

The complaint

Mr D says American Express Services Europe Limited (AESEL) were unreasonable to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint Mr D, but I don't think AESEL have been unreasonable here. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong, and the payment was made with a credit card it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract. I think there has been a misrepresentation here as Mr D booked an ocean view and there wasn't one. The photograph's Mr D has provided demonstrate that was the case, and I think the hotels actions when providing a discount and a change of rooms suggest that was the case too. I think the provision of an ocean view room was likely to have materially influenced Mr D to enter into the contract as I think it's likely he would

have paid more for that than for a standard room, so he actively chose to pay a higher price for that facility.

When there's a misrepresentation we would usually expect the business to put the consumer back in the position they would have been in had it not been for that misrepresentation. But here that's not possible as Mr D has already had his holiday and had the benefit of the facilities and accommodation at the hotel. In those circumstances, an alternative remedy would need to be considered. The hotel offered a discount of €45 per night and that represented a discount of about 16% on the room. Mr D was still able to benefit from the facilities in the room and those available in the hotel. He was also given a change of room and while I note he was upset the bed wasn't a queen bed, but two singles joined together, it was clear he preferred to stay in that room rather than the one he'd originally been allocated, so I don't think he was unduly inconvenienced by that. All told, I think the hotel's actions provided reasonable redress in the circumstances and I don't think AESEL were therefore unreasonable to reject Mr D's section 75 claim.

My final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 September 2023.

Phillip McMahon
Ombudsman