

The complaint

Mr A complains that American Express Payment Services Limited (Amex) failed to raise a dispute under section 75.

What happened

Mr A booked a hotel and paid using his Amex credit card.

When he arrived at the hotel, it was closed, and Mr A had to book an alternative hotel. He did so using the same booking agent and the same Amex credit card.

Mr A raised his concerns with booking agent, but they said no refund was due in line with the hotel's terms and conditions. Mr A then raised a dispute with his credit card. Amex raised a chargeback and applied a temporary credit to Mr A's account. This was defended by the booking agent. Amex said Mr A hadn't provided the additional evidence it required and so it reversed the credit and declined the chargeback.

It then came to light that Mr A had submitted evidence, but it failed to be successfully uploaded on the system. Amex asked Mr A to submit this again but instead he raised a complaint to which he didn't get a reply. Amex was of the view that as a chargeback claim had been successfully defended it would not consider a section 75 claim unless Mr A specifically asked it to, as such Mr A received no refund for the hotel he had booked but was unable to stay at. It did, however, acknowledge it had failed to provide a satisfactory service to Mr A and offered him £125 by way of compensation.

Dissatisfied Mr A brought his complaint to this service.

An investigator looked into things for Mr A. He didn't think AMEX had acted fairly in the circumstances of this complaint, in his view he said:

- He didn't agree it was Mr A's responsibility to raise the possibility of a section 75 claim following an unsuccessful chargeback
- He found there to be a clear case of misrepresentation in this case as it was clear the hotel Mr A booked wasn't open for the dates he wanted at the time of booking
- Had Amex pursued a section 75 claim, the D-C-S chain may not have been present as the nature of the booking meant Mr A had a separate contract with the hotel - but the booking agent was still liable to provide a travel service – which it did not.

On balance the investigator felt Amex had not acted fairly and reasonably and asked it to refund the £211.03 Mr A paid for the first booking. He accepted Amex had offered compensation for poor service of £125, which he found to be sufficient in the circumstances of this complaint.

Amex disagreed. It says Mr A failed to provide the evidence required to pursue the chargeback claim and as that had failed it was very unlikely a section 75 claim would be

successful. Furthermore, it disputes there is a valid debtor-creditor-supplier (DCS) chain in place. It asks for an ombudsman review.

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.

Mr A used his Amex credit card to pay a booking agent for the hotel stay. This means under S75 of the Consumer Credit Act 1974 (CCA for short) he can bring a 'like claim' against Amex for any breach or misrepresentation made by the booking agent. But to be clear Amex is only liable under S75 where it's made out that there is a breach of contract or material misrepresentation. And Amex isn't responsible for issues outside those two areas of liability.

Mr A's Amex credit card is also part of a card network. And this network has rules which includes giving Amex an avenue for card transactions to be disputed with Merchants (the booking agent), namely through the Chargeback process. The Chargeback process is not a right for consumers, nor does it provide any guarantee of success. But this service does consider raising a chargeback to be good practice if the credit card provider considers the dispute has a reasonable prospect of success. I should also add that this decision is about Amex and whether it did what it should have and whether it treated Mr A fairly in relation to its obligations.

In order to uphold Mr A's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Amex's response (or failure to raise) to the section 75 claim wasn't fair or reasonable. A misrepresentation is an untrue statement of fact which induces a consumer to enter into a contract.

Amex is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the Chargeback process or not. If it does go through the process, then it must do so properly. And it can fairly decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success. This is the test here.

Amex did raise a chargeback and it seems it accepted as evidence that Mr A had booked the first hotel because the booking agent provided the booking form. When it asked Mr A for further evidence it didn't get any, but it has accepted that was because the documents Mr A sought to upload failed to do so properly. It has also compensated Mr A for this failure.

So given that Mr A went on to book an alternative hotel with the same company and with the same credit card within a clear timeline so as to support his version of events it seems surprising that Amex didn't go onto consider a Section 75 claim.

Retrospectively it has said that it didn't consider it would have been successful or that a valid d-c-s chain was in place. So, I will deal with each point separately.

Section 75

Before deciding on whether there is breach or misrepresentation here there are some requirements set out in the CCA which also have to be met before these issues can be considered. One of these tests is around financial limits and having considered these I think on balance that Mr A's claim meets the financial limits criteria.

Another test in the CCA for a valid claim is that there must be a debtor-creditor-supplier arrangement in place. This is often referred to as the 'DCS relationship' or simply 'DCS'. This means that there needs to be the necessary three-party relationship. This often looks like:

- A debtor (who makes repayments to the creditor for the borrowing for the purchase)
- A creditor (who has to send the borrowed amount direct to the supplier)
- A supplier (who has to provide what was purchased to the debtor)

This means the person who paid for the goods (the Debtor-Mr A) should have a contractual relationship with whoever supplied the goods or Services (the Supplier-the Hotel here) as well as with the credit provider (the Creditor-Amex). And this is the crux of the complaint here. Mr A says that the DCS relationship is in place so Amex can be held liable for any breach of contract or misrepresentation by the Hotel. The Hotel was due to supply Mr A with the hotel room, but it wasn't who he paid with his credit card. He paid the booking agent for a service, but the hotel supplied the room.

So, Mr A paid the booking agent A (not the Hotel) but the issues were with the hotel in that it was closed. So clearly there are four parties here namely Mr L, the Hotel, the booking agent and Amex. So, I'm not persuaded that DCS is in place here with regard to the services provided by the Hotel. It is in place between the booking agent, Mr A and Amex.

So, I have gone onto consider any breach of contract or misrepresentation by the booking agent here in relation to the services it provided. After all it introduced Mr A to the hotel and provided booking services which he used successfully.

The 'FAQ's' and 'fees and policies' sections of the hotel's page on the booking agent's information clearly states the hotel is closed between 9 January and 10 February. This covers the dates Mr A booked the hotel in good faith with the booking agent despite it being fully aware that the hotel is closed.

As such, I'm satisfied the booking agent made a clear false statement of fact which in my view would be considered a misrepresentation under section 75.

Had Amex considered a section 75 claim, it seems to be a reasonable assumption it would have uncovered this information fairly easily, as indeed this service did and as such could have upheld Mr A's claim. In not attempting to consider a section 75 claim, it is my view Mr A has been treated unfairly and as such Amex should put matter right.

Putting things right

As I have already said, I'm persuaded Amex should have raised a claim under section 75 when Mr A brought a complaint in February 2022.

As such it should carry out the following actions:

1. refund the cost of £211.03 back to Mr A
2. allow approximately one month for what would have been a section 75 investigation and so if Mr A cleared his credit card balance, it should also award 8% simple interest from 12 March 2022. But if Mr A did not clear his balance in full, you should refund all interest payments associated to the payment from the same date.
3. As Amex has awarded £125 compensation for the poor service Mr A experienced I'm satisfied this is reasonable within the circumstances of this complaint and I make no further award.

My final decision

For the reasons I have given I uphold this complaint and direct American Express Payment Services Limited to undertake the actions as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 31 January 2023.

Wendy Steele
Ombudsman