

The complaint

Mr R complains American Express Services Europe Limited (AESEL) trading as American Express (Amex) have acted unfairly by not refunding part of the payments he made towards a holiday using his credit card and charge card.

What happened

Mr R has been supported in making this complaint by his son, Mr R2, but for simplicity I'll refer to all submissions as having come from Mr R.

Mr R booked a stay at a hotel I'll refer to as P, for his family, between 14 and 28 November 2023. The party consisted of four adults and one child staying in a three-bedroom villa.

On arrival Mr R chose to add on an all-inclusive package at a total cost of \$14,000, plus tax and service for the entire party. This was for the provision of: breakfast; lunch; light fare and dinner along with non-alcoholic and alcoholic beverages by the glass.

Unfortunately, from the outset Mr R says there were problems. In summary he said this included: a child car seat not supplied in their transfer vehicle; amenities not working correctly in the villa; delays with room service; poor quality food and service; cleanliness and hygiene issues in and around the villa, including a deceased animal.

As a result, Mr R complained to P who agreed to reduce Mr R's total bill by \$15,986.40. In summary this was made up of:

- Three nights' accommodation - \$12,266.40
- Three nights all-inclusive plan - \$3,720

Mr R says he didn't agree this was fair given his experience but made payment when he departed on 28 November 2023. He paid two invoices, one using his Amex credit card and the other using his Amex charge card, as outlined below:

Invoice one

This was paid using Mr R's Amex credit card and totalled \$14,880.91 (£12,159.51). The invoice listed: guest room, transportation charges, laundry, some excursions, taxes and service charge.

While not explicitly itemised, our Investigator concluded this invoice included the charge of the all-inclusive package under guest room at \$1000, plus tax and service per night. I will explain this in more detail later.

Invoice two

This was paid using Mr R's Amex charge card and totalled \$40,717.89 (£33,271.46). The invoice was made up of: accommodation, hotel accommodation tax, resort fees, service

charge and miscellaneous sales tax.

Unhappy, Mr R contacted Amex in December 2023 in an attempt to claim his money back under the dispute resolution mechanism operated by Amex, known as “chargeback”. As he didn’t consider the price reduction given by P was enough, he made two chargeback claims – one for the credit card purchase, one for the charge card purchase.

Amex credited both amounts to Mr R’s respective cards, while it reviewed matters. But after doing so concluded in February 2024 that as P had reduced the amount and provided evidence the service paid for had been provided, Mr R’s chargeback claims should not succeed.

Mr R disagreed and brought his complaint to our service. He said Amex initially credited the accounts with the chargeback amounts claimed, and in December 2023 its systems had shown both disputes as resolved. But Amex later re-debited both amounts from the respective accounts, without contacting him.

While the complaint was with our service Amex took another look at things, but explained their outcome remained the same as P had already made an adjustment – so any credits previously applied had been re-debited to Mr R’s accounts.

An Investigator here reviewed matters, asking further questions of both parties. They asked Amex whether they’d considered Mr R’s claims under Section 75 of the Consumer Credit Act 1974 (CCA). Amex explained they’d not done so, in part because the total cost of Mr R’s holiday exceeded the limits under section 75.

Our Investigator concluded Amex had acted fairly when considering Mr R’s two chargeback claims. Adding that although a little confusing, Amex were fair to re-debit the cards after P disputed the payments. They also considered Mr R’s payments should be considered as two separate contracts (one covering the all-inclusive package, the other for accommodation) and as such the payment made on the credit card should be considered under section 75.

But in doing so concluded that the price reduction that had already been given fairly resolved matters – so overall didn’t consider Amex had acted unfairly in this respect either.

Mr R didn’t agree, in summary he said:

- Amex hadn’t treated him fairly as they’d reversed the chargeback decision without telling him.
- The amount P reduced the total bill by, as a gesture of goodwill, shouldn’t be included as it was paid under protest.
- Overall, the all-inclusive package misrepresented the quality of the food, beverage and service. It implied an unparalleled quality, which wasn’t received.

Mr R also questioned why our Investigator had said the two contracts were separate but then considered the resolution for accommodation against the all-inclusive package.

With no resolution, the complaint was passed to me to decide.

I issued a provisional decision, explaining why I didn’t intend to uphold this complaint. In this provisional decision I said:

“The rules from which I get my powers enable me to decide cases on this ‘fair and

reasonable' basis. This allows me to depart from the law when I wish to as long as I give my reasons for doing so. It also means that I can look at matters fairly and reasonably in the round (that is in all the circumstances) rather than in other ways such as using a strict legal interpretation.

I think it would be helpful to explain, in this decision I'm only able to consider how Amex handled the disputes Mr R raised with them. I'm not able to consider the action of P, as this isn't within the jurisdiction of this service for these types of complaints.

I think it's important to say at this point, I consider invoice one (explained above) for \$14,880.91 (£12,159.51) was for the provision of the all-inclusive package, among other guest services such as transfers, laundry and excursions. I say this because the terms and conditions show the cost of this package for the whole party was \$1,000 plus taxes per night. While the invoice doesn't say "all-inclusive package" it clearly shows \$1,000 listed for each night, plus taxes, and I've seen nothing else that would explain this charge. So on this basis I think it more likely than not this was the case.

On that basis, invoice two, lists accommodation cost per night and matches what we know to be the room rate. So I consider this cost to be for the provision of accommodation, prior to the all-inclusive package being added. This would also include concerns Mr R raised about amenities not working correctly in the villa, cleanliness and hygiene issues in and around the villa, and his concerns about the deceased animal.

Chargeback and section 75

When a consumer approaches their card issuer with a problem with a purchase made using a plastic card, there are two avenues via which the business can help.

The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme (Amex in this case), and which is often known as "chargeback". Where the payment has been made using a credit card, they can also consider honouring a claim under section 75 of the CCA. I will consider each of these mechanisms in turn below for both payments.

Chargeback

Chargeback allows for a refund to be made of money paid with a plastic card in certain scenarios, such as when goods or services have been paid for and not received. Chargeback is designed to be a simple process to settle complaints. The only matters to be considered are the rules set by the card scheme to which the consumer's card belongs, along with the facts of the case. It is not designed to settle complex disputes or to consider legal arguments.

Chargebacks are not guaranteed to succeed, the recipient of the funds (P in this case) can choose to challenge or defend a chargeback if they don't think it is valid. But I would expect Amex to attempt a chargeback, if there was a reasonable prospect of success, as they did here. If a chargeback is challenged by the other side to the dispute, I would expect Amex to look carefully at the submissions made by the other side and make a decision on whether to continue pursuing the chargeback. I would not expect Amex to pursue it further if the submissions showed it no longer had a reasonable prospect of success.

In this case Amex did attempt a chargeback for both payments, under the dispute code "Not as Described or Defective Merchandise". But they were defended by P, who overall considered Mr R had been provided with the services and explained he had been given a price reduction for both the accommodation charge and the all-inclusive package. This left

Amex the option of dropping the chargeback or persevering with it.

Here I can see Amex persevered with both claims, even after P defended them, but P continued with their defence. This seems reasonable, as Amex could have chosen to stop preserving after P's first defence, given they provided persuasive detail about the service Mr R had received and the reduced rate he'd been charged. As such, I'm not persuaded Amex treated Mr R unfairly here.

When Amex first raised the chargebacks, and on later presentments, a temporary credit for each amount was added to Mr R's cards, as I'd expect. But when P disputed this the credits were removed – this seems reasonable.

I understand Mr R was unhappy Amex's system showed both charges as "resolved" on 19 December 2023. I can appreciate this is frustrating, but P had until 8 January 2024 to dispute the chargeback, and here P did that on 5 January 2024. So within the time limits allowed. I also note Mr R was sent an email on 7 December 2023 which said:

"In the meantime, you are not liable for this amount while the investigation is ongoing and we will credit the amount to your account. If the merchant provides information supporting the transaction, we may rebill your account."

So while I agree Amex's system could have been clearer I think they did enough in telling Mr R that P could dispute the chargebacks and as such they would re-debit his account.

In this case, Amex did as I'd expect and pursued the chargebacks as far as they could. And ultimately, having considered the reasons for which a chargeback can be raised under the rules, I think it unlikely a chargeback would have been successful under any reason code. I say that because Mr R paid for a service he'd used and P had already agreed to reduce the total bill. So even though Mr R says he made the payment under protest, he still in effect agreed to pay for it at the reduced rate, after receiving the service. So under the chargeback rules there wasn't anything further Amex could do.

So given this, I can't agree Amex handled Mr R's chargeback claims unfairly for either card.

Section 75 of the CCA

As I've explained Mr R paid for invoice two using a charge card. Charge cards don't have the additional protection of section 75, so I don't think Amex treated Mr R unfairly as section 75 doesn't apply for the payment of £33,271.46, which I've explained was in relation to invoice two. So I will go on to consider the payment of £12,159.51, Mr R made using his credit card for invoice one.

Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

One condition which needs to be met for section 75 to apply to a purchase is the claim must relate to an item with a cash price of over £100 and no more than £30,000.

Amex didn't consider a claim under section 75, in part because they said the total amount exceeded the limits. However it seems that Amex are no longer disputing that Mr R's claim exceeded the financial limits under section 75. So on this point, I will only say that I agree with our Investigator's analysis that Mr R entered two separate contracts, one for the provision of accommodation, the other for the provision of the all-inclusive package,

transport and other guest services (invoice one for £12,159.51). As such the payment made using his credit card fell under the financial limits for section 75.

A further condition is that there needs to be what is known as a debtor-creditor-supplier ("DCS") agreement in place. That was also met here.

I also need to be persuaded there has been a breach of contract or misrepresentation and if there has, what the resolution should be. As I've concluded I can only consider invoice one, my findings are limited to whether the contract Mr R entered for this was breached or misrepresented. I'll explain this in more detail below.

Has there been a breach of contract or misrepresentation?

Misrepresentation

For the purposes of this case, a misrepresentation is a false statement of fact which induces another party into a contract which leads them to suffer a loss.

Mr R says the information provided when he purchased the package was misleading as to the quality of the food and beverage service. Pointing to the advertisement for the all-inclusive package which said:

"Revel in our sophisticated all-inclusive package"

As well as referring to Global connoisseurs, he considers this implied unparalleled quality which he says wasn't delivered. Effectively Mr R considers the all-inclusive package was misrepresented.

While I can understand Mr R's point, it's clear to me that the supplier here intended to provide the services advertised, it just failed to do so. Mr R hasn't shown these statements were untrue at the time they were made, but he has shown things went wrong. So I've considered these matters in terms of a breach of contract – which I'll go on to explain further later.

Section 75 is prescriptive in the way a claim can be made, and unfortunately based on what I've seen, there's no evidence there has been a false statement of fact here, instead just some examples of poor quality and service, and as such I'm not able to conclude there has been any misrepresentation. So I can't say Amex have acted unfairly in not refunding Mr R, even had Mr R not already received a partial discount from P.

I've also thought about whether the provision of any other items listed on invoice one could be considered to have been misrepresented, but I don't think they could.

I've therefore gone on to consider whether there has been a breach of contract.

Breach of contract

A breach of contract occurs when one party to the contract fails to discharge its obligation to the other. These obligations may come about as a result of the express term of the contract, or because of terms implied by legislation.

In this case, P has clearly accepted there were issues by making the significant price reduction to Mr R's final bill that it did. So as P has accepted there were failings all that's left for me to consider is whether the price reduction Mr R received was fair.

Much of Mr R's arguments here relate to the quality of the service provided, and as such I think could be described as a breach of contract, as explained above.

Mr R has pointed to explanations, which in his opinion weren't correct. However having reviewed the terms and conditions provided for the all-inclusive package, it doesn't include a defined standard of food, beverage or service that would be provided. It does however say that refunds will not be issued for unused portions of the dining package – so even if Mr R had chosen not to continue to use the all-inclusive package, as he was unhappy with the quality, he wouldn't have been eligible for a refund in any case.

While personal taste and preference can influence a customer's perception of quality, I think the price Mr R paid for this service is relevant here. Mr R was due to pay \$14,000 plus taxes and service, for the all-inclusive package and as such I think it's reasonable to conclude a high standard of quality could be expected.

To support his claim Mr R has provided comprehensive information about the level of service and quality of food received, including all correspondence between the guests and their private butler.

Having reviewed this I can see there were several occasions where room service was delayed or wasn't delivered, certain food and beverage items were not available and meals were served incorrectly and on occasion undercooked. But as I've said above, I think P has accepted these failings by reducing Mr R's total bill, so I'll go on to consider whether the reduction he received was fair.

For completeness I've also considered what Mr R has said about a baby seat not being provided – as the cost of transport was also included within Invoice one. While I've not seen any terms for this, I do think it more likely than not there had been an agreement for a baby car seat to be provided – which didn't happen. So it's likely this could also be considered as a breach of contract.

I've also thought about whether the provision of any other items listed on invoice one could be considered to have been in breach of the contract Mr R entered, but I don't think they could.

Resolution

Here, P reduced Mr R's total bill by \$15,986.40. As I've explained, this was split by giving a discount of \$12,266.40 from his accommodation charge (invoice two), and \$3,720 off the charge for the all-inclusive package (invoice one). It's not clear why it's been split in this way, as there doesn't appear to have been such significant issues with the accommodation to warrant a discount of this size. So given this, I think it's reasonable to conclude P split it in this way for one or more of the following: accounting purposes, tax purposes, invoice purposes or some other reason other than purely allocating what in P's view was Mr R's level of quantified detriment precisely to those respective invoices.

Mr R has questioned why our Investigator considered the redress offered in response to the ongoing issues with accommodation against the all-inclusive package. While I understand this query, my remit is to consider a resolution on what I consider to be a fair and reasonable basis. And as I don't consider the discount was applied proportionally, it would be unfair on Amex for me to ignore the fact Mr R has already received a total reduction of \$15,986.40. If Mr R has any evidence as to why P chose to split the overall discount in the way they did, I'd be happy to consider it. But in the absence of this, it seems unfair on Amex not to take the full amount into account. So I've considered what a fair resolution would be, taking account of the total reduction he received.

Mr R doesn't consider this goes far enough to resolve matters and considers a fairer price reduction would be £23,473.05, in addition to what P had already reduced the amount by (as he claimed for in his chargeback claims). But I don't agree as I think he's already had a fair amount reduced from his bill.

While there were errors by P, they reduced the bill significantly, and did so quickly - on the day of his departure. There were also many elements Mr R didn't complain about, but he effectively got a substantial amount of his holiday for free as P chose not to charge him. As such, he still benefited from most of what he paid for and received a significant price reduction.

Mr R says that the invoices should be treated separately (in essence in a strict manner) and that the invoices paid 'under protest' shouldn't be considered. As I've described my remit is to decide matters fairly and reasonably in all the circumstances. It seems clear to me that P gave him a substantial discount for the problems encountered and allocated this discount (for its own reasons) differently to the invoices and not proportionately to the detriment Mr R suffered in relation to the services that those invoices respectively covered. I consider that Amex hasn't acted unfairly in concluding that it didn't need to do more. Mr R's suggestions lead to what I consider an unfair position where some of the discount applied (and which Mr R benefited from) for what went wrong is in essence taken out of Amex's consideration. That is clearly unfair on Amex bearing in mind that would lead to a situation where Mr R gets a larger price deduction than is warranted here due to such a strict interpretation. So it's my current position that overall Amex doesn't have to do more.

While I appreciate this will come as a disappointment to Mr R, as P already reduced his total bill, which Amex considers fair, and I agree that fairly resolves matters, I don't plan to ask Amex to do anything further here."

I invited both parties to respond with any further points or evidence they wanted me to take into account before I made a final decision.

Amex didn't respond to my provisional decision by the deadline.

Mr R2 responded on behalf of Mr R, disagreeing with my provisional decision. As before, for simplicity, I'll refer to all submissions as having come from Mr R.

In summary he said:

- There'd been a lack of transparency in Amex's handling of the chargeback, which he considered unfair.
- The payment was made under protest as the card had already been authorised. He pointed to certain laws which he says mean he should be able to raise a dispute in any case.
- The all-inclusive package was misrepresented as it was sold as a luxury package, which wasn't received. In support he referred to legislation which he considered had not been met as a result of information provided about the standard of the holiday, which he considered to be misleading.
- He had no control in how P allocated refunds to each invoice – and considered it unfair of Amex to rely on a refund received under a separate contract.

Overall, Mr R considered his complaint should be upheld.

I considered what Mr R had said, and provided further comments which I also shared with Amex. In brief, I said:

Firstly, I understand Mr R requested a telephone discussion to clarify his position, but I don't think that's necessary. I say this because Mr R has submitted a significant amount of information as to why he considers Amex acted unfairly – he's also explained his reasons for this in detail. I have reviewed and fully understood everything Mr R has provided and taken it into account when coming to my decision so far. Both parties will also have the opportunity to respond to the further comments I make below.

Mr R has raised his concern that the majority of the discount was applied to the accommodation (around 77%), despite many of the failings relating to the all-inclusive package provided (which received around 23% of the overall refund). He's explained he had no control over this allocation and doesn't consider it fair to be penalised for a refund method that doesn't accurately reflect the complaint.

Mr R also doesn't consider it fair for Amex to rely on a refund applied to a contract that wasn't eligible under Section 75 when considering the part, that was.

As I explained in my provisional decision, looking at matters on a fair and reasonable basis (which our rules allow for) I consider the overall refund Mr R received fairly resolves matters, and as such, I don't consider Amex has acted unfairly.

Nevertheless, I've taken into account what Mr R has said about the disproportionate allocation of the refund and considered his argument that any refund for the accommodation should be discounted.

Having done so, even if I were to ignore the accommodation refund and argue Amex shouldn't consider this, I still think the outcome here is fair.

I say that because, Mr R received a deduction of \$3,720 on invoice one (covering the all-inclusive package). This represents around 27% of the total cost of the all-inclusive package, which he is complaining about. While the hotel has accepted there were errors, and Mr R didn't receive the service he should have, I don't think there's enough to say that Mr R's refund, for this part of the holiday, should be more than the deduction he's already received from P.

Mr R has said services must be delivered with reasonable care and skill. But while there were delays with service as well as problems with the quality and availability of food and drink, I've not seen persuasive evidence to say there were such significant breaches of contract that would warrant a larger discount than he's already received. As such, I consider Amex has acted fairly in how they've handled Mr R's claim.

While Mr R may argue he should receive an equal percentage refund for the all-inclusive package, to that he received under the accommodation, I don't agree. That's because, even had Mr R received no deduction at all from P, I'd only be able to ask Amex to make a refund based on what I consider to be a fair resolution. And here, I think the amount he's already received under the all-inclusive package is fair, based on the service he received.

As such, I'm still of the opinion Amex has handled Mr R's complaint fairly and I don't plan to ask them to do anything further.

I invited both parties to respond with any further points or evidence they wanted me to take into account before I made a final decision.

Amex didn't respond by the deadline.

Mr R responded explaining he considered a fair resolution would be around 50% of the cost of the all-inclusive package. In summary he said:

- They'd experienced considerable delays in room service, with certain food and beverage often not available as well as raw and undercooked food. Saying only around 20% of the meals provided were satisfactory.
- Courts routinely allowed 50-100% price reduction where a service has performed substantially below what was agreed.
- He reiterated Amex should not rely on funds allocated to a contract that wasn't eligible under Section 75 when considering the part that was. And questioned what would have happened had *invoice two* been paid using a non-Amex product.
- In relation to Amex's handling of their chargeback claim – he considered their assurances that a "closed" dispute was final, breached the FCA's Consumer Duty principles to act in good faith and avoid foreseeable harm.

In summary, Mr R didn't consider the refund to date took into account the full extent of the failings, the premium price paid or the protective purpose of Section 75.

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've reached the same outcome as set out in my provisional decision.

The regulator the Financial Conduct Authority (FCA) sets out the rules for our service to follow. These rules are set out in the Dispute Resolution: Complaints (DISP) Handbook.

DISP 3.6.1 says:

The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

And DISP 3.6.4 says:

In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time.

The effect of these rules mean I'm required to take into account the information, laws and

legislations Mr R has mentioned, but I'm not bound by them. This reflects our informal nature as an alternative to the courts. That also means we wouldn't routinely quote every law that could potentially apply.

This also means our service isn't required to follow any award a court might make in relation to a complaint such as this when deciding what we consider to be a fair and reasonable outcome.

So with this in mind I want to reassure Mr R I've taken everything into account when coming to my decision, even if I've not commented on these specially below.

Turning now to the arguments Mr R has raised, I've considered each in turn below.

Chargeback

Mr R has reiterated his concerns about Amex's chargeback process being unclear and that he wasn't made aware the funds could be re-billed to the account. In addition, he's raised concerns that Amex's handling of the chargeback process breached the FCA's Consumer Duty Principles, specifically pointing to their requirement to act in good faith and avoid causing foreseeable harm.

Consumer Duty was introduced as a means of setting higher standards for consumer protection across financial services – but here Amex in fact continued to pursue the chargeback claims, even after P had initially defended them. Ensuring they'd pursued matters as far as they could for Mr R.

Chargebacks are prescriptive in the way they work – there aren't the same flexibilities as section 75 provides. And my role here is to consider whether Amex handled Mr R's chargeback claims fairly – and based on what I've seen I think they did.

And while Mr R considers Amex's systems were wrong to say the chargeback had been closed, when the merchant was still reviewing matters I don't consider this resulted in Mr R being treated unfairly. That's because while I agree Amex's systems could have been clearer, I don't think this resulted in Amex giving the wrong overall outcome. And as explained in my provisional decision Amex did explain the funds could be rebilled. So I don't think the chargeback claims should be overturned, or Amex should pay any compensation, as I don't agree they've acted unfairly or incorrectly.

Section 75

Firstly I want to address Mr R's concerns that he made payment under protest. I understand Mr R considers he had no choice but to make payment at the end of his holiday – but this doesn't mean his complaint should be upheld as a result.

Here he's argued a payment such as this should not preclude a later dispute – but I don't think it has. Mr R has been able to raise claims under both chargeback and section 75, along with subsequent complaints about these.

So I will now go on to consider Amex's handling of Mr R's section 75 claim.

Mr R considers a greater refund should be due, given the problems he faced in relation to the all-inclusive package. He also reiterated his concerns that the package was misrepresented.

Mr R considers the all-inclusive package was misrepresented and has pointed again to the

wording used to describe this – which he considers induced him into the package and wasn't received.

However, to conclude there'd been a misrepresentation I'd need to be persuaded he was told he'd receive something that wasn't provided. Here the statements he's referred to are generic and I don't think can be considered statements of fact – and as such can't be misrepresented. I also explained these would be better considered under a breach of contract.

Having thought about all the arguments Mr R has raised in relation to a breach of contract I'm still of the view that it's fair for Amex to consider any price reduction Mr R received as part of their consideration of his claim. That's because, as explained, I haven't seen any persuasive evidence as to why P separated the reduction in the way they did. And to not take the whole reduction into account, particularly given it doesn't appear the issues he faced with the accommodation warranted that amount, would result in an unfair outcome.

And even if I look at only the refund he's received in relation to the all-inclusive package – I still think Amex has acted fairly. That's because, I haven't seen enough to warrant a price reduction of the amount Mr R considers to be fair – namely 50%. I agree there were problems, but I haven't seen such significant breaches of contract that would warrant a larger reduction. So I think the price reduction he's already received sufficiently compensates him for the problems he faced here.

While Mr R has questioned what the outcome would be had he not paid both invoices using Amex products – I don't think it's necessary to consider that. My role is to look at the circumstances of individual cases, and here Mr R paid using Amex products and he's been able to make chargeback and section 75 claims to Amex as a result of that.

Taking everything into account, I can't conclude Amex has acted unfairly, Mr R already received substantial discounts from P, on both invoices, which Amex considers fairly resolves matters, and I agree. So I won't be asking Amex to take any further action here.

My final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 July 2025.

Victoria Cheyne
Ombudsman