

The complaint

Mr W complains that American Express Services Europe Limited won't refund to him the money that he paid under a holiday accommodation contract.

What happened

Mr W entered into a holiday accommodation contract in November 2018 for four weeks of holiday accommodation from a holiday company. The total price was €6,780 which Mr W paid using his American Express credit card and £6,205.28 was charged to his American Express credit card account.

Mr W's then representative made a claim to American Express in December 2022 under section 75 of the Consumer Credit Act 1974. Its letter to American Express included claims that: the holiday company is no longer trading and is in liquidation so is unable to provide the accommodation; the contract was mis-sold to Mr W; the holiday company engaged in pressure selling with an aggressive sales pitch and misrepresented the accommodation and, but for the misrepresentations, he wouldn't have purchased it.

American Express said that the payment was made to a payment aggregator service which broke the link between the debtor, the creditor and the supplier so the provisions of section 75 don't apply. It also said that it didn't consider that sufficient evidence had been provided to demonstrate that the sale and the services were misrepresented to Mr W. Mr W wasn't satisfied with its response so he complained to this service and his complaint form says that the contract was entered into as a timeshare relinquishment service.

Our investigator didn't recommend that Mr W's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale or that there had been a breach of contract so she didn't think that she needed to establish whether there was a relevant debtor-creditor-supplier agreement. She also considered Mr W's claims under section 140A of the Consumer Credit Act but said that she hadn't seen enough to suggest that the relationship between Mr W and American Express was unfair and she wasn't persuaded that a court would conclude that the relationship was unfair.

Mr W has asked for his complaint to be considered by an ombudsman. He says that he was clearly pressurised into purchasing a timeshare which was completely misrepresented to him and it was effectively mis-sold to him. He says that another holiday company was clearly in breach of contract because it was never possible to book a holiday at any of its resorts at any time of the year as they were always fully booked no matter how far in advance he tried to book. He's provided a personal statement which describes purchases that he made from that holiday company in May and September 2009.

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.

Having done so, I agree with our investigator that Mr W's complaint shouldn't be upheld for these reasons:

- Mr W's claim was made under section 75 which gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- Mr W's claim under section 75 is that there's been a breach of contract by the holiday company and that the contract was misrepresented to him and that he wouldn't have entered into it if it hadn't been misrepresented to him;
- I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not American Express's response to Mr W's claim was fair and reasonable in the circumstances;
- Mr W signed a holiday accommodation contract in November 2018 for four weeks of holiday accommodation from a holiday company and the terms and conditions (that he also signed) say: *"The duration of this application is for a period of 364 days from the date of completion of this agreement. However, after the 364 day period has elapsed the person/s can renew for no additional cost and this facility is repeated at the end of each 364 day period"*;
- Mr W's complaint form says that the contract was entered into as a timeshare relinquishment service but there's no reference in the contract to timeshare relinquishment services and I consider that the contract was for holiday accommodation;
- the contract was made between Mr W and the holiday company – but, in his response to our investigator's recommendation, Mr W has referred to another holiday company and in his personal statement he describes purchases that he made from that holiday company in May and September 2009;
- those purchases weren't financed using credit provided by American Express and in this decision I'm only considering whether or not American Express's response to the claims about the holiday accommodation contract that Mr W entered into in November 2018 that were made by Mr W's then representative in December 2022 was fair and reasonable in the circumstances;
- Mr W's then representative's December 2022 letter to American Express says that the holiday company is no longer trading and is in liquidation so is unable to provide the accommodation – but the contract was for 364 days and neither Mr W nor his then representative has provided any other evidence to show that the holiday company stopped trading or went into liquidation within 364 days of Mr W entering into the contract or that it was unable to provide the accommodation to Mr W under the contract;
- Mr W said, in response to our investigator's recommendations, that the other holiday company was clearly in breach of contract because it was never possible to book a holiday at any of its resorts at any time of the year as they were always fully booked no matter how far in advance he tried to book – even if those claims were made about the holiday company, Mr W hasn't provided any other evidence to support his claim that he wasn't able to book any accommodation under the contract;
- I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company for which American Express would be liable under section 75 in these circumstances;
- the December 2022 letter also says that the contract was mis-sold to Mr W and that the holiday company misrepresented the accommodation to him and, but for the

misrepresentations, he wouldn't have purchased it – and in his response to our investigator's recommendation Mr W says that he was clearly pressurised into purchasing a timeshare which was completely misrepresented to him and it was effectively mis-sold to him;

- the terms and conditions say: *"The Purchaser understands that the Product is not a long term holiday product ... or Timeshare"*; and neither Mr W nor his then representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to Mr W before his November 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the contract and the accommodation were misrepresented to Mr W by the holiday company or that he was induced into entering into the contract by any such misrepresentations;
- one of the criteria for a claim under section 75 is that there must be a debtor-creditor-supplier agreement and American Express says that the link between the debtor, the creditor and the supplier was broken so the provisions of section 75 don't apply;
- as I'm not persuaded that there's been a misrepresentation or breach of contract for which American Express would be liable under section 75, I consider that there's no need for me to make any finding as to whether or not there was a debtor-creditor-supplier agreement in these arrangements;
- our investigator considered Mr W's claims under section 140A – but both the December 2022 letter and Mr W's complaint form refer to a claim under section 75 and neither of them refers to a claim under section 140 so I don't consider that a claim under section 140A was made to American Express and I can't make a finding as to whether or not American Express's response to a claim under section 140A was fair and reasonable;
- I sympathise with Mr W for the issues that he's had with his holiday accommodation contract but I consider that American Express's response to the section 75 claim that was made to it was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require American Express to refund to Mr W any of the money that he paid under the contract, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 April 2024.

Jarrold Hastings
Ombudsman