

The complaint

Mr S is unhappy that American Express Services Europe Limited rejected his claim under section 75 of the Consumer Credit Act 1975.

What happened

In January 2019 Mr S purchased a suite from a retailer and used his Amex card to pay a deposit of £366.40.

When the item was delivered Mr S discovered that after sitting on it, an imprint was left which was of a different colour to the original fabric. This left patches on the fabric, making it look worn.

Mr S reported the issue to the retailer, who arranged for someone to inspect the suite. Mr S says the inspector verbally confirmed that there was an issue with the fabric but said it would be difficult to get the supplier to put things right. As a gesture of goodwill, the supplier offered to steam the suite, but Mr S didn't think this would resolve the issue and declined.

Mr S wasn't able to resolve things with the supplier and it later went into administration, so Mr S raised a section 75 claim with Amex.

Amex asked Mr S to obtain an independent inspection report. Mr S did so and provided the report to Amex. The report stated that there was an inherent fault with the fabric which caused marking and discolouration.

Amex reviewed the report but rejected the section 75 claim. It said there was no evidence that the supplier had accepted responsibility for the issues with the fabric or that it intended to issue a refund to Mr S. Amex also said that the supplier's terms and conditions said that it wasn't responsible for characteristics or variations of natural materials. Amex said that because Mr S had been provided with a swatch of the fabric before he purchased the suite, he had the opportunity to make an informed decision as to the fabric's suitability for his furniture. Amex also said that even if the fabric did have a defect, Mr S had refused the remedial action offered by the supplier.

Mr S wasn't happy with the response and brought his complaint to this service.

Our investigator upheld the complaint. She was persuaded that the fabric had been misrepresented, because its characteristics hadn't been brought to Mr S's attention. She also thought that the fabric might not have been of satisfactory quality when supplied. The investigator said that Amex should refund Mr S the cost of the sofas and arrange for the sofa to be collected at no cost to Mr S.

Amex didn't agree. It said that based on Mr S's comments about the first inspection arranged by the retailer, no inherent faults had been found. It said the offer to steam the sofa was not made in relation to a finding that there was a fault with the fabric. It said that although the second inspection stated that there was an inherent fault, no explanation had been provided as to the cause of the fault, and there was no evidence that the fabric was from a faulty

batch. Amex said that because the second inspection report was more than two years after the point of supply, it was unable to say whether the issues were due to an inherent fault or wear and tear. It also said that the wording provided with the fabric swatch contained a warning that there could be variations in colour and slubbing.

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.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr S's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Amex's response to the claim under section 75 wasn't fair or reasonable.

The relevant law says that goods must be of satisfactory quality and fit for purpose at the point of supply. If this isn't the case, then a breach of contract can be said to have occurred. A misrepresentation is an untrue statement of fact which induces a consumer to enter into an agreement.

There have been two inspections of the suite. The report from the first inspection isn't available, so I'm unable to comment on it. It's not in dispute that, following the first inspection, the retailer offered to steam the fabric. I'm unable to say whether the first inspection identified a fault. Mr S has said that the inspector told him that there was an issue with the fabric. Amex has said that there's no proof of that, and no evidence that the retailer accepted responsibility for the issues. The absence of the report means that I can't attach very much weight to either party's account of the first inspection.

The second inspection found that the fabric had an inherent fault. It stated that a textured fabric has a correct direction of pile which, if brushed in the incorrect direction, should brush back. The inspector stated that the fabric on Mr S's sofa didn't return to its natural pile direction, and that the act of sitting on it or touching the fabric left a permanent impression and mark. The report includes photos showing the marking on the fabric.

Based on the findings of the second inspection report, I'm persuaded that there was an inherent fault with the fabric. I think it's more likely than not that the issue was present at the point of supply because Mr S reported it to the retailer straightaway. I haven't seen anything to suggest that the issue was caused by wear and tear.

I've taken account of all of the points made by Amex. I won't comment on every one but only those which are most relevant to my decision.

Amex has said that there's no evidence to show that the retailer accepted responsibility for the issues with the fabric. I don't think this is a relevant point, because it isn't a requirement of section 75 that a supplier accepts responsibility.

Amex has referred to the retailer's terms and conditions which say that every effort is taken to ensure that the products supplied correspond as closely as possible to samples, but that they may vary due to unique characteristics or variations of natural materials. Amex has said that the absence of any documents describing the fabric means it cannot be determined whether Mr S was advised of any characteristics of the material.

There's no evidence that the issues with the fabric are a characteristic. The second inspection report is very clear that there's an inherent fault with the fabric, because it doesn't

return to its natural pile direction as it should. I'm persuaded that this goes to the satisfactory quality and fitness for purpose of the material, as opposed to characteristics of the fabric. And based on the findings of the report, I don't think the suite was of satisfactory quality because of the inherent fault with the fabric.

Amex has said that Because Mr S had a sample of the fabric, he had the opportunity to make an informed decision as to its suitability for his suite. I've looked at the swatch and I've also looked at the wording which accompanied it. It says that the fabric might exhibit minor shading variations and slubbing.

I've thought about this but having regard to the inspection report and the photos, I don't think the fault with the material can be described as minor. The information provided with the swatch doesn't suggest a level of marking to the extent that Mr S has experienced. I don't think a reasonable person, when provided with the swatch and the wording, would expect to experience issues as significant as those highlighted in the photos of Mr S's suite. And I don't think it's fair to say that Mr S should have known that the fabric was going to change in colour and texture simply from looking at the swatch. The size of the swatch wasn't big enough for a person to sit on, so there was no way Mr S could've been aware of any potential changes in the fabric caused by its use as a covering for a sofa.

Amex has said that because Mr S didn't accept the retailers offer to steam the sofa, it isn't possible to say whether this would've remedied the issue. I haven't seen any evidence to suggest that steaming the fabric would resolve the issue – and in the fact of the inspection report which states that the fabric has an inherent fault, I think its unlikely that steaming the fabric would've made any difference.

Taking everything into account, I'm persuaded that there was an inherent fault with the fabric. This means that the suite wasn't of satisfactory quality at the point of supply, which is a breach of contract.

Putting things right

To put things right, Amex should refund Mr S the total cost of the suite and arrange to collect the suite at no cost to him. Alternatively, if Mr S wants to dispose of the suite himself, Amex must refund Mr S any costs of disposal.

My final decision

My final decision is that I uphold the complaint. American Express Services Europe Limited must take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 May 2022.

Emma Davy
Ombudsman