

Credit card payments for a dubious dating platform

Topic: **Abuse and fraud** Case number: **2021/08**

The client was looking for a partner via a foreign dating platform and paid the platform's bills with his credit card. Various indications led him to believe that the women he was supposedly in contact with via email did not exist at all and that the business model of the dating platform was rather to earn money with chargeable emails, which were generated automatically and could not be assigned to a specific person. He demanded the money paid for the services of the dating platform with his credit card back from the credit card issuer, as in his opinion it was a fraud scheme. The issuer refused to assert his claim for repayment within the framework of a chargeback procedure because the customer had not objected to the disputed credit card charges within the time limit. During the ombudsman proceedings, the bank reiterated its position and took the view that no grounds for a chargeback had been met. The customer's concern could not be resolved in the ombudsman proceedings. The case was closed with an explanatory notice to the customer.

If a customer has paid for a good or service with his credit card and discovers defects, he must in principle deal directly with the merchant who accepted the credit card as a means of payment. He cannot turn to the credit card issuer and claim the money back, as the credit card issuer is only a payment intermediary and is not involved in the basic transaction between the customer and the merchant. This is stated in all common credit card terms and conditions known to the Ombudsman.

However, all major credit card networks have so-called chargeback procedures. Within the framework of these procedures, credit card payments for which there are certain, clearly defined reasons for reclaiming can be reclaimed within a certain period of time via the credit card network. The purpose of these chargeback procedures is to enable a simple and quick chargeback of disputed transactions in clear cases. If a customer claims that he/she did not initiate a certain transaction, he/she must complain within a short period of time so that the chargeback deadlines can still be met by the credit card issuer. If the customer complains about not having received a good or service or not having received it as promised, longer complaint periods apply in some cases. In these cases, however, the customer must first try to clarify the complaint directly with the merchant.

The credit card conditions known to the Ombudsman do not give the customer a contractual right to have the credit card issuer carry out a chargeback procedure in the event of a disputed payment. The Ombudsman nevertheless considers that such a procedure must be carried out on the basis of the duty of loyalty towards the customer if the conditions for it under the chargeback rules are met. In the present case, the bank told the customer that he had objected to his credit card bill too late. This would have been the case if the customer had claimed that he had not triggered the transaction at all. However, this was not disputed. Rather, the customer claimed that he had not received the service advertised by the merchant, i.e. the dating platform, namely the opportunity to meet a woman. In the chargeback rules, the reason "service not as described" comes into question for this. Since longer time limits apply in this case, the Ombudsman asked the bank to look into the case again.

In its statement to the Ombudsman, the bank explained that the customer's complaints were speculations and unproven allegations that could not be clarified in the chargeback procedure. The

bank also took the view that the complaint could not be attributed to a chargeback reason and therefore also refused to initiate a chargeback procedure vis-à-vis the Ombudsman. In view of the bank's unbending stance on this issue, the Ombudsman had to discontinue his mediation efforts.

In his explanatory closing statement, he explained to the customer that the transactions he had made could in principle be attributed to him based on the credit card conditions and that he therefore had to pay the bill for them. However, he regretted that the bank was not prepared to initiate a chargeback procedure and thus attempt to charge back the merchant. In his opinion, the customer's complaints at least potentially fulfilled the chargeback reason "service not as described", and the deadline for asserting this reason had not yet expired.

However, he shared the bank's assessment that a chargeback procedure would hardly have been successful in the present case. It was not recognisable that the client had asserted his complaints directly against the dating platform in a first step, which would have been a prerequisite for initiating the chargeback procedure in this case. Moreover, the service provided by the dating platform could only be plausibilised in this procedure. It would be readily possible for the provider to demonstrate that the customer was able to contact potential partners in the agreed manner. This would have led to the rejection of the chargeback request. It would hardly have been possible to clarify whether there were actually no real persons behind the profiles of these women.