

## **The complaint**

Mr B complains American Express Services Europe Limited has not met its obligations in regard to a transaction he made on his credit card to get out of a Timeshare type agreement.

## **What happened**

In June 2020 Mr B talked with a company which said it provided Timeshare Relinquishment services (which I will call "Firm E"). Mr B says Firm E told him it could get him out of his timeshare type agreement he'd previously entered into. Mr B signed a contract and initialled every page of that contract with Firm E in June 2020 which set out the terms of the contract including it could take up to five years to provide the service. Mr B paid Firm E £2640 using his American Express Services Europe Limited (Amex for short) credit card. The rest of the £5280 cost of the service was made through monthly instalments.

In May 2022 Mr B instructed a separate timeshare relinquishment company to get him out of his timeshare. It wrote to him in July 2022 saying it had extricated him from his timeshare. In March 2023 Mr B's representatives brought his complaint to this service.

Our Investigator considered the matter and felt that Amex hadn't treated Mr B fairly because he felt that Amex should be held liable for the amount Mr B paid Firm E because it hadn't provided the services agreed in the contract. And as Amex has connected lender liability under Section 75 of the Consumer Credit Act 1974 it can be held to a 'like claim' such as that that Mr B could make against Firm E. But Amex didn't agree so this decision came to me to decide.

On the 08 January 2024 I issued a provisional decision saying that I didn't think it was fair for Mr B's complaint to be upheld against Amex. Mr B's representatives have responded. Amex hasn't had anything further to add.

## **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.

Mr B's representatives have made substantial representations on the matter. It is of note that it provides no persuasive commentary on Mr B's own written testimony on what happened in the sale of these services, upon which I've placed weight in my decision making. Mr B's representatives have also not provided any clarification from Mr B as to the events that took place despite having opportunity to do so. I see no persuasive reason to deviate from the rationale I described in my provisional decision which is broadly repeated below. I shall address Mr B's representatives' additional arguments under an additional paragraph entitled 'further arguments' after I've recounted my provisional decisions' rationale which follows this sentence immediately.

I should make it very clear that this decision is not about Firm E, or any other parties involved directly or indirectly with Mr B's timeshare arrangements. This is because these companies aren't within 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 Mr B. And it should be remembered that Amex is only involved in this issue as a result of its managing Mr B's credit card account which he used to make this transaction to Firm E, it wasn't the party that offered timeshare relinquishment services to Mr B.

In essence the tests I must consider in relation to Amex are whether the transaction itself was made correctly, and whether Amex's position in regard to Chargeback and Mr B's Section 75 claim to it under the Consumer Credit Act 1974 was fair.

Mr B doesn't contest that he made the transaction originally, or that it was applied incorrectly to his account. I've considered the transaction itself and I'm satisfied Amex didn't do anything wrong in processing it or allocating it to his account. Mr B accepts he authorised and consented to the transaction being made at the time it was made.

*could Amex challenge the transaction through a chargeback?*

In certain circumstances, when a cardholder has a dispute about a transaction, as Mr B does here, Amex can attempt to go through the chargeback process. Chargeback isn't a right, but this Service does consider it good practice to raise a chargeback, if within the time limits and there is a reasonable prospect of success. I don't think Amex could've challenged the payments on the basis Mr B didn't properly authorise the transaction, given what I've already set out.

Mr B raised a chargeback with Amex on 01 June 2022. He signed the contract with Firm E on 16 June 2020. The card scheme here has a number of timescale rules about when chargebacks can be raised including a 540-day longstop rule. Amex has said it didn't proceed with a chargeback. And having considered the time from transaction to when Mr B contacted Amex about the chargeback it seems likely it didn't raise the chargeback due to this longstop rule. Amex should raise a chargeback if it thinks there is a reasonable prospect of success. Considering what we know here I don't think Amex has treated Mr B unfairly in regard to chargeback.

*how about the Consumer Credit Act 1974?*

Before considering whether a 'like claim' can be made here the Consumer Credit Act 1974 (CCA for short) sets out pre-requisite rules including with regard to financial limits and the required relationship between Debtor Creditor and Supplier. Having considered the facts here I'm satisfied these are in place for a like claim to be considered against Amex.

For such a like claim to be successful it needs to be established that there was either misrepresentation or breach of contract by Firm E with regard to the contract it agreed with Mr B.

*Misrepresentation*

Mr B's representatives say that there was misrepresentation by Firm E in the process leading up to and including Mr B signing the contract with it. These representatives also say that Mr B was pressured into signing the contract. Mr B's representatives have helpfully provided Mr B's own version of events to this service by means of an email he sent to his representatives dated 06 June 2023. In that email Mr B describes receiving a phone call from Firm E in "April/May 2020" in which a home visit was then arranged and took place (date unspecified). In that meeting a further meeting was arranged at Firm E's offices for the 16 June 2020. At no point does Mr B mention being pressured into signing the contract. And bearing in mind he then made a number of monthly payments to Firm E for some time I'm not persuaded he was pressured into signing a contract he didn't want to enter into. I think

had he been pressured he'd have acted differently and said he was pressured in his written comments on what happened.

Mr B goes on to say that he was told "*what could be done to help him recover*" some of his timeshare payments and that this included getting him removed from the timeshare contract. This is reflected in the terms of the contract which provides for supporting Mr B in raising a claim for his timeshare funds and exiting him from his timeshare agreement. It also said the contract would last five years or when the service was completed, whichever was the sooner. Mr B's comments about what he was told by Firm E when considered in the round reflect the contract he agreed. And as a result I'm not persuaded Mr B was misrepresented into the contract.

### *Breach of contract*

The contract includes a clause which states "*The Client (Mr B) agrees to give (Firm E) the sole right for the cancellation of his timeshare ownership and the pursuance of any compensation claim.*" It goes on to say that the money paid is non-refundable unless Firm E fails to fulfil the terms of the contract. And it includes confidentiality clause which includes 'any third party' and notes that if Mr B breaks that confidentiality clause then Firm E is entitled to keep all the money and in certain circumstances pursue him for further payment of a 30% of the amount he paid as damages for breaking confidentiality. Each of the pages of the contract were initialled by Mr B as well as signing it at the end of the contract. So I'm satisfied he saw each page of the contract.

Mr B's representatives have noted that its sister company has confirmed that it terminated Mr B's timeshare in 2022 which was well within the five-year period Mr B agreed with Firm E. So it seems clear from Mr B's representatives' testimony that Mr B breached the contract he had with Firm E by both breaking the 'sole right' clause quoted above and also the confidentiality clause. It seems clear Mr B's representatives had a copy of the contract between Mr B and Firm E when it engaged its sister company. So it seems that Mr B's representatives engaged other parties when in possession of a contract which specified this would constitute a breach by Mr B who it was representing at that time.

Mr B argues he's not heard from Firm E for some time but from the evidence it was clear he continued to pay them well into 2021. And although there isn't evidence available of Firm E updating Mr B during that time there was no contractual agreement for it to do so at any period of time or date. And there is persuasive evidence that Mr B breached the contract with Firm E some years before the agreed five-year term was completed.

Amex points to not having considered s75 originally and that when it did look into it and asking for information Mr B, his representatives did not provide it. In essence its argument is that how could it have treated Mr B's s75 claim unfairly when Mr B and his representatives didn't liaise with it as requested. And I think that it would be unfair to uphold a complaint against Amex for unfairly considering a s75 claim when there is clear evidence that Mr B broke the terms of the contract (his own actions and testimony) when there is no persuasive evidence to show Firm E weren't acting on the matter between June 2020 and May 2022 other than Mr B saying it didn't contact him and he couldn't get in contact with it. As a consequence I don't think Mr B has lost out because of what Amex did. I say this because of the reasons above and that it is clear that Mr B had broken the terms of the contract with Firm E before contacting Amex about raising a chargeback in June 2022. So whatever Amex did on receipt of Mr B raising his concerns about Firm E to it, I don't think it would have fairly led to Mr B recouping the amount paid to Firm E either through chargeback or under S75.

I've considered whether Amex should make a payment for its customer service provided. As it knows it is this services approach that when cardholders raise disputes with suppliers to

card suppliers such as Amex both chargeback and Section 75 should be considered. But I also need to consider that Mr B raised the chargeback online and didn't further liaise with that process or Amex more broadly. And when Amex invited Mr B to provide further information he chose not to. So although Amex should have done more I'm not persuaded Mr B has lost out as a result of what it did.

### *Further arguments*

Mr B's representatives have made further arguments which are unpersuasive to my mind. I shall describe the key arguments made as I see them for clarity's sake.

Mr B's representatives argue that there were well known frauds in timeshare relinquishment and that I'd erred in not following the investigator's position. It is true there are concerns about the services provided by some firms at some times in and around the timeshare and timeshare relinquishment services. Firstly I'm obliged to consider the matter afresh, so I'm not obliged to follow the investigator's position. Secondly I'm satisfied neither the Investigator or Mr B's representatives have placed sufficient weight on Mr B's own written testimony on the matter and I see that as persuasive evidence in this case which Mr B's representatives could have addressed after my provisional decision but chose not to. Lastly it is of note that although there are concerns around Timeshare Relinquishment and rightly so, there is also evidence of these services being provided by such firms to greater or lesser degrees. And Mr B's representatives haven't pointed to any successful criminal prosecution or regulatory action taken against the firms in this case on this particular case or more broadly and hasn't provided such information to Amex at the time of making the claim. And in the absence of persuasive evidence of misrepresentation from Mr B it would be unfair to conclude that Amex have treated Mr B unfairly by not upholding his claim to it considering what happened here and what evidence was put before it to consider in this claim.

Mr B's representatives argue that the contract here should be treated "void" or a "legal nullity." I'm not persuaded by this because if this were the case then Amex couldn't be held liable under a 'like claim' as it would be a like claim as to a claim against a voided or null contract. This argument actually goes against Mr B's interests because it would mean Amex had no potential liability as a like claim to a void or null contract would be equally void or null. The correct approach would be (if I were to be persuaded there was misrepresentation here) that the remedy for a misrepresented contract would be putting Mr B into the position he'd have been if the misrepresentation hadn't been made (and holding Amex responsible for that remedy under a 'like claim').

Mr B's representatives continue to say he was misrepresented into the contract despite this not being supported by Mr B's own testimony of the events. Mr B's representatives have chosen not to revert to Mr B for clarification of his comments or provide any other form of further evidence from him. So I see no persuasive reason to divert from considering Mr B's written comments important in my decision making.

Mr B's representatives have quoted at length information about my powers and the law more broadly. However I've not seen any persuasive evidence as to why I should conclude that Mr B has lost out due to what Amex did when on notice of his dispute here. Particularly considering when Amex asked Mr B for information it received no response and the other facts at hand. And for me to uphold Mr B's complaint I'd have to have reason to conclude he'd lost out because of what Amex did or didn't do. And I'm not persuaded he has.

All in all, having considered all of Mr B's arguments I'm not persuaded he's lost out because of how Amex treated him. And accordingly it is my decision that this complaint should not be upheld.

**My final decision**

I do not uphold this complaint against American Express Services Europe Limited. It has nothing further to do in relation to the claim made by Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 March 2024.

Rod Glyn-Thomas  
**Ombudsman**