

The complaint

Mr P complains that American Express Services Europe Limited, trading as American Express, won't refund to him the payment that he and his wife made for a holiday product. He's being represented in his complaint by a claims management company.

What happened

Mr P and his wife agreed to purchase lodging rights and services for a suite and a junior suite at a vacation club in March 2013 and Mr P made a down-payment of £5,148.87 using his American Express credit card. Mr P sent an e-mail to the holiday company at the end of that month in which he said that he was unable to proceed further with the purchase of the vacation weeks and wished to rescind and be released from the agreement.

The holiday company offered him some options and Mr P agreed in May 2013 to go ahead with an alternative junior suite. He paid a further £2,650.44 to the holiday company in July 2013 using his American Express credit card.

Mr P's representative made a claim to American Express in June 2018 under section 75 of the Consumer Credit Act 1974 for a refund of the down-payment of £5,148.87 that Mr P had made because the holiday product had been misrepresented to Mr P and his wife. American Express said that it was unable to uphold Mr P's claim and it set out its reasons for reaching that conclusion. Mr P wasn't satisfied with its response so a complaint was made to this service that the holiday company was in breach of the contract by misrepresenting the contract to Mr P and his wife and breaching the EU Timeshare Directive.

Our investigator didn't recommend that Mr P's complaint should be upheld as she didn't think that American Express' decision to turn down his claim was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract that Mr P had agreed with it.

Mr P's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. It says, in summary and amongst other things, that:

- our investigator's recommendations don't take into consideration any of the regulations applicable to a contract of this nature;
- Mr P and his wife provided the holiday company with notice that they wished to cancel the contract within the cancellation period of five working days from the delivery, or the signing, of the contract;
- the holiday product that Mr P and his wife received didn't contain the same quality and specifications offered to them at the sales presentation and/or listed in the contract;
- Mr P and his wife purchased the suite and junior suite timeshare weeks as an investment that would provide a 20% return because they believed the salespeople's claims that the units would rent out easily at the rate of US\$3,200 each week and they were provided with a list of brokers who rent out the units; and

- Mr P and his wife had the right to receive sufficient and truthful information about the products acquired but that didn't happen.

Mr P has provided a statement in support of his claim in which he describes the way that the holiday product was sold to him and his wife.

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 agree with our investigator that Mr P's complaint shouldn't be upheld for these reasons:

- Mr P's claim was made under section 75 which gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- Mr P's claim under section 75 is that there's been a breach of contract by the holiday company and that the holiday product was misrepresented to him and his wife and that they wouldn't have bought it if it hadn't been misrepresented to them;
- I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not American Express' response to Mr P's claim was fair and reasonable in the circumstances;
- Mr P's complaint form says that the holiday company breached the EU Timeshare Directive – but neither the holiday company nor the holiday product is based in the EU so I don't consider that the EU Timeshare Directive would be applicable in these circumstances;
- Mr P's complaint form says that the holiday company was in breach of the contract by misrepresenting the contract to Mr P and his wife and his representative's letter to American Express in June 2018 describes the misrepresentations that it says were made to Mr P and his wife, including:
 - they had five working days from the delivery, or signing, of the contract to cancel it;
 - the vacation package that they received didn't contain the same quality and specifications offered to them at the sales presentation and/or listed in the contract;
 - they purchased the timeshare weeks in the suite and junior suite as an investment that would provide a 20% return, because they believed the salespeople's claims that the units would rent out easily at the rate of US\$3,200 each week and they were provided with a list of brokers who rent out the units; and
 - the vacation package contains terms and conditions that weren't previously disclosed verbally or in writing;
- Mr P and his wife had signed documents in March 2013 for their purchase of lodging rights and services for a suite and a junior suite at the vacation club – the total price payable for their suite and junior suite was US\$29,715 and Mr P had made a down-payment of US\$7,429 (£5,148.87) so the balance due from them was US\$22,286;

- Mr P sent an e-mail to the holiday company at the end of that month in which he said that he was unable to proceed further with the purchase of the vacation weeks and wished to rescind and be released from the agreement;
- the holiday company offered him some options and Mr P agreed in May 2013 to go ahead with an alternative junior suite – Mr P’s representative has provided unsigned documents dated May 2013 for the purchase of lodging rights and services for the alternative junior suite at the vacation club - the total price payable for that junior suite was US\$11,468, less the down-payment that Mr P had made so the balance due from Mr P and his wife was US\$4,039 – Mr P paid US\$4,039 (£2,650.44) to the holiday company in July 2013 using his American Express credit card;
- Mr P said in his e-mail to the holiday company at the end of March 2013: *“We realise that the 5 day period for withdrawing is passed but we were unaware of the above until our return home and I have advised you as soon as possible”* – but I’ve seen no evidence to show that Mr P and his wife had more than five working days from the date that they signed the agreement in March 2013 to cancel it and that period had ended before Mr P sent his e-mail to the holiday company;
- Mr P and his wife had agreed to buy rights to the alternative junior suite (and not the suite and junior suite that was the subject of the documents that they’d signed) so the vacation package that they received wasn’t the same as the vacation package offered to them at the sales presentation and/or listed in the contract and I consider that it would be reasonable to expect that the quality and specification would be different and I’m not persuaded that there’s enough evidence to show that the quality and specification of the alternative junior suite was misrepresented to them;
- the purchase agreement that Mr P and his wife signed said: *“Membership is intended for the use and enjoyment of Member, not for rental, resale or investment”*; and the declaration that they signed said: *“The [holiday company] will not rent or resell my weeks. The [holiday company] makes no representations about vacation ownership rentals, resales or their value as an investment and does not in any manner recommend purchasing vacation ownership for any rental, resale or investment purpose”*;
- Mr P says in his statement that he and his wife were given an indication of the likely rent per week and that they were provided with a list of vacation ownership rental and resale companies but that they began to have misgivings about the rental process when they were required to pay an upfront fee to one of those companies and it wasn’t very efficient and it achieved no rental during the four years that it was involved;
- Mr P’s representative says that Mr P and his wife were told that their investment would provide a 20% return and would easily rent out at the rate of US\$3,200 each week – but they had agreed in the documents that they’d signed that their purchase wasn’t an investment and I’ve seen no other evidence to support the claim that they were told that they would be able to rent out the suite and junior suite for US\$3,200 each week;
- Mr P and his wife had agreed to buy rights to a suite and a junior suite but they bought rights to an alternative junior suite and I’m not persuaded that it’s likely that they would have been told that they’d be able to rent out the alternative junior suite for US\$3,200 each week;
- I’m not persuaded that there’s enough evidence to show that the holiday product was misrepresented to Mr P and his wife by the holiday company or that they were induced into entering into the purchase agreement to buy the holiday product by any such misrepresentations;

- Mr P's representative has provided the documents that were signed by Mr P and his wife in March 2013 and also the unsigned documents dated in May 2013 relating to the alternative junior suite and I'm not persuaded that there's enough evidence to show the vacation package contains terms and conditions that weren't previously disclosed verbally or in writing or that the holiday company has breached the agreements;
- I sympathise with Mr P and his wife for the issues that they've had with their holiday product but I consider that American Express' response to their section 75 claim was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require American Express to refund to Mr P any of the money that he and his wife paid for the holiday product, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 June 2023.

Jarrold Hastings
Ombudsman