

complaint

Mr B has complained that American Express Service Europe Limited (Amex) has rejected his claim under Section 75.

background

Mr B had paid for a family member (Miss B) to have a medical procedure. Unfortunately, this was not as successful as Miss B had hoped. When she tried to raise these issues with her surgeon, she discovered he had left the country, and was no longer licenced to perform operations in the UK.

As Mr B had paid on his credit card, he contacted Amex. He said the contract had been breached, as the surgery had not been a success. Amex reviewed this, and said it had no Section 75 liability. It said that for a section 75 complaint to succeed there needed to be a direct link between the debtor (Mr B), the creditor (Amex) and the supplier (the surgeon). Amex did not think there was a direct link in this instance. It gave two reasons:

- 1) Mr B was not party to the contract with the surgeon, and
- 2) Mr B's transaction had been made via a third party payment processing service.

As Mr B didn't agree, he brought his complaint to this service. And the complaint was reviewed by one of our investigators. She didn't recommend that the complaint be upheld. In brief, she said she was not convinced Mr B was a contracting party with the surgeon, and this broke the necessary relationship between the debtor, creditor and supplier. She didn't consider the impact of the third party payment processor, as she was satisfied the debtor, creditor and supplier relationship was broken in any event.

Mr B didn't accept the investigator's assessment, as he felt he was a contracting party. Because of this, the complaint came to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr B is relying on the rights he believes he has under Section 75 of the Consumer Credit Act 1974. My role isn't to decide whether or not Section 75 applies here. Rather, I'm required to decide what, if anything, Amex should do to resolve this complaint. In doing that, I must decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. Relevant law includes Section 75.

Section 75 offers protection to customers who use certain types of credit to buy goods or services. In summary, it gives the consumer equal rights to claim against the provider of the credit or the retailer of the goods or services supplied, if there is a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a debtor, creditor and supplier (DCS) relationship to the agreement. Amex has said that the contract in question was between Miss B and the surgeon, rather than Mr B and the surgeon. Therefore, there is no DCS relationship.

To reach my decision, I've looked closely at what happened when the contract with the surgeon was formed. And I've taken account of what Mr B and family remember of how the contract came about.

Mr B has stated that Miss B researched and met several different surgeons before choosing one for her operation. She had several consultations with the chosen surgeon where the precise details of the surgery were discussed and agreed. Mr B has said that he was not present at these early consultations. He only attended one of the last consultations when payment was arranged. Mr B and family remember Miss B signing the consent form for the operation.

Mr B also supplied some paperwork. This includes the consent form, patient statement and discharge summary. The consent form gives details of the proposed surgery and confirms Miss B's acceptance of the terms. These documents are signed only by Miss B and various medical professionals.

It's clear to me that at this point it was Miss B who was the contracting party. She negotiated the details of the surgery and entered into the contract with the surgeon. And that the contract was to supply a medical procedure. I appreciate that Mr B funded this, via his credit card. But discharging Miss B's duty to pay does not mean he was part of that particular contract, regardless of whether or not the service was for him or a member of his family. He was essentially a third party to the critical contract, which was between Miss B and the surgeon. And because of this, I can only conclude that no DCS relationship existed.

Like the investigator, I haven't explored the impact of the third party payment processor on the claim, as I am already satisfied that there was no relationship in this instance.

I appreciate that this issue has had significant impact on Mr B and his family and that my decision will come as a disappointment to them. However, despite my sympathy for Miss B's predicament, I can't ask Amex to do anything further.

my final decision

My final decision is that I do not uphold Mr B's complaint against American Express Services Europe Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 November 2018.

Sarah Holmes
ombudsman