

The complaint

Mr T has complained that AMERICAN EXPRESS SERVICES EUROPE LIMITED trading as American Express ("AmEx") rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

In November 2022, Mr T bought a sofa suite from a third-party supplier that I'll call "S". Mr T paid £2,028.95 for the suite using his AmEx credit card.

Around October 2024, Mr T contacted S to explain that he'd noticed that the leather was peeling in specific areas and there was a gap forming between the seats due to a loose mechanism. My understanding is that the issues related to only one of the sofas in the suite. The supplier refused to offer a refund or replacement of the sofa, explaining that the sofa suite was now out of warranty.

Unable to resolve matters with S, Mr T contacted AmEx to raise a section 75 claim under the Consumer Credit Act 1974 (s.75). AmEx requested an independent report and on review of this rejected the claim explaining there had been insufficient evidence that the sofa had been misrepresented to Mr T, and although a manufacturing fault had been found, it felt Mr T could mitigate this by getting the sofa repaired. AmEx said Mr T should get the sofa repaired and then make a claim for the repair, and AmEx would reconsider his claim.

Mr T remained unhappy so referred the complaint to our service. Our investigator looked into things and felt the complaint should be upheld. He felt the independent report clearly stated that the mechanism becoming loose was a manufacturing fault and therefore this amounted to a breach of contract that AmEx was liable to fix. While he considered Mr T's request for a refund or replacement, he felt the repair recommended in the report would be a suitable remedy, and AmEx should cover the cost of repair, as well as the cost of commissioning the report. AmEx agreed with our investigator's view of the claim and asked for Mr T to provide a quote for the cost of repair.

Mr T however remained unhappy. He explained he didn't agree with the independent report, as if the leather peeling was caused by poor maintenance, then the other sofas would have suffered the same problems. He felt only repairing the mechanism wouldn't resolve his problems. Our investigator explained that the independent report hadn't identified the leather peeling to have been caused by anything other than poor maintenance, so she didn't think AMEX was liable to offer a remedy for this issue.

She also explained a refund or replacement with a new sofa wouldn't be reasonable as Mr T had used the sofa for over 2 years. She felt the independent report had recommended a repair and AmEx had agreed to it and she didn't think anything further was warranted in this case.

Mr T still didn't agree, he requested that AmEx refund him 1/3 of the total cost of the suite in place of the repair and Mr T would instead use that towards purchasing a replacement sofa. He said he was concerned about the durability of the sofa, and he had lost faith in it.

Our investigator remained of the view that the offer to pay for the cost of repair and the report was a fair resolution and she didn't think anything further was warranted. Our investigator did, however, pass on Mr T's response to AmEx but AmEx did not offer any further remedies.

As things weren't resolved the complaint was passed to me to decide. On the 14 August I wrote to both parties to explain why I was minded to upholding the complaint and asked them to make any final submissions before I completed my review of the complaint. AmEx didn't make any further submissions, but Mr T made some comments which I'll address below.

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.

In my provisional decision I explained the following:

Firstly, I'd like to reassure Mr T, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of his complaint in this decision as I'm required to decide matters quickly and with minimum formality.

I would add that I'm sorry to hear that Mr T is unhappy with the sofa set. But it may be helpful to explain that I need to consider whether AmEx – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr T's claim. It's important to note AmEx isn't the supplier. s.75 is a statutory protection that enables Mr T to make a 'like claim' against AmEx for breach of contract or misrepresentation by a supplier paid using an AmEx credit card for the provision of goods or services. But I want to explain from the outset that I can only consider Mr T's complaint on that narrow basis – that is, whether it was fair and reasonable for AmEx to respond to his claim in the way that it eventually did.

There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met, and AmEx has also agreed that s.75 applies.

Breach of contract

AmEx is responsible for remedying a breach of contract and/or misrepresentation of the supplier under the relevant legislation. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. The CRA implies terms into the contract that the goods must be of satisfactory quality, aspects of which include goods being durable and free from minor defects. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

The independent report Mr T commissioned clearly set out that the mechanism failing was a manufacturing fault due to "incorrect Assembly" which would have been carried out before the sale not more recently. So, I think it's apparent that the sofa sold was not free of defects and in need of a remedy.

The independent report recommended "refitting the mechanism" to resolve the problem. I therefore think that on receipt of this report, AmEx ought to have realised that S had breached the contract as the sofa wasn't free from defects and the mechanism had been incorrectly assembled. While AmEx is correct in stating that the report also mentioned that it could be repaired, it is AmEx's responsibility to cover the cost of the repair. So, I think instead of telling Mr T to get the mechanism repaired and submit a new claim for the repair,

AmEx ought to have accepted the claim and instead confirmed it would cover the cost of the repair as well as covering the cost of the independent report. So, I don't think AmEx's response to Mr T's claim was fair. It has however now accepted this and offered to cover the cost of both the repair and report – so I don't need to explore this any further.

Leather peeling

I understand the report mentioned that the leather issues on this sofa was caused by poor maintenance and that "there are no manufacturing faults with the leather". So, as the report didn't find a fault with the leather, I don't think there's sufficient evidence that the leather was of poor quality or not durable.

I've thought about Mr T's comment that if the issues with the leather was down to general poor maintenance, then he'd expect the other sofas to have displayed the same problems. But his claims are not backed up by the report of an independent expert. Under s.75, Mr T is obligated to provide evidence to support his claim that the leather is faulty or poor quality – which isn't what he's done. So, while I sympathise with him, I don't think there's sufficient evidence to corroborate his claims here, and therefore I don't think AmEx is responsible for offering a remedy for this issue.

How to put things right

I understand Mr T initially requested a full refund or replacement with a new sofa. But as our investigator explained, Mr T has used the sofa for 2 years before notifying S and then AmEx of the problems. Where he has had use of the product for such a significant amount of time, it wouldn't be fair to compel AmEx to refund him the cost of it in full or replace the sofa with a new one. Especially when a repair will put right the defect that's been found. Repairing the sofa is an acceptable remedy under the legislation – and it's been offered so I don't think I could reasonably conclude that AmEx is obligated to offer a refund or replacement.

I've thought about Mr T's counteroffer of accepting a refund of 1/3 of the cost of the suite to settle the claim. And he will instead use that towards purchasing a replacement sofa which will resolve both the issues with the mechanism and his concerns over the leather. He said he has lost faith in the sofa and has concerns over its durability.

While I sympathise with Mr T's position, nothing in the report indicates the sofa is unsafe and will not be durable in the long term once the mechanism is refitted. So, I don't think this warrants a full replacement or a refund or partial refund.

I would add that the sofas are different sizes and there is no breakdown in the cost of the different elements of the suite – so it's not clear that 1/3 of the cost is a fair amount in any event. While AmEx and consumers are able to negotiate resolutions, AmEx has been informed of Mr T's offer and hasn't agreed to offer this in place of the repair. In the absence of such an offer, I can only decide whether the response it has made is reasonable. And to cover the cost of repair and the cost of the report, is a fair solution and a reasonable offer. So, I cannot compel it to accept Mr T's counteroffer.

I think as recommended by the independent report, and now accepted by AmEx, a repair is a fair way to put matters right and I don't intend to ask AmEx to do any more.

I understand Mr T says he has suffered considerable inconvenience in trying to resolve this issue. He also mentioned that it has had an emotional and financial impact on himself and his family. But compensation for distress and inconvenience is not normally recoverable for this type of claim. So, I don't award any further compensation for this.

Misrepresentation

For completeness, I've also thought about Mr T's claim that the suite has been misrepresented to him as he says it was sold as "premium quality" and "durable" and "suitable for long term use." Mr T also alleged that S said the "leather material was genuine and designed to last without peeling or cracking under normal use." He says he bought them due to the statements made and he feels that the sofas have not lived up to either statement.

It is not sufficient to show that there has been a mechanical fault with the sofa to evidence that it's been misrepresented to him. Mr T would have to demonstrate with evidence that S made an untrue statement of fact or law which induced Mr T to enter the contract, thereby causing him loss. Having looked at the sales invoice, I haven't seen these sorts of statements made and the suite doesn't appear to have been marked as having been of a premium range or leather was of particularly high grade for example. So, I haven't seen evidence that such statements were made. Of course, I understand that it would be difficult for Mr T to provide any evidence of verbal misrepresentations.

But in any event, I would add that the independent report noted problems with the leather peeling has been caused by poor maintenance rather than being of poor quality. And while the mechanism requires a repair, the sofa suite may still last for a significant amount of time. Nothing in the report indicates that the sofa as a whole isn't otherwise durable and will fail once the repair has been completed. So, while I do think there's evidence of a breach of contract, I don't think there's sufficient evidence of a misrepresentation in this case.

Summary

I don't think there's sufficient evidence that the suite has been misrepresented to Mr T. While I'm satisfied that there has been a breach of contract on the part of S, that AmEx is liable to remedy, I believe the remedy for AmEx to cover the cost of the repair, and the report is a fair way to put matters right and I don't intend to ask AmEx to do any more.

Putting things right

- *Refund Mr T the cost of the independent report he obtained. AmEx must also pay him 8% simple interest on this amount from the date the claim was declined until the date of settlement.*
- *On receipt of a valid quote/invoice for the repair of the sofa, AmEx must pay Mr T the amount he pays to repair the sofa.*

Further submissions

As explained above, AmEx didn't make any final comments or submissions. Mr T replied that he would like AmEx to pay for the costs of the report he obtained plus interest. But he may dispose of the sofa rather than getting it repaired, and he said he may also provide feedback about the sofa online. I can see Mr T is extremely disappointed with my findings and it's apparent that he doesn't wish to keep this sofa. I'm sorry I haven't been able to recommend the remedy he wishes. But for the reasons explained, I don't think the remedy to repair the sofa and cover the cost of the repair and report is unreasonable so I'm unable to conclude that AmEx ought to offer him the alternative remedy he would prefer.

I think it may also be helpful to explain that Mr T is able to accept this final decision, and then both Mr T and AmEx will be bound by the decision. This means that on receipt of the invoices/quotes for the report and repair, AmEx will be obligated to make the payments in line with my findings. However, if Mr T does not accept the decision, neither he nor AmEx

will be bound by it and AmEx will not need to make the payments in line with the decision. Mr T will then be free to pursue the matter separately for example more formally through the courts.

Based on everything I've seen, I see no reason to depart from my findings as set out in my provisional decision. So, for the reasons explained, I uphold this complaint.

Putting things right

- AmEx must refund to Mr T the cost of the independent report he obtained. AmEx must also pay him 8% simple interest on this amount from the date the claim was declined until the date of settlement.
- On receipt of a valid quote/invoice for the repair of the sofa, AmEx must pay Mr T the amount he pays to repair the sofa.

My final decision

For the reasons I've explained, I uphold this complaint. AMERICAN EXPRESS SERVICES EUROPE LIMITED trading as American Express must put matters right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 September 2025.

Asma Begum
Ombudsman