Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 018/2026

KY

('l-Ilmentatur')

vs

HSBC Bank Malta p.l.c.

Nru. Reġ. C3177

('HSBC', 'il-Bank' jew 'il-Fornitur tas-Servizz')

Seduta 12 ta' Novembru 2026

L-Arbitru,

Ra l-Ilment[1] datat 13 ta' Jannar 2026 magħmul kontra l-HSBC dwar ir-rifjut li jirrifondi ammont ta' €88,175.92 rigward pagamenti li huwa għamel mill-kont tiegħu ma' HSBC li wara rriżulta li kienu frodi. Ma' dawn qed jitlob ukoll rimborż ta' €1,922 li ġie ppenalizzat biex illikwida *Savings Plan* qabel il-maturità biex seta' jagħmel il-pagamenti ilmentati, kif ukoll imgħaxijiet mitlufa u danni mhux kwantifikati[2].

L-Ilmentatur, apparti dan it-telf, sofra wkoll telf ieħor ta' €41,625.57 permezz ta' pagamenti simili li għamel mill-kont tiegħu ma' BNF Bank p.l.c. (BNF). Dawn il-pagamenti huma suġġett ta' ilment separat li deċiżjoni dwaru qed toħroġ b'mod *parallel* ma' din id-deċiżjoni.

Il-pagamenti ilmentati saru kif jidher fit-tabella:

[1] Paġni (P.) A – N b'dokumentazzjoni addizzjonali minn p. O – AK u 1 - 140
[2] P. K

Data	Ammont €	Skop ta' investiment
22.05.2024	24,975.12	Barclays Bank 7.09% Savings Bonds (1 year fixed)
28.06.2024	49,909.30	Deutsche Bank AG 10% Bonds (4 year fixed)
23.08.2024	-24,935.62	Funds Returned
12.12.2024	24,925.12	Return of funds received 23 Aug 2024
20.12.2024	13,302.00	1st part - Deutsche Bank AG 10% Bonds (2 year fixed)
TOTAL	**88,175.92**	

Il-pagamenti saru f'kontijiet ma' Barclays Bank fir-Renju Unit u t-*transfers* kienu juru li l-benefiċjarju tal-pagament kien l-Ilmentatur stess u, għalhekk, f'għajnejn il-Bank dawn il-pagamenti kienu pagamenti *'me to me'*[3].

Sar rapport lill-Pulizija fit-8 ta' Ġunju 2025[4] li kien ikopri l-pagamenti kemm ta' HSBC kif ukoll ta' BNF.

Skop tal-pagamenti

L-Ilmentatur spjega li l-pagamenti saru wara li ġie mħajjar biex jinvesti fi strumenti finanzjarji b'imgħax għoli. Qal:

> ***"FRAUDULENT SCAM***
>
> ***3 April 2024 - I received a call from a person identifying himself as Mr John Gilmour, a Wealth Manager at Barclays Bank UK plc (Barclays). He offered "Barclays International 1-Year 7.09% Fixed-Term € Bond" for €25,000. I received the specific product documents from noreply@international-barclays.com (a clone email of noreply@international.barclays.com). This email and accompanying documents clearly outline the circumstances of the fraudulent scheme I was exposed to and demonstrate that my actions did not fall below what***

[3] P. 6, 10, 13, 17
[4] P. 124 - 126

could be reasonably expected of a person with my knowledge and experience, particularly as a non-professional investor.

5 April 2024 – Mr Gilmour requested AML compliance documents from j.gilmour@international-barclays.com, which became our main correspondence address.

9 April 2024 – Mr Gilmour confirmed approval of a Barclays bond trading account. I also signed a Bond Purchase Agreement.

[Annex 6: Initial emails dd. 3-29 April 2024 & Documents]

20 May 2024 – Mr Gilmour sent payment instructions, which included a specific reference number.

22 May 2024 - I transferred €24,975.12 from HSBC Bank Malta plc (HSBC) to a Barclays account in my own name, but mistakenly used the contract number as the reference, rather than the number quoted in the payment instructions. Mr Gilmour claimed this caused issues, but he managed to arrange. As I did not insert the quoted reference number, exactly 3 months later, i.e. on 22 August 2024, the entire amount of €24,975.12 was returned to my HSBC account with the reference "FRE23084ELLLP8SGOCT/MT GLOBAL CURRENCY NETWORK UNABLE TO APPLY".

On the first opportunity, i.e. when Mr Gilmour called about another offer on 12 December 2024, I voluntarily informed him and returned the funds.

[Annex 1: Summary of Transactions; Annex 2: Payment Instructions & Transfer Confirmations; Annex 3: Bonds' Agreements and Buy Confirmations, Annexes 4-5: Account Statements (HSBC / Barclays); Annex 7: Emails dd. 20-22 May 2024 & 12 Dec. 2024]

28 June 2024 – 27 January 2025 - I continued investing in three other fixed-term bonds through the same procedure outlined above. The total investment for the four bonds, which I lost entirely, reached €129,801.49, of which €88,175.92 were transferred from HSBC, and €41,625.57 were transferred from BNF Bank Malta plc (BNF). All bonds

and their respective details, including interest rates, were available on the official websites of the banks and other trading websites [5]***"***

Kif induna li kien frodi

L-Ilmentatur spjega hekk:

"DISCOVERY OF THE FRAUD

2 June 2025 – As the first bond was due to mature on 23 May 2025, and the capital was supposed to be paid back within 5 working days, I attempted to contact Mr Gilmour to enquire about the delay. I could not reach him, neither by email nor by phone [Annex 9: Emails dd. 3-5 June 2025].

5 June 2025 - I contacted Barclays directly and was told that my client number was invalid. They confirmed that I did not hold an account with them (even though I had transferred the money to a valid Barclays IBAN account number in my own name) and that Mr Gilmour stopped working there. They acknowledged similar fraud cases involving this individual. I immediately lodged a verbal report with Action Fraud UK – case no. NFRC 250607394199. On 10 June, I updated the written report with all the details. On 8 July 2025, Action Fraud UK informed me that it had not been possible to identify a line of enquiry which a law enforcement organisation in the UK could pursue [Annex 10: Action Fraud UK – Report & Reply].

6 June 2025 – I phoned HBSC, who instructed me to file a report with the Malta Police and present it at any branch.

8 June 2025 – I filed Malta Police Report 9/POL/xxxx/2025 and handed over all documents. These were forwarded immediately to FCID. As far as I am informed, there have been no developments in the investigation [Annex 11: Malta Police Report].

9 June 2025 – I met the Manager and Assistant Manager of the HSBC Birkirkara Branch and handed over the Malta Police report. During the

[5] P. C

meeting, they phoned HSBC's Head of Fraud Unit. They discussed the recall of funds and gave me the impression that it was not possible. Immediately after the meeting, I sent the Assistant Manager a summary of the transactions and all supporting documents in three emails. I was assured that they were forwarded to HSBC's Head of Fraud Unit, and that the Bank will keep me informed of the investigation proceedings.

29 July 2025 – As I had not yet received any response from the Bank, I sent a follow-up email to the Manager and Assistant Manager requesting an update on any developments or actions taken by 12 August.

18 August 2025 – As I did not even receive an acknowledgement to my follow-up email of 29 July and 10 weeks had passed from the initial reporting to HSBC, I sent another email, copying infomalta@hsbc.com.

20 August 2025 - I had to raise a formal complaint about the Bank's inaction through secure messaging, as instructed by infomalta@hsbc.com (complaint no. 01064/25).

The HSBC Birkirkara Branch Manager informed me that she had raised a complaint the day before, i.e. 19 August (complaint no 01052/25; no more details given). She added that the funds had not yet been recalled and emphasised the need for a police report - even though I had already provided it by hand 2.5 months earlier.

[Annex 12: Email correspondence with HSBC B'Kara Branch dd. 9 June - 21 Aug 2025]

24 August 2025 – I submitted a formal complaint to HSBC regarding the Bank's failures to detect and prevent the fraud. Upon my enquiry, I was informed that all complaints regarding the fraud were being handled together.

17 October 2025 - HSBC sent a final email reply to the complaint lodged on 19 August 2025 (covering also all other complaints), well after the

maximum thirty-five working days stipulated in article 21A of Chapter 555 of the Laws of Malta (Arbiter for Financial Services Act).[6]***"***

Għaliex l-Ilmentatur iħoss li HSBC huma responsabbli għat-telf li ġarrab

"FAILURES OF HSBC

1. Prevention and Detection Failures

Given the context, scale, and nature of the transactions against my long-established account profile, HSBC failed to implement robust transaction monitoring mechanisms, as required of payment service providers, to detect account activity that was clearly inconsistent with my normal banking behaviour over many years.

Between May and December 2024, I transferred from my HSBC Savings Account to Barclays the following amounts:

- EUR 74,885, representing approximately 2,000% of my monthly income
- in two transactions over five weeks (22 May to 28 June 2024); and
- EUR 38,227 in two further transactions within a single week (12 to 20 December 2024).

HSBC has been my primary bank since approximately 1995, handling my stipend, salary, a 22-year very low-risk savings plan, investments (mostly low-risk HLM funds), and a home loan. HSBC therefore had, and continues to have, extensive historical data enabling it to identify activity that was anomalous and wholly inconsistent with my established banking profile. Despite this, HSBC failed to intervene.

HSBC failed to comply with Article 2(1) of Commission Delegated Regulation (EU) 2018/389, which requires payment service providers to implement transaction monitoring mechanisms capable of detecting unauthorised or fraudulent transactions based on a customer's typical account usage. Article 2(2) further requires such mechanisms to take into account, at a minimum, relevant risk-based factors, including the amount of each payment transaction. HSBC demonstrably failed to do

[6] P. D – E

so in my case, even though these requirements are also clearly spelt out in the Technical Notes of the Arbiter for Financial Services, dating back to at least December 2023.

The transactional pattern across almost 30 years of banking history with HSBC shows unequivocally that the payments in question were out of character. I therefore categorically refute HSBC's assertion in its final reply dated 17 October 2025 that:

"The bank-to-bank transfers... could not be detected as abnormal activity, due to the fact that you are a seasoned investor and such investments are quite common for you,"

and that:

"You have met with our Financial Planning Advisor multiple times, during which it was confirmed that you possess sufficient knowledge of financial services and investment environments."

These statements are contradicted by HSBC's own documentation. The HSBC Financial Planning Report dated 28 March 2024 [Annex 13], prepared less than two months before the first transfer to Barclays, confirms that:
- I only had a qualification which could assist my understanding of HSBC investment/insurance services
- I did not have at least 3 years work experience in the previous 10 years, which could assist my understanding of HSBC investment/insurance services
- Over the previous 5 years, I had held no investments other than an HSBC investment-linked insurance plan
- I am not an experienced investor and I am not confident when it comes to my investment decisions - only have some experience and I am always improving my knowledge around investing.

The earlier HSBC Financial Planning Report, dated 5 May 2022, is even more indicative of my limited investment experience. It records that, while I had some experience, I was "probably never going to get really interested or involved" [Annex 13].

Prior to the scam, I had never transferred funds from my HSBC account to a foreign bank account in my own name. My international transactions were limited to modest consumer purchases of a few hundred, or, at most, a few thousand euros, and I never had any foreign investments.

The abnormality of the transfers is further underscored by the fact that, during extended periods of the scam, my combined HSBC savings, current account, and credit card balances were negative, while I simultaneously carried an outstanding home loan of approximately EUR 32,000.

As recognised by the UK Financial Ombudsman in case DRN-3670635 decided in 2023 against HSBC Bank UK plc, banks must be on the alert to out-of-character account activity that may indicate that a transaction involves fraud or is the result of a scam. In that and numerous decisions since 2022, the Ombudsman made clear that the bank/s in question must:

- "Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things).....

- ... irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud".

This UK Financial Ombudsman Decision was also relied upon by the Arbiter for Financial Services in Case ASF 025/2024, which was subsequently upheld by the Court of Appeal (Inferior Jurisdiction) in its judgment of 19 November 2025 in Case No. 7/2025 LM – xxxx vs Bank of Valletta p.l.c.

In paragraph 12 of that judgement, the Court held that:

"Il-Qorti taqbel mal-Arbitru li s-sistema ta' moniteraġġ u l-verifiki mill-banek, għandhom isiru b'mod rigoruż u dettaljat, partikolarment meta kull tranżazzjoni hija logged u intraċċabbli, u meta kellu jirriżulta, illi li kieku l-bank ħaddem imqar il-minimu tal-moniteraġġ li kien mistenni li jagħmel, din il-frodi fil-konfront tal-appellat kienet titwaqqaf. Dan huwa każ fejn seħħew sensiela ta' tranżazzjonijiet f'ammonti sostanzjali, u dan f'ċirkostanzi li jindikaw li din l-imġieba min-naħa tal-klijent tal-bank kienet waħda insolita ħafna, u li bl-ebda mod ma tirrifletti l-imġieba passata tiegħu fil-konfront tat-tħaddim tal-kont u tal-affarijiet bankarji tiegħu. Il-minimu mistenni f'ċirkostanzi bħal dawn, anki jekk lill-bank irriżultalu li kien l-appellat innifsu li awtorizza dawn it-tranżazzjonijiet, jew li huwa ġie infurmat b'SMS kull darba li l-appellat awtorizza xi ħlas, kien li l-bank jikkomunika mal-klijent tiegħu, sabiex jara x'kien għaddej, u jekk setax jagħti l-każ li dan kien involva ruħu f'xi ħaġa suspettuża jew li għall-bank setgħet tidher illeċita. Il-Qorti tgħid dan b'għarfien sħiħ tal-fatt li l-banek, inkluż l-appellant, sikwit jikkuntattjaw lill-klijenti tagħhom u jitolbu informazzjoni dwar depożiti insoliti jew dwar movimenti li ma jkunux konformi mal-profil li soltu jkun iħaddem il-klijent partikolari".

Appropriate intervention by HSBC in my case would have prevented the first transfer of EUR 24,975.12 on 22 May 2024, and consequently all subsequent payments (including two executed through BNF).

Notably, this first transfer to Barclays was returned to my HSBC account on 22 August 2024 with the reference: "REF YIR0-04015 FRE23084ELLLP8SGOCT/MT/EUR24975.12 GLOBAL CURRENCY NETWORK UNABLE TO APPLY".

This highly unusual event should have triggered immediate scrutiny and escalation within HSBC's transaction monitoring framework. No such action was taken.

The second transfer, dated 28 June 2024, amounted to EUR 49,909, well above the default EUR 25,000 limit for Premier customers. Yet again, at no point was I questioned about the purpose of this transaction, or else refrained from proceeding further in view of the daily limit cited above.

I merely received a standard automated SMS confirming authorisation. Had HSBC intervened at this stage, all losses would also have been avoided.

In its final reply, HSBC places reliance on the automated SMS notifications sent at the time of the transactions as evidence of appropriate intervention. This reliance is misplaced. Such automated alerts are relevant primarily in cases of unauthorised transactions. They are irrelevant in cases of authorised push payment (APP) fraud, which the HSBC Branch Manager herself acknowledged as applicable in my case, in her email dated 20 August 2025. As confirmed by the Court in Case No. 7/2025, where substantial transactions are highly inconsistent with a customer's past banking behaviour, the minimum expected of the bank is to contact the customer to verify what is occurring, even where the customer has technically authorised the payments or received SMS alerts.

Furthermore, in paragraph 28 of the same judgment, the Court clarified that the concept of objectively justified reasons under the Payment Services Directive must be interpreted broadly, encompassing not merely confirmation of the customer's identity, but an assessment of how the payment instrument is being used in practice, how it was used historically, and whether the current usage is indicative of fraud, deception, or conduct arising from a lack of material information.

HSBC's assertion that it "contacted" me to confirm awareness of the transactions refers to a telephone call by the Birkirkara Branch Manager on 19 August 2025 - between eight and fifteen months after the payments, and almost two and a half months after I had reported the fraud. This cannot reasonably be characterised as a timely warning or preventative measure.

Finally, HSBC's reference to attempted payments from my mother's account is entirely unrelated to the scam. These concerned a transfer from my mother's HSBC savings account to an FCM Malta Bank account in her own name, for improved interest rates, as her savings had increased gradually from EUR 2,500 to EUR 14,000 over the previous

years. The process commenced before I became aware of the fraud and had no connection whatsoever to it. While my mother remains fully mentally capable, she prefers that I manage all communications with HSBC under a General Power of Attorney. After being instructed to take her physically to the branch, I elected not to proceed due to her physical disability and the diminishing interest rates. HSBC's reliance on this unrelated matter is therefore irrelevant and misleading.

2. Post reporting failures

As demonstrated in the timeline of events, following my report to HBSC on 9 June 2025, the Bank failed to communicate with me in any manner whatsoever for several weeks. My follow-up email of 29 July to the Branch Manager - explicitly requesting an update on any developments or actions taken by the Bank by 12 August - was not acknowledged at all, even after three weeks.

It was only on 20 August, after I had escalated the matter and specifically enquired about the recall of funds to proceed with the formal complaint, that the Bank Manager replied, emphasising the need for a Police Report as a prerequisite for further assistance. This was particularly troubling given that I had already provided the Malta Police Report in person to her and the Assistant Manager approximately two and a half months earlier.

This sequence of events evidences serious failures by HSBC to take appropriate and timely action following the reporting of the fraud. Any request to initiate the recall of funds should have been made immediately. The Bank's prolonged delay constitutes a clear and material breach of its duty of care. Such inaction substantially undermined any realistic prospect of recovering my funds and amounts to a failure to act promptly, diligently, and in my best interests once fraud had been reported to it.

It is also noted that the final reply of HSBC was sent well after the maximum thirty-five working days stipulated in Article 21A of Chapter 555 of the Laws of Malta (Arbiter for Financial Services Act).[7]***"***

Kumpens

Bħala kumpens huwa jitlob:

1. Rimborż tat-telf ta' €88,175.92
2. Rimborż ta' €1,922 spejjeż biex illikwida *Savings Plan*
3. Rimborż tal-imgħax mitluf b'rata definita bħala *'fair and reasonable'*
4. Rimborż ta' ammont mhux definit bħala danni morali għall-inkwiet li ġarrab.

Ra r-risposta[8] **ta' HSBC fejn qalu:**

That the Complaint is unfounded and ought to be rejected because of the following reasons:

1. The payments forming the subject of the complaint were initiated and authorised by the Complainant. They were processed in accordance with Complainant's instructions and in line with the applicable payment services legislation governing authorised transactions.

2. At the time of execution, there were no objective indicators suggesting that the payments were unauthorised or fraudulent. The transactions complained of were consistent with the information provided by the Complainant to the Bank and hence the Bank had no reasonable grounds justifying refusal to process the transactions on behalf of the Complainant.

3. The Bank contacted the Complainant on 13 December 2024 to verify the nature of the transfers. During which call, Complainant confirmed that:
i. he had requested the transfers,
ii. he was aware of the purpose of the payments,

[7] P. F – J
[8] P. 145 – 146 u dokumenti annessi p. 147 - 149

iii. he knew what the funds were being transferred for, and
iv. he wished the transactions to proceed notwithstanding the associated risks.

It was on the basis of (Ilmentatur) express confirmations that the Bank proceeded in accordance with his payment instructions.

4. HSBC Bank Malta plc does not have visibility into, nor the ability to verify, third party investment schemes offered outside the Bank infrastructure, including opportunities purportedly offered by other financial institutions. The Bank is not in a position to validate the legitimacy and genuineness of such arrangements on behalf of customers.

5. The Bank regularly issues fraud awareness communications to its customers. On the 28 February 2024, the Bank sent the customer an email entitled: "Do you know when you are being scammed?" This email contained information on fraud awareness, including Investment Scams. The Bank also regularly disseminates fraud awareness information through its website and social media channels (Doc 1).

That in view of the above, the Bank submits that the Complainant's claim is unjustified in fact and at law and that consequently all Complainant's demands are to be rejected with costs to be borne by the said Complainant.

The Bank respectfully reserves the right to produce further oral and documentary proof and to make additional submissions both oral and also in writing during the sittings before His Honour, The Arbiter, to substantiate its position as above indicated.[9]***"***

Seduti

<u>L-ewwel seduta</u>

Fl-ewwel seduta tas-17 ta' Lulju 2026, xehed l-Ilmentatur li kkonferma bil-ġurament dak li kien qal fl-ilment.

[9] P. 145 - 146

Waqt il-kontroeżami huwa qal:

"Mistoqsi x'xogħol nagħmel, ngħid li jiena accountant, però, qatt ma pprattikajt fis-settur bankarju. Nista' nuri l-employment history tiegħi. Għamilt xi żmien naħdem ma' audit firm, 26 sena ilu meta ggradwajt fejn għamilt sentejn biss sal-2002.

Imbagħad, għamilt ħafna żmien, auditor tal-fondi tal-Unjoni Ewropea, u għal dawn l-aħħar ħmistax-il sena, nieħu ħsieb in-negozjati tal-fondi – mhumiex fondi tal-banek – imma xxxxxxxxx.

Mistoqsi x'tip ta' due diligence għamilt fuq din il-persuna li kien ċempilli biex ninvesti miegħu, ngħid li hu kien bagħatli generic email: noreply@international-barclays.com. Ngħid li kien hemm dash flok dot.

Jien iċċekkjajt il-website tal-Barclays International; iċċekkjajt il-credentials tiegħu through Chartered Institute for Securities & Investment, jiġifieri beyond il-links li tani hu biex niċċekkja. U ċċekkjajt ukoll il-Bond Prospectus (nista' nurih hawnhekk għax sibtu mill-Internet), jaqbel ma' dak li bagħatli hu, jiġifieri l-bond kien jeżisti on an international website.

Ngħid li anke trading websites oħra kienu jeżizstu.

Iċċekkjajt ukoll l-IBAN li kien validu.

Mistoqsi għandix UK address jew UK phone number, ngħid li, le.

Mistoqsi kontx iċċekkjajt ma' Barclays x'ridt nagħmel biex niftaħ kont magħhom bħala international customer, ngħid li jiena ikkuntattjani Mr John Gilmore, li ppreżenta ruħu bħala Wealth Manager minn Barclays. Ma kelli xejn li jindika li ma kontx qed nitkellem ma' Mr John Gilmore.

Mistoqsi ġinix f'moħħi li stajt inċempel Barclays u nara stajtx niftaħ kont mal-Barclays minn Malta, ngħid li kif jidher mid-dokumenti, hu bagħatli l-informazzjoni kollha. Kien jibgħatli l-istatements, għaddejt mid-due diligence tagħhom. Assolutament ma kien hemm xejn x'jindika li ma kontx qed nitkellem ma' Barclays b'mod speċjali li l-kont kien validu.

Qed jingħad li meta tibgħat il-flus f'kont, il-kont ser ikun validu.

Mistoqsi jekk jien qbadtx it-telefon, kif tlabt lill-HSBC meta ċempilli biex nivverifika li jien allavolja l-ewwel erba' numri għarafthom imma l-kumplament le, dan kellu n-number tiegħu minn fejn iċċempel, u ċempilt fuq it-telefon li hemm fuq il-Barclays website biex niċċekkja.

Ngħid li, kif jaf il-bank, kont qed nagħmel Pensions Plan u għamilt xi riċerka biex nara r-rati eċċ. Kien hemm website, eubonds.org, li kienet padlocked u secure, kif anke indikat fil-messaġġ tal-bank tat-28 ta' Frar li kkwotaw hawnhekk: https://endpadlocked. Kienet sponsored mill-ECB Santander HSBC Barclays Bank u kienu joffrulek compared rates u, at that point, ma kien hemm xejn harmful li jiena ndaħħal l-email biex jibagħtuli r-rates compared.

Allura, meta kelli din it-telefonata, jiena allaċċjajtha ma' dik l-informazzjoni li kont qed infittex.

Qed jingħad li minn verifika żgħira stajt inċempel Barclays fuq in-numru li għandhom fuq il-website u nistaqsihom jekk stajtx niftaħ kont. U l-ewwel ħaġa li jgħidulek hi li għandu jkollok a UK address u jrid ikollok a UK telephone number for an international client. Qed jingħad li hawnhekk jidher ċar li d-due diligence ma sarx.

Anke fuq il-korrispondenza li wriena l-Ilmentatur, hemm miktub li l-branch kienet 1 Churchill Place meta l-address tal-International Customer huwa ġo Knightsbridge.

Ngħid li għamilt verifiki, iċċekkjajt il-website tagħhom, il-credentials tiegħu, fejn anke huwa listed bħala Wealth Manager, l-informazzjoni li ġiet ikkwotata.

Jekk tidħol fl-FCA, hemm xi 20 trade names tal-Barclays.

Tajjeb li wieħed iżomm lilu nnifsu kif jiena kont at that point.

L-Arbitru jintervjeni biex jgħid li d-deċiżjoni li jrid jieħu hix jekk dak li ġara b'xi mod għandux tort il-bank li ħallih jiġri.

Mistoqsi mill-Arbitru kontx naf li biex niftaħ kont ma' Barclays bilfors li ridt li jkolli UK address u UK telephone number, ngħid li jien investejt

kulma kelli mal-HSBC u qatt u qatt ma kelli investimenti barra minn Malta kif jaf l-HSBC mill-history tiegħi.

Kelli cautious funds, Malta Government Bond Funds, kelli Savings Plan mal-HSBC. Jiena ma kontx naf għax m'inix investitur professjonali.

Mistoqsi daħallix f'moħħi li dan kien qed jidħaq bija meta qalli li ser jiftaħli kont ma' Barclays mingħajr ma għaddejt mill-proċeduri kollha meta tiftaħ kont, id-due diligence u la jien la kelli UK address u lanqas UK phone number, dan il-kont ma setax jinfetaħ.

Ngħid dik tal-UK address ma kontx nafha. Hu talabni dokument, bħall-passaport, minħabba l-compliance u bgħatthomlu d-dokumenti. Jien qatt ma nvestejt barra minn Malta u ma kontx naf li biex tiftaħ kont hemmhekk irid ikollok UK address, b'mod speċjali meta qed ngħidu fuq 2024.

Qed jingħad li f'Jannar 2024 għamilt transfer lil third party, FCM Bank, ta' €24,000.

Mistoqsi nafx li għamilt dan it-transfer, ngħid, iva, għamilt transfer lill-FCM Bank Malta biex ikolli xi ftit interessi.

Qed jingħad li kien third party, ngħid li third party għall-HSBC għax lil xxxxx tfajthom.

Mistoqsi naqbilx li dak iż-żmien, jiena minn Jannar 2024 sakemm għamilt dawn il-pagamenti kollha, qatt ma kkontestajt il-limits tiegħi, ngħid li le, qatt ma kkontestajt il-limits tiegħi. Jiena ma kontx aware u l-informazzjoni ħarġet fil-mediation.

Mistoqsi meta rċevejt il-pagament lura f'Awwissu 2024, iċċekkjajtx għalfejn ġie lura, ngħid li iva. L-ewwelnett, kellhom jakkumulaw l-ewwel interessi għax il-kont kien jagħti interessi kull tliet xhur imma jibqgħu fil-kont jiġifieri mbagħad ikun hemm ir-repayment bl-interessi b'kollox. U inzerta kien eżatt dak iż-żmien.

Jiena meta ċċekkjajt għalfejn ġew lura – u kont nafha wkoll – meta ftaħtu, fil-Payment Instructions talabni nagħmel referenza partikolari u jien flok għamilt dik ir-referenza, għamilt in-numru tal-kuntratt tal-

bonds. Hu kien qalli mill-ewwel li dik ir-reference tista' tikteb li trid. Qalli, 'Darb'oħra ikteb dak ir-reference number.'

U r-raġuni li tani kienet dik li ma għamiltx il-code it-tajjeb.

Qed jingħad li fl-1 ta' Lulju jien erġajt għamilt transfer fl-istess kont. Ngħid iva. Imma fl-1 ta' Lulju kien qabel ġew il-flus.

Qed jingħad li €24,975.12 fit-23 ta' Mejju jiġu lura fit-23 t'Awwissu, imbagħad, fl-1 ta' Lulju għamilt €49,909.30e li kienu ġo l-istess kont tat-23 ta' Mejju. Ngħid li iva, bgħatthom fl-istess IBAN.[10]***"***

Fuq talba tal-Arbitru, l-Ilmentatur ikkonferma li fid-deċiżjoni tiegħu l-*Ombudsman* tar-Renju Unit (*FOS – Financial Ombudsman Service*) ma kien ordna l-ebda kumpens li Barclays kellu jħallas lill-Ilmentatur.

Aġġornament wara l-ewwel seduta

Wara s-seduta, fuq talba tal-Arbitru, l-Ilmentatur issottometta dawn id-dokumenti:

1. Kopja tar-rapport li sar lil *Action Fraud UK* (b'kopja lil Barclays u lill-FOS) datat 11 ta' Ġunju 2025[11].

2. Kopja ta' deċiżjoni tal-FOS datata 31 ta' Marzu 2026 li fiha kkonkluda:

"I'm really sorry to see what's happened here and I appreciate this will have caused [Complainant] much distress and inconvenience, as well as financial loss. But whilst I sympathise with him about what has happened, I've not seen any evidence to indicate that Barclays missed any opportunities to prevent his loss or that it ought to have had concerns about its customer's account. So, considering this, I don't think it would be fair or reasonable to ask Barclays to do anything further."[12]

L-Ilmentatur talab lill-FOS biex jirrikonsidra l-opinjoni tiegħu,[13] iżda l-FOS ikkonferma l-istess deċiżjoni u għalaq il-każ.

[10] P. 154 - 157
[11] P. 117 - 122
[12] P. 162 - 166
[13] P. 167 - 168

It-tieni seduta

It-tieni seduta nżammet fil-31 ta' Awwissu 2026[14] fejn xehed Kenneth Attard, uffiċjal inkarigat mill-każ għal HSBC.

Wara li spjega kif kienet is-sekwenza tal-pagamenti, kompla jgħid:

> ***"Fit-13 ta' Diċembru, ċemplitlu persuna li tirrapporta lili li hija parti mill-Fraud Operations Team għax il-payment ġie mwaqqaf min-naħa taghna. Proprjament, mhux imwaqqaf imma jmur ġo queue qabel ma nagħmlu xi verifiki min-naħa tagħna biex naraw jekk kienx ġenwin jew le.***
>
> ***Ikkuntattjajna lis-Sur xxxxxx u r-risposta tiegħu kienet eżattament, 'I know that I made the transaction that might have triggered a security check but it was made on purpose. I know what I did. There is a reason for it.'***
>
> ***U dan qed nitkellmu fuq il-pagament li sar fit-12 ta' Diċembru 2024 ta' €24,925.***
>
> ***Meta qallu hekk, serraħ rasu għax il-klijent kien jaf x'inhu jagħmel u l-pagament ġie trasferit.***
>
> ***Ngħid li ftit qabel, fit-28 ta' Frar 2024, il-bank bagħat fraud awareness email (Doc. 1 annessa mar-risposta) fejn hemm miktub:***
>
> ***'Fraudsters will use investment opportunities exactly like this example to get money and more recently fraudsters have capitalised on this;' u***
>
> ***'This is where criminals pretend to be from HSBC'.***
>
> ***Ngħid li fl-aħħar mill-aħħar, din kienet cold-call. Bank mhux normali li jċempillek out of the blue biex joffrilek investiment.***
>
> ***Ngħid li din kienet impersonation investment scam aktar milli pig butchering għaliex dawn għamlu impersonation ta' bank, taparsi qed iċemplu biex jinvesti flusu u barra minn hekk, għamlu impersonation***

[14] P. 170 - 177

ukoll mal-bank għax dawn fetħu kont f'isem il-fraudsters fejn ittrasferew il-flus u minn fejn ħaduhom.

Pig butchering ikun aktar long-term, online fraud meta l-kriminali jagħmlu a fake relationship, a romantic scam u hekk.

Ngħid li meta website jew https ikollha l-katnazz ifisser li l-website tkun encrypted u li any data which is transferred from the device of the customer, of the person, to that website is encrypted. Jiġifieri kull ħaġa li tmur mil-laptop tas-Sinjur, eżempju, għal dik il-website tkun encrypted in transit. Dan ma jfissirx li l-website hija ġenwina jew onesta. Illum fraudsters jikkreaw websites li jidhru 120% ġenwini u ovvjament ikunu https ukoll. L-unika ħaġa li għandek li l-website hija encrypted u li d-data meta tmur minn fuq id-device għal fuq il-website ser tkun encrypted.

Ngħid li s-Sur xxxxxx f'Jannar 2024 kellu €25,000 transfer ukoll.

Ngħid li s-Sur xxxxxx kien mar ġo branch għax ried jagħmel xi pagament ġol-loan tiegħu stess u talab biex jgħollulu l-limit għal €65,000. Wara li sar dan ma kienx qalilhom biex jerġgħu iniżżlu l-limit.

L-Arbitru jirreferi għal Annex 4 anness mal-ilment li huwa bank statement li jkopri l-perjodu minn Mejju 2024 sa Diċembru 2024.

L-Arbitru jitlob lill-bank biex jipprovdi statement tas-sena 2024 kollha[15]***"***

Taħt kontroeżami kompla jixhed:

"Qed jingħad li jien għidt li l-Ilmentatur irrapporta magħna fid-19 t'Awwissu 2025 mentri huwa jgħid li rrapporta magħna fid-9 ta' Ġunju 2025.

Ngħid li jiena għandi 'Complaint 19 August 2025'.

Qed jingħad li l-Ilmentatur irrapporta magħna fid-9 ta' Ġunju, tana l-Police Report, bagħat it-transactions u d-dokumenti kollha, u sad-19 t'Awwissu, meta pprotestajt li ma sar xejn, bil-panic, il-Manager għamlet complaint report hi mingħajr ma qalet lill-Ilmentatur.

[15] P. 171 - 172

Ngħid li d-dati mhux ser niftakarhom offhand, imma nista' nfittixhom.

Ngħid li dan ikun il-complaint formali għalhekk ikkwotajt lilu. Dan hu r-rapport intern li sar min-naħa tagħna. Għandna internal procedure ta' kif isir complaint.

Mistoqsi meta l-impjegati tiegħi meta jċemplu lill-klijent, wara li jistaqsuh u jivverifikawlu m'għandhomx struzzjonijiet għalkemm aħna nkunu bgħatna xi ċirkolarijiet lill-klijenti tagħna jekk jagħmlux xi investigazzjonijiet, ngħid li meta aħna nikkuntattjaw lill-customers, aħna nistaqsu pertinent questions biex naraw jekk hemmx lok li dawn jistgħu ikunu fraudulent activity. L-aktar li nistaqsu lill-customer biex hu jurina jafx x'inhu jagħmel.

F'dan il-każ, is-Sur xxxxxx qallu outright li kien jaf x'inhu jagħmel: 'I know what I did. That is the reason for the transfer.' Serraħlu rasu li kien jaf x'inhu jagħmel.

Qed jingħad li min ikun qed jiġi ngannat ikun mingħalih li qed jagħmel transfer ġenwin għax kieku mhux ser jagħmlu.

Mistoqsi meta nirċievi dik ir-risposta, tkun kif tkun u b'saħħitha kemm tkun b'saħħitha, m'għandhomx xi struzzjonijiet li jinvestigaw ulterjorment, ngħid li le, għax qabel ma jagħmel it-telefonata, jagħmel il-homework. Jidħol fil-kont tal-klijent, tas-Sinjur, ra x'inhu x-xogħol tas-Sinjur u nduna li għandu ċertu knowledge fl-area; u meta ra t-transactions li kellu qabel, qal dan jaf x'inhu jagħmel; dan bniedem ta' ċertu livell, jaħdem f'ċertu livell. Dawn l-affarijiet li jagħmlu barra li jistaqsu l-mistoqsijiet.

Ngħid li dakinhar mhux lis-Sur xxxxxx biss ċemplu. Ikollna ħafna u ħafna oħrajn. Li trid tagħmel hu li tistaqsi the right questions u jekk jikkonvinċik li jaf x'inhu jagħmel u l-background tiegħu hu dak li hu ...

Qed jingħad li l-Ilmentatur sema' t-telefonata u li tajjeb li wieħed jiffrejmja l-kuntest li diġà qiegħed fil-verbal tas-17 ta' Lulju 2026, li dan beda jitkellem b'aċċent Indjan u li l-Ilmentatur ma fdaħx u qallu li n-numru 2380 kemm-il darba rċieva telefonati imma mhux bl-aħħar erbgħa numri li qed jidhru fuq il-mobile tiegħu.

Mistoqsi kemm damet din it-telefonata, ngħid li ma nafx bl-amment.

L-Arbitru ser jagħmel il-ġudizzju tiegħu fuq din it-telefonata.

Naqbel li t-trasferiment li semmejt tal-24 ta' Jannar ta' €25,000 kien lejn bank lokali.

Naqbel li s-Sur xxxxxx kien talab li jogħla t-transfer limit fis-sena 2017 u l-każ ġara fis-sena 2024.

Mistoqsi jekk persuna tkun għolliet it-transfer limit tagħha dawk is-snin kollha qabel, bħalma ġara f'dan il-każ, ma jsirx review tiegħu, ngħid li normalment, at that point in time, li kien jiġri aħna konna nistennew lill-customer jikkuntattjana hu biex jgħidilna li jrid iniżżel it-transfer limit. Fil-fatt, is-Sinjur mar ġo branch, jiġifieri xi ntqal ġol-branch ma nistax ngħid għax ma nafx, però, meta wieħed iċempel il-Call Centre jgħidulu, 'Isma', jien ser ngħollihulek, agħmel it-transfer, u jekk tkun trid terġa' tniżżel l-ammont, erġa' kellimna.'

Dak iż-żmien konna nistennew li l-customer jiġi fuqna biex jew iniżżlu kif kien qabel jew iniżżlu kif ikun jixtieq hu.

Ngħid li dan l-aħħar il-proċeduri nbidlu.

Mistoqsi parti mill-investigazzjoni li tkun saret biex ġiet triggered din it-telefonata sarx assessment fuq il-history tas-Sur xxxxxx tat-trasferimenti li għamel, ngħid li kif diġà spjegajt, dan ma qabadx u ċempel. Dan jeħodlu xi fifteen to twenty minutes. Dan jifflagjalu dan it-transfer u dan jibda l-homework tiegħu. Imur fuq l-account tas-Sinjur, jiċċekkja x'normalment jagħmel, jekk hix normali l-attività jew le.

Dan li għamel l-investigazzjoni ra li kienet tranżazzjoni normali imma xorta ċempillu; ma qabadx u għaddiha, però, meta ċempillu, ġie b'dik ir-risposta. Kien qed imur lejn Barclays Bank li kien jidher ġenwin u għaddih wara li s-Sinjur qallu li kien jaf x'qiegħed jagħmel għax il-kliem eżatt kien, 'I know what I'm doing'.

Jekk xi ħadd jgħidli, 'I know what I'm doing', inserraħ naqra rasi wara li nkun għamilt il-homework.

U dan hu kien qed jagħmlu t-transfer; ma kinux qed jagħmluh il-fraudsters.

Qed jingħad li din it-telefonata saret fit-13 ta' Diċembru u s-Sur xxxxxx għamel l-ewwel pagament ta' kważi €25,000 fit-22 ta' Mejju; għamel kważi €50,000 fit-28 ta' Ġunju.

Mistoqsi kif il-bank inqabdet din it-telefonata fit-13 ta' Diċembru u €75,000 li saru f'ħames ġimgħat li huma għoxrin darba aktar mis-salarju nett li jidher fl-istatement il-bank ma ttriggerjalu xejn, ngħid li fit-22 ta' Mejju, ġie ifflaggjat ukoll dak il-pagament li kien sejjer lejn IBAN partikolari. Però, ma saritx it-telefonata għax kif konna naħdmu dak iż-żmien, ser jifflaggjalek xi pagament għax ikun hemm xi ħaġa li tittriggerja l-fraud monitoring system tagħna.

Ġaladarba ġiet triggered, l-aġent li jrid jagħmel id-discounting – jiċċekkja jagħmilx sens, jara jekk hux ser jikkuntattjak jew le, jew jgħaddi l-payment, - min kien għamel dan id-discounting process, he deemed that the transfer is OK u ma ċempilx lis-Sur xxxxxx dakinhar għall-€25,000, l-ewwel darba.

Eventwalment, meta ġiet tal-25 ta' Ġunju, dik kienet għall-istess beneficiary u wara li sar l-ewwel wieħed u ma ġiex ikkuntattjat, sar it-tieni wieħed u ma ġiex ikkuntattjat lanqas.

Qed jingħad li l-Ilmentatur qatt ma għamel pagamenti tat-tip ta' dak il-pagament li daħal fit-23 t'Awwissu u dan ukoll ma triggerja xejn.

Ngħid li meta l-flus ġew lura ma kinux ser jittriggerjaw lilna għax kienu incoming; li jittriggerjawlna li jkunu outgoing.

L-Ilmentatur missu rrealizza li kien hemm xi ħaġa ħażina meta bagħat il-flus fit-22 ta' Mejju u ġew lura tliet xhur wara f'Awwissu. Fil-fatt, il-fraudsters reġgħu ikkuntattjawh u bidlu l-IBAN, li kienet a red flag oħra. L-Ilmentatur ma ndunax li kien hemm xi ħaġa ħażina u qed jippretendi li nindunaw aħna. Aħna mhux ser nindunaw għax jiġi pagament lura.

L-Ilmentatur jgħid li fl-20 ta' Mejju ġibed il-Cautious Fund kważi kollu (€15,000), imbagħad, tefagħhom jumejn wara. U fil-25 ta' Ġunju ġibed

dak li kien baqa' fil-fund tal-HSBC - €12,000 – u l-għada, €36,500 mis-Savings Plan li dawn ukoll tefagħhom jumejn jew tlieta wara (kważi l-ammont kollu tal-€50,000).

Mistoqsi meta l-bank ra dan il-pattern li qatt ma eżista fi tletin sena, u l-kuntest tal-Financial Planning Report li sar xahrejn qabel (Annex 13 tas-sottomissjonijiet tal-Ilmentatur), hemmhekk ukoll il-bank ma xegħlitlu l-ebda bozza, ngħid li aħna jixgħelulna bozoz, u kif għidt qabel, it-tranżazzjonijiet tal-Ilmentatur kienu flagged. It-tranżazzjoni tat-22 ta' Mejju kienet flagged u tat-27 kienet flagged.

Tat-22 ta' Mejju, il-bank ma kkuntattjahx għax min għamel l-investigazzjoni ħass li hemmhekk – issa erħilu li dik ġiet lura, l-Ilmentatur kien lucky; jiġifieri flagging kien hemm u bħalma jaf l-Ilmentatur, tat-27 kellimnih. Kien hemm, mela ma kienx hemm imma, unfortunately, l-ewwel t-transactions għamilhom and they were allowed to pass.

L-Ilmentatur jgħid li sab nota mis-sena 2017 li kien ħażżeż hu li meta kien mar fi branch kienu qalulu li biex jagħmel transfer mill-HSBC Savings għal HSBC xxxxxx Loan, xxxxxx to xxxxxx, biex jaqta' l-loan €60,000, ried iċempel biex jgħolli l-limit. U l-Ilmentatur hekk għamel.

Qed niġi mistoqsi għalfejn il-bank għollielu l-limit għal third party transaction u ħallih hekk għal dawn is-snin kollha meta hu talab li jogħla l-limit biex jagħmel transfer għal-loan – HSBC to HSBC – u kieku ma ħallewlux il-limit għoli għal dan iż-żmien kollu, kieku l-pagament ta' €50,000 ma kienx jgħaddi u l-bank forsi seta' ċempillu u peress li kellu kollox Cautious, wisq probabbli ma kienx jagħmel li għamel.

Ngħid li dak iż-żmien kienu jgħollu l-limits kollha meta tagħmel transfer. Barra minn hekk, jekk l-Ilmentatur kien Cautious, meta rċieva cold call kellu jagħmel il-verifiki tiegħu meta ried jagħmel dawk l-ammonti.

L-Ilmentatur jgħid li rigward il-limits, hu kien meqjus Premier; u milli jeżisti pubblikament, Premier irid ikollu minimu ta' €70,000 savings jew investiment mal-HSBC, jew inkella minimu ta' €50,000 income jew inkella minimu ta' €300,000 mortgage property loan.

Mistoqsi kif l-Ilmentatur meta kien negative, mhux talli ma kellux €70,000, talli ż-żewġ kriterji l-oħra ma kienx jissodisfahom u kienu negative għal ħafna żmien, meta tqis ukoll il-credit cards, baqa' meqjus Premier bir-riskji kollha involuti bil-limiti kbar tal-Premier customers u, allura, suxxettibbli għal ħafna aktar scams li jeżistu, ngħid li din id-domanda ma nafx nirrispondiha. Rigward kif jaħdmu l-limits jekk hux Premier jew customer normali ma nafx, inkunu rridu nġibu aktar informazzjoni.

Mistoqsi nafx l-impjegat li għamel it-telefonata u kemm kien ilu impjegat mal-HSBC u x'tip ta' taħriġ ingħata, ngħid li dan mhuwiex Malti; dan jaħdem GSC. Hu parti mill-Fraud Team. Ngħid li jien m'ilnix ħafna f'dan id-dipartiment; ili minn Jannar 2024. Dan kien diġà parti mit-team.

Ngħid li training isir kemm minna u kemm mill-offshoring, mit-team li hemm hemmhekk. Dawn huma dedikati fuq hekk biss. Dawn xogħolhom hu li jiġu flagged l-accounts u jekk hemm bżonn jikkuntattjaw lill-customers biex jaraw jekk il-pagamenti humiex ġenwini jew le.

Min-naħa tagħna nagħmlulhom training on a frequent basis, bil-fraud trends li jinbidlu u dawn l-affarijiet. Aħna ninfurmawhom b'inċidenti li jkunu ġraw biex jekk naraw li sar xi żball, ma jerġax isir. Training isir kontinwament.

Ngħid li jiena, on a quarterly basis, nagħmlilhom it-training. Imbagħad, l-Indja stess jagħmlulhom it-training il-managers tagħhom.

Però , offhand, ma nafx kemm kien ilu l-bank, imma kienu ilhom.

In-nazzjonalità tiegħu hija Indjana.

Mistoqsi f'ċirkostanza bħal din fit-taħriġ ġieli ġiet tackled jekk persuna qiegħda tassigurak li taf x'inhi tagħmel x'għandu jsir, jekk toqgħodx fuq il-kelma tiegħu jew tistħarreġ aktar, nassigurakom li, iva, imma, bħalma tista' timmaġina, kull każ ikun differenti. Jaf ikollok persuna bħas-Sinjur, fejn qabad u qallu, 'Isma', naf x'qed nagħmel.'

> ***Aħna nġiegħeluhom jistaqsu mistoqsijiet li jittriggerjaw lill-klijent. Huma jippruvaw imma ovvjament jekk il-customer ikun konvint milli qed jagħmel u ċertissimu li hija ġenwina, għalih, at that point in time, żgur hekk ser ikun.***[16]***"***

L-Arbitru sema' r-reġistrazzjoni tat-telefonata li HSBC għamlu biex jistaqsu fuq il-pagament tat-12 ta' Diċembru 2024 fejn ġew ritornati lis-suppost kont tiegħu f'Barclays €24,925.12 li kienu ġew lura tliet xhur u nofs qabel. F'din it-telefonata, li ma komplietx għax l-Ilmentatur sab reżistenza biex jagħmel verifika tal-identità tiegħu, huwa jgħid ċar:

> ***"I know I made a transaction that might have triggered a security check but it was made on purpose. I know what I did, there is a reason for it. OK".***

Analiżi u kunsiderazzjonijiet

Il-qofol ta' dan il-każ huwa jekk HSBC kienx b'xi mod responsabbli għat-telf li ġarrab l-Ilmentatur minħabba li l-Bank messu kellu sistemi sensittivi biżżejjed biex ixommu li l-pagamenti ilmentati kienu jinvolvu frodi. Dan minkejja li l-pagamenti kienu inkontestament awtorizzati mill-Ilmentatur u minkejja li l-pagamenti kienu juru li sejrin f'kont li l-Ilmentatur kellu ma' Barclays Bank fir-Renju Unit.

L-argument tal-Ilmentatur huwa li qatt ma kien għamel pagamenti bħal dawn għal kont li mhux f'Malta u li fid-dokumenti KYC u profil ta' riskju dwar is-*Savings Plan* li kellu ma' HSBC kien meqjus bħala *cautious investor* u *low-risk investor*. Allura l-Bank kien messu induna li l-pagamenti kienu strambi biżżejjed li kellu jżommhom u jkellem lill-Ilmentatur u jiftaħlu għajnejh qabel japprovahom[17].

Hemm ukoll argument li HSBC, wara li l-Ilmentatur irrapportalu li l-pagamenti kienu frodi, dam żmien twil qabel ma għamel il-proċess ta' *recall* u dan seta' ppreġudika l-possibbiltà li l-flus jinżammu u jiġu rkuprati.

L-Arbitru, wara li eżamina d-dokumenti kollha u stħarreġ bir-reqqa ċ-ċirkostanzi tal-każ, iħoss li l-Ilmentatur qed jipprova jara f'min jista' jwaħħal biex itaffi t-

[16] P. 172 - 177
[17] P. 182

telf li ġarrab riżultat ta' negliġenza li wera waqt li jfittex investimenti b'imgħax għoli. Dan għamlu bla ma ħa l-ebda parir fuq dawn l-investimenti minn xi ħadd awtorizzat tal-fiduċja tiegħu, u lanqas ma ħa miżuri biex jaċċerta ruħu li verament kien qed jiddilja ma' rappreżentant ta' Barclays Bank.

Wara li l-FOS ma sabx li Barclays kellu xi ħtija, issa qed ifittex kenn mal-OAFS biex isib xi responsabbiltà fuq banek lokali li bagħtu l-flus lil Barclays.

Persuna ta' esperjenza u edukazzjoni tal-Ilmentatur żgur li jaf li llum anke biex tiftaħ kont ma' bank fejn il-persuna tkun residenti, hemm ċerti proċeduri li jieħdu ż-żmien. Huma biss *technology banks* (bħal Revolut) li jiftħu kontijiet *cross-border* malajr b'sempliċi dokumenti ta' identifikazzjoni u residenza. Ma' dawn it-tip ta' banek normalment wieħed iżomm bilanċi żgħar biex jagħmel tranżazzjonijiet kurrenti, mhux investiment ta' valur kbir. Żgur li bank bħal Barclays ma jaqax f'din il-kategorija.

L-Arbitru ma jsibx li kien hemm xi nuqqas min-naħa ta' HSBC għaliex ma ħareġ l-ebda twissija lill-Ilmentatur dwar possibbiltà ta' frodi. L-Ilmentatur ma kienx talab ebda parir dwar investimenti lil HSBC u ġaladarba kollox kien juri li l-flus kienu sejrin f'kont li l-Ilmentatur stess kellu ma' Barclays, ma kien hemm ebda raġuni għalfejn il-Bank kellu jissuspetta frodi. Xejn ma jindika li l-Bank kellu xi tagħrif dwar l-investimenti li l-Ilmentatur kien mingħalih qed jagħmel li seta' jwassal lill-Bank jifhem li dawn kienu kontra r-*risk profile* tal-Ilmentatur.

Apparti minn hekk, meta f'Diċembru 2024 kien sar attentat bit-telefon minn HSBC biex jikkonferma pagament li qed jagħmel l-Ilmentatur, dan, flok ħa t-telefonata bħala twissija biex jerġa' jqis dak li kien qed jagħmel, irrisponda:

> ***"I know I made a transaction that might have triggered a security check but it was made on purpose. I know what I did, there is a reason for it. OK".***

Fil-fatt, wara din it-telefonata xorta għamel il-pagament li sar fl-20 ta' Diċembru 2024 kif muri fit-tabella aktar 'il fuq.

Il-paragun li għamel l-Ilmentatur ma' deċiżjoni tal-Arbitru fil-każ 025/2024 (liema deċiżjoni ġiet ikkonfermata mill-Qorti tal-Appell u bħalissa qiegħda suġġetta għal

ritrattazzjoni) ma jsostnix konsistenza ma' dan il-każ[18]. Fil-każ ta' ASF 025/2024[19] kienu ċirkostanzi għal kollox differenti li jinvolvu numru kbir ta' pagamenti pjuttost żgħar li kienu sejrin għal kont li l-Ilmentatur kellu ma' *crypto exchange*. Pagamenti *crypto* jqajmu *alerts* speċjali sija rigward l-esperjenza tal-klijent dwar investimenti *crypto* u anke dwar kwistjonijiet ta' *Anti Money Laundering* (AML), għax *crypto* huwa *medium* użat ħafna minn frodisti u kriminali.

Daqstant ieħor mhux floku l-argument li l-Bank kellu xi ħtija li ma nvestigax ir-*refund* t'Awwissu 2024 li kien juri li l-flus ġew lura minn *Global Currency Network* bħala *'Unable to Apply'*. Jekk kien hemm xi ħadd li kellu jieħu sinjal ċar minn dan ir-rimborż li l-affarijiet ma kinux kif jidhru, kien l-Ilmentatur.

Ma staqsiex għalfejn il-flus ġew lura minn *Global Currency Exchange*.Ma tkixxifx kif, minkejja li l-flus ġew lura, l-investiment baqa' jidher fl-i*statement* falz qisu ma ġara xejn? U għalfejn reġa' bagħat il-flus lura tliet xhur u nofs wara fit-12 ta' Diċembru 2024, liema pagament skatta t-telefonata ta' HSBC?

Kif jidher ċar, l-ewwel pagamenti kienu saru f'kont ma' Barclays IBAN GB83BARC.....9600 waqt li l-pagamenti ta' Diċembru 2024 saru f'IBAN GB11BUKB....9922. Dan ma kienx qajjem suspett f'moħħ l-Ilmentatur kif l-IBAN tal-kont li ħaseb li kellu ma' Barclays inbidel bla ma ġie mgħarraf?

L-argument li xi dewmien biex isiru *recalls* seta' ppreġudika l-prospett ta' rkupru ma ġie sostnut mill-ebda evidenza u lanqas mill-probabbiltà taċ-ċirkostanzi. Il-Bank ġie infurmat fid-9 ta' Ġunju 2025 filwaqt li r-*recall* jidher li sar f'Awwissu 2025. HSBC jiġġustifika d-dewmien għaliex ried li jkollu f'idejh rapport lill-Pulizija u jagħmel investigazzjonijiet interni.

Filwaqt li dan huwa dewmien inġustifikat, huwa fatt li l-pagamenti ilmentati saru xhur qabel ma ġew rapportati. Il-probabbiltà li *recall* ikollu suċċess wara dewmien daqstant twil hija minima għax il-frodisti jkunu pronti jiġbdu l-flus u jisparpaljawhom f'kontijiet oħra mferrxa bla ma jħallu ebda traċċa evidenti.

[18] P. H; 185

[19] https://financialarbiter.org.mt/sites/default/files/oafs/decisions/1738/ASF%20025-2024%20-%20CL%20vs%20Bank%20of%20Valletta%20plc%20%28with%20Technical%20Note%29.pdf

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.

L-Arbitru jiddetermina li dan it-telf soffert mill-Ilmentatur huwa għal kollox kawżat minn negliġenza tiegħu li:

1. qagħad fuq pariri ta' persuna li qatt ma kien iltaqa' magħha li suppost kienet rappreżentant ta' Barclays u ma ħa ebda prekawzjoni biex jinvestiga jekk verament kienx normali li bank bħal Barclays iħajjar persuni barranin jiftħu relazzjoni *online* ta' investimenti sostanzjali;

2. ma fittex l-ebda parir (la mingħand HSBC u lanqas mingħand persuni ta' fiduċja u awtorizzati) fuq l-investimenti nfushom li kellhom ħafna kriterji ta' *'too good to be true'*.

3. Apparti minn hekk, huwa stramb li dan il-pagament li sar fit-22 ta' Mejju 2024 kien ġie rritornat lura fit-23 ta' Awwissu 2024 b'narrattiva *GLOBAL CURRENCY EXCHANGE UNABLE TO APPLY*[20].

   Dan kellu jindika li l-investiment ma kienx sar u li bejn l-Ilmentatur u Barclays kien hemm fin-nofs *GLOBAL CURRENCY EXCHANGE* li kien bagħat il-flus lura għax ma setax jallokahom. Il-flus reġgħu intbagħtu lura fit-12 ta' Diċembru 2024, jiġifieri tliet xhur u nofs wara, iżda l-i*statements* ta' Barclays (frawdolenti) baqgħu juru l-investiment oriġinali qisu ma ġara xejn[21].

L-ewwel pagament sar biex jiġi investit f'bond li jġib numru ISIN XS2711945878 – 1 Year Fixed Rate Savings Bonds Issue 270-INT EUR[22].

Tfittxija fuq l-*internet* turi li dan il-*bond* kien:

Barclays plc bond | 7.09% 2029-11-06 GBP | XS2711945878.

[20] P. 38
[21] P. 55
[22] P. 23

Kien jagħlaq fis-sena 2029, kien fi flus GBP (Sterlini) u ma kienx *Savings Bond*. Ir-rata għolja tal-imgħax tindika karatteristiċi ta' Co-Co (*conditional convertible*) jew *subordinated bond*. Anke l-fatt li kien deskritt bħala *Savings Bond* għal sena waħda meta fil-fatt kien xi ħaġa kompletament differenti seta' indika li dan kien frodi kieku saret tfittxija serja fuq l-*internet*.

It-tieni investiment sar biex jiġi investit f'*bond* li jġib numru ISIN DE000A30VT97 – Deutsche Bank AG 10% (*4 year fixed)*[23]

Tfittxija fuq l-*internet* turi li dan il-*bond* hu *subordinated* jew *Co-Co (conditional convertible) perpetual bond*. Anke l-fatt li kien deskritt bħala *perpetual* (ma jagħlaqx) imma b'xi mod il-*contract note*[24] (falza) turi li kellu *'*End *of Term'* tal-11 ta' Ġunju 2028, suppost xegħel bozza ħamra.

Apparti minn hekk, huwa ċar li rata ta' 10% għal *perpetual bond* ta' bank li għandu *low investment grade rating* hija suspettuża ħafna. Kellu jindika li kien hemm xi kundizzjoni bħal Co-Co jew *Subordinated* li żżid ir-riskju minn *bond* sempliċi. *Co-Co / Subordinated* ifissru li taħt ċerti kundizzjonijiet fejn il-*bond issuer* ikun taħt *financial stress,* il-*bond* jista' jinbidel f'*equity (shares)* li f'dawk iċ-ċirkostanzi jitilfu ħafna fil-valur.

It-tielet investiment sar biex jiġi investit fl-istess *bond* bħal ta' qablu Deutsche Bank AG 10% ISIN DE000A30VT97 imma jagħlaq fit-12 ta' Diċembru 2026. Ma' dan l-investiment ġew investiti flus oħra mill-BNF[25].

L-istess kummenti bħal fil-każ tat-tieni investiment jgħoddu wkoll għal dan il-każ. Kif il-fatt li l-istess *security* ISIN *number* ikollha maturità differenti (l-ewwel wieħed erba' snin u t-tielet wieħed sentejn) minnu nnifsu huwa suspettuż.

[23] P. 25
[24] *Ibid.*
[25] P. 30

Għar-raġunijiet spjegati hawn fuq, l-Arbitru jiċħad dan l-ilment u jordna lill-partijiet iġorru l-ispejjeż rispettivi tagħhom.

Alfred Mifsud
Arbitru għas-Servizzi Finanzjarji

<u>Nota ta' Informazzjoni relatata mad-Deċiżjoni tal-Arbitru</u>

Dritt ta' Appell

Id-Deċiżjoni 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-Deċiżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deċiżjoni 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-Deċiżjoni skont l-artikolu msemmi.

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