

The complaint

Ms S complains about the way American Express Services Europe Limited ('Amex') handled her request for a refund.

What happened

In March 2024, Ms S bought a number of items including a sofa bed, bench, a fabric footstool and leather footstool (collectively 'the furniture') from a business I'll refer to as 'T'. Shortly after delivery, Ms S contacted T to complain about a number of issues with the furniture. Unhappy with the way T dealt with her concerns, Ms S contacted Amex making a claim for breach of contract under section 75 ('section 75') of the Consumer Credit Act 1974 ('CCA'). Amex thought the remedy T had offered Ms S for the matters she complained about was fair and didn't think more had to be done. Ms S referred her complaint to us.

Our investigator upheld Ms S's complaint. Amex disagreed saying it considered T had offered reasonable remedies to deal with the issues Ms S raised. As no agreement could be reached the matter has been passed to me for a decision. I issued a provisional decision but after Ms S disagreed providing further submissions, I issued a second provisional decision. Ms S still didn't agree with my findings so I'm now issuing my final 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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our service. However, I've given careful consideration to all of the submissions made before arriving at my final decision including those made following my provisional decisions. Having reviewed everything again, I remain of the view that whilst Amex should pay Ms S £100 for its service failings, I'm not intending to ask Amex to do any more than this.

Amex agreed with my provisional findings adding: *"Please accept this as confirmation that we understand that the independent report was not considered when making your decision. It will be considered if presented to us as part of a Section 75 claim review."* Ms S disagreed with my provisional findings. In summary, she said: she referred to Amex's email dated 28 October 2024 which was sent to Ms S in response to her section 75 claim; she disagreed with the level of compensation I recommended; the issues with the furniture had never been remedied; the independent expert report shouldn't be disregarded; Amex should've considered refund or rejection options; Amex should've advised her about her secondary rights under the Consumer Rights Act 2015 (right to reject/right to a price reduction); and Ms S wanted written confirmation that no adverse internal, or external (credit file) reporting will result from raising a section 75 claim.

Whilst I very much sympathise with Ms S's situation, my final decision remains the same as my provisional decision for the following reasons:

- I note all of Ms S's further submissions in response to my provisional decisions and I want to reassure her that I've fully considered these. Overall, I can't see that she's added anything substantially new and I've dealt with most of what she submitted in my provisional decision, which I've repeated below and expanded on where I think necessary.
- In reaching my decision I've taken into account all relevant law including the implied terms under the Consumer Rights Act 2015 ('CRA') and section 75 of the CCA. I've also considered Amex's chargeback process but because Ms S didn't return the furniture, and was seeking compensation for consequential losses, I don't think it was unreasonable for Amex to focus on section 75 as a potential avenue for a refund. I understand Ms S thinks Amex should've told her about her rights under the CRA, but I don't think it was under any particular duty to do so. What it had to do was assess her claim fairly in light of these provisions, which I think it did in her case.
- I should note here that in order for there to be a valid section 75 claim certain conditions need to be met. One of these conditions is that the cash price attached to the item(s) in question, needs to be more than £100 and below £30,000. Here a number of items on Ms S's invoice don't meet these financial requirements so I won't consider these as part of this decision.
- Further, regarding what Ms S said about the damage to her floor which she said was caused by T's agents when delivering the furniture, as I explained to her, I don't think there's sufficient evidence to show T was at fault here. And this is the conclusion Amex reached which I don't think was unfair in all the circumstances.
- To recap, the other parts of Ms S's claim was about several aspects of the furniture delivered to her by T including that: the furniture had noticeable 'creases'; there's a 'hissing' noise made when pressure is applied to the leather footstool; and the sofa bed has a gap between the seating and the back.
- In March 2025 Ms S obtained an independent expert report (the 'report') to assess the issues with her furniture. This was after the matter came to our Service and several months after Amex assessed Ms S's claim which was in late October 2024. The report made a number of observations and recommendations. As I discussed with Ms S, I can't take into account the contents of the independent expert report because Amex wasn't privy to this during the claims process. So, it wouldn't be fair or reasonable for me to say that Amex acted incorrectly for not considering its contents. And I appreciate Ms S is still trying to resolve this matter with T. As noted above, Amex has acknowledged that it understands the expert report hasn't formed part of this complaint.
- I know Ms S thinks Amex should've asked her to obtain an independent report, but I don't think it was unreasonable or unfair for it not to do so particularly in light of the fact it thought it had sufficient information to make a decision about whether to accept liability or not. I can see that in its email dated 28 October 2024, Amex didn't accept there'd been a breach of contract. However, it seems to have accepted there were matters that needed to be addressed but thought the offers made by T to carry out what were, in effect, 'repairs' (i.e. to steam out the creases) was a suitable remedy. I don't think this was unreasonable or unfair in light of the evidence at the time of Ms S's claim.
- So, even if I accept there has been a breach of contract for which Amex could be held liable, I still don't think that this means it acted unfairly in the way it dealt with Ms S's section 75 claim. I say this because under the CRA the remedy for a breach of contract is for either a repair or replacement (see section 23 of the CRA). I know Ms S has now

indicated she wants to reject the furniture and receive a full refund. But I can't see that even with a breach of contract that this remedy would be available to Ms S at the stage she brought her claim to Amex.

- Under the CRA there's a 30-day period from delivery in which a consumer can reject any faulty items (see section 22 of the CRA), but I can't see that Ms S has presented any evidence to show that she exercised this right within that period. In fact, all of her submissions to Amex at the time of her claim were about trying to find a resolution with T but being unable to do so. That said, there's still a right to reject under the CRA after the 30-day period has elapsed, but this is only after any attempted repair (or replacement) fails (see section 24 of the CRA) – at this point, a right to reject (with a deduction for fair usage), or a price reduction, would be applicable. In this case, no such repair was attempted by T as Ms S didn't want T to do any repairs as she didn't think what it was offering was a fair way to resolve things.
- In terms of the bench Ms S says T isn't accepting liability for the creases that show on the bench. But T offered an explanation for this issue which, on the face of it, seemed plausible to Amex. That said, I know that Ms S has an independent expert report which gives a different explanation for these creases (and a particular remedy for them). But as I've said above, this report wasn't available at the time of Ms S's claim to Amex, so I don't think it acted unfairly or unreasonably for not taking the findings of the report into account. If Ms S wants Amex or T to consider the findings of the independent report, this is something she will need to present to the respective parties as part of a new claim. I've not considered it as part of this complaint for the reasons set out above.
- In regard to the gap between the seats and the back of the sofa bed, I can see from a telephone note recorded by Ms S in her timeline submitted to Amex that she said: *"[model of sofa] gap to be review by Technician on visit as this is not of satisfactory quality"*. From what I can tell, at the point Ms S approached Amex no arrangements for T's technician to visit had been made.
- Ms S says she didn't want T's technician to visit for a number of reasons including that she thought it's technician wouldn't assess all of the issues she had with the furniture. But her telephone note does suggest the technician was willing to look into this particular issue if a visit was arranged. In my view, based solely on the photographic evidence and Ms S's testimony including what she said via email to T, I don't think there's persuasive evidence to show Amex acted unfairly or unreasonably here. That said I know the expert report has given an explanation for the gaps between the seating and a particular remedy. Again, Ms S will need to present this evidence to T or Amex as I don't think it would be fair or reasonable to say Amex should've considered something which wasn't available to it at the time of her claim.
- In terms of the 'hissing' noise vis-à-vis the leather footstool, T said this was due to the 'leather' material used. I know Ms S strongly disagrees with this but ultimately, I don't think she presented a sufficiently persuasive case that there was a breach of contract in this regard. And even if there were it does appear T offered Ms S a replacement for this particular item.
- I appreciate there were some communication issues during the claims process with Ms S not receiving call backs when promised by Amex's agents. Having reconsidered the matter carefully, I think a total amount of £100 compensation for the trouble and upset caused by Amex for some communication issues (not calling Ms S back), recognises the impact of this mistake. I've taken into account that these customer service issues didn't impact on the outcome of Ms S's claim, and it appears that it is the

outcome of this claim which has, understandably, caused the most upset for Ms S.

- I know Ms S has asked for £150 since I issued my provisional decision, but this seems to be to cover the cost of the independent report. As I've said above, if Ms S wants to present this report to Amex (or T) given there are new findings that weren't available to Amex prior to deciding on the outcome of Ms S's claim in late October 2024, Amex may agree to cover the cost of the report but I don't think it would be fair or reasonable to award this as part of this complaint for all the reasons I've set out above.
- I understand Ms S has a number of health conditions and is a carer. I'm, of course, sorry to hear about the difficulties Ms S has experienced. However, I can see that when she flagged these issues up to Amex, she didn't ask for anything specifically to be changed in the way (for example) it communicated to her.
- Ms S says she wants reassurance that her credit file hasn't been impacted by her section 75 claim. But I can't comment on this as it doesn't form part of this complaint.

For all the above reasons, I won't be asking Amex to do anything more than pay Ms S £100 in compensation. As noted above, my role is to look at things informally. So, if Ms S disagrees, she can reject my decision and pursue matters by alternative means if she wants, such as court (seeking appropriate advice in the process).

My final decision

My final decision is that American Express Services Europe Limited should pay Ms S £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 5 December 2025.

Yolande Mcleod
Ombudsman