Complaint

Mr B complains that American Express Services Europe Limited ("Amex") declined his claim under Section 75 of the Consumer Credit Act 1974 ("s.75"; "the CCA"). And also declined to raise chargebacks in the alternative.

Background

In June 2016 Mr B purchased a lifetime digital marketing membership package with a third party ("the supplier"). In particular, he says that the package was promoted as including:

i) Global training centres
ii) Training and courses prepared and delivered by experts, including PHD qualified educators. were never made available
iii) An affiliates programme as an additional source of income
iv) A bonus programme providing a commission based course of income

He paid for this, through two separate payments of £4,562.12 each (total of £9,124.24), using his personal Amex credit card.

Mr B says that in October 2017 the supplier announced a change of ownership. This led to the cancellation of several elements of the membership package. He says that up until that point he had only received an interim, alternative service that did not correspond to what he had been promised – so he has never received the package he paid for.

So Mr B says that in November 2017 he cancelled his membership and requested a refund from the supplier. But this was refused so he raised a dispute with Amex.

Amex initially treated the dispute as a potential s.75 claim. But they subsequently wrote to Mr B explaining that s.75 didn't apply because the supplier had processed Mr B's payments through a third party payment processor ("business A"). They described business A as offering an alternative service whereby individuals, or businesses like the supplier, can accept online payments without having to sign up as a merchant directly with Amex themselves.

Amex also considered the possibility of raising chargebacks. They told Mr B that he had had 120 days from the date of his payments to raise the dispute, so he was too late. Amex subsequently said chargebacks might be possible before reverting back to saying Mr B was too late.

Mr B complained to Amex about how his dispute had been handled. In particular, that he believed he had had 540 days to raise chargebacks.
Amex sent Mr B a final response letter. They expanded on why s.75 didn't apply. Namely, because the "billing" had been processed by business A – a "third party payment service". And that s.75 only applied when there was a direct contractual agreement with the supplier. But Amex had re-reviewed the chargeback position again and accepted that a longer timeframe of "520" *(sic)* days applied. So they offered to re-start the chargeback dispute process and to credit Mr B's account with £100 by way of an apology for the delay in dealing with the dispute.

Subsequently, Amex once again informed Mr B that it was too late to raise the chargebacks. And that Mr B's terms and conditions stated that "the merchant" wasn't required to provide the information being requested due to the length of time since the payments.

Mr B complained once more, saying that his terms and conditions didn't stipulate a timeframe for chargebacks. He also explained why he believed s.75 applied and pointed out that his credit card statement referred to the supplier. But Amex didn't change their mind so Mr B brought his complaint to us.

Our investigator explained that for s.75 to apply there had to be a link between the debtor-creditor-supplier ("DCS link"). In this case, that meant Mr B, Amex and the supplier respectively. So the involvement of business A meant that the link was broken.

As for the chargebacks, our investigator said that Mr B had had 120 days from the date the goods and services were received. This began from when the interim alternative service began. So Mr B had been too late to raise chargebacks.

Mr B disagreed and asked for an ombudsman's decision. After reviewing the evidence, I asked Amex for some further information. This included the process by which business A elicited funds from Amex following Mr B's purchase from the supplier.

Amex explained that information between them, their merchants (in this case business A) and any funds are largely exchanged in an automated and systemic manner. As a payment aggregator/processor, the exchange with business A would be as follows:

• The supplier signs up to business A as their customer. This provides the supplier with a gateway to accepting card payments through business A – either by business A's payment terminals or software to charge credit/debit cards. So the supplier doesn't need a direct relationship with Amex.
• Once the supplier accepts a payment by an Amex card holder business A will present the transaction/credit card information to Amex. Part of that transactional information includes the supplier's details.
• Amex then processes the transaction by debiting their card holder's account (in this case Mr B) and crediting business A's account with Amex (less Amex's fee under their merchant agreement with business A).
• Upon receiving that credit, business A in turn credits the supplier.

So Amex say that the supplier's direct agreement is with business A only, not with Amex, meaning that s.75 can't apply. They have provided an internal system screen shot of the details of Mr B's dispute in support of their position. This shows business A as the "merchant". The supplier's details also appear but Amex say that's part of the transactional information referred to above. As opposed to information held directly by Amex – so Amex have no responsibility for that information.
I also asked Amex to provide me with a copy of their agreement with business A but they declined to do so, telling me it's confidential and business sensitive and that business A hadn't consented to it being shared.

My provisional decision

In my provisional decision, I said:

Section 75 claim

I must decide what, if anything, Amex should do to resolve Mr B's complaint. To do this, I have to decide what I think is fair and reasonable, having regard to, amongst other things, any relevant law.

In this case, the relevant law is s.75 which says that, in certain circumstances, if Mr B paid for goods or services on his credit card and there was a breach of contract or misrepresentation by the supplier, Amex can be held responsible. In particular, s.75(1) states:

"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."

So s.75 only applies if:

i) There is a debtor-creditor-supplier agreement of the type that falls within s.12(b) or (c);
ii) That agreement finances the transaction between the debtor (Mr B) and the supplier (business A); and,
iii) Relating to that transaction, the debtor (Mr B) has a claim against the supplier (business A) in respect of a misrepresentation or breach of contract. If so, then the creditor (Amex) is jointly and severally liable to the debtor.

S.12(b) applies to:

"a restricted use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier"

S.11(1)(b) defines a restricted-use credit agreement as a regulated consumer credit agreement:

"to finance a transaction between the debtor and a person (the "supplier") other than the creditor"

And s.189 says *"finance"* means to wholly or partly finance, and that *"financed"* shall be construed accordingly.

So with this in mind, the issues I need to decide in this case, and in this order, are whether:

(1) The absence of a "direct contractual agreement" between Amex and the supplier means that s.75 doesn't apply ("The direct agreement issue").

(2) If s.75 captures indirect agreements, whether the nature of business A's role and involvement meant that there were no relevant arrangements between Amex and the supplier under which Mr B's purchase was financed, and therefore no DCS link. ("The DCS issue").

(3) If there was a DCS link, whether there was a misrepresentation or breach of contract by the supplier, which Amex must remedy under s.75. ("The liability issue").

(4) And, if there was liability, its amount. ("The quantum issue").

(1) The direct agreement issue

By way of background, the CCA was enacted at a time when credit cards were generally issued within the framework of a three-party structure which involved (i) an agreement between the card issuer and the cardholder to extend credit by paying for goods or services purchased by the cardholder from suppliers who had agreed to honour the card; (ii) an agreement between the card issuer and the supplier under which the supplier agreed to accept the card in payment and the card issuer agreed to pay the supplier promptly; (iii) an agreement between the cardholder and the supplier for the purchase of goods or services.

This three-party structure subsequently developed into a four-party structure involving a "merchant acquirer", whose function was to recruit new suppliers willing to accept the issuer's card. Under this four-party structure, instead of the agreement between the card issuer and the supplier, there were two agreements: (a) an agreement between the merchant acquirer and the supplier, under which the supplier undertook to honour the card and the merchant acquirer undertook to pay the supplier; and (b) an agreement between the merchant acquirer and the card issuer, under which the merchant acquirer agreed to pay the supplier and the card issuer undertook to reimburse the merchant acquirer.

This impact of this development on the application of s.75 was considered by the Court of Appeal in the case of *Office of Fair Trading v Lloyds & ors [2006] EWCA Civ 268* ("the OFT case").

The Court of Appeal first considered whether the introduction of the four-party structure meant that the system had evolved significantly beyond the state of affairs to which s.75 had been directed. They concluded that it had not, stating at paragraph 55 of their judgment:

"From the customer's point of view … it is difficult to see any justification for drawing a distinction between the different [three-party and four-party] situations. Indeed, in the case of those card issuers such as Lloyds TSB, who operate under both three-party and four-party structures, the customer has no means of knowing whether any given transaction is conducted under one or other arrangement. Similarly, from the point of view of the card issuer and the supplier the commercial nature of the relationship is essentially the same: each benefits from the involvement of the other in a way that makes it possible to regard them as involved in something akin to a joint venture, just as much as in the case of the three-party structure."

The Court of Appeal also considered whether four-party structure transactions between the debtors and suppliers were "financed" by the credit agreement, even though the creditor's payment went to the merchant acquirer, not the supplier. They stated at paragraph 56:

"It is clear that, whether the transaction is entered into under a three- party or four-party structure, the purpose of the credit agreement is to provide the customer with the means to pay for goods or services. It follows that in both cases the card issuer finances the transaction between the customer and the supplier by making credit available at the point of purchase in accordance with the credit agreement. The fact that it does so through the medium of an agreement with the merchant acquirer does not detract from that because it is

the card issuer's agreement to provide credit to the customer that provides the financial basis for the transaction with the supplier."

The Court of Appeal then examined whether the creditors were correct to argue that the four-party structure fell outside the definition of restricted-use credit, because section 11(3) of the CCA excludes agreements under which the credit is in fact provided in such a way as to leave the debtor free to use it as he chooses. They rejected the argument, because the card could only be used to purchase goods and services from some businesses – namely the suppliers who had agreed to accept the card.

The Court of Appeal also held that the definitions in s.187 were not intended to define the only type of arrangements that fell within s.12(b). The word "arrangements" is capable of carrying a broad meaning and, in the context of the CCA, must have been deliberately chosen by Parliament with a view to embracing a wide range of different commercial structures having substantially the same effect. (Para. 61-66 of the judgment).

With all of this in mind, I have considered the particular facts of Mr B's case. It doesn't appear to be in dispute that business A is the party that holds an account and has a contract with Amex. Amex have explained that the supplier, in turn, signs up to payment processing services with business A. These services allow the supplier to accept payments from its customers via various payment methods, including Amex credit cards, without having to have an account or contract with Amex themselves.

This aligns with Mr B's recollection of his payment journey. Namely, the supplier redirected him to a payment page with the words "powered by [business A]" on it. He has helpfully provided a screen shot confirming this.

So I accept that this was a four-party structure given that Amex's direct agreement was with business A only, although I've not been shown the terms of that agreement by Amex. And business A must, in turn, have had an agreement with the supplier under which it agreed to process payments from Amex and other card issuers for the supplier.

That being said, looking at the principles outlined by the Court of Appeal, it's clear to me that Amex provided credit to Mr B which enabled him, through the medium of Amex's agreement with business A, to pay for services from the supplier. Furthermore, not every business accepts Amex cards. So where a supplier does agree to accept Amex's cards then that results in Amex providing restricted use credit, no matter whether the supplier's agreement is directly with Amex or not. So I think that Mr B's credit agreement with Amex financed the transaction.

I also think that it's highly unlikely that Mr B would have appreciated that there was no direct agreement between Amex and the supplier when making payment with his credit card. So he would have had no means of knowing whether his transaction with the supplier was conducted under one or other arrangement. Plus Amex and the supplier both undoubtedly benefit commercially from the involvement of the other, through the intermediation of business A, in a way that makes it possible to regard them as in something akin to a joint venture.

For all of these reasons, I don't accept that Amex needed to have a direct agreement with the supplier in order for s.75 to apply. And nor is the definition of an "arrangement", for the purposes of s.75, confined to a formal contract. Instead, I need to consider whether the scope of business A's role, and the nature of their agreement with the supplier, meant that

the DCS link between Amex and the supplier was broken. This leads me onto the second issue.

(2) The DCS issue

Clearly there were arrangements between Amex and business A. So the question is whether the nature of business A's service and role meant that they extended those arrangements to the supplier. Before I outline my findings on this I think it would be helpful, once more, to refer to the OFT case. In particular:

The Judge who heard the OFT case at first instance *([2005] 1 All ER 843)* considered the meaning of the word "arrangements", as used in section 12, and whether there existed relevant arrangements between creditors and suppliers in the four-party situation. She held that the use of the word showed a deliberate intention on the part of the draftsman to use broad, loose language, which was to be contrasted with the word "agreement". She went on at paragraph 26:

"In my judgment, in the natural ordinary sense of the word, there are clearly arrangements in place made between the card issuers and the suppliers, notwithstanding the absence of any direct communication between them, or any direct contractual relationship, or even of knowledge on the part of the issuer of the identity of the particular supplier. The fact that there are a number of different arrangements, reflecting the various roles, contractual or otherwise, played by different participants in the network, does not mean that there is not an arrangement in place between the issuer and the supplier. I consider that it is unrealistic to look merely at the individual links in the chain; rather one should stand back and look at the whole network of arrangements that are involved in the operation of the schemes. If one does so, one can, in my judgment, properly conclude that, by virtue of the supplier and the issuer being subject to the rules and settlement processes common to all participants in the card network, there is indeed an arrangement (albeit indirect) between them."

In the Court of Appeal, the creditors argued that arrangements should be given a narrower meaning that took the four-party structure outside the definition. But the Court of Appeal agreed with the Judge that "arrangements" had been used to embrace a wide range of commercial structures having substantially the same effect. They held it was difficult to resist the conclusion that such arrangements existed between credit card issuers and suppliers who agreed to accept their cards, and stated:

"Moreover, we find it difficult to accept that Parliament would have been willing to allow some consumers to be disadvantaged by the existence of indirect arrangements when other consumers were protected because the relevant arrangements were direct."

It's also important to note that in the OFT case the court saw evidence about the particular rules governing the activities of merchant acquirers. The Judge at first instance drew attention to the following features (paragraph 30):
"The evidence showed that the rules of the four-party card schemes control which suppliers may participate in the schemes by, for example, (i) stipulating that merchant acquirers must only put transaction details into interchange for suppliers with whom they have valid and subsisting merchant acquirer agreements; (ii) requiring merchant acquirers to screen suppliers before entering into agreements with them, in order to establish that the suppliers are creditworthy and carrying on bona fide businesses; (iii) requiring merchant acquirers to monitor suppliers to deter wrongful activity; (iv) requiring merchant acquirers to forward information to the network merchant databases where, for example, a supplier is suspected

of fraud or where a supplier's ratio of transactions "charged back" by the card issuer exceeds established criteria. Likewise card issuing creditors exert leverage over suppliers, through the networks [operated by MasterCard, Visa and American Express], in that the networks reserve rights to insist that suppliers' merchant acquirer agreements are terminated and to exclude suppliers from entering into merchant acquirer agreements. Thus some sort of leverage is available, at least in domestic four-party transactions, but even if it were not, that would not affect my conclusion."

So turning to the facts of Mr B's case, I've noted Amex's description of how transactions are processed by business A and an email Mr B has provided, which was sent to him by business A, confirming that:

"Opening a [business A] account is not the equivalent of opening a bank account as whilst a bank account can be used to hold deposits, a [business A] account can only be used to facilitate payments."

Both pieces of evidence appear to indicate that business A's role was confined solely to payment processing.

To help me understand this better I looked at, and carefully considered, the terms and conditions of the agreement between business A and the supplier. Those terms and conditions can be found on business A's website under the "Services Agreement – United Kingdom" section. The following are of particular relevance:

- Section C.1 explains that business A works with "payment method providers" in order to give their customers (in this case the supplier) access to various payment methods. Amex is expressly included within the definition of a "payment method provider".

- Section C.3 further expands on business A's role by stating:

  "To enable us to process Transactions for you, you authorise and direct us….the Payment Method Providers…to receive and settle any payment processing proceeds owed to you through the Payment Processing Services…. You appoint [business A]… as your agents for the limited purpose of directing, receiving, holding and settling such proceeds."

The terms and conditions also expressly incorporate Amex's own payment terms and their card network rules as follows:

- Section C.5 confirms that additional "payment terms" will apply between the supplier and a given payment method provider, as part of the agreement with business A. The section provides a hyperlink to the list of payment methods and the corresponding additional payment terms – the applicable one here is "Amex Express Checkout" ("AEC").

  The AEC payment terms are referred to as an "addendum" to the agreement between business A and the supplier. The supplier must accept the terms of the addendum in order to use the AEC payment method. The addendum also incorporates Amex's card network rules (para.6 of the addendum).

- Section C.6 of the agreement also expressly refers to, and incorporates, Amex's card network rules and states that networks may amend Network Rules and business A reserves the right to change payment processing services at anytime to comply with the Network Rules.

Other general terms include:

- Section A.4 states:

  "In addition to the Fees, you are also responsible for any penalties or fines imposed in relation to your [business A] Account on you or [business A] by [business A] or any Payment Method Provider….resulting from your use of Payment Processing Services in a manner not permitted by this Agreement or a Payment Method Provider's rules and regulations."

- Section A.10 states:

  "We may suspend your [business A] Account and your ability to access funds in your [business A] Account, or terminate this Agreement, if (i) ….. (iii) any Law, Payment Method Provider or Payment Method Acquirer requires us to do so; ….. A Payment Method Provider …. may terminate your ability to accept a Payment Method, at any time and for any reason, in which case you will no longer be able to accept the Payment Method under this Agreement."

Again, with the Court of Appeal's principles at the forefront of my mind, it's clear from the evidence I've referred to above that business A's role is to provide suppliers with access to various payment methods and to process payments. The nature of this type of business means that it enters into very many similar agreements with companies, firms and other traders who use its payment processing services. Given this, and the express references to Amex and their card network rules in business A's agreement with the supplier, Amex knew the nature of business A's services. Indeed, their final response letter to Mr B confirms this knowledge. It follows that Amex must have consented to this commercial system – as opposed to a one-off situation. So it would be unfair for Mr B to be disadvantaged by the existence of an indirect arrangement.

Of course in Mr B's case, in contrast to the OFT case, I haven't been told what (if any) contractual restrictions Amex have placed on business A's activities in recruiting suppliers for whom business A will process payments from Amex or monitoring their activities. Nor have I been told what termination rights Amex holds in its agreement with business A.

But, by the same token, I also haven't been shown anything to suggest that Amex had prohibited business A from acting for the supplier. I think that it'd be reasonable to suppose that it would be within Amex's power to ban or restrict their arrangements with business A, if they chose to, but for their own reasons they haven't done so. Although not direct evidence of this, the reference of a possibility that business A could be fined by a payment provider in section A.4 of their terms and conditions supports this conclusion. So it appears that some sort of leverage is available to Amex.

In reaching these provisional conclusions, the fact that the supplier could only use AEC by agreeing to Amex's specific payment terms and card network rules is particularly significant. As is the fact that Amex are expressly given the right to terminate the supplier's ability to accept AEC as a payment method. So it appears that the supplier and Amex are subject to

the rules and settlement processes common to all participants.

So even though the Court of Appeal's decision in the OFT case was made on different facts, I think that a conclusion that arrangements between Amex and the supplier existed is consistent with the principles and approach expressed by the court in that case. That's because it appears that Amex were using business A, whether by design or accident, as an intermediary that somewhat resembles a merchant acquirer.

I have also considered the High Court's judgment in Governor and Company of the Bank of Scotland v Alfred Truman (a firm) [2005] EWHC 583 (QB) ("The Truman case").

In the Truman case, the bank (a merchant acquirer) paid money to a solicitors' firm under a merchant services agreement, which it sought to recover. The solicitors acted for a car dealership which had no facility to accept payment by credit card and so used the firm to take credit card payments from customers. The bank paid money to the firm under the merchant services agreement in respect of a series of transactions where credit card payments had been taken from the dealership's customers. However, the card holders involved in those transactions did not receive their cars. The card holders made claims under s.75 against their respective card issuers for the reimbursement of the payments. The card issuers duly repaid their card holders then recouped those sums from the bank via chargeback. The bank, in turn, sought repayment of those sums from the firm, which defended the claim by arguing that the card holders had no valid claim against the card issuers under s.75. Meaning that the chargeback scheme should not have operated.

The court was therefore considering a five-party structure (debtor, card-issuer, merchant acquirer, solicitors firm, car dealership) in which the fifth party, the car dealership, had no contractual or other direct relationship with either the Visa or MasterCard scheme. But it was held that it did not matter that the card issuers had no direct contractual or other relationship with the dealership or that the card issuers had no idea of the existence of the car dealership. There still existed "arrangements" sufficient for the requisite DCS link.

In Mr B's case, I think there are stronger indications of relevant arrangements than those in the Truman case given that it involves a four-party structure and business A is specifically and publicly in the business of payment processing. As I've said above, this is a fact that was known to Amex, who decided to contract directly with business A. Whereas in the Truman case the card issuers dealt through a merchant acquirer with a merchant ostensibly carrying on business as a firm of solicitors, rather than the business of payment processing for third parties. So, in Mr B's case the card issuer would seem in a stronger position both to know about and to influence or prevent the activities of the payment processor than the card issuers were in the Truman case.

For all of these reasons, I'm minded to conclude that s.75 applies to Mr B's payments. This leads me onto consider what, if anything, Amex are responsible for under s.75.

(3) The liability issue

Mr B says that there was no written contract outlining the remit of the lifetime membership package. Instead, he was sent promotional literature through the supplier's website and webinars. Following a promotional webinar he was redirected to a page inviting him to purchase the membership at a discounted pre-launch price, which he did. In particular, he says that the package was promoted as including:

i) Global training centres
ii) Training and courses prepared and delivered by experts, including PHD qualified educators were never made available.
iii) An affiliates programme as an additional source of income
iv) A bonus programme providing a commission based course of income

Mr B says that (i) and (ii) have never been delivered. He has only ever received old, pre-recorded training materials that had already been sold separately over the previous years. Any new materials after the change of ownership were only available with an additional subscription fee. And (iii) and (iv) were cancelled once the supplier changed ownership.

So, given there was no written contract, I need to first consider the other evidence available to me in deciding the product and services that the supplier agreed to provide. Mr B has provided several screenshots of promotional literature from the supplier's webpage. But the following are particularly helpful:

- A copy of the promotional webinar invitation page sent to Mr B before he signed up. This referred to "…the first of its kind…an ACTUAL physical internet marketing college", a "brand new income stream" and "your bonus payouts".
- The page that Mr B was directed to at the end of that webinar inviting him to purchase the package at a discounted pre-launch price.
- A copy of the page sent to Mr B, three months later, with a link to register for the members' site.
- A description from the supplier's website referring to an "elite expert online business education" and "an affiliate program" attached to this. Together with a list of the upcoming courses in the winter of 2016. This also refers to the involvement of "Phd-derived curriculum developers".
- An email from August 2016 inviting Mr B to a webinar to explain, amongst other things, how the "affiliate" programme works.
- Copies of pages from the "affiliate challenge" promising a big prize reward.
- Copies of pages from the bonus programme promising big prize giveaways.

Overall, this evidence supports what Mr B says about the package promising to include the items at (i)-(iv) above. So I accept his account. And it appears that these parts of the package were core elements of the membership.

I also accept Mr B's evidence that the supplier breached the terms of their service by failing to provide, or by cancelling, these core elements. He has been consistent with his account throughout and I have noted the emails he sent to the supplier in 2017 outlining the breaches – which carries considerable weight given their contemporaneous nature.

This conclusion is supported by Amex's own internal records from December 2017 which state that this was "clearly" a case of "goods/services not as described or defective because the terms and conditions of the [supplier] changed as evident in the documentation received".

It seems clear to me that, although Mr B received a service of sorts, the supplier breached the core terms of the membership package by providing minimal services and of a different nature to what Mr B paid for. So I now turn to the quantum issue.

v) The quantum issue

As I've said above, Mr B wasn't provided with the core, and material, parts of the package as promised and I've noted the email Mr B has provided confirming his cancellation request in 2017 – so I accept that he hasn't used his membership since then.

That being said, I have considered the fact that Mr B did derive some benefit from his membership up until the cancellation. For example, the old training materials – albeit this wasn't what Mr B had paid for. And looking at a breakdown he has provided it appears that he also received the equivalent value of around $1,000 of the membership package. This related to "internet marketing principals and core training".

But I think it would be both unfair and artificial to consider the package in piecemeal elements. That's because it's clear from the promotional literature I've referred to above that the nature and intended purpose of the package was to provide various elements which, when taken altogether, would give Mr B an opportunity to create and derive an additional income source. So delivering on a small element of the package wouldn't have been much use to Mr B without the entirety of the other elements.

For these reasons, I think that Mr B's purchase of the package was a wasted cost, even if he did receive minimal parts of it. So I think that a fair and reasonable outcome is for Amex to refund Mr B the entire amount he paid (£9,124.24).

I think that Amex should also pay Mr B 8% annual simple interest on that refund because Mr B has been denied an opportunity to earn interest on it as a direct result of Amex failing to recognise that s.75 applied. The calculation should be from the earliest opportunity that Amex had to refund Mr B – namely the date at which Mr B provided all necessary supporting information to support his claim. Amex's "case history" states that Mr B provided "all the relevant information" on 8 November 2017. So in the absence of any other evidence, it appears that this would be the fairest date from which the interest should be calculated.

Chargebacks

For the sake of completeness, I've considered the issue of the chargebacks as an alternative remedy.

The relevant chargeback code is "goods and services not received". The code states that the timeframe for a chargeback is 120 days from the date a cardholder becomes aware that the expected goods and services would not be provided, "not to exceed 540 days". So it seems clear to me that the 540 days isn't an alternative timeframe to the 120 days, but rather provides an overall maximum within which the 120 day period must begin and end.

I've noted what Mr B says about the change in ownership being the point at which he realised the service wasn't going to be provided. But I'm not persuaded by this. The change in ownership was in October 2017 – some 15 months after his purchase. And Mr B had only ever received an interim service during that time.

Mr B has provided a copy of the registration link he was sent, three months after his purchase. He says that this unlocked old, pre-recorded training materials only. So I think that it would have been apparent at that stage that he wasn't receiving the package he'd signed up for. Or, at the very latest, within a few months thereafter when the full product didn't materialise.

For these reasons, I think that Mr B's request for chargebacks were well beyond the 120 day timeframe from which Mr B was, or certainly ought to have been, aware that the service wasn't going to be provided. It follows that Amex wasn't unreasonable in concluding that Mr B's request was too late.

That being said, Amex have accepted that they didn't handle the chargeback requests well. And I can see how their final communication to Mr B added further confusion. I say this because it's unclear which terms and conditions Amex were referring to and what information they believe "the merchant" didn't have to provide.

I think that the offer of £100 compensation is a fair reflection of the frustration and confusion Mr B undoubtedly suffered as a result of this mishandling. Especially given the time and energy he has wasted trying to get a clear answer on why his requests were refused. It appears that Amex may have already credited Mr B's account with this money. But if that isn't the case then they will now have to do that.

The response to my provisional decision

Mr B acknowledged my provisional findings and confirmed that he does not wish to provide any further information.

Amex confirmed that they are willing to agree to my provisional findings. They sought clarification of their understanding of the proposed redress as follows:

- To pay Mr B £9,124,24 and 8% interest from 8 November 2017 to an estimated date of 30 September 2020.
- The £100 compensation referred to in their final response letter in relation to the chargebacks issue has already been paid to Mr B. So this is no longer outstanding.

My findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have seen nothing further to change my mind. So my provisional findings remain unchanged and final.

Amex's understanding of the refund amount plus 8% annual simple interest is correct. That interest will need to be calculated from 8 November 2017 up until the date of settlement. Amex has referred to an estimated end calculation date of 30 September 2020. But it will be entirely a matter for them to ensure that the calculation is accurate depending on the exact date of settlement.

In relation to the £100 compensation, again Amex is correct. The £100 compensation I referred to in my provisional findings was the amount offered to Mr B in Amex's final response letter. So if that amount has already been paid to him then nothing further is owed in this regard.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint. I direct American Express Services Europe Limited to:

- Pay Mr B £9,124.24 plus 8% annual simple interest* calculated from 8 November 2017 up until the date of settlement.
- Pay Mr B the £100 for his material distress and inconvenience offered, by Amex in their final response letter, if this has not already been done.

**If Amex considers they should deduct income tax from any 8% interest element of my award they may do so, but should give Mr B the necessary certificate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 October 2020.

Sim Ozen
Ombudsman