

The complaint

Miss A complains that American Express Services Europe Limited (AESEL) or “Amex” didn’t treat her fairly when she requested a refund of costs she paid in part with her credit card.

What happened

Miss A used her Amex credit card to pay part of the cost of having a resin driveway and patio installed at her home. The total cost of the work came to £19,800 and Miss A paid £7,920 using her Amex card in July 2023. Miss A used other cards to pay the remainder, with the final payment for the completed work made in early September.

A few months after the work was done, Miss A contacted the installer to say that she was unhappy with the work because weeds had started to appear on her driveway. Miss A said she’d been told that the resin driveway would be maintenance free, and that weeds would not grow through it. Miss A said she would not have chosen to have such a driveway installed if it meant she would still need to deal with weeds.

The installer said in response to Miss A’s complaint that while the resin driveway was weed-resistant and required little maintenance, it still needed some level of attention. The installer advised Miss A that she would need to maintain the driveway with regular jet washing and might need to deal with weeds from airborne seeds growing on top of the resin.

In December, Miss A asked Amex for help as she couldn’t resolve her complaint with the installer to her satisfaction. She asked Amex for a refund under Section 75 of the Consumer Credit Act 1974. This Act offers protection to consumers by making a lender jointly and severally responsible for any misrepresentation or breach of contract for goods paid fully or partly with credit. A successful claim might result in Amex refunding the full amount Miss A paid for the driveway and patio.

Amex rejected Miss A’s claim for a refund under Section 75. It said that it didn’t find that the installer had breached its contract with her for the work nor did it misrepresent the work to her.

I haven’t seen evidence that Amex considered whether Miss A could be refunded the £7,920 she paid with her Amex card by making a chargeback request. Card schemes (companies that run the card networks, Amex itself in this case) can consider a refund on behalf of their customer if there’s a problem with the goods or services they’ve paid for.

Our investigator looked into Miss A’s complaint but didn’t recommend that Amex take further action. They found that Amex hadn’t treated Miss A unfairly by not providing a refund to her under Section 75 or by not considering her request under the chargeback process.

Miss A disagreed with this recommendation and asked for her complaint to come to an ombudsman to decide and it has come to me.

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've also borne in mind relevant legislation including Section 75 of the Consumer Credit Act 1974 (CCA) and the Consumer Rights Act 2015 which gives consumers rights when they have problems with the goods or services they've bought.

Section 75 of the CCA offers protection to consumers by making the lender jointly and severally responsible for any misrepresentation or breach of contract for goods paid fully or partly with credit. I'm satisfied the CCA is relevant here taking into account the cost of the work, the amount Miss A paid for with her credit card and the relationships between the parties involved. I've considered whether Amex treated Miss A unfairly by not accepting liability for the cost of the work she had carried out and refunding her the money she paid for it.

My considerations include whether:

- Miss A was told something untrue about the installation of the resin driveway which induced her to have it installed when otherwise she would not have; or
- There was a breach of contract on the part of the installer in that the resin driveway was of unsatisfactory quality when it was installed, which would include aspects such as fitness for purpose.

Was the work misrepresented to Miss A?

Miss A said that the information about the resin driveway provided on the installer's website was misleading and provided screenshots of the specific wording. I've reviewed the screenshots of the website and the installer's Terms and Conditions of sale. I understand these were provided to Miss A prior to the work being carried out.

The website states that a resin driveway is "weed resistant and requires very little maintenance". The Terms and Conditions state that the installer cannot be held responsible for "natural occurrences such as... seeds that embed and take root". Neither the website nor the Terms and Conditions state that the resin driveway would be weed or maintenance-free, so it doesn't seem to me that the written information available to Miss A was untrue or misleading in this regard.

Miss A also said that she was told in person by the installer that weeds would never grow through the resin and therefore the driveway would require no maintenance. Clearly, I can't know the detail of what was discussed between Miss A and the installer. Having considered the matter carefully, I've concluded that any information the installer provided in person to Miss A would, more likely than not, have been similar to what was set out on the website and in the Terms and Conditions given it could have easily been checked.

Altogether, I can't find that Miss A was given untrue or misleading information about the nature of the resin driveway. I can't therefore conclude that Miss A was told something untrue about the driveway which induced her to have it installed when otherwise she would not have chosen to do so.

Was there a breach of contract in relation to the sale?

The Consumer Rights Act 2015 implies a term into any contract to supply goods that those goods will be of satisfactory quality, and gives consumers rights when they have problems with the goods or services they've bought fully or partly with credit. Satisfactory means what

a reasonable person would expect, taking into account the description of the goods, the price and any other relevant circumstances.

The quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. An issue with any of these aspects of quality doesn't necessarily mean that the goods provided were of unsatisfactory quality – it depends on the specific circumstances.

Miss A said that the work carried out wasn't up to scratch and was not fit for purpose. She hasn't complained about any other aspect of the work other than the growth of weeds, so I've focused on this aspect when considering whether the installer breached the contract with Miss A because the work carried out was not of satisfactory quality.

Miss A provided photos which she said were of weeds growing in her driveway some time after the resin driveway had been installed, and quotes to redo the work. Miss A also provided a report she said was compiled by an independent expert which states that the reason for the weed growth is because the driveway wasn't installed correctly. The report states that the lack of substrate and the size of the stones used in the resin caused weeds to grow through it. The installer didn't think the source of the weeds came from below but rather were the result of airborne seeds.

I am not an expert on the installation of resin driveways and would need to place considerable weight on the opinion of an independent expert, alongside Miss A's description of events and her photographic evidence. In weighing up the evidence provided by Miss A, I'm afraid I cannot consider that the report was written by an independent expert. I haven't seen any evidence, such as an invoice or payment for the report, to show that the provider is independent from Miss A. Neither have I seen any evidence that the provider is an expert in the installation of resin driveways - while the provider offers building services it seems they specialise in carpentry and construction. In these circumstances, I can't consider that Miss A has provided sufficient evidence to support her claim.

In summary, I don't think the work was misrepresented to Miss A prior to installation and I haven't seen enough evidence to find that the work was of unsatisfactory quality leading to a breach of contract. It follows that I don't think Amex treated Miss A unfairly by not offering her a refund in accordance with the Section 75 provisions.

Amex was required to consider Miss A's request for a refund under Section 75 as this is a consumer's legal right, but it didn't have to consider a chargeback request. Providing refunds through chargeback is a separate process. It is voluntary, refunds can be considered only in specific circumstances and requests have to be submitted within strict time limits.

I can see that the relevant time limits had been exceeded by the time Miss A turned to Amex for help and provided the necessary information for it to consider a claim. Furthermore, I doubt a chargeback claim would have been successful for the same reasons Amex declined Miss A's Section 75 claim. Therefore I can't say Amex got anything wrong by not considering this option for Miss A.

I appreciate Miss A's strength of feeling about her experience and I'm sorry I can't provide her with the outcome she wanted. I hope I've clearly explained why I am not upholding her complaint.

My final decision

For the reasons I've explained above I am not upholding Miss A's complaint and don't require American Express Services Europe Limited (AESEL) to take any further action in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 26 December 2024.

Michelle Boundy
Ombudsman