

Before the Arbiter for Financial Services

Case ASF 012/2025

AK

('the Complainant')

vs

Finance Incorporated Limited

(C 55838)

('FIL' or 'the Service Provider')

Sitting of 03 April 2025

The Arbiter,

Having seen the **Complaint** against FIL relating to the transfer of €14,000 the Complainant made on 11 September 2024 to a corporate client of the Service Provider named PAYNOOM SP. Z.O.O.

The Complainant requested refund of the money paid as she claimed that these were transferred under fraudulent circumstances and demanded a full investigation of the fraudulent transaction and identification of the final recipient of the funds.

The Complaint¹

In her Complaint Form, the Complainant alleged that a UK-based broker trading as Entrust Capital (which she discovered later was a professional fraudster) put her under pressure from 13 August 2024 to 17 October 2024 to transfer

¹ Complaint Form on Page (P.) 1 - 8 with supporting documentation on P. 9 - 42

significant amounts of money including the payment subject matter of this Complaint.

'The fraudsters called me frequently, and by using screen-sharing tools, they directed my actions: dictating what buttons to press and where to send the funds. Under their influence and constant pressure, I was unaware that I was a victim of fraud until it was too late.

*Upon discovering the fraudulent nature of the transactions, I immediately contacted Finance Incorporated Limited via the following email addresses: support@paymix.eu, info@paynoom.com. My first enquiry was sent on October 23, 2024, and a follow up was sent on November 20, 2024.'*²

She added that despite several attempts to reach FIL for assistance, she received no response.

Apart from the payment of €14,000 subject of this Complaint, the Complainant reported³ she allegedly suffered total loss of €48,100 and GBP £37,000 from this fraud through transfers through other financial institutions.

However, this Complaint covers only one particular transfer above referred to effected through FIL.

Having considered, in its entirety, FIL's reply,⁴ where they submitted the following:

'Reference is made to the complaint form (the "Complaint") submitted against Finance Incorporated Limited (the "Company" or "Finance Incorporated Limited") by (the "Complainant" or "The Complainant"), to the Office of the Arbiter for Financial Services, with reference number: ASF 012/2025.

Firstly, Finance Incorporated Limited would like to confirm that a response was indeed provided by the Company to the Complainant by way of a letter dated 19th December, sent by email on 23rd December 2024 from support@paymix.eu to the email address: xxxxxx@hotmail.ch.

² P. 3

³ P. 36 - 37 report to UK Police Action Fraud

⁴ P. 50 - 55

In this way, Finance Incorporated Limited wholly refutes the claim made by the Complainant that she did not receive a response and more over also refutes that claim that multiple attempt to reach Finance Incorporated Limited for assistance were made, given that the Company only has one email on record, that which the Complainant sent on 17th December 2024 but has no further records of the Complainant's alleged attempts at making contact notwithstanding the email contained on Page no. 015 of the Complaint, dated 23 October 2024.

1. Facts of Case

The facts of the matter as known to Finance Incorporated are set out here below:

- *The Complainant is not a customer of Finance Incorporated Limited, neither currently nor has been in the past.*
- *Paynoom Sp Z.O.O, is a crypto currency exchange service provider established and organised under the laws of Poland with company registration number 523351200 and 50 registered with registration number RDWW-497 to provide virtual currency service in terms of the Polish AML Act, being the prevailing applicable law at the time of the payment.*
- *Paynoom Sp. Z.O.O. (hereinafter "Paynoom"), offered its clients the opportunity to buy or sell crypto currencies allowing for a fast exchange between FIAT and crypto currencies.*
- *Paynoom held two accounts with Finance Incorporated Limited since 20 October 2023, one for purposes of its own administrative requirements and the other to receive FIAT payments from its clients making use of the services offered by Paynoom.*
- *On 09 September 2024, the Complainant through her bank Aardausche Kantonalbank in Switzerland (the "Remitting Institution"), converted CHF13,295.14 to EUR14,000.00 and remitted the EUR14,000.00 by way of a single SEPA transfer with remitter reference 0242551653428248, which sum was received on 11 September 2024 in an account in the name of Paynoom held with Finance Incorporated Limited. The purpose of this transaction was*

to buy BTC as evidenced by the invoice issued by Paynoom to the Complainant (Annex 1).

- *On 21 October 2024, the Complainant via the Remitting Institution, requested the recall of the payment in the amount of EUR14,000.00. In accordance with industry requirements, the beneficiary, i.e., Paynoom, was advised by Finance Incorporated Limited of the recall request which was rejected by Paynoom on the basis that “the customer received the services from our side in full. Customer didn’t contact us after that the service was provided for the invoices”.*
- *Finance Incorporated Limited received the Complainant’s email dated 17 December 2024 setting out her complaint regarding fraudulent transactions that resulted in the loss of EUR14,000.00 and asserting that Finance Incorporated Limited had not responded to her prior correspondence. In a letter dated 19 December 2024 and sent on 23 December 2024, Finance Incorporated Limited asserted that no previous correspondence had been received from the Complainant or from any person acting on behalf of the Complainant pertaining to her complaint that she was coerced into transferring EUR14,000.00 to an IBAN account provided by professional fraudsters. Moreover, Finance Incorporated Limited also advised the Complainant that since she was not a customer of the Company, she was required to follow current EU applicable legislation regarding the appropriate recourse for matters of alleged fraud.*

At this initial point, Finance Incorporated humbly suggests that the Complainant is and has always been a third party to Finance Incorporated Limited. Reference is made to the Arbiter for Financial Services Act, (Chapter 555 of the Laws of Malta), where “eligible” customer is defined as: “a customer who is a consumer of a financial services provider, or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from a financial services provider. It includes the lawful successor in title to the financial product which is the subject of the relevant complaint”. It is suggested that the Complainant, vis-a-vis Finance Incorporated, is not an

eligible consumer given that she is not a customer who is a consumer of Finance Incorporated and nor has Finance Incorporated offered to provide the Complainant with a financial service and nor has the Complainant sought the provision of a financial service from Finance Incorporated. In this way, the Complaint falls outside the jurisdiction of the Arbiter for Financial Services in Malta.

Further rebuttals to the Complaint are set out below:

2. Rebuttals to Complaint

Notwithstanding the above, Finance Incorporated Limited hereby rebuts fully the Complaint raised against it by the Complainant for the following reasons:

- 1. From the evidence being presented by the Complainant, (reference is hereby made to Page no. 011 and Page no. 012 of the Complaint), it would appear that the Complainant is alleging that she was scammed by persons including an investment broker with the name Entrust Capital Limited. It is understood from the Complaint, (specifically Page No. 21 of the Complaint), that the Complainant had seen an advertisement regarding a Revolut account opening via a broker with the following URL: <https://trade.entrustcapitallimited.com> and gave her own telephone number on which she was contacted by a person speaking in her native Russian language. Although it is not clear from the details that the Complainant included in her submission to 'Action Fraud in the UK' (vide Page No. 021 of the Complaint), it appears that the Complainant had directed and authorised the transfer of funds in anticipation of investing into crypto currency for which she allegedly deposited a total of EUR48,100.00 through a platform.*
- 2. As can be seen in the bank account statement from Aardausche Kantonalbank (i.e. the Remitting Institution)) in the name of [the Complainant] and dated 20.10.2024 (Page no. 013 of the Complaint), it shows that the Complainant converted CHF13,295.14 to EUR14,000.00 and transferred such payment of EUR14,000.00 to the account in the name of Paynoom held with Finance Incorporated Limited on 11 September 2024. Therefore, the Complainant herself had*

directed and authorised the remittance of funds from the Complainant's own account to the account in the name of Paynoom. In accordance with industry standard, the remitter of funds has full responsibility for where she directs the funds to be remitted and for authorising such payment remittance.

- 3. Given that the Complainant held some form of "relationship" with the internet-broker, Entrust Capital Limited, which appears to have been for purposes of the Complainant investing in crypto currency, (despite the Complainant asserting that she has never been involved in any crypto currency-related activities on Page No. 28 of the Complaint), it is humbly submitted by Finance Incorporated Limited that the Complainant should have been alert and displayed a higher degree of caution before she remitted funds to a third party account which was not in the name of the alleged broker. Had the Complainant undertaken a level of enquiry and acted using a level of care as would be reasonably expected from an investor, not least from an investor involved in higher risk investments such as investing through internet-based platforms and investing in crypto currency, it would have become apparent, if not already known to the Complainant, that the making of an investment using an online/internet platform is considered to be higher risk and that it is well known that the provision of internet-based investment brokers and platforms are more susceptible to being involved in fraud related scams. It is therefore submitted that the Complainant, prior to the making of any internet-based investment transaction and before authorising a transaction to remit funds pursuant to this proposed investment, (and also given that the this was not an unsubstantial amount), had a duty to undertake standard preliminary checks before directing and authorising the remittance transaction. Such checks would involve, at a minimum, determining the validity of the alleged investment broker Entrust Capital Limited and the parties involved in the investment chain to ensure that all appropriate regulatory licences were held as were required to provide the investment services to the Complainant. Therefore, it is submitted, that the Complainant did not display the necessary caution when remitting sums of money of not insignificant amounts to person or persons of whom she allegedly had*

no knowledge and that the remitting institution failed to ensure the purpose for which such large sums of money were being transferred.

- 4. Moreover, it would appear that the Complainant, acting without caution and prudence, gave the alleged fraudsters the ability to take over her phone via a “screen sharing app” (as indicated on Page No. 027 of the Complaint), and this without even having verified the persons with whom she was communicating, displaying a complete disregard to data and information security concerns that would have otherwise been expected from someone who understands how to use accept a screen sharing app.*
- 5. Finally, at no point has Finance Incorporated Limited ever had any evidence to support the claim that the Complainant did indeed “lose” her funds or her cryptocurrency investment.*

It is therefore humbly submitted by Finance Incorporated Limited that the Complainant would need to initiate the proper course of action to determine whether she has any legitimate basis to recover the funds that she remitted by contacting her bank as the responsible remitting institution. Given that the Complainant asserts that she transferred a total of EUR48,100.00 as part of the manipulation that she suffered from professional fraudsters who used psychological pressure to coerce her into transferring funds, there were clearly other payments made in excess of the EUR14,000.00, which funds were not received by Finance Incorporated Limited. Finance Incorporated Limited therefore has no visibility of the Complainant’s transactions and investments not least because it appears from the statements exhibited in the Complaint, that she remitted funds to other institutions.

It is also imperative to emphasise that Finance Incorporated Limited has adhered to applicable AML/CFT laws throughout the onboarding and management of the customer’s account and at no time was aware, nor could have been aware, of any association between its customer Paynoom and Entrust Capital Limited let alone any relationship between the Complainant and Entrust Capital Limited. Therefore, whilst the Complainant had visibility of Entrust Capital Limited within the investment

chain and had the opportunity of being able to undertake preliminary checks prior to remitting any funds, in contrast, Finance Incorporated Limited had no visibility of the existence of Entrust Capital Limited. In fact, during the onboarding of Paynoom and managing the customer relationship, Finance Incorporated adhered to due process required for the onboarding and management of corporate customers, (as is applied to all the Company's corporate customers), in compliance with applicable laws and regulations and at no time was Entrust Capital Limited ever identified as being a connected party to Paynoom. Finance Incorporated Limited further confirms that no payments were received from or remitted to Entrust Capital Limited from the account held in the name of Paynoom with Finance Incorporated Limited.

3. Conclusion

For the reasons set out in this response, Finance Incorporated wholly disputes the Complaint and the remedies being proposed by the Complainant in the Complaint, including that Finance Incorporated Limited refund the EUR14,000.00 to the Complainant. Such a claim is considered as being wholly inappropriate given the facts and information set out herein. Finance Incorporated Limited will therefore not be providing the compensation to the Complainant.

In addition, Finance Incorporated Limited wholly and fully refutes the allegations and insinuations being made against Finance Incorporated Limited by the Complainant in her Complaint, that Finance Incorporated Limited had any knowledge of, or was involved in any way, with Entrust Capital Limited and the alleged loss of any funds pertaining to the Complainant pursuant to proposed investment transactions involving the Complainant and Entrust Capital Limited.

Moreover, Finance Incorporated Limited completely refutes the claim that no response was provided to the Complainant regarding the handling of her complaint for the reasons stated earlier herein. The only communication received by Finance Incorporated Limited from the Complainant was the email dated 17 December 2024, which email was received following a telephone conversation from the Officer of the Arbiter

for Financial Services and which was responded to by Customer Support of Finance Incorporated Limited by way of email dated 23 December 2024.

Finally, Finance Incorporated hereby reserves its rights against the Complainant in respect of serious and unfounded allegations being made against it by the Complainant.'

Hearing

At the hearing held on 24 March 2025, the Arbiter informed the parties that he will first rule on the preliminary plea raised regarding his competence before proceeding to consider the merits of the case.⁵

For this purpose, the Arbiter asked the Complainant whether:

- a. she had an account with FIL?
- b. FIL ever spoken to her before the event of this Complaint?
- c. she asked FIL for any service or even knew about them before the event of this Complaint?

Complainant answered in the negative for all three questions.

Preliminary Plea

The Arbiter's competence is determined by Article 22(2) of Chapter 555 of the Laws of Malta ('the Act') stipulates that:

'Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence.'

Moreover, in virtue of Article 19(1) of the Act, the Arbiter can only deal with complaints filed by eligible customers:

'It shall be the primary function of the Arbiter to deal with complaints filed by eligible customers through the means of mediation in accordance with Article 24 and where necessary, by investigation and adjudication.'

⁵ P. 56 - 58

The Act stipulates further in Article 11(1)(a) that:

‘Without prejudice to the functions of the Arbiter under this Act, it shall be the function of the Office: (a) To deal with complaints filed by eligible customer.’

Thus, the Arbiter is obliged to primarily decide whether the Complainant is, in fact, an eligible customer in terms of the Act.

Article 2 of the Act defines an ‘eligible customer’ as follows:

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

The Complainant makes it clear in her Complaint that she was a victim of fraudsters, and no evidence was provided that FIL were in some way directly involved in the scam.

The fact that they had an account relationship with the beneficiaries of the funds transferred (it is not clear what relationship such beneficiaries had with the alleged fraudsters Entrust Capital) does not render the Complainant an eligible customer of the Service Provider. The beneficiaries PAYNOOM SP. Z.O.O. were clearly identified in the payment order in question.

Decision on determination of eligibility

Considering the above and having reviewed the circumstances of the case in question, it is evident that there was no contractual relationship between the Service Provider and the Complainant.

In view of the above, it results that the Complainant was not ***‘a customer who is a consumer’*** of the Service Provider neither that FIL ***‘has offered to provide a financial service’*** to the Complainant, nor that the Complainant ***‘has sought the provision of a financial service from FIL for the purposes of the Act.’***

Decision

For reasons explained above, the Complainant cannot be deemed as an 'eligible customer' in terms of Article 2 of the Act. Consequently, the Arbiter does not have the competence to deal with the merits of this Complaint.

This without prejudice to the right of the Complainant to take her case to a competent court or tribunal.

It is also without prejudice to any right that the Complainant may have to file a complaint against the remitter and beneficiary of her funds at the appropriate jurisdiction for their potential failure of their payment monitoring duties under EU Directive 2015/2366, commonly referred to as PSD 2.

Considering that the case was decided on a procedural issue, 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.