

## Before the Arbiter for Financial Services

Case ASF 089/2024

ZB

(‘the Complainant’)

vs

FCM Bank Limited

(C 50343)

(‘FCM’ or ‘the Bank’)

### Sitting of 26 July 2024

#### The Arbiter,

Having seen the **Complaint** made against *FCM Bank Limited* (‘FCM’ or ‘the Bank’), regarding the Complainant’s savings account held with FCM. The Bank is a credit institution licensed by the Malta Financial Services Authority (‘MFSA’).<sup>1</sup>

The Complaint relates to the Bank’s alleged failures in the handling of the Complainant’s money and savings account. The Complainant, in essence, claimed that:

- (i) his account was unlawfully blocked and closed by FCM without prior notice;
- (ii) FCM made unexplainable requests besides changing positions about the documentation required in respect of his account and the transfer out of his money;

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<sup>1</sup> <https://www.mfsa.mt/financial-services-register/>

(iii) the transfer out following the closure of his savings account was inadequately handled, with delays experienced in the transfer of funds and the transfer occurring to an account arbitrarily chosen by the Bank, which was different to the one he selected for such transfer.

As a result of the alleged failures, the Complainant requested compensation for the time wasted, interest foregone, and moral damages allegedly caused by the Bank's actions.

### *The Complaint<sup>2</sup>*

The Complainant claimed that there was a complete lack of responsibility and trustworthiness on the part of the Bank, given that promises and declarations made were reversed and not kept and, also, given the repeated false assertions.

He alleged that the same documents, which were deemed sufficient as proof of the source of funds, were then deemed unacceptable, and the position on such documents switched several times. It was further asserted that the employees lacked skills as they struggled to understand basic tax documents and bank statements.

The Complainant claimed that the bank did not follow the regulations regarding the safe transfer of funds, given that the Bank's employees were able to make arbitrary transfers of funds, both to a destination and in the amount of their choice, without having a written, signed confirmation from the customer. It was further alleged that transfers were not double-checked by the supervisors, as is the practice of other banks.

The Complainant maintained that the general terms of the bank account contract were disregarded and that his savings account was closed without prior notice.

He claimed that he was unlawfully deprived of control of his assets as his account was blocked without notice or explanation. He alleged that this occurred due to a bureaucratic approach and not for security reasons.

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<sup>2</sup> Complaint Form on Page (P.) 1 - 5 with supporting documentation on P. 6 - 68

### *Remedy requested*

The Complainant explained that the transfers to one of his banks were rejected as the amount was too big and FCM was deemed as high risk. He explained that this problem was solved after him spending a further nine hours, which he valued at EUR 1,800.

The Complainant also explained that the returned funds could not be allocated immediately to other savings accounts, and he could thus not earn interest for 25 days. The foregone interest was valued by the Complainant at EUR 200.

He further claimed moral damages for the amount of EUR 2,000 from the stress caused by the alleged unreasonable demands made by the Bank, the reversal of the promises made, the unsolicited transfers of his funds and the unlawful closure of his account.<sup>3</sup> This totalled EUR 4,000.

In his final submissions, the Complainant revised his request for compensation to EUR 5,346, broken down as follows:<sup>4</sup>

- compensation of EUR 3,000 for the time spent;
- compensation of EUR 1,400 for the time spent with CCB<sup>5</sup> in Bulgaria;
- compensation of EUR 500 for moral damages;
- compensation of EUR 446 (EUR 131 + EUR 315) for lost interest.

### **Having considered, in its entirety, the Bank's reply, including attachments,<sup>6</sup>**

Where, in essence, the Service Provider explained and submitted the following:

#### *Background to Internal Procedures & Conduct of Business Obligations*

1. That, in order to assist with its explanations, it included screenshots of the Bank's online onboarding as seen by the Complainant (Appendix I to its reply).<sup>7</sup> A copy of the '*Terms and Conditions – Product and General*', available from the online onboarding portal was also included (as Appendix II to its reply).<sup>8</sup>

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<sup>3</sup> P. 3

<sup>4</sup> P. 203

<sup>5</sup> Central Cooperative Bank p.l.c.

<sup>6</sup> Reply (P. 75 – 80) with attachments (P.81 – 190)

<sup>7</sup> P. 88

<sup>8</sup> P. 155 - 190

*Customer Risk Assessment 'CRA' (AML/CFT Obligations)*

2. FCM submitted that as a subject person, it is obliged to follow the *Implementing Procedures* issued by the *Financial Intelligence Analysis Unit*, in terms of the provisions of the *Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01)*, 'PMLFTR'.

The CRA obligations must be met at the onboarding stage, prior to customer acceptance, and on an ongoing basis throughout the relationship, either periodically in line with the risk posed or when a material change occurs (as per the FIAU *Implementing Procedures*, 3.5.1 – Timing of the Customer Risk Assessment).

3. At onboarding stage, during June 2023, the CRA was completed taking into consideration the risk factors at the time surrounding the customer.
4. On 27 October 2023, the FATF included Bulgaria on the '*Jurisdictions under Increased Monitoring*' List (as per, Appendix III, <https://www.fatf-gafi.org/en/countries/detail/Bulgaria.html>).<sup>9</sup>

During the Bank's annual Jurisdiction Risk Assessment exercise, FCM updated the risk levels with the recent updates from FATF and other sources the Bank relied on to conduct its jurisdiction risk.

It explained that customers who were residents in Bulgaria or held business interests there and accounts funded from this grey-listed country were affected, and the respective CRA was moved to High Risk.

The Bank further explained that the respective customers had to be reviewed, enhanced due diligence enabled, and such customers placed on an enhanced transaction monitoring list. The Bank submitted this was in line with Regulation 11 (10) of the PMLFTR.

5. FCM noted that high-risk customers are not allowed automatic transactions from the online portal but need to send a secure message, and the back-office team would process the transfers manually. It explained that this is a pre-transaction control feature to ensure all transaction

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<sup>9</sup> P. 93

monitoring, where enhanced monitoring is necessary. Furthermore, the source of wealth declarations had to be supported by adequate documentation.

### *History with the Complainant*

6. The Bank explained that on 7 June 2023, the Complainant submitted an online application to open a savings account (attached as Appendix IV to its reply).<sup>10</sup> It noted that the online platform targets depositors who are residents in Germany or hold German nationality and that the products available on the platform are simple savings accounts.
7. FCM noted that the Complainant completed the necessary details and declarations, and the application was accepted by the Bank. It noted that, furthermore, the Complainant provided a copy of the bank account from where he will be funding the account with FCM. This is part of the Bank's procedures (as only verified linked bank accounts in the name of customers/applicants), can be used to transfer in and out of the account.

The Bank explained that the Complainant, however, did not fund the account during 2023, but transferred EUR 3 only, probably to test the system. It noted that the CRA score at the time was medium risk. A copy of the account statement was attached to its reply as Appendix V.<sup>11</sup>

8. The Bank explained that no transactions were carried out before the 16<sup>th</sup> January 2024, but the CRA had, however, been updated to reflect the grey listed jurisdiction – as customer was a tax resident in Bulgaria and was funding the account from Bulgaria. CRA audit was attached as Appendix VI to its reply.<sup>12</sup>
9. FCM noted that on 4 December 2023, an email was sent to the Complainant informing him that the balance on account was below the minimum threshold as stipulated by the Terms and Conditions (included in Appendix VII). The Complainant was asked whether he would be depositing

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<sup>10</sup> P. 97

<sup>11</sup> P. 98

<sup>12</sup> P. 102

additional funds or closing the account. He was also informed that a '*source of wealth*' ('SOW') form had to be completed.

On 21 December 2023, the Complainant responded by email that he would be transferring additional funds and provided information about his source of funds of the amount to be transferred – being a matured fixed deposit. On 3 January 2024, the bank official requested the SOW form again which was returned by the Complainant but without supporting documentation. The completed SOW form was included as Appendix VIII to its reply.<sup>13</sup>

10. The Bank explained that given that the account was now being funded, and as part of its due diligence procedures, it requested documentation to support the SOW form completed by the Complainant. An income tax declaration was provided on the 9 January 2024. The form was in German and sent to the Bank's internal translator for compliance purposes. The Complainant requested confirmation that no more documents were needed, to which the Bank official replied that no further documents were needed for the time being. FCM emphasised the reference to 'for the time being' and submitted that this did not mean it could not request clarifications after the compliance analysis.
11. FCM further explained that, in the meantime, the Complainant transferred funds but did not use the linked bank account verified on its system. This was picked up by its internal transaction monitoring system, and the Complainant was informed to send a bank statement so it could verify the additional account and link it to the system. Once the bank statement was provided, the transfers were credited to the FCM savings account (as per para.2.9 of the Savings Account Specific Terms and Conditions).
12. The Banks submitted that the translated document was however not consistent with the information provided by the Complainant in his application and therefore, the customer's circumstances were not clear for the Customer Services and Compliance Teams. (The Complainant declared he was retired in the application form, but he presented a tax document

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<sup>13</sup> P. 105

showing a tax refund – the Teams were trying to establish the past income and current income stream and from which jurisdiction).

Clarifications were sought from the Complainant on 7 February 2024. To assist further, the Bank's German speaking bank official also contacted the Complainant telephonically to explain what was needed and where it found inconsistencies. The Bank also explained that given his Bulgarian residency, Bulgarian tax resident, and Bulgaria being now considered as a high-risk jurisdiction, the Bank needed to review its files and obtain more information from all its customers with interests in Bulgaria.

13. Following the Bank's additional clarification requests, the Complainant tried to request an online withdrawal on 7 February 2024, but this could not be effected due to the system controls, as explained previously. He emailed the Bank with his concerns, and on 8 February 2024, FCM emailed and explained that the Bank could do the requested withdrawal from the back-office side after the Bank is provided with the requested clarifications.

FCM explained that the Complainant did not provide the Bank with the clarifications and was constantly contacting the Bank's official requesting the withdrawals. It was noted that contact was made even after office hours with the Complainant showing anger towards the official and making unfounded allegations about the Bank. The Bank's official accordingly sought the advice of the Bank's Compliance Officer on the way forward.

14. FCM further explained that given the lack of cooperation from the Complainant to clarify his profession/employment status and/or income sources; the country of residence being placed on the Grey list (outside the Bank's risk appetite); and the doubts as to the veracity and limited disclosure plus the continuous angry communication directed at the Bank's official outside office hours, the Compliance Officer took the decision and responsibility to transfer all funds and interest due back to origin (as per the failure to complete CDD measures laid out in PMLFTR 7(1) (2)(7)(11); FIAU IPS Section 4.7).

It submitted that the Complainant's instructions to withdraw the funds were in hand and received from the secure online portal as per Appendix



IX attached to its reply.<sup>14</sup> The funds were sent to the verified linked bank accounts in the name of the Complainant held in its records. Bank statements were sent to the Complainant.

15. FCM noted that the transfer instructions were processed on 9 February 2024. The Complainant was informed that the account will be closed after full interest payment to the day. The Complainant responded and requested full account statement and asked to wait three days before FCM's closes the account stating that *'pls do not close the account but wait until the next interest rate payment ... also because some of the transfers could bounce back'*.<sup>15</sup>
16. On 12 February 2024, the Complainant noted that the funds were not yet in his account and started chasing constantly. FCM checked from its end but did not note any problems encountered with the transaction and had no related messages from the Correspondent Bank. It noted that up to the date of its reply, the Bank had no formal or information/notification from its Correspondent Banks or other banks that any of its transactions were rejected due to FCM being deemed as high risk. It noted that the Complainant, however, kept insisting that the receiving bank was refusing to credit his account with the funds sent from FCM Bank *'as the amount was too big and FCM Bank was deemed high risk'*.<sup>16</sup>
17. FCM submitted that although it had no indication that there were any issues with the transfers, it independently requested an investigation with its Correspondent Bank to trace and check the status of the transfers. The Correspondent Bank confirmed on 23 February 2024 that the transfers were credited as per instructions with no issues (as per Appendix X to its reply).<sup>17</sup> FCM further pointed out that the highest transfer was EUR 30,000 and the total amount transferred out was approximately EUR 63,000. The Bank is unsure how such amounts can be classified as *'too big'* by the receiving bank.<sup>18</sup>

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<sup>14</sup> P. 106

<sup>15</sup> P. 78

<sup>16</sup> *Ibid.*

<sup>17</sup> P. 114

<sup>18</sup> P. 78



18. The Complainant, in the meantime, sent an email to request details on the complaints procedures. The requested information was provided, and the Bank's Compliance Department was kept in copy. The Complainant was informed to send his Complaint directly to the Compliance Department, and the contact email was specifically provided.
19. On 22 February 2024, the Complainant submitted his Complaint to the general information inbox. This was missed from the Bank's end and, therefore, the Bank did not respond within the stipulated timeframes. On 11 April 2024, the Compliance Officer emailed the Complainant and once again provided the necessary explanations and apologised for the late response. Confirmation that the transfers were never rejected was also included in its email.

*Concluding remarks in its reply*

20. The Bank submitted that its officials followed procedures and acted courteously with the Complainant. It submitted that the Complainant was kept informed at all times of the requirements and clarifications being sought. The attitude and behaviour of the Complainant changed when the Bank was pressing for more information/clarification on his professional/employment/income-earning status.
21. FCM noted that it stands to reason that not all bank employees understand German language and require translation. To assist, FCM had a German speaking employee on the team and instead of requesting customers to send translated documents, the Bank provided this internally. It submitted that when the translation is ready, there are of course instances wherein clarifications are necessary, and this was one of such instances.
22. FCM submitted that the Complainant was informed, more than once, that it can only process transactions received from or sent to the linked bank account. This is clearly stipulated in the Terms & Conditions. He was also informed that the account was going to be closed following the withdrawals and full interest payment. He requested to allow 3 days to close and there was no dispute to this at the time.

23. The Bank pointed out that the Complainant never provided evidence that the Bulgarian Bank refused to credit the funds. It submitted that, in fact, the correspondent bank confirmed that the transfers were processed normally, and this confirmation has already been provided to the Complainant.
24. FCM submitted that it cannot understand how the Complainant is requesting compensation equivalent to 29 hours of work at his hourly remuneration of EUR 200 per hour, stating this is his usual hourly payment. The Complainant declared to be retired and earning no income other than rental income, on which the Bank does not have much disclosure. It submitted that this gave rise to additional doubts around his declarations made to the Bank.
25. In view of the said facts and turn of events, the Bank totally refutes any fault in the handling of the matter in question and finds no grounds for compensation of the EUR 4,000 claimed by the Complainant. It submitted that the Complainant received all his funds and interest due and was always treated politely and professionally.
26. The Bank noted that it will also inform the Complainant that it will terminate its relationship agreement in due course. The Bank also reserved the right to take additional action, as allowed by the laws of Malta, on the unfounded allegations towards it or any of its officials.

## **The Merits of the Case**

**The Arbiter will decide the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.<sup>19</sup>**

## **Background**

The Complainant, a German national, born and resident in Bulgaria,<sup>20</sup> applied to open a savings account with FCM in June 2023.<sup>21</sup>

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<sup>19</sup> Cap. 555, Art .19(3)(b)

<sup>20</sup> P. 97

<sup>21</sup> P. 7 & 97

In the Bank's forms, his current employment status was indicated as retired. His previous occupation was as Managing Director in the engineering sector.<sup>22</sup>

## Timeline

The following is a timeline and summary of key events and communications as emerging from the evidence produced during the proceedings of the case:

- a) 4 Dec 2023 – FCM sent an email to the Complainant notifying him that it was *'currently updating the details of our customers and have noticed that your balance has fallen below Euro 2,000 which is the minimum amount. Your balance stands at Euro 3.05'*.<sup>23</sup>

FCM asked the Complainant to confirm whether he intended to make a transfer and keep his account open or whether he wished to close his account. The Bank further noted that in case the Complainant opted to transfer funds to keep his account open then, he had to fill in a form attached to its email and, also, send FCM supporting documents as requested in the said form.

- b) 21 Dec 2023 – The Complainant notified FCM that he was willing to put some money on fixed term deposit with FCM. He explained that his *'source of wealth are savings that have been kept on deposits for years'*.<sup>24</sup> He asked FCM to confirm whether, as proof, he could send his previous fixed-term deposit contract from the other bank.
- c) 21 Dec 2023 – FCM confirmed that the *'contract should be sufficient'* and to revert should he have any questions.<sup>25</sup>
- d) 25 Dec 2023 – The Complainant emailed FCM and provided *'a statement from one of my German banks where I keep my funds on fixed term accounts'*.<sup>26</sup> He noted that his reference account with FCM was the Bulgarian Cooperative Bank account and asked FCM to clarify whether this

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<sup>22</sup> P. 97

<sup>23</sup> P. 26

<sup>24</sup> *Ibid.*

<sup>25</sup> P. 25

<sup>26</sup> *Ibid.*

meant that he could fund his FCM account only from such Bulgarian account or from any other account he held in his name.

- e) 3 Jan 2024 – FCM asked the Complainant to fill in an attached form and to notify it once he transfers the funds to his FCM Savings account.<sup>27</sup>
- f) 3 Jan 2024 – Completed Source of Wealth Declaration Form.<sup>28</sup>
- g) 9 Jan 2024 – Complainant sent a reminder to FCM that he was waiting for their answer.<sup>29</sup>
- h) 9 Jan 2024 – FCM emailed the Complainant where it confirmed that *‘the document is sufficient’* and asked the Complainant to send *‘a payslip or Income tax return as proof of income’*.<sup>30</sup>
- i) 9 Jan 2024 – The Complainant questioned why FCM required another document as proof of his income if the document was deemed sufficient. He, however, attached to his email his *‘recent German tax declaration with income from rented property’*.<sup>31</sup>
- j) 10 Jan 2024 – FCM informed the Complainant that it requested further documents to support his answers in the form provided.<sup>32</sup>
- k) 10 Jan 2024 – The Complainant asked FCM to confirm that it does not need any more documents.<sup>33</sup>
- l) 10 Jan 2024 - FCM confirmed to the Complainant that *‘No further documents are needed at the time being,’* and asked the Complainant to let the Bank know once he transfers the funds.<sup>34</sup>
- m) 12 Jan 2024 – The Complainant confirmed to FCM that he had sent a small test amount of EUR 2, but this was not credited yet.<sup>35</sup>

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<sup>27</sup> P. 24

<sup>28</sup> P. 104

<sup>29</sup> P. 24

<sup>30</sup> P. 23

<sup>31</sup> *Ibid.*

<sup>32</sup> P. 22

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> P. 21 - 22

- n) 15 Jan 2024 – FCM confirmed that it received the funds, but these were not sent from the Complainant’s linked bank account. The Complainant was asked to send FCM a bank statement from where he had sent the funds.<sup>36</sup>
- o) 15 Jan 2024 – The Complainant emailed FCM stating that that was the reason why he had sent ‘*a lot of bank statements and other papers*’ to FCM the previous week, and asked whether the new account was also a linked account.<sup>37</sup> He noted that FCM could contact him if it needed anything else.
- p) [7 Feb 2024] – FCM emailed the Complainant, where it noted that as part of its routine, FCM was reviewing and updating his profile and asked him
- (i) to confirm ‘*in which country you used to work and at which company*’ given that in his application form he had stated that he was retired, and
- (ii) to provide ‘*a document showing some of your income, like Retirement Income*’ given that the document provided regarding his tax declaration only stated that he overpaid taxes and will receive a refund.<sup>38</sup>
- q) 7 Feb 2024 – The Complainant notified FCM that he tried to transmit some of the funds to his reference account, but he was not able to do so as he was given an unknown error. He asked FCM to resolve the problem as soon as possible.<sup>39</sup>
- r) 8 Feb 2024 – FCM informed the Complainant that ‘*with regards to outgoing payments*’, the Complainant can send FCM ‘*instructions via email or secure message*’ and FCM will then proceed on his behalf.<sup>40</sup> A form was attached that the Complainant could complete. The Complainant was further asked to reply to FCM’s previous questions.
- s) 8 Feb 2024 – Email from the Complainant to FCM where he noted how many hours he lost just to prepare the documents and requesting the transaction to be made on the day as he wanted to buy a property and if

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<sup>36</sup> P. 21

<sup>37</sup> *Ibid.*

<sup>38</sup> P. 20

<sup>39</sup> *Ibid.*

<sup>40</sup> P. 19

this is delayed the deal would then be compromised. He further noted that he had checked with friends from USB Bank who confirmed to him that the country risk about Bulgaria did not change recently *'contrary to your statement that Bulgaria was changed to high risk country last week'*.<sup>41</sup>

The Complainant also noted that:

*'I never stated that I have retirement income!! In my KYC once again it confirms you do not read what I sent to you and work with false information based on personal assumptions!*

*It is not true that my german tax return states just what I have received in overpaid taxes. This is the same document that I sent to you almost month ago and you personally in written confirmed that it is OK for you. It only means that you have not read this document when it was sent ... And now when you read it still your interpretation is completely wrong'*.<sup>42</sup>

- t) 8 Feb 2024 – FCM emailed the Complainant informing him *inter alia* that they were trying to contact him and that there were no documents attached to his email.<sup>43</sup> FCM also included an extract from the application form where he had stated that he was retired.
- u) 8 Feb 2024 – Complainant queried how FCM was saying that it did not receive the attachments. He referred to a screenshot of the attachments sent and requested the transfers to be made on the same day.<sup>44</sup>
- v) 9 Feb 2024 – FCM notified the Complainant that it was currently processing his transfers and had so far transferred Eur 30,000 to *FIB* and Eur 12,980 to *CCB*.
- w) The Bank further noted that *'With regards to the Raisin Bank should you wish to receive the remaining funds there please send me a bank statement or else we transfer them to one of the banks mentioned above. We await your confirmation'*.<sup>45</sup>

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<sup>41</sup> P. 40

<sup>42</sup> *Ibid.*

<sup>43</sup> P. 39

<sup>44</sup> P. 38

<sup>45</sup> P. 146

- x) 9 Feb 2024 – Complainant emailed FCM noting *inter alia* that he expected the Bank to have checked the documents, noting also that he did send FCM a screenshot from his *Raisin Bank* and had nothing else from this bank. He asked for Eur 10,000 to be otherwise sent to CCB and Eur 10,000 to *FiBank*. The Complainant also requested FCM to *‘pls do not close the account but wait until the next interest rate payment’*.<sup>46</sup>
- y) 9 Feb 2024 – FCM notified the Complainant that they checked, but the screenshot was not enough, and that’s the reason why they asked for the statement. The Complainant was further informed that *‘The interest was credited today since the account will be closed today’*.<sup>47</sup> The Bank also noted that it *‘Will transfer the funds to your linked bank accounts’*.<sup>48</sup>
- z) 9 Feb 2024 – The Complainant sent an email to FCM requesting to Bank to *‘send me also an account statement for the period I had the funds with you with all credit and debit transactions’* and, also, asking FCM to *‘pls wait 3 days with the closure of account’*.<sup>49</sup>
- aa) 12 Feb 2024 – The Complainant emailed FCM, notifying it that the funds had not yet been received.<sup>50</sup>
- bb) 12 Feb 2024 – FCM asked the Complainant to *‘allow some more time to receive the funds’* as it was explained that the funds *‘were successfully transferred out on Friday’*.<sup>51</sup>
- cc) 12 Feb 2024 – The Complainant informed FCM that *‘the Central Cooperative Bank refuses to credit me the transfers,’* given that FCM was *‘considered as high risk’*.<sup>52</sup> He asked whether he should ask CCB *‘to return the money’* and whether FCM *‘will transfer them to [an]other bank’*.<sup>53</sup>

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<sup>46</sup> *Ibid.*

<sup>47</sup> P. 145

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> P. 19

<sup>51</sup> P. 18

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*



- dd) 14 Feb 2024 – FCM confirmed to the Complainant that *'funds can be returned and we will transfer them the other bank'*.<sup>54</sup>
- ee) 14 Feb 2024 – The Complainant requested various contact details of FCM's bank staff and supervisors, ombudsman and supervisory authority's with whom he can make a complainant and requested the bank statements which he noted he had already asked for *'already four times'*.<sup>55</sup> He further stated in the said email that *'I understand you don't have much experience in working with a bank but I have incurred significant financial losses by your actions which I would like to claim by starting a law action personally against you'*.<sup>56</sup>
- ff) 14 Feb 2024 – FCM provided details of the complainant handling procedures, the contact of the Compliance Department and *'the bank statements as requested'*.<sup>57</sup>
- gg) 14 to 23 Feb 2024 – Email communications between FCM and Banca Popolare di Sondrio (the correspondent bank) to check about the crediting and tracing of the funds to the Complainant's account given that the Complainant was claiming that his bank had rejected FCM's payments.<sup>58</sup>
- hh) 22 Feb 2024 – Formal complaint made by the Complainant with FCM.<sup>59</sup>
- ii) 23 Feb 2024 – Internal communication of FCM attaching a confirmation (from Banca Popolare di Sondrio) dated 23 February 2024, that *'both payments ... were credited to his linked bank account'*.<sup>60</sup>

## Observations

As the timeline above shows, after the Complainant's communication of 21 December 2023 (relating to his intention to open a fixed deposit) and his subsequent query of 25 December 2023 (on the linked account), FCM requested

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<sup>54</sup> P. 17

<sup>55</sup> P. 136

<sup>56</sup> P. 135-136

<sup>57</sup> P. 135

<sup>58</sup> P. 30 - 35

<sup>59</sup> P. 11 - 14

<sup>60</sup> P. 29

documentation regarding the source of wealth and other clarifications in January and early February 2024.

After deposits of over EUR 62,900 were made in January 2024, the Complainant wanted to then withdraw from his account in early February 2024 but was initially not permitted automatically due, presumably, to the pre-transaction control feature. He was informed (on 8 February 2024) that instructions for outgoing payments had to be sent to FCM '*via email or secure message*'.<sup>61</sup> The Bank then executed the withdrawals on 9 February 2024 as also emerging from the timeline above and the Bank's statement.<sup>62</sup>

The Complainant's failure to adequately satisfy the Bank's requests and the Complainant's attitude and lack of cooperation ultimately led to FCM closing his account and returning his money.

With respect to the key allegations raised, the Arbiter further observes the following:

*(A) Claims of unexplainable requests/reversal of positions in documentation requested/inadequate handling of the transfer out of his money*

Following a review of the submissions made and evidence presented during the proceedings of this case, the Arbiter would like first to outline that he finds no satisfactory basis and evidence substantiating the claims made by the Complainant of unexplainable requests on the part of FCM or unreasonable reversal of positions in the documentation requested by FCM, nor about the inadequate handling of the transfer out of his money.

This is also when considering the nature of the clarifications and documents requested by FCM as well as the emails and documents exchanged as also outlined in the timeline above.

It is noted that the Bank referred to Regulation 11(10) of the *Prevention of Money Laundering and Funding of Terrorism Regulations* (S.L. 373.01)

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<sup>61</sup> P. 19

<sup>62</sup> P. 100

(‘PMLFTR’) as the reason for asking for additional clarifications following Bulgaria’s greylisting.

The said regulation, which deals with ‘Enhanced customer due diligence’, provides the following:

*‘(10) Where occasional transactions or business relationships or transactions involve non-reputable jurisdictions, subject persons shall:*

*(a) obtain additional information on the identity of the customer and, where applicable, the beneficial owners; (b) obtain additional information on the intended nature of business relationships; (c) obtain additional information on the source of wealth and source of funds of the customer, and, where applicable, the beneficial owners; (d) obtain information on the purpose of prospective or executed transactions; (e) obtain the approval of senior management when establishing business relationships, carrying out occasional transactions or continuing business relationships; (f) conduct enhanced monitoring of business relationships by increasing the frequency of monitoring, and identifying and, where appropriate, examining patterns of transactions that require further scrutiny; and (g) where applicable, require that the first payment be carried out through a bank account in the customer’s name held with a bank subject to customer due diligence obligations that are consistent with those laid down under these regulations.’*

Furthermore, Article 2 of the PMLFTR provides that:

*“non-reputable jurisdiction” means any jurisdiction having deficiencies in its national anti-money laundering and counter funding of terrorism regime or having inappropriate and ineffective measures for the prevention of money laundering and the funding of terrorism, taking into account any accreditation, declaration, public statement or report issued by an international organisation which lays down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism or which monitors adherence thereto, or is a jurisdiction identified by the European Commission in accordance with Article 9 of Directive (EU) 2015/849.’*

It is noted that during his communications with FCM, the Complainant appeared to question and doubt the greylisting of Bulgaria and/or the timing thereof. In his email of 8 February 2024, he *inter alia* stated that,

*'I checked with my friends from USB Bank and they confirmed that Bulgaria country risk did not change recently. This is contrary to your statement that Bulgaria was changed to high risk country last week!!'*<sup>63</sup>

In his final submissions, the Complainant further noted that:

*'According to Caroline, Bulgaria was included in the list of risk countries in October [23], e.g. After the opening of the account but before transferring the funds.*

*If this was the case, so why I was not informed in any moment about this fact, as this means that the use of my account was restricted and could not be used as initially advertised?!*

*In her mail beginning of 2024, Janelle states that Bulgaria was included in the list of risk countries two week ago ... Obviously a **false** statement'.<sup>64</sup>*

Further to the above, it is evident, as also emerging from general searches over the internet, that Bulgaria, the country of residence/place of birth of the Complainant,<sup>65</sup> was greylisted by the Financial Action Task Force ('FATF') in October 2023.<sup>66, 67</sup>

It is also evident that the Bank was duty-bound to seek the required documentation and requested clarifications for its due diligence purposes and indeed the Arbiter finds no fault on the Bank's part in this regard.

As also outlined under Regulation 7(7) of the PMLFT Regulations regarding Customer Due Diligence:

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<sup>63</sup> P. 40

<sup>64</sup> P. 201

<sup>65</sup> P. 97

<sup>66</sup> P. 93 - 94

<sup>67</sup> <https://www.reuters.com/article/business/healthcare-pharmaceuticals/fatf-financial-crime-watchdog-adds-bulgaria-to-grey-list-for-closer-scrutiny-idUSFWN3BX422/>

*'(7) Customer due diligence measures under these regulations shall be repeated whenever, in relation to a business relationship, doubts arise about the veracity or adequacy of the previously obtained customer identification information.'*

It is further noted that after the Complainant opened his savings account with FCM in June 2023, he only funded it six months later, in January 2024.<sup>68</sup> The funding of his account (in January 2024) thus happened slightly more than two months after the change in Bulgaria's classification.<sup>69</sup>

The Arbiter notes that no evidence has emerged of any formal notification sent to the Complainant by FCM about the consequences of the greylisting on his status with the Bank.

In its email of 4 December 2023, regarding the funding of his account and whether he intended to close the account, the Complainant was indeed not notified about the *'pre-transaction control feature'*<sup>70</sup> that would have applied to his account following Bulgaria's greylisting. This would have been an opportune moment for FCM to bring to the Complainant's attention the matter of the greylisting and how this affected his account. This aspect shall be taken into consideration in the extent of any compensation reflected in the decision later on.

As to the claims relating to the transfer of money, no basis is either found justifying the Complainant's claims made in this regard. It is noted that section 3 titled 'Account Opening' of FCM's General Terms and Conditions for retail banking accounts, indeed provided *inter alia* that:<sup>71</sup>

*'Any funds or monies received into the Account or transferred out of the Account may only be received from or transferred to the Linked Account(s). Any original monies first transferred from your Linked Account(s) will be credited to the Account by close of the same Business Day, provided that the deposit takes place prior to the Cut-Off Time. Otherwise, funds will be credited to your account in the following Business Day. Requests for*

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<sup>68</sup> P. 98

<sup>69</sup> P. 100 - 101

<sup>70</sup> P. 76

<sup>71</sup> P. 156

*transfers out of your Account will be processed on the first Business Day from receipt if received prior to the Cut-Off time. Requests received after Cut-Off time will be processed on the next Business Day. In the event however that satisfactory due diligence requirements, in relation to such matters as we deem fit, have not been completed, any monies received in your Account from the Linked Account/s will be returned to the Linked Account(s) at any time and at our absolute discretion'.*

The Arbiter shall next focus on the Complainant's claim about the blocking and closure of his account which is considered the main aspect of this case.

*(B) Claim of account being unlawfully blocked and closed by the Bank without prior notice*

The Complainant claimed that the general terms of his account with FCM were disregarded and that his account was unlawfully blocked and closed without prior notice.

As to the alleged 'blocking' of his account, it is considered that this aspect is related to the pre-transaction control feature already considered above.

The Bank is deemed by the Arbiter to have been justified, in the circumstances, to apply the pre-transaction control feature and, also, within its powers to close the Complainant's account in the absence of satisfaction of its requests relating to its due diligence exercise. The Complainant's claim of unlawful blocking/closure is accordingly outrightly dismissed.

As to the allegation of a lack of prior notification about the closure of the account, the Arbiter observes that during the proceedings of the case, it has not emerged that the Complainant has received an official termination notice from the Bank – the timeline of events above refers.

In its final submissions, FCM in fact only noted that the '*Complainant was informed and requested additional 3 days before closure (OAFS Ref 145, 146, 147)*'.<sup>72</sup> The said OAFS references are, however, just the exchange of emails on 9 February 2024, (reflected in the timeline above).

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<sup>72</sup> P. 207

In its submissions, FCM stated that this was *'supported by the General terms and conditions – Section 10; last para'* which states that:

*'Without terminating the relationship we have with you, we may, by giving reasonable notice, unilaterally take action to close any Account(s) you hold with us in any of the following cases:*

- a. If we reasonably believe that you are no longer eligible for an Account;*  
*or*
- b. If we discover that you have provided us with false information at any point in time.'*<sup>73</sup>

The Arbiter, however, notes that the introductory part of Section 10 of the Bank's General Terms and Conditions, titled *'Termination'*, provides that:

*'We reserve the right, at our sole discretion, to terminate the provision of any Account(s) and/or all Services at any time, by sending you a notice in writing specifying the date on which such termination shall take place. We shall provide you with reasonable notice of our intention to terminate the Services, and in all cases such notice shall not be less than sixty (60) days or two calendar months whichever is applicable.'*<sup>74</sup>

The only notice in writing sent by the Bank regarding the closure of the account that was presented during the proceedings of this case is an email of 9 February 2024, in which the Bank notes that:

*'The interest was credited today since the account will be closed today.'*<sup>75</sup>

It is further noted that during the hearing of 17 June 2024, FCM's official testified *inter alia* that *'I would like to clarify that the relationship is not yet terminated. The account was closed, and the funds were returned to origin for the reasons that we already explained ...'*<sup>76</sup>

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<sup>73</sup> *Ibid.*

<sup>74</sup> P. 157

<sup>75</sup> P. 145

<sup>76</sup> P. 193



During the same sitting, it was also noted the following in this regard:

*'The Arbiter refers to what I said earlier that the relationship has not been terminated but the account has been closed and asks if the account has been closed how is it that I say that the relationship has not been terminated.*

*I say, yes, because we are bound by the terms and conditions; and there is a client agreement, at that point in time, wherein we close the account. I mean ... Once this case is over, we will inform the client that we will be terminating the relationship ... we have no intention of continuing the relationship and open further accounts'.<sup>77</sup>*

In its final submissions, FCM further explained, with respect to the termination notice, that:

*'To explain better, customers at times hold accounts which mature and are subsequently closed or withdraw all the funds and therefore the account will be closed. However, the relationship will not be terminated and they will be able to open other accounts, and a due diligence review of the existing customer profile will occur. Sometimes additional documents are requested and sometimes not, depends on the circumstances and the time elapsed since the previous account closure. On the other hand, if the Bank decides to terminate a relationship, the terminated customer will receive the respective notification and will not be allowed to open any further accounts in the future. Any request for services will be declined. The termination notice has not been sent to Mr ZB and shall be submitted once the complaint has been concluded'.<sup>78</sup>*

Having considered the relevant aspects as raised above, the Arbiter does not consider FCM's explanations acceptable nor that they justify the lack of adequate termination notice that should have been sent to the Complainant, in line with the first paragraph under Section 10, Termination of FCM's General

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<sup>77</sup> P. 194

<sup>78</sup> P. 207 – Emphasis added by the Arbiter

Terms and Conditions. Such provision clearly provides that a termination notice had to be sent in case of termination of *'any Account'*.<sup>79</sup>

In addition, even in case of the notice required in case of termination of a relationship, the Arbiter considers that once FCM was terminating the sole account of the Complainant, the relationship was *de facto* concurrently being also terminated. An adequate notice should have been sent to the Complainant regarding the closure of the account and, also, termination of the relationship within the prescribed period outlined in the said Terms and Conditions.

The Arbiter shall reflect the above shortcoming on the part of FCM in the extent of compensation awarded to the Complainant in this decision.

#### *Other general observations*

It is noted that the bulk of the remedy requested by the Complainant comprised of an arbitrary amount chosen by the Complainant for the time he claimed that was spent in dealing with the Bank's requests and in sorting the transfer of his funds.

During the hearing of 17 June 2024, the Complainant testified *inter alia* that,

*'Asked by the Arbiter what I am seeking by way of remedy, I say, to be honest, I calculated my time, the time I spent in dealing with this case'*.<sup>80</sup>

In his final submissions, he further clarified that:

*'I have spent more than 15 hours of work with my correspondence (including more than 25 mails written and more than 10 tel. phones with Janelle and her colleagues. This alone valuated with an hourly remuneration of 200 euro/my usual hourly payment – from the time when I was working as a managing director and consultant in Germany before my retirement/amounts to 3000 euro'*.<sup>81</sup>

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<sup>79</sup> P. 157

<sup>80</sup> P. 192

<sup>81</sup> P. 202

The Arbiter finds no adequate basis substantiating and/or justifying the requested amounts nor any partial amounts thereof.

This conclusion is based not only when considering that the Complainant was a retired person (and, accordingly, could not reasonably value his time at the rate he earned in his previous employment, as such aspects are unrelated to each other), but also because the Arbiter finds no merit with respect to various of his claims as outlined above.

The Arbiter reasonably cannot justify any request for compensation for the time the Complainant had taken to sort out clarifications that the Bank needed as part of its enhanced due diligence checks.

Furthermore, no evidence has either emerged that the Bank was at fault for any delays experienced by the Complainant in receipt of his money at CCB. This is also in light of the confirmation presented by the Service Provider from its correspondent bank of 23 February 2024.

#### *Claimed interest loss*

As to the claimed loss in interest, the Arbiter further decides that there is also no evidence substantiating the Complainant's claim that the receiving bank was refusing or delaying crediting his account as '*the amount was too big, and FCM bank was deemed as high risk*'.<sup>82</sup>

The claim of interest loss is accordingly also dismissed.

#### **Compensation**

As amply explained above, the Arbiter considers that there is no legal nor any other reasonably justifiable basis on which the Complainant's request for compensation for lost interest and time spent can be acceded to as claimed.

However, in the particular circumstances of this case, the Arbiter is awarding a nominal payment for damages on an *arbitrium boni viri* basis due to:

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<sup>82</sup> p. 3

1. the Bank's failure to follow exactly the procedure applicable for the termination of the savings account as outlined in its General Terms and Conditions.
2. Failure to inform the Complainant about the consequences on the status of his account relationship caused by Bulgaria's inclusion in the FATF greylist in October 2023 when requesting whether the client intended to fund his account in December 2023.

**Given the identified shortcomings outlined above, the Arbiter, concludes that it is fair, equitable and reasonable in the particular circumstances and substantive merits of the case to award the Complainant a compensation of EUR 500 for damages suffered as a result of the conduct complained of.**

**Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders FCM Bank Limited to pay the amount of EUR 500 (five hundred Euros) as compensation to the Complainant for the reasons stated in this decision.**

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

**Alfred Mifsud  
Arbiter for Financial Services**

### **Information 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.