

The complaint

Mr F complains that American Express Services Europe Limited (AESEL) rejected a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

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.

I know it will disappoint Mr F, but I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

section 75

When considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach if Mr F made a claim through them for breach of contract or misrepresentation.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

Here I would agree that there has been a breach of contract as I think any reasonable person would expect to have access to hot water in their room.

Mr F says that he wasn't told there'd be no hot water and that he wasn't given the opportunity to cancel his room. But the hotel dispute that and I think it would be unreasonable to ask them to refund the whole accommodation cost when there are conflicting and unsupported claims on both sides.

I think it's fair for the hotel to make a deduction for the accommodation and facilities that Mr F did benefit from. Having considered how much that should be I think Mr F has been able to benefit from most of the facilities included within the price of the room and I think the discount of £40 the hotel provided was fair. I therefore don't think AESEL's actions were unreasonable when they rejected Mr F's claim.

chargeback

I also note that AESEL raised a chargeback. A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules.

What this means here is that AESEL can in some circumstances ask for a transaction to be reversed if there's a problem with the goods or services supplied by the merchant. But the chargeback process doesn't give consumers legal rights and it isn't guaranteed to result in a refund. It all depends on what the merchant says in response to the chargeback request.

It's important to note that chargebacks are decided based on the card scheme's rules, not the relative merits of a cardholder/merchant dispute. So, it's not for AESEL – or me – to decide whether Mr F should be allowed to have his money back through the chargeback process. AESEL's role is to raise the appropriate chargeback and consider whether any filed defence complies with the relevant chargeback rules. From what I've seen, that's what AESEL did here and the chargeback was defended and ultimately rejected. I can't say AESEL did anything wrong and overall I don't think they need to take any further action.

My final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 January 2021.

Phillip McMahon
Ombudsman