

The complaint

Mrs G complains that American Express Services Europe Limited will not refund the balance paid with her credit card after a flight was cancelled. In addition, Amex will not meet the additional cost of re-booking.

What happened

Mrs G's husband booked flights for them and their child to travel at the end of January 2024. He used an online booking platform, which I'll call "O". The full payment of £544.92 was made using Mrs G's Amex credit card.

The flights were cancelled. Mrs G received a refund of £512.73, which O said was the amount due from the airline. Mr G asked O why the refund was less than the amount he and Mrs G had paid for the flights. O explained that it did not include additional products which were non-refundable; it listed the type of products which might come under that category.

Mrs G thought she should have received a full refund and so Mr G referred the matter to Amex. It considered whether Mrs G should receive a refund on the grounds that she had been promised a credit which had not been processed. It noted however that O's terms and conditions said that it would charge a service fee and so concluded that no further refund was due.

Amex also declined a refund under section 75 of the Consumer Credit Act 1974 ("section 75") on the grounds that the disputed amount was under £100.

Mr G referred the matter to this service on Mrs G's behalf. Our investigator thought however that Amex had acted fairly. Mr G did not agree and asked that an ombudsman review the case.

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.

Where goods or services are paid for by credit card and are not supplied (or are only partially supplied) there are two ways in which a customer might be able to make a claim against the card issuer – section 75 and chargeback. I'll deal with each in turn.

Section 75

Section 75 says:

75 Liability of creditor for breaches by supplier.

(1) 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.

(2) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under subsection (1), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

(3) Subsection (1) does not apply to a claim —

(a) under a non-commercial agreement,

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...

Amex concluded that Mrs G could not bring a claim under section 75 because of the exception in section 75(3)(b) relating to the cost of goods. It said that Mrs G's claim needed to be for more than £100. I don't believe that is correct. The limit refers to the price attached to an item, not the value of a claim. It's arguable that a service is not an "item" at all, so the exception does not apply to flights, but in any event it is quite clear that the price of each flight and the combined cost of all the flights in this case was more than £100.

But, for section 75(1) to apply, the cardholder must have a claim against the payee or someone very closely linked to the payee. The investigator noted that the booking was in the name of Mr G and that he was not the cardholder. It could be argued therefore that he, rather than Mrs G, has the right to bring any claim. I think, however, it's arguable that O had a contract with both Mr and Mrs G, since they were both named as passengers on the booking.

However, O's terms and conditions made it clear that its role was as an intermediary, not as a provider of holiday services. It offered a search and intermediation service. Clause 2.1 included:

2.1.1. We do not enter into the contractual relationship relating to the Travel Services and/or Other Services that you purchase, unless expressly indicated as such. WHEN YOU MAKE A BOOKING VIA THIS SITE, THE CONTRACT WILL BE BETWEEN THE TRAVEL Suppliers AND YOU, AND NOT BETWEEN US AND YOU UNLESS OTHERWISE INDICATED. Please note that in this case, for any claims relating to Travel Services and/or Other Services purchased, our role is just to intermediate between you and the Travel Provider who will be the last responsible.

2.1.2. We will assist you in the purchase of Travel Services and/or Other Services, intervening in your name for the procurement of said purchases with the Travel Suppliers. Your agreement is subject to the terms and conditions of each Travel Provider, who can limit or exclude its responsibility. Ensure that you consult the applicable terms and conditions of your Travel Provider/s, especially those relating to cancellation terms. See the relevant section.

Mrs G's underlying claim is that the flights were not provided and that she has not received a full refund. But O was not responsible for providing the flights – the airline was, and Mr and Mrs G had a separate contract with the airline. And, because payment was made to O, the contract with the airline was not financed by an arrangement between it and Amex.

Mrs G's complaint does not suggest that she has a claim for breach of contract against O. It arranged the flights in line with Mr and Mrs G's requirements and made payment to the airline. That is, broadly speaking, what it agreed to do.

Where an intermediary is involved in booking (and taking payment for) a package holiday The Package Travel and Linked Travel Arrangements Regulations 2018 can mean that section 75 will apply to breaches on the part of, for example, an airline. I am satisfied however that those regulations do not apply here; they apply where an organiser (such as O)

arranges more than one element of a holiday – for example, flights and accommodation – as a package. O arranged only the flights here.

It follows therefore that I think that Amex was justified in taking the view that a section 75 claim would not succeed – albeit for rather different reasons from those it gave.

Chargeback

Mrs G's claim here is, in summary, that O agreed a refund but did not reimburse the full amount which she had paid.

I don't believe however that O agreed to refund everything. Its terms and conditions also included:

2.1.4. Our Intermediation Fees are non-refundable. This is because they are charged for the intermediation services provided by us, which are fulfilled when the booking has been confirmed to you. Our Intermediary Fees will be refundable in the event of an error in our service.

As I have indicated in my consideration of section 75, there is no suggestion that O did not provide the intermediation services which it agreed to provide. It follows that it was entitled to charge a fee for those services.

That is consistent with the airline's own terms and conditions insofar as they relate to cancellations. They say that passengers are entitled to a full refund of all amounts paid in connection with a changed flight where no acceptable alternative is available.

I am not aware that O set out, either before or after Mr and Mrs G booked their flights, how much the intermediation/intermediary fees would be. I can see why they might think that would have been helpful. The explanation given after the event appears as well to provide examples of payments that might not be refunded, but they do not add up to the shortfall of £32.19 and do not mention intermediary fees.

Be that as it may, I think it more likely than not that Mrs G has received a full refund of the amount paid to the airline and that Amex acted reasonably in concluding that no more was due as a result of the cancellation.

Finally, I have referred to O as a single entity in this decision. In reality, it is a group of companies. The actual company involved depends on different factors – such as the nature of the activity and where it is carried out. I am satisfied however that those arrangements make no material difference to the outcome in this case.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 5 August 2025.

Mike Ingram
Ombudsman