

## **Before the Arbiter for Financial Services**

**Case ASF 152/2024**

**HD**

**(Complainant)**

**Vs**

**FinXP Limited**

**(C 65783)**

**(FXP or Service Provider)**

### **Sitting 09 December 2024**

This Complaint<sup>1</sup> was filed on 26 July 2024 alleging that Service Provider was responsible for a loss of €36,800 which Complainant suffered when on 23 April 2020, he transferred such funds through his bank in Ireland to a Company BHPT OU who had an account with the Service Provider.<sup>2</sup> BHPT OU was a crypto trading platform licensed in Estonia.

Complainant claims that he was scammed by a fraudster he refers to as Profitix. Profitix seem to have had an account with BHPT OU. Complainant reported that commencing on or about 19 March 2020, he fell victim to a multi-layered scam operation orchestrated by a fraudulent investment company called Profitix whom he claims was committing financial crimes right under the nose of FXP.

He claims money for value of €210,000 was transferred using FXP services.<sup>3</sup> However, the Complaint is about one particular transaction of €36,800 and the higher figure is not sustained or referred to elsewhere in the Complaint.

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<sup>1</sup> Pages (p) 1 - 5 and attachments p. 6 - 37

<sup>2</sup> P. 37

<sup>3</sup> P. 6

In his Complaint, he accuses FXP of misconduct, fraud, unjust enrichment, violations of international law, aiding and abetting fraudsters, and failure in its duties to adopt fraud detection mechanisms.

By way of remedy, he seeks full refund for his loss of €36,800 and a further €10,000 for moral damages.

### **Reply of the Service Provider**

In their reply,<sup>4</sup> the Service Provider raises two preliminary pleas as follows:

1. Prescription on the basis of Articles 21(1)(c) of Chapter 555 which stipulates that Complainant must file his complaint with the Service Provider within 2 years from the day on which the Complainant first had knowledge of the matters complained of.
2. FXP never had a relationship with the Complainant.

### **Hearing**

A hearing<sup>5</sup> was held on 28 October 2024, where the Arbiter explained that before entering into the merits of the case, he has to decide about the preliminary pleas raised by the Service Provider.

In reply, the Complainant stated:

***'I did not have the knowledge to be able to complain to a bank.***

***I was afraid of taking on a professional company and being scammed again. Once bitten, twice shy.***

***So, it was not until a few years on that I realised the possibility of some redress from what happened. I was in a very vulnerable period at the time. My wife, who is since deceased, had dementia; and in 2019, she wanted a separation and she convinced our son and daughter that we were incompatible.***

***We sold the house, we separated. We split the money, and she went to her home place which we had bought a couple of years back and I went to move to a cottage which I was going to renovate.***

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<sup>4</sup> P. 43 – 46 and attachment p. 47 - 51

<sup>5</sup> P. 52 - 54

***During that period, I got involved with this scam company, Profitix. After three months, my wife profusely apologised to me and wanted me to go back and live with her.***

***Anyway, I did, but this scam started and I carried on with it. I say they impressed me and I was hoodwinked by them, very much so, they were very professional.'***<sup>6</sup>

The Arbiter noting that this did not address the preliminary pleas raised, gave Complainant until end November 2024 to make submissions in writing explaining why, in his opinion, the Arbiter should overrule the preliminary pleas and proceed to adjudge the case on its merits.

### **Submissions**

The Complainant made the following submissions to argue against the preliminary pleas raised by the Service Provider:

*'Thank you for granting me the opportunity to provide my submissions regarding the preliminary pleas raised by the service provider under the provisions of Chapter 555 of the Laws of Malta. I would like to address the issues raised regarding the prescription and eligibility concerns.*

### **Prescription Issue**

*The service provider has asserted that my complaint is time-barred, citing that I had first knowledge of the matters on 1 January 2021 and subsequently failed to file my complaint within the stipulated two-year period. However, I respectfully submit that the circumstances surrounding my case warrant a broader interpretation of "first knowledge" under the law.*

While the events occurred before 2021, I was not in a position to recognize my rights or the nature of the fraudulent actions inflicted upon me due to the following factors:

- 1. During the period leading up to the alleged first knowledge date, I was under immense personal and emotional strain. I was dealing with the separation from my wife, her health challenges, and the subsequent*

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<sup>6</sup> P. 53

*reconciliation. This turmoil severely impacted my ability to assess the fraudulent actions committed by Profitix.*

- 2. As I stated in my earlier submission, I was initially reluctant to challenge what I perceived as a professional organization. Having already been victimised by a scam, I was hesitant to act out of fear of further exploitation.*
- 3. It was only later, after learning of similar cases and becoming aware of potential redress mechanisms, that I could fully comprehend the fraudulent nature of the actions and my right to seek justice.*

*Given these circumstances, I respectfully request the Arbiter to consider my complaint as falling within the period of prescription, as my vulnerability and lack of awareness delayed my ability to act.*

### ***Eligibility as a Customer***

*The service provider also claims that I am not an eligible customer under the provisions of Chapter 555. I contest this plea on the grounds that I meet the criteria for filing this complaint. My relationship with the service provider, arising from the transactions and interactions detailed in my complaint, establishes me as a customer within the meaning of the Act.*

### ***Conclusion***

*I kindly request the Arbiter to consider the unique and challenging circumstances of my case when assessing these preliminary pleas. My delay in filing the complaint was not due to negligence but rather to an extraordinary set of personal and emotional factors that hindered my ability to act sooner.*

*Thank you for understanding and for considering my submissions. Please let me know if any additional information or clarification is required.<sup>7</sup>*

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<sup>7</sup> P. 56 - 57

## Analysis of the preliminary pleas

In his Complaint to the Office of the Arbiter, Complainant gives the date of first knowledge of the matter complained of as 01 January 2021.

This seems plausible as the fraud event had happened more than 9 months earlier. The first complaint was registered with the Service Provider on 10 July 2023.<sup>8</sup> On the part of FXP, this was acknowledged and refuted by letter of 12 July 2023.<sup>9</sup>

Complainant explained during his evidence at the hearing that:

***“It was not until a few years on that I realised the possibility of some redress from what happened.”<sup>10</sup>***

Knowing that he might have a right of redress is quite different from knowledge about the matter being complained of. By his own admittance, Complainant knew of this matter much longer than 2 years before registering the complaint with the Service Provider. The reasons given in the written submissions of Complainant are more excuses than valid legal arguments that he was not aware of the matters complained of more than 2 years before registering his complaint with FXP.

As to whether the Complainant is an eligible customer of the Service Provider as required by Article 19(1) of Chapter 555 of the Laws of Malta (which states that the Arbiter only has competence to hear complaints filed by eligible customers), the Arbiter has to decide whether the Complainant fits the definition of **‘eligible customer’** as in Article 2 of the same Act which states:

*‘eligible customer means a customer who is a consumer of a financial services provider, or to whom the financial services provider has offered to provide a service, or who has sought a financial service from a financial service provider’.*

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<sup>8</sup> P. 6 - 14

<sup>9</sup> P. 15

<sup>10</sup> P. 53

From the evidence of this case, it results that the Complainant was not an eligible customer of the Service Provider. By his own admission, he was a customer of the alleged fraudster who was a customer of BHPT OU who was a customer of the Service Provider. The Outward Payment Advice<sup>11</sup> of the Irish Bank AIB clearly shows that the funds were intended for the account of BHPT OU as beneficiary of the transfer and the Service Provider was a mere intermediary through which the funds were channelled by the Complainant to BHPT OU.

No evidence was submitted on any contact or exchanges between the Complainant and the Service Provider before registering his complaint.

### **Decision**

For reasons above explained, the Arbiter upholds the preliminary pleas raised by the Service Provider and declares he has no competence to hear the merits and to adjudge this Complaint. This without prejudice to the right of the Complainant to take his case before a court or tribunal who may have such competence.

As the case is being decided on preliminary pleas, each party is to bear its own costs.

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

### *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.

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<sup>11</sup> P. 34

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.

