

## **The complaint**

Mr A complains that American Express Services Europe Limited rejected his chargeback dispute in relation to a cancelled hotel reservation.

## **What happened**

Mr A has two American Express credit cards. Both of these cards were enrolled on an offer made by a hotel chain, the offer being that if he spent £250 or more on a booking then he would get £100 back. The deadline to qualify for this offer was 31 December 2022.

On 31 December 2022, Mr A used one of those cards to make a hotel reservation and benefit from the offer. He spent £254.40. However, although the reservation was confirmed, he discovered that he had not received the benefit of the offer. As the booking was therefore too expensive for him, he cancelled the booking. But the hotel refused to refund him, or let him apply his purchase to a future booking. It said the reservation was non-refundable.

Mr A then asked American Express to raise a chargeback dispute on his behalf. But it declined his claim when the hotel chain told American Express that the booking had been non-refundable.

Mr A then brought this complaint to our service. He said he had only made the booking in the first place because of the offer; he wouldn't have made the booking otherwise. And he wouldn't have cancelled the booking if the offer had been honoured.

American Express said that Mr A had not qualified for the offer because although he had made the booking within the deadline, the transaction had not been billed to his account until 2 January 2023. Mr A said he did not believe that explanation. He said that was because he had also made another hotel reservation with the same chain, to take advantage of the same offer, but this had not been honoured either, even though he had made the booking on December 23.

One of our investigators considered this complaint. He asked American Express why the other booking had not qualified for the offer either, and the answer he was given was that the offer's terms and conditions were that online orders were excluded. The investigator accepted that answer (Mr A maintains that there is no such rule in the terms and conditions). The investigator decided that American Express had dealt with the chargeback dispute properly and had reached the correct decision. So he did not uphold this complaint.

Mr A asked for an ombudsman to review this case.

## **What I've decided – and why**

### Introduction

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

Having done so, I do not uphold it. I will explain why.

Before I do, I must make it clear that this complaint is only about the purchase which was made on 31 December 2022. I will also refer to the earlier purchase made on 23 December, to explain why I do not think that American Express has acted in bad faith, but while that is evidence I need to consider, it is not the subject of this complaint.

### Chargeback

Chargeback disputes are subject to rules, which set out an exhaustive list of reasons why a chargeback dispute can be raised. There are two chargeback reasons which were potentially relevant to Mr A's claim. One of them is about when goods or services are not received. But that one does not apply here, because Mr A cancelled his booking. The other is called "Credit Not Presented," and this applies when services are cancelled in accordance with the service provider's policy. That would clearly not avail a cardholder when the policy is no refunds.

I have read the booking confirmation email dated 31 December 2022, and it states "No cancellations, no refunds." So I'm satisfied that a chargeback claim could not have succeeded, and that American Express acted reasonably and in compliance with its chargeback rules when it declined Mr A's claim.

I could stop here and determine this complaint based on the findings I have made above. But as the reasons for the offer not applying to Mr A's purchases has been relied on by him as evidence that American Express has not dealt with him in good faith, I think it is right that I should address them. (However, I should also point out that American Express is not responsible for administering the offer; it was not American Express's offer but the hotel chain's.)

Although the booking was made on Saturday 31 December, the transaction was not billed to Mr A's account until Monday 2 January. That is not American Express's fault; it is the merchant's responsibility to process a credit card transaction (i.e. the hotel). American Express told us that purchases made on a weekend sometimes are not processed until the following weekday. That appears to be what happened here, and so I accept that explanation.

The hotel's terms and conditions for the offer include these two clauses:

- “• Book and pay by the offer end date.
- Spend must be billed to your Card account by 31/12/2022, to be eligible for this offer. If [*name of hotel chain*] does not charge your Card during this period, you may not be eligible for this offer.”

So although the booking was made by the deadline, Mr A was disqualified by the above clause, because his account was not billed in time. The two clauses I have quoted make it clear that there is a distinction between the date of booking and paying, and the date on which the credit card account is charged.

Although the same terms and conditions also applied to the reservation Mr A made on Friday 23 December, he did not qualify for the offer for a different reason. That was because the booking was made online. The offer terms and conditions also say:

- “• Offer valid on checkout spend only at participating locations.”

In fact, the same reason would actually apply to both bookings.

Mr A disputes that explanation. He argued that “checkout” can include online checkout, and that there is nothing in the terms and conditions which defines what checkout means, or which limits it to checkout at a physical location or excludes an online transaction. However, I disagree. In the original document, the underlined word “locations” in the clause I have quoted above is a hyperlink to a list of hotels and their addresses. (I have omitted the link here to avoid identifying a third party.) I think that implies that online purchases are excluded.

So I am satisfied by American Express’s explanation of why it declined Mr A’s chargeback claim.

### Section 75

I have also thought about whether American Express should have considered Mr A’s request for a refund in the context of section 75 of the Consumer Credit Act 1974. That section makes American Express jointly and severally liable for any breach of contract or misrepresentation by the hotel chain. But for broadly the same reasons I have set out above, I do not think that there was either a breach of contract or a misrepresentation by the hotel chain. So I don’t think that American Express needed to do more than it did.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 28 December 2023. But apart from that, this final decision brings our service’s involvement in this case to an end.

Richard Wood  
**Ombudsman**