

The complaint

Miss K complains that American Express Services Europe Limited (Amex) failed to refund her for an unsatisfactory hotel stay through its disputes process.

What happened

Miss K paid for a hotel stay in September 2023 for £340.68 using her Amex credit card. She says during the first night of her stay she was bitten when in bed and this caused her significant worry, meaning she lost sleep that night. Miss K tried to sort this out with the hotel that night but was told that nothing could be done until the morning. Miss K contacted the hotel manager the following morning and they arranged another room for her on a different floor of the hotel. Miss K says while she was at breakfast someone inspected the original room, and the hotel produced a report from a specialist company saying there were no bedbugs present in the room. While out that day Miss K obtained written comments from two pharmacies saying the bites she received were from bedbugs.

Miss K complained to the hotel and attempted to get a refund. When she wasn't successful, she contacted Amex on 3 October 2023 to see if it could help her get her money back.

Amex raised a chargeback for the full cost of the hotel stay using the evidence Miss K provided but the hotel provided evidence to refute this, and the chargeback failed. Amex didn't think Miss K's dispute was eligible to be considered under Section 75 of the Consumer Credit Act 1974 (Section 75)

Miss K was unhappy with this result and disputed the reliability of the hotel's evidence. Amex said it couldn't question the veracity of the report and had to take it on face value.

Unhappy with Amex's decision to decline the dispute, Miss K referred the case to this service. One of our investigators considered the case and didn't think Amex had acted unfairly.

Miss K didn't agree with our investigator's view, so her complaint has been passed to me for review and 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.

I think it would be helpful for me to be clear here that I am only considering the actions of Amex in this case, and I can't consider the actions of the hotel.

The transaction Miss K disputed was made using a credit card and she paid the hotel directly. So, Amex could have considered the claim through the chargeback process or under Section 75.

Chargeback claims

Chargeback isn't a legal right and isn't guaranteed to get a customer a refund. That said it's good practice for a credit provider to attempt a chargeback where the circumstances are appropriate and there is a reasonable prospect of success. Strict rules apply to chargebacks, and these are set out by the card scheme operator, in this case American Express. These rules include timeframes for chargebacks to be raised and details of what evidence is needed for the claim.

I can see that Amex didn't think the claim met the criteria for Section 75 and so raised a chargeback for the service not being as described. To help me understand what took place here I've listened to the calls Miss K had with Amex about the claim.

I can hear that Miss K felt passionately that she hadn't received the service she'd paid for and expected, regardless of what she was bitten by. She explained how this impacted her enjoyment of the trip and the inconvenience caused on her return and I don't doubt the distress Miss K experienced.

However, I must consider whether Amex acted fairly given the information available to it. I understand that Miss K has said regardless of what bit her, she didn't receive the service she should have. But I must consider that the evidence she provided to Amex, from the local pharmacists, confirmed the bites were from bedbugs. So, whether the hotel had bedbugs becomes relevant and I don't think Amex were unreasonable to focus the investigation on this.

Based on the information Miss K had provided, Amex raised the chargeback disputing the payment to the hotel. However, the hotel responded to defend the claim by providing a report from a hygiene specialist to say it found no evidence of bedbugs.

Miss K has said she distrusts the evidence the hotel provided. She's said the specialist's office was too far away from the hotel for them to have carried out the assessment in a half an hour window while she was at breakfast. Whilst I appreciate Miss K's perspective, we can't be sure that the specialist came from their office or that they weren't already in the area. In addition, I haven't seen any conclusive evidence that means Amex should have questioned the report provided by the hotel. So, I'm not persuaded that Amex acted unreasonably in accepting the report at face value.

I appreciate that Miss K says she was bitten at the hotel, and I can see that Miss K did have bites on her legs (which the pharmacists confirmed to be bedbug bites). However, I haven't seen any evidence was provided to Amex to show there were bedbugs at the hotel such as photos or reports of an infestation around the time of Miss K's stay. The evidence the hotel provided confirmed there were no bedbugs in the room Miss K stayed in on the first night and so based on the evidence, I don't think Amex have acted unreasonably in deciding not to pursue the chargeback claim further.

Section 75 Claims

Section 75 makes the provider of credit (Amex in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when there is a direct relationship between the debtor, creditor, and supplier otherwise known as a DCS agreement.

In this case Amex said the involvement of a booking agent meant there wasn't the necessary DCS agreement. However, I can see from the evidence provided that Miss K paid the hotel directly using her Amex credit card. So, I don't agree that there isn't a direct relationship

between the debtor (Miss K), the creditor (Amex), and the supplier (the hotel). It follows then that I think the necessary DCS agreement did exist, and Amex could have considered Miss K's claim under Section 75.

From the outset Miss K made Amex aware she wanted to claim for the costs she incurred having her belongings professionally cleaned when she returned home. Consequential losses can't be recovered through the chargeback process. However, they could potentially be recovered as part of a successful Section 75 claim. So, I think Amex should have considered the claim under Section 75.

This then leads me to consider whether a Section 75 claim would have been successful. So, I've thought about whether the evidence shows either a misrepresentation or a breach of contract occurred.

On balance and for broadly the same reasons the chargeback failed, I think it's more likely than not that the Section 75 claim would have failed too. I say this because there is evidence to say the bites Miss K suffered were from bedbugs, but there's no conclusive evidence that Miss K received the bedbug bites at the hotel. However, there is evidence to show that the room Miss K stayed in on her first night at the hotel didn't have bedbugs.

The available evidence doesn't show that the hotel misrepresented the service or breached the written or implied contract between it and Miss K. Given this, I don't think a Section 75 claim would have been successful. So, although Amex did make a mistake in saying a Section 75 claim wouldn't be possible, because the claim wouldn't have been successful, I don't think this has unfairly disadvantaged Miss K.

My final decision

My final decision is that I don't uphold Miss K's complaint about American Express Services Europe Limited for the reasons I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 27 May 2025.

Charlotte Roberts
Ombudsman