

The complaint

Mr G complains that American Express Services Europe Limited (AESEL) trading as American Express ('Amex') have not refunded him for a booking he made on his credit card.

What happened

Mr G booked hotel rooms in December 2019 costing in excess of £4,000. It was for a stay in August 2020 for guests due to attend a wedding. However, due to the global pandemic the wedding could not go ahead. Mr G cancelled the booking for the hotel rooms and explained the situation to the hotel ('the supplier').

Because the booking was non-refundable the supplier would not offer a full refund. Instead it offered a partial credit of £418.96 and a voucher for future use in the hotel.

Mr G says he didn't get the partial credit back from the supplier, and says he was not able to make use of any voucher. So he approached Amex to help him. It considered a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') but did not uphold it. As a way of settling the matter it offered to honour the partial credit the supplier offered.

Mr G was not happy with the outcome of the claim he made to Amex, but it didn't change things. So Mr G took his complaint to this service.

Our investigator did not uphold the complaint. In summary, she concluded that Amex had not been unreasonable in declining a Section 75 claim as there was no breach of contract by the supplier. She also noted there were no chargeback rights which would have allowed Mr G to claim for a full refund, and at most Amex could have recovered the part credit promised by the supplier.

Mr G has asked the matter to be considered by an ombudsman.

I issued a provisional decision on this matter on 20 April 2023:

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

I'm sorry to hear Mr G and his family cancelled a wedding due to circumstances surrounding the global pandemic. This meant they had no use for the hotel rooms that had been paid for. But it is worth noting that Amex did not market or supply the hotel booking which is the subject of this dispute. Nor is Amex generally responsible for putting right unfortunate events caused by the global pandemic. In considering what it should fairly do to resolve matters I consider its specific obligations as a provider of financial services. Here I have focused on the relevant card protections – in this case these are chargeback and Section 75.

It is also worth noting from the outset that while I am provisionally finding a different outcome to our investigator, for the reasons detailed below I am not directing Amex to pay Mr G the

full refund he wants. And while Mr G has said he knows of others who have received full refunds I am looking at his case on the individual circumstances.

Section 75

Section 75 in certain circumstances will allow Mr G to make a 'like claim' against Amex for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it has with him for the provision of goods or services.

Certain criteria need to be met in order that Section 75 will apply in any given circumstance. I am satisfied such criteria are met here. I also note that although the accommodation was marketed and booked through an online travel agent, the credit card payment was made directly to the supplier. Therefore, I consider the relevant Section 75 claim here is respect of the agreement with the supplier rather than the travel agent.

I have gone on to consider if there has been any misrepresentation or breach of contract by the supplier which would give rise to a successful claim against Amex. I don't consider that misrepresentation is relevant or being claimed here so I have focused on breach of contract.

Unfortunately, I have not been provided or been able to obtain the terms and conditions of the supplier that relate to Mr G's booking. The process of booking the hotel through the online travel agent appears to allow for bookings which are both refundable and not refundable. In this case I note the supplier in email correspondence to Mr G (after he contacts it about the problems) states that the booking is non-refundable and indicates its offer is based on goodwill. Furthermore, from what I can see Mr G has accepted that the booking he made was non-refundable but has instead focused on the pandemic (and events beyond his control) as a reason he should get the money back.

On the basis that the booking is non-refundable there appears to be no breach of contract by the supplier here. I say that because it was not the supplier that cancelled the booking – it was Mr G. And while I appreciate Mr G has stated it was because of the unfortunate circumstances around the pandemic (an event clearly out of his control) it appears that the supplier was still able to provide the service agreed. Furthermore, I have not had sight of any contractual terms that oblige the supplier to provide a refund in these circumstances. Because of this there is technically no breach of contract by it which would give rise to a claim against Amex.

Furthermore, even if the supplier were prevented from opening due to restrictions imposed as a result of the global pandemic (which I don't think has been suggested at this point) it would also unlikely be considered a breach of contract. It might be considered a frustrated contract, but this does not give rise to a claim against Amex under Section 75.

Because there is no breach of contract by the supplier Amex is not liable via Section 75. And while I accept the supplier promised a refund and a voucher this appears to be a goodwill gesture rather than evidence of a breach. It follows that any failure to receive the offer (as Mr G has alleged) does not give rise to a breach in the context of the Section 75 claim against Amex.

To conclude – because there is no persuasive evidence of a breach of contract or misrepresentation by the supplier I don't think that Amex has acted unfairly in declining the Section 75 claim here.

Chargeback

The chargeback scheme is one way which Amex might have been able to recover funds for Mr G. However, it is limited by the particular scheme rules that apply. I have considered the information I have in order to decide if Amex has acted fairly here.

I understand Amex did not raise a chargeback for Mr G. It has pointed to the fact that it considered a Section 75 claim instead. However, I don't think considering matters under Section 75 prevents Amex from fairly considering and raising a chargeback if appropriate. However, while it is often good practice to raise a chargeback I think Amex would only be expected to raise one that had a reasonable prospect of succeeding in the particular circumstances.

In respect of obtaining a refund for the cancellation of the hotel booking I am not persuaded there is a chargeback reason code that had a reasonable prospect of success here. It could be argued that a reason code for a 'service not received' is the most relevant one here. There is a question mark over whether Mr G contacted Amex in time for it to raise a chargeback for a service not received. But even if there were time to raise a chargeback—the service as far as I can see was provided and available to use. It was just that Mr G and his party were unable to make use of it. So I don't think a chargeback is likely to have succeeded on these grounds in any event.

I note the supplier did promise Mr G a credit for part of the payment but didn't process this. So it is arguable that a chargeback for a 'credit not presented' would have been a viable option for Amex. It is not entirely clear to me how the scheme rules would apply in this particular situation and whether Amex would have been in time to raise a chargeback. I note there appears to be a 120-day time limit from when the supplier agrees a credit is due.

However, in deciding what is fair and reasonable I have taken note that:

- although the original offer of a refund was made by the supplier in June 2020 the dialogue between the supplier and Mr G about the refund appears to continue up until March 2021 (where the supplier requests information from Mr G in order to process the refund) and in July 2021 the booking agent confirms a refund request has been sent to the supplier and might take 15 days to complete*
- Amex has not provided compelling reasons why a chargeback for the promise of part credit would not have succeeded and has also agreed to honour the credit offered by the supplier (and says it has paid this to Mr G) in any event*

I do not know for sure if Amex has paid Mr G the part credit yet but if it has not done so I consider in the particular circumstances it is fair and reasonable to do this.

Customer Service

Mr G has complained about the way Amex handled his claim. In summary, he indicates that the case was closed without explanation, his emails were blocked, and it took too long to give him an answer.

Amex says it didn't close the claim without warning. However, from what I can see it closed the claim as a result of not getting 'sufficient' information back from Mr G and wrote to Mr G to say this. Mr G responds to say he did send the information. I note that Amex in its final response letter in reference to claims it blocked emails explains that the email address Mr G was using for the Section 75 team was being 'decommissioned' and not used for external email communications. Furthermore it explained that the email address it is using will only

accept responses within a strict time frame and the emails Mr G sent did not 'fulfil this' criterion. However:

- *it seems likely Mr G did send Amex information in response to its request(s), but emails were blocked for the reasons Amex describes;*
- *while the blocking was clearly not intentional it is not reasonable for Amex to have expected Mr G to know that he wasn't able to email certain addresses or that his responses would not go through if sent outside certain timeframes unless this was clearly explained in advance (and I can't see where it was); and*
- *even if Mr G had not sent Amex the information it needed, Amex could have been clearer about what exactly it had received and what it needed before closing the case.*

Furthermore, I can see Amex opened the Section 75 claim in July 2021 but didn't give Mr G an outcome until around January 2022. This seems to be too long on the face of it. Amex has indicated that it had times where it was waiting for information from Mr G however I think most of the delays in getting information were because Amex had not been clear about how Mr G could send the information or what format Amex needed to view this (it later refers to needing PDF format). Furthermore, it appears that even when Amex considered it had everything it needed it still took another three months or so to provide an outcome.

I think Amex could have been clearer with Mr G, and even though it says there is no time frame set out for considering a Section 75 claim I think overall things took longer than they needed to. I note what Mr G has said, and to me what has occurred has caused him frustration and annoyance more than the level he might reasonably have expected. I think Amex should therefore pay £150 in compensation for the way it handled the claim.

My provisional decision

I direct American Express Services Europe Limited (AESEL) trading as American Express to pay Mr G the £418.96 credit he was promised and £150 in compensation.

I asked the parties for their comments:

Mr G said in summary:

- the hotel promised to refund the full amount within 15 days as advised by the online travel agent but then changed its mind;
- he kept on requesting the vouchers, but these did not arrive before the deadline to use them; and
- he has not received any payments from Amex and it has let him down very badly and not been helpful when dealing with the claim.

Amex responded to say, in summary:

- it is not liable for the credit offered by the merchant as this is a goodwill offer and is compensation for the claim Mr G made – it is only able to claim a chargeback in relation to a charge for goods and services; and
- £150 compensation for its customer service is unreasonable – the Section 75 process does not have a regulated timeframe and the pandemic is responsible for delays – while it appreciates there had been a delay due to correspondence going to an unused email address this was addressed when the issue arose and *'correspondence sent from the Section 75 contained the correct receipt address, therefore this shouldn't be counted as an AmEx error'*.

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.

I thank the parties for their responses to my provisional decision. I have considered these carefully. However, I have focused on what I consider to be the key matters here rather than comment on everything. This reflects my role resolving disputes informally.

I have considered Mr G's comments, but it doesn't change my provisional findings. In summary, I don't think there is persuasive evidence that the hotel whom Mr G contracted with for the rooms promised Mr G a full refund or contractually owed him one. The email I have seen from the hotel is clear that the hotel is not willing to offer a full refund as the rooms are non-refundable. I don't think the third-party booking site was in a position to guarantee refunds here but acted as a go between.

Mr G has referred to the fact the vouchers did not get sent in a timely fashion – however, as I have said in my provisional decision, the vouchers were not offered to remedy a breach of contract here – but as a goodwill gesture. Therefore, with Section 75 in mind – there is no breach of contract which Amex is liable for in respect of the travel vouchers.

I have considered what Amex has said about why a chargeback would have failed. It says:

'The main difference with this is that we are looking at goodwill offered by the merchant. They actively offered that as compensation for the claim that the Cardmember made. A chargeback that we can claim for would be in relation to an [sic] charge for goods and services.'

However, although I accept the offer of credit was a goodwill gesture – I am not persuaded that this means it is not a promised credit of a specific charge for services. Firstly, I note that the hotel in its email to Mr G about the refund specifically says that it will refund the charge in respect of certain rooms equating to £418.96. This indicates the merchant (goodwill or otherwise) has promised to credit a precise amount paid attributable to part of the service rather than make a general and unrelated offer of global compensation.

In fact I note that Amex has previously written to us to say that it reviewed the claim and provided *'a refund of £418.96 on 14th January 2022, for a refund which had not been applied by the merchant'*. So what Amex has said here is not consistent with what it has said more recently. I think what it said initially to this service indicated that a chargeback would have succeeded for a credit not processed. I also note that Amex has not provided any information from its actual chargeback rules to show that Mr G would not have been eligible for a successful chargeback dispute based on the promised credit not being processed.

Taking into account the lack of clarity here from Amex about its specific chargeback rules along with what on the face of it appears to be a promised credit of a specific charge for services – I still consider it fair on balance that Amex refund the £418.96 to Mr G (which Mr G says he has not received). However, due to the particular circumstances here I am not asking it to pay additional sums (such as interest) on this amount.

I note Amex has disputed my decision to award £150 compensation for its customer service and has now focused on the pandemic as a reason for delays. I was not unaware of the context of the pandemic when deciding the initial figure of compensation. However, even considering this I have already explained in some detail in my provisional detail why I think that Amex caused Mr G unnecessary inconvenience– including not being clear with him about its email policy (causing emails to get blocked) and closing his case without being clear about what information it needed.

I also still consider that even though Section 75 has no set time for handling claims in the source legislation Amex could have handled things better. I note in its finalised April 2021 guidance called '*Cancellations and refunds: helping consumers with rights and routes to refunds*' the FCA says the following:

Credit and debit card providers

3.7 We expect credit and debit card providers to handle section 75 and chargeback claims in a reasonable timescale, and remind firms of their obligations to treat customers fairly. If there are delays in processing claims, firms should clearly explain the reason for the delay.

I consider that although the pandemic would impact what would be a reasonable timescale – here we are talking about what is reasonable over 1 year on from the start of the pandemic. I am also not persuaded that Amex communicated with Mr G in a clear way regarding any delays either as I note that in November 2021 it is Mr G who is chasing for updates and Amex responds but the reason it gives for the delay is not the pandemic but something else.

I am also unclear on what Amex means when it has said recently about its emails containing the correct 'receipt address'. I think from the evidence I have already seen it is quite clear there were particular restrictions on Mr G's responses to certain email addresses and I am not persuaded Amex explained all this clearly to him from the outset. Everything considered, Amex has not persuaded me that an award of £150 is unfair here.

In summary, the parties have not added anything which causes me to change my proposed outcome. I still consider it to be fair and reasonable for the reasons given here and incorporating my provisional findings (as copied above).

Putting things right

Amex should put things right according to my direction below.

My final decision

I direct American Express Services Europe Limited (AESEL) trading as American Express to pay Mr G the £418.96 credit he was promised and £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 July 2023.

Mark Lancod
Ombudsman