

The complaint

Ms R complains that American Express Services Europe Limited declined her claim for a refund of money she had spent on defective building work, under section 75 of the Consumer Credit Act 1974.

What happened

In September 2021 Ms R hired a contractor to do some building work on her home. She paid £1,250 on her American Express credit card, and made further payments totalling £3,900 by bank transfers. Altogether she paid £5,150 before firing the contractor for his shoddy work.

Ms R asked American Express for a refund under section 75. She provided a report from a chartered surveyor as evidence that the work had not been satisfactory, and to prove how much it would cost to remedy it.

American Express asked Ms R for the contractor's terms and conditions, which she didn't have. For that reason, American Express said it was not possible for it to ascertain whether the contractor had breached its contract with her, or had misrepresented its services. It also said that section 75 didn't apply anyway, because her credit card payment had been made via a third party, Sumup.

Ms R brought this complaint to our service. One of our investigators upheld it. He didn't think it mattered that the payment had been made via a payment facilitator, as both Sumup and the contractor were members of the same card scheme. He concluded that section 75 still applied to the transaction. He pointed out that it was a statutory implied term of Ms R's contract that the contractor would carry out the agreed work with reasonable care and skill. He was satisfied that this term had been breached. He recommended that American Express pay Ms R £8,458, and also pay for the cost of the independent report if Ms R provided it with the author's invoice.

Ms R accepted that opinion, although she later added that another builder had identified some extra work that needed doing (screeding the concrete foundation for the garden path, which she said the original contractor had attempted to do). She supplied an invoice for that work, showing the cost to be £320.

However, American Express did not accept the investigator's opinion, for the same reasons why it had originally rejected Ms R's claim. It asked for an ombudsman's 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 do not think it matters that Ms R has not provided the contractor's terms and conditions. The contractual term she has alleged has been breached is not an express term, but an implied term under the Consumer Rights Act 2015. Section 49 of the Act requires a service

to be performed with reasonable care and skill. The surveyor's report makes it clear that this was not done.

I have seen the contractor's quote and invoice for the work, and evidence that Ms R paid them. So I'm satisfied that she provided enough evidence for American Express to be sure that the work was done by that contractor, that she paid for it, and that the work was not performed properly.

Although Ms R's card payment was made to a third party, Sumup's sole involvement was to pass that payment on to the contractor as a payment facilitator. As Sumup, the contractor and American Express Services Europe Limited were members of the same card scheme, I think this was an "arrangement" within the meaning of section 12(b) of the 1974 Act. So I'm satisfied that this transaction was financed by a debtor-creditor-supplier agreement, and that accordingly section 75 of the 1974 Act applies to Ms R's purchase. American Express is therefore liable to her for the contractor's breach of the implied term.

I agree with how the investigator calculated the compensation, and his working has not been challenged by either party. I considered adding the £320 for re-screeding the garden path, but as the surveyor's report does not state that this had already been attempted by the original contractor, I don't think there is enough evidence to support this part of Ms R's claim.

My final decision

My decision is that I uphold this complaint. I order American Express Services Europe Limited to pay Ms R £8,458. I also order it to pay Ms R another £480 for the surveyor's report, if and only if she provides the surveyor's invoice and proof that she made that payment by 1 June 2023.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 1 June 2023.

Richard Wood
Ombudsman