

## Before The Arbiter for Financial Services

Case ASF 198/2023

**GV**

**(‘Complainant’)**

**Vs**

**APS Bank p.l.c.**

**Reg. No. C 2192**

**(‘Service Provider’ or ‘APS’)**

### Hearing of 21 March 2024

The Complaint,<sup>1</sup>

Complainant claimed that APS had:

- Unjustifiably rejected a transfer for €3948.46 to his account from eToro<sup>2</sup> despite his having provided them with all information and documentation/evidence regarding the legitimacy of this transfer resulting from liquidation of his investment portfolio with eToro.
- Caused him data privacy concerns as at the time of the issues giving rise to this complaint, he received similar enquiries from Bank of Valletta.
- Gave unsatisfactory response to his complaint indicating that their compliance team had no proper understanding of financial products,

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<sup>1</sup> Page (1) 1 - 10 and attachments p. 11 – 146 filed with OAFS on 30 October 2023

<sup>2</sup> eToro are internationally renowned multi-asset brokers offering exchange services in various investment classes including currencies, commodities, ETFs, stocks, bonds, indices and crypto assets through licences from, *inter alia*, UK, Malta, Cyprus and USA.

resulting in communication breakdowns and unclear internal bank policies leading to the rejection of the transferred funds.

- Unfair internal policies which give rise to suspicion that APS were promoting their own products at the expense of alternative investments.

By way of remedy, the Complainant sought:

1. Formal apology from APS acknowledging their misunderstanding and mismanagement of the situation and the inconvenience and distress they caused to the Complainant.
2. Re-instatement of the transaction allowing transfer of funds from his portfolio proceeds without any hindrance.
3. Assurance about protection of his data privacy and protection.
4. Revision of the Service Providers internal policies, with additional training to their employees to get aligned with modern financial investments developments to ensure similar misunderstandings do not recur.

It is to be noted that in their reply to the complaint, APS had explained their rejection of funds was caused by eToro statements which the Complainant provided and which showed that crypto assets were included in the portfolio.<sup>3</sup>

### **Service Provider's reply**

In their reply of 20 November 2023, APS stated:

1. *'That the Bank has the right to reject and to send back payments when these do not comply with its Acceptance Policies. The Bank itself determines the parameters based on which it decides whether to accept a payment or not, according to its risk appetite;*
2. *That as a result, the complainant's request cannot be acceded to as the Bank cannot accept payments when these violate its Policies;*
3. *That contrary to what is alleged and requested by the complainant, there was no misunderstanding of the situation or financial products by the Bank. Therefore, while understanding that the complainant is not satisfied*

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<sup>3</sup> P. 12

*with the situation, there is no need for a review of the Bank's Policies or an update regarding the financial products in the market;*

- 4. That it is only an assumption by the complainant that the Bank breached his privacy or disclosed any information about him to third parties;*
- 5. That, moreover, the complainant's demands are unfounded in fact and law and should be dismissed with costs;*
- 6. Reserving the right to file further legal replies, if necessary.<sup>4</sup>*

### **The hearing**

During the hearing of 23 January 2024,<sup>5</sup> the Complainant gave evidence explaining the benefits of investing on the platform of eToro, including that they offer copy traders who act as discretion portfolio managers, and that such portfolio management could include derivative products (contract for differences -CFDs) offering possibilities to go long or short on an investment, as well as to own fractions of high unit value shares.

He stated when central banks started raising interest rates, he took a decision to liquidate his portfolio and gave instructions to eToro to transfer the proceeds to his APS account. However, the latter returned the funds to eToro explaining that as the proceeds included gains from crypto, they could not accept the transfer. Complainant explained that it was the eToro's traders who decided where to allocate the funds under their management, and that he had not directly traded in crypto assets.

Such explanation was deemed not persuasive enough for APS to accept the transfer which, according to them, went against their internal policies.

It was confirmed that APS did not terminate their account relationship and the complaint was solely related to non-acceptance and return of the funds transferred from eToro.

On being cross-examined, the Complainant stated:

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<sup>4</sup> P. 152

<sup>5</sup> P. 154 - 159

***'Asked whether it is correct to say that, in order to be able to use eToro and to be able to make these investments, I had to deposit an amount of money within eToro, I say, exactly.***

***It is being said that the first amount, or first amounts, that I deposited in eToro came from Bank of Valletta and not from APS, I say, yes, they came from Bank of Valletta.***

***Being asked in these trades that I carried out with eToro, is it correct to state that these trades included trading in crypto, I say, no. They were trades which I did myself, what are called stock picking. I did not trade in crypto. I traded in CFDs.***

***I am being referred to the documents that I submitted with my complaint, to the very last page (fol. 146), to the second line where it says 'Crypto (Profit or Loss)'. Asked to explain this when I have just declared that I did not trade in Crypto, I say that, first of all, I did not trade in crypto. If it was done in crypto, it was done to the CFD and it was done to the copy trader.***

***Asked whether any trading was done in crypto, I say that I did not do any trading in crypto. Personally, I never traded in crypto.***

***Asked whether eToro traded in crypto on my behalf, I say that the copy trader could have done trades.***

***Asked whether I agree that he actually did according to this statement, I say, it seems so.***

***Being referred to the fourth line from the bottom, where there is written 'Commissions (spread) on Crypto', being asked whether this also refers to trading done on a crypto-based currency, I say that these could be trades done by the copy trader on my behalf.***

***Asked whether I agree that the CFD part includes, or could include, trading in crypto, I say it could be.***

***Asked whether I agree that the bank in asking for this information would not know if the CFD includes or does not include crypto, I say I don't know. The bank has the transactions and could have analysed them.***

***It is being said that from the transactions given to the bank, when it comes to CFDs, the bank cannot decipher if it includes crypto trading or not. Asked whether this is correct, I say it could be, I don't know.***

***It is being said that the bank was given a number of documents which were submitted to the Arbiter (together with other documents which I submitted to the bank and which were not submitted to the Arbiter) which is basically the eToro statement, and asked if there is anything which clearly indicates that the CFD trading carried out does not include crypto, I say, I don't know. Basically, the fund manager or the copy trader decides where to invest them.***

***Asked whether they could include crypto, I say they could. It depends on the copy trader.***

***Asked whether it is correct to state that when the bank called me regarding these transactions the primary thing it wanted to decipher was whether I or whether eToro, on my behalf, traded in crypto either directly or through CFD, I say, yes. I told them that I do not trade in crypto.***

***It is being said that in the beginning I was asked about money coming from Bank of Valletta going into eToro, eToro trading, and then the money is coming out of eToro. Asked whether it is correct to say that this transaction that I want reversed is me sending money from eToro to APS, I say, yes.***

***Asked whether there was any particular reason why it was sent to APS and not to Bank of Valletta, I ask whether that would make a difference for APS. It is being said that it makes a difference to their question since it is part of my claim that there was a data leak.***

***Asked whether I tried sending funds only to APS or also to Bank of Valletta, I say that I like to balance funds between my bank accounts, different accounts with different banks, and I decided to transfer the funds to APS.***

***Asked whether I tried sending to Bank of Valletta, I say, no.<sup>6</sup>***

Following cross-examination, it was agreed by the parties that there was no need for a second hearing, and that parties were to make final submissions which will include an extract from the APS internal policy where it is defined that they do not accept transfers involving proceeds from crypto, as it is claimed was the case with the transfer being rejected giving rise to this complaint.

APS also indicated they will send statements from eToro showing larger crypto activity than the Complainant included in his complaint.<sup>7</sup>

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<sup>6</sup> P. 156 - 158

<sup>7</sup> P. 159

## Final submissions

### The Complainant's final submissions<sup>8</sup> included:

1. Lack of transparency from APS for not providing evidence of their internal policies leading to the rejection of the funds transferred from eToro, speculating that such policies can now be manipulated to suit the circumstances of his complaint.
2. Unfairness of APS policies to refuse across the board transfers including any element of crypto trading rather than adopt a case-by-case approach.
3. Criticism that APS blanket policy is not in line with '*notable advancements in both regulatory and educational landscape surrounding crypto currencies*' citing MICA,<sup>9</sup> Bitcoin ETFs, and Malta's legislative framework including the Virtual Financial Assets Act.
4. Contradiction of APS policy refusing inward transfers such as the one giving rise to this complaint, to APS policy re Credit Cards which allow outward online payments and debit cards transactions to crypto exchanges such as Coinbase citing as evidence Arbitrator's decision on Case ASF 109/2022 involving APS.
5. APS contradiction in forming partnerships with Trust Payments for merchant acquiring servicing even though Trust Payments have a policy of facilitating the fast evolution of Crypto and Gaming sectors.
6. Criticism that APS internal policies vis-à-vis crypto assets are excessively restrictive, unjustified and unfair going against the broader context of financial innovation, regulatory developments and the Bank's own policies relating to outward payments.

### The Service Provider's final submissions<sup>10</sup> stated:

*'As stated in its reply to the complaint, the Bank has the right to reject and to send back payments when these do not comply with its Acceptance Policies. This is exactly what occurred in the case at hand. The Bank shall firstly exhibit (as per*

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<sup>8</sup> P. 161 - 174

<sup>9</sup> Markets in Crypto Assets Regulation which is an EU Regulation coming into effect in 2025

<sup>10</sup> P. 177 - 181

*minutes of the hearing) an extract of its Customer Acceptance Policy so as to dispel all allegations put forward by the complainant in his final note of submissions. All comments by the complainant in the sense that the Bank may have drawn up or amended such policy post-facto are purely gratuitous, unfounded, frivolous and vexatious and with all due respect shed more light with respect to the complainant's credibility rather than the Bank's.*

*The Bank does not make its acceptance policy public. The reasons are obvious, as otherwise potential customers may find ways to circumvent same.*

*The merits of the complaint are very simple – the complainant received funds in his APS bank account which funds, it results, include amounts derived from trading in Crypto Currencies. As clearly indicated in the bank's Customer Acceptance Policy, the Bank is **not prepared** to enter into a business relationship with customers where the activities involve Crypto Assets, Virtual Currency Exchanges and Virtual Currency Issuers.*

*With all due respect, the Bank may determine its own parameters based on which it decides whether to accept a payment or not, according to its risk appetite. Funds **deriving** from the said activities do not fall within the Bank's accepted payments, notwithstanding the complainant's best efforts to justify the nature of his transactions. The parallelisms drawn by the complainant with other decisions involving the Bank are incorrect and extremely stretched out. Suffice to say that in none of such cases did the Bank receive funds deriving from Crypto.*

*The complainant's cross-examination is sufficient evidence of the fact that a part of the funds deposited with the Bank do derive from trading in Crypto Currencies – it may have taken a few questions, however, the complainant finally admitted. Moreover, in addition to such admittance, the Bank is also exhibiting, as per minutes of the sitting, the extended eToro statement, which the complainant provided to the Bank, showing the full list of transactions (it is to be noted that the complainant chose to exhibit to the Arbiter only parts of such statement). At the last page of the statement, one can note that the highest amount of profit from the total transaction list actually derived from trading in Crypto. In any event, the Bank cannot determine the precise amount of funds deriving from Crypto and consequently it cannot accept any amount deriving from the eToro account.*



*Consequently, the complainant's request cannot be acceded to as the Bank cannot accept payments when these violate the Policies.'*<sup>11</sup>

### **Consideration and analysis**

The Arbiter makes it clear that each bank has a right to formulate its own internal policies related to Customer Acceptance and Risk Policies provided these are consistently applied without discriminating against particular customers.

The Arbiter also dismisses any notion of APS having breached the Complainant's privacy rights. There is no shred of evidence that Bank of Valletta's simultaneous enquiry was anything other than coincidental.

The Arbiter also dismisses the Complainant's speculation that APS could have manipulated their internal policies to justify the special circumstances of this complaint *a posteriori*.

This is even more evident from the fact that the extract of their policies<sup>12</sup> presented by APS to justify their decision to return the funds received from eToro does not justify their action.

In fact, this policy states:

#### ***'4.1 Prohibited/Unacceptable Customers***

***The following is a list of persons/entities with whom the Group is presently not prepared to enter into a business relationship***

***... Omissus ...***

#### ***(f) Prohibition based on Business Activity and/or Industry Type***

***Corporate and Sole Traders, who fall within the below industry types:***

***... Omissus...***

- ***Crypto-assets, Virtual Currency Exchanges and Virtual Currency Issuers.'***

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<sup>11</sup> P. 177 - 178

<sup>12</sup> P. 179



APS have confirmed that the account relationship of the Complainant was maintained notwithstanding the return of the funds to eToro.

Consequently, article 4.1 cannot apply to the Complainant as it relates to persons/entities excluded from having a business relationship.

Furthermore, prohibition under 4.1.(f) relates to business clients and not to individual clients. It is evidently aimed to exclude businesses offering crypto/virtual assets services rather than individual clients who include crypto/virtual assets as part of the asset allocation in their investment portfolio.

The fact that APS do not adopt similar restrictive policies related to outward payments further confirms that they do not seem to have a specific policy which excludes individual inward payments, especially when these form part of liquidation of an investment portfolio, especially where crypto forms a very small part thereof.

APS presented a fresh copy of Complainant's statements with eToro which differ from what the Complainant had attached to his Complaint only in the first and last pages. Whereas the first and last page<sup>13</sup> presented by the Complainant covered the period from 01.01.2023 to 30.08.2023 the first and last page<sup>14</sup> presented by APS cover the period from 01.01.2018 to 30.08.2023. The pages in between the two reports seem identical.

However, even taking the final summary presented by APS covering the extended period of over 5 years, the crypto profit is only quantified as US\$ 282.89 and crypto commission (spread) [not clear if this is a revenue or an expense item] is only USD 85.38. In the absence of any clear policy excluding this transfer, there is nothing to suggest that APS should have refused it based on AML or regulatory concerns.

While APS have every right to adopt policies which exclude client relationships or individual transfers involving proceeds from trading crypto assets, the policies they quoted as presently applicable do NOT exclude private clients transfers as is the subject of the complaint.

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<sup>13</sup> P. 28; P. 146

<sup>14</sup> P. 180 - 181

It is evident that APS have wrongly adopted policies re Customer Acceptance related to business clients (Corporate and Sole Traders) who actually offer crypto assets services (including Issuers of virtual assets and virtual asset exchanges) to apply to individual clients who may use such services rather than offer them.

### **Decision**

For reasons explained above, the Arbiter finds this complaint justified and is accepting it within the limits of decisions.

Consequently, the Arbiter is deciding that APS should accept the transfer of funds of about €4,000 from eToro to complainant's account and is ordering APS to pay nominal €100 (one hundred euros) as compensation for moral damages for same reasons that the Arbiter had explained in his decision related to case ASF 071/2021.<sup>15</sup> This in terms of the power given by Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta.

This is without prejudice to the right of the APS to adopt, going forward, internal policies that clearly show that payments, as the subject of this Complaint, are beyond its risk appetite.<sup>16</sup>

The costs of these proceedings are to be borne by the Service Provider.

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

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<sup>15</sup> [ASF 071-2021 - NH vs Bank of Valletta plc.pdf \(financialarbiter.org.mt\)](#)

<sup>16</sup> even though such policy would be going against the trend where financial innovation is going and would be quite incongruent with its policy of not excluding crypto and virtual assets for its outward payments.

## **Note related to the Arbiter's decision**

### **Right of Appeal**

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.

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### **Costs of the proceedings**

In terms of article 26(3)(d) of Cap. 555 of the Laws of Malta ('the Act'), the Arbiter has adjudicated by whom the costs of the proceedings are borne and in what proportion, taking into consideration the particular circumstances of the case.

The costs of the proceedings are not limited to the payment of any applicable cost of filing the Complaint with the Office of the Arbiter for Financial Services (presently Eur25) but may also include any reasonable lawful professional and legal fees paid by the Complainant limited to the acts filed during the proceedings of the case. Such professional fees should not include any contingency judicial fees and charges.

The extent of tariffs and fees in respect of professional or consultancy services rendered to customers in relation to the claims or proceedings under the Act, that may be lawfully and reasonably requested as part of the said costs of proceedings, are not defined in the current provisions of the Act. However, the Arbiter expects these to be benchmarked on tariffs and fees as stipulated and applicable for Civil Court proceedings in Malta under the Code of Organization and Civil Procedure.