

The complaint

Mr R complains about how American Express Services Europe Limited dealt with his claim for a refund of his hotel booking.

What happened

Mr R booked four nights in a hotel room in the Far East, and paid £263.76 for this with his American Express credit card. After his stay, he complained to American Express about his stay in May 2023. He said there had been no heating in his room and he had not been offered an alternative room; furniture and wallpaper in the room had been damaged; the complimentary spa had not been provided; and the restaurant was not fully operational.

American Express raised a chargeback dispute with the hotel, who defended the claim. The hotel said that Mr R had never complained during his stay, and the sauna and the restaurant had been operating at reduced capacity due to the covid-19 pandemic. Accordingly, the chargeback failed because the chargeback rules require a cardholder to try and resolve matters directly with the merchant or cancel the service, and Mr R had done neither.

American Express also considered its liability under section 75 of the Consumer Credit Act 1974, but it concluded that there was no evidence that any breach of contract or misrepresentation had occurred; alternatively, he had not tried to mitigate his loss by raising the matter with the hotel during his stay.

Mr R then brought this complaint to our service, but our investigator did not uphold it. She said the chargeback conditions had not been met. She also did not think that Mr R's section 75 claim should have succeeded either; in particular, the spa had not been complimentary as there had been an additional fee for using it, and this had not been paid.

Mr R did not accept that opinion. He said that he had not cancelled his stay because there had been no convenient alternative. Some of the problems had not been immediately apparent, but had only been discovered after he had stayed in the room for a while. He had not wished to spend hours arguing with hotel reception, so instead he had made the best of it; nevertheless, he had still complained to the hotel at the time, but there was no record of these complaints. He had provided American Express with two videos of his hotel room to show the state it had been in, but American Express had told him it would accept only written evidence. He asked for an ombudsman's 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.

Under the chargeback rules, Mr R was only eligible for a refund of so much of his booking that he did not use. Since he stayed at the hotel for the full term of his booking, he was not eligible for a refund, regardless of his reasons for not cancelling. As the hotel denied that he had complained at the time, and there was no evidence to corroborate Mr R's claim that he

had, American Express was unable to pursue the chargeback any further. I therefore do not uphold his complaint about how the chargeback was handled.

Turning to Mr R's claim under section 75, I am satisfied that the section applies to Mr R's booking, and that American Express is liable for any breach of contract or misrepresentation by the hotel. But the evidence Mr R provided shows that there was an additional charge for using the spa; it was not complimentary. And I think that the covid pandemic is sufficient excuse for the sauna and restaurant only having limited availability. So I don't think a breach of contract or misrepresentation has been proved in relation to those matters.

However, Mr R provided videos of his hotel room, to show the condition it was in, but it appears that American Express did not take them into account; it told him that it would only accept written evidence. But I think that when considering a claim under section 75, all of the available evidence should be taken into account. I was unable to play the videos, but I have assumed that they support Mr R's case. I have therefore assumed that there was a breach of contract in that the room was not of satisfactory quality.

However, I agree with what American Express said about Mr R not having taken steps to mitigate his loss. In law, a person who is suing for breach of contract or for misrepresentation has a duty to take reasonable steps to reduce the impact of the consequences on him. In Mr R's case, that would have meant asking for another room. Since the hotel denied that Mr R ever raised any of the issues he complained to American Express about, I think that American Express had enough evidence to defend the claim on that basis.

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 R to accept or reject my decision before 17 May 2024.

Richard Wood
Ombudsman