

The complaint

Miss K complains that American Express Services Europe Limited won't refund her money in relation to flights.

What happened

Miss K's credit card account with American Express Services Europe Limited ('Amex' for short) was used to pay a company (which I'll call 'Firm T') for the service of booking of flights with an airline which was a separate company. Miss K paid Firm T just over £900 in November 2022. Firm T booked the flights as requested. Miss K says she was denied boarding by the airline and had to buy new tickets. So she complained to Firm T. Firm T offered her back the tax amount on the missed flights. Unhappy, Miss K took her complaint to Amex.

Amex looked into the matter and wouldn't refund this transaction. Feeling that to be unfair, Miss K brought his complaint to this service.

It has since transpired that Firm T managed to receive as a gesture of goodwill a refund from the airline of the remaining cost of the flights (£900 less the tax previously offered). Miss K accepted this refund and was to ask Firm T to honour its offer of the tax amount also.

Our investigator looked into the matter. Overall, he felt that Miss K hadn't satisfied the requirements to make a claim under Section 75 of the Consumer Credit Act 1974 ('S75' and 'CCA' for short). And that a chargeback wouldn't have been successful in the end. Accordingly he felt Amex hadn't acted unfairly. Miss K disagrees. 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 it very clear that this decision is not about Firm T or the airline. This is because they are not in the jurisdiction of this service for these types of complaints. This decision is solely about what Amex did or didn't do in relation to its obligations in relation to Miss K with regard to chargeback and S75. And just because Miss K says she's lost out it isn't necessarily the case that means that Amex has treated her unfairly.

chargeback

Chargeback is a straightforward dispute resolution process run by the card network (not Amex) that Miss K's card belongs to. It allows for disputes to be raised with merchants and them to either accept the dispute or provide its evidence on the matter. If an amicable conclusion cannot be reached, ultimately it's the card network itself which decides the outcome of the chargeback dispute. So it's possible for a card issuer to take the chargeback throughout the whole process and still not be successful having done everything fairly. It should also be noted that only the amount of the transaction can be recovered through

chargeback. Other losses, consequential losses or other damages cannot be ever recovered through the chargeback process.

Here Miss K accepts she made the transaction on her Amex card. Amex did raise a chargeback on the transaction regarding the service provided. And Firm T responded with evidence from the airline that Miss K arrived late to the airline desk and was so late she couldn't board the flight. It says she was accordingly treated as a 'no show' and no refund was applicable under the terms and conditions of the flight booking. Firm T also noted that its role was simply to book flights on behalf of Miss K and that it wasn't responsible for any aspect of the flights themselves including their boarding.

Amex considered this and decided that the chargeback no longer had a reasonable prospect of success. Miss K disputes she was late but has only said she was denied boarding but not given any particular explanation of this or evidence of what actually happened. In light of this I think Amex's position of not taking the chargeback further is fair. So I don't think Miss K has lost out due to Amex' approach to chargeback.

And in any event, seeing as events have moved on and a full refund is available via Firm T (some of which has been paid), Miss K hasn't lost out as regards chargeback as she has/will get a full refund.

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"). S75 says:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

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* Miss K has lost out as a result.

Here Amex has pointed to the fact that Miss K paid Firm T but her real dispute here is with the airline for not letting her board and not refunding her or addressing her other issues such as extra costs and time spent in the airport. It also notes that the transaction Amex funded wasn't with the airline but with Firm T. And that Firm T's sole role here was to book flights for Miss K not to actually be responsible for the provision of those flights.

For a debtor to make a S75 claim against a creditor it must be a 'like claim' (as S75 says) to that which he or she could make against the supplier. But here it isn't a like claim. The claim Miss K can make against Firm T isn't that which she could make against the airline. This is because Amex didn't fund any transaction directly with the airline and it isn't party to the contractual arrangements between Miss K and the airline.

So I am satisfied that the Debtor Creditor Supplier arrangement required under S75 isn't in place here for the contract which Miss K complains about, specifically the provision of the flights themselves and the boarding of them therein. Accordingly Amex cannot be held responsible for any failings of the airline.

I am satisfied that the Debtor Creditor Supplier arrangement is in place for any complaint about what Firm T has done here. But bearing in mind it wasn't at fault here for Miss K not being able to board and has managed to source a full refund for Miss K as a gesture of goodwill I'm satisfied that Amex doesn't have to do any more under a 'like claim' in relation to Firm T.

I do appreciate that this isn't the decision Miss K wants to read. And that she feels she's been treated harshly. But that doesn't make it fair for Amex to have to do any more here. So it is my decision that this complaint should not succeed.

My final decision

For the reasons set out above, I do not uphold the complaint against American Express Services Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 18 September 2024.

Rod Glyn-Thomas
Ombudsman