

The complaint

Mr N complains about a claim he made to American Express Services Europe Limited (Amex) in respect of a hotel not being as described.

What happened

In November 2024, Mr N paid £4,699.24 using his Amex credit card to book a suite at a hotel which he intended to stay at between 11 and 17 November 2024. The booking and payment were made directly to the hotel who I'll call S. Mr N booked a Presidential Suite with three bedrooms for his travelling party of five, and he was unhappy with the following not being as he expected:

- The suite was described as having "3 bathrooms with shower" however on arrival he found it had two bathrooms with showers and one bathroom with only a toilet and hand basin.
- There were broken door handles.
- There was an exposed pipe in one of the showers.
- The carpets were stained.
- There was torn bedding.
- Mr N was unhappy with the cleanliness of the room.

Mr N has said he made numerous complaints directly to S, however nothing was done aside from some complimentary tea having been provided to him. Mr N said he was travelling with his wife, his mother and his parents in law so three bathrooms was a necessity for him to avoid the discomfort of having to share for any of the travelling party. He says that had he known there would only be two bathrooms with showers he would not have booked the suite as he required a minimum of three bathrooms with showers. Mr N says this hotel is described as having premium furnishings, but this suite fell short of expectations.

Mr N raised a payment dispute to Amex. Amex raised a chargeback under the reason code Not as Described or Defective Merchandise. The merchant defended the dispute and Amex decided not to proceed any further with the dispute following this. Amex turned to considering the claim under Section 75 of the Consumer Credit Act 1974 (Section 75). After review, Amex did not find that there had been a breach of contract or misrepresentation that meant the claim should succeed so it was declined. Mr N raised a complaint, but Amex found it had treated him fairly when considering his claim.

Unhappy with this outcome, Mr N brought his complaint to our service. He said the room had been misrepresented as he was expecting three bathrooms with washing facilities in each. He further said his contract had been breached due to the state of disrepair and poor hygiene. Mr N asked for the full amount he paid for his stay to be returned to him. In addition, he said he experienced distress and frustration as he expected a luxury experience and instead had to stay in a dirty, damaged and falsely advertised suite due to a non-

cancellation policy. He experienced embarrassment and feelings of helplessness during his stay as his complaints were dismissed and minimised by S's staff.

Our investigator reviewed the complaint and awarded 5% of the total cost of the stay and additional interest at 8% from the date the claim was declined to the date of settlement. Our investigator thought Amex had treated Mr N fairly when handling his chargeback dispute. Regarding Section 75 our investigator found that a breach of contract had been established for some of the cosmetic issues raised by Mr N and for those, he felt a 5% refund to be appropriate.

Amex agreed with this outcome, however Mr N disagreed and asked for an Ombudsman to decide the complaint. Mr N broadly repeated his earlier arguments regarding breach of contract and misrepresentation. He said the 5% offered is not a proportionate remedy. The complaint was passed to me to decide and I issued a provisional decision in which I said the following:

"I would like to start by saying that I have provided a brief summary of the events that occurred above. I intend no discourtesy by this and can assure both parties that I have taken all the information provided into consideration when reaching a decision on this complaint.

In this decision, I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point, it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. Our rules allow me to do this, and this reflects the nature of our service as a free and informal alternative to the courts.

I also think it's worth clarifying that I'm deciding whether Amex acted fairly in assisting Mr N with his dispute against S. I'm not making a finding on the underlying dispute Mr N has with S. When considering what's fair and reasonable, I'm only considering whether Amex acted in line with its obligations as a provider of financial services.

Chargeback

Chargeback is a voluntary scheme under which settlement disputes are resolved between card issuers and merchants, under the relevant card scheme. A card issuer will review the claim against the possible reasons for a chargeback and look at whether it would be able to make a successful claim for the customer. Card issuers do not have to submit claims and usually will only do so, if it is likely to be successful. We don't expect them to raise a claim if there is little prospect of success.

Amex raised a chargeback under the most appropriate reason code available based on the issues Mr N described. The merchant provided information in its defence. Having reviewed this information, I find it unlikely that the claim was likely to succeed if pursued further. I therefore find it to be reasonable that Amex declined to pursue the claim further based on low prospects of success.

Additionally, I note that a chargeback would have been difficult to pursue successfully from the beginning due to Mr N having stayed for the duration of the booking. This is not a reflection on him, and I am not disregarding his comments about how he was unable to cancel the booking due to a non-cancellation clause, but this does not affect the chargeback rules and what they mean for complaints of this nature.

Section 75

Section 75 allows – in certain circumstances - for a creditor (Amex) to be jointly and severally liable for any claim by the debtor (Mr N) of breach of contract or misrepresentation made by a supplier of goods and/or services (S).

Breach of contract

I have considered whether there has been a breach of contract. Mr N has provided evidence of a torn duvet cover, some small spots of dirt on a curtain and on a carpet, a shower tap which is slightly distended from the tiling showing the pipe behind it, and a door handle cuff which has come loose. I can also see an instance where Mr N complained to the staff that the hotel staff had come to clean, but he did not find it to be so – although I find this matter hard to substantiate from the picture provided.

Amex has said there is no evidence these issues were present on Mr N's arrival in the room. In addition, it said both Mr N and S have evidenced the hotel's intention to compensate Mr N for these issues and these overtures were refused by Mr N. Amex felt that as Mr N refused to mitigate his circumstances, the claim should not succeed.

Having reviewed the evidence provided, I can see that the torn duvet cover, door handles, and issues of cleanliness were raised over messaging with the hotel. I can also see attempts of Mr N attempting to call and meet with staff to no avail. There are messages where S has said it offered compensation in the form of dinner, lunch or amenities. In Mr N's response, he refutes that S tried to offer these things and confirms he was only offered some Arabic tea as compensation.

It is difficult to say exactly what happened when complaints were made to the hotel based on the information available. But I don't find it to be entirely relevant, and I'll explain why. I can see the hotel is described as 5-star. I cannot see where it says that it has premium furnishings. I understand that the defects with the room might have been a disappointment and are not usually what one would expect of a 5-star hotel. Having said that, I have carefully considered the issues raised and I don't consider that these defects are so severe that they amount to a breach of contract (or a misrepresentation).

I say this because I find the impact of these issues on Mr N's stay to be minimal. The defects were not dangerous, nor did not impair use. I don't expect hotel's to be completely free of minor defects, and I do not find they would have hugely impacted Mr N's enjoyment of the suite. So, for different reasons than Amex has described, I do not think it was unreasonable for it to have reached the outcome it did on this element of the claim.

Misrepresentation

Mr N says the hotel room was misrepresented to him. I have reviewed S's description of the room as Mr N would have seen it at the time of booking. It says:

"120 SQM, 1291 SQF, 1 king bed room and Two Twin bedrooms, Living, 3 closets, 3 bathrooms with shower, TV with international channels, telephone, AC, Free WIFI, Club Access"

Mr N has provided evidence to confirm the suite had two bathrooms with showers and one bathroom with a toilet and hand basin. Amex reviewed this matter and said it is not misrepresentative to list a separate toilet as a bathroom. It based this on the knowledge that a separate toilet with hand basin can also be called a bathroom.

I've considered this and I don't find that Amex has addressed all it needed to here. The issue is not that the separate toilet was referred to as a bathroom, but that the description was "3

bathrooms with shower". The implication is clear from the way this is worded that the suite contains three bathrooms, all with shower facilities. I don't think this can be interpreted in any other way. So, I think it was reasonable for Mr N to have been disappointed to find only two showers in the suite, and I find that there was a representation made about the suite prior to booking that turned out to be false.

Having established that a false statement of fact was made, I now need to consider whether this false information induced Mr N into entering the contract. Mr N has said he stayed in S's sister hotel prior to his arrival here and he had booked the same suite there which had the facilities as described. He also said he was travelling with three parties consisting of (1) Mr N and his wife (2) Mr N's mother; and (3) Mr N's parents in law. He required three showers for each of the three parties to use so as to avoid discomfort. Based on the information provided, I am persuaded that the false information induced Mr N to enter the contract so I am minded to find that a misrepresentation was made, and but for that misrepresentation, Mr N would not have entered the contract. As Amex has connected lender liability under Section 75, we are able to hold it responsible for this misrepresentation.

Having established that, I have turned to consider what needs to be done to put things right. Mr N has asked for the total cost of his stay to be returned. I understand that Mr N didn't feel that he could leave due to a non-cancellation policy but irrespective of this I need to consider that Mr N stayed for the duration of the booking, and enjoyed the suite and other hotel amenities whilst he was there. So, a proportion of what he paid would be a fairer remedy.

I have thought about all the reasons why the booking was made including the amenities, location and purpose of the trip. Having done so, I am minded to find that about a third of the decision to book the hotel was based on having separate showers. Of that third, two showers were available, so it was only a third of the parties in the travelling party who were affected by the lack of the additional shower. Therefore, I am minded to find that 10% (£470) of the overall cost of the trip should be returned to Mr N for the misrepresentation made. I am also minded to find that Amex pay 8% simple interest on this amount from the date the claim was declined to the date the payment is made.

For completeness I will add that the matter of the shower could also be successfully argued to be a breach of contract however I will not go into this further as misrepresentation has already been established. Mr N has spoken about the distress, frustration and embarrassment he experienced at the hotel. Although I empathise, I do not find it fair to hold Amex responsible for the treatment Mr N experienced at the hands of the hotel staff and Amex cannot be held responsible for the service received from the hotel staff under Section 75."

Amex agreed to the provisional decision and confirmed the date the claim was declined was 28 March 2025 – so it would pay the 8% simple interest awarded from this date. Mr N disagreed with the level of redress proposed and made the following points for consideration:

- The description of the suite provided by the hotel was materially false, and the misrepresentation made was central to his decision to make the booking.
- As he was travelling with three separate adult parties, it was essential that each party had their own bathroom with shower for reasons of privacy, hygiene and dignity. He had previously stayed at a sister hotel and the equivalent suite there had all the amenities as described.
- Section 75 establishes joint and several liability between the creditor and the supplier. Under Section 2(1) of the Misrepresentation Act 1967 Mr N is entitled to be restored to the position he would have been in had the misrepresentation not occurred.

- The 10% currently awarded does not reflect the discomfort and lack of privacy that a third of the travelling party experienced for the duration of their stay. Mr N suggests a remedy of 30% instead.

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.

Having considered the further information provided, I am reaching the same outcome and for the same reasons as those outlined in my provisional decision.

Mr N speaks to a misrepresentation having been made, who he was travelling with, the reasons why they wished to have three bathrooms with separate showers and his experience at the sister hotel. All these matters were acknowledged in the provisional decision and had been taken into account when reaching my findings.

The starting position when a misrepresentation has been made is to put the customer back in the position they would have been in had the misrepresentation not been made. I stress that this is a starting point. I acknowledge that there was a non-cancellation policy, and so Mr N felt compelled to stay. However, I cannot ignore that Mr N and his party did stay and made use of the suite and other hotel amenities for the duration of their stay. It is with this in mind that I have worked through the most fair and reasonable way in which to resolve the complaint, which to my mind, means a partial refund of money paid.

I understand that Mr N feels a 30% refund would be more appropriate. Although I have read his reasons for suggesting this amount, I find the 10% I previously outlined to be fair and reasonable and am not persuaded that this amount should be increased. I appreciate this may come as a disappointment to Mr N, however I find all the matters raised by Mr N to have been taken into account when issuing the provisional decision and do not find reason to stray from my previous findings.

My final decision

My final decision is that for the reasons set out above, I uphold this complaint and direct American Express Services Europe Limited to do the following:

- Pay Mr N £470
- Pay Mr N 8% simple interest* on this amount from the date the claim was declined to the date the payment is made

*If American Express Services Europe Limited considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr N how much it has taken off. It should also give Mr N a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 29 September 2025.

Vanisha Patel

Ombudsman