

The complaint

Mr W is unhappy because American Express Services Europe Limited (AESEL) declined his disputed transaction claim.

What happened

In or around June 2022 Mr W purchased a subscription to a website and paid the merchant using his AESEL credit card.

In or around November 2022 Mr W received an email from the merchant which said there was an automatic subscription renewal in place on his account for 12 months at a cost of £478.80.

Mr W says he went onto the App and cancelled his subscription. He says that following this, he checked his subscription status a couple of times and saw that it said “subscription ends on 14 December 2022”.

On 16 December 2022 Mr W noticed that his AESEL card had been charged £478.80 for a further 12 months subscription. He contacted the merchant and said he’d cancelled his subscription and asked for the charge to be refunded.

The merchant replied to Mr W and said his subscription had renewed because the automatic renewal feature hadn’t been disabled. It said it was unable to issue a refund because Mr W’s request to cancel had been made outside of the cancellation policy.

Unable to resolve matters with the merchant, Mr W raised a disputed transaction claim with AESEL.

AESEL charged back the merchant and asked it for its version of events. The merchant responded by rejecting the dispute and said it hadn’t received a cancellation request. AESEL asked Mr W for evidence that he’d cancelled the subscription but ultimately decided that it didn’t have enough evidence to uphold the dispute.

Mr W remained unhappy with AESEL’s decision and brought his complaint to this service.

Our investigator didn’t uphold the complaint. She said that Mr W hadn’t provided evidence to show that he’d cancelled the subscription. She also said that the renewal reminder email dated 14 November 2022 clearly explained the process which Mr W needed to follow to cancel the subscription and that based on the information provided by both parties, she didn’t think Mr W had completed that process. The investigator concluded that AESEL hadn’t acted unreasonably in rejecting the claim.

Mr W didn’t agree so I’ve been asked to review the complaint.

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.

Mr W has raised several points in his submission to this service. I've understood and looked into these, but I've only commented on what I think is essential to my conclusions.

The key issues here are the obligations owed by AESEL to Mr W in this situation, the chargeback request and how AESEL dealt with it, and whether AESEL should've considered the claim under section 75.

What obligations did AESEL have to Mr W in this situation?

It's clear from everything that Mr W has told this service that he's not happy with the way the merchant (the website) responded to his complaint and request for a refund. He's pointed out that he followed what he understood to be the process for cancelling his subscription. Mr W has said that he considers AESEL to be equally liable with the merchant and that AESEL should've reviewed the merchant's actions.

I agree that in certain circumstances, section 75 of the Consumer Credit Act 1974 gives a consumer a right to claim against the supplier of goods (or services) or the provider of credit if there's been a breach of contract or a misrepresentation. Based on what I've seen here, AESEL dealt with Mr W's disputed transaction under the chargeback scheme, not under section 75. It has told this service that it received an online chargeback request from Mr W on 19 December 2022 to cancel and refund the payment to the merchant. So my role here is to look at whether AESEL has done anything wrong in the way it handled the chargeback.

The chargeback request and how AESEL dealt with it

The chargeback scheme is a voluntary one. It's a process by which disputed transaction disputes are resolved between card issuers and merchants under the relevant card scheme rules. What this means is that AESEL can, in some circumstances, ask for a transaction to be reversed if there's a problem with the goods or services supplied by the merchant. But the chargeback process doesn't give a consumer any legal rights and it isn't guaranteed to result in a refund. It depends on the evidence provided to support the chargeback and what the merchant says in response. I'd consider it to be good practice for AESEL to raise a chargeback if it thinks there's a good chance of it being successful.

In this case, I can see that AESEL raised the chargeback and credited Mr W's account with the disputed sum. It asked Mr W to provide evidence to show that he had cancelled the subscription.

AESEL has said that it considered the information received from Mr W and the merchant and ultimately declined the chargeback because Mr W hadn't provided evidence to show that he had cancelled the subscription.

I've reviewed all of the information that Mr W and the merchant provided to AESEL. I understand that Mr W thought he'd successfully cancelled his subscription. However, it seems that the subscription didn't cancel because Mr W didn't turn off the automatic renewal on his subscription.

I can't be certain of exactly what steps Mr W took to cancel his subscription. I can see that AESEL asked Mr W to provide evidence to show that he'd cancelled the subscription. This evidence might have included (by way of example) a screenshot of the cancellation confirmation or an email confirming that the subscription had been cancelled. In this case, without any evidence (other than Mr W's testimony) to show that the subscription had been cancelled, I don't think it was unreasonable for AESEL to reject the chargeback claim.

Section 75

I've gone on to consider section 75. I've already explained that in certain circumstances section 75 gives a consumer a right to claim against a supplier of goods or services or the provider of credit if there's been a breach of contract or a misrepresentation.

In this case, whilst I can see that AESEL considered the chargeback claim, I can't see that it considered the claim under section 75. AESEL hasn't mentioned section 75 in its final response letter.

Mr W has made some points about his cancellation rights and the cooling off period under the agreement. He's also commented that the screen he saw regarding his account status after he had cancelled his subscription was misleading and misrepresented the actual status of his account. So, I can see why Mr W might want AESEL to consider his claim under section 75.

There's no time limit for bringing a claim under section 75. So, if Mr W wishes to raise a claim under section 75 with AESEL, he can do so. AESEL must be given the opportunity to consider the claim and respond. If Mr W isn't happy with the outcome, he can ask this service to look into it.

My final decision

My final decision is that I don't uphold the complaint. For the reasons I've explained, I don't think AESEL acted unreasonably when it rejected the chargeback claim,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 October 2023.

Emma Davy
Ombudsman