

The complaint

Mrs K complains about how AMERICAN EXPRESS SERVICES EUROPE LIMITED ('Amex') handled a claim she made to it.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mrs K used her Amex credit card to pay for a 4-night stay in a serviced apartment accommodation (who I will refer to as the 'supplier') through a booking platform (who I will refer to as 'B') but she was unhappy with it. Namely there was no courtyard as advertised, the room had a dirty duvet and had poor air quality (due to the air conditioner and smells outside), and there was too much noise from neighbouring residents.

Mrs K raised a claim with Amex for a full refund. It considered the dispute under its chargeback scheme and in respect of Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, it didn't provide Mrs K with the refund she wanted.

Mrs K escalated the complaint about the claim to this service. Our investigator did not uphold it so it was passed to me for a final 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

I am sorry to hear about Mrs K's issue with the accommodation she paid for. However, it is worth noting here that Amex is not the supplier of the service. So when looking at what is fair I consider its role as a provider of financial services – and what it reasonably could have done to help with the information that was reasonably available to it at the time. As Mrs K used a credit card to pay for the service in dispute I consider the protections of chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75') to be particularly relevant.

Chargeback

Chargeback is a way that Amex can attempt to recover money for Mrs K – however, it isn't guaranteed to succeed and is governed by the rules of the particular chargeback scheme (the Amex scheme here).

I can see Amex raised a chargeback under the dispute reason code relating to '*Not As Described Or Defective Merchandise*'. Based on the concerns Mrs K brought to Amex I consider this a reasonable dispute code to have used.

However, I can see that B responded to defend the chargeback in detail. In that defence is testimony from the supplier stating Mrs K stayed all four nights without raising issues with it, requesting a room change or cancellation. It refuted the claims about the quality of the accommodation but accepted that a dirty blanket which Mrs K used was not intended for guest use. B also added that it had provided Mrs K with a partial credit due to the issues experienced.

Based on this I can see Amex discontinued the chargeback. So I have considered if this was a fair thing to have done.

Although I can see that Mrs K wrote back to Amex to contest this defence (and I think there was evidence showing Mrs K had raised at least some issues to the supplier at the time), I think there are a few critical things which weaken the chargeback. Namely:

- It is strongly contested whether Mrs K continued to have use of the apartment for the duration of her stay, noting Mrs K had said in some messages to B on her third day at the accommodation she would likely continue to use the apartment's kitchen facilities in any event.
- It appeared that Mrs K had already received a partial credit worth around 20% of the booking.

I say this noting the Amex chargeback rules allow a merchant to defend itself under this code where it can show services were used and not cancelled and where a correcting transaction has been made (such as a partial refund).

I note Mrs K has sent proof of payment for a hotel to show she didn't stay at the accommodation originally booked. But I don't think the evidence was clear that Mrs K fully vacated the original booking – her messages to B indicate she still continued to use the apartment which undermine her chargeback claim in light of the Amex rules requiring cancellation of the service.

So it is arguable Amex was acting fairly in discontinuing the chargeback at this stage as it didn't have a reasonable prospect of succeeding. Ultimately, had Amex continued the chargeback – I expect B would have continued to defend it on behalf of the supplier. So it would likely have had to be pushed to arbitration by the card scheme. And based on what I have said above – I can't fairly say it was more likely to have succeeded than not.

With all this in mind, I don't think that Amex's handling of the chargeback dispute has unfairly deprived Mrs K of a full refund here.

Section 75

Section 75 in certain circumstances allows Mrs K to hold Amex liable for a '*like claim*' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.

There are certain requirements that need to be met for Section 75 to apply – which relate to things like the cash price of the goods or the way payment was made. After considering these factors I think the requirements are in place for Mrs K to have a valid Section 75 claim against Amex.

Amex in handling the Section 75 claim has declined it on the basis that B has not done anything wrong and had simply been involved in booking it according to its terms and conditions (rather than being responsible for the provision of the service itself). Which on the face of it, would be fair and reasonable if under the relevant 'Debtor-Creditor-Supplier'

agreement Mrs K's claim against Amex was in respect of the actions of B rather than the supplier. However, B would arguably be responsible for any misrepresentation of the apartment on its website.

However, as our investigator has concluded. I don't consider there persuasive evidence to show that the apartment was misrepresented. The room is described as having an 'inner courtyard' view. Which is technically correct – as it is a space enclosed by walls and open to the sky. The view turned out not to be visually appealing or what Mrs K was expecting and I am sorry to hear that. But that does not mean that the room aspect has been misrepresented. And while the advertising refers to the room aspect as creating a 'relaxing environment' this is subjective and presumably refers to the fact that it does not face onto a road and is likely to be quieter from traffic and public noise in a city like the one Mrs K stayed in.

There is an argument that in respect of the Section 75 'Debtor-Creditor-Supplier' agreement Amex is instead liable for the actions of the supplier of the apartment here because of the way B positions itself contractually and operates akin to a payment facilitator. So in the interest of completeness, I have considered this – but it doesn't change the outcome in any event. I will briefly explain why.

A breach of contract can occur when a service is not provided with reasonable 'care and skill' (as implied by the Consumer Rights Act 2015). There is no specific definition of this in the legislation but it is taken to mean the level of skill and care that is acceptable in a particular industry.

I know a main point Mrs K has made is about actions of residents in other apartments – such as early morning noise. However, it is difficult to say this is a breach of contract by the supplier here – especially if some of those apartments are privately owned. However, if the air conditioner smelt bad and a blanket was dirty, I think this is likely a breach of contract.

I can see from photos of the blanket that it was soiled and dirty. And the supplier doesn't appear to dispute that. Although evidence shows an alternative was available once Mrs K raised this with the supplier. Smells are hard to evidence but from what Mrs K has said and noting the pictures of the dirty exterior air conditioning units I think it is quite likely that the air conditioning did not smell very good.

The evidence indicates Mrs K did likely raise at least some issues with the supplier at the time, but it is unclear what was discussed and when around potential solutions to the air conditioner smell. But prima facie I consider it arguable Mrs K is due some compensation to reflect this issue (in addition to the issue with the blanket).

However, even if it were accepted Mrs K is due compensation for these issues I note she has already received around 20% back as a credit from B. This isn't a science but seems broadly fair here noting that although Mrs K booked a hotel for the last two nights to sleep in evidence shows she did not check out of the apartment completely and continued to use it. She explained to B at the time this was due to strict dietary requirements. Mrs K has since clarified she didn't cook there and just used the fridge to store rather than prepare food. However, I don't think the matter is clear (especially noting the nature of the items Mrs K said she stored) and she did ultimately continue to utilise the facility in a way which prevented it from being re-let, so this should reflect fairly in any compensation.

In deciding what is fair I note Mrs K didn't indicate to B she couldn't use the credit - only that if B wasn't going to refund her in cash then she would like additional credit. For completeness, it is also worth noting here, that during the claim with Amex B subsequently offered Mrs K significant further credit in line with her original request to resolve matters

which would have taken the refund closer to half the value of the stay.

Overall, in the circumstances I don't think Amex acted incorrectly by not issuing Mrs K the full refund she asked it for. But I remind Mrs K that my role is to informally look at Amex's claim handling – and if she wishes to reject my findings and take the matter by more formal routes (such as court) she can consider this.

I note Mrs K has mentioned she thinks Amex's actions caused B to delete the messages on her customer account. However, it isn't clear if this was the case or what material impact this had on her claim in any event. I also note Mrs K has raised concerns regarding what she suspects is illegal video surveillance by the supplier to prove she continued to use the accommodation – however, I don't think that is material to the claims handling I have considered here. This is something Mrs K can report to the relevant authorities if she wishes.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 21 May 2026.

Mark Lancod
Ombudsman