

Before the Arbiter for Financial Services

Case ASF 009/2021

BE ('the Complainant')

vs

Truevo Payments Limited

(C62721)

('Truevo' or 'the Service Provider')

Sitting of the 30 November 2021

The Arbiter,

Having seen **the Complaint** against Truevo Payments Limited ('Truevo' or 'the Service Provider') relating to the processing of payments by Truevo to an allegedly fraudulent third party and the alleged lack of co-operation offered by the Service Provider to recoup the Complainant's losses.

Having considered, in its entirety, the Complaint including attachments, filed by the Complainant,¹

Where, essentially, the Complainant claimed that: (i) the Service Provider processed transactions to a party which turned out to be unregulated and which party did not provide her with the requested investment service, (ii) the Service Provider did not cooperate to recoup the losses.

The Complainant claimed *inter alia*:

- (i) That the Service Provider was the acquiring bank in respect of the sum of USD12,300 that she paid to *Finantik.com*;

¹ A fol. 2-18

- (ii) That she discovered that *Finantik.com* were not regulated and she was the subject of the fraud and scam perpetrated by *Finantik.com*;
- (iii) That *Finantik.com* was owned by *Pro Star Griffith Corporate Center* and located in Saint Vincent and the Grenadines;
- (iv) That *Finantik.com* did not give her a real investment and was not regulated in Qatar² nor by the FCA (UK) as they claimed to be. She also noted that the said party was furthermore blacklisted by Consob (Italy);
- (v) That Truevo did not co-operate with respect to her letter of complaint dated 24 November 2020 and request to retrieve her money *'from their client ask4bit'*³ or to reimburse her for the loss;
- (vi) That she reported the matter to the cybercrime office in Qatar (claim no. 1435/2020);
- (vii) That in its reply of 27 November 2020, Truevo responded that Truevo did not have any contractual relationship with the merchant *Pro Star* or www.finantik.com and that as a payment acquirer Truevo could not issue a refund directly to the Complainant as cardholder.

The Complainant further stated that in its reply, Truevo considered that the Complainant should follow up her request of reimbursement by contacting directly the merchant and the bank who issued the card or lodge a complaint with the police authorities.

The Complainant however considered that the reason provided by Truevo was not satisfactory as she claimed that Truevo was supposed to undertake sufficient due diligence about the merchant for whom Truevo acquired money. She further noted that this was required in compliance with the financial regulations and for the sake of protecting payers from fraud and money laundering.

² The Complainant's country of residence.

³ A fol. 2

In her Complaint Form, the Complainant referred to her formal letter of complaint to the Service Provider dated 24 November 2020. In the said letter (sent to Truevo by her legal advisors), the following was submitted:⁴

- That the Complainant was solicited by a merchant operating under the address <https://www.finantik.com> to wire funds to a false and fictitious 'trading account'.⁵ It was claimed that the merchant was part of a global network of cybercrime known as 'the binary option and falsified trading scam',⁶ and that according to the information on its website it was owned and operated (in terms of billing and payments) by *Pro Star* with the address in St Vincent and Grenadines. This was referred to as 'the Merchant' in the said formal letter of complaint;⁷
- That the Merchant claimed to have the ability to offer and exchange digital currencies but, in reality, it provided a fictitious and malicious software which did not execute any exchanges or purchases of digital currencies and was not connected to any recognised exchanges.

It was further claimed that the software was manipulated by the Merchant to exhibit his own desired figures and the Merchant had left a trail of victims who had fallen for his sophisticated and well-crafted scam and lost their entire life savings. It noted that evidence to support this could easily be found on the web through basic research or could be provided if needed;

- That the offering of financial/brokerage services without the mandatory required license is considered illegal and fraudulent in all countries;
- That acting in good faith and in full reliance of the website information the Complainant was instructed in writing by the Merchant to wire funds to a company (referred to as the 'Beneficiary') holding an account with Truevo;⁸
- That after much research it was concluded that the Merchant was not officially connected to the Beneficiary and the facts lead to the conclusion

⁴ A fol. 6-8

⁵ A fol. 6

⁶ *Ibid.*

⁷ *Ibid.*

⁸ A fol. 7

that the Beneficiary was aiding the Merchant to bypass the bank's fraud detection screening for embezzlement of clients' funds and laundering of illegal proceeds;

- That the Merchant funnelled unauthorised transactions through a legitimate business network (the Beneficiary) in order to conceal the true origin of the transaction. It was further noted that the Merchant instructed the Complainant to use the SWIFT system to send money via bank-to-bank transfers directly from their bank account to the Beneficiary and the account under its name at Truevo;
- That Truevo is to take the appropriate steps to mitigate the loss by conducting a thorough fraud investigation and investigate potential money laundering for all related transactions and accounts and freeze their accounts pending the result of the investigation ensuring that all the funds in the accounts of the Beneficiary are held;
- That Truevo should send all appropriate contact details of the relevant authorities in order for the Complainant to assist in Truevo's investigation.

Complainant's Request to the OAFS

The Complainant sought the reimbursement of the total amount of USD12,300 in respect of her five transactions – USD5,000 on 31/10/2019; USD2,000 on 07/11/2019; a further USD2,000 on 07/11/2019; USD1,000 on 07/11/2019 and USD2,300 on 30/12/2019.⁹

In an attachment to the Complaint Form addressed to the OAFS, the Complainant also asked OAFS for '*your support in the process of fund recall and request you to kindly conduct a fraud investigation by Truevo Payment Ltd, into the transactions*' referred to above.¹⁰

Having considered Truevo's reply wherein it made the following submissions:¹¹

1. That Truevo is a Maltese MFSA-licensed Financial Institution which is also licensed by Visa and Mastercard ('Card Schemes') in order to act as a

⁹ A fol. 3 & 18

¹⁰ A fol. 17

¹¹ A fol. 24-27

licensed Acquirer. To this effect, Truevo is able to process Visa and Mastercard transactions for its merchants and partners situated in Europe;

2. That preliminarily, Truevo rebuts ALL the claims made by the Complainant in the Complaint as being unfounded both in fact and in law;
3. That without prejudice to the above, during the course of the proceedings, Truevo will provide evidence that the Complainant is not an Eligible Customer in terms of Chapter 555 of the Laws of Malta and that there was no direct relationship between Truevo and the Complainant. It was further submitted that henceforth, Truevo is surely not the rightful defendant in relation to the claims brought forward by the Complainant;
4. That with respect to the above, from the very definition of eligible customer established in Article 2 of Chapter 555 of the Laws of Malta, it is clear that:

*'4.1. The complainant was never a customer of the Respondent Company;
&*

4.2. The respondent company never offered to provide a financial service to the complainant; &

*4.3. The complainant never sought the provision of a financial service from the Respondent Company.'*¹²

5. That it was evident that the Complainant's contractual relationship was with the merchant 'Pro Star Griffith Corporate Centre', which according to the Complainant owns the url www.finantik.com ('Finantik'). Truevo further submitted that it has no relationship whatsoever with Finantik;
6. That during the course of the proceedings, Truevo will provide evidence that Finantik could never have been onboarded by the same Truevo because, *ex admissis*, Finantik is located in Saint Vincent and the Grenadines and Truevo's Area of Use is strictly within the Europe region. To this effect, under no circumstance can Truevo be allowed to either onboard or process transactions from merchants that are not situated in

¹² A fol. 24 & 25

Europe. Consequently, it was impossible that the merchant in question was a merchant of Truevo.

7. That Truevo once again reiterates that it has no connection with the merchant operating the URL: *ask4bit*;
8. That with all due respect, the Complainant was targeting Truevo because clearly she cannot retrieve the money from the rightful defendant. Moreover, Truevo finds itself defending itself from frivolous allegations to make good for shortcomings/scam effected by third parties.
9. That should the Arbiter fail to accept the preliminary plea of the rightful defendant, then Truevo submits that during the course of the proceedings it will show that at no point in time did it fail to conduct proper due diligence on onboarding. It submitted that in fact, Truevo categorically refutes the unfounded and baseless allegation that it somehow failed in its regulatory obligations when onboarding clients. It noted that Truevo is a subject person in terms of the Maltese anti-money laundering ('AML') regulations and as a licensed entity supervised by both MFSA and Card Schemes, always adheres to the highest standards in this regard prior to onboarding its merchants.
10. That the Complaint and the requests therein are not contemplated in the law in that the Complainant is seeking redress from alleged regulatory breach which did not necessarily led to the losses alleged.
11. That for the stated reasons, and while reserving any right and/or action according to law, Truevo humbly requests that this Complaint be refuted and the requests and remedies indicated therein be thrown out, with costs against the Complainant.

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

Considers:

Basis of Complaint

The Arbiter notes that, in her final submissions, the Complainant highlighted new aspects and made new claims which were not raised in the original complaint filed with the Office of the Arbiter for Financial Services ('OAFS'). Such

new aspects and claims were particularly raised with respect to the entity Allmedia EOOD which was not mentioned in the Complainant's Complaint Form to the OAFS, which form only referred to 'wwwfinantik.com', 'Pro Star Griffith Corporate Center' and 'ask4bit'.¹³

It is further noted that, in her final submissions, the Complainant also requested additional compensation not indicated in her Complaint Form. In addition to the reimbursement of the sum of USD12,300, the Complainant requested, in her final submissions, also '*a feasible interest for the period from the transactions dates until the compensation payment*'.¹⁴

The Complainant cannot change the basis of her complaint and/or make new requests in her final submissions. The Arbiter will accordingly only consider the complaint as originally filed.

The Jurisdiction of the Arbiter

The Arbiter notes that the Complaint, in essence, relates as to whether Truevo, which processed payments made by the Complainant that were targeted to Finantik and/or Pro Star Griffith Corporate Centre as the 'Merchant', carried out adequate due diligence checks on the Merchant and whether Truevo could have prevented and not facilitated the alleged fraud perpetuated by the Merchant had it undertaken the said checks. In addition, the Complainant alleged that Truevo did not assist her to recoup her losses from the Merchant. The Complainant has, on this basis, requested a reimbursement from Truevo of the payments processed by the Service Provider.

In its reply, the Service Provider submitted *inter alia* that '*the Complainant is not an Eligible Customer in terms of Chapter 555 of the Laws of Malta, and there was no direct relationship between the Respondent and the Complainant.*'¹⁵

Truevo further noted that '*the Complainant's contractual relationship was with the merchant 'Pro Star Griffith Corporate Centre', which according to the*

¹³ A fol. 2

¹⁴ A fol. 89

¹⁵ A fol. 24

*Complainant owns the url www.finantik.com.*¹⁶ Truevo submitted that it had, however, *'no relationship whatsoever with Finantik'*.¹⁷

Since the Service Provider is claiming that the Complainant is not their client, the Arbiter has to examine whether the Complainant is, in fact, an *'Eligible Customer'* according to law.

The Arbiter can only determine complaints filed by *eligible customers*.

In fact, Article 19(1) of the Act stipulates that:

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

The Act also states that the Office of the Arbiter can only receive complaints filed by eligible customers:

'Without prejudice to the functions of the Arbiter under this Act, it shall be the function of the Office:

*(a) to deal with complaints filed by **eligible customers**.*¹⁸

In the definition of a *financial services provider*, the legislator also provided that a complaint against a financial services provider has to be made by an *eligible customer*.¹⁹

Reading through the Act, it follows that the Arbiter may only deal with complaints filed by an **Eligible Customer**.

Therefore, the Arbiter needs to consider whether the Complainant is an eligible customer because such consideration determines whether the Arbiter has the competence to consider the complaint.

¹⁶ A fol. 25

¹⁷ Ibid.

¹⁸ Article 11(1)(a)

¹⁹ Article 2: *"financial services provider" means a provider of financial services which is or has been licensed or otherwise authorised by the Malta Financial Services Authority ... during the period in relation to which a complaint by an **eligible customer** is made to the Arbiter ...*.

Article 22(2) of the Act enables the Arbiter to consider whether the complaint falls within his competence.²⁰

As also provided for in Article 2 of the Act, an **'eligible customer'** is defined as:

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

Facts of the Case and other relevant Aspects

In order to decide whether the Complainant is an Eligible Customer, the Arbiter has to consider the facts and other relevant aspects raised and emerging in this case.

The following is a summary of the pertinent points arising with respect to the disputed transactions as evident from the documents provided, hearings and submissions made during the case:

- (i) The Complainant, (whose address was indicated in the Complaint Form as being in Qatar),²¹ used her bank, HSBC Bank Middle East Limited (Doha, Qatar),²² to initiate the payments to her Merchant.
- (ii) The Merchant was identified by the Complainant as *'Finantik at www.finantik.com, owned by Pro Star Griffith Corporate Centre'*,²³ having an address at Saint Vincent and the Grenadines as per her formal letter of complaint to the Service Provider dated 24.11.2020 and the extracts provided from the website of the Merchant's internet platform.²⁴
- (iii) As evidenced in the bank's statement presented by the Complainant during the proceedings of the case, there were five transactions for a total of USD12,300 that were debited from the Complainant's MasterCard held

²⁰ Article 22(2) *'Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence.'*

²¹ A fol. 1

²² A fol. 11 & 34

²³ A fol. 2

²⁴ A fol. 6 & 10

with HSBC Bank (Qatar) over the period 31 October 2019 to 30 December 2019 as follows:²⁵

- USD5,000 with a '*Transaction Date*' of 31 October 2019;
- USD2,000 with a '*Transaction Date*' of 7 November 2019;
- USD2,000 with a '*Transaction Date*' of 7 November 2019;
- USD1,000 with a '*Transaction Date*' of 7 November 2019;
- USD2,300 with a '*Transaction Date*' of 30 December 2019;

As per the '*Transaction Details*' indicated in the said bank statement issued by HSBC Bank (Qatar), the mentioned payments were all made to '*buysmartbits.com*'.²⁶

- (iv) During the hearing of 18 May 2021, it was noted (by the representative of the Service Provider)²⁷ that '*the entity which received the payments in question ... was All Media EOOD ... a Bulgarian company*'.²⁸

It was further testified that '*Being asked who the merchant is for Ask4bit.com, I say that is not our merchant of record*',²⁹ and that '*The merchant we have on record was All Media EOOD and the website is called Buysmartbits, which is also the same name that Truevo would have sent and which the customer would have received in her statement*'.³⁰ It was also confirmed that the merchant was, '*in this case a cryptocurrency merchant*'.³¹

- (v) The Service Provider presented a copy of its Merchant Agreement (dated 19 March 2019) that it entered into with its client '*All Media EOOD*',³² the

²⁵ A fol. 34-36

²⁶ *Ibid.*

²⁷ A fol. 42

²⁸ A fol. 37

²⁹ *Ibid.*

³⁰ A fol. 38

³¹ *Ibid.*

³² A fol. 45-77

latter being indicated as having a registered address in Bulgaria and its 'Trading Name' being 'Buysmartbits'.³³

Truevo further confirmed that the MCC code assigned to All Media EOOD at the time of the disputed transactions was 6051.³⁴ It is noted that, in its final submissions, Truevo *inter alia* submitted 'that the Card Schemes instructed the Respondent to assign the code in question for cryptocurrency merchants'.³⁵

- (vi) The Complainant sent a formal letter of complaint to the Service Provider **over 10 months after the last disputed transaction (of 30/12/2019)**, by way of its letter dated 24.11.2020.³⁶
- (vii) As testified during the hearing of 6 April 2021, the Complainant had contacted her bank to make a recall of her money. During the said hearing, the Complainant testified that:

*'After having done some payments by Mastercard and by wire transfer, later, I contacted my bank, the issuer of my Mastercard, to recall my money.'*³⁷

No further details about the outcome of the recall with the Complainant's bank emerged during the proceedings of the case.

Determination of Eligibility - Considerations

The Complainant did not file any evidence showing that there was any form of contractual obligation or contractual relationship existing between the Complainant and Truevo.

The Arbiter has no proof that there was any contract and/or contact between the Complainant and Truevo and/or its agents prior to, or during, the disputed transfers.

³³ A fol. 47

³⁴ A fol. 44 - MCC 6051 is the category applied for 'Quasi-Cash Merchant', in the category of 'Service Provider', as per pg.136 of the Mastercard Quick Reference Booklet of 15 October 2019 - <https://www.mastercard.us/content/dam/mccom/global/documents/quick-reference-booklet-merchant-edition-oct2019.pdf>

³⁵ A fol. 99

³⁶ A fol. 6

³⁷ A fol. 28

The Complainant has, in fact, never claimed that it had a contractual relationship or any direct dealing or contact with Truevo. The Complainant had only contacted Truevo, after contacting her bank and after discovering Truevo's involvement in the payment process during her communications with her bank, HSBC Bank Middle East, as she herself confirmed during the proceedings of this case.

During the hearing of 6 April 2021, it was noted that the Complainant *'got to know from the statements that Truevo was involved in this transaction'*.³⁸

The Complainant noted, during the said hearing, that:

'I am only suing Truevo because they are the acquiring bank and because, firstly, they are supposed to do due diligence of the parties and not just receive their money and transmit it. They are an entity with a rightful position to do proper due diligence of the financial institutions whose money is crossing their channels. Secondly, when one gives them an alert, they are supposed to cooperate and not deny the transactions'.³⁹

By virtue of its licence as a financial institution under the Financial Institutions Act ('the FIA'), Truevo's activities were only limited in terms of the said licence, to:

'payment services as defined in the Second Schedule' to the FIA; 'issuing and/or acquiring of payment instruments' and 'money remittance'.⁴⁰

With respect to the case in question, Truevo's role was limited to processing payments but not as the Payment Services Provider of the Complainant. The Complainant, as payer, had her own payment service provider, this being her bank, HSBC Bank in the Middle East. Such payments were initiated by the Complainant from her Mastercard account held with HSBC Bank Middle East and aimed to her merchant, Finantik/Pro Star Griffith Corporate Centre.

The transactions were ultimately clearly consented to by the Complainant and the disputed transactions did not involve incorrectly executed payment

³⁸ A fol. 30

³⁹ A fol. 29

⁴⁰ <https://www.mfsa.mt/financial-services-register/result/?id=5400>

transactions nor has the Complainant ever raised the issue that the funds had not adequately arrived at her merchant.

It is furthermore noted that it has not emerged that the merchant identified by the Complainant, *'Finantik'/Pro Star Griffith Corporate Centre'*, with a purported address in Saint Vincent and the Grenadines, was actually Truevo's client, given that the client of the Service Provider was a different entity/party named *'All Media EOOD'*, whose registered address was indicated as being in Bulgaria.

The exact links and connections between *'All Media EOOD'* and *'Finantik'/Pro Star Griffith Corporate Centre'* have not been clearly explained nor determined during the case. What has rather emerged during the proceedings is that the payments made by the Complainant from her Mastercard account and intended for *'Finantik'/Pro Star Griffith Corporate Centre'* were made to *'buysmartbits.com'* (as per the instructions given to the Complainant by the former),⁴¹ with *'buysmartbits.com'* being the trading name of *'All Media EOOD'*.⁴²

As indicated, the Complainant's Complaint is about the alleged inadequate due diligence done by the Service Provider on her merchant, *'Finantik'/Pro Star Griffith Corporate Centre'*. As pointed out, it has not been clearly and unequivocally determined, in the first place, that the party who was meant to provide the disputed investment trading account service and on whom the Complainant alleged inadequate due diligence by Truevo, was actually the client onboarded by the Service Provider.

In any case, the Arbiter considers that it has not emerged that the Complainant has a valid complaint against the Service Provider which can be considered by him in terms of Cap. 555 of the Laws of Malta.

The Arbiter notes *inter alia* the arguments put forward by the Complainant (through her legal advisors), on the point of the relationship between the

⁴¹ During the hearing of 6 April 2021, the Complainant testified *inter alia* that *'The Relationship Manager of Finantik used to call me and he established the link for the transactions ...'* - A fol. 29

⁴² A fol. 47

Complainant and the Service Provider. In her final submissions it was stated, for example, that:

*'Insofar as the acquirers are publicly regulated and licensed, the regulatory framework applicable to them defines the legal expectations of payors towards said payment institutions. It contradicts the common sense and the essence of the EU Law to deny a claim of a cardholder against an acquirer just because there is no contractual relationship between them. The absence of a formal direct agreement does not mean by far that there are no justified and protected legal expectations and reliance that is subject to legal protection and that each violation against those expectations and reliance shall remained unsanctioned'*⁴³

...

*In our opinion, even though Ms BH has no direct written agreement with Truevo Payments Limited, as one of its immediate clients, still does not mean that Ms BH does not have a legal relationship to the acquirer and justified and legally protected expectations towards Truevo Payments as a licensed financial institution and payment services provider to observe all applicable rules and regulations and especially those related to KYC, AML and fraud prevention and combating ...'*⁴⁴

However, notwithstanding the extensive submissions provided by the Complainant, it is considered that no specific or adequate provision from any applicable legislation, regulation or terms and conditions, has ultimately been quoted or been produced by the Complainant to demonstrate the Service Provider's obligations and duties applicable specifically towards the Complainant and/or dealing with or catering for the Service Provider's potential liability towards the Complainant in the context of the particular circumstances of the case.

The Arbiter notes that in the said final submissions, the Complainant further referred to the definition of 'payment service user' as per 'Art. 4(10) Directive 2015/2336' to justify her direct claim against Truevo.⁴⁵

⁴³ A fol. 84

⁴⁴ A fol. 88

⁴⁵ Ibid.

The Arbiter, however, considers that this case does not relate to issues involving the liability of payment service providers in circumstances as provided for under the provisions of the Payment Services Directive 2015/2366/EU ('PSD2') which regulates payment services throughout the EU.⁴⁶ It does not involve losses related to, for example, unauthorised payment transactions, non-execution, defective or late execution payment transactions.

The Arbiter accordingly considers that there is no basis on which the Complaint could be considered even from the perspective of the liability provisions specifically catered for under the Payment Services Directive for the reason mentioned.

It is further noted that in its final submissions, the Complainant claimed several '*possible breaches*'⁴⁷ on the part of the Service Provider of various directives and regulations where reference was made to Article 9 and Article 66(1)(a) of the Capital Requirements Directive (Directive 2013/36/EU); Article 18(5) of the Payment Services (PSD2) Directive, (Directive 2015/2366/EU); Article 5(1) and Article 42 of MiFID II Directive (Directive 2014/65/EU); Article 11 and Article 13 of the Fourth Money Laundering Directive (Directive 2015/849/EU); as well as sections R5, R10 and R13 of the FATF Recommendations; the VISA VCR and/or MasterCard Rules and Regulations; and the Payment Services Provider '*own Directives for Fraud Control and Prevention of Suspicious Payments*'.⁴⁸

The Arbiter, however, does not consider the quoted provisions as supporting in any way the Complainant's eligibility for the submission of a complaint under Chapter 555 of the Laws of Malta which regulates the Office of the Arbiter.

Conclusion

The context of the Complaint involves no payment service contract between the parties to this case as indicated above. A complaint with the Arbiter can

⁴⁶ Furthermore, as indicated in Preamble 87 of Directive 2015/2366, '*This Directive should concern only contractual obligations and responsibilities between the payment service user and the payment service provider.*'

⁴⁷ A fol. 86

⁴⁸ A fol. 86-87

only be filed against the service provider of a complainant in line with the provisions of Chapter 555 of the Laws of Malta. The Arbiter cannot extend his jurisdiction or competence.

In the particular circumstances of this case, the Arbiter considers that the Complainant was not *'a customer who is a consumer of'* Truevo, neither that Truevo *'has offered to provide a financial service'* to the Complainant nor that the Complainant *'has sought the provision of a financial service from'* Truevo for the purposes of the Act. The Complainant is accordingly not deemed to qualify as an *'eligible customer'* in terms of Article 2 of the Act.

Given that the Complainant cannot be considered an *'eligible customer'* under the Act, the Arbiter has no competence to deal with this complaint in terms of the Act.

Therefore, the Arbiter decides that he cannot consider this complaint any further.

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

Dr Reno Borg
Arbiter for Financial Services