

The complaint

Mrs T complains that American Express Services Europe Limited (Amex) has not refunded a payment she made for a holiday which was unsatisfactory and which she paid for using her Amex credit card. She says too that Amex misled her into thinking that she had received a permanent refund.

What happened

In March 2023 Mrs T booked a package holiday for herself and her husband to attend their son's wedding. She paid £9,300 to U, a travel company, using her Amex credit card. The payment covered flights and accommodation.

Mr and Mrs T took the holiday at the end of May and beginning of June 2023. Their experience fell some way short of their expectations. They said, amongst other things, that their accommodation was dirty, the pool was not cleaned and could not be used, the restaurant food was poor, and staff were unhelpful.

Mrs T complained to U and was eventually offered a partial refund of £1,566, through ABTA.

Mrs T did not think, however, that this went far enough and referred the matter to Amex, seeking a refund of £7,000, the sum which she estimated to be the cost of the accommodation and meals. She had no issue with the flights.

Amex applied a temporary credit of £7,000 to Mrs T's credit card, while it processed a chargeback claim. It reversed that credit in January 2024. In the meantime, however, it had told Mrs T that the refund was permanent and would not be reversed. Acting on that information, Mrs T said she had booked another holiday.

Amex said that it did not believe that there were grounds for a chargeback or that Mrs T had a valid claim under section 75 of the Consumer Credit Act 1974 ("section 75"). It did acknowledge however that it had not handled matters as well as it should have done and paid her £150 in recognition of that. Mrs T referred the matter to this service, where one of our investigators considered what had happened.

The investigator did not think that the offer of £150 was enough and recommended that Amex increase it by £150 to £300 in total. Mrs T did not accept that recommendation and asked that an ombudsman review the case.

I did that and, because I thought that Amex should increase its offer of compensation to Mrs T, issued a provisional decision. In that provisional decision, I said:

In his initial assessment, the investigator listed a number of errors which Amex made when Mrs T referred her complaint to it. He noted:

- *The chargeback claim had initially been raised for the wrong reason.*
- *It had taken too long to reverse the temporary credit on the account.*
- *Amex continued with the dispute with U, even though it had been defended.*

- Amex had not considered a section 75 claim.
- There was little or no communication after the end of August 2023.

The investigator concluded that the process had been marked by a lack of clarity and delays.

I agree with the investigator's overall assessment and comments about the way Amex dealt with the claim for a refund. It should have explained much more clearly and quickly what was happening and why it reached the decisions it did.

I turn then to the substance of the complaint – that Amex should not have declined the claim for a refund.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes. In most cases, that means Visa or Mastercard, but Amex operates as both card issuer and the merchant acquirer. So, in this case, it had agreements with both Mrs T and with U, and the dispute between them was to be considered under Amex's own rules.

Chargeback is primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods have been paid for but not delivered. It can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.

The underlying dispute here is that the services provided were of a poor standard. Mrs T has provided evidence which she says shows that the accommodation and catering were not of a satisfactory standard. I will discuss that further under "Section 75" below, but I do not believe that it shows sufficient grounds for a successful chargeback claim. Mr and Mrs T did receive flights and accommodation. I do not believe therefore that it can fairly be said that the services were not provided or that they were not as described – the two chargeback reasons which might be relevant.

Section 75

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 said that the necessary conditions were not met in this case. That was because the card payment was made to U, but Mrs T's claim was against the resort which provided the holiday accommodation. U had fulfilled its contract with Mrs T by making the necessary bookings and passing on payment to the resort and the airline.

That analysis does not however take into account The Package Travel and Linked Travel Arrangements Regulations 2018 ("the Regulations"), which include:

"Responsibility for the performance of the package

15.—(1) *The provisions of this regulation are implied as a term in every package travel contract.*

(2) The organiser is liable to the traveller for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers.”

In this case, the “organiser” was U, because it sold the “package travel contract”, comprising flights, transfers and accommodation. That was the case, even though the airline and the resort were the direct suppliers of those services.

I note that U’s terms and conditions said that it accepted no responsibility for the acts or omissions of suppliers, but it is not usually possible to contract out of terms implied by consumer protection legislation – which would include the Regulations.

I have therefore considered in more detail what Mrs T has said about the standard of accommodation and services at the resort.

Under English law, where services are provided to a consumer, it is an implied term of the contract that those services will be performed with reasonable care and skill. Mrs T says that they weren’t – because, for example, the accommodation had been poorly maintained and was not kept clean. She has provided some photographs which do appear to support her case. Other issues, such as the behaviour of staff and quality of “butler” service, are unfortunately less easy to evidence.

A section 75 claim can only arise in respect of a breach of contract or a misrepresentation. It is important to note that not everything about which Mrs T has expressed dissatisfaction can give rise to such a claim. For example, one complaint which she made concerned the layout of the resort, which was on each side of a main road. I am not persuaded that that could form the basis of a claim for breach of contract. Similarly, she says that the transfers to and from the airport took much longer than she had expected; I can understand that would have been frustrating, but I am not aware that there was an agreed journey time.

It is not for me to say whether Mrs T does in fact have a claim against U – or indeed, the resort. Nor is it for me to decide whether she has a claim against Amex under section 75. What I must do is decide what I consider to be a fair resolution of Mrs T’s complaint about Amex’s decision to decline his claim. And in doing that, I must take into account all relevant circumstances. Those circumstances include the payment she has already received through ABTA.

As I have indicated, I think it is certainly arguable that, in some respects at least, the services which Mrs T and her husband received were not provided to a satisfactory standard. It does not follow however that she should receive a full refund. I believe a partial refund would be appropriate, but in my view the refund which Mrs T has received through ABTA – which amounts to more than 20% of the likely cost of the hotel service – is a fair amount.

Incorrect advice

I turn then to Amex’s statement to Mrs T that the refund which was credited to her account was permanent. She says that statement led her to book another holiday, in part at least because of the disappointment of the May/June 2023 holiday.

I note that Mrs T had been told that the £7,000 credit on her account could be reversed. But there is no dispute that she was assured in a call of 31 August 2023 that it would not be. That statement in my view was consistent with what she had been told previously, since at some point the decision would have to be taken to reverse the credit or to make it permanent.

Where a person is given incorrect information, and they act on it to their detriment, they may be able to bring a claim against the person who provided that information.

Mrs T has said that she and her husband had two trips in mind, but that it was only when she was told that the refund of £7,000 had been finalised that they decided to go ahead with both bookings. But for what she was told by Amex on 31 August 2023, they would not have done so.

Having considered the evidence about this very carefully, I am not persuaded that Mrs T's decision was made solely (or even primarily) because of what Amex said about the refund. I accept that it may have affected the timing of the decision, but I do not believe it would be fair to hold Amex liable for any further commitment which Mrs T may have made.

Conclusions

For the reasons set out above, I do not think it would be fair to require Amex to refund Mrs T for the holiday or to compensate her for the incorrect advice she received.

However, I do believe that Amex's handling of this matter has fallen some way short of what I think Mrs T was entitled to expect. There were significant shortfalls in the information which it provided, as well as significant delays. That caused Mrs T to suffer both distress and inconvenience which in my view merits a higher award than that recommended by the investigator.

I propose therefore to increase the compensation from the £150 recommended by the investigator to £500 – in addition to the £150 already paid.

In response to my provisional decision, Amex noted that it had already accepted the investigator's earlier recommendation, but said it had nothing to add. Mrs T remained unhappy; she said she did not think it was fair that Amex was not being held accountable. She clarified that she wanted to continue with the ombudsman process, so I have reviewed the case again before issuing this 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.

Having done so, I have not changed my view from that which I set out in my provisional decision. In that decision, I noted that there were some areas where the service which Mrs T had received from resort did not appear to meet the standards which she was entitled to expect. But I explained why I did not think it would be fair to require Amex to provide a full refund. In saying that, I took account, amongst other things, of the partial refund which Mrs T had already received.

I also explained in my provisional decision why I thought that Amex's service had fallen short of what I would expect in several areas and that Mrs T should receive significantly more compensation than Amex had offered. I don't believe it is correct to say therefore that Amex is not accountable here – although I stress that my award is intended to compensate Mrs T, not to punish Amex.

As I have indicated, Amex accepted my provisional findings, but I will make a formal award in any event, so that Mrs T can enforce it, should that be necessary.

My final decision

For these reasons, my final decision is that, to resolve Mrs T's complaint in full, American Express Services Europe Limited should pay her £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 8 April 2025.

Mike Ingram
Ombudsman