

The complaint

Mr M complains that American Express Services Europe Limited won't refund a payment made on his credit card for a hotel stay.

What happened

In October 2020 Mr M paid a travel agent £372.24 to stay in a hotel abroad in November 2020 using his American Express Services Europe Limited credit card (Amex for short).

When he arrived the hotel was closed down due to the pandemic. The hotel was part of a chain of hotels and it had a sister hotel approximately 400m away. So Mr M went and stayed there for the week he'd booked. But Mr M says the sister hotel was of a lesser standard than that hotel he'd paid for. And he said that arriving at the original hotel to find it closed was distressing and that the travel agent had done nothing to help in the matter whatsoever. He didn't get anywhere with his complaint to the agent. So he took his dispute to Amex.

Amex raised a chargeback which the agent defended by saying Mr M had used the service booked. So Amex didn't do any more.

Mr M didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, they thought Amex had acted unfairly by not considering Section 75 of the Consumer Credit Act 1974 properly. And accordingly they thought that Amex should refund the difference in costs between the two hotels (calculated to be £48.39) plus interest on any credit balance on Mr M's card. Amex accepted this assessment and made clear it would follow the redress methodology of the Investigator. Mr M doesn't think this is a fair outcome. So the complaint has been passed to me to decide.

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 should make very clear that this decision is not about the agent or indeed the hotels, which aren't financial services providers and so don't fall within my remit. This decision is solely about whether Amex treated Mr M fairly when he took his dispute with the agent to Amex.

Amex has two ways of considering what happened here, either through the chargeback process or under S75. It did raise a chargeback which the agent defended. But it didn't appear to properly consider the matter under S75 originally. However it now does agree with the investigator's findings that it should compensate Mr M as explained.

Amex here is only liable in such a scenario because of this piece of legislation. And the legislation makes clear Amex is only responsible for breach of contract and misrepresentation. It isn't responsible for customer service or the broader experience Mr M had. However I'm satisfied that this dispute falls within the financial limits' requirements within the legislation. And I'm satisfied that in terms of the contract Mr M had with the agent for its services, the debtor creditor supplier requirement in the legislation is made out also.

The agent's terms make clear that it would confirm availability of the booking to Mr M once he made his booking. I've seen no evidence of such a confirmation being made. And as the hotel chain have made clear, the original hotel was closed throughout the period in question. So had the agent tried to confirm availability with the hotel properly it would have discovered it was closed. So I'm satisfied the agent breached its contract here by not confirming availability as set out in its terms agreed. I'm satisfied had it done so it would have told Mr M the hotel was closed, and a different course of action would have resulted.

However as this didn't happen Mr M arrived at the hotel to find it was closed. Mr M then managed, through his own ingenuity, to get a room in the sister hotel nearby. Mr M hasn't shown he had to pay for that hotel. In fact Mr M hasn't evidenced any incurred costs, other than to say he incurred some such costs. But no receipts or other evidence of such has been provided in this dispute.

Mr M, in his emails with our investigator has said *"my case was either for a complete refund, or a refund for a difference in the cost of the hotel estimated as £200; shown in the screenshot below (this shows the nightly difference in rates). Additional out of pocket expenses were in my original email."* Clearly Mr M accepts he had use of the sister hotel for the same period as he booked the original hotel. So a complete refund would clearly be unfair on Amex as Mr M has received significant benefit here, namely the stay at the sister hotel. And as Mr M suggests the difference in hotel costs is a fair methodology above then clearly Mr M's disquiet with the investigator's position is with the amount of recompense in monetary terms rather than methodology. Which I appreciate bearing in mind the obvious disappointment of arriving at a closed hotel and having to make other arrangements there and then.

However I've considered the methodology of the Investigator with regard to the cost difference between sister hotels, which are close together, albeit with different settings in regard to the beach and other nearby amenities and not having identical facilities. Due to the nature of hotel room prices fluctuating constantly finding the exact price difference is difficult, particularly considering that one of the hotels was closed at the precise time of Mr M's trip. Nevertheless the methodology of the Investigator is fair to my mind. And it should be remembered that these were sister hotels close together providing similar facilities and rooms within the mass market range of prices. This is not a case of Mr M having missed out on luxury top-end experience and having to settle for some sort of a terrible squalid hotel. These are sister hotels providing largely similar facilities and experiences. Mr M's arguments around price differential are not persuasive to me bearing in mind these factors. And his suggestion that the sister hotel would have been more than half the price of the original hotel is unpersuasive considering the above factors and what we know of them.

I shall now address some of Mr M's other arguments for completeness. Mr M says he should be compensated for not being informed of hotel closure and no other arrangements being made. I agree with Mr M's comments about the agent not saying anything about the hotel being closed before he travelled. And the only evidence I can see about the hotel being closed is dated days after Mr M arrived. So I don't think that makes a difference to the matter. However Amex is only responsible for breach of contract and material misrepresentation. It isn't responsible for customer service outside of the contractual terms. So although I'm sure these events were disconcerting for Mr M, the agent's terms make clear its only responsible for the service of making the booking. It doesn't provide a support service to customers on arrival and as the legislation means Amex is responsible as a 'like claim' I see no persuasive reason for Mr M to be compensated for such a lack of support from the agent around these matters.

Mr M also thinks he should be compensated for facilities and location not being as booked. I think this is fairly accounted for in the price differential between the hotels, so see no need for further redress here.

Mr M says he should be compensated for cost of finding a new hotel including time and taxi costs. As I've noted these hotels are relatively close to each other. And Mr M hasn't provided any evidence of such costs such as receipts. So I don't see a persuasive reason why Amex should compensate for this. It is of note that the sister hotel didn't charge Mr M. It seems clear Mr M had proof of booking with him on arrival at the sister hotel. It may even be that this was not a singular occurrence of this happening. And Mr M's description of the difficulties of finding a new hotel aren't particularly detailed. So I'm not persuaded there is any significant consequential loss in this regard.

Mr M says he should be compensated for emotional distress for what happened. But Amex is only responsible for breaches of contract and losses that flow from that. It is not responsible for matters outside of that such as customer service. Mr M hasn't provided any persuasive evidence of such a consequential loss such as medical receipts for treatment of such emotional distress. And these hotels were within walking distance of each other and it seems clear the sister hotel was able to provide a room without further cost to Mr M. So I'm not persuaded the position Amex has agreed to since the assessment of the investigator is unfair. So I think Mr M's complaint should be successful.

Putting things right

Amex should rework Mr M's credit card as if the payment of £48.39 had been refunded when he approached it on 28 December 2020. And where this reworking of his account leads to periods of positive balance, interest at 8% simple should be paid to Mr M on those amounts for those periods until Amex settles this matter. And when it settles the matter it should write to him explaining how and that it has done so.

My final decision

For the reasons set out above, I uphold the complaint against American Express Services Europe Limited and direct it to settle this matter as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 January 2023.

Rod Glyn-Thomas
Ombudsman