

The complaint

Mr G complains that American Express Services Europe Limited (AESEL) has unfairly declined his claim under Section 75 of the Consumer Credit Act 1974 (Section 75).

What happened

Mr G used his AESEL credit card to purchase introduction and matchmaking services from a service provider (who I'll call S) in February 2023. The cost of membership for one year was £349.

From the information provided, it appears as though S provided Mr G with an introduction at some point after he signed up for their services. As it did not work out, he was provided with a further introduction in March 2023. This candidate did not get in touch with Mr G at all and he informed S of the same in May 2023. S contacted Mr G again in November 2023 to provide information concerning a third candidate. Mr G said he did not receive this email.

In February 2024 Mr G contacted S and let it know he thought the service provided hadn't been adequate. Mr G said the terms and conditions said he would be guaranteed a minimum of six introductions through the year (if needed). Mr G told S the terms entered in to had been breached as he had only received two introductions. He asked for a refund of the money he paid for the services.

S did not agree that it had done anything wrong so Mr G raised a claim with AESEL under Section 75. AESEL considered and declined the claim on the basis that there was no breach of contract. It said the terms and conditions do not allow for a refund once a first introduction is made, and also that the terms allow for an extension of membership at no additional cost if the specified amount of introductions are not made. AESEL also told Mr G it didn't think there had been misrepresentation as Mr G was unhappy with how the contract had been performed rather than information provided before he entered into it.

Mr G disagreed and raised a complaint about the time taken to provide him with a response to his claim and misinformation given. As a resolution could not be reached, Mr G brought his complaint to our service. He said he has only received two introductions and therefore only 33% of the services. He was unhappy his claim had been declined.

Our investigator reviewed the complaint and told Mr G she thought that AESEL provided him with a response to his claim within a reasonable time frame, and there was no evidence of breach of contract or misrepresentation. Unhappy with this outcome, Mr G asked for an ombudsman to issue a decision, so the complaint has been passed to me to decide.

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.

Section 75 of the CCA allows – in certain circumstances - for a creditor (AESEL) to be jointly and severally liable for any claim by the debtor (Mr G) of breach of contract or

misrepresentation made by a supplier of goods and/or services (S). In this particular claim, AESEL needed to explore whether Mr G's claims that he had only received two introductions out of a promised number of six constituted a breach of contract that it should be held liable for.

As a starting point I have considered those documents which can be considered contract terms. This includes a copy of the terms and conditions and the frequently asked questions section on S's website. I note on the number of introductions to be provided, it says:

"We guarantee a minimum of six introductions throughout the year (if needed), but will endeavour to provide as many as necessary throughout the year where possible without any upper limit, subject to availability and requirement."

Between February 2023 and February 2024, Mr G received three introductions. Mr G says he did not receive one of them, but whether it be two or three, the result is the same – S says it will provide a minimum of six introductions (if needed) through the course of year and S failed to provide this number of introductions to Mr G. So, S's guarantee hasn't been met.

However, this should not be considered in isolation and I must also take into account any other relevant terms of the contract. S also say:

"The membership period will be increased accordingly, in the rare event that [S] fails to give the minimum guaranteed number of introductions (6 – if needed), based on compatibility rather than area, or if the membership renewal is pending."

This clause effectively allows S to extend the membership period for Mr G, without cost to him, until the minimum number of guaranteed introductions is achieved. It also has the effect that a failure to achieve the guaranteed number of introductions doesn't breach the contract; rather, the contract makes provision for a further obligation on S to arise should this event happen. Mr G raised his complaint to S in the first instance and I have reviewed their response. There is nothing in their correspondence which indicates it does not intend to continue to provide the service Mr G has paid for and so I'm satisfied AESEL was entitled to conclude there has not been a breach of contract.

Mr G disagrees on the basis that there has been no proof of performance, nor has there been any evidence S is able to fulfil the service. I have thought about what Mr G has said and I don't think it makes a difference to my decision. I say this for two reasons. The first is that S has a reasonable and plausible explanation for any delay in further introductions; that is, in the terms, customers are required to provide an update on the success or otherwise of introductions, otherwise S will cease making further introductions. Mr G failed to come back to S on how the introduction made in November 2023 went. And second, when S realised it may need to take some further action to generate interest in Mr G's profile it added Mr G to its 'platinum list' indicating it was taking steps to attempt to fulfil the contract.

While Mr G has questioned whether S will perform the contract, that doesn't provide him with the basis of a claim against AESEL that the contract has been breached. If, for example, S ceases trading, the position might be different. But as things stand, I can't expect AESEL to refund him.

While Section 75 also enables Mr G to bring a misrepresentation claim against AESEL, he hasn't expressed any concerns along these lines. His concerns reflect the performance of the contract, rather than the basis on which he entered into it. So, I haven't found it necessary to look further into this aspect.

Mr G has also complained about the time AESEL took to provide him with a response to his

claim. AESEL received Mr G's Section 75 claim on 24 January 2024. It issued a response to the claim by 14 February 2024. There were some issues during this time concerning some emails it sent Mr G which failed to deliver, but I don't think this is of significance as I don't see there were delays in reviewing and providing a response to the claim.

My final decision

For the reasons I have set out above, I am not upholding Mr G's complaint about American Express Services Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 October 2024.

Vanisha Patel
Ombudsman