

The complaint

Mr B complains that American Express Services Europe Limited won't refund to him the money that he paid for some accommodation and other amounts that he's claimed.

What happened

Mr B used his American Express credit card in December 2024 to pay £958.45 to a booking company for some accommodation. He says that the accommodation was unfit for purpose due to uninhabitable temperatures and undisclosed excessive heating costs. He says that he also incurred additional costs of £132.19 for alternative accommodation. He raised disputes about those payments with American Express. It credited the £958.45 to his account and made a chargeback claim to the booking company. It defended the chargeback claim so American Express re-debited the payment from Mr B's account. American Express says that the evidence from Mr B about the payment of £132.19 was insufficient for it to make a chargeback claim to the booking company.

Mr B then made a claim to American Express under section 75 of the Consumer Credit Act 1974. It said that the booking company's services were limited to those of a booking intermediary, providing Mr B with an online platform to reserve and pay for accommodation with its suppliers and American Express can't be held liable for the accommodation provider's alleged failings. Mr B complained to American Express about its response to his section 75 claim but American Express said that his claim had been addressed appropriately and it had been unable to evidence any errors on its part.

Mr B wasn't satisfied with its response so he complained to this service and he provided a detailed summary of his complaint. His complaint was looked at by one of this service's investigators who, having considered everything, didn't recommend that it should be upheld. He thought that American Express had handled the chargeback claim fairly, he said that he was unable to conclude that there had been a breach of contract and he didn't think that anything had been misrepresented to Mr B so he didn't think that a section 75 claim ought reasonably to have been successful.

Mr B didn't accept the investigator's recommendation and has asked for his complaint to be escalated to an ombudsman for a decision. He's provided a detailed response in which he says that American Express was statutorily obliged to assess a breach of contract but didn't do so, the investigator's recommendation conflicts with the Consumer Rights Act 2015, and the interpretation that's been adopted renders section 75 practically meaningless.

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.

Mr B disputed the payment that he'd made to the booking company and he asked American Express to make a chargeback claim for the payment of £958.45 and the £132.19 that he'd paid for alternative accommodation. If a consumer disputes a card payment, the card issuer may be able to make a chargeback claim to the merchant under the relevant card scheme to

try to settle the dispute. There's no right for a consumer to require that a chargeback claim be made and the applicable scheme rules set out the disputes that can be considered and the time limits for making a claim. If the right to make a chargeback claim exists under the applicable scheme rules, and if there's a reasonable prospect of success, I consider it to be good practice for a chargeback claim to be made. In this decision, I'm not deciding the merits of the disputed payments but whether or not American Express has dealt with the chargeback claims correctly.

American Express responded to Mr B about his dispute of the £958.45 payment and said: *"We have forwarded the documents to the merchant for more details. In the meantime, you are not liable for this amount while the investigation is ongoing and we will credit the amount to your account ... If the merchant provides information supporting the transactions, we may rebill your account. We will update you if this happens"*.

The booking company defended the chargeback claim and said that the service was performed as described and the accommodation was presented to Mr B as described. American Express then said to Mr B: *"The Merchant has now sent us documentation in support of the charge ... As this documentation appears to support the transaction, the amount previously credited has been reapplied to your account"*.

Mr B wrote to American Express to formally escalate his concerns regarding the handling of the dispute. American Express replied to him and said: *"The merchant has provided their terms and conditions and explained they act only as an intermediary agent between the customer and the accommodation that only provides a platform for the advertisement of the hotels and services and complaints due to cleanliness, lighting and location are subject to opinion and cannot be taken into consideration. They have also explained that the services have been provided and utilized"*.

Mr B complained to American Express about the handling of his chargeback claim but American Express said that it had been unable to establish any errors on its behalf. On the basis of the booking company's defence of the chargeback claim, I consider that it was fair and reasonable for American Express to decide not to take that chargeback claim any further and to re-debit the payment of £958.45 from Mr B's account.

When disputing the payment of £958.45, Mr B said that he was also pursuing a separate chargeback request for £132.19 covering the cost of alternative accommodation due to early departure, which directly resulted from the accommodation's failure to provide adequate heating. American Express says that the evidence from Mr B about the payment of £132.19 was insufficient for it to make a chargeback claim to the booking company. I'm not persuaded that there's enough evidence to show that American Express acted incorrectly in deciding not to make a chargeback claim for that payment.

Mr B then made a claim to American Express under section 75 and said that his claim centred on significant misrepresentation and breach of contract by the booking company and the accommodation provider as the accommodation was demonstrably uninhabitable and didn't meet the legally required standards for satisfactory quality or purpose as outlined in the Consumer Rights Act 2015.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a relationship between the debtor, the creditor and the supplier. Mr B had booked accommodation using the booking company and had confirmed that his booking was with the accommodation provider directly and by completing the booking he agreed to the booking company's booking conditions, general terms, and privacy policy. He made a

payment using his credit card to the booking company but the accommodation was being provided to him by the accommodation provider. American Express has no relationship with the accommodation provider relating to Mr B's booking so American Express would have no liability under section 75 for any breach of contract or misrepresentation by the accommodation provider.

There is a debtor, creditor, supplier relationship between American Express, Mr B and the booking company so Mr B would be able to make a claim under section 75 about any breach of contract or misrepresentation by the booking company. To be able to uphold Mr B's complaint about American Express, I must be satisfied that there's been a breach of contract or misrepresentation by the booking company and that American Express's response to his claim under section 75 wasn't fair or reasonable (but I'm not determining the outcome of Mr B's claim under section 75 as only a court would be able to do that).

In response to the investigator's recommendation, Mr B says that a material electricity surcharge clause was disclosed only after full payment and just days before check-in, provided no meaningful opportunity to cancel, amend, or refuse the late term, and removed the booking from his account and obstructed any escalation, in breach of its own terms.

Mr B asked the booking company to pay him £1,207.97 which was the £958.45, the £132.19 and £117.33 for supplementary heating materials. No request was made for an electricity usage charge. Mr B says that whether the surcharge was ultimately applied is immaterial and he was placed at significant risk of financial penalty under post-contractual terms which is contrary to the Consumer Rights Act and to basic principles of transparency and informed consent in contract formation.

I've carefully considered the details of Mr B's booking and the information that was sent to Mr B by the accommodation provider and I don't consider that the charge for excessive electricity usage would properly be considered to be a material surcharge or that it would justify cancellation of the booking. Mr B had agreed that he could cancel the booking free of charge until 14 days before arrival but if he cancelled in the 14 days before arrival, the cancellation fee would be the total price of the booking. I've seen no evidence to show that the accommodation provider charged Mr B for excessive electricity usage and I'm not persuaded that any such charge would be in breach of the Consumer Rights Act.

The accommodation was provided with storage heaters and a fire and normal electricity consumption was included. No representation was made that unlimited electricity consumption was included or that there wouldn't be a charge for excessive electricity usage and I'm not persuaded that there's enough evidence to show that there's been a breach of contract or misrepresentation. Nor am I persuaded that there's enough evidence to show that the accommodation was unfit for purpose due to uninhabitable temperatures, that the accommodation provider failed to provide adequate heating or that the accommodation didn't meet the legally required standards for satisfactory quality or purpose.

Mr B used the accommodation, though he used alternative accommodation for one night, and I don't consider that the issues that he had with the booking company's complaints process would be enough to be a breach of contract by the booking company. I'm not persuaded that there was a breach of contract or misrepresentation by the booking company in these circumstances and I consider that American Express's responses to the disputed payments and to Mr B's section 75 claim were fair and reasonable. I find that it wouldn't be fair or reasonable for me to require American Express to make any refund to Mr B, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 September 2025.

Jarrold Hastings
Ombudsman