

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

**Case ASF 095/2021**

**SE**

**(‘the Complainant’)**

**vs**

**Trust Payments (Malta) Limited  
(C 56013)**

**(‘Trust Payments’ or ‘the Service  
Provider’)**

### **Sitting of the 27 July 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 a victim of an internet fraud by a person hidden behind a website portrayed for the trading of financial regulated tools.

He admits having been misled by the merchant in view of the fact that the latter claimed misled the Complainant into believing that the merchant was a professional adviser authorised to trade in regulated financial tools, keep client’s money in segregated financial accounts, participate in real-time trading, and presenting contact details that are related to an existing broker.

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<sup>1</sup> Page (P) 2-36

The Complainant insisted that these facts and circumstances fall within the scope of the KYC/AML check-ups that diligent 'banks' should do in accordance with the applicable law.

He stated that he was instructed by the merchant to wire funds to *CCX Exchange*, a company holding an account with Trust Payments (Malta) Limited. The Service Provider, being the acquiring bank, should not have allowed the transactions in question to take place considering that they are possibly related to fraud and/or money laundering. The Complainant further emphasised that acquiring banks should, before processing payments related to internet provided services, properly identify the merchants, and this in line with any anti-money laundering legislation in the relevant jurisdiction.

The Complainant submitted that CCX Exchange accepted his payments for an investment service, and this despite not having a financial broker licence and thus not being in a position to prove legal grounds for the same payments.

The Complainant insisted that Trust Payments provided service to a scam merchant and failed to check the same merchant's brokerage licence. He declared that despite informing Trust Payments about the fraud and money laundering in question, they were not helpful in his regard, and this harbours the belief that the Service Provider is associated with the same fraud.

The Complainant also referred to a letter of complaint,<sup>2</sup> addressed to Trust Payments by his legal advisors, whereby, *inter alia*, the following was submitted:

- That the Complainant accessed the internet-based platform <https://i-coin.io>, owned and operated by *Millenium Solutions Inc.* which claimed to be a financial investment firm dealing with regulated financial tools, with its officers and employees being presented as experienced financial brokers;
- That there were concerns relating to the activity of the merchant, and Trust Payments was asked for assistance and support as it was believed that the issues raised could under some circumstances also affect its business operations;

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<sup>2</sup> P. 8

- That when accessing <https://i-coin.io>, no contract was provided through the platform, but 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>3</sup>
- 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 also being presented as experienced financial brokers. But, from further investigations, it resulted that the merchant was not licensed to offer regulated financial tools and to provide financial advice to third parties. In fact, warnings and citations for lack of licence were issues against the same merchant.
- That the merchant's claims as a financial broker were a clear example of '*misrepresentation of the Merchant;*'<sup>4</sup>
- That on the 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>5</sup>and, eventually, the disputed transactions were withdrawn from the his account;
- That there was an alleged '*misinterpretation of the service*'<sup>6</sup> in view of the fact that the investment account ordered by the Complainant was not provided and it did not keep money on that account;
- That, considering the service was '*not as described*' involves '*possible fraud*';<sup>7</sup>
- That, after finding out that he was misled by the merchant, he cancelled his account on the merchant's website and requested the return of his money which, however, was '*... tacitly refused ...*'.<sup>8</sup>

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

<sup>4</sup> P. 9

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

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

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

- 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 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>9</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>10</sup> the possible neglect of the payment service provider's duty to actively prevent fraud and abnormal payment patterns;<sup>11</sup> and the possible neglect of the legal provisions for measures against money laundering.<sup>12</sup>

In view of the above, as declared in the complaint form, the Complainant is requesting the following:

*'1) Check the observance of the KYC and AML obligations of Trust Payments (Malta) Limited in the case of the disputed transactions in light of the restrictions to process payments possibly related to fraud; and 2) To instruct Trust Payments (Malta) Limited to reverse all disputed transactions with regard to the payments specified in the letter provided to the bank on my behalf.'*<sup>13</sup>

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

<sup>10</sup> P. 10

<sup>11</sup> P. 11

<sup>12</sup> P. 12

<sup>13</sup> P. 3

Based on the *List of disputed transactions*<sup>14</sup> attached to the said letter of complaint, the Complainant is asking the Arbiter to order the Service Provider to pay him the sum of EUR 6,750.

**Having considered Trust Payment's reply,**<sup>15</sup> whereby the Complainant's claims are being disputed.

Primarily, the Service Provider declared that the Complainant's direct relationships are only with the merchant and his credit card issuing bank, and does not hold any direct relationship, implied, expressed, or otherwise agreed, with the same Complainant and, hence, the latter is not an *eligible customer* as defined under the Arbiter for Financial Services Act.

The Service Provider declared further that upon internal investigation, the transactions in question were identified as being processed and protected with fraud detection. It specified that the transactions were authorised by the Complainant's credit card issuing bank and processed by the Complainant's full cardholder authentication under the 3DS protocol but holds no evidence that any chargeback attempts were initiated.

Trust Payments explained that as a payment processor, it does not hold a direct relationship with any cardholder – the latter's relationship is with the merchant, and with the Issuing Bank. It explained further that, as per standard industry practice, in case of a transaction dispute, the cardholder should first attempt to settle such dispute with the merchant and, should this fail, the issuing bank should be advised of the matter. In case the issuing bank considers the claim made by the cardholder as valid, then a formal chargeback process will be initiated by the same bank. Should the chargeback be accepted by the merchant, the transaction will be debited from the latter's account and credited to the cardholder.

However, if an outcome to the dispute cannot be agreed upon, the issuing bank may refer the case to the payment network's arbitration process for investigation, and the case will be decided in favour of one of the parties.

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<sup>14</sup> P. 21

<sup>15</sup> P. 42

The Service Provider submitted that, despite being advised to contact his Issuing Bank, and this following communications with the merchant resulting to be unsuccessful, the Complainant failed to follow guidance in relation to the industry standard practices to which the Service Provider is bound.

Trust Payments concluded that adherence to industry standard process is crucial and, above all, reiterated that there is no direct relationship between a payment processor and a merchant's customer. The former simply connects the merchant's bank to the customer's credit card bank to enable the flow of funds. It insisted that the merchant's customers are not and cannot be known to the payment processor.

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

**Considers:**

The Arbiter notes that the complaint mainly relates to the alleged Service Provider's failure to look into various facts and circumstances that fall within the scope of regular KYC/AML check-ups as per 'applicable law', which failure led to the processing of transactions that are possibly related to fraud or money laundering.

In its reply to the complaint, the Service Provider declared that it has no direct relationship with the Complainant and, thus, the latter is not an eligible customer. This has been reiterated in its final submissions whereby it declared that:

*'... TPML submits that it is not suited in these proceedings as the Complainant is not an "Eligible Customer" in its regard and accordingly, it did not provide a 'Financial Service' as defined in the Act.'*<sup>16</sup>

Moreover, in its solemn declaration, the Complainant stated that:

*'I confirm that I have no other contractual relationship with other parties other than I-Coin that could be treated as legal grounds for my payments and to underline that all my payments were made in the belief that I was making payments to I-Coin.'*<sup>17</sup>

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<sup>16</sup> P. 86

<sup>17</sup> P. 48

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:

*'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>18</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:

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<sup>18</sup> Article 11(1)(a)

*'I was instructed by the Merchant to wire funds to a company holding an account with Trust Payments (Malta) Limited Ewropa, namely CCX Exchange, ...'*<sup>19</sup>

He declared further that:

*'CCX Exchange accepted payments from me for the investment service ...'*<sup>20</sup>

On the other hand, in the letter of complaint addressed to Trust Payments, the Complainant's legal advisors declared that this is a *'... case concerning i-coin.io (<https://i-coin.io>) acting through the internet-platform <https://i-coin.io>, which website is/was owned and operated by Millenium Solutions Inc ...'*<sup>21</sup>

In its solemn declaration, the Complainant continuously referred to a company named *I-Coin*.

In fact, he stated that:

*'I decided to send my money to the I-Coin company after seeing an advertisement in a newspaper "Blick" called "High profits investment".'*<sup>22</sup>

He also described how he was instructed to make the payments in question by a representative of *I-Coin*:

*'Asked who gave me payment instructions, I say that Conrad Williams was a person pretending to act on behalf of I-Coin and he instructed me to pay to the merchant, as it turned out later, using the services of Trust Payments Limited.'*<sup>23</sup>

The Complainant also declared how at the time of payment, he was of the impression that he was paying *I-Coin*:

*'The crediting of each card payment was immediately reflected in my I-Coin account and this made me feel like I have paid directly to I-Coin.'*<sup>24</sup>

Crucial to note that the Complaint confirmed that:

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<sup>19</sup> P. 2

<sup>20</sup> P. 3

<sup>21</sup> P. 8

<sup>22</sup> P. 45

<sup>23</sup> P. 47

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



*'... I was a victim of fraud by I-Coin. Asked if I was misrepresented by I-Coin, I say that I-Coin caused my problem.'*<sup>25</sup>

Based on the above-quoted declarations, it is evident that at the time the disputed transactions took place, the Complainant was of the impression that the entity concerned was *I-Coin*, and this despite in the original complaint form submitted, reference was continuously being made to the company *CCX Exchange*. It transpired, however, that, based on information provided to him by his bank, it was at the time of the complaint that he became cognisant of *CCX Exchange* and eventually of the Service Provider.

In fact, he stated that:

*'It is being said that I testified that I do not know where my money was credited to, when my bank, OTP Bank, informed me that the money went to CCX Exchange, I say that originally I knew that my investment was directed to I-Coin. But later, I got information from OTP Bank that my money went to Trust Payments Limited. I agree that Trust Payments were just the payment processor and that the actual merchant was CCX Exchange.'*<sup>26</sup>

In its response letter,<sup>27</sup> and by virtue of its representative's declaration,<sup>28</sup> the Service Provider clearly explained the role of Trust Payments, which is that of a card acquirer, whereby it enters into agreements with merchants to be able to process card transactions with payments that the latter receive from their own customers.

The Service Provider's representative declared that:

*'The merchant in this particular case was a company named Netcore OU, a company registered in Estonia and operating as a crypto exchange under a licence from the Estonian regulator. Their domain is ccx.io.'*<sup>29</sup>

Above all, he declared further that:

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<sup>25</sup> P. 49

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

<sup>27</sup> P. 42

<sup>28</sup> P. 64

<sup>29</sup> P. 65

*'The complainant claimed that he transacted with an entity which he called I-Coin. We do not have a relationship with I-Coin.'*<sup>30</sup>

Moreover, the Service Provider clearly explained that there is no direct relationship between a payment processor and a merchant's customer, as the former simply connects the merchant's bank to the customer's credit card bank to enable the transaction. It stated that the merchant's customers are not and cannot be known to the payment processor.

### **Determination of eligibility**

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

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 Trust Payments, neither that Trust Payments *'has offered to provide a financial service'* to the Complainant, nor that the Complainant *'has sought the provision of a financial service from Trust Payments for the purposes of the Act.'*

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**

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<sup>30</sup> *Ibid.*