

complaint

Mr R complains about a flight which he paid for using his American Express Services Europe Limited (Amex) credit card.

background

Mr R had brought two premium economy flights and says he had to pay an extra £180 in order to be able to sit next to his husband. He paid for these flights using his Amex card.

Mr R says the cabin area was dirty, three hours into the flight the cabin crew said it had run out of drinks and his on flight entertainment system was not working. He was told he could not be moved due to the shortage of available seats.

When Mr R complained to the airline company (B) about the flight, he and his husband were each awarded 8500 Avios points. B said it would not be able to refund the reservation fee. So, Mr R complained to Amex.

Amex initially credited Mr R's account with the disputed sum but having carried out its investigation, it told Mr R that it was not going to be upholding his complaint. It had re-debited Mr R's account without notification. It also told Mr R that the Avios points which he had been awarded were sufficient compensation for the problems he had encountered.

But Mr R said he did not want to accept the Avios points. He wanted a monetary award as he had no intention of flying with B again.

When our adjudicator looked into matters for him, he thought Amex should offer Mr R a partial refund of £175. He (the adjudicator) thought that there had been a breach of contract and so under S.75 Consumer Credit Act 1974 Mr R was entitled to seek a refund from Amex. Mr R agreed but Amex did not and asked for an ombudsman's 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.

I intend to depart from the adjudicators view – Mr R is aware and has been given the opportunity of making further submissions. I have taken these into account in making my findings.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services *or* the provider of credit if there's been a breach of contract or misrepresentation by the supplier. If I were to consider this complaint under section 75, I would need to be satisfied that there's been a breach of contract or misrepresentation by B.

But I'm not satisfied that I do need to give this due consideration. It is arguable that there may be a claim under S.75 – it is also arguable whether a claim under the chargeback scheme would have been the appropriate route.

Before I consider which category this complaint falls into, I have considered the redress already provided – and I think that the offer of Avios points is a reasonable offer. I know Mr

R says he does not intend to fly with B again – but it has been explained to him that the Avios points can be redeemed at a number of outlets for services other than flights.

So, in the circumstances, I cannot see that Amex has acted unfairly in not upholding Mr R's complaint.

my final decision

My final decision is that I do not 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 10 February 2017.

Shazia Ahmed
ombudsman