

## Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 252/2025

DL

(‘l-Ilmentatur’)

vs

Bank of Valletta p.l.c. (C 2833)

(‘BOV’, ‘il-Bank’ jew

‘il-Fornitur tas-Servizz’)

Seduta tat-23 ta’ Marzu 2026

**L-Arbitru,**

Ra l-Ilment<sup>1</sup> datat 20 Ottubru 2025 magħmul kontra l-BOV dwar ir-rifjut li jirrifondi ammont ta’ €533 rigward pagament (inkluż spejjeż) li sar mill-kont li l-Ilmentatur għandu mal-BOV favur terzi li wara rriżulta li kien frawdolenti.

L-Arbitru ġew quddiemu diversi ilmenti ta’ dan it-tip li filwaqt li jvarjaw fuq ċerti dettalji, fihom ħafna affarijiet komuni bejniethom:

- Il-pagament ikun għal ammont ġeneralment taħt il-€5,000 biex ma jinżammx minħabba li jeċċedi d-‘*daily limit*’ ta’ pagamenti li jkun maqbul bejn il-Bank u klijent tat-tip ‘*retail*’.
- Il-frodist jirnexxielu jippenetra b’mod frawdolenti l-mezz ta’ komunikazzjoni normalment użat bejn il-Bank u l-klijent, ġeneralment permezz ta’ SMS jew *e-mail*.

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<sup>1</sup>Paġni (P.) 1 - 10 b’dokumentazzjoni addizzjonali minn p. 11 - 90.

- Il-frodist jagħti *link* fil-messaġġ tiegħu u jistieden lill-klijent biex jagħfas fuq il-*link* biex jagħmel ‘*validation*’ jew ‘*re-authentication*’ tal-kont tiegħu.
- Minkejja diversi twissijiet<sup>2</sup> maħruġa mill-banek u mir-Regolatur biex ma jagħfsux *links* għax il-bank ma jibgħatx *links* fil-messaġġi tiegħu, u li l-klijent għandu jikkomunika mal-bank biss tramite l-App u/jew il-*website* uffiċjali u dan permezz tal-kredenzjali li l-bank ikun ta lill-klijent, il-klijent b’nuqqas ta’ attenzjoni jagħfas il-*link*.
- Minn hemm ‘il quddiem, il-frodist b’xi mod jirnexxielu jippenetra l-kont tal-klijent u jagħmel trasferiment ta’ flus ġeneralment fuq bażi ‘*same day*’ li jmorru fil-kont tal-frodist, ġeneralment, f’kont bankarju f’pajjiż barrani minn fejn huwa kważi impossibbli li jsir *recall* effettiv tal-flus galadarba l-klijent jirrapporta lill-bank tiegħu li ġie ffrodat. Hafna drabi, il-frodist ikun pront jiġbed jew jittrasferixxi l-flus appena jaslu fil-kont indikat.
- B’riżultat, jinholoq nuqqas ta’ ftehim bejn il-bank u l-klijent dwar min hu responsabbli jgħorr il-piż tal-pagament frawdolenti. Il-klijent isostni li l-bank ma pproteġihx meta ħalla kanal ta’ komunikazzjoni li normalment użat bejn il-bank u l-klijent jiġi ppenetrat mill-frodist, u li l-bank messu nduna li kien pagament frawdolenti għax, ġeneralment, il-klijent ma jkollux storja ta’ pagamenti bħal dawn. Il-bank isostni li l-ħtija hija kollha tal-klijent għaliex permezz ta’ traskuraġni grossolana (*gross negligence*), ikun ta aċċess tal-kredenzjali sigrieti tal-kont tiegħu lill-frodist u b’hekk iffaċilita l-frodi.

F’dan il-każ partikolari, dawn huma d-dettalji rilevanti:

- Fis-27 Awwissu 2024, l-Ilmentatur irċieva telefonata minn persuna li qalet li kienet impjegata tal-BOV u bdiet tagħtih ċertu dettalji li kkonvincewh li kienet ġenwina. Fosthom qaltlu li l-kont tiegħu kien mal-fergħa tal-Fgura u li huwa kien jaħdem ir-Rabat.<sup>3</sup>

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<sup>2</sup> L-Uffiċċju tal-Arbitru ukoll ħareġ twissijiet – ara: [https://www.youtube.com/watch?v=3podDv2R\\_Jc&t=3s](https://www.youtube.com/watch?v=3podDv2R_Jc&t=3s)

<sup>3</sup> P. 133

- Wara t-telfonata irċieva SMS fuq il-kanal BOV Mobile li normalment fuqu jirċievi notifiki mill-BOV fil-ħin ta' 12:51 li stiednu jagħfas link (li kienet frawdolenti) biex jibda l-proċess ta' '*setting up your new user ID*'.<sup>4</sup>
- L-Ilmentatur għafas fuq il-link qarrieqa u daħal f'website li kienet identika għal tal-BOV u wara li ta xi informazzjoni oħra mitluba, irċieva SMS ieħor fil-ħin ta' 12:52 jgħidlu li '*your application for new User ID was successful*' u tawh *activation code* ġdid għal BOV Mobile App li ordnawlu jużawh f'temp ta' siegħa<sup>5</sup>.
- Fil-ħin ta' 15:22 sar SMS dwar il-pagament ilmentat ta' €525. L-għada, t-28 t'Awwissu 2024 fil-ħin ta' 07:02, ħareġ SMS ieħor dwar pagament ta' €120, li iżda ġie rkuprat u għalhekk ma jiffurmax parti minn dan l-ilment.<sup>6</sup>
- L-Ilmentatur ċempel il-BOV biex javża li l-ewwel pagament ma kienx awtorizzat u l-BOV qalulu li kien hemm ukoll it-tieni pagament. It-tieni pagament laħaq inżamm u saret rifużjoni immedjata tiegħu. Mhux ċar għalfejn l-SMS dwar it-tieni pagament ħareġ l-għada meta l-pagament kien diġà nżamm u ġie rifuż.
- It-telefonata saret minn raġel jitkellem bl-Ingliż **u l-Ilmentatur ma kienx żgur jekk it-telefonata saritx qabel jew wara li rċieva l-ewwel SMS qarrieq**<sup>7</sup>.
- Sar rapport lill-pulizija fil-ħin ta' 16:26 fil-jum stess tas-27 t'Awwissu 2024.<sup>8</sup> Mir-rapport tal-pulizija joħroġ li l-frodista li kien qed jipersonifika lil BOV spjega li kien hemm bżonn urġenti jibdel il-USER ID għax xi ħadd miż-żona tar-Rabat kien ipprova jieħu aċċess għall-kont tiegħu permezz ta' iPhone u staqsih jekk kienx hu. L-Ilmentatur qallu li ma kienx hu u għalhekk fehem il-bżonn li jibdel is-USER ID malajr.
- Mir-risposta tal-BOV jirriżulta li l-pagament ilmentat sar fil-ħin ta' 10:33. Jidher għalhekk li l-pagament sar qabel ma nbidel l-*activation code* li intqal qabel sar fil-ħin ta' 12:52. Peress li l-SMS notifika tal-pagament sar fil-ħin

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<sup>4</sup> P. 139

<sup>5</sup> Ibid.

<sup>6</sup> P. 140

<sup>7</sup> P. 135

<sup>8</sup> P. 39

ta' 15:22, hemm incertezza dwar is-sekwenza jekk il-pagament sarx qabel jew wara li nbidel l-*activation code*. Mix-xhieda ta' Michael Gatt għal BOV joħroġ li l-pagament sar wara li nbidel l-*activation code*<sup>9</sup> iżda dan allura jqajjem dubju jekk il-ħin tal-pagament ta' 10:33 huwiex korrett kif dikjarat mir-risposta tal-BOV (p. 103)

- Il-pagament sar bħala *online internet payment* favur ta' persuna 'Michael Cloke' b'indirizz il-Fgura iżda f'kont ma' bank/istituzzjoni Ġermaniża f'kont IBAN DE222.....8328 mhux bit-3D Secure. Dan isaħħaħ il-ħsieb li l-bidla fl-*activation code* ma kienx hemm bżonnha biex sar dan il-pagament u l-informazzjoni ingħatat mill-Ilmentatur biex gie awtorizzat dan il-pagament.<sup>10</sup> Il-pagament sar on '*same-day priority basis*' u għalhekk kellu jitlaq bla dewmien.
- Sar *recall* immedjat f'attentat li jingabru l-flus qabel ma jingibdu mill-frodist iżda dan l-attentat ma rnexxiex.<sup>11</sup>

## L-Ilment

L-Ilmentatur qal li l-BOV offrewlu biss kumpens parzjali ta' 50% skont il-mudell li ppubblika l-Arbitru, iżda huwa jinsisti għal rimborz sħiħ minħabba li jħoss li:

- *Lack of adequate security safeguards and warning systems*

*The fraudulent communication I received did not occur through an obscure or unrelated channel – it was a spoofed phone call and SMS message appearing within BOV's official communication thread.*

*I was contacted by an individual who presented himself as a representative of my local BOV branch, referencing accurate personal and account information that gave the impression of legitimacy.*

*At first, I declined the caller's request, stating that I would prefer to handle any issues directly at the branch. However, the individual demonstrated enough personal data – including information only available to authorised personnel – to convince me that this was an official internal verification.*

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<sup>9</sup> P. 144 - 145

<sup>10</sup> P.37

<sup>11</sup> P. 104; 143 -144

*The caller further emphasised that the matter had to be completed through the BOV mobile application, and within minutes, a confirmation SMS appeared on the same official BOV message thread consistent with the Bank's standard message format.*

*At that point, there was no visible distinction between this spoofed communication and legitimate Bank correspondence.*

*This event highlights a serious deficiency in customer-facing communication safeguards and fraud prevention systems.*

*While BOV later stated that 'spoofing cannot be prevented', the Bank does hold a duty of care to warn customers about ongoing spoofing attempts, to differentiate its communication channels, and to ensure that sensitive personal information cannot be easily weaponised to authenticate fraudulent actors.*

*Other financial institutions mitigate such risks by implementing sender-ID authentication systems, in-app verification alerts, or secondary confirmation mechanisms – all of which could have prevented or mitigated this incident.*

*In failing to adopt such measures or to adequately educate customers, the Bank indirectly contributed to the conditions that made this fraud possible.<sup>12</sup>*

- *Procedural negligence: Loss of official documentation<sup>13</sup>*
- *Unreasonable delays in Investigations and Communication<sup>14</sup>*
- *Lack of Transparency and Accountability<sup>15</sup>*
- *Rigid application of the Arbiter's model<sup>16</sup>*

## **Risposta tal-Fornitur tas-Servizz**

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<sup>12</sup> P.5

<sup>13</sup> Dan b'referenza li kellu jibgħat kopja tar-rapport tal-pulizija għax qal li l-ewwel rapport ma nstabx.

<sup>14</sup> Dan b'referenza għad-dewmien biex infurmawh bl-eżitu tar-recall.

<sup>15</sup> Dan ukoll b'referenza għad-dewmien biex infurmawh bl-eżitu tar-recall

<sup>16</sup> Kollox ma' kollox, l-Ilmentatur jidhirlu li 50% mhux kumpens għust u jippretendi mill-anqas 75%. P. 7

Fir-risposta<sup>17</sup> tagħhom, il-BOV qalu:

(I). **Introduction**

1. *Whereas Mr. .... (hereinafter referred to as “the Complainant”) is alleging that the Bank failed in its duty of care following a spoofing incident that occurred on the 27th August 2024. The Complainant asserts that he was contacted by an individual impersonating a representative of the Bank via a phone call and SMS, both of which he claims appeared to originate from the Bank’s official channels. He claims that he was misled into providing his credentials and following instructions that led to two unauthorised transactions from his account:*
  - i. *A payment of €525, and*
  - ii. *A payment of €120;*
  
2. *Whereas the Complainant is alleging that:*
  - i. *The Bank lost his police report;*
  - ii. *There was a delay of over one year in providing a substantive response;*
  - iii. *The spoofing was so realistic that it created a legitimate appearance of a communication from the Bank;*
  - iv. *The Bank failed to detect fraud or block suspicious activity following a change in device;*
  - v. *The Bank’s internal procedures contributed to the loss; and that*

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<sup>17</sup> P. 95 - 101 u dokumenti annessi p. 102 - 132

vi. The Bank is liable under the Consumer Affairs Act and Banking Rule BR/09;

3. *Whereas the Bank respectfully submits that these allegations are ill-founded, both in fact and in law, as shall be articulated hereunder;*

II. **Authentication and Transaction Logs**

4. *Whereas the Complainant is alleging that the Bank failed to detect fraud or block suspicious activity following a change in device. However, the transaction logs from the 27th August clearly demonstrate that the payment of €525 was processed through the Bank's mobile banking using valid credentials and authenticated successfully ;*

5. *Whereas the logs in question show a complete and uninterrupted session flow, confirming that the transaction was initiated and authorised by the user. The transaction was authenticated at 10:33:22, indicating that the system recognised the user credentials and authorised the payment. No anomalies or failed attempts were recorded;*

6. *Whereas the Bank's fraud detections systems did not flag the transaction because it was executed within a valid session using correct credentials. There was no indication of device change or behavioural anomaly that would have triggered a block or alert. The spoofing attack occurred prior to login, and the Bank's systems were not compromised;*

III. **The Bank's Actions**

7. *Whereas the Bank blocked Mr Gatt's card on the 21st August 2024 after he denied Apple Pay activity. On the 27th August 2024, following his disclosure of credentials to a spoofed caller, the Bank*

*immediately blocked internet and mobile app access and raised recall requests for both transactions, as shall be described hereunder;*

8. *Whereas following the transaction of €525 on the 27th August 2024, the Bank promptly initiated a recall process as is the usual procedure in such fraud cases, as is described in the timeline of events hereunder :*

i. **Friday 30th August 2024:** *Initial contact with beneficiary bank (Banking Circle S.A.) by the Bank;*

ii. **Monday 2nd September 2024:** *The Bank sent an email to the beneficiary bank flagging the transaction as fraudulent and requesting a cancellation and return of funds. On the same day, the beneficiary bank acknowledged such request;*

iii. **Friday 6th and Thursday 12th September 2024:** *The Bank sent follow-up reminders to the beneficiary bank;*

iv. **Friday 13th September 2024:** *The beneficiary bank issued a formal decline, stating:*

*“Client refuses the Recall Request. In light of the evidence of a third-party claim, we can confirm that there are currently €525.00 on hold. We ask that you request that the sender pursue their claim through one of the official channels with the Luxembourgish authorities, whether it be the CSSF or la Police Grand-Ducale.”*

v. **Monday 16th September 2024:** *The Bank noted that the customer had been non-responsive to the Bank’s request and the case was thus considered closed, after the Bank had exhausted all recovery channels;*

9. *Whereas the matter was subsequently escalated internally, and the Bank made a without prejudice offer to the Complainant of a 50% refund (€262.50) under the Arbiter's model, which he subsequently denied ;*
10. *Whereas it is significant to state that the funds were credited to Banking Circle S.A. – German Branch, a jurisdiction classified as low-risk, with no adverse media on the receiving financial institution or the receiving beneficiary (Michael Cloke). Moreover, the Complainant had previously conducted other transactions to foreign jurisdictions including France and Luxembourg, indicating a pattern of cross-border activity;*

IV. **Applicable Regulatory Framework**

11. *Whereas under Article 73 of Directive (EU) 2015/2366 (PSD2), payment service provider is liable for unauthorised transactions unless the payer acted fraudulently or with gross negligence:*

*“In the case of an unauthorised payment transaction, the payer's payment service provider shall refund the amount of the unauthorised payment transaction to the payer.”*

12. *Whereas Article 74 of PSD2 further provides that a payer shall bear the loss for unauthorised transactions resulting from misappropriation of a payment instrument, unless the Bank acted with gross negligence:*

*“In the case of a payment transaction initiated by the payer, the payer shall bear the losses relating to any unauthorised payment transactions resulting from the use of a lost or stolen payment instrument or from misappropriation of a*

*payment instrument, up to a maximum of EUR 50, unless the payer has acted fraudulently or with gross negligence.”*

13. *Whereas Article 40 of CBM Directive No. 1 (which transposes PSD2) provides that a payment transaction is considered authorised only if the payer has given consent:*

*“A payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and the payment service provider, after the execution of the payment transaction.”*

14. *Whereas the Bank’s General Terms and Conditions reinforce this position:*

i. **Section 3.21 – Indemnity**

*“We will not be responsible or liable for losses or costs which you may suffer [...] unless such losses arise due to the gross negligence of the Bank.”*

ii. **Section 3.22 – Instructions to Us**

*“All payments submitted after entering your security credentials are deemed binding. You are responsible for the authenticity and correctness of the information given.”*

iii. **Section 3.23 – Security Notice**

*“You will be unlimitedly responsible for all transactions carried out prior to notification if you have failed to safeguard your credentials or acted with gross negligence.”*

V. **Rebuttal by Assertion**

15. *Whereas the Complainant alleges that the branch lost his police report. The Bank respectfully submits that there is no evidence of mishandling or loss. Moreover, the fraud occurred and was reported on the 27th August 2024. The Bank initiated the recall process immediately, irrespective of the police report. The alleged delay and report loss occurred after the funds were transferred and do not causally contribute to the loss;*
16. *Whereas the Complainant alleges that the Bank delayed its response by over a year. The Bank reiterates that it acted promptly on the 27th August 2024, initiating recall requests for both transactions as described in Section V of this Reply. The Bank respectfully submits that the delay was due to the foreign bank's refusal to return the funds, and not due to any negligence by the Bank. The Bank continued to engage with the Complainant and offered compensation under the Arbitrator's model ;*
17. *Whereas the Complainant alleges that the spoofing call and the SMS realistically mimicked communication from the Bank. Respectfully, the spoofing method used is a known external fraud technique involving caller ID and SMS thread manipulation. The Bank's systems were not compromised. The impersonation was sophisticated, but not attributable to any failure in the Bank's communication protocols. The Bank responded immediately once notified, blocking access and initiating recalls;*
18. *Whereas the Complainant alleges that the Bank failed to detect fraud or block suspicious activity following a change in device. The logs confirm that the €525 transaction was initiated via mobile banking, authenticated successfully, and*

*followed by balance and transaction views, and logout. The Bank reiterates that no anomalies were found that would have triggered a block due to fraud. The transaction was processed using valid credentials and session authentication. There is no evidence of a change in device or behavioural anomaly during the session;*

19. *Whereas the Complainant states that the Bank is liable under the Consumer Affairs Act and Banking Rule BR/09:*

i. *The Complainant invokes the Consumer Affairs Act, alleging that the Bank failed in its duty of care and its obligations relating to consumer protection. However, it is pertinent to state that this Act primarily governs consumer transactions involving goods and services, and establishes protections against unfair commercial practices, defective products, and misleading advertising. In the case at hand, the transaction in question was not initiated by the Bank, but by the Complainant himself under the influence of a third party spoofing scam; the Bank did not engage in any misleading conduct, nor did it fail to disclose any terms and conditions; and the Bank acted promptly and transparently, blocking access, initiating recalls, and even offering compensation under the Arbiter's model. Thus, the Bank respectfully submits that the cited legislation does not impose strict liability on financial institutions for losses caused by criminal acts outside the Bank's remit or control, especially where the financial institution acted diligently and in good faith throughout;*

ii. *The Complainant invokes Banking Rule BR/09, issued by the Malta Financial Services Authority (MFSA), which is aimed at ensuring that credit institutions maintain robust credit risk management frameworks, particularly in relation to non-performing loans (NPLs) and forborne exposures. This rule*

*applies to the assessment of asset quality, loan provisioning, and capital buffers and is this not applicable to fraud recovery or consumer protection in the context of unauthorised transactions. Furthermore, it does not impose a duty of care in relation to spoofing or impersonation fraud. Thus, the Bank respectfully submits that the Complainant's reliance on BR/09 is misplaced, as the rule does not govern the Bank's obligations in such instances. The Bank's actions fall outside the Rule's scope;*

20. *Whereas in view of the above, the Bank respectfully asserts and reiterates its position that it acted in accordance with its obligations under internal policy and applicable law, responded promptly and transparently to the fraud report, offered a 50% goodwill refund (€262.50) under the Arbiter's model, which the Complainant declined, and is not liable under either the Consumer Affairs Act or BR/09 for losses caused by a third-party spoofing scam*

VI. **Conclusion**

1. *For the reasons articulated above, the Bank respectfully submits that the Complainant's claims are unfounded in fact and law. The Bank's systems operated securely and were not compromised. The incident arose from a spoofing attack, thus, at no fault of the Bank. Nonetheless, the Bank did its utmost to aid the Complainant in being reimbursed by the beneficiary bank and even applied the Arbiter's model in line with established practice and without prejudice;*
2. *Chapter 555 of the Laws of Malta vests the Honourable Arbiter with the authority to decide a case on the basis, inter alia, of the complainant's legitimate expectations and what he deems fair and equitable in the circumstances of the case. The Bank respectfully submits that such element of fairness must be assessed in light of the shared responsibility between*

*the payment service provider and user, as recognised under PSD2 and the Arbiter's own technical notes;*

3. *The Bank reserves the right to bring oral and documentary evidence in order to substantiate the defences 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.*
4. *The Bank reserves all rights/ actions pertaining to it at law and respectfully requests the Arbiter to reject and dismiss the complaint's claims.*

*With expenses.*<sup>18</sup>

## **Seduti**

Inżammet seduta fis-7 ta' Jannar 2026 fejn l-Ilmentatur ippreżenta l-każ tiegħu li diġà gie spjegat aktar 'il fuq, fosthom:

***'Mistoqsi jekk il-messaġġ irċevejtux waqt it-telefonata, ngħid li jista' jkun imma peress li dan kien sena ilu ma nistax ngħid eżatt.***

***Qed jingħad li meta kont fuq it-telefonata u meta rċevejt l-SMS kelli ħin nivverifika. Ngħid li għidtlu li nixtieq inkompliha mill-fergħa u hu qalli li xorta ridt nagħmilha b'mod diġitali u, allura, hu qisu riedni nkompli dak il-ħin.***

***Jien irċevejt il-messaġġ fuq iċ-chat uffiċjali tal-BOV u hemmhekk ikkonkludejt li hija xi haġa tal-BOV.***

***Iċ-chats li jwissu l-BOV huma just iwissu li inti ser tirċievi messaġġ. Allura, jiena, min-naħa tiegħi għidt li jiena kopert.***

***Ngħid li l-SMS kien biex nidhol fil-link u jien għafast il-link.***

***Ngħid li ma niftakarx eżatt x'għara wara li għafast il-link.***

***Mistoqsi tajtx xi informazzjoni, ngħid li jien segwejt il-link għax kont taħt l-impressjoni li kienet għejja mill-BOV.***

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<sup>18</sup> P. 95 - 101

***Mistoqsi x'informazzjoni tajt, ngħid li din ġrat sena u nofs ilu. Li nista' ngħid hu li jien xtaqt inkompli fil-fergħa, irċevejt messaġġ fuq iċ-chat ufficjali u minn hemmhekk imxejt mal-istruzzjonijiet li rċevejt.***

***Mistoqsi x'kienu dawn l-istruzzjonijiet, ngħid ma nistax nikkwota x'kelli nagħmel għax din ġrat sena u nofs ilu.***

***Qed jingħad li jien tajt ċertu informazzjoni biex pagament jgħaddi. Mistoqsi niftakarx x'informazzjoni tajt, ngħid li le.***

***Ngħid li jien għidt mill-ewwel li mxejt mal-istruzzjonijiet li rċevejt.***

***Mistoqsi naqbilx li l-bank qatt qabel ma baġhat jistaqsi fuq informazzjoni sensittiva permezz ta' telefonata jew SMS, ngħid li ma ġejtx mitlub informazzjoni sensittiva imma huma offrew informazzjoni sensittiva u, għalhekk, jiena waqajt taħt l-impressjoni li dik kienet telefonata vera mill-BOV.***

***Dan il-pagament sar permezz ta' mobile banking payment.***

***Mistoqsi naqbilx li l-bank jibgħat SMSes iwissi fuq dawn l-incidenti, ngħid li l-bank jibgħat SMSes u inti tirċievi link. Qatt ma kien hemm informazzjoni li inti ser tirċievi telefonata qabel li twasslek għal-link.***

***Ngħid li kont irċevejt SMSes mill-bank biex iwissu li l-bank qatt ma jibgħat SMSes b'links u biex ma nagħfsux links imma mhux konnessi ma' telefonata.***

***Ngħid li jiena din il-link ma kontx ser nagħfasha. Il-punt hu li jien ġejt konvint bis-sensittività li offra l-impersonatur u minn hemmhekk imxejt.***

***L-Arbitru jitlob lill-Bank biex jipprezenta lista ta' dawn l-SMSes peress li ma kinux inkluzi fir-risposta tiegħu.***

***Qed jingħad li jien irċevejt SMS li t-tranzazzjoni kienet għaddiet.***

***Mistoqsi x'għamilt wara, ngħid li ċempilt mil-ewwel il-Customer Care u kellmitni waħda jisimha Maria. Qaltli li għandi transacion ta' €20 u għidtilha OK u qaltli wkoll li rrid nagħmel rapport tal-Pulizija. Jien għidtilha dak il-ħin stess li biex nagħmel rapport tal-Pulizija ridt nagħmlu l-għada. Qaltli, 'Jiena nilhaq nipprepara kollox. Inti mur u ssottometti r-rapport.'***

***Jiena mort u ssottomettejt ir-rapport.<sup>19</sup>***

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<sup>19</sup> P. 135 - 135

Wara s-seduta, l-BOV bagħat lista ta' twissijiet li kien bagħat b'SMS lill-Ilmentatur biex ma jagħfasx links fuq SMS anke jekk dawn jidhru g'ejjin mill-Bank. L-aħħar SMS qabel id-data tal-każ kienet tat-23 ta' Lulju 2024.<sup>20</sup>

Fit-tieni seduta li nżammet nhar is-17 ta' Frar Jannar 2026, xehed Luke Cutajar għan-nom tal-Bank dwar il-process ta' *recall*<sup>21</sup> u Michael Gatt dwar il-process kif jinbidel l-*activation code*.<sup>22</sup>

Din ix-xhieda l-Arbitru jqisha mhux tant relevanti għax ma jqisx li kien hemm dewmien biex sar ir-recall li b'xi mod ippreġudika l-pożizzjoni tal-Ilmentatur anke jekk il-komunikazzjoni dwar l-eżitu setgħet kienet aktar tempestiva.

Anke għaliex kif diġà gie spjegat qabel, il-pagament ilmentat sar qabel ma nbidlet l-*activation code* u għalhekk ma jidherx li l-bdil fl-*activation code* lagħab xi rwol relevanti f'dan l-ilment.

### **Sottomissjonijiet finali**

Fis-sottomissjonijiet finali, il-partijiet bażikament sostnew il-pożizzjoni tagħhom kif esebita fl-ilment, fir-risposta u fix-xhieda waqt is-seduti. Fil-fatt, l-Ilmentatur ma għamilx sottomissjonijiet u straħ fuq l-ilment diġà spjegat u fuq ix-xhieda fis-seduti.

### **Konsultazzjoni mal-Malta Communications Authority**

Biex l-Arbitru jifhem l-intriċċi teknoloġiċi dwar kif frodist jista' jipersonifika ruħu qisu l-Bank biex jiffroda lill-klijenti, stieden għal konsultazzjoni lill-espert tas-*security* kemm tal-BOV kif ukoll tal-Malta Communications Authority (MCA).

Mill-konsultazzjoni joħroġ illi dan it-tip ta' frodi magħruf teknikament bħala *Spoofing* u *Smishing* jew kollettivament bħala *Social Engineering Scams*, ma jippermettix lill-Bank li jieħu xi prekawzjoni (għajr ovvjament twissijiet effettivi biex il-klijenti joqgħodu attenti) biex il-frodist ma jkunx jista' juża dan il-kanal ta' komunikazzjoni biex jipersonifika l-Bank u jiffroda lill-klijenti.

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<sup>20</sup> P. 141- 142

<sup>21</sup> P. 143 - 144

<sup>22</sup> P. 144 - 145

## Analizi u konsiderazzjoni

L-Arbitru huwa tal-fehma li għall-fini ta' trasparenza u konsistenza, biex jasal għal deċiżjonijiet dwar ilmenti bħal dawn, ippubblika mudell dwar kif jaħseb għandha tinqasam ir-responsabbiltà tal-frodi bejn il-bank konċernat u l-klijent iffrodat u dan billi jieħu konsiderazzjoni ta' fatturi li jistgħu ikunu partikolari għal kull każ.

Għal dan il-għan, l-Arbitru qed jannetti ma' din id-deċiżjoni mudell li ppubblika u li ser jiġi wżat biex jasal għal deċiżjoni dwar kif ser isir '*apportionment*' tal-konsegwenzi tal-frodi. Il-mudell fih ukoll diversi rakkomandazzjonijiet biex il-banek ikompli jsaħħu l-protezzjoni tal-konsumatur kontra frodisti li kulma jmur dejjem isiru aktar kapaci u kreattivi.

Iżda l-Arbitru jhoss il-bżonn jemfasizza li filwaqt li huwa minnu li l-banek ma għandhomx mezz kif jipprojbixxu li jsir *spoofing/smishing* fil-mezzi ta' komunikazzjoni li jużaw mal-klijenti, iridu jagħmlu iżjed biex iwissu b'mod effettiv lill-klijenti biex joqgħodu attenti; biex ma jagħfsux *links* li jkunu f'dawn il-messaġġi avolja jkun jidher li ġejjin mill-bank konċernat fuq il-mezz li normalment juża l-bank biex jibgħat messaġġi lill-klijenti.

Mhux biżżejjed li jagħmlu avviżi kontinwi fuq il-website tagħhom. Mhux biżżejjed li joħorġu twissijiet fuq il-mass media jew social media. Il-konsumatur huwa impenjat bil-problemi tal-ħajja ta' kuljum u ma għandux jiġi pretiż li billi jsir avviż fuq il-*website*, fil-ġurnali/TV jew fuq il-paġna ta' *Facebook* tal-bank, b'daqshekk il-konsumatur jinsab infurmat.

F'każijiet serji ta' frodi bħal dawn jeħtieġ li l-banek jużaw komunikazzjoni diretta mal-klijent permezz ta' SMS jew *email*. Dan l-aspett huwa wieħed mill-fatturi inklużi fil-mudell.

Min-naħa l-oħra, l-Arbitru jifhem li l-fatt li l-klijent jiżbalja billi jagħfas *link* li jkun ġie mwissi biex ma jagħfasx għax tista' tkun frawdolenti, b'daqshekk din ma tkunx awtomatikament taqa' fil-kategorija ta' negliġenza grossolana skont il-liġi.

Il-Qorti Ewropea tal-Ġustizzja (CJEU) fil-każ ta' *Wind Tre and Vodafone Italia*<sup>23</sup> tagħmel referenza li ma tkunx negliġenza fi grad grossolan jekk jaqa' għaliha

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<sup>23</sup> Deċiżjoni 13 ta' Settembru 2018 C-54/17

anke konsumatur medju li jkun raġonevolment infurmat u attent. L-Arbitru jara każi fejn l-ilmentaturi faċilment jaqgħu f'din il-kategorija.

Fuq kollox, il-PSD 2 tagħmilha ċara<sup>24</sup> li l-konsumatur irid jagħti l-kunsens tiegħu biex isir il-pagament speċifiku u mhux biżżejjed kunsens ġenerali li jkun kontenut f'xi *Terms of Business Agreement*.

Għalhekk, il-banek jeħtieġ li jkollhom sistema ta' pagamenti robusta biżżejjed biex il-pagament ma jsirx jekk ma jkunx speċifikament awtorizzat mill-klijent/Ilmentatur. Il-banek ma jistgħux ma jerfgħux responsabbiltà jekk iħallu toqob fis-sistemi tagħhom li permezz tagħhom il-frodista ikun jista', bla ma jkun hemm aktar involviment tal-klijent/Ilmentatur, jagħmlu awtorizzazzjoni speċifika tal-pagament a favur tal-frodista.

Dan il-fatt huwa wkoll inkluż fil-mudell.

Il-mudell jagħti wkoll konsiderazzjoni għal xi ċirkostanzi partikolari tal-każ. Jista' jkun hemm ċirkostanzi partikolari fejn il-messaġġ tal-frodista ikun anqas suspettuż.

Il-mudell għandu wkoll għarfien dwar jekk l-Ilmentatur ikunx midħla tas-sistemi ta' pagamenti *online* mal Bank billi jkun għamel xi pagament simili (ġenwin) fit-12-il xahar ta' qabel. Dan jgħin ukoll biex tiġi ffurmata opinjoni jekk il-monitoring tal-pagamenti li l-bank huwa doveruż jagħmel (kif spjegat fil-mudell) huwiex effettiv.<sup>25 26</sup>

## Deċiżjoni

L-Arbitru jiddeċiedi skont kif provdut f'Artiklu 19(3)(b) b'referenza għal dak li, fil-fehma tiegħu, ikun ġust, ekwu u raġonevoli fiċ-ċirkostanzi u merti sostantivi tal-każ.

Meta l-Arbitru japplika l-mudell propost għal dan il-każ partikolari jasal għal din id-deċiżjoni:

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<sup>24</sup> Article 64 of PSD 2

<sup>25</sup> (EU) 2018/389 tas-27 ta' Novembru 2019 RTS supplement ta' PSD2 EU 2015/2366 Artikli 2(1) u 2(2)

<sup>26</sup> PSD 2 Eu 2015/2366 Artiklu 68(2).

	<b>Perċentwal ta' htija tal-Fornitur tas-Servizz</b>	<b>Perċentwal ta' htija tal-Ilmentatur</b>
Ilmentatur li jkun wera traskuraġni grossolana	0%	100%
Tnaqqis għax irċieva l-messaġġ fuq <i>channel</i> normalment użat mill-Bank	50%	(50%)
Żieda għax l-Ilmentatur ikkopera b'mod sħiħ biex sar il-pagament ilmentat	(30%)	30%
Żieda għax ikun irċieva twissija diretta mill-Bank fl-aħħar 3 xhur	(20%)	20%
Sub-total	0%	100%
Tnaqqis għal ċirkostanzi speċjali	20%	(20%)
Tnaqqis għal assenza ta' pagamenti simili ġenwini fl-aħħar 12-il xahar	20%	(20%)
<b>TOTAL FINALI</b>	<b>40%</b>	<b>60%</b>

Għalhekk, skont il-mudell, l-Ilmentatur għandu jgħorr 60% tal-piż u l-40% l-oħra iġorrhom il-BOV.

Meta ppubblika l-mudell, l-Arbitru spjega li dan japplika b'mod ġenerali imma l-Arbitru jibqa' ħieles li ma jimxix miegħu f'każijiet speċifiċi li jirrikjedu apprezzament partikolari. Però, l-Arbitru jiġġustifika, bi spjegazzjonijiet adegwati fid-deċiżjonijiet tiegħu, meta ma jimxix ma' dan il-mudell, fejn applikabbli.

F'dan il-każ partikolari, il-mudell isib li l-fatt li l-Ilmentatur ikkopera mal-frodista billi għaddielu kull informazzjoni li kienet meħtieġa biex jiġu approvati l-pagamenti. Dan jinkludi l-*activation code* biex jinbidel it-token li japprova pagamenti avolja dan ma kienx relevanti għax il-pagament kien diġà sar qabel.

Peress li l-BOV bagħat messagġi SMS regolari biex iwissi kontra li klijenti jagħfsu links fuq SMS li jkun jidher ġej mill-BOV, ma jistax inaqqas il-piż tal-ħtija ta' negliġenza grossolana peress li kien avżat sew b'mod dirett.<sup>27</sup>

Iżda l-Arbitru jhoss li f'dan il-każ hemm ċirkostanza speċjali li timmerita li l-Ilmentatur jitnaqqaslu l-piż ta' negliġenza grossolana b'doża ta' 40%, jiġifieri 20% aktar mill-20% normalment spjegati fil-mudell. F'dan il-każ, il-frodista mhux biss bagħat SMS qarrieq iżda sostna l-kredibilità tal-SMS permezz ta' telefonata konvinċenti minn persuna li tat informazzjoni li l-Bank biss seta' jkollu.

Kif din il-persuna kellha aċċess għal informazzjoni interna u kunfidenzjali tal-Bank dwar klijenti, sta għall-Bank biex jagħmel l-investigazzjonijiet meħtieġa. Dwar dan l-Arbitru għandu ilmenti oħra li juru li dan ma kienx xi każ uniku.

L-Arbitru ma għandux kompetenza li jinvestiga kif informazzjoni kunfidenzjali ħarġet mill-Bank.<sup>28</sup> Dan huwa xogħol il-Bank u xogħol il-Pulizija biex jinvestigaw kif dan seta' jiġri.

Iżda l-Arbitru jifhem li meta l-Ilmentatur ġie ffaċċjat minn xi ħadd li jipersonifika b'mod espert lill-Bank permezz ta' telefonata 'live', allura, l-SMS bil-link frawdolenti tidher anqas suspettuża, minkejja t-twissijiet li l-Bank kien ħareġ.

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<sup>27</sup> P. 141 turi li l-aħħar SMS ta' twissija kien intbagħat fit-23 ta' Lulju 2024, anqas minn xahar qabel ma seħħ dan il-każ.

<sup>28</sup> L-Arbitru ħa inizzjattiva biex l-Assoċjazzjoni tal-Banek toħroġ twissija urġenti dwar telefonati frawdolenti bħal f'dan il-każ.

L-Arbitru jifhem li waqt it-telefonata konvincenti tal-frodist li ppersonifika lil BOV, l-Ilmentatur kien konvint li din kienet telefonata ġenwina mill-BOV u, għalhekk, is-salvagwardji soliti ġew imwarrba.

L-Arbitru qed ukoll jiskuża l-Ilmentatur b'20% għax ma giet ipprovduta l-ebda evidenza li kien midħla ta' kif isiru pagamenti *online bl-internet banking*, jew li kien għamel xi pagament simili fit-12-il xahar qabel seħħ dan il-każ.

B'kollox, għalhekk, qed jiġi intitolat għal kumpens ta' 60% tal-pagamenti frawdolenti li ġie ddebitat lill-kont tiegħu.

**Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil *Bank of Valletta p.l.c.* iħallas lill-Ilmentatur is-somma ta' tlett mija u dsatax-il ewro punt tmienja żero (€319.80).**

**Il-pagament irid isir fi żmien ħamest ijiem tax-xogħol mid-data tad-deċiżjoni. Altrimenti, l-imgħax bir-rata ta' 2.15% fis-sena<sup>29</sup> mid-data tad-deċiżjoni sad-data tal-ħlas effettiv.<sup>30</sup>**

**Peress li l-piż ġie allokat bejn il-partijiet, kull parti għorr l-ispejjeż tagħha.**

**Fl-aħħarnett, l-Arbitru jirreferi għal rapporti mhux konfermati li l-pulizija irnexxielhom jimblukkaw xi fondi misruqa mill-frodisti u, għalhekk, eventwalment jista' jkun hemm xi rkupru minn dan is-sors.**

**Jekk jirrizulta rkupru bħal dan, biex ma jkunx hemm possibilità ta' arrikkament inġustifikat, l-Arbitru jordna li l-flus ta' xi rkupru jiġu allokatu bl-istess mod kif ġie allokat it-telf f'din id-deċiżjoni, jiġifieri 60% għal BOV u 40% għall-Ilmentatur.**

## **Alfred Mifsud**

### **Arbitru għas-Servizzi Finanzjarji**

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<sup>29</sup>Ekwivalenti għall-*Main Refinancing Operations (MRO) interest rate* kurrenti stabbilita mill-Bank Ċentrali Ewropew.

<sup>30</sup> <sup>30</sup> Fil-każ li din id-deċiżjoni tiġi appellata, u tali deċiżjoni tkun ikkonfermata fl-appell, l-imgħax pagabbli jiġi kkalkolat mid-data tad-deċiżjoni tal-Arbitru.

## **Nota ta' Informazzjoni relatata mad-Deciżjoni tal-Arbitru**

### *Dritt ta' Appell*

Id-Deciżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deciżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deciżjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt l-artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili mitluba skont l-artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien ħmistax (15)-il ġurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deciżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji. Dettalji personali tal-Ilmentatrici/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.