

The complaint

Mr W is unhappy about a decision taken by American Express Services Europe Limited ("AESEL") to decline a claim he made to them under section 75 of the Consumer Credit Act 1974 ("S75") and about the service they provided to him more generally.

What happened

Mr W took out a membership with a dating site I shall call 'L' in June 2022 using his AESEL credit card. This was for a six month subscription costing £119.70.

He then received an email from L in November 2022 confirming an automatic renewal was in place for an additional 12 months for a one off payment of £478.80.

Mr W says that on receiving this email he went onto L's mobile app and when he reviewed the status of his subscription, it said that it would end on 14 December 2022.

On 16 December 2022 Mr W's AESEL credit card was debited with a further subscription cost of £478.80. On noticing this Mr W contacted L and advised them that he'd actually cancelled his subscription and was therefore due a refund.

L told Mr W that his subscription had renewed because the auto renewal in place hadn't been disabled. They didn't believe a refund was due as the cancellation request had been made too late and outside the required period.

As Mr W didn't agree he contacted AESEL who raised a chargeback claim on his behalf. This was disputed by L however who said they didn't receive a cancellation request in time. AESEL asked for more information regarding this from Mr W and then upon further review concluded there was insufficient evidence to pursue the chargeback further.

Mr W didn't accept AESEL's position and brought a complaint to our service in January 2023. This complaint was considered by us and a final decision (by an ombudsman) issued on it in September 2023. While the ombudsman concluded AESEL hadn't done anything wrong in not pursuing the chargeback further, they said AESEL hadn't considered Mr W's claim under S75. They therefore said Mr W had the right to ask AESEL to do so.

Mr W subsequently submitted a S75 claim to AESEL in October 2023. This S75 claim was also declined by AESEL as they didn't feel there was the necessary debtor-creditor-supplier ("DCS") agreement in place as required under S75, as the payment had been made through a payment aggregator.

They also felt that even if they'd considered the claim, they wouldn't have upheld it due to the evidence presented by the merchant regarding the subscription not having been cancelled in time.

Mr W didn't agree and so raised a complaint with AESEL. AESEL provided their final response in November 2023 and said they hadn't done anything wrong. As Mr W remained dissatisfied, he referred his complaint to our service in February 2024. I note that in addition to his previous complaint points, he also raised the issue of AESEL's customer service which he felt was unsatisfactory.

Our investigator looked at the complaint and said AESEL were incorrect in concluding that there wasn't the necessary DCS agreement in place. He said that this service had made their position clear to AESEL in terms of the involvement of payment aggregators and considered that in this case the necessary DCS agreement was in place.

However he still felt that the claim would've been unsuccessful as there was insufficient evidence of a cancellation within the required time. Our investigator also provided findings on the customer service and felt AESEL need not do anything further in this respect.

Mr W didn't accept the investigator's view and so his complaint has been passed to me for review and 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.

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally

It's important to note that AESEL aren't the provider of the services here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr W paid for the subscription using his credit card, a S75 claim could possibly help him. So in deciding what's fair and reasonable I've focussed on this. I've not commented on the prior chargeback claim as this has already been addressed by our service under a separate case reference with a final decision being issued on it.

Section 75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

AESEL has said the necessary DCS agreement isn't in place for Mr W to hold them liable under S75. They say this is because the credit card payment didn't go directly to L, and instead went via a payment aggregator.

I don't think AESEL is correct to say the involvement of this payment aggregator means the necessary DCS agreement wasn't in place. However, this won't make a difference here because I think Mr W's claim against AESEL would've been unsuccessful for other reasons which I'll explain.

Was there a breach of contract?

In determining whether there was a breach of contract by L that might make AESEL liable to Mr W under S75, I've considered whether there is sufficient evidence to show that Mr W was appropriately notified of the length of his initial subscription and whether he then submitted his cancellation in time.

AESEL has said that at the time of purchase online Mr W was given the option of which membership plan and payment option he wished to choose. This would've then shown him the total cost, length of term and most importantly the renewal terms and conditions. In order to progress the subscription purchase, these terms would've needed to be accepted by ticking a checkbox.

AESEL has also said that after payment, a confirmation would've been sent to Mr W for instructions on how to cancel the auto renewal feature of the subscription. In addition an auto renewal email would've been sent to Mr W 30 days before his subscription was set to renew.

I'm therefore satisfied AESEL did make Mr W aware of the cancellation process. However this doesn't seem to be in dispute here and Mr W has said he did receive this email. This is more about whether Mr W completed the required actions in time.

Mr W told our service that he cancelled the auto-renewal on the website before the deadline. He also says that when he looked at L's mobile app, there were two buttons – one which said the 'Subscription ends 14 December 2022' and another which said 'reactivate subscription'. Based on this Mr W concluded the subscription would end on this date and the second button was there if he wished to reactivate it.

L addressed this by stating that the fact the subscription would auto renew was clear from their prior emails to Mr W. They also confirmed Mr W needed to log into his account on a browser to determine the status of his membership and cancel, rather than their mobile app. L has said their system records show Mr W turned off the auto-renewal and also called them to cancel the subscription on 17 December 2022 which was after the cancellation deadline.

They also clarified that the 'renew subscription' button was only for those customers that had purchased their membership via Apple iTunes. As Mr W had purchased his via their website, this didn't apply to him.

While I appreciate that the information on the app could've been interpreted as the subscription ending on 14 December 2022, Mr W did receive the email prior confirming that the subscription would auto renew.

I've also insufficient evidence Mr W turned off the auto renewal in time on his online account. It's more likely on balance that Mr W concluded further action wasn't necessary upon reviewing the information on the mobile app.

I don't think this would've been a reasonable assumption considering the conflicting information regarding auto renewal within the email received. The information on the mobile app could've then been interpreted as saying that while the original subscription would end on that date, the auto renewal process would ensure the subscription then continued.

Likewise while a resubscribe button did exist there, and also noting it wasn't for Mr W's use, I don't think its existence was enough for him to reasonably consider the subscription had been cancelled. I do think that while the mobile app could've caused an element of confusion, it would've been more appropriate for Mr W to then query this with L and the status of his subscription rather than assume a cancellation had gone through.

L didn't believe the required cancellation process was followed but still applied a 50% reduction of the resubscription payment and charged £239.40 for the 12 month renewal. This looks to be a gesture of goodwill under the circumstances as I've not seen any evidence from L confirming they felt they'd done anything wrong here.

I note Mr W has an additional complaint point regarding his 14 day cooling off period from L's terms and conditions and believes he was in time to cancel if this was applied again at renewal. I don't think this is an appropriate application of these 'right to cancel' terms as they would've applied to the initial purchase of the subscription in June 2022 and not to each subsequent renewal.

If considered in this way, it'd suggest that each renewal would have its own additional 14 day cancellation period. However this wouldn't be a reasonable application of these terms. Quite simply, each renewal wouldn't be a new service, but an extension of the existing service of which the cooling off period elapsed back in June 2022.

With all of this in mind, I can't say there is sufficient evidence that L breached its terms and conditions in renewing the subscription. Mr W was aware the subscription would auto renew and I've insufficient evidence he submitted his cancellation in time, nor am I satisfied that the information visible on the L's mobile app was sufficient to say it had. It would've been necessary for Mr W to have cancelled the subscription via his account online but I can't see this was done before renewal.

I therefore think L was entitled to renew the subscription at the amount stated in its prior correspondence and there was no breach of contract by them that would make AESEL liable to Mr W under S75. I also appreciate L has only charged 50% of this amount to Mr W considering what'd happened.

With all of this in mind, I can't say AESEL need do anything more with regard to Mr W's S75 claim.

Customer Service

I note Mr W also raised concerns about the customer service provided by AESEL and issues with communications when he wished to speak to them about the prior chargeback claim. AESEL investigated this complaint and provided a copy of a final response letter (FRL) on 17 February 2023 addressing his concerns. AESEL admitted things should've gone better and offered £100 compensation to address this, which they paid as credit to his AESEL account.

In Mr W's communication with our investigator he asked him to look into this and mentioned he was aware of a prior £100 offer but wasn't clear what this was in regard to.

I note that this final response letter was sent to Mr W while his previous chargeback complaint was ongoing with us from January 2023 - and in his complaint form to us mentioned these issues. I note though that this wasn't addressed within that particular case so I do consider it fair for me to do so now in this decision.

Mr W also clarified that as a part of the complaint issues from February 2023, this included AESEL's decision that there wasn't a valid S75 claim due to the involvement of a payment aggregator. I agree this service's position has been clear, however as there wasn't a successful claim outcome possible, I don't think any further compensation would be due here for AESEL still choosing to maintain this stance.

In terms of the communication issues from January 2023, there were a number of missed calls between both AESEL and Mr W and the complaint was subsequently closed. Mr W found this unreasonable, however it's likely this occurred because AESEL weren't able to progress the complaint. Still, Mr W's concerns were later passed to the appropriate team.

I won't go into the subsequent chronology of events in detail but it's clear that in the following days Mr W made a number of calls to AESEL and felt he didn't receive satisfactory service. Mr W said AESEL remained of the position he hadn't provided sufficient information to support his chargeback claim. I note our investigator addressed Mr W's concerns and concluded he didn't think more needed to be done by the business. AESEL subsequently clarified that they had discussed the issue with Mr W on 15 February 2023 over the phone and a £100 offer was then made to address these issues as a gesture of goodwill.

I contacted Mr W asking if he felt this offer was unsatisfactory and why. While Mr W didn't comment on the amount itself and whether he felt it was reasonable, he referenced the general customer service and delays after February 2023. However the chargeback complaint was with this service from the end of January 2023 to the end of September 2023 when the final decision was issued.

The S75 claim was subsequently considered by AESEL and as this was also unsuccessful Mr W brought this to our service in February 2024. I can't see there were any undue delays at that time with AESEL's S75 review although I appreciate it would've been more helpful to consider this earlier in the year alongside the chargeback claim.

With all of this in mind and considering the relevant evidence, I think AESEL's prior £100 offer (which has been credited) is appropriate to address the challenges Mr W faced when he wished to discuss his chargeback claim outcome back in January 2023 and for the overall complaint handling. I therefore won't be asking them to do anything more.

My final decision

For the reasons above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 December 2024.

Viral Patel
Ombudsman