

complaint

Mr F complains that American Express Services Europe Limited will not refund to him the money that he has claimed for a hotel booking. His complaint is made against American Express under section 75 of the Consumer Credit Act 1974.

background

Mr F booked a hotel room using a booking agent. He was contacted by the hotel shortly before his arrival and was told that it could not provide him with the room that he had booked but that it had arranged accommodation at a hotel nearby. Mr F stayed at that hotel but said that it was not as good as the hotel that he had booked, was not convenient for him as he had friends staying at the original hotel and that he was charged the room rate for the original hotel even though the replacement hotel charged a lower room rate. Mr F asked American Express to refund to him the difference between the amount that he was charged and the amount that he says he should have been charged. He was not satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. She concluded that a refund of the difference in price between the two hotels was reasonable and recommended that American Express should rework Mr F's account as if the transaction was €40 less. She also concluded that American Express had unnecessarily delayed Mr K's complaint and had not dealt with it properly. She recommended that it should pay Mr K £100 compensation for that.

American Express has asked for this complaint to be considered by an ombudsman. It says, in summary, that there is no debtor-creditor-supplier relationship relating to any claim for breach of contract or misrepresentation by the original hotel. It also says that there is not enough evidence to show that Mr F was entitled to or would have been charged the lower room rate to which he has referred and it says it has handled Mr F's complaint correctly and has acted in good faith throughout.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

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 has been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr F's complaint about American Express under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the hotel and that there is a direct relationship between the debtor, the creditor and the supplier.

There is no such relationship relating to the original hotel because Mr F (as the debtor) did not make a payment to that hotel and American Express (as the creditor) therefore had no direct relationship with the hotel (which would have been the supplier). The required relationship does exist in relation to the replacement hotel because Mr F (the debtor) has made a payment using a credit card issued to him by American Express (the creditor) to pay for his stay at the hotel (the supplier).

However, I am not persuaded that there has been a breach of contract or misrepresentation by the replacement hotel. It has provided a room to Mr F and he has paid for that room. He

says that he should only have been charged a lower rate than was actually charged by that hotel. Although he has provided evidence to show that the replacement hotel did offer a lower rate, he has provided no evidence to show that the lower rate was applicable to the room in which he stayed, for the period of his stay or in the circumstances of his stay. Nor am I persuaded that American Express is liable for any comment made by the original hotel about the quality of the replacement hotel: firstly, I am not persuaded that the comments of the original hotel about the quality of the replacement hotel are enough to constitute a misrepresentation; and secondly, even if the original hotel did misrepresent the replacement hotel, American Express would only be liable for that misrepresentation under section 75 and – as I have already said – there is no debtor-creditor-supplier relationship between American Express and the original hotel which was the hotel that made the alleged misrepresentation.

I therefore do not consider that Mr F's claim against American Express under section 75 should succeed and I therefore do not consider that it would be fair or reasonable for me to require it to refund to him the €40 that he has claimed.

Mr F first complained to American Express at the beginning of February 2014 and asked for a refund of the difference in price between the two hotels. American Express made a chargeback claim for the full amount paid by Mr F and did not send its final response to him until more than six months later. I consider that it did not properly address his complaint and that it should have responded to him sooner than it did. That will have caused Mr F to suffer distress and inconvenience and I consider that it would be fair and reasonable for it to pay him £100 to compensate him for that distress and inconvenience.

my final decision

For these reasons, my decision is that I uphold Mr F's complaint in part. In full and final settlement of it, I order American Express Services Europe Limited to pay £100 compensation to Mr F.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F to accept or reject my decision before 11 March 2015.

Jarrod Hastings
ombudsman