

The complaint

Mrs S complains that American Express Services Europe Limited ("AESEL") failed to properly pursue her claim for unsatisfactory holiday accommodation.

What happened

Mrs S booked holiday accommodation overseas from a business I will call S which was paid for using her AESEL credit card. She made the booking through an online booking platform ("B").

During the holiday Mrs S encountered a number of issues which are well known to both parties so I will not rehearse them here in full. They included a lack of hot water for a number of days and little or no support from the owner. Mrs S was offered an opportunity to change rooms, but she has explained that the alternative was worse than the existing room.

She made a claim to the owner of the accommodation and then to B giving it a detailed account of what happened. B responded to say that S had provided the accommodation as described and did not agree to provide compensation.

Mrs S turned to AESEL and again provided a detailed account. It submitted a chargeback which was challenged by B and Mrs S was notified that her claim had been unsuccessful. It said:

"In your specific claim, the decision was taken to reject the claim as the merchant informed us that those complaints due to cleanliness, lightning, location, etc. are subject to opinion and should not be taken into account as all of the amenities described by the property were provided. The merchant acts as an intermediary between the customer and hotel and can only refund any amount once received from the hotel."

Mrs S was unhappy with this as she had not made any complaints about cleanliness, lighting or location. She felt AESEL had not properly examined her claim. She brought a complaint to this service where it was examined by one of our investigators who didn't recommend it be upheld. She noted AESEL had made a chargeback and this was rejected and there were not sufficient grounds to take it further. She noted AESEL had not considered a s. 75 Consumer Credit Act 1974. Claim. However, she concluded that the contract Mrs S had with B and it had fulfilled the contract by making the booking of the accommodation Mrs S had requested. It was not responsible for the actions of S.

Mrs S didn't agree and asked for her complaint be referred to an ombudsman. She said that AESEL had failed to investigate a claim under s.75 and this service should address that. She said that the chargeback must operate within the rules set out in s.75. She confirmed her agreement was with B and she believed it had a responsibility to ensure S met the appropriate service standards. Mrs S felt B's terms and conditions absolved it of any responsibility which she thought was not correct. It should provide some form of protection. She felt consumer protection was undermined by this approach.

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 have every sympathy with Mrs S but I do not consider I can uphold her complaint. I will explain why.

There are two separate routes for her to make a claim via AESEL. The first is chargeback and the second is a s. 75 claim. The two are not connected and the rules for a chargeback are not defined by s.75.

Chargeback is a process that is provided by the Card Scheme. It allows customers to ask for a transaction to be reversed if there's a problem with the goods or services they've paid for. There's no automatic right to a chargeback. Nor is chargeback a guaranteed method of getting a refund. The Card Scheme checks the nature of the problem against the possible chargeback reasons to see whether the claim will be successful. If the bank feels that a claim won't be successful, they don't have to raise a chargeback. It is a purely voluntary process but I would expect AESEL to have raised one in this case. It did raise one and B challenged it after contacting S. I can see that the defence was not as well articulated as I would expect, but the chargeback was defended and AESEL has no say in determining the outcome. That falls to the Card Scheme. AESEL could have appealed, but it was not obliged to; as I have said the whole process is voluntary. On balance I do not consider it unreasonable of AESEL to have reached the decision that the matter was at an end.

The second route available to Mrs S was a claim under s.75. This offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For s. 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

There is no dispute that the chain is intact but we need to be clear who is party to the agreement. Mrs S is the debtor and AESEL is the creditor. Her agreement was with B and so it is the supplier. The question is did it supply what it had agreed to supply. B provides a platform where customers can choose accommodation and it then makes a booking on their behalf. It does not supply accommodation and it is not responsible for that accommodation. If Mrs S had booked direct with S then we could look at what it did and whether that amounted to a breach of contract or misrepresentation.

I have looked at B's website and its listing for the accommodation and, while accepting it might have changed, I can see nothing in that which misrepresents the property. The main issue was that there was a problem with the electrics which meant Mrs S went without hot water, but I cannot see how B can be said to have misrepresented anything about the property because of that electrical failure.

As our investigator has explained B is not responsible for the operation of the property by S. B did not breach its contract with Mrs S. It arranged the booking the accommodation she chose. It is not responsible for its operation and in its agreement with Mrs S it did not accept responsibility for that. Quite simply I cannot safely conclude that B breached its contract with

Mrs S.

Although AESEL does not appear to have considered s.75 that makes no material difference since if it had done the outcome would have been the same.

I appreciate Mrs S will be disappointed with this decision, but I cannot say AESEL did anything materially wrong.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 December 2024.

Ivor Graham
Ombudsman