DRN-4163264

The complaint

Mr A is unhappy with how American Express Services Europe Limited (AESEL) 'Amex' responded about a dispute in relation to a credit card transaction.

What happened

Mr A made a payment to a travel service ('the supplier') in December 2021. However, he realised he had made a mistake and contacted the supplier to cancel the transaction.

The supplier said it could only apply a credit to Mr A's account and not refund him. Mr A was not satisfied with this so he contacted Amex for help.

Amex raised a chargeback – however, this was defended by the supplier. Amex discontinued the chargeback.

Mr A complained about the outcome of his claim but Amex did not uphold the complaint. Mr A took the matter to this service.

Our investigator looked into whether Mr A would have had a successful claim in respect of Section 75 of the Consumer Credit Act 1974 ('Section 75'). He concluded that the supplier's cancellation policy was unclear and could be read in more than one way – however, in light of the provisions of the Consumer Rights Act 2015 ('CRA') he considered it fair to read it in favour of Mr A. In this case Mr A was contractually entitled to a refund – and in not providing it the supplier was in breach of contract. He thought that Amex should refund Mr A (with interest) but Mr A would need to inform the supplier that he no longer required the credit balance.

Amex does not agree with our investigator so the matter has come to me for 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.

Amex did not supply the travel service here – but I have considered its role as a provider of financial services and how it could reasonably have assisted with the dispute. With that in mind I consider the card protections of chargeback and Section 75 to be relevant here.

Like our investigator I have not considered chargeback here in any detail as I am upholding this complaint for other reasons. Furthermore, in my role resolving disputes informally, even though I have considered these I will not be commenting on all matters raised by the parties – only those I think are central to the dispute.

Section 75 allows Mr A in certain circumstances to hold Amex responsible for a breach of contract or misrepresentation by a supplier in respect of an agreement for goods or services paid for using his credit card.

Certain technical criteria have to be satisfied for a valid Section 75 claim – for example in

respect of the cost of the goods or services, or the relationship of the parties in respect of the agreement with the supplier. In this case I am satisfied such criteria has been met – so I have moved on to consider whether there is a breach of contract here by the supplier (misrepresentation is not being argued nor do I consider it relevant here).

In order to determine whether there has been a breach of contract I have considered the agreement Mr A has with the supplier for the travel service.

The supplier's terms of use that deal with cancellation (section 4) state that Mr A may cancel the travel service he booked by contacting the supplier's support. Mr A appears to have done that and received confirmation in writing. However, the refund was applied as a credit to his '*personal account'*.

The cancellation terms then go on to state that '*Refund of the Transfer'* shall be carried out in accordance with clause 4.2 This part goes on to describe various scenarios where funds will be due back to the customer's 'Personal Account' for use on other transfers.

It appears undisputed by the supplier that Mr A was entitled to cancel when he did without penalty. I also note that all the scenarios in 4.2 A to D where cancellation without penalty is permitted are in respect of the credit being returned to the customer's 'Personal Account' rather than a cash refund.

However, what muddies the water here is clause 4.2.2 which appears to have the effect of explaining that during the pandemic the supplier's stance is that any credit will be applied to the 'Personal Account' – but after which the customer has the option of having the money returned to their bank account.

Amex has indicated that Mr A did not cancel due to the pandemic so clause 4.2.2 doesn't apply here. But I don't think the clause relates to the reason for cancellation – it appears to be an explanation of the refund policy during the pandemic. The reason Mr A cancelled appears not to be relevant here to whether the credited refund can be returned to a bank account – only whether circumstances in respect of 'force majeure' still persist at the particular time.

My interpretation of the cancellation policy is that 4.2.2 acts as an umbrella clause to explain that customers will be entitled to withdraw funds held on account once the circumstances around the pandemic (or other force majeure events) no longer apply. The parameters for this are somewhat unclear (such as when 'the end' of a period of force majeure would be determined) – but there is no compelling evidence put forward that indicates the supplier's service was impacted at the time (or continues to be impacted) in such a way that Mr A was not entitled to have his refund applied to his bank account.

I have given regard to the submissions about section 8.1 (G) of the terms which are cross referenced in 4.2.2 but I don't think that has the effect of preventing Mr A from getting a refund here – it simply appears to show that the provisions of clause 4.2.2 applies to periods of other unforeseen circumstances (in addition to the pandemic).

I acknowledge that Amex has a different interpretation here. I can see why – the clause is not drafted in a clear way. However, I don't think my interpretation or that of our investigator is unreasonable either. And where contract terms could have different meanings the Consumer Rights Act 2015 (section 69) is clear that the meaning that is most favourable to the consumer is to prevail. Here I consider the most favourable interpretation is that Mr A is entitled to a cash refund – not a credit on account.

I agree with the investigator that if Mr A accepts the decision he needs to fairly inform the

supplier that he no longer requires the credit on account as he is receiving reimbursement from elsewhere. I don't think it unreasonable that he provides a copy of this correspondence to Amex either so it can see Mr A has made a reasonable attempt to prevent double recovery.

Our investigator has awarded interest to Mr A from the date Amex gave its final response on the matter. I think there is an argument to say that Amex could have considered the Section 75 claim sooner and issued a refund. However, I do acknowledge the specific circumstances here and the clarity in respect of the contract. So noting this, and Mr A's lack of objection to what the investigator proposed I consider it fair to award out of pocket interest on the refund from the date of the final response to the date of settlement here.

Putting things right

Amex should put things right in accordance with my direction above – however, Mr A should note he is to provide Amex with a copy of the correspondence he sends to the supplier, in order that it can be satisfied he is not receiving double recovery here.

My final decision

I direct American Express Services Europe Limited (AESEL) to pay Mr A the refund of the £732.72 he paid the supplier plus 8% simple yearly interest calculated from 25/1/23 to the date of settlement.

If Amex considers it necessary to withhold tax from the interest element of my award it should provide Mr A with a certificate of tax deduction so he may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 August 2023.

Mark Lancod
Ombudsman