

The complaint

Mr D is unhappy with how American Express Services Europe Limited (AESEL) handled a breach of contract claim he made to them.

What happened

Mr D took out a membership with a supplier of matchmaking services I shall call 'W' in October 2023. This was for 12 months at the cost of £1,153.19 using his AESEL credit card. He was however subsequently banned from his account two weeks later without refund and W cited this was due to a violation of their terms of service.

Mr D complained to W about what'd happened and says he was told another customer had complained about him. While no further details were given, Mr D assumed this was tied to an option to purchase messages to be sent to other users before a profile match has occurred. He recalled doing this prior on a few occasions using the same introductory message and felt the message was innocuous. He therefore thought it unfair for his account to be banned and didn't think he had breached their terms of service.

Mr D subsequently contacted AESEL to raise a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against them.

AESEL considered Mr D's claim and concluded W were entitled to cancel his membership and retain his payment. They said this was non-refundable as W felt Mr D had violated their terms of service.

As Mr D didn't agree, he raised a complaint with AESEL about the outcome of his claim. AESEL sent a final response in December 2023 saying they'd insufficient evidence W had either misrepresented their services or breached their contract with him.

Mr D was unhappy AESEL hadn't provided a refund and brought the complaint to this service.

Our investigator looked at the complaint but didn't uphold it. They noted AESEL hadn't raised a chargeback claim against W but didn't believe there would've been a prospect of success as W had acted in line with their terms and conditions.

They also said Mr D had agreed to these terms and conditions when he signed up for the service. This meant W were within their rights to terminate the service if they considered there had been violations. Our investigator therefore concluded there was insufficient evidence W had breached their contract with Mr D in cancelling the subscription and not providing a refund.

Mr D didn't agree with the investigator and asked for an ombudsman to make a 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.

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 service 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 D paid for this transaction using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for AESEL to raise a chargeback, but it is often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case AESEL's own rules). I've considered the relevant chargeback rules in deciding whether AESEL acted fairly.

As Mr D's service was cancelled, I consider his chargeback claim is most likely to fall under 'goods and services not received'. This is because he became aware after account termination that the expected services wouldn't be provided for the remainder of his contract term.

However I note AESEL didn't raise a chargeback claim due to Mr D's specific request for a S75 claim to be raised against them. I don't agree this approach is correct as we'd expect a business to consider all appropriate avenues to address a consumer's concerns. In this case both a chargeback and a S75 claim could've helped him although only the latter was considered.

Still I think it likely a chargeback claim would've been defended as W say Mr D violated their terms of service. AESEL is likely to have then declined to take the chargeback claim further based on the evidence available. I do consider it unlikely the claim would've had a prospect of success and I've also elaborated further below in the next section on the merits and why I think this is. I therefore don't think AESEL need do more here regarding the chargeback claim.

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.

In order to assess a valid claim, AESEL would've needed to consider all relevant evidence with regard to the alleged breach of contract. S75 has certain technical requirements for there to be a valid claim. I am satisfied those are in place here.

AESEL has said they didn't contact W as they felt the submissions from Mr D were sufficient to conclude there wouldn't be a valid claim. They considered W's correspondence with Mr D which said the account had been terminated due to a violation of their terms and service. AESEL also noted W's terms and conditions say they reserve the right to terminate an account without a refund if they felt those terms have been breached,

I've reviewed W's terms and conditions and it says (the supplier name has been substituted by the letter 'W'):

9. Account Termination

"W reserves the right to investigate and, if appropriate, suspend or terminate your account without a refund if W believes that you have violated these Terms, misused our Services, or behaved in a way that W regards as inappropriate or unlawful, on or off our Services..."

This section also subsequently says:

"If your account is terminated by you or W for any reason, these Terms continue and remain enforceable between you and W, and you will not be entitled to any refund for purchases made".

I understand Mr D would've signed an acceptance to these terms and conditions when he opened an account with W.

W were therefore entitled to terminate the account if they felt Mr D had violated these terms. From Mr D's submissions, this looks to be a conduct issue and while I understand Mr D doesn't believe he acted inappropriately, W does, and their terms entitle them to terminate Mr D's account.

W were then entitled to also decline a refund per their terms and conditions. Considering all the available evidence, I've insufficient evidence there has been a breach of contract here by W and therefore AESEL were wrong in declining Mr D's S75 claim.

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 D to accept or reject my decision before 6 June 2025.

Viral Patel
Ombudsman