

The complaint

Mr W complains that American Express Services Europe Limited rejected his claim under section 75 Consumer Credit Act 1974 in respect of faulty garden furniture.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute so instead I'll focus on giving the 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

It is agreed that the furniture has a manufacturing fault; this has been established by an independent report. That means Mr W is entitled to redress. The remaining issue is how this is achieved.

Our investigator has suggested that the purchase price be refunded less a deduction of £311 which reflects the use he had over two years and 10 months. This has been calculated at 10% per year. Mr W doesn't agree and has explained that a new version of the furniture would cost him £1,699 and the proposed redress would leave him out of pocket.

The manufacturer has offered to supply a replacement set, but I gather this is not as large as the original and so Mr W has declined that offer. My role is to consider how American Express has handled the claim and I have no remit to consider the actions of the manufacturer.

The furniture has been used and so requiring American Express to replace it with a like for like set is not practical. I consider it only right that Mr W be refunded the cost of the furniture, but it is also right that a deduction be made for use. I appreciate that will mean he will not receive sufficient funds to buy a replacement, but consumer law does not allow for a new for

old style of recompense. The aim is to put Mr W back in the position that he would have been had he not made the purchase, not to allow him to fund a similar replacement.

Our investigator has carried out research into the life expectancy of the furniture and I consider the reduction she has suggested is fair.

I have given consideration to compensation for any distress and inconvenience Mr W has suffered due to the actions of American Express, but I don't consider it has been the cause of such matters. It asked him for a report and only rejected his claim when one wasn't forthcoming. When it was given the evidence, it accepted that the furniture was faulty.

I appreciate Mr W will be disappointed with my decision, but I cannot recommend the compensation he is seeking

Putting things right

The business should allow Mr W to reject the furniture.

My final decision

My final decision is that I uphold this complaint and I direct American Express Services Europe Limited to:

- collect the furniture at no cost to Mr W,
- reconstruct Mr W's account as if the transaction (for the furniture costing £1,099) never took place,
- if, after reconstructing the account, Mr W is out of pocket at any time it should pay Mr W 8% annual simple interest on this from the date he was out of pocket until he gets it back*.
- refund Mr W the cost he incurred in getting the independent inspection report - £48 - carried out upon receipt of an invoice,
- pay Mr W 8% annual simple interest on the sum of £48 from the date of payment by Mr W to the date of settlement*.

*American Express is required by HM Revenue and Customs to deduct tax from any interest paid. Should Mr W request it, American Express should provide him with a certificate showing how much tax has been taken off so that, if appropriate, he can reclaim it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 May 2022.

Ivor Graham
Ombudsman