

Before the Arbiter for Financial Services

Case ASF 229/2024

DK and SK

(‘Complainants’)

Vs

Bank of Valletta p.l.c.

Reg. No. C 2833

(‘Service Provider’ ‘Bank’ or ‘BOV’)

Sitting of 28 March 2025

This is a complaint related to a claim for alleged damages amounting to €31,000 which Complainants claim to have suffered due to Bank of Valletta not responding appropriately to their 3 times request to increase their transaction limit to enable them to make a transfer to their broker/investment adviser.

They claim that the delay in executing the transfer caused them to pay much more for the securities they wanted to buy as, in the meantime, the market price moved up.

The Complaint¹

The following timeline was included in their complaint:

‘On 08 October 2024 we called BoV customer service from overseas to increase our transfer limit on our internet banking service as we were intending to purchase iShares Physical Gold ETC shares through Curmi & Partners (see

¹ Pages (p.) 1 - 7 with documents attached p. 8 - 39

attached email from Curmi & Partners marked 'F'). We were advised that the amount we requested was too high and we would need to request an increase through messages on their 24/7 portal. The message would be sent to our branch for action. We immediately sent an online message and received an acknowledgement and a statement that the request had been forwarded to the unit concerned so that they may contact you accordingly. (copy attached marked 'A'). Because of this final statement we were expecting to be contacted by our branch via online message or email or telephone.

By 11 October 2024 we had got no response and we were getting anxious as the price of the shares was increasing. We emailed Mr Melchior Galea at BoV as he was the only contact we had at the time. (Copy of email correspondence attached marked 'B').

By 17 October we still had received no communication from BoV re the increase in transfer limit. On this date Mr Melchior Galea advised me that he had got in touch with the unit concerned and asked them to take action and entertain my request. At all times, we were expecting contact from our branch to advise that the increase had been made. During the period we attempted to make the transfer online at least three times but each time it was refused as being over the limit. We did not keep a record of the date/time of these attempts.'²

'On 21 October (2024), we returned to Malta after a period abroad and we immediately went on BoV 24/7 to check for any messages re the transfer. There were none so we immediately requested an appointment via the portal.

On 23 October (2024), I received a call from BoV regarding a request we had made for a Cashlink Visa card. We were advised that we could not get the card until our personal details were updated and for this, I need an appointment. We thus made an appointment for 1630 hours on 24 October. We mentioned to the person on the line that we also needed to speak about the transfer limit at the appointment as a request had been made but no response had been received.

BoV cancelled the appointment on 24 October (2024) because although the date/time had been suggested by themselves, the branch was actually closed at

² P. 4

that time. A new appointment was eventually sent up after various email exchanges for Monday, 28 October (see attachments marked 'C' and 'D').

On 28 October (2024), the increase in transfer was effected after the appointment at the branch and we were able to transfer the funds. The price of iShares had increased considerably by this time.

FYI, source of funds had been approved via email on 24 September 2024 (see attachment 'G').³

They explained that:

'BoV failed to make communication with us regarding the increase in limit despite their message advising us that they would communicate accordingly. They state that the increase was made according to our request however we were never made aware of this increase which was also time limited. No communication whatsoever was received from them. (Attachment 'E')

Their message to us on 8 October clearly stated "Kindly note that your request has been forwarded to the unit concerned so they may contact you accordingly." (copy attached marked 'A'). We were thus expecting to be contacted and advised when the increase had been opened up online so that we could effect the transfer. This never happened and no contact was made.'⁴

They claim that the delay in executing the transaction caused them a loss of €31,000 as the price of iShares increased and are claiming full compensation from BOV.

Reply⁵

BOV submitted their reply on 27 December 2024, stating:

A. 'Introduction

- 1. Whereas spouses ("the complainants") explain that on the 8th of October 2024 they called the Bank's Customer Service Centre to request an increase in limit on their internet banking service so that they could purchase shares through*

³ P. 5

⁴ P. 4

⁵ P. 45 - 48 with attachments p. 49 - 51

Curmi and Partners. The Customer Service Centre informed them that the requested increased amount was too high to be affected through a phone call and informed them that they should make the request through their internet banking service.⁶

B. Timeline of Events

2. *Whereas on the **8th of October 2024** at 16:37 the Bank received the following message through the internet banking profile of [the Complainant]:*

*“Good afternoon. I would like to increase my daily transfer limit on bov.com 24/7 to €450,000.00 for **24 hours**.”*

3. *Whereas [the Complainant’s] branch handled this request the following working day (**9th of October 2024**) and in fact it temporarily increased [the Complainant’s] daily internet banking limit and enabled this increased limit until the **10th of October 2024**, since [the Complainant’s] had indicated that she wanted the increase for 24 hours only.*
4. *Whereas subsequently, [the Complainant’s] branch once again received a request for a temporary increase in limit on the **15th of October 2024** which was handled on the next working day (**16th of October 2024**) and the Bank left this increase in place until the **17th of October 2024**, since once again this was a temporary increase request.*
5. *Whereas on the **28th of October 2024**, [the Complainant’s] daily internet banking limit was once again increased and a transaction of €480,000 was affected.*

C. The Complaint

6. *Whereas the complainants state that “they lost a substantial amount of money due to the delay in transfer of funds. It was the responsibility of BOV to advise us via their 24/7 portal or via email that the increase in transfer limit had been made.”⁷*

⁶ P. 4

⁷ *Ibid.*

7. *Respectfully, the Bank submits that the transfer was in the full control of spouses, and it was in their interest to ensure that it was affected. In this respect, the Bank implemented their instructions in a timely manner and as specified by [the Complainant] herself. The allegation that it was the Bank's obligation to inform them of this increase is completely unfounded. The Bank's terms and conditions do not specify that the Bank is obliged to contact customers once this increase is affected.*
8. *Whereas, with reference to the message received by [the Complainant] following the submission of her request, there is clearly stated that the branch "may" contact her. Therefore, there was no specification that the branch will definitely contact her once the increase was affected.*
9. *Whereas in addition to the above, had the complainants attempted to affect the transfer with the time period specified by [the Complainant] in her requests, the transfer would have been affected since the Bank implemented her instructions promptly.*
10. *Whereas the complainants state that they suffered a loss of €31,000 which they are claiming in compensation from the Bank.⁸ The Bank questions how this amount was established. since when [the Complainant] initially complained with the Bank on the 28th of October 2024, she stated that the amount lost was of €19,204. This can be seen in the attached complaint form marked as 'DOC.A'. This is a substantially different amount than that being claimed by spouses in their complaint.*
11. *Finally, the Bank respectfully submits that spouses were aware of the urgency by which they needed to make the transfer, thus it would have been in their best interest to attempt to affect the transfer following their requests. This transfer would have been successful since the Bank acted immediately upon their instructions. Thus, any allegation of damages suffered occurred due to the inaction of spouses themselves.*

⁸ P. 4

D. Conclusion

12. *For the reasons articulated above, the Bank respectfully submits that the Complainants' claims are unfounded in fact and law.*
13. *The Bank reserves the right to bring oral and documentary evidence in order to substantiate the defenses raised in this reply, as well as to make submissions both verbally and in writing pursuant to the provisions of Chapter 555 of the Laws of Malta.*
14. *The Bank reserves all rights/ actions pertaining to it at law, and respectfully requests the Arbiter to reject and dismiss the complaints' claims.*

*With expenses.*⁹

Hearings

At the first hearing of 04 February 2025, the Complainant (Mrs.) said:

'I made communication on the 8th of October with customer service because I needed to transfer a large sum of money out of BOV to an investment house.

When I made the request, they said to me, 'This is too large a sum. You need to send us a message on the 24/7 portal.' So, I said, 'Thank you very much,' and I sent the message straight away. And I got a reply which, I think, everybody has seen which said:

'Thank you for your Internet banking request. Kindly note that your request has been forwarded to the unit concerned so they may contact you accordingly.'

Those were the exact words. I understood this to be that BOV would make contact with me either to tell me they had opened the window or to discuss the matter because it was a very large sum. But I understood that contact would be made with me in some way before the window was open or to advise me that the window would be open.

So, I was waiting for contact from BOV. Every day, I opened up my 24/7 portal to see if there were any messages and there were none. So, on the 11th of

⁹ P. 45 - 47

October, I started communicating with Mr Melchior Galea, whose email I had at the bank, and I said to him:

'I'm sorry, I'm contacting you, but I'm pretty desperate. I need to get this money moved. And I'm not getting a response from BOV. I'm not getting any contact.'

So, he, eventually, on the 17th of October, assured me he got in touch with the unit concerned and asked them to take action. I was still expecting at this point, especially after all the emails with Mr Galea saying that I had not received any contact, to receive contact from BOV. And, if they were opening the window then, they should have advised me because how was I to know the window was open at that point again?

So, this is basically my complaint. Having said in their message to me that they will make contact, they never contacted me, and I was left really not knowing what was happening which is what caused a delay in eventually transferring the funds.¹⁰

On cross-examination, she continued:

'I confirm that in my request to increase the limit, I had asked for it to be increased for 24 hours.

Asked whether within those 24 hours I attempted to make the transaction, I say after I received the email, the message back from you, I was expecting contact first. I was not expecting the window to be opened without contact being made because your message stated, '... your request has been forwarded to the unit concerned so they may contact you accordingly.' It didn't say 'so they may action', '... so they may contact you accordingly.' So, that is what I expected - contact.

I say, no, I did not attempt to make the transaction.

Asked whether I attempted to make the transaction at some other point after that, I say, I believe I did. Unfortunately, I didn't keep any records of these transactions. I did not expect it to come to this, so I have no records of when I tried to make this. I did try after that though to make the transaction.

I confirm that the transaction was not successful.

¹⁰ P. 52 - 53

Asked, in view of this urgency I mentioned throughout my complaint, why I did not attempt to call the bank immediately when the transaction was not successful, I say because I was expecting contact.

That is why I made contact with Mr Galea because he was the only person I had an email address for. I say that when I had contacted customer services, all they said to me was, 'You need to send it in writing,' which I had done.

It is being said that I could have inquired about when and why I was not getting a reply with the Customer Service Centre. And that the Customer Service Centre had only told me that they cannot entertain the request themselves and view the amount, but they would still be in a position to answer queries about the request.

I say that I felt I would get more response if I went through to Mr Galea than from the Customer Service Centre.

It is being said that I mentioned that the amount I am requesting from the bank is €31,000. Asked how this amount was established exactly, I say by the price of the iShares on a particular day which would have been about the 9th or the 10th of October to the price I eventually bought them for when I could make the transfer.

Asked by the Arbiter on which date I bought them, I say, I eventually bought them on the 29th but I'll tell you exactly. I don't have that in front of me now, but the 28th or the 29th of October. And allowed two days after the initial request.

I can forward those exact details to you.

It is being said that when I first complained with the bank, I had requested the sum of around €19,000 as a refund.

I say that I did not have the full details. When I put that request in, I was putting it in very fast and I didn't have full details with me at the time. I then got the full details from Curmi & Partners.¹¹

At the second hearing, for BOV gave evidence Malcolm Buttigieg, Manager of Republic Street Valletta Branch. He said:

'I am a Manager at the Republic Street branch of Bank of Valletta p.l.c.

¹¹ P. 53 - 54

I am being asked to explain my involvement in this case while it was at the branch stage prior to it arriving before the Arbiter for Financial Services.

I say, that as a procedure, we receive the request from the client. Usually, we distribute it to our officers within the team to process the request. The officers check that the details are all correct so that in case there is something which is not proper, we can contact the client.

However, once the details are fine, we affect the process; and we, as Managers, authorise the transaction to proceed.

My involvement in this case was to authorise the request coming from my officers.

Asked to explain the instances when the complainants' internet banking limit was increased, I say that there were three instances. The first one came through internet banking on the 9th of October; the second one came through an officer from our end on the 15th of October; and the third one was on the 28th of October when the client went physically to the branch.

***These three transactions were done through the normal process of our bank. They have been authorised from our end in order for the bank to proceed.'*¹²**

On being cross-examined he continued:

'It is being said that message sent to the client did not say that the bank would process her request but said that 'they may contact her accordingly'; and to her this response was very unclear and very ambiguous.

I say that the instructions are sent from the client's end. The client is giving us the authority to do the transaction. Once we receive it, we vet the instructions and if they are clear for us, we proceed accordingly. We may contact you in case you are at default and we inform you that we cannot entertain your request.

I am being asked why the bank did not contact the client on the 15th of October, when the bank realised that the client did not see that it was open. It is also being said that when the bank received the second request from Mr Galea, the bank could at that point contact the client to inform her that it was open again.

¹² P. 55 -56

I say that in the three instances, the bank had acceded to her request. We do not contact all our clients saying, 'Listen, you can proceed.' This is not in our procedure. We contact our client just in case the instructions are not correct and we cannot entertain the client's request.

When you send your request, you are giving the bank, there and then, instructions to proceed. We may contact the client in case we cannot accede to the client's request.'¹³

Final Submissions

In their final submissions, the parties largely restated their positions as explained in the complaint, the reply and the evidence during the hearings.

Complainants arguing that it was BOV's fault they could not execute the transfer of funds to their broker in time as the Bank never informed them that their request to raise the transaction limit for 24 hours had been accepted and executed.

They consider BOV responsible for the three-week delay in execution of the investment transaction, during which period the market price of the security moved against them, and they incurred an extra expense quantified at €31,000 which according to them should be made good by the Bank.

On the other part, BOV argued that the instructions to raise the transaction limit were immediately executed each of the three times it was made and they never committed themselves to inform clients of such execution. They had only indicated that the clients **may** be contacted, and explained such contact would only have been necessary if there were any problems with accepting their request. As no such problems existed, the request was properly executed, and Complainants should have tried to execute their transfer within the 24-hour time window they requested, rather than wait idly to receive a confirmation from BOV that was never promised.

BOV also argued that customers showed no sense of urgency in executing the transfer. Even if they were under the misguided impression that their request

¹³ P. 56

was not executed, they never made a proper and timely follow-up with the right channels of the Bank to enquire why.

BOV also argued that Complainants provided no evidence about the loss they are seeking compensation for; and their claim increased from an original amount of €19,204 in their complaint with the Bank to €31,000 in their complaint with the OAFS.

Analysis and considerations

The Arbiter has to decide whether BOV were at fault for executing the Complainants' online request to increase the transaction limit of their account (to enable transfer of a large sum to their broker/investment adviser for investment purposes) through the 24/7 secure connection service **without informing** them and, therefore, responsible for claimed additional cost incurred to purchase the securities as planned.

Basically, it boils down to a question as to whether the reply of 08 October 2024¹⁴ stating:

"Kindly note that your request has been forwarded to the unit concerned so they may contact you accordingly,"

justified Complainants' not checking whether the limit had been increased as they asked and instead waited idly hoping to receive a reply confirming the increased limit.

The same thing happened again with the second request on 15/16 October 2024.¹⁵

It was after the visit to the branch on 28 October 2024 that finally the transfer was affected.¹⁶

Complainants confirm that their request for the increase in the transaction limit was for the increase to remain effective for 24 hours.¹⁷

¹⁴ P. 8

¹⁵ P. 46; p. 50

¹⁶ P. 5; p. 54; p. 55

¹⁷ P. 53

When asked if they attempted to make the transaction within the 24-hour time window from their request, the Complainant stated:

“No, I did not attempt to make the transaction”.¹⁸

Yet, in the complaint form, they stated:

*“During the period we attempted to make the transfer online at least three times but each time it was being refused as being over the limit. We did not keep a record of the date/time of these attempts”.*¹⁹

The Complainants admit that their unsuccessful attempts were probably made outside the 24-hour time window they had themselves asked for which are explained in BOV email of 06 November 2024.²⁰

The Arbiter finds it strange that:

1. Complainants never attempted to execute the transaction within the 24-hour time window they themselves requested.
2. Even if they waited for the never materialised BOV’s confirmation that the transaction limit had been raised, once this did not arrive, they took no effective action to make further enquiries through the right bank channels. After all, this involved a transfer of €450,000 and they were fully aware of the importance of its timeliness. One cannot allow 20 days to pass and then claim damages for the delay without making effective attempts to get things done.

Decision

The Arbiter does not agree with BOV that Complainants failed to provide evidence about the claimed loss.²¹ However, the Arbiter is of the opinion that while it is desirable and recommendable that BOV communicate better with their clients, the Bank is not responsible for the loss Complainants claim to have suffered.

¹⁸ *Ibid.*

¹⁹ P. 4

²⁰ P. 26

²¹ P. 31 email from stockbroker explains the loss.

When making requests related to such an important transaction, it is obvious that Complainants should have attempted to make the transaction within the requested 24 time-window rather than make several attempts outside the time-window and then blame the Bank for not informing them that the time window had been opened.

Furthermore, the Arbiter is of the view that on 11 October 2024 when, from their viewpoint, after 3 days the transfer from the first request remained unexecuted, they should have done much more than just sending an email to their contact at the Bank who had nothing to do with the transfer and then wait another 3 days for his reply.²² A prompt follow up message on 24/7 online system enquiring fate of their request to increase the transaction limit was the obvious next step.

Rather than expect the Bank to make good for their loss, they had responsibility to ensure the loss does not arise in the first place. The Arbiter feels that they failed to do so.

Furthermore, when a trade remains unexecuted, the price movement could go in either direction. In this case, it moved against the client but at the time the original transfer request was made, there was no assurance about the direction the market would move. It could have well gone the other way, in which case, Complainants would have profited and unlikely to account such profit to the Bank. Failure to take timely action to facilitate prompt trade execution presented a market risk to the Complainants which they cannot shift on to the Bank in a *loss I win, gain you lose* situation.

For reasons above explained, the complaint is not accepted, and no compensation is being ordered. Parties to bear their own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

²² P. 9 - 10

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.