

The complaint

Ms J is unhappy that Bank of Scotland plc trading as Halifax won't refund debit card payments she made to a dating agency she says is operating a scam.

What happened

The detailed background to this complaint is well known to both parties, so I'll provide only an overview of the key facts here.

On 17 October 2019 Ms J made a payment of £50 to a dating agency. This was to meet one of the representatives from the agency in a London hotel. Ms J explains that they spoke for well over an hour, so she thought the agency was gathering information to take into account in order to find compatible matches. On 29 January 2020, Ms J paid £997 for the Gold Service membership package.

Ms J was unhappy with the service she received. She said the dating agency was not as exclusive as it claims to be and that it provided generic profiles without any thought about whether the suitors are a good potential match. She felt the dating agency had not acted with integrity by allowing her to sign up when there were no suitable matches available. Ms J explains that the dating agency provided a registration pack which she describes as a "*degree in dating*" and overwhelming. Ms J says she lost confidence in the organisation because it had not vetted its clients closely enough. She did not wish to make use of the remaining services in her membership package. She felt the fee the dating agency was charging for its service was astronomical and that its level of service was no different to other, significantly cheaper, dating services.

In April 2020, Ms J contacted Halifax and explained the service she was receiving from the dating agency was not what had been promised. Ms J says that Halifax did not tell her that she could raise a dispute. She says she was told the bank could not do anything to help.

Ms J contacted the dating agency and asked for her money back. The agency felt it was providing the service Ms J had paid for. It said it had sent 37 profiles to Ms J since January 2020. It explained that the Gold Service provides access to all members and is not a personal matchmaking service. It pointed out Ms J had not taken advantage of the dating support that is part of the overall package she had paid for. It said it was still willing to provide the coaching call, the video profile and the communication critique. It suggested it was still possible that Ms J could make a connection through the agency and urged her to make the most of her remaining membership time.

Ms J obtained legal advice and discovered there was a chargeback process when paying by debit card. Ms J contacted the bank again and said it had made a mistake by not telling her how to dispute the payment.

Halifax looked into things and concluded that it did not have to refund Ms J. It issued its final response to her complaint in February 2021. It paid Ms J £75 compensation to make up for the confusion around the chargeback process, but concluded it would not have taken Ms J's dispute further because the company was willing to provide her with the promised services

and she had decided not to use them.

Ms J referred her complaint to this service. Our Investigator looked into it but didn't recommend that it should be upheld. She didn't think a chargeback would have had a reasonable prospect of success in this case. She thought the dating agency would have most likely been able to provide sufficient evidence to defend the claim. She noted that the dating agency had not taken Ms J's fees and disappeared and that it had been willing to provide all of the services included as part of the Gold Service.

Ms J didn't agree and asked for an Ombudsman to review the complaint afresh. She explained the service and the matches were very poor and that she'd never met one single person face to face. She said she'd been harassed by unsuitable matches and there had been no point even going to the next stage with any of those potential connections. She explained that she had made payment for suitable matches and felt strongly the service was a scam. She was disappointed the dating agency had not refunded any money to take into account that it could not provide a quality face to face service during the pandemic. She referred to the materials provided by the dating agency and said she had not signed up to take a dating course. She added that neither the bank nor the Investigator had scrutinised the materials that had been sent to her by the dating agency so could not have made a fair judgment.

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.

Having done so, I can see no basis on which I can fairly require Halifax to refund the money Ms J paid. I can appreciate this is not the outcome Ms J was hoping for, so I will explain why.

Millions of card payments are made each day and most of those transactions are problem free. But there are occasions where an account holder may need to query a transaction applied to their account, perhaps if they don't recognise it or if they think something has gone wrong.

If an account holder raises concerns about a transaction, I'd expect their card issuer to look into the situation further to see whether it has any responsibility for refunding the amount in dispute. In some circumstances, a card issuer can ask for a transaction to be refunded through the chargeback process

As Ms J used her debit card to make the payments and wants a refund, I've thought about whether Halifax dealt with that request fairly and did what it could to help her.

Should Halifax have attempted a chargeback?

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. What this means is that Halifax can in certain circumstances ask for a payment Ms J made to be refunded. Those circumstances can include where goods or services aren't supplied by the company Ms J paid or if they are not as described or defective.

A chargeback isn't guaranteed to result in a refund. There needs to be a right to a chargeback under the card scheme rules. And under those rules the merchant can defend a chargeback if it doesn't agree with the request. There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and it is reasonable to do so.

In this case, Halifax didn't tell Ms J about the chargeback process when she first got in touch. Halifax, as the scheme member, has the knowledge of the various requirements for a chargeback to succeed under the scheme rules. It did not think there was a reasonable prospect of success in the circumstances Ms J had described. It was entitled to take this view, but it would have been better for the bank to have told Ms J about chargeback and why it didn't think it would help her on this occasion rather than have Ms J discover chargeback at a later date and feel that it had been overlooked. Halifax has already paid £75 compensation to Ms J to acknowledge that it should have been clearer about what it was able to do and why. I think this is fair.

By the time Ms J had learnt about the existence of the chargeback scheme, it was too late to raise a claim for the payments she had made to the dating agency. So I have thought about whether Halifax has caused Ms J to miss out on the opportunity to try and recover the money she paid. Having done so, I do not think a chargeback would have had a realistic prospect of success even if it had been raised in time.

I have thought about the chargeback rules and about what Ms J has told us about her complaint. Assessments of the quality of a dating agency and the services that it provides can be very subjective. Where the dispute lies is that Ms J believes the services were not as described to her.

It's important to note that chargebacks are decided based on the card scheme's rules and not the relative merits of a cardholder and merchant dispute. This means it's not for me or Halifax to decide whether the dating agency has treated Ms J poorly or whether she should be allowed to have some or all of her money back as a result. It is for this reason that I do not need to see all of the materials the dating agency provided to Ms J or make any determination as to whether they were worth the price paid or not. I am not deciding whether it is the dating agency or Ms J that deserves the money that's been paid. I am considering whether the bank's position that a chargeback would not have been successful is fair and reasonable in all the circumstances.

It is clear from the dating agency's responses to Ms J that it would have resisted any chargeback claim. It had engaged with Ms J to try and resolve the situation and I think it is more likely than not that it would have provided similar details as part of a chargeback claim.

To defend a chargeback claim, the dating agency would have needed to provide evidence to show that its service matched what was described. I am persuaded that it would have been able to do so. There is no dispute that the dating agency shared Ms J's profile and that it provided her with the details of profiles to consider, which was all part of the Gold Service package. Ms J said only around 20 of those profiles met the very basic requirements of what she was looking for, but she felt none were a good fit for her from a personality and emotional perspective. But this does not mean that the service the dating agency performed was defective or that Ms J had been deceived. The dating agency explained that it shared profiles with Ms J with the intention of not limiting anyone from the possibility of making a connection and getting to know people.

From the correspondence I have seen between Ms J and the dating agency, the dating agency was willing to provide the services included in the Gold Service subscription Ms J had paid for and to provide ongoing access to new and existing matches for the duration of her membership, although I can appreciate that Ms J didn't attribute much worth to the approach and the methodology of the dating agency by this point.

Even so, I remain persuaded that the dating agency would have provided a defence to a chargeback claim that would have been sufficient to rebut it. The services Ms J had paid for

were still available for her to use and it was ultimately her choice not to use them. I can't fairly and reasonably ask Halifax to return the money to Ms J in circumstances where a chargeback wouldn't have succeeded.

Ms J's strength of feeling is clear. She has spent a lot of money on the subscription and the experience as she has described it does not come anywhere near close to what she was anticipating. She feels the dating agency is a scam. But I consider a scam to be a dishonest scheme or criminal wrongdoing intended to result in financial gain. From publicly available information about the dating agency, it has been established for over 20 years and its testimonials point to broadly positive experiences which have led to new friendships and marriages. I am not persuaded the dating agency set out to deliberately defraud Ms J.

Ms J has referred to consumer protection legislation which gives a consumer rights against a supplier. But Halifax isn't able to help Ms J to enforce any rights under this legislation in the same way a court might. There's also no contractual obligation on Halifax to help Ms J to try and recover money from the merchant. The bank wasn't ever going to be able to investigate any underlying issues between Ms J and the dating service. The only way that Halifax could potentially try to help was through the chargeback process. As there was no realistic prospect of the chargeback being successful, there was nothing further Halifax could do to try and help Ms J to recover the money she paid.

I'm not persuaded there are any grounds on which Halifax can fairly and reasonably be held responsible for refunding the money Ms J paid. As such, I do not require it to do anything more in the particular circumstances of this complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 14 April 2022.

Claire Marsh
Ombudsman