

## Before the Arbiter for Financial Services

**Case ASF 024/2023**

**AU ('the Complainant')**

**vs**

**Truevo Payments Limited**

**(C 62721)**

**('Truevo' or 'the Service Provider')**

### **Sitting of 6 June 2023**

#### **The Arbiter,**

Having seen **the Complaint** relating to the Service Provider's alleged failure to prevent, stop or reverse the payments amounting to GBP£65,400 spread over 18 transactions effected between 10 April 2018 and 13 June 2018 made in favour of an internet platform [www.tradefintech.com](http://www.tradefintech.com) operated by a company named S.O. Strategic Partnership LP with whom the Service Provider held a merchant agreement operating under the trade name 'Tradefintech'.<sup>1</sup>

#### **The Complaint**

The Complainant explained that between 10 April 2018 and 13 June 2018, she fell victim to a scam operation orchestrated by a presumed fraudster Tradefintech. The Complainant grew gradually sensitive to the possibility that she had been subjected to a scam and contacted Truevo on 14 March 2019 with a complaint seeking further information on the beneficiaries behind Tradefintech and

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<sup>1</sup> P. 951

enquiring about due diligence check-ups they made on the Merchant that was evidently the perpetrator of a fraud.

During the complaint process, the Complainant, assisted by a Professional Advisor, elaborated on the complaint stating *inter alia* that<sup>2</sup>:

1. the Service Provider had not made proper due diligence on Tradefintech which would have exposed that it was a scam entity;
2. the Service Provider had a duty of care in relation to transactions being made on its platform which would have made it obvious that the Complainant was being defrauded;
3. the Service Provider breached its fiduciary duties to the Complainant by failing to exercise the diligence required in the performance of its obligations, resulting in a significant loss to the Complainant;
4. the Service Provider had possibly neglected legal provisions for measures against money laundering;
5. the Service Provider had possibly breached the Complainant's rights as a consumer, possibly breached regulatory obligations, as well as the conditions contained in VISA and MASTERCARD Rules and Regulations.

The Complainant demanded that Truevo reverses of all payments she had sent to the alleged fraudster, threatening that in case of non-compliance there will be escalation ***“that might even result in losing banking licence”***.<sup>3</sup>

The Service Provider initially replied on 20 March 2019 informing the Complainants that for any information about a Merchant suspected of fraud:

***“we kindly ask you to refer your matter to the Office of the Attorney General in Malta in line with the European Convention on Mutual Assistance in Criminal Matters. Once we receive confirmation from the Attorney General in Malta we would be happy to be of assistance and provide you with the necessary information to help in your investigations. As a licensed financial institution, Truevo Payments has an obligation to protect client information and may only***

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<sup>2</sup> P. 8 - 73

<sup>3</sup> P. 14: note Truevo does not hold a banking licence.

***divulge information upon confirmation from a regulatory authority, such as the Attorney General, in this particular case.”<sup>4</sup>***

No other comments about the rest of the queries raised in the Complainant’s letter of 14 March 2019 seem to have been addressed. The Service Provider seems to have interpreted that communication more as a request for information rather than complaints against Truevo.

An official complaint was filed with the Office of the Arbiter for Financial Services (OAFS) on 22 February 2023.

The Service Provider filed their reply on 09 March 2023 and in it they raise the following preliminary pleas:

1. That the Complaint is time barred by prescription as it was filed on 22 February 2023 whereas the Complainant herself admitted that she had knowledge of the matter surely by 14 March 2019. This in terms of Article 21(1)(c) of CAP. 555.
2. That the Complaint is also time barred in terms of Article 2153 of Chapter 16 of the Laws of Malta (Civil Code).
3. That the Complainant is not an Eligible Customer in terms of Cap. 555 and in accordance with decisions already delivered by OAFS, the Arbiter has no competence to hear this Complaint.

### **The Hearing Process**

A first hearing was held on 04 April 2023 where the Complainant, assisted by her Advisor, related how she fell into this fraud scheme. She reiterated that:

***“It should have been obvious to the acquiring bank that the merchant was a scam company. They did not carry out due diligence because there were warnings from the Financial Conduct Authority against this company”,*** and,

***“I put in a complaint to the Financial Ombudsman in Britain and they recognised that I was being in representation and it took years; it was only recently. So,***

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<sup>4</sup> P. 24

***some of my credit card one, I got back; but the majority of my money I did not get back.***<sup>5</sup>

When asked if she ever signed a document with Truevo, the Complainant replied, ***“I say that I traded with TradeFintech; I don’t know, I just trusted them”***.<sup>6</sup>

A further hearing was held on 15 May 2023 where the Service Provider insisted that a decision be taken on their preliminary pleas before they continue with their defence based on the merits of the case.

The Arbiter concurred taking into consideration if the preliminary pleas are upheld resulting in the Arbiter having no jurisdiction in hearing this complaint, it would be advisable not to express further on its merits in case the Complainant would wish to seek justice in another more appropriate court or tribunal.

### **Preliminary Pleas**

That the Complaint is time-barred by prescription as it was filed on 22 February 2023 whereas the Complainant herself admitted that she had knowledge of the matter surely by 14 March 2019. This in terms of Article 21(1)(c) of CAP. 555.

The cited article states that the Arbiter has competence to hear a case if the *“complaint is registered in writing with the service provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.”*

Once the complaint has been registered in writing with the Service Provider, the Act CAP. 555 establishes no time limit for filing the Complaint with the OAFS. In that case, the provisions of the Civil Code would apply.

As the Complainant’s letter of 14 March 2019 is both the date of the Complaint sent to the Service Provider as well as the definite date when the Complainant had comprehensive knowledge that she was the victim of a scam, then the Arbiter

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<sup>5</sup> P. 956

<sup>6</sup> P. 957

has competence to continue hearing this case as it is not prescribed by the cited Article of CAP. 555. The preliminary plea is therefore rejected.

That the Complaint is also time-barred in terms of Article 2153 of Chapter 16 of the Laws of Malta

The Arbiter has consistently interpreted the prescription period under the cited Article of the Civil Code as being that of 5 years as complaints generally involve repayments of debt arising from a commercial transaction or other causes. Consequently, as 5 years have not elapsed from the date of ascertained comprehensive knowledge of the scam, being 14 March 2019, then the plea of prescription under the cited Article of the Civil Code is also rejected.

That the Complainant is not an Eligible Customer in terms of CAP. 555 and in accordance with decisions already delivered by OAFS, the Arbiter has no competence to hear this Complaint

An ‘eligible customer’ is defined by the Act CAP. 555 as **a consumer of a financial service provider, or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from the financial services provider.**<sup>7</sup>

The Service Provider has declared that<sup>8</sup>:

- The Complainant was never a customer of the respondent company (Truevo)
- The respondent company never offered to provide a financial service to the Complainant
- The Complainant never sought the provision of a financial service from the Respondent Company.

During the first hearing of the Complaint when asked if she ever signed any agreement with Truevo, the Complainant replied “I traded with Tradefintech; I don’t know; I just trusted them”.<sup>9</sup>

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<sup>7</sup> Art. 2

<sup>8</sup> P. 950

<sup>9</sup> P. 957

In fact, there is no evidence that at the point of effecting the series of payments which funded the fraudsters, the Complainant had any knowledge of the existence of Truevo. On the contrary, the Complainant when asked when did she come to know about Truevo replied:

***“I cannot give an exact date because it took a lot of time to unravel it. And I turned the matter to my chargeback. So, I believe they wrote a letter to you, I think it was in March 2019, where we were trying to establish who the acquiring bank was”.***<sup>10</sup>

In further confirmation that at the time of making these payments the Complainant did not even know of the existence of Truevo and their role in the payment chain, it is stated in her Complaint:

***“The relevant point in the timeline ... is the moment when the Complainant got knowledge about Truevo’s likely involvement in the chain of events led to damages and losses. This moment lays not in 2018, but in 2019, when Truevo Payments Ltd. rejected providing information to us and/or the moment when Lloyds Bank revealed Truevo Payments Limited as the merchant’s acquirer.”***<sup>11</sup>

The Arbiter therefore upholds the preliminary plea for lack of competence to continue hearing and adjudicate this Complaint by virtue of the fact that the Complainant is not deemed as an eligible customer as defined in CAP. 555 and in accordance with Art 11(1)(a) of CAP. 555 the OAFS has no competence to continue hearing this complaint.

### **Further consideration on incompetence**

Possibly there is also the issue that the Complainant has divulged in the hearing of 04 April 2023 that she put in a complaint to the Financial Ombudsman in Britain, and she got some refunds but not the majority of her money.<sup>12</sup> In terms of Art. 21(2)(a), the Arbiter shall decline to exercise his powers under this Act (CAP. 555) where ***“the conduct complained of is or has been the subject of a law suit before a court or tribunal or is or has been the subject of a complaint lodged***

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<sup>10</sup> P. 956

<sup>11</sup> P. 72 - 73

<sup>12</sup> P. 956

***with an ADR entity in any other jurisdiction, initiated by the same complainant on the same matter’.***

It needs to be noted that in her official Complaint to the OAFS, the Complainant answered a straight ‘NO’ to the question whether the Complaint is or has been subject to a lawsuit before a court or tribunal or is or has been the subject of a complaint lodged with another alternative dispute resolution (such as an ombudsman) in any other jurisdiction, initiated by the same complainant. There was a warning that the OAFS would be unable to hear the case if there existed such circumstances.

As the Complaint was filed with the OAFS on 22 February 2023, whereas in her evidence the Complainant revealed that:

***“I put in a complaint to the Financial Ombudsman in Britain and they recognised that I was being in representation and it took years ; it was only recently . So, some of my credit card one, I got back; but the majority of my money I did not get back”.***<sup>13</sup>

The Arbiter concludes that the Complainant did not give the correct information in her Complaint application, possibly to avoid having the Complaint refused before registration.

Whilst the complaint to the Financial Ombudsman in Britain must have been against a different Service Provider (possibly the card issuer), it very much fits the definition of a complaint initiated by the same complainant on the same matter and for which some recoveries have been made.

## **Decision**

For the reasons explained above, the Arbiter is accepting the preliminary plea of incompetence to adjudicate on the merits of the case principally, but not only, on the basis that the Complainant is not an eligible customer in terms of Art 11 of Cap. 555.

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<sup>13</sup> P. 956

This without any prejudice to the Complainant's right to pursue proceedings on the merits of her complaint before any other court or tribunal competent to adjudicate it.

As the case is being dismissed on the basis of preliminary plea, each party is to bear its own costs.

**Alfred Mifsud**  
**Arbiter for Financial Services**