

## The complaint

Mr S complains American Express Services Europe Limited (Amex) rejected his claim under section 75 of the Consumer Credit Act 1974 in respect of window shutters which he believes weren't provided nor installed to a satisfactory standard.

## What happened

In September 2021, Mr S used his Amex credit card to purchase window shutters through a company who I will refer to as Q. He paid a deposit of £712 and £1,069 when it was installed, meaning he had a balance left to pay of £1069. The total for the supply and fit of the shutters was £2850.

Following its installation, Mr S complained to Q about a number of issues including but not limited to:

- The shutters were faulty with dents, scratches and marks;
- The profile around the shutters weren't as agreed as per the contract;
- Some of the shutter panes didn't close correctly and there was inconsistent spacing around each of them;
- There was inconsistency between the louvres and they were different to what was agreed.

Mr S said over a period of several months he tried to resolve the issue with Q. They agreed to carry out repairs by replacing some of the shutters and repairing those at the bay window. Mr S said what they offered didn't go far enough to put things right, he maintained the shutters at the bay window should be replaced. Frustrated by Q's lack of response and action, he raised a section 75 claim with Amex.

Amex rejected the section 75 claim stating Q had already agreed to rectify the faults but Mr S had refused them access to his property to do so.

Unhappy with their response, Mr S referred the complaint to our service. Our investigator said there was no dispute there were faults with the shutters. However there was insufficient evidence that the faults to the bay window shutters couldn't be repaired rather than being replaced in its entirety. Mr S provided further evidence including photographs but having considered the same, the investigator said it didn't change his overall opinion. Mr S maintained his stance.

Since then, Mr S has arranged for a third party to look at the shutters who I will refer to as G. They said the shutters in the bay window differed to what was specified in the contract as it was of a different material. It said the frame profile of the shutters differed to what was agreed in the contract and one of the set of louvres exhibited friction when opening and closing. Overall G said the workmanship was substandard, the bay window shutters should be replaced entirely and the louver friction meant it collectively "*compromised the functionality, aesthetics and overall quality of the shutters*". G's findings were forwarded to Amex for their consideration however their position remained unchanged.

In December 2023, I issued a provisional decision outlining my intentions to uphold the complaint. I said:

*"In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods (Q) or the provider of credit (Amex) if there's been a breach of contract or a misrepresentation. I'm satisfied the requirement for a debtor-creditor-supplier relationship is present and so far Mr S has paid over £1,700 for the shutters via his credit card and there is an amount outstanding. As the relevant circumstances are met, I find Mr S was able to make a section 75 claim.*

*However, I must stress in order to uphold Mr S' complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Amex's response to the section 75 claim wasn't fair nor reasonable.*

*In this case, the relevant law that applies is The Consumer Rights Act 2015 (CRA). It implies a term that the goods must be of satisfactory quality and fit for purpose at the point of supply and the service delivered must be carried out with reasonable care and skill. That is, the standard a reasonably competent person in that trade or profession would expect.*

*Is there a breach of contract?*

*When reviewing this case I've seen a number of pieces of evidence. This includes a copy of the contract with Q, pictures of the shutters, correspondence between Mr S and Q, Mr S' communication with Amex and the third party report by G. I don't purport to be an expert in installations of window shutters so I find it reasonable to rely on the findings of G as they are an independent party. In summary, it says the shutters need to be replaced as they don't conform to the contract and represents 'substandard workmanship'. Moreover, based on the correspondence from Q, they don't dispute there were issues, they accept a number of things need to be put right. Overall, I'm not persuaded a reasonable person looking at these pictures and emails would conclude these shutters had been installed with reasonable skill and care and it was fit for purpose. Therefore I find there was a breach of contract.*

*What is the appropriate remedy?*

*How to put things right appears to be the crux of the dispute in this case. In instances of a breach of contract, one of the remedies is repair or repeat performance. Broadly speaking this has been offered by Q which I believe is a fair course of action.*

*What was left in dispute was the extent of the repairs. Q says they are willing to carry out the repairs including the replacement of some of the shutters but they will only repair those in the bay window. Mr S maintains they should all be replaced and he's willing to accept this as a resolution.*

*Based on the findings of G especially what they said about the shutters in the bay window not conforming to the contract and it should be replaced in its entirety, I find it's reasonable that they are replaced along with the other shutters. To put things right, Amex should arrange for these repairs and remedial work to be carried out. Given the amount of time that has passed since this section 75 claim was raised, I would expect these repairs to be carried out within a reasonable amount of time.*

*I note Amex's comments as provided by Q that the reason for the repairs not being undertaken was due to Mr S not being willing for Q to attend his property. On the contrary, I find he was willing for this to happen and I've seen correspondence he's sent to them to say they could attend but he received no response.*

*As per the terms of the agreement, once the repairs and remedial work have been carried out and all issues resolved to a satisfactory standard, I would expect Mr S to pay the outstanding balance owed.*

*Lastly, if Mr S has paid for the report as provided by G, this should be reimbursed by Amex as it was incurred as a result of the breach of contract”.*

### **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 thank both parties for responding promptly. Amex had no further comments to add. They said they would cover the cost of the repairs (upon provision of receipt) as arranged by Mr S through a contractor of his choice. Mr S also accepted the findings. However he asked about paying the outstanding balance subject to the contract with Q, as they aren't responding to his correspondence.

I appreciate the difficulties Mr S has experienced contacting Q but as this complaint is against Amex, I can't comment any further about Q nor can our service get involved with the payment of the outstanding balance. I'm sorry I couldn't be of any further help.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

### **My final decision**

For the reasons set out above, I've decided to uphold Mr S' complaint.

To put things right, American Express Services Europe Limited should:

- Arrange for the relevant repairs and cover the cost of any remedial work to be carried out as outlined by the report by G, this should include the replacement of the shutters in the bay window;
- Reimburse Mr S for the cost of the report by G (upon evidence being provided) plus pay 8% simple interest per annum from the date of payment up to the date of settlement\*.

\*If Amex considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 January 2024.

Simona Reese  
**Ombudsman**