

The complaint

Mr S complains American Express Services Europe Limited declined a Section 75 claim for a purchase on his credit card.

What happened

Mr S booked a cruise for himself and his family, paying with his American Express credit card.

Mr S was disappointed with the cruise, highlighting several issues, including cleanliness, food quality, difficulties accessing photography and internet packages, actions of other guests and filming on the ship limiting access to certain areas.

When returning from the cruise, Mr S complained to the cruise provider. It acknowledged Mr S had encountered problems on the trip, but said steps had been taken to resolve issues reported at the time, with boxes of chocolates and wine being offered as gestures of goodwill and frequent cleaning of his cabin. On other issues the cruise provider said its investigations were inconclusive. To apologise for the problems Mr S encountered, the cruise provider offered a discount on a future trip equivalent to 15% of the amount Mr S had paid for the cruise.

Unhappy with the cruise providers response, Mr S made a claim under Section 75 of the Consumer Credit Act 1974 "Section 75" to American Express, for a refund of a portion of the cost of the cruise.

American Express considered Mr S' claim, but didn't agree it was liable under Section 75, so declined to offer a refund. It said Mr S hadn't been able to evidence a misrepresentation or breach of contract had occurred; to mean it was liable to refund part or all of the cost.

Unhappy with American Express' response, Mr S referred his concerns to the Financial Ombudsman. One of our Investigators looked into what happened and thought American Express' response was reasonable. She acknowledged there has been problems while on the cruise but didn't think there was enough to evidence there had been a misrepresentation or breach of contract, to make American Express liable to provide a refund.

Mr S disagreed, saying the cruise fell below industry standards. He therefore asked that an ombudsman review his complaint, so it's been passed to me to decide.

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.

Mr S' complaint relates to American Express' handling of his Section 75 claim. Section 75 sets out that, in certain circumstances, if Mr W paid for goods or services, in part or wholly on his American Express credit card, and there was a breach of contract or

misrepresentation by the supplier (cruise provider), American Express can be held jointly responsible.

There are conditions that need to be met for Section 75 to apply. One of these is that there needs to be a 'debtor-creditor-supplier' (DCS) agreement in place between the parties to the transaction. Another is that the item purchased must fall within set financial limits. I'm satisfied that Mr S' claim meets these requirements.

American Express declined Mr S' claim on the basis it didn't think he'd provided evidence to demonstrate there'd been a misrepresentation or breach of contract, to mean it was liable to provide a refund in full or partially for the cruise. I've therefore considered whether American Express was reasonable in reaching these conclusions.

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. So, to say that occurred in the circumstances of this complaint, I'd need to be satisfied that a false statement induced Mr S to book the cruise, and he then suffered a loss as a result.

In saying this, I haven't been made aware of a false statement that Mr S says induced him into entering the contract. Rather I think it could be considered that the concerns Mr S has raised about the quality of the cruise and the service he received are alleged breaches 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 because of an express term of the contract, or because of terms implied by legislation.

Much of Mr S' concerns relate to the experience of the cruise and that it fell below the standards expected and I note he's provided extensive comments on this. American Express however, said Mr S hadn't adequately demonstrated the cruise provider had breached its contract with Mr S, which is why it declined his Section 75 claim. So, I've considered whether it was reasonable in reaching this conclusion.

In doing so, I must think about what the courts may say, were Mr S to make a 'like' claim against American Express for breach of contract. Which is to say, I must consider whether Mr S provided sufficient evidence to demonstrate his concerns amount to a breach of contract. That is to say, it's possible that things may go wrong and Mr S could be disappointed with the service he'd received, but this might not amount to a breach of contract. Similarly, American Express isn't responsible for everything that might have gone wrong, rather is only liable if there's evidence of a breach of contract or a misrepresentation.

Mr S was able to take the cruise for the duration of his booking, so the fundamentals of the contract were provided, however I've taken on board Mr S' list of concerns.

I've reviewed the terms and conditions of Mr S' agreement with the cruise provider and have considered whether these have been breached.

The Consumer Rights Act 2015, which is relevant legislation to this complaint, also implies terms into agreements, such as Mr S' that the service be provided with reasonable care and

skill. If this doesn't happen, the initial remedy is that the supplier – the cruise provider – must attempt repeat performance, which in the circumstances of Mr S' concerns could be offering a replacement room, for further cleaning to be carried out, or to replace a meal.

Mr S had raised concerns about the cleanliness of his rooms, and from the evidence available my understanding is additional cleaning was carried out in Mr S' room. So, on this basis it appears the cruise provider took reasonable steps to resolve this concern.

Similarly, I appreciate Mr S raised serious concerns about the food and refreshments he'd been provided. However, the cruise provider had also addressed these points in response to his complaint and said it had offered to replace meals and said staff paid Mr S' family special attention each night. Added to this, what one considers to be an 'exquisite meal' can be subjective and will differ from one person to another. So, while I don't have any reason to doubt what Mr S has told us, again I think American Express was reasonable in concluding there wasn't sufficient evidence to demonstrate a breach of contract had occurred or that the cruise provider had failed to rectify problems once it had been made aware of them.

I've taken on board Mr S' comments that there were problems with the wifi package, namely that the wifi didn't work as expected. While I appreciate that must have been frustrating, I haven't seen American Express was provided conclusive evidence to demonstrate this or that the cruise provider breached its contract in the provision of this service.

Similarly, I'm sorry to hear Mr S had to make numerous attempts to activate his photography package, before he could access it. I note Mr S' comments that the photo package then provided a number of photos that weren't of his family, but I haven't seen anything in the terms to say it was guaranteed that every photo would be of just his family. So, I don't think it's been demonstrated that these services weren't provided, to conclude the contracts had been breached.

And while I recognise Mr S' concerns about the actions of other passengers and restrictions to certain parts of the ship during parts of the cruise, I haven't been provided anything to say these issues would amount to a breach of Mr S' contract with the cruise provider.

Therefore, while I appreciate Mr S has detailed the cruise fell below his expectations for a number of reasons, I think American Express was reasonable in concluding there wasn't enough to demonstrate there had been a misrepresentation or breach of contract to make it liable to provide a refund under Section 75.

For completeness, I've also considered whether American Express may have been able to help Mr S achieve a partial or full refund through a chargeback. Which is a process of asking the merchant (cruise provider) for a refund, in certain circumstances under rules set by the scheme provider. However, while I appreciate Mr S is unhappy with the cruise, as he and his family stayed for the full duration, I don't think a dispute would have had any prospect of success against the chargeback rules. So, I haven't found Mr S suffered a loss through American Express not considering this.

Conclusion

In conclusion, I'm sorry to hear the cruise fell below the standards Mr S was expecting and I appreciate this answer is likely to come as a disappointment, but I don't think American Express needs to do anything further. I say this as I think it fairly considered Mr S' claim for a refund, before declining to do so, for the reasons set out above.

My final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 December 2025.

Christopher Convery
Ombudsman