

The complaint

Mr T complains that American Express Services Europe Limited has treated him unfairly in relation to some flight tickets.

What happened

In May 2023 Mr T used his American Express Services Europe Limited credit card (Amex for short) to make three transactions for three flights with an airline. He made these bookings through a third party booking service for his wife, child (a baby) and mother in law. Mr T wasn't travelling but he says he did take those flying to the airport where they were denied boarding. He and his family were stuck at the airport for many hours incurring significant costs and suffering substantial distress before being able to book other flights to their destination and eventually departing. Mr T says he wants £100,000 in compensation for all the trouble he was put to. The airline said it was the booking service's fault. The booking service said the booking was made on its website and it wasn't them that made any mistake. So reaching deadlock with those parties he took his dispute to Amex.

Amex initially said that the dispute was nothing to do with it because Mr T was complaining about the booking service provided by a separate legal entity. It also noted that it didn't think that the required relationship for a Section 75 claim under the Consumer Credit Act 1974 ('S75' and 'CCA' for short) was in place and such a claim couldn't be successful. So it didn't refund him for what happened.

Mr T didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter and in the end concluded that a S75 couldn't be successful due the reasons given by Amex and other associated reasons. Mr T didn't agree. So the complaint was passed to me to decide.

In August 2024 I issued a provisional decision explaining why I didn't think the complaint should be upheld. Both parties have responded.

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.

In response to my provisional decision Amex accepted my position and confirmed the £200 gesture of goodwill was still available to Mr T if he chose to contact Amex to accept it.

Mr T essentially repeated his comments about what happened on the day of these events and pointing to evidence of what happened that day. However he has not engaged at all with the key arguments in my provisional decision, firstly regarding the chargeback issue regarding the merchant of record. Secondly he has not engaged at all with the fact that it was my provision position that he couldn't make a S75 claim as he wasn't a party to the contract. As neither party has sought to argue these two key positions central and crucial to this matter and that these issues mean irrespective of anything else at all, Mr T cannot be

successful in his complaint about MBNA in any event, I see no persuasive reason to deviate from my position as set out in my provisional decision.

Accordingly due to the reasons above and set out in my provisional decision Mr T's complaint is not successful. I now repeat broadly my position as described in my provisional decision with minor adjustments to reflect the final nature of this decision for completeness.

I should make very clear that this decision is not about the booking service Mr T used which isn't a financial services provider and doesn't fall within my remit regarding chargeback or Section 75. Whatever the issues there maybe with the flights and their booking, and just because Mr T says he has lost out here, it doesn't necessarily follow that Amex has treated Mr T unfairly or that it should refund him. And this decision is solely about how Amex treated Mr T. I hope this point is clear.

There's no dispute that Mr T used his Amex card to pay for these flights. So I don't think Amex did anything wrong by charging these transactions to his account.

chargeback

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr T does here, Amex (as the card issuer) can attempt to go through a chargeback process which is run by the Card Network. I don't think Amex could've challenged the payment on the basis Mr T didn't properly authorise the transaction, given the conclusion on this issue that I've already set out. Here the booking service has said the booking was made through its website so it wasn't at fault for the booking made. But it also notes that Mr T paid the airline who is the merchant of record and that it was the airline that denied his family members boarding. So any chargeback raised would be answered by the airline and not the booking service. Bearing in mind I've seen evidence from the airline noting that the boarding was denied because the baby had an adult ticket and I've also seen the booking service say that the airline told it that boarding was denied because the baby didn't have a suitable chair (car seat or similar) to fly in, it seems clear to me that the airline had at least one if not two persuasive reasons to defend any chargeback. It is also clear the airline points to the booking service being at fault. For these reasons I'm satisfied that any chargeback raised would have been successfully defended by the airline. Similarly had it gone to the end stage of the chargeback process I also think Mr T would have been unsuccessful. So I don't think Mr T has lost out here due to Amex's position regarding chargeback, as I'm satisfied on balance it would not have been successful in any event.

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."

I do appreciate Mr T has funded the flight tickets here from his Amex credit card. But simply funding a transaction doesn't necessarily make someone a contractor to a contract or entitled to represent other parties in a claim on that contract. I note particularly the recent case of *Cooper v Freedom Travel Group Ltd and another (t/a Halifax)* [2022] EWCA Civ 1557 (25 November 2022) and particularly the comments of Davies LJ who concluded that

“the word ‘debtor’ in section 75 has a plain and unambiguous meaning, namely the contractual debtor”.

I've considered the airlines terms and conditions and note that parties to the contract for travel are the airline and those travelling. As Mr T wasn't travelling he wasn't a party to the contract so he couldn't make a claim against the airline through legal processes and so he can't bring a 'like claim' (as quoted above) against Amex in relation to what the airline did or didn't do. So even if all the issues were due to the airline, Mr T wouldn't be able to hold Amex responsible under such a 'like claim'.

I also note that both Mr T and the airline point to the booking service as being at fault here for what happened. But Amex didn't fund any contract Mr T had with the booking service through the payments made in this dispute because he didn't pay the booking service he paid the airline. So Amex wasn't providing credit towards any contract Mr T has with the booking service and accordingly the debtor creditor supplier arrangement isn't in place in relation to any failing of the booking service. And although I appreciate Mr T will say he pays the booking service through the fees he is charged but those fees aren't credit for the purposes of the CCA.

I appreciate Mr T would argue that Amex and the booking service are one and the same. But as Amex has made clear they are entirely different legal entities. And I've not seen any persuasive evidence from Mr T in making his S75 claim that the booking service and Amex are Associates as defined under Section 184 of the Consumer Credit Act 1974. So such an argument wouldn't persuade me to uphold such a complaint about such a s75 claim.

As the prerequisites for a claim under S75 have not been met then a s75 claim cannot be successful even if either the booking service or airline were demonstrably at fault. Accordingly there is no need to decide whether the booking service or the airline breached their contract or misrepresented their contracts to Mr S as a claim couldn't be successful in any event.

Our investigator felt that Amex should pay Mr S £200 for not informing Mr S sufficiently of his options here, in essence its customer service at that point. Amex didn't agree to the reasoning but was willing to pay Mr S that amount out of goodwill. Amex pointed out long before the investigator's assessment that a S75 claim couldn't be successful. So I'm not persuaded that there has been any detriment to Mr S for Amex not informing him (as it should) and has been this service's position for some time. In any event Mr S didn't accept this resolution. Accordingly Amex doesn't have to pay Mr S this amount to my mind. If Mr S is now willing to accept this gesture he should contact Amex to receive it as it has confirmed this offer is still available.

So having considered everything here it is my decision that this complaint should not be successful.

My final decision

For the reasons set out above, it is my final decision that I should not uphold the complaint against American Express Services Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 October 2024.

Rod Glyn-Thomas
Ombudsman

