

The complaint

Ms I complains about how American Express Services Europe Limited dealt with her chargeback claim about her purchase of a rice cooker.

What happened

In July 2021 Ms I bought a rice cooker from a third party, which I will call “the merchant.” She paid £229 for it with her American Express credit card.

A year later, in July 2022, Ms I told the merchant that there was a fault with the cooker. The merchant arranged for Ms I to send the cooker back. Unfortunately, when the cooker arrived it had been so badly damaged in transit (by a third party carrier service booked by the merchant) that it was impossible for the merchant to examine it and verify that there had been a fault or to repair it. But in August, as a gesture of good will, the merchant offered to replace the cooker with another one.

Ms I did not accept the replacement. She says that the offer of a replacement was not really a gesture of good will, but a legal obligation, since the original cooker was faulty, and the merchant was responsible for any damage caused while the cooker was in transit. And she says that the replacement cooker was also damaged, and she was entitled to an undamaged one. She says she told the merchant that she would still accept the damaged replacement if she was given a new warranty to go with it (since the original warranty had expired in July). Since the merchant did not agree to do that, she asked American Express to refund her purchase.

American Express raised a chargeback dispute, but it accepted the merchant’s defence and closed the dispute in the merchant’s favour. It told Ms I that it had rejected the chargeback claim because the merchant had offered her a replacement cooker even though it didn’t have to, since the damage caused to the original product had prevented the merchant from testing it to see if it was faulty. It added that the merchant’s terms and conditions did not require it to offer her an additional warranty for the replacement.

In May 2023 Ms I brought this complaint about the handling and outcome of the chargeback dispute. She said American Express had not considered the evidence properly, and had also taken too long to reinvestigate the matter when she had complained to it. She had had to chase American Express for a response. She added that the merchant had impugned her character, by suggesting that she might have damaged the cooker herself on purpose, and that she had abused the chargeback system.

One of our investigators considered this complaint, but he did not uphold it. He thought that a chargeback claim could not have succeeded, because the merchant had offered a replacement. Since Ms I had had the cooker for a year, and there was no proof it had been faulty, he thought that offer had been reasonable, notwithstanding the “slight cosmetic damage” which the merchant had acknowledged the replacement had.

Ms I did not accept that decision. She pointed out that the fault had occurred before the warranty had expired, and so she should be protected under the Consumer Rights Act 2015.

She had followed the merchant's instructions about returning the cooker in its original packaging, and it had not been until after it was delivered in its damaged condition that the merchant had mentioned – for the first time – that she should have returned it in stronger packaging than that. Therefore the merchant should be held responsible for the damage, and for the fact that it was no longer possible to establish that the cooker had been faulty. She argued that she was entitled to either a full refund or a like-for-like replacement with no cosmetic damage.

The investigator pointed out that the cosmetic damage to the replacement was too small to see in a photo of it, and that it would probably be functional. But if it turned out to be faulty, then Ms I would have a remedy against American Express under section 75 of the Consumer Credit Act 1974. Ms I accepted that answer, and agreed to accept the replacement item. However, the merchant then told her that as it had been 14 months since she had rejected its gesture of good will, its offer of a replacement was no longer open. Ms I asked for an ombudsman to review her case.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I do not uphold it. I will explain why.

Ms I had two possible remedies against American Express: the chargeback scheme, and a claim for breach of contract under section 75 of the Consumer Credit Act, which makes American Express liable for what the merchant did. However, I think that both of these remedies would have been unsuccessful, for the same reasons. Firstly, there is not enough evidence that the original cooker was faulty at the time it was first delivered to Ms I, and secondly, I think that if a fault had been proved, then the offer of a replacement was a fair offer. I will consider each of these in turn.

When Ms I first reported the fault in July 2022, she said it had been an issue for a few weeks, so it appears that the fault had not been present right away, but had developed several months later. The merchant (and American Express) would only be liable for a fault which was already present or developing at the point of sale, not for something which only appears later on. So while I accept that there was a fault in 2022, I don't think there was enough evidence about the fault to prove that it existed in July 2021. For that reason, I don't think it would be fair and reasonable of me to decide that American Express needs to compensate Ms I for it now.

I have considered the point that the merchant might have been able to diagnose the fault and its cause, and perhaps to establish whether the fault was present all along or not, but for the damage which was sustained when the cooker was in transit in 2022. I think it would have been better if the advice the merchant subsequently gave Ms I about packaging had been given to her in the first place. But there are two difficulties here. First, I cannot speculate about what the merchant might have found out if the item had been returned undamaged. And second, I think this problem is mitigated by the merchant's offer to replace the cooker with another one.

I don't need to get into whether this offer was a gesture of good will or a legal obligation, because in either case I think it was enough. A brand new cooker has to be free of minor defects, and so the slight cosmetic damage (which was two very small dents in the top) would have meant that this would not have sufficed as a replacement for a new item. But the merchant was not offering to replace a new item, but one which (when the offer was made) was a year old. So I think this was a like-for-like replacement, or close enough to one to

amount to a fair resolution to the dispute, since I would not expect a replacement for a year-old cooker to have to be entirely free of minor defects.

Ms I's concern about the dents was not about their aesthetic appearance, but about the risk that this damage could indicate that the replacement cooker might not work properly, because there might be internal damage. It was for that reason that she wanted a new warranty to cover another year. That is an understandable request, but it is not required under the chargeback rules, and the merchant's terms and conditions specifically say that any warranty for a replacement item will be for the same term as the original. So I am satisfied that American Express dealt with the chargeback claim properly. I have thought about whether a different outcome might have been achieved by considering Ms I's claim under section 75, but I do not think it would. That is because the usual remedy for a breach of contract is to put the complainant back in the position she would have been in but for the breach, and in this case that would mean giving Ms I a replacement item with no warranty, since the original warranty had expired in July 2022. Giving her a new warranty would have put her in an improved position, which is not required. If the replacement had turned out to be defective (and I can't conclude that it would have done), then Ms I could have raised a new claim for that, but that aside, I am satisfied that the offer of a replacement was a fair resolution, and that American Express did not have to do more than it did.

Finally, American Express is not responsible for the allegations made by the merchant, so I can't consider that part of Ms I's complaint. And how American Express dealt with her complaint about the chargeback from September to December 2022 (as opposed to how it dealt with the chargeback itself) is not something which I have jurisdiction to consider.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 30 January 2024.

Richard Wood
Ombudsman