

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

**Case ASF 090/2021**

**RG ('the Complainant')**

**vs**

**Truevo Payments Limited**

**(C 62721)**

**('Truevo' or 'the Service Provider')**

**Sitting of 14 June 2022**

**The Arbiter,**

**Having considered in its entirety, the Complaint<sup>1</sup> filed by the Complainant,**

Where, in summary, the Complainant claimed to have been approached by representatives of *Ashford Investments* (through internet platform [www.ashfordinvestments.com](http://www.ashfordinvestments.com)), a company operated by Teres Media Limited.

The website in question lacked certain information whilst providing poor, unclear and misleading description concerning its owner/operator. The Complainant argued that the same website also contained misleading information about the merchant that was perceived to be a professional broker qualified for trading with regulated financial tools, whilst the representatives communicating with him have also impersonated themselves as being qualified financial brokers with the necessary skills and certifications to provide financial advice.

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<sup>1</sup> Page (P) 3 - 89

The Complainant declared that, acting in good faith and relying on the information and statement contained on the same website, between September and December 2017, he '*... made a number of payments amounting in total to USD 51.000, (US Dollar Fifty-One Thousand) in favour of the Merchant/webplatform [www.ashfordinvestments.com](http://www.ashfordinvestments.com).*'<sup>2</sup>

He stated that these transactions were processed by the Service Provider in its capacity as an '*... acquiring payment institution providing payment services to a possibly fraudulent merchant.*'<sup>3</sup>

The Complainant submitted that the '*... non-fulfillment of major and substantial regulatory obligations of Truevo Payments Limited led to processing payments in contradiction with the applicable law and caused loss of money for the Client.*'<sup>4</sup>

The Complainant also referred to a letter of complaint,<sup>5</sup> addressed to Truevo Payments Limited by his legal advisors, whereby, *inter alia*, the following was submitted:

- There were concerns with the activity of a merchant, this being a company that used/uses the Service Provider's services as a payment service provider for processing payments, which concerns led the Complainant to ask Truevo for assistance and support as it was believed that the issues raised could under some circumstances also affect the latter's business operations;
- That the Complainant accessed the internet-based platform [www.ashfordinvestments.com](http://www.ashfordinvestments.com), owned and operated by *Teres Media Limited* and being referred to as the merchant. Despite no contract was provided through the platform, the '*... terms and conditions contained on the site are intended to govern the relationship and responsibilities of the parties. Therefore, all information on the web-site is relevant for determination of the services and the rights and obligations of the parties.*'<sup>6</sup>

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<sup>2</sup> P. 3

<sup>3</sup> *Ibid.*

<sup>4</sup> P. 4

<sup>5</sup> P. 8 - 80

<sup>6</sup> P. 9

The same web platform also provided registration information about the company of the merchant through which it was commercially active in different time periods;

- That the merchant claimed to be a financial investment firm dealing with regulated financial tools, such as CFDs, indices, binary options, commodities, etc., with its officers and employees being presented as experienced financial brokers. But, from further research in the available public registries, it resulted that the merchant was not licensed to offer regulated financial tools and to provide financial advice to third parties. Warnings and citations for lack of licence were also issued against the merchant.
- That the merchant's claims as a financial broker were a clear example of '*misrepresentation of the Merchant*';<sup>7</sup>
- That on reliance of the merchant's claims, the complainant '*... ordered a service-related opening of an investment brokerage account to be used for subsequent trading with financial tools in real time ...*',<sup>8</sup> and, eventually, the disputed transactions were in fact withdrawn from his account;
- That there was an alleged '*misinterpretation of the service*'<sup>9</sup> in view of the fact that the complainant was never given the investment account and access to it to be able to use it for the trading of the financial products as listed;
- That, considering the service was '*not as described*' involves '*possible fraud*'.<sup>10</sup>
- That, after finding out that he was misled by the merchant, he cancelled the account on the merchant's website and requested the return of his money, which however was '*... tacitly refused ...*'<sup>11</sup>

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> p. 9

- That, based on the above, the following breaches of applicable law would have taken place:
  - a) *'Trading regulated financial tools without required license; Facilitating persons to provide financial services without required license/possible joint knowledge (accessory) in trading regulated financial tools without required license*
  - b) *Possible neglect of the bank's duty to actively prevent fraud and abnormal payment patterns*
  - c) *Possible neglect of the legal provisions for measures against money laundering*
  - d) *Possible theft/fraud committed.'*<sup>12</sup>

In the said letter of complaint, further submissions were made, mainly related to the trading of regulated financial tools without the required licence and possibly facilitating such trade;<sup>13</sup> the possible facilitating of an operation of a non-licensed payment service provider;<sup>14</sup> the possible neglect of the payment service provider's duty to conduct initial and ongoing KYC;<sup>15</sup> the possible neglect of the legal provisions for measures against money laundering;<sup>16</sup> and the possible breaches of the card scheme rules and regulations.<sup>17</sup>

Finally, the Complainant declared<sup>18</sup> that should the Service Provider had diligently fulfilled all major regulatory obligations, the payments in dispute would not have been processed and hence not credited to the merchant's account as the acquirer.

In view of the above, as declared in the complaint form submitted, the complainant is requesting

*'... from Truevo Payments Limited a compensation in an amount of USD 51,000 – in favour of the Merchant/webplatform [www.ashfordinvestments.com](http://www.ashfordinvestments.com), such*

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<sup>12</sup> P. 9 - 10

<sup>13</sup> P. 10

<sup>14</sup> P. 11

<sup>15</sup> P. 12

<sup>16</sup> P. 13

<sup>17</sup> P. 15

<sup>18</sup> P. 4

*amount representing the sum of all payments made to said Merchant/webplatform and processed in breach of the applicable law by the acquirer.*<sup>19</sup>

**Having considered Truevo's reply**<sup>20</sup> whereby, *inter alia*, the Service Provider declared that it is licensed by the MFSA and also by Visa and Mastercard to act as a licensed Acquirer.

Primarily, the Service Provider argued that, without prejudice to other pleas, the action proposed by the Complainant is time-barred in terms of Article 2(1)(c) of Chapter 555 of the Laws of Malta, considering that the transactions in question date back to the year 2017 as noted by the Complainant himself whilst the complaint was registered on 20 July 2021.

It stated that it is '*... very dubious and frankly implausible how the Complainant declares in Section 4 of the Complaint Form that he first had knowledge of the matters complained about on the 27<sup>th</sup> April, 2021, coincidentally on the same day that his legal counsel addressed a legal letter to the Respondent.*'<sup>21</sup>

The Service Provider questioned the fact that the complainant was defrauded in 2017, and he learnt of the involvement of the same provider more than three years after the alleged transactions. It noted further that the action being complained of is also time-barred in terms of Article 2153 of Chapter 16 of the Laws of Malta.

With reference to the merits of the complaint, the Service Provider is rebutting all the contents as being unfounded at law and in fact. It explained how, during the course of the proceedings, it will provide evidence that the Complainant is not an *eligible customer* in terms of Chapter 555 of the Laws of Malta, and that there was no direct relationship between the Service Provider and the same Complainant and, thus, the former is not the rightful defendant in relation to the claims brought forward.

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<sup>19</sup> P. 4

<sup>20</sup> P. 95 - 97

<sup>21</sup> P. 95

The Service Provider emphasised that, '*... from the very definition of eligible customer established in Article 2 of Chapter 555 of the Laws of Malta, it is clear that:*

- *The complainant was never a consumer of the Respondent Company; &*
- *The respondent company never offered to provide a financial service to the complainant; &*
- *The complainant never sought the provision of a financial service from the Respondent Company.'*<sup>22</sup>

It explained that a Merchant Agreement with *Teres Media BG limited* was in place, which, contrary to what was claimed by the Complainant, is not registered in the Marshall Islands. It explained further that, based on records held, the merchant that operated under the trade name *Ashford Investments* dealt in binary options.

The Service Provider submitted that it is being targeted, as the Complainant cannot retrieve the monies from the rightful defendant, which is thus in a situation of defending itself from frivolous allegations to make good for shortcomings/scam effected by third parties.

It has also refuted the unfounded and baseless allegations that it somehow failed in its regulatory obligations when on boarding clients, as prior to doing so, it always adhered to the highest standards regarding anti-money laundering regulations.

Truevo concluded that the complaint and the requests therein are not contemplated in the law, in that the Complainant is seeking redress from alleged regulatory breach which did not necessarily lead to the losses alleged.

**Having heard the parties and seen all the documents and submissions made,**

**Considers:**

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<sup>22</sup> P. 96

The Arbiter notes that the complaint mainly relates to the alleged failure of Truevo to fulfil its major regulatory obligations and has processed payments not according to the ‘applicable law’ which eventually led to the client’s losses.

Primarily, Truevo submitted that it is not the rightful defendant to the complaint in question and the Complainant is not an Eligible Customer in terms of Chapter 555 of the Laws of Malta since there was no direct relationship between itself and the same Complainant. This was reiterated by Truevo’s employee in the Affidavit<sup>23</sup> filed during the proceedings of this case.

The Complainant himself declared that,

*‘I confirm that I have no contractual relationship with any other party other than Ashford Investments.’*<sup>24</sup>

Therefore, in view of such declarations, the Arbiter has to examine his competence.

### **Competence of the Arbiter**

The question of whether the Arbiter enjoys jurisdiction in a particular case is dictated by the provisions of Chapter 555 of the Laws of Malta (‘the Act’) whereby the Arbiter is obliged to investigate his jurisdiction.

Article 22(2) of the same Act stipulates that:

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

Moreover, Article 19(1) of the Act stipulates that 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.’*

The Act stipulates further that:

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<sup>23</sup> P. 107

<sup>24</sup> P. 100

*‘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 customers**.’<sup>25</sup>*

### **Eligible customer**

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.’*

In his complaint form, the Complainant stated that in 2017, he ‘... was approached by representatives of Ashford Investments acting through the internet-platform [www.ashfordinvestments.com](http://www.ashfordinvestments.com), which is/was owned and operated by Teres Media Ltd ...’<sup>26</sup>

He claimed that, eventually, between September and December 2017, he made various payments amounting to USD 51,000 in favour of the same platform/merchant.

The Complainant made himself clear that prior to depositing or investing money, his contact was with *Ashford Investments*. In fact, in the letter of complaint addressed to Truevo, the Complainant’s legal representative stated that:

*‘Our Client has accessed the internet-based platform of the Merchant available under [www.ashfordinvestments.com](http://www.ashfordinvestments.com). To the best of our knowledge, through the platform the Merchant did not provide a contract, however, the terms and conditions contained on the site are intended to govern the relationship and responsibilities of the parties. Therefore, all information on the web-site is relevant for determination of the services and the rights and obligations of the parties.’<sup>27</sup>*

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<sup>25</sup> Article 11(1)(a)

<sup>26</sup> p. 3

<sup>27</sup> p. 9

By virtue of this statement, the Complainant, or his legal representative, are admitting that the Complainant had a direct relationship with *Ashford Investments* with whom he had communicated on a regular basis.

Moreover, in the letter of complaint addressed to Truevo, to which reference was made earlier, it was declared that:

*'As a law firm we have been assigned by our client, Mr RG, to represent his interests and to undertake legal steps against a company that used/uses your services as a PSP for processing payments. As part of our endeavours we are addressing this letter to TRUEVO PAYMENTS LTD asking for your support and understanding in the case concerning CFD Corporate acting through the internet-platform [www.ashfordinvestments.com](http://www.ashfordinvestments.com), which website is claimed to be owned and operated by namely: Teres Media Ltd ... Herewith we would also like to share with you our concerns with regard to the activity of the Merchant and to kindly ask for your assistance and support on the case, as we believe that the raised issues could under some circumstances affect your business operations, as well.'*<sup>28</sup>

### **Determination of eligibility**

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

This was admitted by the Complainant himself when he specifically stated that:

*'I confirm that I have no contractual relationship with any other party other than Ashford Investments.'*<sup>29</sup>

A complaint with the Arbiter can only be filed against the service provider in line with the provisions of the Act.

Considering the above, it results that the Complainant was not *'a customer who is a consumer'* of Truevo, neither that Truevo *'has offered to provide a financial service'* to the Complainant, nor that the Complainant *'has sought the provision of a financial service from Truevo for the purposes of the Act.'*

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<sup>28</sup> P. 8

<sup>29</sup> P. 100

Accordingly, the Complainant cannot be deemed an '*eligible customer*' in terms of Article 2 of the Act.

Therefore, the Arbiter does not have the competence to deal with this complaint.

Considering that the case was decided on a procedural issue, each party is to bear its own costs of these proceedings.

**Dr Reno Borg**  
**Arbiter for Financial Services**