DRN-5300350

The complaint

Mr C is unhappy with how AESEL handled a quality of service claim he made to them.

What happened

Mr C took out a membership with a dating agency I shall call 'E' on 11 October 2023 using his AESEL credit card at a cost of £1,495.00. This covered up to nine months of matchmaking, as required, with a guarantee of six recommendations, all vetted in advance.

Mr C had a video interview on 17 October 2023 with E where he explained his preferences, such as his matches being unmarried and also not having children. Then on 19 October 2023 he followed up with the requirement to not be matched with anyone with a criminal record or with a life limiting or altering illness.

E arranged Mr C's first match shortly after, however Mr C discovered from reading their profile that they had children. E accepted this error and reset Mr C's match count back to zero to address this.

E then arranged another match on 6 November 2023 and in this case Mr C spoke directly to this individual. However during the course of this call he discovered they had a life limiting impairment. As this didn't match Mr C's requirements, he complained to E who later admitted they'd been aware of the disability. However E claimed they didn't know of Mr C's requirements at the time of arranging the match.

E then arranged another match on 24 December 2023, however Mr C assumed that the match was married from their profile picture and this was yet another example of an unsuitable recommendation. He therefore approached E for a refund of his membership.

E declined and said that his preferences were only guidelines rather than a firm guarantee. They also acknowledged the issues that'd transpired and felt they'd been addressed appropriately. E also promised a further call back within 14 days following their response to discuss further.

As this didn't occur, Mr C contacted AESEL to raise a chargeback claim against E and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against AESEL for what'd happened.

AESEL initially raised a chargeback claim but this wasn't progressed as they felt the required information wasn't provided in time. They did however also raise a S75 claim but upon consideration of the available evidence concluded they couldn't establish a breach of contract or misrepresentation by E.

As Mr C didn't agree, he referred his complaint to our service in March 2024.

One of our investigators looked at the complaint and concluded that they couldn't agree the contract had been breached as it was still on-going when the complaint was raised. However they did think E had misrepresented the service to Mr C. They felt insufficient care had been taken with the matches arranged to date, and so a full refund of the cost plus 8% interest simple was due to Mr C.

AESEL didn't agree with the investigator's assessment and said there was still insufficient evidence for a successful S75 claim. The case was therefore referred to me for decision.

I previously issued a provisional decision on the matter. I said:

> I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
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> 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.
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> It's important to note that AESEL aren't the provider of the goods 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 C paid for the service 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*
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> There is no requirement for AESEL to raise a chargeback, but it's 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 these chargeback rules in deciding whether AESEL acted fairly.
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> I note that Mr C's chargeback claim would fall under 'not as described or defective merchandise' (which also includes services). Mr C raised this on 29 January 2024 but AESEL says the initial evidence submitted consisted of a written testimony which they didn't consider sufficient to progress the claim. They tried to contact Mr C on 7 and 8 February 2024 with regard to this but weren't able to get a hold of him.
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> The claim was subsequently closed but then reopened on 14 February 2024 and additional information was provided by Mr C. AESEL says that this was outside the 120 days from initial payment on 11 October 2023 and so they couldn't progress the claim.
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> However I'm not persuaded this is a correct application of their own chargeback time limit rules. AESEL gives their card holders 120 days from the payment date to file a chargeback claim. This meant he needed to initially raise the claim by 8 February 2024 which did occur.

The additional evidence was provided just outside the time limits – but as the claim had already been logged in time, I don't think it would've then been appropriate to say that the additional submissions meant Mr C was out of time to progress the chargeback claim. I also don't think an unreasonable period of time had elapsed between the claim initially raised and the submission of further evidence (just over two weeks).

While I think AESEL should therefore have considered the further evidence for Mr C's chargeback claim, it does look likely to have been disputed by E as they made their position clear following Mr C's prior complaint to them. In addition I think the chargeback wasn't likely to succeed under this reason code after consideration of the evidence presented. I will discuss this in further detail below as a part of my consideration of the subsequent S75 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 or misrepresentation. AESEL felt there was insufficient evidence to establish this and in their final response letter ("FRL") to Mr C they said E's terms and conditions were clear there were no guarantees tied to the recommendations made and the matches may only match a client's preferences to a degree.

They also felt the service itself hadn't been misrepresented to Mr C. As a result the S75 claim for breach of contract or misrepresentation was declined by AESEL.

Breach of contract

In considering whether AESEL's outcome was appropriate, I've considered E's terms and conditions, and whether they performed their services with reasonable skill and care as stated under Section 49 (S49) Consumer Rights Act 2015 (CRA) as follows:

Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.

In determining whether E performed its matchmaking service with reasonable care and skill, I've considered each of the matches that took place and whether it met these requirements. While I do note that E's own terms and conditions say the preferences may only be matched to a degree, it's more of a question of whether the matches were wholly appropriate in the round and if the service overall could be considered satisfactory.

With regard to this, I've summarised my findings from the provisional decision as follows:

- Match 1 - in this case it was clear the match didn't meet C's requirements with regard to the fact they had children. E accepted this error and reset Mr C's match counter which I think was a fair solution for what'd happened.

- Match 2 - this occurred on 6 November 2023, so almost one month after Mr C's initial payment for the service. For this match again, Mr C's requirements for not being matched with someone who suffered from a life altering condition was key. I note E initially said they weren't aware of this requirement when the match was arranged.

  I've reviewed the email exchanges between Mr C and E from October 2023 and can see that he wrote back to them after the initial video call on 17 October 2023. In these exchanges he confirms he doesn't have any criminal convictions but also elaborates that he doesn't want to be matched with someone with a life limiting or life altering illness. E then emailed him the second match on 6 November 2023 without considering this.

  I understand that E initially didn't accept they were aware of the extent of the match's disabilities although Mr C made it clear from his conversation with them that the disability was such that they would be considered life limiting.

  On this, I do think E needed to ensure they understood the individual's state of health to the extent they could match them appropriately. And in this case, Mr C's wish to not be matched with someone with a life altering illness should be considered a firm requirement rather than a simple preference.

  Therefore I do think E failed to meet a reasonable level of care and skill with this particular match for Mr C.

- Match 3 - E's final match prior to the complaint was on 14 December 2023 – so just over two months after the service was taken out. I understand Mr C was uncertain about the the marital status of the match after reviewing a photograph of them. Mr C considered that it was likely that another one of their key requirements hadn't been followed.

  Mr C said that E denied that there was an issue with this match and said there was insufficient evidence that they didn't meet his requirements.

  There's insufficient evidence of the marital status of that match to date so I can't say if E failed to meet the required standards of care and skill here. While I've not gone into further detail on the specifics of that photograph here, I don't think Mr C's concerns over this picture would in itself be a confirmation that they didn't meet his requirements. I also note that E's own terms and conditions ask their clients to let them know if they are in a relationship and any changes in availability. In this case E have said that this match was unmarried and so met Mr C's requirements.

  I do appreciate though that due to the prior matches Mr C was dissatisfied and had lost trust with E's abilities and considered the service was not of the standards expected here either.

  However with all of this in mind Mr C was promised six recommendations over nine months but at the time of complaint had received only three matches over two months. Out of these three, two look not to have been matched with reasonable care and skill. The first of these was accepted by E and removed from his match count.

  With this in mind he only had two matches against his agreed six. The first which looks to not have been appropriate, but for the second there's insufficient evidence of their relationship status. I don't think that in itself would be enough to suggest that the match was inappropriate – although that choice may have been one that wasn't to Mr C's own preferences.

I note the investigator said in their view that they couldn't agree there could be a successful claim for a breach of contract as further matches remained. I have to agree – while the second match (which was the first following the count reset) didn't meet key requirements, that in itself wouldn't be enough to consider that E hadn't met the required levels of care and skill under S49 CRA for the entirety of the agreement. If however there was further evidence of this in subsequent matches Mr C would be entitled to complain at the end of his contract and then revisit the S75 claim with this additional evidence for AESEL to consider.

However at this time, and based on the evidence available, I don't think AESEL has done anything wrong in declining his S75 claim against them for the reasons stated.

I also went on to say the following in my provisional decision:

Misrepresentation

AESEL also considered whether Mr C had a successful claim against E for misrepresentation of their services. I've reviewed E's contract terms and conditions and they say they can't guarantee their recommendations will satisfy all of the client's preferences. I don't think this term is unreasonable although even with this in mind, I do think Mr C's requirements were fundamental ones and such that E needed to comply with when considering appropriate matches.

However this would then be more of an issue of skill and care under S49 CRA as explained above rather than a case of the service itself being misrepresented. I'm also not aware of how Mr C discovered the service itself but I've reviewed E's website and it looks to be clear in what the service will comprise of. It describes itself as a matchmaking service for professionals and guarantees a number of matches and in turn confidentiality for its clients.

I do think the service provided here is in line with what's advertised – and so I can't say there is sufficient evidence the service itself was misrepresented. I'm therefore also satisfied AESEL hasn't done anything wrong here for declining his S75 claim for this reason.

Next steps

While the outcome to this decision will be disappointing to Mr C, and I do empathise with him for the service he received, I don't think there is sufficient evidence at present to say that E has breached their contract under S75. This is primarily due to only two of the nine month term having elapsed, and only two matches of the six promised presented to him.

I do agree that one of those two matches didn't meet the standards of care and skill expected under S49, and this may be something E needs to consider when it comes to Mr C's match count. However we've insufficient evidence of the marital status of the last match so their rejection seems a little premature.

> Nonetheless at this time I can't say E hasn't fulfilled their obligations as required by S49 CRA and in turn for a successful claim under S75 CCA. Mr C still has the right to complete his service with E – so for the remainder matches, and if he then finds that the service has not been to the levels one can reasonably expect, he has the right to complain again and then reopen his S75 claim with AESEL with this additional evidence.
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> If AESEL still consider there isn't a successful claim under S75 for breach of contract, this may be a complaint Mr C can bring back to us to consider afresh. But at this time and with the evidence available, I won't be asking AESEL to do anything more.

AESEL hasn't responded to my provisional findings with any further submissions.

Mr C responded to my provisional findings to say that he disagreed with them. In summary he felt a full refund of his membership costs was the fairest way forward. He also asked for 8% interest to be applied for the loss of these funds during this period along with compensation for the impact this has had on him.

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.

While I appreciate Mr C has sent in a lengthy submission to the provisional decision, I don't wish to appear discourteous when I say I've commented on the aspects I feel are most relevant here. In addition I note new complaint points have been raised for misrepresentation by E such as the inclusion of non-paying clients in the pool of matches and data sharing practices. I won't be commenting on these in detail as these didn't form part of the original complaint with AESEL but I still can't say these further submissions by Mr C are enough for me to consider that the service wasn't in line with what was advertised.

So in terms of the other comments, first and foremost I note Mr C has referred to S49 CRA and the requirement for reasonable care and skill. While I do agree this is necessary, as mentioned in my provisional decision, I don't think it's reasonable to say E has failed to meet this based solely on two matches (excluding the match where it is agreed the match's marital status is unclear and may still confirm to Mr C's requirements) out of a promised six, during a period of two months of the nine month contract period.

I note that E has reset their match making counter for their first match and my suggestion is that they should also do so with the second so this will leave Mr C with the majority of their matches remaining. I don't think it's reasonable here to consider that E is unlikely to find further appropriate matches purely based on what's already happened to date. I consider it fair they should be given the opportunity to complete their service to Mr C here.

I've also commented previously on the handling of the chargeback and S75 claim by AESEL and I don't think anything more is needed here. I don't consider it likely these claims would've succeeded based on the current evidence although Mr C has the right to complete his agreement with E and if issues remain, to raise the matter again with AESEL along with any additional issues not previously considered.

I appreciate Mr C has moved on since then in terms of seeking alternative services, however I don't consider it fair for the subscription fee to be refunded purely on the fact that Mr C has lost faith and no longer wishes to continue with the service provided by E.

Likewise while I appreciate Mr C has provided comments on the broader impact this has had on him, and I'm sorry to hear this, I can't agree any compensation is due here for what's happened, taking into consideration all of the available evidence and the fairest way forward.

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 C to accept or reject my decision before 4 March 2025.

Viral Patel
Ombudsman