

Before the Arbiter for Financial Services

Case ASF 063/2022

NC per pro XXXXX

Passport No. ____ (personal)

**Registration No. ____ (Company)
(the Complainant(s))**

Vs

Multitude Bank plc

Formerly known as Ferratum Bank plc

Reg. No C 56251

(the Service Provider or the Bank)

Sitting of the 6 June 2023

The Arbiter

Having seen the Complaint filed on 08 June 2022 related to blocking by the Service Provider of Euro 123,420.78 in an account held in the personal name of the Complainant which the latter feels have been unjustly blocked for over 5 years without being given a proper explanation for such measure.

The Complainant is requesting the Arbiter to:

- Order the release of the funds
- Close the Account
- Refund Eur 5,000 to cover the attorney fees
- Award damages up to EUR 25,000 for loss of earnings of 4 years (at the time of filing the Complaint on 06 June 2022).¹

¹ P. 1-7

The Complainant

The Complainant is a French citizen and also the Chief Executive Officer of a French Company named XXXXX.²

He opened an account in his personal name with the Service Provider on 07 March 2018. The Complainant claims that although the Account was in his personal name, he made it clear at the onboarding stage that it will be used for the professional purposes of his company XXXXX.

The Service Provider maintains that at the time of opening of the account:

“... it only served consumers who were natural persons. This information was also contained in the terms and conditions of the Bank which, at the time, were available on the website and which were also presented to the customer as part of the application process.”³

The Complainant *per contra* maintains that at the onboarding stage, the Service Provider had verbally confirmed ***“that opening a professional bank account was possible”*** before starting the procedure to do so.

A few days after the account opening, the Bank blocked the account as its payment monitoring procedures indicated that it was being used for business rather than personal purposes. On 24 April 2019, the Complainant, in his capacity as President of XXXXX, sent a complaint to the Service Provider about the delay in releasing the funds. The Bank replied to the Complainant in his personal capacity without particularly referring to the Complaint of XXXXX, explaining that:

“The account was blocked for security reasons in accordance with the relevant provisions of Directive (EU) 2015/2366 (the so-called ‘PSD2’) and the applicable terms and Conditions. ... we are currently carrying out further internal controls to ensure that the available balance to be further credited is the one actually resulting from transactions duly authorised from your end.”⁴

² P. 8

³ P. 119

⁴ P. 10

On 17 August 2021 (more than 3 years after the funds were blocked), the Complainant's French lawyer, _____, officially wrote to the Bank on behalf of the the Complainant in his personal capacity, i.e., on behalf of Mr NC, demanding release of the funds failing which threatening to start legal action including interest and costs to assure the defence of his client's rights.⁵

In the Bank's reply of 02 September 2021, through their legal advisor, it was disclosed that the non-release of blocked funds:

“was occasioned by reasons outside the control of the Bank, which the Bank is prohibited from disclosing due to legal and regulatory obligations applicable to it. I assure you that the Bank is in fact adhering fully with its legal requirements in this case.”

One notes here that the reasons the Bank gave in 2021 for the continued blockage of the funds are different (without disclosing them) from the original reasons given in 2019 related to PSD2 regulations.

In their reply of 27 June 2022⁶ to the official complaint filed with the OAFS, the Service Provider, apart from repeating their position as had been already explained to the Complainant, raised two preliminary pleas:

1. The Bank does not recognize XXXXX as a payment services user in relation to the above mentioned (i.e., the blocked) account. For this reason, the Complaint by XXXXX should be rejected.
2. In terms of Section 21(1) (c) of the Act CAP 555 (the ACT), the Arbiter has no competence to hear the case as it was filed with the OAFS more than four years from the date when the Complainant had knowledge of the account blockage.

In respect of the first preliminary plea, the Bank elaborated at the sitting of 14 November 2022 that:

“Also there is a bit of a mix up because the account was opened by Mr NC so our customer was Mr NC and communciation was with Mr NC. This complaint

⁵ P.12

⁶ P. 119 - 120

was not made by Mr NC but by XXXXX which is not even our customer and does not even have an account opened with us.”⁷

The Preliminary Pleas

The Bank does not recognize XXXXX as a payment services user in relation to the above mentioned (i.e., the blocked) account. For this reason, the Complaint by XXXXX should be rejected.

This preliminary plea basically relates to whether the Complainant is an Eligible Customer in terms of the Act.

An Eligible Customer is defined in the Act as:

‘a consumer of a financial service 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 the financial services provider.’⁸

This revolves on whether the Complaint was filed by Mr NC in his personal capacity or by Mr NC on behalf of his Company XXXXX.

In the Complaint Form filed with the OAFS, Mr NC is defined in Section A1 as Complainant.⁹ However, in the next page of the Complaint Form in Section A2 which asks if the Complaint was on behalf of a business, it is indicated that it is being filed on behalf of XXXXX.¹⁰

Furthermore, in the Signature Panel¹¹ which requests ‘Name of Complainant/Authorised signatory fo the business’ there is written ***‘Mr NC per pro XXXXX’*** above the signature of Mr NC.

This leaves little doubt that the Complaint was filed by XXXXX and not by Mr NC personally. In further evidence of this, the first complaint letter sent to the Bank was on a letterhead of XXXXX and shows as signatory Mr NC as President of XXXXX.

⁷ P.152

⁸ Art. 2 CAP 555

⁹ P. 1

¹⁰ P. 2

¹¹ P. 7

Consequently, there is a strong case to argue that this complaint was not filed by an eligible customer, as XXXXX:

- was never a customer of the Service Provider
- The Service Provider never offered to provide a financial service to XXXXX
- XXXXX never sought the provision of a financial service from the Respondent Company.

On this latter point, the Complainant made a case that at the onboarding stage, he made it clear that the account would be used for professional purposes. In fact, the recordings of the conversations conducted at the onboarding stage were retrieved and the particular excerpts translated to English are as follows:

'Customer:

I'm calling to find out if you accept professionals?

Bank agent:

So, no, no we don't open pro (professional) accounts, they're just nominative accounts.

Customer:

Meaning?

Bank agent:

In your name.

Customer:

Alright, so alright. But there are pros who use it or not at all?

Bank agent:

Yeah probably huh. No, but it's in their name.'

There were arguments whether the translation was accurate and whether meanings were lost in translation.

The Arbiter feels that the arguments are rather frivolous because:

- The first reply which conditions the rest of the conversation is that the Bank only opens personal accounts.
- If the Complainant wished to have a business account, he should have sought a bank that opens a business account.
- It is normal banking practice and part of Anti-Money Laundering and Prevention of Terrorism regulations that accounts be in name of beneficial owners of the funds contained therein.

In terms of Section 21(1)(c) of the Act CAP 555 (the ACT) the Arbiter has no competence to hear the case as it was filed with the OAFS more than four years from the date when the Complainant had knowledge of the account blockage.

It has been proven that the Mr NC was informed that his account was blocked in March 2018. XXXXX¹² filed their complaint with the Service Provider in April 2019.

Section 21(1)(c) - The cited article states that the Arbiter has competence to hear a case if the *'complaint is registered in writing with the service provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.'*

Once the complaint has been registered in writing with the Service Provider, the Act CAP. 555 establishes no time limit for filing the Complaint with the OAFS.

As the Complainant has filed his complaint with the Service Provider well within the 2-year period, then the Arbiter has competence to continue hearing this case as it is not prescribed by the cited Article of CAP. 555.

Decisions re preliminary pleas

For reasons above stated, the Arbiter is rejecting the second preliminary plea based on incompetence due to prescription but upholding the first preliminary plea based on the claim that the Complainant is not an Eligible Customer.

¹² For the purpose of this preliminary plea, XXXXX and Mr NC are both considered complainants. The issue of who is the real Complainant was addressed in the first preliminary plea.

The Arbiter therefore upholds the preliminary plea for lack of competence to continue hearing and adjudicate this Complaint by virtue of the fact that the Complainant is not deemed as an eligible customer as defined in CAP. 555 and, in accordance with Art. 11(1)(a) of CAP. 555, the OAFS has no competence to continue hearing this complaint

Further observations

Independently of the merits of this particular case, the Arbiter feels it necessary to register his views and concerns regarding cases where customer funds remain blocked for a considerable period of time without the banks or financial institutions being in a position to give proper explanations or offer remedies to affected clients.

The Arbiter is sensitive to the fact that in cases where there are investigations related to AML/FT issues, Banks are obliged by regulation not to disclose information to their customers.

The Arbiter has no wish to issue any decisions which oblige licensed institutions to choose whether to break regulations or the decision of the Arbiter. Probably this would oblige the licensed institutions to appeal the Arbiter's decision and seek guidance from the Courts.

On the other hand, the Authorities need to be sensitive to customers' rights too and, therefore, their investigations need to be conducted with the necessary despatch.

The Arbiter appreciates that investigations often take considerable time and the general protection of society prevails on expectations of individual clients. But every effort needs to be made to bring investigations to a conclusion so that licensed institutions can be in a position either to release funds or explain to their clients more properly why they are being blocked.

The Arbiter will be sending a copy of these remarks to the Malta Bankers Association, the Malta Financial Services Authority and the Financial Intelligence Analysis Unit.

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

Alfred Mifsud
Arbiter for Fiancial Services