

The complaint

Ms O complains American Express Services Europe Limited (AESEL) (American Express) unfairly considered her claim under section 75 of the Consumer Credit Act 1974 in relation to a hotel booking.

What happened

In January 2023, Ms O booked to stay at a hotel. She paid £176.95 using her American Express credit card. She received a booking confirmation email from the hotel. A couple of days later (on the day she was due to check in), the hotel manager sent her an email to say she wouldn't accept the booking due to Ms O's past behaviour.

Ms O spoke to the hotel manager about this and according to her, she was told the reason why the booking wouldn't be accepted is because she had previously made a complaint about the hotel's facilities. Ms O said she was told she would receive a refund for the booking.

As a result of the cancellation, Ms O said she had to quickly arrange an alternative hotel (£302) and incurred additional travel costs (around £70). She wanted to be refunded for the same and be compensated for the trouble, distress and inconvenience caused.

Ms O raised the dispute with American Express. They raised a chargeback dispute on the basis that the service wasn't provided. The chargeback was successful as the hotel didn't provide a defence to contest it. The amount paid for the hotel was credited back to her credit card account.

American Express said they didn't pursue a section 75 claim for the consequential losses (the new hotel and transport costs) because Ms O hadn't sufficiently demonstrated there was a breach of contract or a misrepresentation by the hotel.

Unhappy with their response, the complaint was referred to our service. The investigator recommended the complaint was upheld. She said American Express should've explored the section 75 dispute further. In the absence of evidence to determine what hotel terms Ms O had breached, and by the hotel initially accepting and later cancelling the booking, the investigator believed the hotel had caused a breach of contract. She said American Express should pay the difference in cost between the two hotels. She didn't award compensation as she felt American Express couldn't be held responsible for the hotel's actions.

American Express agreed to the same and said they would refund Ms O's travel costs. They said they would apply 8% simple interest per annum from the date of payment up to April 2023 which was when Ms O paid the credit card statement in full. In total, the settlement value was £203.55 which they said they would apply as credit to Ms O's credit card account to offset the balance.

However Ms O says she should also be awarded compensation for the distress, inconvenience and mental anguish this situation has had on her.

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.

Having done so, I've decided to uphold Ms M's complaint. I'll explain why.

Ms O had two ways that American Express could assist her in this case. Firstly via a chargeback. This is a way in which payment settlement disputes are resolved between cardholders (Ms O) and suppliers (the hotel). Each card scheme has its own rules about what types of disputes can be raised and under what conditions. There is no obligation for a card issuer (American Express) to raise a chargeback but I would consider it good practice for one to be attempted where the right exists and there is a reasonable chance of success.

The second is a dispute raised under section 75 of the Consumer Credit Act 1974. In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods/services (the hotel) or the provider of credit (American Express) if there's been a breach of contract or a misrepresentation. But it's necessary for a debtor-creditor-supplier agreement to be present. As the relevant circumstances are met, I find Ms O was able to make a section 75 claim.

When Ms O raised the dispute, American Express promptly raised a chargeback. They credited her account with the amount paid for the hotel while the chargeback was being looked into. They made it clear to Ms O that the hotel would have the opportunity to contest the refund which they would consider and then decide what further action would be taken (if any at all).

As the hotel didn't respond to the chargeback dispute, it was considered successful meaning the amount for the hotel was refunded. I find the actions taken by American Express were reasonable and what I would expect given the circumstances. While it didn't cover Ms O's out-of-pocket expenses, I'm satisfied it was a resolution to resolve the hotel's breach of contract which is central to this case.

For the out of pocket expenses (consequential losses), American Express also considered a section 75 claim. However like the investigator, I don't agree they fairly did so. They declined it on the basis there was no breach of contract by the hotel. However, I don't believe there's reasonable justification as to why the booking was cancelled, there's insufficient evidence Ms O had breached the hotel's terms. I don't believe American Express fairly took this into account so I can't say they carried out a thorough review based on the evidence.

In the absence of such justification, and by the hotel accepting the booking then cancelling it on the day of check in, I agree with the investigator that the hotel breached their contract with Ms O.

Following the investigator's opinion, American Express has since accepted there was a breach of contract. I'm glad to see they've agreed to pay the difference between the cost of the two hotels, the travel costs and the associated interest. I wish to make it clear in instances like this, we wouldn't award the full cost of the second hotel as that would mean Ms O stayed there for free which wouldn't be fair. Instead we would award the difference in cost between the two hotel so she's not financially disadvantaged. Based on the evidence

I've seen, there's nothing to suggest American Express' calculation is incorrect. Overall I consider this a fair resolution as it covers Ms O's consequential losses.

I'm aware Ms O says this issue has been going on for several months and American Express didn't fairly consider her dispute and because of this, it has impacted the balance on her credit card and her ability to use it.

I acknowledge her strength of feeling about what's happened and I'm sorry to hear about the situation. However I find the main party who has caused the trouble and upset here is the hotel, not American Express. While I accept they should've considered the section 75 more fairly, I must take into account they successfully raised the chargeback without delay and Ms O received the refund for the hotel which is the central dispute in this case.

For me to award compensation I would need to be satisfied any loss or inconvenience was due to American Express rejecting the section 75 claim when it should've been upheld. Based on the evidence presented to me, I'm not persuaded the main source of the inconvenience is American Express, I find it was the hotel. So I won't be asking American Express to pay compensation for the trouble and upset caused.

Taking everything into account, while American Express acted fairly in raising a chargeback dispute, they didn't reasonably consider the section 75 claim for consequential losses. To put things right, they should credit Ms O's credit card account with £203.55 which can be used to offset any balance owed. If there is no balance, this amount should be paid directly to Ms O.

My final decision

For the reasons set out above, I've decided to uphold Ms O's complaint.

To put things right, American Express Services Europe Limited must:

- Credit Ms O's credit card account with £203.55 to cover the consequential losses incurred following the section 75 dispute. If there is no balance, this amount should be paid to Ms O directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 29 March 2024.

Simona Reese
Ombudsman