

The complaint

Mr R complains that American Express Services Europe Limited (“American Express”) hasn’t refunded him the cost of a sofa that he purchased.

What happened

In August 2023, Mr R used his American Express credit card to purchase an ex-display sofa from a supplier I’ll call “B”. The cost of the purchase was £1,600 and this included the price of the sofa, its assembly and delivery, along with some accessories and a fabric cleaner.

Mr R says he asked the salesman in the shop whether the sofa had any defects and they confirmed there weren’t any. The sofa was delivered a few weeks later and Mr R noticed that the base of it was stained. He checked each cushion and saw there was a broken fastener and a missing tuft on one cushion.

Mr R contacted B about this and mentioned that the delivery person scuffed one of his walls. B sent someone round to clean the sofa and gave Mr R a sponge to clean his wall. They didn’t though offer to cover the cost of repairing the fastener or the tuft as they said the sofa was ‘sold as seen’.

Mr R then asked American Express to help him reclaim the money he’d paid. They raised a chargeback, but this was defended by B and American Express decided not to take the chargeback any further. Mr R complained about this, but American Express said B had given them supporting documents to sufficiently defend the claim and that B’s terms and conditions on ex-display models set out that Mr R wasn’t eligible to claim a refund or return the sofa.

Mr R wasn’t happy and referred his complaint to our service. One of our investigators looked into what happened but didn’t think American Express needed to do anything. He said it was reasonable for American Express not to take the chargeback any further as B had sent them terms and conditions showing that Mr R wasn’t entitled to a refund, images showing the sofa was as described, and a signed satisfaction note from him. The investigator noted that American Express hadn’t considered whether Mr R had a valid claim under Section 75 of the Consumer Credit Act 1974. But he felt that B had fulfilled their contract with Mr R, so the claim wouldn’t have succeeded.

Mr R didn’t agree. He said B’s terms and conditions weren’t given to him until after he’d bought the sofa, so he hadn’t agreed to them. Mr R also said the defects weren’t disclosed to him even though he’d specifically queried whether there were any. And he said that he signed the satisfaction note noting on it that the sofa was soiled/stained.

As the matter remains unresolved, Mr R’s complaint has been passed to me to decide.

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.

There are typically two avenues here that American Express as the provider of credit could have considered.

Chargeback

In certain circumstances, the chargeback process provides a way for a bank to ask for a payment made to be refunded. Where applicable, the bank raises a dispute with the merchant and effectively asks for the payment to be returned to the customer. While it's good practice for a bank to try a chargeback where the rights exists and there is some prospect of success, the circumstances of a dispute means a refund isn't guaranteed. When a supplier defends a chargeback, this can lead to further representations by the cardholder's bank, if they consider the supplier has raised a weak or invalid defence. The process then allows for representations to be made if the parties still don't agree, and for the card scheme to decide who keeps the money.

Here, American Express raised a chargeback for Mr R under the reason code 'not as described or defective merchandise', but it was defended by B on the basis that Mr R saw the sofa in-store and would have seen there was a tuft missing and that their terms and conditions didn't allow for ex-display models to be refunded or replaced. And B said they arranged for the sofa to be cleaned.

I note that Mr R says that he wasn't presented with the terms and conditions before the purchase. However, the chargeback rules didn't permit this as a reason for American Express to further challenge B's defence. That would have been different had the terms allowed Mr R to claim a refund or a replacement. But I've not seen that B's terms permitted that. I also think that, given Mr R looked at the sofa in-store before he purchased it, and given that B had arranged to clean the marked areas of the sofa, American Express felt the chargeback wouldn't have been successful had it been pursued further. And I don't think they acted unfairly by taking that stance.

Section 75 of the Consumer Credit Act 1974

When something goes wrong with goods or services and the payment was made, in part or in whole, with certain types of credit, it might be possible to make a s.75 claim. This says that in certain circumstances, the borrower under the credit agreement can make a like claim against the credit provider as they can against the supplier, if there's been a breach of contract or misrepresentation.

The Consumer Rights Act 2015 implies certain terms into a contract. In this case it requires the sofa to be of satisfactory quality when supplied to Mr R. This is another avenue that American Express could, and in my view, should have explored to determine whether Mr R should receive his money back.

It should be remembered though that the sofa wasn't new and wasn't marketed as such. An ex-display model such as this will likely have had some wear and tear and that would have been reflected in its sale price. I agree that there appears to have been a fastener missing and a stain of some kind evident. But I don't think this rendered the sofa as being of unsatisfactory quality. I gather the stain wasn't visible when the sofa had cushions in place, and I don't think a fastener missing from a set of six meant that the cushion couldn't be properly fixed in place. I also note that Mr R saw the sofa in-store and had the opportunity to see that there was a tuft missing and I'm not seen sufficient evidence that this was in place in-store but was then missing when it was delivered.

I appreciate that Mr R says that the salesperson said the sofa had no defects, however I can't be certain that this was said. Overall, I'm not persuaded that B breached the contract with him or misrepresented anything about the sofa. So, I don't think it's likely that a s.75 claim would have been successful if American Express had considered this.

My final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 December 2024.

Daniel Picken
Ombudsman