

The complaint

Miss G complains that American Express Services Europe Limited declined to refund 15 payments which were made from her credit card account to a hotel.

What happened

In early 2018 Miss G stayed in a hotel overseas for 33 nights. She says she had pre-authorised her Visa debit card for all payments, but during the last few days of her stay, 15 payments were charged to her American Express credit card instead. In sterling, those payments add up to £14,829.64. Only one payment was made with her Visa card. Her complaint arises from the fact that the wrong card was charged 15 times.

Miss G originally complained that those payments had not been authorised by her. In July 2019 American Express rejected that complaint, on the ground that there was no evidence of fraud. It sent her a final response letter in which it told her she had six months in which to complain about that decision to the Financial Ombudsman Service. Over two years later, in August 2021, Miss G brought a complaint about that matter to our service (and told us she had not received that letter), but one of our ombudsmen decided that our service did not have jurisdiction to consider that complaint. So I will not be considering that aspect here.

Next, in March 2023, Miss G brought a claim under section 75 of the Consumer Credit Act 1974 ("section 75"). This final decision is about how American Express dealt with that claim.

Miss G's section 75 claim was originally brought on the basis that the hotel had breached its contract by charging the wrong card. In support of that claim, she pointed out that the hotel had paid a small refund to her Visa debit card. But American Express did not agree that only charging that card had been a term of her contract with her hotel, nor had Miss G shown that she had suffered any financial loss as a result of using another card (since she had still been liable for the sums paid), and so it rejected Miss G's claim. It also said the refund did not prove that she had never authorised the hotel to charge her American Express card. And it pointed out that she had given her credit card details to the hotel as a guarantee for her stay.

In September 2023, Miss G brought this complaint to our service. She added a second ground to her section 75 claim: she said that she had booked a standard room, but on arrival at reception the hotel had verbally agreed to upgrade her to a superior room for free, for the whole stay. But then she had been charged at the full upgraded room rate of £519 a night, instead of the original and agreed rate of £350 a night. Alternatively, this had been a misrepresentation by the hotel. She also sought to resurrect her complaint about the payments being unauthorised.

Our investigator did not uphold this complaint. He reiterated that an ombudsman had already ruled that the issue as to whether the payments had been unauthorised was out of our jurisdiction. And he decided that American Express had done nothing wrong in respect of the section 75 claim, because there was no evidence that there had been a breach of contract or a misrepresentation by the hotel. He said that one payment had been made to the hotel towards the end of her stay using the Visa debit card, and as Miss G had overpaid her total hotel bill by a modest amount, the overpayment had been refunded to that card. He didn't

think that proved that there had been a contractual term to only charge payments to that card. And as for the new ground for the claim, he said that Miss G had never raised that issue with American Express, so it could hardly have been expected to uphold her claim on that ground. But even if she had raised it then, she had still not provided American Express or the investigator with any evidence to prove that she had originally booked a standard room, or that she had been promised a free upgrade. He didn't think Miss G's own testimony was sufficient evidence for him to say that American Express should have upheld her claim.

Miss G asked for an ombudsman to review her complaint. She repeated that she had not authorised the payments.

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.

Having done so, I do not uphold it, for broadly the same reasons as the investigator.

As I've said, I am not going to consider the allegation that the payments were not authorised, as that complaint does not fall within my jurisdiction.

I will deal first with the section 75 claim that was actually raised with American Express: the allegation that there was a contractual term to charge all payments to the Visa debit card, and not to the American Express credit card. I'm afraid that I find that claim unconvincing, for the following reasons.

Firstly, there is no evidence that such a term was ever agreed as part of Miss G's contract with the hotel, other than her own assertion to that effect, and I don't think that American Express was obliged to take her at her word without asking to see corroborative evidence.

Secondly, such a term would be inconsistent with the hotel having asked for, and Miss G having provided, her American Express credit card details. And if the term was that the credit card would only be charged under certain conditions (such as if a Visa debit card payment did not go through), then there is no evidence of what those conditions were, or that those conditions had not been met. On the balance of probabilities, I don't accept that such a term was agreed.

It follows that there was no breach of such a term. But even if there had been, I cannot see that Miss G incurred any financial loss as a result. She was liable for the hotel bill, whichever card she used to make the payments. The amount charged to either card would have been the same. And she could have avoided paying interest on her credit card by paying it off with the money in her current account which she had intended to use to make the Visa debit card payments. So I'm satisfied that a section 75 claim would never have succeeded on this ground.

The new ground on which Miss G sought to argue that she had had a valid section 75 claim – that the hotel had reneged on its promise to only charge her for a standard room – was never raised with American Express, so I certainly can't uphold her complaint about the outcome of her claim on that basis. American Express only has to deal with the claim which is brought before it, not a claim that could have been raised but wasn't. But as the limitation period for bringing a section 75 claim has not yet expired, I will still examine the evidence for this potential claim.

There is no evidence of what kind of room Miss G had originally booked or how much it would cost; nor is there evidence showing that the hotel upgraded her room, or that it said it

would upgrade it for free. Nor does it appear that Miss G challenged the hotel about the bill at the time, which I would have expected someone to do if they really thought they were supposed to be paying £169 less per night than they were charged at the end of their stay; over 33 nights, the difference comes to £5,577. The hotel bill is clearly itemised and it shows the cost of each night. And as I've said, Miss G did not raise this point with American Express, either when she originally complained about unauthorised transactions or in her section 75 claim. That suggests to me that, five and a half years after her stay, she had misrecalled what happened when she checked in. So I am not persuaded that a viable section 75 claim has been established.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 7 February 2024. But this decision is our service's final word on this matter, and it brings our involvement in this complaint to an end.

Richard Wood
Ombudsman