

The complaint

Mr L says American Express Services Europe Limited, has treated him unfairly in relation to a transaction on his credit card which paid for accommodation.

What happened

In April 2022 Mr L used his American Express Services Europe Limited credit card (Amex for short) to make payment for eleven nights of accommodation booked for later in April 2022 abroad. He paid just over £340 for these eleven nights and stayed the entire duration of the booking at the Hotel (the “Hotel”) which he booked through a Website (the “Website”).

Mr L says the room was extremely noisy and he couldn’t sleep. He says he talked to the Hotel and it said all the rooms were the same. But he said the room wasn’t as described because the advertising said they were “*soundproofed rooms*”. So having not been successful in complaining to the Hotel, he then complained to Amex to get his money back under Chargeback or Section 75 of the Consumer Credit Act 1974 (CCA).

Amex considered what happened. It raised a chargeback which was defended by the Website. It also argued that the required relationship (Debtor, Creditor, Supplier) set out in the CCA wasn’t in place. So Amex concluded it didn’t need to do more.

Mr L wasn’t happy with Amex position, so he brought him complaint to this service. Our Investigator felt Amex didn’t have to do anymore. And Mr L remained unhappy and so this complaint came to me for a decision.

I issued a provisional decision at the beginning of July 2023 saying Amex didn’t have to do more and inviting the parties to respond. Amex responded saying it had nothing further to add. No response was received by this service from Mr L before the deadline set out had passed.

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.

As neither party has chosen to contend my thinking in my provisional decision I see no persuasive reason to depart from it. Accordingly for this and the reasons set out in my provisional decision (below) Mr L’s complaint does not succeed.

As Mr L used his credit card if certain criteria are met, Amex can have certain responsibilities to Mr L which arise from the relevant law, specifically, Section 75 of the Consumer Credit Act 1974 (‘the CCA’). In summary, in certain circumstances, Section 75 has the effect of allowing Mr L to hold Amex liable for breaches of contract, or misrepresentations made in relation to the agreement made. In essence Amex can be held responsible for a ‘like claim’ as that which Mr L would have against the Website.

Mr L's Amex credit card is also part of a card scheme. And this scheme has rules which includes giving Amex a route for card transactions to be disputed with Merchants such as the Website, namely through the Chargeback process. This isn't a right for consumers, and it is possible that chargeback could be ultimately unsuccessful without Amex having done anything wrong.

could Amex challenge the transaction through a Chargeback?

Mr L has been clear that he used his card here and doesn't dispute the amount charged, when it was charged, or whether it was applied correctly to his account. So I don't think Amex could've challenged the payment on the basis Mr L didn't properly authorise the transaction, given what I've just set out.

Amex is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the Chargeback process or not. If it does go through the process, then it must do so properly. And it can fairly decide to not proceed at any stage if it thinks there is no longer a reasonable prospect of success.

Having considered Mr L's bank statement which covered the transaction in question it's clear Mr L paid the Website rather than the Hotel. And when Amex raised the chargeback it went to the Website, the merchant of record, not the Hotel. I've considered the Website's terms and conditions which make clear the Website acts as a marketplace introducing its customers to Hotel services and aiding in booking those services. And it makes clear in its terms that Mr L agreed to that:

"we and our Partners will not be liable for:

- (Not relevant in this case)
- for the acts, errors, omissions, representations, warranties or negligence of any such Travel Providers (the Hotel)".

The Hotel description provided by the Hotel to the Website is covered under this exclusion in terms of its 'representations'. The terms go on to say:

"The Travel Providers (the Hotel) provide us with information describing the Travel Services (the Hotel's amenities, rooms etc). This information includes Travel Service details, photos, rates and the relevant Rules and Restrictions, etc. We display this information through our Service. The Travel Providers are responsible for ensuring that such information is accurate, complete and up to date".

In essence the terms and conditions Mr L agreed to, makes clear that he cannot hold the Website liable for any representations or information provided by the Hotel to the Website. Amex raised a chargeback, which the Website defended. In its response, the Website said it contacted the Hotel and the Hotel confirmed that Mr L stayed for the full duration of his booking. The Website also said that the Hotel had told it that Mr L didn't complain to the Hotel during his stay. The Website also points out that Mr L never contacted it during his stay and thus the Website didn't have opportunity to deal with the matter. Amex considered this chargeback response alongside what Mr L had said. And decided to no longer continue with the chargeback process.

I've considered what happened here. And I note that the Website cannot be held liable under the contract for what the Hotel says about its amenities including comments such as that the rooms are "soundproofed". So considering the terms and conditions present and the response received to the chargeback I'm not persuaded Mr L has lost out because of the chargeback having not been taken further. So to my mind Mr L didn't lose out because Amex didn't continue with chargeback as it wouldn't have been successful anyway.

Section 75

There are some requirements set out in the CCA which have to be met before deciding whether there was a breach of contract or misrepresentation here. Amex has said it's not persuaded that the required Debtor, Creditor, Supplier relationship was in place. But I'm not persuaded by Amex's interpretation of the legal position here as I'll explain later. Although I should add that this isn't at the crux of the matter for the reasons I'll now explain.

For Amex to be held accountable under a 'like claim' under s75 it has to be shown that there was a breach the contract or a material misrepresentation that led to loss.

Mr L paid the Website for this accommodation. The contract he agreed to with the Website makes clear that the terms of the Hotel are incorporated within the contract he agreed with the Website. (These terms define 'Travel Providers' as those providing services to the Websites customers such as Hotels.)

"As well as these Terms, other terms and conditions provided by Travel Providers (such as a property's terms and conditions) also apply to your booking ("Rules and Restrictions")"

In essence the Hotel's rules and restrictions are incorporated into the agreement Mr L had with the Website. And accordingly in relation to this particular Website it is clear that Mr L only has one contract in place and that is with the Website and that incorporates within its rules any specific additional rules that the Hotel requires.

So in short the contract Mr L agreed for this accommodation includes a term making clear Mr L can't hold the Website responsible for the representations made about the Hotel on the Website. Accordingly even if I was persuaded that the room was advertised as "soundproofed" and that that meant the room was always totally silent and advertised as such (which I'm not), Mr L had already agreed to terms prior to utilising the Hotel which meant the Website couldn't be held responsible for any resulting loss. So it is my decision that this complaint should be unsuccessful for this reason alone. And due to the Websites' terms and conditions including those of the Hotel, I'm not persuaded by Amex's arguments here about the Debtor Creditor Supplier agreement not being in place, although for the above and following reasons this issue isn't at the crux of the matter here.

I appreciate Mr L will not be pleased with this rationale, but Amex can only be held responsible under a 'like claim' to that Mr L would have legally against the Website. And he's agreed to the above terms in entering the contract so any direct claim against the Website would fail for this reason. So I'm not persuaded Amex has treated him unfairly by not refunding him, albeit for different reasons than those I've given.

For the sake of completeness I should add that I'm not persuaded by Mr L's arguments regarding what "soundproofed" means. An ordinary reading of the word is that there has been some degree of work done at some point to reduce the impact of external noise on those inside of such a "soundproofed room". I'm not persuaded that it means Mr L is guaranteed total silence or freedom from all external noise throughout his stay.

But even if I thought Mr L's arguments as to the meaning of the term here had some merit, I'd be applying the terms of the Consumer Rights Act 2015 to the service being provided which are required to be provided with '*reasonable care and skill*'. The Act doesn't define what this means intentionally. But in the accompanying explanatory notes regarding Section 49 of the Consumer Rights Act 2015 subsection 244 notes "*The price paid for the service can also be a factor in determining the level of care and skill that needs to be exercised in order to be reasonable.*"

Mr L paid just over £340 for eleven nights of accommodation for one person. Even considering that the Hotel was abroad and pricing structures are different in countries such as the one here, I'm of the view that this was at the lower end of the market price for Hotel rooms in the region for such a length of stay. Accordingly I think bearing in mind the price here it would be reasonable to have some noise levels here that had they been occurring in a mid-range or expensive hotels would not have been reasonable. But as I've explained earlier, Mr L's complaint falls at the first hurdle, he accepted terms which meant the Website and hence Amex couldn't be held liable for representations made by the Hotel which were repeated on the Website.

Mr L describes the room as being not 'as described'. Here Mr L is referring to the legislation regarding goods in the Consumer Rights Act. However the provision of hotel accommodation and services doesn't meet the definition of 'good' under the legislation. Accordingly the provision around services applies in this case as I've described.

Lastly I should add that Mr L has asked for a full refund here. However he stayed in the room for the entirety of his stay. So even if Mr L's arguments were persuasive, any remedy would have to consider that he used his accommodation booking entirely. Accordingly any remedy for noise would be notional to negligible considering the substantial benefit he's had from the performance of the contract-namely occupying the accommodation for eleven nights.

Amex did pay Mr L £100 for the customer service it provided. I've considered what happened here and I think that is a fair solution to that particular issue.

Mr L has pointed to Amex's comments about not accepting certain types of evidence. Amex has given reasons for this including its cyber security. The fact remains Amex is liable to 'like claims' and such types of evidence are considered in courts. However in this case Mr L has described in his arguments the issue with the room to Amex, so I'm not persuaded this issue has caused Mr L any loss other than understandable irritation. To my mind such irritation is covered by the amount paid by Amex already to reflect the customer service provided as it is part of the overall customer service he received from it.

For the above reasons I'm satisfied Mr L's complaint should not succeed. Amex has nothing further to do in this regard.

My final decision

I do not uphold this complaint about American Express Services Europe Limited. It has nothing further to do in regard of Mr L's complaint here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 August 2023.

Rod Glyn-Thomas
Ombudsman