

## The complaint

Ms M complains American Express Services Europe Limited (AESEL) (“Amex”) has not treated her fairly when she sought a refund of money she’d paid on her Amex card towards a property investing course.

## What happened

When I was passed this case to review I considered both parties would benefit from a more complete explanation of our initial investigator’s recommendations. I therefore wrote to both Amex and Ms M with my initial thoughts on how the complaint should be resolved and why. For this reason, I won’t go into great detail about the background of the case. But in summary:

- Ms M signed up to a property investing course with a company I’ll call “TS” in February 2020. She agreed to pay £15,594 for the course, which she partially funded with her Amex credit card. The course was advertised as being for 12 months with primarily face to face delivery of the course content.
- Ms M attended one face to face session in March 2020 before the coronavirus pandemic led to national lockdowns which prevented further in-person sessions from going ahead. TS offered students the option of continuing the course, adapted to an online format, or suspending the course until such time as conditions allowed for it to be delivered face to face. Ms M was persuaded by TS that it would be able to deliver the course online and agreed to continue.
- However, Ms M was greatly disappointed with the online course, which she felt was substantially different to what she had agreed to pay for. She did not find that the online delivery suited the networking-focused style of the course, and was generally dissatisfied with the quality of the services provided by TS. She attended one online mentoring session and then a catch-up with a mentor in June 2020. She cancelled her subsequent mentoring sessions and then complained in September 2020, asking for a refund.
- TS rejected Ms M’s complaint, although it did accept that the course had been advertised as face to face and that parts of it had been “jeopardised” by the move to an online format. Ms M took her complaint to a different ombudsman service, directly against TS. At about the same time she also contacted Amex to raise a claim under section 75 of the Consumer Credit Act 1974 (“CCA”).
- Ms M had lodged her claim with Amex in December 2020. Amex then became aware of the involvement of the other ombudsman service in February 2021. It told Ms M that it would no longer be looking at her section 75 claim because the terms and conditions of her credit card said she was not allowed to pursue claims through multiple avenues. Ms M was unhappy about this decision and complained – with that complaint subsequently being referred to the Financial Ombudsman Service.
- In the meantime, the other ombudsman scheme made a decision about the

complaint with TS. It said TS had offered a partial refund of about £1,700 for mentoring sessions Ms M hadn't attended by the time she decided to stop the course, and it thought this was fair. Ms M didn't accept this offer and continued her case with this service, where it was looked into by one of our investigators. At this point, Amex made an offer of £50 compensation for providing poor customer service.

- Our investigator initially didn't think the complaint should be upheld, but later changed his mind and recommended Amex refund 50% of the amounts Ms M had paid for the course, "rework" her account, pay 8% compensatory interest where applicable, and pay an additional £200 compensation in relation to it having unreasonably refused to look into Ms M's section 75 claim. Amex disagreed, questioning where the breach of contract was by TS which meant a refund was due, and standing by its decision to stop looking at Ms M's claim.

The complaint was passed to me to decide. I wrote to both parties, broadly making the following observations and findings:

- A key point in the promotional material for the course had indicated it was meant to have primarily face-to-face delivery, and TS had accepted, when initially responding to Ms M's concerns, that she had "paid for in-person training" and aspects of the course had been "jeopardised" by the move to online delivery.
- I thought it was a term of the contract with TS that Ms M would receive in-person training, and the failure by TS to provide this apart from one pre-pandemic session, was a breach of contract which was significant enough for Ms M to be able to terminate the contract. Ms M had been persuaded by TS initially that she should give the online format a go, but I didn't think this meant she was prevented from terminating the contract for breach when the online format turned out to be unsatisfactory.
- It could be difficult to calculate appropriate damages for a breach of a contract for services. The courts had discouraged taking too fine-toothed an approach to this. One way of calculating damages was to work out the difference in value between what had been paid for and what had been provided. Ms M had attended two out of 12 mentoring sessions, two specialist workshops, and had also had access to an online knowledge library. TS had told the other ombudsman service that this was all worth £13,882.20, of which each mentoring session had been worth £835.20. However, the maths didn't add up so I didn't feel I could put much weight on TS's calculations. Our investigator had recommended a backdated 50% refund plus 8% simple interest where applicable. I considered it could be argued that the value of the services Ms M had received was either or more or less than this but, looking at things in the round, I thought our investigator's recommendation was a fair one. Due to the effect of section 75 of the CCA, Ms M was able to claim this redress from Amex instead of TS.
- I thought it had been inappropriate of Amex to decide not to look at Ms M's claim when it became aware of the involvement of another ombudsman service in her complaint to TS. Amex had sought to justify its decision by pointing to its terms and conditions saying that Ms M couldn't make any other claim against a retailer or third party. But I noted that the terms and conditions didn't say what Amex thought they did. They only said that Ms M agreed not to make any other claim *if* she had received a refund from Amex already, which she hadn't. I considered there were more reasonable courses of action Amex could have taken, such as explaining to Ms M that she would not be able to recover the same losses twice (double recovery) and that it would need to wait for the other ombudsman scheme to make a ruling before it

could give her an answer on her claim. I thought the additional £200 compensation recommended by our investigator for the impact of this was fair.

Both parties responded to my informal findings. Amex said that, in order to get the matter resolved, it would accept what I'd said. Ms M also broadly accepted my informal findings but said she thought the amount of compensation should be higher. She said she had felt Amex should *"be on notice not to dismiss or push under the rug consumer claims just because they don't want to take the time to understand them or because it's not in their interest to understand them."*

Because full agreement couldn't be reached on the question of compensation, I must now make a final decision.

### **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.

Section 75 of the CCA gives consumers a degree of protection when they pay for goods or services using a credit card. So long as certain technical conditions are met, they are able to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of the goods or services.

It's not been argued that the technical conditions (relating to the price of the goods or services, and how they were paid for) for Ms M to make a claim under section 75 have not been met, so about this I will say only that having reviewed the available evidence, I am satisfied that the conditions are met.

I've explained already in this decision why I think TS was in breach of contract and a refund of 50% of what she paid would be a fair award in respect of this. Neither party to the case has expressed disagreement with my reasoning or conclusions, so I see no reason to depart from them.

Regarding the £250 compensation (including the amount Amex has already offered), Ms M has said she thinks this should be higher. Ms M's reasoning for thinking it should be higher appears to be for it to have a punitive or deterrent effect on Amex – to discourage it from dismissing consumer claims. The Financial Ombudsman Service doesn't have the power to make awards for the purpose of punishing or fining a business. The purpose of compensation is to reflect the non-financial impact of something wrong which a financial business has done (or failed to do).

In this case, Amex wrongly declined to consider Ms M's section 75 claim after it became aware of the involvement of another ombudsman service. The result of this was a degree of delay in Ms M's claim being heard, and disappointment on her part. Overall, I remain of the view that a figure of £250 is fair and reasonable in these circumstances.

### **My final decision**

For the reasons explained above, I uphold Ms M's complaint and direct American Express Services Europe Limited to take the following actions:

- 1) Refund to Ms M 50% of the total amount that she paid to TS for the property investing course (including payments not made on her Amex card).
- 2) The refund in 1) above should be treated as though it had been made on the date

American Express Services Europe Limited communicated to Ms M that it was no longer going to look into her section 75 claim. This means any fees, interest or charges on the credit card account will need to be recalculated and refunds of these provided where they should not have been incurred. If the refund means a credit balance would have arisen on Ms M's account at any time, 8% simple interest per year\* should be paid on that credit balance, calculated from the date the credit balance would have arisen, to the date it would have ceased.

- 3) Pay Ms M a total of £250 compensation. If it has already paid part of this to Ms M (for example, the £50 offered previously), it only needs to pay the remaining amount.

\*If American Express Services Europe Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms M how much it's taken off. It should also give Ms M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 15 June 2023.

Will Culley  
**Ombudsman**