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A NOTE FROM THE ARBITER

*Alfred Mifsud, Arbiter for
Financial Services*

Highlights from the first six months of 2024:

- **51 complaints decided.**
- **Only 10 cases registered before 2024 were pending at the end of June 2024.**
- **Time from final submission to decision stage – 69.5 days.**
- **New complaints increased by 65% in H1 2024 compared to H1 2023, rising from 81 to 134.**
- **Banking/payments issues accounted for the majority of complaints (57).**
- **Fraud scams and unauthorised payments made up 60% of all banking/payments complaints.**
- **36 cases settled in mediation.**

We are pleased to report a busy and productive first half of 2024.

DECISIONS

The Arbiter issued decisions on 51 complaints, compared to 52 and 35 in the same period of 2023 and 2022, respectively. Thirty-one decisions did not uphold the complaint, 15 partially upheld it and five cases involved complaints that were fully upheld.

One has to take into consideration that most of the decisions issued in the first half of 2023 were taken in the second quarter to address quite a large backlog left pending from previous quarters.

There was no such backlog at the end of 2023. So, the decisions issued in the first half of 2024 were normal operational flow, which is higher than the 35 issued in 2022.

At the end of June 2024, the Arbiter only had three cases ready for decision; and another 11 were awaiting final submissions after conclusion of the evidence collection process.

At end June 2024, there were only 10 cases pending that were registered before 2024. Of these, five were decided after 30 June 2024, one was withdrawn since there was a direct settlement following a preliminary decision issued by the Arbiter, one is at the decision stage and three are in the evidence hearing stage since they involve complex issues.

The time from final submission to decision stage for decisions issued during the first half of 2024 was, on average, 69.5 days compared to 158 days in the same period of 2023. Ten complaints filed in 2024, which reached adjudication, were already decided by the end of June 2024.

APPEALS

Of the 51 decisions issued, seven were appealed – four appeals by the Service Provider and three by the Complainant. By way of comparison in H1/2023 of the 52 decisions issued there were eight appeals – four by the Service Provider and four by the Complainant.

The Court of Appeal decided five appeals filed before 2024. Three appeals confirmed the Arbiter's decisions and two reversed the Arbiter's decisions. A Court of Appeal decision reversing the Arbiter's decision related to the right of a bank to terminate an account relationship with clients who fail to submit due diligence information requested.

This matter is a practical and legal grey area as the laws relating to rights to privacy and licensed institutions obligations to conduct detailed Know Your Customer (KYC) procedures are at times conflicting.

NEW COMPLAINTS

There were 134 new complaints registered in the first half of 2024, compared to 81 in the same period of 2023. Fifty-seven complaints were related to banking/payments issues, 42 complaints related to insurance issues, 33 complaints were investments related and two complaints were related to the provision of corporate services.

60% of banking/payments complaints related to fraud scams and unauthorised payments.

MEDIATION

We are pleased to note a substantial increase of cases being settled at mediation. In the first half of 2024, 36 cases were settled at mediation compared to 18 in the same period of 2023. Fourteen cases settled through mediation related to payment scams. The publication of a model explaining how the Arbiter apportions responsibility for scam payments between the payer (PSU) and the bank/ paying institution (PSP) helped parties understand how their case is likely to be decided if taken to adjudication and therefore motivates quick settlement at mediation. To sustain this trend, the OAFS is planning to augment its mediation resources in the second half of 2024.

CONCERNS

The Arbiter and the OAFS remain concerned by the increase in both quantity and quality (in terms of sophistication and deception) of scam schemes aimed at unsophisticated consumers, often with a promise of some get rich quick scheme. We are seeing too many cases that cause not just financial ruin, but also emotional and psychological stress to victims and their families.

Consumers should be on their guard not to give away the access credentials of their bank account to scammers posing as some authority, being banks, regulators, government officials or the police. They should also be extra careful not to be duped by the promise of quick returns on some 'clever' investment and should always bear in mind that, if something seems too good to be true, then it most probably is.

"Before parting with their money, consumers should seek advice from trusted sources."

Trying to blame others for not protecting victims from their own negligence is often an exercise in pious hopes.

More education on how consumers should protect themselves from falling victims to these scams is needed at the national level.

SELECTION OF CASE SUMMARIES

Each week, in our LinkedIn post, we typically feature a decision of the Arbiter for Financial Services that gives an insight into a particular issue or area. In the four decisions summarised below, there are decisions related to banking, corporate services providers, life insurance and a financial service provider of retirement schemes.



Banking complaint upheld

In a decision issued on 22 March 2024, the Arbiter for Financial Services upheld a complaint involving a customer who claimed that his bank had unjustifiably rejected a €3,948.46 transfer from an online investment platform, despite providing documentation on the transfer's legitimacy. The complainant also raised data privacy concerns and criticised the bank's policies and staff training. As a remedy, he sought an apology, reinstatement of the transaction, data privacy assurance, and revision of the bank's policies and employee training.

In response, the bank stated that it had the right to reject and send back payments when they did not comply with its acceptance policies and that the complainant's request could not be acceded to as the bank was unable to accept payments when they violated its policies. The bank also denied any misunderstanding or need for policy review and dismissed the complainant's claims as "unfounded in fact and law".

The Arbiter clarified that banks have the right to formulate their own customer acceptance and risk policies, provided they are consistently applied without discrimination. He dismissed notions of the bank's breaching the customer's privacy rights or manipulating policies to justify their actions. Importantly, the Arbiter found that the extract of the bank's policy presented to justify returning the funds did not actually support their action.

The policy prohibited business relationships with corporate and sole trader customers involved in crypto/virtual currency industries but did not apply to individual customers like the complainant, whose account was maintained.

The Arbiter noted the small amount of crypto-related activity in the customer's five-year online investment statement, and the lack of a clear policy excluding such transfers. He concluded the bank wrongly adopted policies meant for business clients offering crypto services to the complainant's individual transaction.

The Arbiter found the complaint justified and ordered the bank to accept the €4,000 transfer from the online investment account to the customer's account. He also awarded €100 in nominal moral damages to the customer.

The bank did not appeal.

Read the full decision (ASF 198/2023) on this link: <https://rb.gy/m78u8l>.



CSP complaint dismissed

In a decision issued on 12 April 2024, the Arbiter for Financial Services concluded that the settlement of €500 plus VAT related to tax advice from a Corporate Services Provider (CSP) constituted a full and final settlement.

Complainant engaged the CSP to obtain tax advice on behalf of a friend contemplating reporting a case of VAT evasion. After detailing the background, complainant posed five specific questions on the potential consequences for his friend.

However, the advice received on 5 September 2023 was deemed of 'no value' by the complainant since he alleged that it failed to address any of the questions. Despite this, an invoice of €2,046.25 plus VAT was issued, which, after complaints, was reduced in stages to €500 plus VAT.

The CSP defended their actions, stating they had provided the requested tax advice and offered a significant discount on the invoice, reducing it by 75%. They highlighted the complainant's professional background as a retired lawyer, arguing he was fully aware of the terms and conditions outlined in the Letter of Engagement he signed.

The provider maintained that the advice given was professional and comprehensive, covering the relevant provisions of the VAT and Income Tax Acts.

The Arbiter noted the complainant's acknowledgment of signing the Letter of Engagement and being informed of the hourly rates. Despite complainant's claims of duress due to threats of legal action, the Arbiter found that the CSP had followed their standard procedures in handling unpaid invoices.

The provider's senior manager testified to the relevance and justification of the time spent on providing the advice, emphasising the professional nature of their response to complainant's queries.

The Arbiter concluded that the settlement of €500 plus VAT, following the complainant's offer of €250 plus VAT, constituted a full and final settlement that should not be reopened. The argument of acceptance under duress was refuted, with the Arbiter emphasising that the exercise of legal rights by the CSP should not be considered undue duress. Consequently, the complaint was dismissed, with each party bearing its own costs of the proceedings.

Read the full decision on the case, ASF 044/2024, which was not appealed, at this link: <https://rb.gy/hqo0su>.



Additional compensation awarded after shortfall in with-profits policy maturity value

In a decision issued on 10 May 2024, the Arbiter for Financial Services concluded that a life insurance provider should pay an extra €3,186.45 in compensation to a policy holder after the sum offered at the policy's maturity was significantly less than the estimated maturity amount.

Complainants alleged that, when purchasing an insurance policy in 1997, the provider's representative assured them they would receive Lm20,000 (€46,587.48) on policy maturity after 25 years. However, on maturity in 2022, they were only offered €19,747.87. Complainants claimed the representative failed to properly explain the policy terms and had guaranteed the maturity amount.

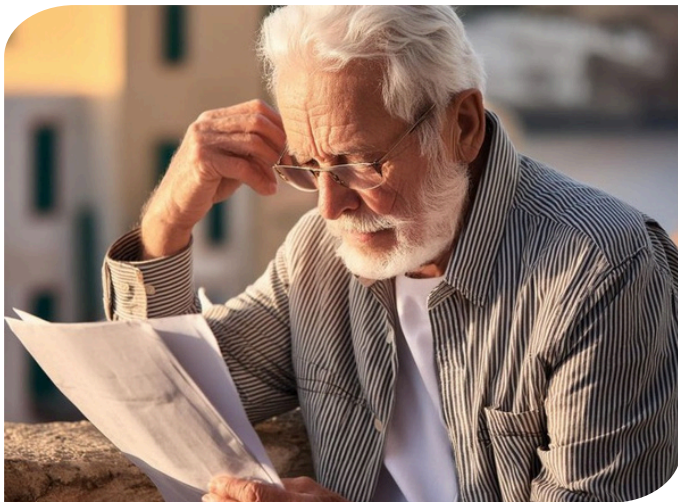
The provider argued that the quoted maturity values were not guaranteed but merely estimates based on then-current rates. They asserted that “the only amounts which were guaranteed under the policy was the sum assured in the amount of Lm5,067 (€11,802.94)” and that “the quotation, as the name indicates, is only an estimate, that is, estimate or illustration”. The provider maintained they acted in good faith and fulfilled all contractual obligations.

The Arbiter noted the conflicting positions on what was promised during the sale. While the Arbiter found it “difficult to understand whether this was a case where the provider’s representative was imprudent to only emphasise the benefits of the policy”, the Arbiter also observed that the complainant, while consistent in his arguments, could be having a selective memory.

The Arbiter felt the provider “should have been more cautious in the quotations it issues” to help the client understand that nothing was guaranteed for 25 years and decided that, while the complainant did not have a legitimate expectation to receive the full quoted amount, the provider could have taken additional measures to avoid unrealistic expectations.

The Arbiter ordered the provider to pay the complainant an additional €3,186.45 in compensation on top of the €21,243.01 already offered, resulting in a total payment of €24,429.46, within five working days and to bear the costs of the case.

Read the full decision on the case, ASF 207/2023, which was not appealed, at this link: <https://rb.gy/mc0nih>.



Retirement scheme provider ordered to pay 70% of net realised losses in compensation

The Arbiter for Financial Services ordered a financial services provider to pay £9,542.34 in compensation after receiving a complaint related to a personal retirement scheme. In a decision issued on 12 April 2024, he directed the provider to apply a lower annual trustee fee from 2021 onwards and to waive its own exit fee applicable to the scheme.

The Arbiter also recommended that the provider review the correctness of the application of certain fees within the investment platform and report their findings to the complainant. The costs of the proceedings were to be borne by the service provider.

The complainant alleged significant losses on his retirement scheme due to unsuitable investments allowed by the provider on the advice of an unauthorised investment adviser. He claimed that his pension plan was eroded by fees and that the trustee took no action to prevent the scheme from falling in value.

The complainant also stated that the trustee was not forthcoming with information and explanations on his scheme, leading to a loss of over £44,000 during a seven-year period since 2016.

The provider argued that the complaint was filed beyond the two-year timeframe stipulated by law, as the complainant was aware of the issues by June 2020. The provider explained that the complainant had signed all investment instructions, indicating his explicit agreement.

They also noted that the scheme was member-directed, requiring the member to appoint an investment adviser, and that the provider was not licensed or authorised to offer investment advice. The provider emphasised that they had consistently provided detailed information about the portfolio and had offered the complainant an option to transfer his pension fund to a plan with reduced fees, which he did not pursue.

The Arbiter determined that the complaint fell within his competence and was not time barred. He observed that the investment portfolio was unsuitable for the complainant’s profile and risk appetite. The portfolio lacked diversification and had high exposure to single investments, which was not in line with the applicable requirements.

The Arbiter noted that “high-concentration risks were clearly and evidently being taken with respect to individual investments”. Additionally, the frequent redemptions within short periods and the inclusion of complex structured products were deemed inappropriate for a retail investor.

The provider failed to act with the prudence, diligence and attention required, and did not meet the “reasonable and legitimate expectations” of the complainant, the Arbiter concluded.

The Arbiter decided that the service provider should be partially held responsible for the losses incurred – up to 70% of the net realised losses on the investment portfolio.

Read the full decision on the case, ASF 160/2023, which was not appealed, at this link: <https://rb.gy/b0uk90>.

LESSONS LEARNED: LEVERAGING THE ARBITER'S DECISIONS FROM A CONSUMER PERSPECTIVE

Each week, in our Facebook post, we regularly feature lessons learned from decisions of the Arbiter for Financial Services and give advice in specific situations related to financial products. These are select typical posts related to scams via text message, investment advice and use of automated teller machines (ATMs). Apart from posting in English, we also post in Maltese.



On text message scams

🚨 Scam Alert: Your Voice Matters! 🚨

Have you ever received a text message that seemed a bit off, claiming to be from your bank or a trusted institution, but something just didn't sit right? 😞 You're not alone. Scams, especially through text messages (smishing), are on the rise, and they're getting more sophisticated by the day. 📈

But here's the thing – you have the power to fight back. 🙌 The Office of the Arbiter for Financial Services (OAFS) is here to assist you. If you suspect you've fallen victim to a scam, acting swiftly and reporting the incident is crucial. Your bank is obliged to investigate your complaint. If you remain unsatisfied, you can approach the OAFS for assistance 🗣️.

Why lodge a complaint?

– Your security: By reporting scams, you help enhance security measures, contributing to a safer financial environment for everyone. 🛡️

- Your rights: It's essential to know that you're not alone. The OAFS offers guidance on how to approach these issues, ensuring fairness, consistency and transparency. 🤝

- Your impact: Lodging a complaint not only seeks justice for your case but also aids in preventing future scams, protecting the community at large. 🌍

How to lodge a complaint:

1. Report to your bank: Inform your bank immediately about the suspicious activity. 🚨
2. Unsatisfied? Contact the OAFS: If you're not happy with your bank's response, or if you don't receive any, reach out to the OAFS. They're just a call or a WhatsApp message away. We are ready to guide you through the process. 🗣️

Remember: doing nothing is not a solution. Your action can make a difference. Let's work together to create a safer financial environment. 🤝 Don't stay silent – if you've been a victim of a scam, raise your voice. 🗣️ The OAFS is here to support you every step of the way.

#ScamAlert #FinancialSafety #ConsumerRights #SpeakUp



On investment advice

👁️ Have you been approached by what appears to be a *bona fide* investment services or fund management firm seeking to handle your savings and offering above average returns?

💰 Even if they show you a 'certificate' that contains the logos of local regulators, including the Malta Financial Services Authority, along with signatures of their officials – think again!

🚨 Only deal with entities that are listed on the Register that you can access on the website of the MFSA – <https://www.mfsa.mt/financial-services-register>.

#InvestmentScams #BeVigilant #StaySafe



On ATM deposits

There are several lessons to be learned from a decision of the Arbiter for Financial Services, issued in March 2024, in a complaint by a bank client who claimed to have lost bank notes while trying to deposit them in one of the bank's ATMs.

1. Always count and verify the exact amount you intend to deposit before heading to an ATM. This helps avoid confusion if there are any discrepancies later on.
2. When depositing a large sum, it's prudent to organise the notes by denomination rather than mixing them together. This makes it easier to track and verify the deposit.
3. If an ATM error occurs, don't panic! Inform the bank staff immediately and request them to review the ATM's transaction logs and CCTV footage to investigate the issue.
4. Provide concrete evidence to support your claim, such as deposit receipts or records showing the amount you intended to deposit. The Arbiter noted the lack of proof in this case and inconsistencies in testimony.
5. Be clear and consistent in your communication with the bank and the Arbiter. Contradictory statements or speculation without basis can weaken your case.

Remember: staying calm, being organised and being factual are key when dealing with ATM disputes.

You can read the full decision on the Arbiter's website by following this link <https://rb.gy/4u7v20>.

#ATMdeposits #lessonslearnt #beorganised

On crypto asset investing

Here are some more lessons to be learned from some recent decisions of the Arbiter for Financial Services involving crypto asset investing.

Be extra vigilant of scams and fraud in the crypto space. If an investment offer seems too good to be true, it probably is! Stay alert and sceptical, especially when dealing with unfamiliar parties or platforms.

Understand that crypto platforms primarily facilitate the transfer of funds and may not be involved in or responsible for investment decisions. So research and understand the investment before proceeding.

Verify transaction details before submitting instructions to your crypto service provider. You're responsible for ensuring accuracy!

Once you authorise a crypto transfer, it's final. Always double-check wallet addresses and transaction details before confirming.

Crypto providers aren't required to collect user data when you transfer to an external non-custodial wallet. You are responsible to ensure that the external wallet you are transferring your crypto assets to belong to licensed investment managers.

If you've been defrauded, notify local authorities. They can request any relevant information through proper legal channels.

The crypto market is high-risk and less regulated than traditional financial markets. Before investing, educate yourself on the risks and how to protect your assets.

#lessonslearnt #crypto #investments





On invoice scams

What should we look out for when we receive an invoice to ensure we are not being scammed?

Scammers often change account details on invoices or intercept emails to redirect payments to their accounts.

If you receive an invoice, even from a what seems trusted source, and are pressured to pay quickly, it is crucial to verify the account details by calling the supplier on the usual trusted numbers to ensure that payment recipients match the expected company or person.

A typical example of an invoice scam is a wedding booking, where scammers send a fake invoice with altered payment details, leading the victims to lose their life savings.

Other typical scams involve payment service providers and online retailers. So, it is important to be aware of the risks associated with clicking on fake invoices.

Be vigilant against requests for money or personal information, spelling errors in communications, and promises of easy rewards or harsh penalties.

Verify the legitimacy of invoices and take immediate action if fraud is suspected to maintain a secure online environment.

#InvoiceScams #BeVigilant #StaySafe



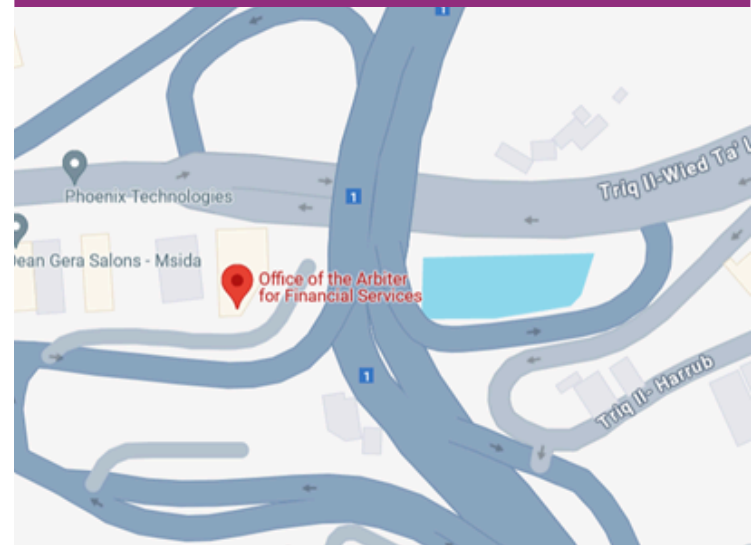
NEW OFFICE LOCATION

GET IN TOUCH

The Office of the Arbitrator for Financial Services is located in New Street in Regional Road, Msida MSD 1920. You can contact the Office of the Arbitrator by calling 80072366 (local landlines only) or +356 21249245. Alternatively call or text on WhatsApp on +356 7921 9961. Further information is available at www.financialarbiter.org.mt.

Find us on Google:

<https://maps.app.goo.gl/PqSGUwxr5PVCove2A>



Don't miss out on valuable insights and updates!

Like our pages on Facebook and LinkedIn to stay connected and receive our weekly posts every Friday!

On LinkedIn, we typically provide concise case summaries based on the latest decisions issued by the Arbitrator.

On Facebook, we go beyond the decisions and share practical lessons from the Arbitrator's deliberations. We also add tailored information to specific situations related to financial products and services arising from such decisions.

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