

## Before the Arbiter for Financial Services

Case ASF 128/2022

GH

(‘the Complainant’)

vs

Global Shares Execution Services Ltd

(C86113) (‘the Service Provider’)

Sitting of 6 June 2023

The Arbiter,

Having considered **the Complaint** relating to the alleged lack of service extended by the Service Provider to the Complainant for which the Complainant, although admitting he suffered no financial or material loss, is demanding as a remedy:

- a) compensation of GBP<sup>1</sup> £1000 for the lack of service;
- b) written warnings to be issued by the Human Resources Department of the Service Provider to two of its employees whom the Complainant considers are responsible for the alleged lack of service.

Furthermore, in his final submissions, the Complainant extended his remedy expectations by including a request for:

- c) compensation of a further GBP £2,000 regarding an estimated additional tax burden;<sup>2</sup>

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<sup>1</sup> Great Britain Pound

<sup>2</sup> No evidence was provided that the tax claim is related to the Complaint in question and this matter was not part of the original complaint.

- d) a letter of apology from the CEO of the Service Provider;
- e) an acknowledgment of gross misconduct and unprofessional behaviour from an additional employee of the Service Provider apart from those already mentioned in (b) above.

**In its reply, the Service Provider essentially submitted the following:<sup>3</sup>**

Whilst acknowledging that their service fell short of reasonable expectations, the Service Provider refused any compensation claims as it claimed that the Complainant had admitted not incurring any loss.

The Service Provider considers the other demands as internal matters and not in the scope of any remedy that is normally applicable to cases referred to the Office of the Arbiter for Financial Services.

Furthermore, the Service Provider maintains that the Complainant is not an eligible customer as there is no contractual or legal relationship between the Complainant and the Service Provider. The latter only had a relationship with the Complainant's former employer for the purpose of administering the employer's share option scheme, to which the Complainant was no longer entitled upon termination of his employment.

The Service Provider explained that any access to the system administering the employer's share option scheme was authorised by the former employer who automatically removed such access rights upon termination of employment.

Accordingly, the Service Provider contends that, in terms of Cap. 555 ('the Act'), the Arbiter does not have competence to hear this Complaint.

**Preliminary**

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

**Considers:**

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<sup>3</sup> Page (P.) 42 - 43

### ***Preliminary Plea regarding the competence of the Arbiter***

Before proceeding to the merits of the case, the Arbiter must consider first whether he holds the necessary competence to hear and adjudicate this case.

The function of the Arbiter is to deal with complaints filed by eligible customers.<sup>4</sup> Eligible Customer is defined in Article 2 of the Act 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.'*

During the proceedings of the case, it was satisfactorily established that the contractual relationship that the Complainant is basing his Complaint and claims upon was between the Service Provider and the Complainant's former employer.

It was also satisfactorily established that, upon the termination of his employment, the Complainant had no assets allocated to him, being shares or options, with respect to the contractual arrangement entered into between the Service Provider and the Complainant's employer.

It was further established that the Complainant suffered no material loss, and his claim is related to the lack of service and disciplinary measures he is expecting the Service Provider to take against its personnel who did not service the Complainant to his expectations.

Having considered the particular circumstances of this case, the Arbiter deems the Complainant to not satisfy the requisites of an Eligible Customer for the purposes of the Act. He is essentially not considered to be a consumer of the Service Provider, nor has he been offered a financial service by the Service Provider and neither has the Complainant sought the provision of a financial service from the Service Provider.

**On this basis, the Arbiter considers that he has no competence to adjudicate this Complaint given that in terms of Article 19 (1) of the Act, his function is *'to deal with complaints filed by eligible customers'*.**

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<sup>4</sup> Art 11 (1)(c) and Art. 19 (1) of Cap. 555

The Arbiter further notes that even in the circumstance where the Complainant was a consumer of the Service Provider (which he was not as outlined above), the Arbiter would still have no competence to deal with this Complaint and would decline to exercise his powers under the Act in terms of Article 21(2)(c) given that, in his opinion, the Complaint is frivolous and vexatious.

The language used by the Complainant in making his case is, in many instances, not only adversarial but offensive; and his expectations that the Arbiter should order a Service Provider to provide written apologies or to interfere with its internal disciplinary procedure is not reflective of the functions of his Office.

Neither do the remedies requested ultimately fall within his adjudication powers under Article 26(3)(c) of the Act.<sup>5</sup>

**For the reasons mentioned, the Arbiter is accordingly dismissing this case.**

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

**Alfred Mifsud**  
**Arbiter for Financial Services**

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<sup>5</sup> In terms of Art. 26(3)(c)(iv) of the Act any monetary compensation that the Arbiter may award has to be in respect of *'any loss of capital or income or damages suffered by the complainant as a result of the conduct complained of'*. No satisfactory evidence has been provided that the Complainant has suffered any such loss or damages. In fact, his claim for compensation in the original complaint says clearly ***'compensation for the lack of service received (still received) from Global Share for a total amount of £1,000'*** – P. 4.