

The complaint

Mr R complains that American Express Services Europe Limited won't refund him for an accommodation booking.

What happened

In November 2022 Mr R's American Express Services Europe Limited credit card (Amex for short) was used to pay an introducer type website ('the Website') for the rental of some accommodation for a friend ('the Friend') abroad. Mr R paid £1047.32 for the accommodation. On arrival at the accommodation the Friend says they were denied access to the accommodation due to not being able to pay the relevant city tax payment upfront. So they had to find alternate accommodation locally. Mr R complained to the Website but didn't get a refund. So still unhappy with what had happened he complained to Amex.

Amex looked into the matter and has said it didn't consider Mr R's dispute should be successful through Section 75 of the Consumer Credit Act 1974 (CCA for short). So that's why it didn't refund him.

Mr R didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, she didn't think Amex had acted unfairly by declining Mr R's request for a refund because she decided that Section 75 didn't apply here. And didn't think there was enough to show any chargeback had a reasonable prospect of success. Mr R 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 accommodation, or the Website used here, which aren't financial services providers and don't fall within my remit regarding either chargeback or Section 75. Whatever the issues there maybe with the Website or the accommodation, and just because Mr R says he has lost out here, it doesn't necessarily follow that Amex has treated Mr R unfairly or that it should refund him. And this decision is solely about how Amex treated Mr R. I hope this point is clear.

chargeback

There's no dispute that Mr R's Amex card was used here. So I don't think Amex did anything wrong by charging this transaction to his account at the point of purchase.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr R does here, Amex (as the card issuer) can attempt to go through a chargeback process. Chargeback is a voluntary process which is decided simply on the terms of the dispute within the rules of the card scheme. I don't think Amex could've challenged the payment on the basis Mr R didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

The chargeback process is a straightforward dispute process between card issuers and merchants that is managed by the card scheme and is based solely on the rules of the card scheme. Here Amex didn't raise a chargeback, apparently because it didn't think it had a reasonable prospect of success. I've considered the relevant chargeback codes available here and considering those along with the information here and particularly the website's position on the matter. I'm not persuaded that Amex has treated Mr R unfairly here. I say this because considering the chargeback process and the rules of that process I'm not persuaded on balance that had Amex pursued a chargeback that it would have been successful. Although there is dispute over what exactly happened when the Friend arrived at the accommodation and why they were actually denied the accommodation it is clear from what Mr R says that the Friend accepts they were unable to pay the taxes on arrival and that payment was demanded by the accommodation provider. I can see the taxes are mentioned on the booking albeit not made clear that they were to be paid upfront. And it is clear that such tourist taxes are applicable in that region.

So it would seem likely that as that's the reason the Friend was given for being denied the accommodation that would also be the defence that the accommodation provider would use to defend any chargeback. And bearing in mind this is a governmental or regional governmental tax I think it likely that non-payment of such a tax would be a valid reason for not supplying the accommodation. So I'm not persuaded a chargeback would have been successful had Amex pursued it. And it should be remembered this a voluntary process which is decided on the evidence provided during the process and upon which the scheme ultimately decides. It is not the case that further evidence is sought or sourced and it is based purely on the rules of the scheme and not other considerations like the law or evidence being challenged. It is a voluntary straightforward dispute process where the scheme is the final decision maker.

So I don't think Mr R has lost out because Amex didn't raise a chargeback. I appreciate Mr R would argue that this was 'sharp practice' by the accommodation provider, and I have sympathy for this viewpoint. Nevertheless it would seem unlikely to me that a chargeback would have been successful as such taxes are chargeable and weren't paid at the beginning of the stay.

The CCA

The CCA introduced a regime of connected lender liability under Section 75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier").

A business such as Amex can only be held responsible under S75 of the CCA if certain requirements are met *and* if there is breach of contract or misrepresentation of the contract and if there is that it also means that Mr R has lost out as a result. Our Investigator concluded that one of the requirements for a S75 claim wasn't in place, so Amex didn't have to consider the matter further. And even if breach or misrepresentation was made out (which Mr R argues) this doesn't make a difference because Mr R's claim under s75 didn't meet the qualifying criteria. In short the Investigator concluded that this S75 claim fails before getting

to the point of considering the question of whether the service of the accommodation provision was provided with reasonable skill and care.

Was Mr R a contractor for the accommodation?

Amex has pointed to the fact that although Mr R paid for the accommodation he wasn't the named contractor. Mr R freely admits he paid for the accommodation for the Friend to stay in, and I can see from the booking confirmation that the named guest was the Friend and it was not Mr R. Section 75 provides for debtors under a DCS agreement to make a 'like claim' against a creditor as the contractor would have against the supplier. But here it is clear that although Mr R is the debtor he isn't the named contractor to use the accommodation-the Friend is. And the Friend can't make a claim against the creditor because she wasn't the account holder of the account where the credit came from paying for the contract for the accommodation. So due to these circumstances Amex is correct that Mr R cannot make a 'like claim' against Amex because he's not the contractor who can make the claim for the refusal of use of the accommodation. So as the pre-requisite conditions of Section 75 coverage haven't been made out Amex hasn't done anything wrong by not considering the matter further.

Mr R has made arguments about the role of the website here which are well articulated. Unfortunately for the reasons already given his claim fails, so I don't need to decide in this case specifically what liability can be held against it here.

Mr R also points to making the booking, finding the accommodation, and doing more than simply financing the transaction. I appreciate his comments here. Nevertheless he's not the named planned occupier for the accommodation for this booking and thus couldn't be the claimant in a claim against the supplier about it.

I do appreciate that this isn't the decision Mr R wants to read. And I'm sorry to hear about what happened. But I don't think Amex treated him unfairly. And just because Mr R has lost out doesn't mean it's fair for Amex to refund him. It would only be fair for it to refund him if it had done something wrong. And I'm satisfied Mr R hasn't lost out due to what Amex did. So it has nothing further to do here. For the above reasons Mr R's complaint therefore does not succeed.

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 R to accept or reject my decision before 20 May 2024.

Rod Glyn-Thomas
Ombudsman