

The complaint

Mr B complains that he did not receive a timeshare relinquishment service. Because he paid for that service using his credit card, issued by American Express Services Europe Limited ("Amex"), he says he has a claim against it under section 75 of the Consumer Credit Act 1974 ("section 75").

Mr B has been represented in bringing this complaint by a claims management business, which I'll refer to as "F". References to Mr B's arguments and submissions therefore include those made on his behalf.

What happened

Mr and Mrs B were members of a timeshare and holiday club, which I'll call "C". They wanted to relinquish their membership and so instructed a business ("A") to make the necessary arrangements. A charged a total of £9,610 for its services. Mr B made two credit card payments, totalling £7,023, with his Amex card; he paid the balance with a different credit card.

Mr and Mrs B's agreement with A said that it would take up to but no longer than 12 months from the date of the final payment or up to 12 months from the date of their final holiday to complete the relinquishment. The agreement was dated 14 October 2020 and the final payment was made on 29 October 2020. Mr B says that he and Mrs B took their final holiday with C in November 2019.

In May 2022 Mr B contacted Amex. He said that A had not provided the service he had paid for and that, since it was no longer trading, he could not make a claim against it.

Amex said, in summary, that, due to the passage of time, it could not treat Mr B's claim as a claim for chargeback. It initially said too that section 75 did not apply because the card payments had been made through a payment aggregator, Stripe, and so the necessary conditions for a section 75 claim had not been met.

Mr B referred the matter to this service. One of our investigators considered what had happened. She agreed that a chargeback claim was out of time. She said that the involvement of Stripe did not affect any liability Amex might have under section 75, but that Amex was entitled to ask Mr B to provide more evidence to show that A had been in breach of contract.

Mr B said that he had had no contact from A since he had signed the contract and made the payments in October 2020. He provided a copy of a letter from C sent in January 2021 providing an update on arrangements during the Covid-19 pandemic, indicating that he was still a member at that point. He also provided a copy of a demand for payment of outstanding management fees, which included a 30-day notice of cancellation, dated 16 April 2021. Most of C's records were, however, kept electronically, and Mr B did not have access to them.

The investigator reviewed the further information provided, but was not persuaded that it showed a breach of contract on the part of A. It did not show that Mr and Mrs B were still members of C more than a year after the final payment.

Mr B did not accept the investigator's assessment and asked that an ombudsman review the case.

For completeness, I should also note that F explained that A (which was a Spanish company) had referred Mr and Mrs B to a UK company to act as its agent. That company had in turn instructed F, but had not received any funding from A; that meant that F could not carry out any termination work.

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 agree that a chargeback was not appropriate in this case, for the same reasons as the investigator.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider.

Amex initially said that this didn't apply here, because it has no direct arrangements with A. A was only able to take card payments through Stripe, which is a payment aggregator, not a merchant acquirer. It has however decided not to pursue that argument, so I make no further comment on it. I have therefore considered Mr B's dealings with S.

I accept that Mr B did not use C's timeshare and holiday services after November 2019. It follows that, in line with its contract with Mr and Mrs B, A agreed to arrange for their timeshare to be relinquished on or before 29 October 2021 – that is, one year from the final payment.

There is evidence that Mr and Mrs B were still members of C on 16 April 2021. Had they not been, there would have been no reason to threaten them with cancellation. I have not however seen anything to indicate that they were members after that date – and certainly no indication that their membership of C continued after 29 October 2021. Indeed, the letter of 16 April 2021 indicated that Mr and Mrs B would have their membership cancelled around the middle of May 2021, and I think it is likely that it was.

I note that Mr and Mrs B's contract does not directly address the question of what happens if the timeshare contract is nullified for reasons unconnected with any steps A may or may not have taken. But clause 9 (the refund guarantee) does say that a full refund will be offered "*... should my/our ownership not be nullified within the above stated time period...*". If, as appears to be the case, Mr and Mrs B were no longer members by October 2021, it certainly would have been open to A to argue that the conditions which would have entitled them to a refund were not met.

It is not for me to say whether Mr B does in fact have a claim against A. Nor is it for me to decide whether he has a claim against Amex under section 75. What I must do is decide what I consider to be a fair resolution of Mr B's complaint about Amex's decision to decline his claim. In the circumstances, however, I think it was reasonable of Amex to do so.

Finally, I note that Mr B has received a refund from the other credit card provider, of the amount paid on that card, plus interest. I have taken that into account in reaching this decision.

My final decision

For these reasons, my final decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 April 2025.

Mike Ingram

Ombudsman