

The complaint

Mr N complains about how American Express Services Europe Limited (“American Express”) dealt with his claim for two hotel rooms that he paid for which he did not receive.

What happened

In July 2022 Mr N paid for two hotel rooms in Cardiff via a third-party booking agent, he paid £202 with his American Express credit card. When he arrived at the hotel, he said that it had no record of his booking.

Mr N raised the matter with American Express. He asked American Express to compensate him. But American Express declined to raise a chargeback until Mr N provided proof that he had not received what he had paid for and it said that Section 75 did not apply to his purchase, because the payment had been made to the travel company via a payment facilitator, Stripe.

I issued a provisional decision on 26 January 2024 in which I said the following;

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

Does section 75 apply to Mr N’s purchase?

Where goods or services are purchased on credit, Section 75 (where it applies) can make the provider of credit (American Express) jointly and equally liable with the supplier of the goods or services for a breach of contract by the supplier. But Section 75 only applies where the credit is paid under a “debtor-creditor-supplier agreement” (which is defined in section 12 of the Consumer Credit Act).

American Express has said the necessary debtor-creditor-supplier agreement isn’t in place for Mr N to be able to hold it liable for what’s happened under Section 75. It says this is because the credit card payment didn’t go directly to the travel company, and instead went via a payment facilitator called Stripe.

For there to be a valid debtor-creditor-supplier agreement there need to be arrangements between American Express and the travel company for the bank to finance purchases made by Mr N from the travel company. The credit card scheme is there to put such arrangements in place between those participating in it. In this case, the credit card payment went to the travel company via Stripe but I think that was under arrangements of the required kind. This is because Stripe is a recognised participant in the same card scheme as American Express, and this model of recruiting and paying suppliers is a common and accepted commercial practice which has evolved over time.

American Express would have contemplated, when agreeing to give Mr N a credit card, that the market for payment services would develop over time and that the card would be used to pay suppliers through the card scheme via any established method which had since emerged. This is one such method. Due to the mutual participation of all parties within the card scheme, therefore, I am satisfied that there was a valid debtor-creditor-supplier, agreement.

That said though there is another condition that needs to be fulfilled for there to be a valid claim under Section 75. That is that Section 75 of the CCA does not apply:

“...so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000...”

In this case the cash price for the hotel rooms was £192 for the stay but it was for two rooms. This means the price for each room was less than £100. I note that there was a fee but this is listed separately and is not factored into the price quoted for the rooms.

Given this I don't think Section 75 applies to this transaction and therefore I can't ask American Express to refund it.

I have also considered whether American Express should have initiated a chargeback but in this instance it asked Mr N to provide evidence to support his claim that he was unable to use the rooms in question. It is my understanding that Mr N did not provide this information and therefore I don't think that is unreasonable for it not to have raised a chargeback.

I note the Mr N has explained that as he was scammed, he should be due a refund but there is no automatic right for a refund. In situations like this when Section 75 does not apply and when I also don't think American Express needed to initiate a chargeback, I would only require it to refund Mr N if it should have intervened and prevented the transaction from going ahead but given the amount it was for I don't think it would've been right for American Express to have intervened in this instance.

So, I currently don't think that American Express needs to refund the transaction.”

American Express agreed with my provisional decision. Mr N agreed that Section 75 did not apply but he did not agree about the chargeback. He said that that he did provide American Express proof that he could not use the hotel rooms and therefore American Express should have attempted a chargeback.

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.

In this instance I have considered the additional points that Mr N has raised. Firstly, I should explain that a chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants. It allows customers to ask for a transaction to be refunded in a number of situations, such as where the goods are defective or not provided, as in this case.

There's no obligation for a card issuer to raise a chargeback when a consumer asks for one. And chargeback is not a guaranteed method of getting a refund because chargebacks may be defended by merchants. It's important to note that chargebacks are decided based on the card scheme's rules and not the relative merits of the cardholder/merchant dispute.

In this instance the rules in place at the time for the chargeback to have been attempted required Mr N to provide evidence that the service, in this case the hotel rooms, were not provided to him.

I accept that he has shown that he made payments to what seems to be a different hotel on the date that he was supposed to have been provided with two hotel rooms but I don't think that this is enough on its own for American Express to demonstrate that the original hotel rooms were not provided to him. I would have thought it reasonable for Mr N to have provided more information, such confirmation from the original hotel that it did not have a reservation or booking for him. I note that Mr N asked American Express to do this for him. But it is not American Express's obligation to do this on his behalf.

I understand that Mr N appears to not have received the rooms he paid for but that is not what I am looking at. I can only assess whether American Express, who was not the person Mr N paid, did anything wrong and therefore whether it should refund Mr N.

So, overall for the reasons set out above I don't think Section 75 applies to this complaint, I also don't think that American Express should have stopped the payment before it was made and finally I don't think that it needed to attempt a chargeback at the time. So I can't ask American Express to refund Mr N the payments he made.

So, I do not uphold this complaint.

My final decision

For the reasons set out above my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 8 March 2024.

Charlie Newton
Ombudsman