

The complaint

Mr T complains that American Express Services Europe Limited won't help him in his dispute about being forced to buy an additional flight ticket.

What happened

In April 2023 Mr T used his American Express Services Europe Limited (Amex for short) charge card to pay £208.05 to a website (the Website) for a flight ticket to be used that day to be provided by an airline (the Airline). At arrival at the gate Mr T was told that the booking had not been completed, so boarding wouldn't be possible as the airline hadn't been paid for the flight. So Mr T bought a second ticket directly from the Airline there and then in order to fly. He tried to get his money back from the Website but was unsuccessful. So he complained to Amex.

Amex looked into the matter and has said it didn't consider Mr T's dispute should be successful through chargeback. So it didn't do anymore. Mr T didn't think this was fair, so he brought his complaint to our service.

Our investigator looked into the matter. Overall, he didn't think Amex had acted unfairly by declining Mr T's request for a refund. Mr T didn't agree. So the complaint has been passed to me to decide.

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 should make very clear that this decision is not about the Website or the Airline which aren't financial services providers and don't fall within my remit regarding chargeback. Whatever the issues there maybe with the Website and or Airline and just because Mr T says he has lost out here, it doesn't necessarily follow that Amex has treated Mr T unfairly or that it should refund him. And this decision is solely about how Amex treated Mr T. I hope this point is clear.

There's no dispute that Mr T used his Amex card to make the purchase of the ticket. So I don't think Amex did anything wrong by charging it to his account originally.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr T does here, Amex (as the card issuer) can attempt to go through a chargeback process with the merchant. I don't think Amex could've challenged the payment on the basis Mr T didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

Amex is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. And it can fairly decide to not proceed at any stage, if it doesn't think there is a reasonable prospect of success.

Here Amex did raise a chargeback and the website defended the chargeback. On receipt of the response Amex decided that the chargeback didn't have a reasonable prospect of success so it didn't continue with it. And thus Mr T wasn't refunded.

I've considered what happened here. I don't think that Mr T has lost out because of what Amex did here. So his complaint is unsuccessful. However I do think Amex raised the wrong chargeback reason but for the reasons I'm about to explain I don't think this makes a difference. I say this because I don't think a chargeback would have been successful in any event. So Mr T hasn't lost out due to what Amex did here.

In essence Mr T is saying he had to pay for an extra ticket because the Website hadn't done everything it should have done to book the ticket in time for the flight. This is because although the booking was made it hadn't been completed so that he could board the flight and thus he's lost out because he then had to buy a replacement ticket so the flight could be taken.

We must remember here the only complaint I can consider is that against Amex and not the other parties. Amex raised the chargeback on the basis of the service required had been paid for by other means. What it should have done was raise the chargeback on the basis of goods/services not provided (i.e. booking the flight so that the nominated flight could be taken). As far as Mr T was concerned he paid for a flight that was due to fly in a couple of hours after the purchase. So he should have been able to board, or alternatively, not be able to buy those flights from the website if it couldn't provide the booking service within the space of time between booking and flight departure.

I've considered the website's terms and conditions from the time. I note that had Amex raised the correct chargeback code the Website had a number of defences to that chargeback reason. So I don't think Mr T has lost out because Amex raised the wrong chargeback. I think had the correct chargeback been raised it wouldn't have been successful in any event.

I say this because the Website has the following terms:

- *"When you book a Travel Product, your booking is also subject to the relevant Supplier's terms and conditions (for e.g., the airline's or the hotel's terms and conditions). It is important that you read these, as they form a separate legal agreement between you and the relevant Supplier."*
- *"If you encounter a problem when you submit your payment, please do not submit the payment again. You can confirm whether your booking was successfully made by contacting us using the details in section 1 of these terms."*
- *"We shall use reasonable endeavours to issue your flight ticket within the time frame we notified you of during your booking process, and as set out in the "Flight Payment Successful" email. If your flight ticket is not issued within this time frame, please contact us using the details in section 1 of these terms."*

In the defence to the chargeback the Website said *"We sent a confirmation email and e-ticket/voucher to the customer via email after the booking process was completed on 29 Apr 2023."* So it appears clear the booking process wasn't complete by the time the flight flew as the Website is saying that it didn't send the tickets until the 29 April which is the following day to when the transaction was made.

I've considered the terms of Website and there is no guarantee for how quickly it will book flights on behalf of its customers such as Mr T. And I note it only refers to making 'best endeavours' in regard to issuing tickets rather than guaranteeing issuance of tickets in time for flights.

So in any event, considering the Website's terms I don't think Amex would have been successful raising a chargeback even if it had done it correctly. This is because there is no contractual basis for Mr T to rely on regarding getting his tickets for the flights before the flight flew in his particular circumstances.

I appreciate that Mr T feels strongly about the Website's position and I have sympathy with this, considering the facts here. However Mr T has a charge card with Amex which doesn't gain protection under S75 of the Consumer Credit Act 1974. Had he used a credit card here, it's possible that he might have been successful with a s75 claim in these circumstances as that provides a different basis for such disputes and allows for all losses to be recouped including consequential loss where successful.

But in this case the only test I can apply is whether Amex's approach to chargeback was correct or not and if not whether he lost out as a result. But I think for the reasons given had Amex properly done the chargeback he'd still have not got his refund due the Website's particular terms and conditions which don't guarantee issuance of the tickets in any particular time period. So he hasn't lost out because of what Amex did.

I do appreciate that this isn't the decision Mr T wants to read. And clearly he has reasons to be disappointed with the website, but I don't think his chargeback would have been successful in any event. So he hasn't lost out due to what Amex did here.

My final decision

For the reasons set out above, I do not uphold the complaint against American Express Services Europe Limited. It has nothing further to do here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 April 2024.

Rod Glyn-Thomas
Ombudsman