

The complaint

Mr B complains about how American Express Services Europe Limited ('Amex') handled a claim he made to it.

What happened

The parties are familiar with the background of this complaint – so I will only summarise it briefly here. It reflects my informal remit.

Mr B is represented throughout his complaint. So where I refer to submissions by Mr B these are also taken to include those of his representative.

Mr B paid a travel agent ('the supplier') for a holiday deal using his Amex credit card across two transactions (the deposit then the balance). The holiday booking consisted of travel and accommodation in two hotels (which I will refer to as 'Hotel S' and Hotel J').

Mr B was unhappy with several elements of the holiday and obtained a partial refund from the supplier of just under £400.

Mr B then approached Amex to raise a dispute. Amex raised a chargeback which was defended by the supplier. Amex discontinued the chargeback and paid Mr B £75 as an apology for not promptly addressing his request to look into things under Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, after considering Section 75 it concluded that the partial refund paid by the supplier to date was fair and there was no outstanding breach of contract or misrepresentation to remedy.

Mr B was unhappy with how Amex had handled the claim. He says Amex had not fully investigated and has relied on what the supplier told it and failed to consider evidence along with the legal responsibilities of the supplier under The Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs').

Our service looked into the complaint about the claim handling and did not uphold it. Our investigator concluded that Amex did not have to do anything more because the supplier's compensation payment, and offer of a further £3,500 to settle the case against it was more than fair to reflect the alleged service failings.

Because of some things Mr B had said following the view, I sent him an email to clarify if he wanted this service to continue its involvement in the case (and if so I also asked for some clarification on a few other points). Mr B's representative wanted to clarify things with me over the phone – which she has now done. Mr B's representative accepted that I would not be going into the details of my view on the case merits during the call and that it was not an oral hearing. If Amex wants to know more about the things Mr B's representative told me this can be provided, however, this should be reasonably clear from my decision so I don't consider it necessary in the first instance.

Mr B has now asked for me to look into the case and issue a decision. He has explained that he has now accepted the £3,500 settlement offer from the supplier but still feels out of pocket. He considers that had Amex dealt with things differently from the outset he would be in a better position.

I issued a provisional decision on this case which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There are substantial submissions on the file. However, I will only be commenting on the evidence I consider key. It is not meant as a discourtesy but reflects my role resolving disputes informally.

I am aware Mr B is upset with our service and attributes the findings of our investigator to why he felt he had to accept the offer from the supplier. However, to be clear this does not form part of my decision here (which is about the actions of Amex) and is a service matter which Mr B can pursue separately if he wishes.

It is important to note that Amex is not the supplier of holidays. So in order to decide if it has acted fairly I need to consider its role as a provider of financial services only. I note that Mr B used his credit card to pay for the holiday. And with this in mind I consider the card protections of chargeback and Section 75 to be particularly relevant as to how Amex could reasonably assist Mr B. It is these I have focused on when determining what is fair and reasonable.

Section 75

Via Section 75 Mr B is able to make a 'like claim' against Amex for alleged misrepresentation and/or breach of contract by the supplier he paid using his credit card.

I note from the evidence I have that Mr B was clear with Amex from the outset he wanted a Section 75 claim raised and Amex appeared not to do this – or at the very least it took sometime from the claim being raised in February 2023 before there appeared to be any progress on the matter (May 2023).

While Amex said there is no time limit for considering a Section 75 claim – I remind it that in accordance with FCA published guidance it needs to carry out its claim handling in a reasonable time. I can see from chat logs that the apparent lack of progress on the Section 75 claim was frustrating for Mr B. I note that Amex paid him £75 compensation for this which Mr B appears to consider fair. I think this is fair too.

There are certain requirements for a valid Section 75 claim – including those relating to the parties to the contract and the cash price of the goods or services. Amex has not disputed these requirements – but I don't consider it necessary to go into this in detail in any event as they don't impact my decision for reasons that should become clear later.

From the evidence I have seen including claim forms and contact logs between Mr B and Amex I am satisfied that the dispute he brought to it was for a full refund of the price of the holiday focused on:

- *Hotel facilities not being as described/being of poor quality (including consequential issues such as food poisoning)*

- Hotel services not being provided (specifically he says the supplier cancelled the stay at Hotel J which meant he had to pay out for alternative accommodation)

I note that in eventually considering the Section 75 claim Amex did not agree that it was liable for any more than the compensation that the supplier had paid to date (around £400). It also said something in its response letter to Mr B's complaint about the handling of the dispute (dated 3/5/23) that indicated it didn't think the supplier was responsible for issues with the accommodation as it was a travel agent.

I consider Amex was incorrect in initially concluding the supplier wasn't responsible for any problems with the accommodation. I say this because of my interpretation of the PTRs and the particular terms they imply into a consumer contract. In summary, these make the 'organiser' of a package travel contract responsible for the performance of the elements of the package holiday it arranges. I am satisfied that the supplier would be considered an 'organiser' under the PTRs here because the holiday consisted of travel and accommodation elements which it combined and sold at an all-inclusive price.

While Amex's initial statement about the liability of the supplier has no doubt frustrated Mr B I do note that despite apparently failing to recognise the operation of the PTRs initially, a system note I have seen indicates that Amex (when it later considered the merits of the Section 75 claim) did eventually take the requirements of the PTRs into account.

Of course, that is not necessarily a comfort to Mr B because ultimately Amex decided to decline his Section 75 claim. And even if it had considered the PTRs and not upheld the case I expect that Mr B would still maintain that Amex did not consider things in the sort of detail it should have from the outset in respect of the allegations of breach of contract or misrepresentation.

I know Mr B feels somewhat insulted by Amex's conclusion that it didn't have to pay more than the (roughly £400) the supplier had already paid out, particularly when he considers he was out of pocket for far more than this. But while the outcome Amex came to was frustrating for him, I don't think that simply not upholding his Section 75 claim is something in isolation I would fairly direct Amex to pay compensation for, particularly noting that the questions of law around Section 75 liability are often not straightforward.

I know Mr B thinks Amex failed to consider evidence and had it done so things might have been different. It is difficult to tell how much detail it looked into things or how things might have panned out differently. But in order to arrive at a fair outcome I would usually look into any allegations of breach/misrepresentation myself to see if Amex is liable to Mr B for a further legal remedy beyond the initial payment he received from the supplier as compensation. However, I don't consider it necessary to consider the allegations of breach and/or misrepresentation against the supplier in further detail in the particular circumstances here. I will explain why.

The Section 75 claim Mr B has against Amex mirrors the claim he has against the supplier. It is a 'like claim' in law. I note more recently things have moved on and Mr B has accepted a full and final settlement from the supplier in respect of all the allegations relating to the nonconformity of the package travel product which he brought against Amex. The terms of this settlement are clear in that they provide finality in respect of the subject matter of Mr B's claim against the supplier. To all intents and purposes this means that the Section 75 liability Amex had in respect of the alleged misrepresentation and/or breach of contract falls away. Therefore, I am unable to fairly direct Amex to pay further losses (if I concluded there were any) in any event because the claim has now been settled with the supplier.

Mr B has explained why he felt he had to take the settlement and how he still considers he is at a loss. And while I do understand his points, I am looking at how Amex handled his claim only. And as I have said I don't consider its general handling of the Section 75 claim warrants further compensation here. Nor do I think it reasonable from a causation perspective to conclude that Amex turning down the claim has ultimately caused Mr B to accept an offer to his detriment.

A note about chargeback

I don't intend to go into chargeback in detail noting that Mr B really wanted Amex to raise a Section 75 claim instead. However, it is something that was available to Amex to help dispute a payment so it is relevant here.

Chargeback is a voluntary scheme and is not guaranteed to succeed. But it is often good practice to raise one and potentially take it further.

Here I note that Amex did raise a dispute for Mr B via chargeback. I note the supplier provided a lengthy and robust defence and on the face of it (and considering the Section 75 investigation) Amex was not at fault for discontinuing the chargeback when it did, also noting:

- *the dispute is multi-faceted taking in a range of allegations (services not provided, services not as described, quality of services and claims for consequential loss) and something that does not suit the chargeback scheme which is based on single reason codes and does not permit certain types of claims for personal injury and consequential damages; and*
- *Section 75 was available to Amex and was something which Mr B wanted it to focus on at that stage.*

I can see Mr B has highlighted evidence that he says shows Amex only presented part of the chargeback claim to the supplier (and omitted the elements relating to Hotel J). I am not entirely sure why Amex wouldn't include this although it potentially relates to the limitations of the chargeback scheme I have mentioned above when it comes to multiple complaint points. I also don't think the supplier's response to the chargeback is entirely conclusive as it appears at pains to point out that the claim is only in respect of Hotel S – and I question why it would need to do that if Amex had not presented anything about Hotel J. However, even if Amex had done what is alleged here I don't think it changes things in any event. Based on the supplier's other responses to Mr B at the time, and its initial refusal to issue refunds in respect of Hotel J I don't think it would have likely accepted liability through the chargeback scheme for this in any event. So I don't think it has ultimately altered the outcome of the chargeback.

With all this said, even if I were able to conclude that Amex had made an error in the way it had progressed a chargeback (which I do not) I note once again that the underlying dispute with the supplier has now been settled. Therefore, and in any event, I am presented with similar challenges to those I have already discussed in respect of directing Amex to put things right if I considered it needed to do so.

While I am sorry to hear about the difficulties and frustration Mr B and his family have experienced in relation to the holiday booking I am unable to fairly say Amex needs to go further to resolve matters here.

I did not uphold this complaint.

Neither party provided further submissions in response to my decision.

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.

Neither party has given me cause to change my provisional decision and I still consider it fair and reasonable. So my final decision is not to uphold this complaint for the reasons already stated in my provisional findings (as copied above and incorporated in this decision).

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 May 2024.

Mark Lancod
Ombudsman