

The complaint

Mr E complains about the way American Express Services Europe Limited handled his claim for a refund when hotel accommodation was not of a satisfactory standard. He paid for the hotel room using his Amex credit card.

What happened

In October 2024 Mr E's wife booked a two-night stay at a boutique hotel in Ontario, Canada. They paid Can\$760 (equivalent to £441.31) using Mr E's credit card.

After the first night, Mr and Mrs E checked out of the hotel. They had found out that it was close to a busy railway line, and their sleep had been badly disturbed by freight trains. They asked the hotel for a refund, which was refused. Mr and Mrs E felt they had been misled by the hotel's publicity material into thinking they would have a peaceful stay, but the train noise meant that was not the case. The hotel noted that its booking terms meant that was not the case.

Mr E referred the matter to Amex, seeking a refund. Amex considered Mr E's claim as a chargeback dispute, but concluded, having sought comments from the hotel, that there were no grounds for a refund.

Mr E was unhappy with Amex's handling of the matter. He said that his claim should have been considered as a claim under section 75 of the Consumer Credit Act 1974 ("section 75") rather than as a chargeback claim. Amex acknowledged that it had not handled things as well as it should have done and offered Mr E £100 by way of compensation. It agreed too to consider the section 75 claim.

Mr E referred the matter to this service, where one of our investigators considered what had happened. He issued a preliminary assessment in early May 2025. Amex had not at that point reached a conclusion about the section 75 claim, but the investigator took the view that it was unlikely to be successful. Accordingly, he did not recommend that the complaint be upheld.

Mr E did not accept the investigator's assessment and asked that an ombudsman review the case.

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 note that Amex's initial response to Mr E's contact was to consider a chargeback request. Because of the way Amex operates, Mr E and the hotel are both its customers. In effect, therefore, Amex considered the refund request under its own dispute resolution process. I don't believe that was unreasonable, and neither do I think the outcome was unfair. But I would have expected Amex to have given consideration to a section 75 claim as well, given what Mr E had said about the nature of his dispute with the hotel. And I don't believe that its explanations of why it had not considered a section 75 claim were as clear as they should have been.

Mr E's complaint includes a complaint that Amex has not met his section 75 claim. As far as I am aware, Amex is still considering the claim. If so, I have treated this part of the complaint as a complaint that the claim has not been met and that it should have been met by this stage. Otherwise, it is a complaint that the claim was wrongly declined.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. I note that in this case it appears that Mrs E made the hotel reservation, and that the paperwork is also in her name. It was however Mr E whose card was used to make the payment. Nevertheless, I am satisfied that the hotel's contract here was with both Mr and Mrs E, so section 75 can apply. I have therefore considered their dealings with the hotel.

It is likely that the contract with the hotel was covered by local law, which may not give consumers the same protections as English law. I have not however been made aware of any material differences which might affect the outcome in this case.

I accept that Mr and Mrs E's stay at the hotel was disturbed by train noise. The hotel has not disputed that. Indeed, Mr E has said that it provided ear plugs, indicating that railway noise was a known issue. The issue I need to consider is whether the hotel misled Mr and Mrs E into thinking there would be no noise, alternatively whether it was under any obligation to warn them about noise issues.

There was no mention of noise (or, more importantly, lack of noise) in the booking conditions. They mostly concerned practical matters – payment, check-in times and the like. Further information was provided covering mealtimes, parking and access. But the information provided directly to Mr and Mrs E did not say either that the area was quiet or that there was a risk of disturbance from railway noise.

I have considered too the information provided on the hotel's website, and on which Mr and Mrs E would have relied when deciding to book. The website describes the hotel as "*refined*" and makes reference to its "*serene courtyard*". I don't believe however that those references can fairly be said to amount to a statement that there will be no noise.

I do however note that the website includes:

"... The town also known for its scenic beauty and rich history and has been recognized for its exceptional commitment to preserving its built heritage. Like any other old towns in Canada with train tracks, the train sounds can be heard throughout the area of the town. Therefore if you are sensitive to noise, this may impact your overnight stays."

That echoes the hotel's response to Mr and Mrs E's initial complaint. I do not believe therefore that it can fairly be said that the likelihood of train noise was concealed from them. I accept that it was not specifically drawn to their attention either, but I do not believe there was any obligation on the hotel to do so.

The hotel did not agree to a refund, either in full or for the part of their stay that Mr and Mrs E did not use. I note however that its booking terms said that no refund would be provided for late cancellations.

It is not for me to say whether Mr E does in fact have a claim against the hotel or whether he has a claim against Amex under section 75. What I must do is decide what I consider to be a fair resolution of his complaint about Amex's handling of his claim – including the fact that it has not provided a refund. I have commented on some failings, but I believe that the offer of £100 which Amex made in recognition of those was fair in the circumstances.

My final decision

For these reasons, my final decision is that I do not uphold Mr E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 3 September 2025.

Mike Ingram
Ombudsman