

Before the Arbiter for Financial Services

Case ASF 117/2022

EY

(‘the Complainant’)

vs

Phoenix Payments Limited

**(C 77764) (‘PPL’ or ‘the Service
Provider’)**

Sitting of 8 May 2023

The Arbiter,

Background to the case

The Complainant has filed an elaborate complaint against the Service Provider in relation to a loss of Euro 30,000 that he incurred when he was duped to transfer such funds to a beneficiary referred to as Woodstock OU who had an account with PPL.

Evidence was provided that the Complainant made such transfer in lots of Euro 10,000 each through his account with Sparkasse Regensburg on the 3rd and 4th December 2020.

At some unclear point following the payments effected, the Complainant must have realised that he has been fraudulently duped in making these payments by someone referred to as Proquote27.

The Complainant made an official complaint to the Service Provider on 02 March 2022 claiming that their failure to adopt sufficient Know Your Customer and Anti Money Laundering (KYC/AML) procedures rendered PPL as an accomplice in the

fraud and demanded a full refund of the loss incurred. The Complainant also blamed PPL's inadequate transaction monitoring and fraud detection processes as contributing to his loss.

Despite his rather lengthy letter of complaint (13 pages), the Complainant does not explain why he waited for some 16 months to lodge his complaint and what other measures he had taken to recover his loss from the reported fraudsters. Nor did he give any indication of the type of fraud which persuaded him to part with his money in the first place although in his letter of complaint he does state that the fraudster *'offered investment services/advise not related to real market/exchange data (manufacturing false charts etc.). The trading platform was purposely manipulated, in a way that each client would ineluctably and unknowingly lose money, as the existence itself of the trades was made-up.'*

Service Provider Reply

The Service Provider replied to the Complainant by means of an e-mail dated 14th March 2002 informing that Woodstock OU was no longer their client as they had terminated the relationship and closed all accounts with such entity. They also assured that *'our Compliance Functions has already taken action in terms of the Laws of Malta and the respective authorities have been notified'*.

Filing of Complaint with OAFS

The Complainant filed his complaint with OAFS on 03.10.2022 and he claimed compensation of Euro 30,000 from PPL for reason that they *'provided service to the scammer who have stolen my funds under fake pretences of investments'*.

The Service Provider filed his response beyond the 20-day limit but subsequently gave valid reasons which justified the late reply which was allowed to be included in the proceedings.

In their reply, the Service Provider registered a preliminary plea that the Complaint is not a legitimate complaint as PPL *'has no relationship whatsoever, whether contractual or otherwise, with the Complainant and in no manner was it involved or in contact with the Complainant when the alleged claim arose.'*

PPL also maintained that they *'never engaged to provide any service to him (the Complainant) such that it is reiterated that have no contractual arrangements with or obligations towards the Complainant'*.

Hearings

Two hearings were held on 16.01.2023 and 20.02.2023 but in both cases the Complainant did not participate as he claimed not to understand proceedings in the English language. This is strange as his written communications were in quite elaborate English and did not indicate that he was being assisted by a third-party advisor.

In the hearings no fresh issues emerged.

Arbiter's jurisdiction

Chapter 555 of the Laws of Malta (the Act) regulates the procedure before the Arbiter for Financial Services.

The Act *'set up the Office of the Arbiter for Financial Services with power to mediate, investigate, and adjudicate complaints filed by a **customer** against a **financial services provider**'*.

Article 19(1) further 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.'*

Therefore, the Arbiter has to examine whether the Complainant was an **eligible customer** of the **financial service provider**.

'Eligible customer' is defined as follows:¹

'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. '

¹ Article 2, definitions

Then, **financial services provider** is described as follows:²

*“financial services provider” means a provider of financial services **which is or has been licensed or otherwise authorized by the Malta Financial Services Authority**³ in terms of the Malta Financial Services Authority Act or any other financial services law’.*

It is quite evident that the Complainant is not an eligible customer as defined in the Act.

Decision

For this reason, the Arbiter does not have jurisdiction to deal with the merits of the case.

The Arbiter sympathises with the Complainant who is an innocent victim of a scam. However, it is in order to sound a clear warning to unsophisticated retail investors that they should be on their guard when they receive unsolicited attractive financial investment offers. They should bear in mind that if the offer looks to be too good to be true then the great probability is that it is not true. This should be enough reason to raise their caution and get expert advice before parting with their money, as quite often fraudsters are experts in ensuring that such funds are untraceable and unretrievable.

This decision is without prejudice to any action which the Complainant may be entitled to file in another jurisdiction against the perpetrators of the fraud.

Due to the particular circumstances of this case and because the case has been decided on a procedural issue, each party is to bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

² *Ibid.*

³ Emphasis added by the Arbiter