

## **The complaint**

Miss C is unhappy with AMERICAN EXPRESS SERVICES EUROPE LIMITED, trading as American Express's ('Amex') handling of her section 75 claim.

Miss C is represented by her father Mr C in this matter, but for the purposes of this decision I have referred to Miss C throughout as it is her complaint.

## **What happened**

I issued my provisional decision to both parties explaining why I thought Miss C's complaint should be upheld in part and invited both parties to provide any further evidence and / or submissions in reply.

The background to this complaint was set out in my provisional decision together with my provisional findings which are both copied below and now form part of this final decision.

### Background

In June 2024 Miss C booked a package holiday online with Company J for herself and her young daughter. The holiday was half-board, booked from 7 July 2024 until 18 July 2024. Miss C paid £2,758 for the holiday (£2,808 including the flight seat reservations).

Miss C's package holiday included a coach transfer, but on arrival in the destination country Miss C found the coach was not able to drop her and her daughter directly outside the hotel. Miss C expressed concerns for her and her daughter's safety at being left in a dangerous situation in an unknown country.

At the hotel Miss C then found the room provided was unsanitary due to a significant smell in the room. Miss C was shown three rooms she has said were unacceptable and unsanitary before being shown a room that she was prepared to accept due to having no other choice. Miss C had to pay the hotel an extra 170 euros (£153.82) for the change in rooms.

Miss C expressed her concerns to Company J who paid Miss C £11.57 in relation to the coach transfer, but did not uphold any of Miss C's other concerns. Miss C therefore approached Amex to get back what she had paid for the holiday.

Amex considered Miss C's claim, acknowledged a breach of contract had taken place, and paid Miss C £153.82 to reimburse Miss C for the additional cost in the change of rooms.

Miss C did not accept Amex's findings and sought the return of the full cost of the holiday.

Our Investigator concluded Miss C's complaint should not be upheld. They accepted there had been a breach in contract, but said there was not enough evidence to say that Miss C should be paid any more than the refunds she had already received. The Investigator also considered whether a chargeback would have been successful, but on review concluded that it would not have been.

Miss C strongly disagreed with the Investigator's findings. Miss C said Amex owed her daughter a duty of care, and she had no alternative but to accept the unsatisfactory conditions of the hotel; the further 170 euros was extortion; there had been a danger to her daughter being dropped off in the middle of nowhere; the supplier had admitted there were local drainage problems, and so she should have been made aware of this before booking; other travellers had similar complaints.

### Provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've only included a summary of what's happened above, and while I may not respond to every point each party has raised, I have reviewed all the submissions available and focused on what I consider relevant to reaching a fair and reasonable resolution in this matter.

To decide what is a fair and reasonable resolution I have taken into account any relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.

I am aware Miss C feels strongly about Company J's actions, so for the avoidance of doubt I make clear my considerations are limited to Amex as the provider of financial services only.

### **Section 75**

Miss C approached Amex to raise a Section 75 claim. Amex declined the claim, and while it is not for me to decide the outcome of the claim, I can consider whether in the circumstances Amex fairly handled the claim.

Section 75 of the Consumer Credit Act 1974 makes the provider of credit (in this case Amex) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by specified types of credit.

There are certain criteria that must be met before considering whether there has been a breach of contract or misrepresentation, and in Miss C's case I have seen nothing to suggest those criteria were not met – that is, I think the valid 'debtor-creditor-supplier' (DCS) agreement exists in this case, and the cash price of the package holiday falls within the financial thresholds for a Section 75 claim.

It therefore follows that consideration can be given to whether there was a breach of contract or misrepresentation. Relevant to these considerations are Company J's terms and conditions, and the Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs).

### Breach of contract

A breach is recognised where goods have not been of satisfactory quality and where services have not been performed with reasonable care and skill.

### *Room*

Amex's correspondence to Miss C accepted Miss C had provided sufficient evidence to support a breach of contract and so refunded Miss C £153.82 for the additional hotel charge for changing rooms.

Amex have not provided details of the breach of contract they have accepted or any details of the evidence they relied on from Miss C to reach this conclusion.

Miss C submits Amex's refund of the additional hotel charge is an admission of 'breach of contract', that the charge had been illegal due to it being extorted by the hotel, and therefore the total cost of the holiday should be refunded.

I have given the submissions here careful consideration.

As part of her package holiday Miss C booked a 'S' room which appears to have been one of the hotel's standard rooms and which offered no promise of a particular view.

Miss C's concerns about the initial hotel room she was given, and subsequent rooms she was shown, included that they smelled due to problems with the hotel drainage system, that in one of them the toilet was not working, and that there were bins outside the window of another room.

Company J's agent at the hotel found no smell or view of the bins - although it is not clear from the submissions how many of these rooms the agent viewed. There are also no photos of the rooms or other records of the rooms Miss C was shown.

That said, Amex have accepted there was a breach of contract. In the absence of anything else I have taken Amex's acceptance of a breach to relate to the issue with the room Miss C was initially provided with. This is because Miss C was shown more than one room before settling on a particular room which she says was not an upgrade to her original booking. So I think it would be reasonable for Amex to have considered there was more likely than not a problem with Miss C's original room given the hotel had similar 'S' rooms that were of a better quality and which Miss C settled on.

The PTRs set out that where a significant proportion of the package cannot be performed alternatives should be offered at no extra cost and should be of equivalent or higher quality than specified in the original contract.

Miss C was provided with another room for the duration of the holiday so Miss C was provided with accommodation as per her package holiday. There are no details of the room Miss C stayed in, but given Miss C's original booking was for a standard room, there do not appear to have been any rooms of lesser value than this and I think it fair to therefore say Miss C's new room was not a downgrade. So in the circumstances I think Amex fairly refunded the cost Miss C incurred for changing rooms.

Miss C has also submitted that due to the problem with the initial room, she lost a day of her holiday having to sort the problem out.

In the circumstances, I think it would be fair to recognise the inconvenience this caused Miss C given the purpose of her travel was for a holiday with her daughter, and some of this holiday time was lost due to the breach in providing a satisfactory room from the outset and the need to find a new room on the day she arrived. To recognise this I think Amex should pay Miss C £150 for the inconvenience caused resulting from this breach.

### *Drainage*

Miss C has said there were smells in the rooms she viewed. Company J, in an email to Miss C, acknowledged that drainage systems overseas do not always work to the standard of the United Kingdom (UK) and so can cause smells on occasion, but they also said their representative at the hotel found no smell.

It is not possible for me to know the smell of any of the hotel rooms Miss C was shown. However, as noted above, it has been accepted already that the quality of the initial room Miss C was shown was not satisfactory, and Miss C did go on to take a room that was more acceptable to her than the original room at the time.

I've referred later on to Miss C's concerns that the hotel's drainage problems were not highlighted to her prior to booking, as part of my considerations under 'misrepresentation'.

#### *Coach transfer*

I am sorry to learn of Miss C's concerns about the coach transfer which she has described as particularly upsetting given she was not brought to the front of the hotel and was left to navigate reaching the hotel with her young daughter, a buggy and their luggage in an unfamiliar location.

Miss C hasn't described how far away from the hotel she was dropped off or if any help was provided to her, but it is accepted that the coach transfer was unable to reach the front of the hotel due to the limitations of the local road.

I've reviewed Miss C's transfer voucher and there is no promise on there that the coach will deliver travellers directly to the front of the hotel. I've also reviewed Company J's terms and conditions and found that for transfers it says, 'Transfer vehicles will try, wherever possible, to drive up to each hotel. However this may not always be possible due to local restrictions.' Although it is listed as part of the package holiday, the available paperwork does not separate the price of the coach transfer. However, I note Company J have already paid Miss C £11.57 which appears to be in relation to this as part of their attempt to resolve things with Miss C.

That said, given Company J's terms and conditions I don't think Amex were unreasonable in not paying anything more to Miss C in relation to the coach transfer, as there is not enough here for Amex to have fairly concluded there was a breach of contract in respect of this part of Miss C's package holiday terms and conditions. And even if there had been, there is not any evidence to suggest that Miss C should have received any more than she already has for the cost of the coach transfer.

#### Misrepresentation

A misrepresentation is recognised as a false statement of fact which induces a consumer to enter into an agreement, and the consumer suffers a loss because of the misrepresentation.

#### *Four stars*

Miss C says she did not receive the four-star holiday she signed up for.

I realise Miss C had an expectation of what a four-star holiday should be, and that the holiday she experienced did not meet that expectation. And I recognise a holiday rating can be helpful for customers when selecting their holidays, but I think it is fair to say expectations of a four-star holiday can be subjective given there are different ratings used across the travel industry.

The four stars on Miss C's Company J hotel voucher say underneath the four stars: 'our rating'.

Company J's terms and conditions explain their ratings are based on their own knowledge

and customer feedback of the facilities, food and service available at the accommodation as well as the characteristic differences between accommodation types. Company J's terms and conditions also set out, 'We make no representations of any kind about the reliability of such ratings and cannot be held responsible for any reliance placed on such ratings'.

In the circumstances, there is not enough here for me to say Amex could have reasonably concluded that Miss C was presented with a false statement of fact in relation to her holiday.

#### *'Holidays you can trust'*

I've considered Miss C's submissions about the statement on Company J's literature about 'Holidays you can trust', but I think in this case the statement is subjective and more a statement of Company J's opinion, and so there is not enough here for Amex to have reasonably concluded a false statement of fact was given to Miss C or that misrepresentation, for the purposes of considering the claim, took place.

#### *Drainage*

I've also considered whether any misrepresentation took place with regards to Miss C's concerns about the drainage as she has said had she known about the issues with the local drainage she would not have booked the holiday.

While it would be reasonable to expect no problems of this nature when paying for a holiday like this, for the purposes of a Section 75 claim I've not found enough to support that Amex could reasonably have concluded that any false statement of fact was made here. As such issues can be temporary it seems unreasonable to expect that Company J would have known in advance if there would be a problem of this nature at the time of Miss C's travel.

#### **Chargeback**

Chargeback is another mechanism that is available to Amex to attempt recovery of funds for their customer as it allows the card issuer (Amex) in certain circumstances to recover funds for a cardholder from a merchant's bank. Chargeback follows the strict rules of the card scheme provider (in this case American Express). There's no legal obligation here for the card issuer to refund or assist the cardholder, but it would be considered good practice where there is a reasonable prospect of success.

Amex did not consider a chargeback for Miss C as she approached Amex to make a Section 75 claim, and this is what Amex therefore considered. But I think it would have been good practice for Amex to have also thought about chargeback given it was a mechanism that was available to them.

That said, I think it unlikely a chargeback would have had a reasonable prospect of success.

A chargeback must be raised under a reason code. The reason code most likely to have matched Miss C's circumstances was 'Goods / services not as described'. However, the card scheme rules allow for a merchant to rebut a dispute under this reason code by, amongst other things, showing the merchant had attempted to provide a replacement, and that the goods / services had been used. In Miss C's case, as she remained for the full duration of the holiday and a replacement room was provided, it is unlikely the card scheme would have found in Miss C's favour had a chargeback been raised.

#### Other matters

In her submissions Miss C has shared the personal impact of these events on her well-being

and I am sorry to learn Miss C's holiday experience was not the positive one she expected. I understand Miss C is seeking compensation for the distress caused to her.

Under Section 75 Amex can only be held responsible for a 'like' claim against the supplier, so an award for distress is not something a court would be likely to award in such circumstances. So although I propose no reward for distress here, Miss C should note this is not intended to be dismissive of what she has shared.

I'm unable to consider the level of service provided by Company J to Miss C, but I can consider the level of service provided by Amex to Miss C as their customer during the course of their handling of her claim.

Having done so, I can see there were times Miss C had to call Amex for updates on what was happening with her claim and it appears there were some challenges in Miss C being able to speak to the appropriate person dealing with her claim. To recognise that, on occasion, Amex's customer service could have been better in their support of their customer, I think they should pay Miss C £50 to recognise this.

#### Putting things right

AMERICAN EXPRESS SERVICES EUROPE LIMITED, trading as American Express should pay Miss C £150 as part of the damages following the breach of contract they have accepted took place. And that they should pay Miss C £50 to recognise their customer service to Miss C could have been better during the course of their handling of her claim.

#### Responses to the provisional decision

Amex replied to accept the provisional decision and provided no further submissions for me to consider.

Miss C responded to the provisional decision to say the offer proposed was an insult given Amex had not acted in her best interest and that a more realistic offer should be made, given the breach of contract and attempt to extort money illegally when the full payment had been made. Amex had also not considered the loss of a day's holiday due to Amex accusing her of breach of contract against their supplier, which was hurtful and an offence against her good name.

#### **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've reviewed the responses from both parties to my provisional findings and while I recognise Miss C's strength of feeling on the matter, my role here is to consider what I think is fair and reasonable in the circumstances of the complaint for both parties. As no new evidence has been provided for me to consider I've therefore not seen anything to persuade me to depart from the findings I reached in my provisional decision.

I do realise this will be a disappointment to Miss C who believes Amex should have done more, but as I set out above my considerations are limited to Amex's actions as the provider of financial services, and therefore their responsibilities under a Section 75 claim and chargeback. As I've previously explained, it is not for me to fine or punish a firm and neither Section 75 nor chargeback are designed to act as a means of punishing the provider of financial services either.

I remain persuaded that the remedy proposed in my provisional decision is fair in the circumstances.

As a consequence of the breach which I think Amex recognised, Amex returned the money Miss C was charged abroad for changing rooms, which I think in the circumstances was fair. I think it would have been reasonable for Amex to also have considered the inconvenience to Miss C because of that breach due to the interruption to her holiday on her first day, and I remain persuaded this should be recognised by paying Miss C £150.

And for the reasons I gave above, I think £50 is fair in the circumstances to recognise Amex could have, at times, provided Miss C with better customer support and therefore avoided added upset and inconvenience for Miss C.

For any concerns Miss C still has against the supplier, Company J, she is free to seek independent advice as to whether to pursue those separately.

### **Putting things right**

AMERICAN EXPRESS SERVICES EUROPE LIMITED, trading as American Express must pay Miss C a total of £200 (£150 related to the breach of contract, and £50 to recognise Amex's service caused Miss C upset and inconvenience).

### **My final decision**

For the reasons above, my final decision is that I uphold Miss C's complaint in part and AMERICAN EXPRESS SERVICES EUROPE LIMITED, trading as American Express should put things right as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 22 December 2025.

Kristina Mathews  
**Ombudsman**