

The complaint

Mr C complains that American Express Services Europe Limited ("AESEL") didn't fairly deal with a claim he made under Section 75 (S75) of the Consumer Credit Act 1974 (the 'CCA') in relation to a purchase he made with a supplier.

What happened

Mr C booked a holiday with a travel company, L, on its website for October 2023. The holiday comprised a hotel which advertised an indoor pool. He said this was the main reason for choosing this hotel. When he arrived he was told the pool was only accessible if he paid for spa treatments. Mr C said this was very misleading and disappointing as he specifically travelled to this resort because it advertised an indoor pool. He said he wouldn't have booked it otherwise. Mr C said he did raise this with the hotel at the time but was told there was nothing they could do. He complained to L and requested a refund of the amount he paid for the hotel. L offered to reimburse Mr C 15 % (£186.95) of the accommodation costs (£1,246.39) as a gesture of goodwill. Mr C didn't accept this offer so he raised a S75 claim with AESEL. He believed the holiday had been misrepresented and L failed to provide services he had paid for.

In its final response AESEL didn't uphold Mr C's complaint. It accepted Mr C was unable to use the indoor pool but said the amount reimbursed by L was fair and reasonable. Mr C didn't agree and brought his complaint to this service.

Our investigator concluded that AESEL hadn't done anything wrong in the way it handled Mr C's S75 claim. Mr C wasn't satisfied and asked for a decision from an ombudsman. He made some additional comments to which I have responded below where appropriate.

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 realise this will come as a disappointment to Mr C but having done so I won't be asking AESEL to do anything further for the reasons I've outlined below.

In deciding what I believe to be fair and reasonable in all the circumstances I'm required to consider relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time. S 75 of the CCA is relevant here. It protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. To be able to uphold Mr C's complaint about AESEL I must be satisfied there's been a breach of contract or a misrepresentation by L, and that AESEL's response to Mr C's claim under 75 wasn't fair or reasonable. But I'm not determining the outcome of Mr C's claim under 75 as that is for a court to decide.

I'm satisfied there is a debtor-creditor-supplier relationship in place.

Was there a breach of contract?

I'm not persuaded there was a breach of contract. Mr C chose a hotel with an indoor pool. And the hotel did have an indoor pool which he could use, albeit with conditions attached.

Was there a misrepresentation?

Mr C believes the hotel was misrepresented to him. A misrepresentation is an untrue statement of fact made by the supplier that induces a consumer into entering a contract. Misrepresentations under this legislation can be made by omission – that is by what a supplier does not make clear when it ought to either deliberately or otherwise. On the advert the hotel says it has an indoor pool along with other features. It doesn't say whether or not it's included as part of the package holiday. Nor does it say there are any terms and conditions specific to using the pool. So I think it's reasonable that Mr C had an expectation that in choosing this hotel he would be able to use the pool without the caveat of booking spa treatments. It doesn't necessarily follow however that there is a misrepresentation under S75.

Mr C has said he had a specific requirement for an indoor pool as he was travelling with two young children. He said he opted for this resort as it advertised an indoor pool without any caveats.

In his complaint to L he said "The main reason I chose this hotel was because it advertised an indoor pool for general availability on your website." He went on to say "...I specifically travelled to the resort because it advertised an indoor pool. I would not have booked it otherwise."

Mr C said in his complaint to this service "I want to stress that I would not have booked this resort if I had known that the indoor pool was not part of the all-inclusive. There were plenty of other resorts to choose from which also advertised indoor pools."

I'm not disputing Mr C when he says the indoor pool was important to his choice of hotel. It's clear that is the case. But given that Mr C has said there were other resorts with indoor pools to choose from I'm not persuaded that the presence of an indoor pool was the inducement to enter into the contract to go for this resort. I say this as it's likely there are other features that may also be important such as availability, kids club, entertainment, location and the positive reviews in the hotel description. So I'm not persuaded there was misrepresentation. And I'm satisfied AESEL treated Mr C fairly when it handled his S75 complaint.

AESEL said if Mr C were unable to use the indoor pool it accepted that this would have detracted from some of the benefit and enjoyment he had experienced during the holiday. It didn't agree with Mr C that this warranted a full refund of the accommodation cost.

I can see that Mr C did have use of an outdoor pool. But he said the temperature of the outdoor pool was unsuitable and unbearable for adults let alone young children. It's not clear to me whether this was an assumption Mr C made prior to the holiday or whether he used the pool and found it uncomfortable. The comfort of a swimming pool is subjective. Mr C hasn't complained about any other aspects of the hotel or accommodation, so I'm persuaded to agree with AESEL that L's refund of 15% was fair and reasonable in the circumstances.

My final decision

My final decision is don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2025.

Maxine Sutton
Ombudsman