DRN-5601520

The complaint

Mr C complains that American Express Services Europe Limited ("ASEL") rejected his claim under section 75 Consumer Credit Act 1974 ("s.75").

What happened

In February 2022 Mr C purchased a piece of furniture from a retailer at a cost of £581.25. This was a discounted price. He encountered some issues with the furniture and the retailer replaced it in March 2022 after it was unable to source a part to repair it. The replacement also had problems and the retailer sent an independent technician to repair it. Shortly afterwards the issue returned and a further problem appeared.

The retailer ceased trading and Mr C contacted AESEL and made a s.75 claim in December 2022. In April 2023 AESEL declined his claim and he made a formal complaint. This was rejected and so Mr C brought his complaint to this service.

The complaint was considered by one of our investigators who recommended it be upheld. He concluded the report by the independent technician was sufficient to accept the goods were faulty. He recommended that AESEL refund the cost less £87 to cover the use Mr C had of the furniture plus interest. He also added that it should cover the cost of the report and pay £100 compensation. He also said AESEL should arrange for the collection of the furniture. AESEL agreed, but said it wanted Mr C to provide a quote for removal of the item and it would pay this.

Mr C didn't agree and said a similar replacement item would cost him more due to inflation. He said that his continued use of the furniture had been caused in part by AESEL. He noted AESEL had sight of the report in early 2023. He also felt the sum of £100 compensation was insufficient given AESEL's refusal to accept his claim.

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 considered all the evidence put forward by both parties I find myself in agreement with the view out forward by our investigator. I will explain why.

This complaint has been submitted as a claim under s. 75. This legislation offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 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 s. 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.

Our role isn't to say if there has been a breach of contract or a misrepresentation for a valid claim under s. 75 but to consider if AESEL has come to a fair outcome based on the evidence provided. I am satisfied the required agreement chain is in place and so I must consider if there has been a breach of contract or misrepresentation.

I do not propose to explore this in much detail since both parties now accept there was a breach of contract. The initial report was less than clear and I can see why AESEL reached the conclusion it did. However, Mr C sought clarification from the company responsible for the report and it responded saying: "The technician has advised that this is a manufacturing fault as the frame is rubbing". This is somewhat less than AESEL had asked for, but on balance I consider it was enough to accept the furniture was not of a satisfactory quality and so there was a breach of contract.

Turning to the redress, which is the key issue now for Mr C I appreciate the points he has made, but I am not persuaded by his arguments. Although he has now indicated he does not wish to pursue the issue of the deduction for his use of the furniture I should point out that he did have the use of it regardless of any delays by the retailer, or AESEL. It is simply a factual matter that he had use of the goods and so that should be taken into account when determining redress. The sum of £87 which is 15% of the cost is fair and if anything errs on the side of Mr C.

He has also said that to find a replacement of a similar standard would cost him more. There are a wide range of similar items of furniture on the market and it is somewhat difficult to determine what a similar replacement would be and what it would cost. Even if I was able to accept his argument that the replacement cost should be used I think it would prove difficult to establish a fair figure. However, I don't think this is necessary.

Included in the proposed redress is annual interest at 8% simple. This in effect allows for inflation on the sum paid by Mr C and so I consider addresses his concern about funding a replacement product. I appreciate our investigator has raised the issue of betterment, but I don't consider this applies in this case. Mr C will get back what he spent plus interest and a small deduction for his use. Assuming he finds a suitable replacement and assuming life expectancy of 10 years he will have the use of that item until 2035. If the original item had been fault free and he had the use of it for 10 years it would need to be replaced in 2032.

Finally, I consider the compensation sum of £100 to be fair. I do not consider AESEL was unreasonable in its approach and while I think it reached the wrong conclusion it had some grounds for doing so.

Therefore, taking the whole issue in the round I consider what our investigator proposed was fair.

Putting things right

After due consideration I consider AESEL should:

- Pay Mr C £494.25 (£581.25 - £87 for usage).
- Pay 8% annual simple interest on this sum from the date of payment until the date of settlement.
- Pay £60 to cover the cost of the independent report.
- Pay £100 to acknowledge the avoidable delays during the investigation.
- Pay Mr C for the cost of removal of the furniture on production of an invoice.

My final decision

My final decision is that I uphold this complaint and I direct American Express Services Europe Limited to pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 September 2025.

Ivor Graham
Ombudsman