

Before the Arbiter for Financial Services

Case ASF 047/2023

RO ('the Complainant')

vs

Foris DAX MT Limited (C 88392)

('Foris DAX' or 'the Service Provider')

Sitting of the 29 November 2023

The Arbiter,

Having seen **the Complaint** dated 17 April 2023¹ relating to the Service Provider's mishandling of a transfer payment of GBP 1,000 (or €1,103.80) made by the Complainant from her UK bank account to her account held with *Crypto.com*. The transfer was executed on 17 January 2023 and was similar to other transfers that Complainant had executed without any problems since she opened the *Cyrpto.com* account in September 2021.

The Complaint

The Complainant explained that the January 2023 transfer failed to show up in her account until 10 March 2023. In the process, Complainant had been repeatedly querying fate of her transfers and she was given different explanations, which she termed as lies and excuses, which were not at all convincing.

But, although the money finally showed up in her account, she was not free to use it to transfer it back to her bank account in UK as she needed.

¹ P. 1 - 99

The Service Provider explained that for reasons of internal change of procedures, they could not transfer FIAT currency out of her account but offered that she uses the funds to buy crypto assets which they could then transfer to any other crypto wallet she may have. They also offered to pay all expenses related to such transactions by crediting her account with their own Cronos tokens.

The Complainant reluctantly agreed to such a mechanism and, eventually, the funds were converted into DAI and transferred to an unknown external wallet that she indicated. A total of 1107 DAI units was transferred. The cost of these transfers amounting to DAI 20 units was compensated by having Cronos units (approx. 287 units) credited to her Crypto.com account.

However, the Complainant remained unhappy with the solution offered and filed her complaint seeking compensation as follows:

GBP 1000 to be transferred back to her UK bank account.

GBP 1760 being the extra work calculated at 40 hours at a rate of GBP 44 per hour which she engaged in chasing her funds.

Total compensation of GBP 2760 was requested.

Complainant also submitted that:

"I have been feeling a lot of anxiety about my money, mainly during the period from 24/01/2023 until 10/03/2023. This affected my mood and my social life and caused me eating and sleeping disorders.

I feel as if I had been robbed, because Crypto.com used my money in the way they wanted and at the time they wanted. I lost total control of my own money and of the service I can opt for".²

² P. 4

Service Provider's reply

The Service Provider's official reply was received on 08 May 2023³ where they gave a detailed explanation of the causes that led to the delay in processing the funds of the Complainant.

While this explanation is very elaborate and removes any doubt that Foris DAX have acted dishonestly, as implied in the Complaint, yet these reasons are quite irrelevant to the Complainant who suffered the delay for reasons that she had no control over. Accordingly, the Arbiter will not labour on the reasons which, in the end, are of no relevance to the materiality of this claim.

The Arbiter finds very unconvincing the argument that after finally having the funds credited to the account of the Complainant after nearly 2 months, the Service Provider, being part of a large international group, could not find a practical means to have the funds transferred back as FIAT currency to origin. For a group the size of Crypto.com, GBP 1,000 should be little more than a petty cash transaction.

This notwithstanding, the Service Provider did not agree to the compensation sought by the Complainant arguing:

“While we sympathize with RO in regard to the time it has taken for the credit of her missing deposit, ultimately the Complainant had not suffered any material losses. The full amount of the missing deposit has been manually awarded to her Fiat Wallet, and subsequently exchanged to a stablecoin of her choice and withdrawn to a wallet address outside of the Company, which the Complainant provided. As agree with the latter, the Company also compensated RO for the incurred withdrawal transaction fees.

As such, the Company is of the opinion that we cannot offer the compensation being sought.”⁴

The hearing process

The first hearing was held on 05 September 2023.

³ P. 105 - 111 and attachments p. 112 - 125

⁴ P. 110 -111

The Complainant sustained her Complaint, accusing the Service Provider of incompetence and dishonesty, and arguing that the solution she had to accept to get back control of her money was still not acceptable to her and was only accepted as a lesser evil to the alternative of leaving the funds on her account with Crypto.com, in whom she had lost all trust.

She stated:

“Asked to confirm that when I withdrew my cryptocurrency to my new Wallet outside of Crypto.com, Crypto.com compensated me for the withdrawal transaction fee in Crohn, I say, to be honest, I know something was deposited but I did not understand because I am no expert in cryptocurrencies. Today I still don’t know what a token is, but, because I had no option ... the thing is, I can think of those crypto currencies which are equivalent to USD Dollar, I know these are the tokens because Crpto.com says they are equivalent to the fees I had to pay, but I am ignorant in this, and I did not check that. I never used those tokens. Probably, they are still there, and I do not know how to use them.”⁵

“The Arbiter is asking me should he give me the £1,000 that I am asking for, am I suggesting that I would transfer those digital assets back to Crypto.com or will I keep them in my new Wallet, I say I could transfer them back to Crypto, I could. I just did not want to leave them there for obvious reasons.

To set this clear, what I am saying is that should the Arbiter grant me the compensation for the £1,000 originally transferred, I will then transfer the digital assets which were transferred to my new Wallet back to Crypto.com if Crypto pays for the fee again. I understand now that this would eliminate the double reward that the Arbiter was referring to.”⁶

In the second hearing of 19 October 2023, the Service Provider, bearing in mind the proceedings of the first hearing, offered to reimburse the Complainant with £1,000 to be transferred to her UK bank account if she transfers back to them the digital assets they had given her in compensation and agreed to pay all charges related to such transfers.

⁵ P. 130

⁶ P. 132

The Service Provider agreed also to top up £80 to cover the loss of use of funds for approximately 9 months at the legal interest rate of 8% applicable in Malta. Alternatively, they offered the Complainant to keep the transferred assets and pay her just £80 for loss of use of funds.

The Complainant refused both offers stating that she cannot transfer the digital assets back as she had actually used them, and she does not want to buy them back and she finds the £80 on offer as too low compensation for what she has been through.

“The thing is that I already used the tokens. For me to transfer back tokens I should spend a lot of time transferring money from a bank account to another app, to another app. I do not think that £80 is fair.”⁷

The parties were invited to make final submissions, however, none were received in the allotted time.

Having heard the parties and seen all the documents and submissions made,

Further Considers:

The Merits of the Case

The Arbiter is considering the Complaint and all pleas raised by the Service Provider relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555⁸ which stipulates that he should deal with complaints in *“an economical and expeditious manner”*.

The Arbiter is also bound by Article 19(3) of Chapter 555 to determine and adjudge a complaint to what, in his opinion, is fair, reasonable and equitable given the particular circumstances and substantive merits of the case.

In accordance with Article 26(4)(c)(iv), the Arbiter has authority to order the Service Provider:

⁷ P. 136

⁸ Art. 19(3)(d)

“to pay an amount of compensation for any loss of capital or income or damages suffered by the complainant as a result of the conduct complained of, with or without interest, at such reasonable the as the Arbiter may determine”.

The Arbiter has always interpreted this Article in so far as its reference to damages, as damages which are actually incurred and capable of being proven with credible evidence, and not as compensation for the Complainants’ effort to defend their case.

Consequently, the Arbiter declines the claim for extra payment of £1,760 being 40 hours at £44 per hour. The Arbiter also finds it hard to understand how a professional earning £44 per hour should spend 40 hours simply writing emails and chasing a misplaced funds transfer or that this should cause the sort of stress described in her Complaint.

The Arbiter would have accepted any of the two solutions that the Service Provider offered in the second hearing. In fact, the Arbiter is surprised that having in the first hearing stated that she did not use the digital assets transferred to her in settlement of the £1,000 transfer and agreeing to transfer them back if she is paid in FIAT money in her UK bank account with all transfer expenses being covered by the Foris Dax, in the second hearing, the Complainant walked back her commitment and said she had already used these digital assets and it was too complicated to buy them back and have them transferred back to the Service Provider.

Decision

In the circumstances, given the inconsistency of the Complainant in the defence of her case, the Arbiter refuses her Complaint, and orders the Service Provider to compensate her only for her inability to use the funds for the period of 3 months (mid-January to mid-April when the digital assets were transferred to her account) at an interest rate of 5.5% being the current applicable Bank of England bank rate.

Payment of £1,000 at 5.5% for 3 months = £13.75. If any digital assets are still held on her Crypto account, these are also to be sold and settled in Fiat currency to the Complainant's UK bank account.

All sale and transfer expenses to be borne by the Service Provider.

Each party is to bear its own costs of these proceedings.

**Alfred Mifsud
Arbiter for Financial Services**