

## The complaint

Mr M complains American Express Services Europe Limited (“Amex”) failed to honour a claim he brought under section 75 of the Consumer Credit Act 1974 (“CCA”).

## What happened

I set out the background to Mr M’s complaint, and my provisional findings on it, in a detailed provisional decision which is appended to and forms a part of this final decision. As a result, I don’t need to outline matters in detail, but in very brief summary:

- Mr M made a booking using his Amex credit card on a well-known holiday rental platform (“AB”), paying £1,722.76 including a service fee of £256.82.
- There was a risk Mr M might not be able to go on the trip due to an illness in the family, and he contacted AB and the accommodation host with a view to cancelling. He discovered he had missed the cut off for a full refund and tried to negotiate with AB and the host.
- The host replied to offer a refund of seven out of nine nights, which Mr M said he didn’t accept, but he says he then discovered AB had processed a cancellation without his authority, and he received only a partial refund. He complained to AB, which agreed to refund its service fee, but he still did not get a full refund. Mr M rebooked equivalent accommodation for the same dates, meaning he was left out of pocket.
- Mr M tried to raise a section 75 claim with Amex, but his claim was declined for two reasons – a failure of the claim to meet the technical criteria for section 75 to apply, and (when Mr M challenged this argument) because it considered Mr M had instructed the cancellation himself. Amex stood by its decision after Mr M complained, and Mr M then brought his complaint to this service.

In my provisional decision I made the following key findings:

- The technical criteria for a section 75 claim to be made in respect of an alleged breach of contract or misrepresentation by AB had been met.
- AB had a contractual duty to provide its booking administration and management services to Mr M with reasonable care and skill. It had failed to exercise reasonable care and skill when it cancelled Mr M’s booking without confirming that this was his instruction. It had been apparent that Mr M was engaged in negotiations over a potential cancellation, but had not yet accepted the offer on the table. His intentions had been ambiguous at best. AB had been in breach of contract, something for which Amex was jointly liable for under section 75 of the CCA.
- I reasoned that Mr M’s loss as the result of the breach was the difference between what he paid for his replacement booking, and any money he had been refunded for the original booking. This was either £331.42 or £588.24, depending on whether AB

had in fact refunded its service fee. I said I was minded to direct Amex to pay whichever of these two amounts was correct to Mr M, plus compensatory interest.

I invited both parties to comment on my provisional decision before 26 April 2024. Amex said it would accept the provisional decision. Mr M has not responded, so I don't know if he agrees or disagrees with the provisional decision. The case has been returned to me to issue a final 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.

Because neither party has provided any further submissions for me to consider, I see no reason to depart from the findings and redress proposals I made in my appended provisional decision. It follows that I will be upholding Mr M's complaint that Amex failed to honour his section 75 claim.

### **My final decision**

For the reasons explained above, and in my appended provisional decision, I uphold Mr M's complaint and direct American Express Services Europe Limited to take the following actions:

- 1) Verify if Mr M received a refund of £256.82 from AB. If he did, go to step 2). If he did not, go to step 3).
- 2) Pay Mr M £331.42, this being the unreimbursed financial loss caused by AB's breach of contract, and go to step 4).
- 3) Pay Mr M £588.24, this being the unreimbursed financial loss caused by AB's breach of contract, and go to step 4).
- 4) To the amount paid to Mr M, add 8% simple interest per year\*, calculated from the date it first wrote to Mr M declining his section 75 claim, to the date the amount is paid to him.

\*If Amex considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 May 2024.

Will Culley  
**Ombudsman**

## **COPY OF PROVISIONAL DECISION**

*I've considered the relevant information about this complaint.*

*Having done so, I've reached a different set of conclusions to our investigator, so I need to give both parties an opportunity to respond before I make my decision final.*

*I'll look at any more comments and evidence that I get by 26 April 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.*

### **The complaint**

*Mr M complains American Express Services Europe Limited ("Amex") failed to honour a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA").*

### **What happened**

*Mr M made a booking on a well-known holiday rental platform ("AB") on 6 November 2022 for a stay in Dubai between 11 December 2022 and 20 December 2022. The total price paid was £1,722.76, including a service fee of £256.82 which was payable to AB. Mr M used his Amex credit card to pay for the booking over two equal instalments on 6 November 2022 and 2 December 2022.*

*Mr M says that by 6 December 2022 he had learned that his mother, who was unwell, had needed to go into hospital, something which threw some doubt on whether the Dubai trip would be able to go ahead. Mr M checked his booking on AB's website to see if he could cancel his reservation for a full refund, but found he could only get a refund of 50% of eight of the nine nights, minus the service charge.*

*This surprised Mr M, as he says he'd thought he had until 3pm on 6 December 2022 to cancel for a full refund. However, he subsequently discovered this was Dubai time, not UK time, and he had missed the window by about an hour. He contacted AB and the accommodation host via a webchat facility on AB's website the same day to try to negotiate an exception to the refund policy in the circumstances.*

*To AB, Mr M said he was only being offered a 50% refund even though he was allowed until 3pm to cancel. An agent of AB told Mr M that they would contact the host to see what could be done. To the host, Mr M explained the circumstances with his mother and that he wasn't sure if he'd be able to travel to Dubai, and that he'd been unaware the window closed at 3pm Dubai time. He asked whether the host would be willing to make an exception to his cancellation policy and issue a full refund.*

*The host replied to Mr M on 7 December 2022 at 14:42 to say that he was sorry to hear of Mr M's circumstances but that as the accommodation was his only source of income, he could only offer a refund for seven out of nine nights. It appears AB's representative was on leave, and only replied to Mr M early on the morning of 8 December 2022. She initially said the host had offered a refund for six nights, then she said about an hour and a half later that he'd offered seven nights and that "the cancellation and refund has been process[ed]".*

*Mr M complained the same morning to AB that he hadn't agreed to the host's proposal and hadn't authorised AB to go ahead and cancel the booking. He also argued that AB should refund their service fee and that the time zone which applied to the cancellation policy was not made clear.*

*AB responded to the complaint on 12 December 2022. By this time Mr M had rebooked*

*alternative accommodation in Dubai for the same dates he had been due to stay, as it had turned out he was able to go. AB didn't accept Mr M's complaint, but said that in addition to a refund of £1,168.60 (which was for seven of nine nights), it was refunding the service fee to him of £256.82.*

*It appears Mr M approached Amex to make a claim under section 75 of the CCA on 9 May 2023, seeking a refund of £604.16, which he said was the amount he had not been refunded on his booking. He explained that he thought AB had breached its contract with him by cancelling his booking without his authorisation.*

*Amex rejected Mr M's claim on 11 May 2023, initially because it considered the technical criteria had not been met for a section 75 claim. This was because Mr M had used his card to pay AB, but it was the accommodation host which was providing the services to him. This, Amex said, meant there wasn't a valid debtor-creditor-supplier ("DCS") agreement. Mr M challenged this, stating that his claim related to AB's actions. Amex then introduced another reason for declining Mr M's claim, which was that it considered he had requested the cancellation himself. Mr M complained about Amex's decision but it stood by its position in a final response dated 24 May 2023.*

*Dissatisfied with this response, Mr M referred his complaint to the Financial Ombudsman Service, where one of our investigators looked into the matter. Our investigator reached the following conclusions:*

- Amex had not been correct to say that AB's involvement meant there was not a valid DCS agreement.*
- There wasn't any basis for Mr M to claim more of a refund than he had already received. He had cancelled the booking and AB had applied the cancellation policy and issued him with a partial refund as per that policy. That wasn't a breach of contract.*
- The booking had not been misrepresented to Mr M.*

*Mr M disagreed. He insisted that he had not cancelled the booking, and that AB had failed to act on his instructions correctly. No agreement could be reached, and so the case has now been passed to me to decide.*

### ***What I've provisionally 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.*

*Section 75 of the CCA allows consumers a degree of protection when they purchase goods or services using a credit card. Subject to certain technical conditions being met, the consumer can claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of the goods or services.*

*In this case Amex has suggested one of the technical conditions – the need for there to be a DCS agreement – has not been met. Like our investigator, I disagree, and I'll explain why.*

*The DCS agreement is a highly complex area, but at its most simple, a valid DCS agreement will generally be in place if the person who owns the credit card account (debtor) has used their credit card to pay a company they have a claim against for breach of contract or misrepresentation.*

*In Mr M's case, he used his credit card to pay AB, and his claim is in respect of a breach of contract he alleges AB committed. Amex points out that Mr M was making a booking through AB of accommodation which was to be supplied by someone else – the accommodation provider. However, that doesn't mean he can't claim against Amex in respect of AB's alleged breaches of contract or misrepresentations. There is still a valid DCS agreement in place for that.*

*Things would potentially have been more complicated had Mr M been complaining about something which was the host's responsibility, such as the cleanliness of the accommodation, but that is not what Mr M's claim is about.*

*The other main technical criterion which must be met for section 75 of the CCA to apply concerns the cash price of the item to which the claim relates. This has to be more than £100 and no more than £30,000. The "item" Mr M's claim relates to is essentially the booking management service provided by AB, so it is the price attached to this which is relevant for the purposes of his claim. I note AB told Mr M that its service charge in relation to the booking was £256.82, which is within the range of values to which section 75 would apply, and so I find that this technical criterion was met also.*

*However, there is still the important question of whether AB misrepresented something to Mr M, or breached its contract with him. The contract Mr M had with AB appears to have been a consumer contract for the supply of services – with the services being the management and administration of his booking. The Consumer Rights Act 2015 ("CRA") applies to such contracts and makes it an implied term that services will be provided with "reasonable care and skill". What this means is not defined in the CRA, but has generally been taken to mean the level of care and skill to be expected of a competent practitioner of the services in question.*

*Both Amex and our investigator took the view that AB had simply actioned a request from Mr M to cancel his booking, but I think that oversimplifies what happened. I've carefully considered the messages between Mr M and AB, and Mr M and the host, and I do not think Mr M ever made a clear and unambiguous request to cancel the booking.*

*I think Mr M was enquiring about cancelling and wanted to know what the host was willing to offer in terms of a refund, knowing he was outside the period in which he was allowed a full refund, and given his particular circumstances. I think Mr M was essentially trying to negotiate a higher refund than the policy entitled him to, and was going to base his decision to cancel or not on the reply he received. Given there remained a possibility Mr M would be able to travel to Dubai anyway and not have to cancel the booking (which is in fact what happened in the end), this seems like a sensible course of action for Mr M to have taken.*

*I appreciate Mr M did say some things which indicated that he was serious about cancelling. For example, when he hadn't heard back from AB by the morning of 7 December 2022, he said he was going to ask his credit card company to charge the transaction back if he "didn't get a refund on this today". However, even with this I think Mr M's intentions were at best ambiguous and this should have been apparent to AB. I think by failing to confirm with Mr M that, having heard the host's offer, he wanted to cancel his booking, AB failed to perform its booking management services with reasonable care and skill. This was a breach of contract which led to the booking being cancelled by AB against Mr M's wishes.*

*What loss was caused to Mr M by AB's breach of contract?*

*Ultimately, had it not been for AB's breach of contract, it seems likely to me that Mr M would have retained his booking and stayed as planned. The fact that, following AB's cancellation, he rebooked in Dubai for exactly the same dates, supports this contention.*

*This means Mr M would have paid £1,722.76 and got his nine nights in Dubai. What ultimately happened was that he paid £1,756.84 for the replacement booking, which appears to have been for accommodation of an equivalent standard, and only received a partial refund of his cancelled booking.*

*I think Mr M's loss is the cost of the replacement booking minus any refunds he has already received. I've seen evidence that he was refunded £1,168.60, and AB told him he'd also receive £256.82. I've not seen evidence of this last refund being credited to his account however. This will need to be checked. Assuming this refund was made then Mr M's loss as a result of AB's breach of contract is £331.42. If the refund was not made then it is £588.24.*

*Due to the provisions of section 75 of the CCA, Mr M is able to claim against Amex for the loss caused by AB's breach of contract, so I'm currently minded that Amex's decision to decline his claim was not fair or reasonable.*

### ***My provisional decision***

*For the reasons explained above, I'm minded to uphold Mr M's complaint and direct American Express Services Europe Limited to take the following actions:*

- 5) Verify if Mr M received a refund of £256.82 from AB. If he did, go to step 2). If he did not, go to step 3).*
- 6) Pay Mr M £331.42, this being the unreimbursed financial loss caused by AB's breach of contract, and go to step 4).*
- 7) Pay Mr M £588.24, this being the unreimbursed financial loss caused by AB's breach of contract, and go to step 4).*
- 8) To the amount paid to Mr M, add 8% simple interest per year\*, calculated from the date it first wrote to Mr M declining his section 75 claim, to the date the amount is paid to him.*

*\*If Amex considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

*I now invite both parties to the complaint to let me have any new submissions they would like me to consider, by 26 April 2024. I will then review the case again.*

Will Culley  
**Ombudsman**