

Before the Arbiter for Financial Services

Case No. 054/2020

BG

(the Complainant)

vs

Truevo Payments Limited

(C62721)

(Truevo or the Service Provider)

Sitting of the 9 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 assistance 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, in summary, the Complainant claimed: (i) that the Service Provider processed transactions to a party which had no financial license, forged his signature and disappeared with his savings and (ii) that the Service Provider did not assist him to recoup the losses when it had the means to do so.

In his Complaint Form, the Complainant explained *inter alia* that:

¹ A fol. 1-42

- (i) He was misled by Olsson Capital to deposit his savings, who forged his signature and disappeared;
- (ii) He had been unsuccessfully trying to get his money back since then;
- (iii) The banks who took the money never replied to his letter or to his legal representatives;
- (iv) Truevo has been silent on the issues raised in his letter and refused to respond to it despite several attempts;
- (v) He thinks that Truevo was '*involved with Olsson Capital which related to possible fraud, scam, hiding taxes and/or money laundering*'.²

In his Complaint Form, the Complainant referred to and attached various documentation, which attachments included his formal letter of complaint dated 29 November 2019 sent to the Service Provider through his legal advisors.³

The said formal letter of complaint asked *inter alia* for the support and understanding of Truevo '*in the case concerning Olsson Capital acting through the Internet-platform www.olssoncapital.com, which website is/was owned and operated by namely: Carter Enterprises OU having registered address at 85 James Bouchier Blvd. Sofia Bulgaria, hereby referred to as the Merchant ...*'.⁴

The letter further explained the issues that the Complainant had with the merchant, Olsson Capital, and the Complainant's expectations from Truevo where it was submitted:

- that the Complainant had accessed the internet-based platform of Olsson Capital/Carter Enterprises OU ('the Merchant') available under www.olssoncapital.com where '*... the Merchant did not provide a contract, however, the terms and conditions contained on the site are intended to govern the relationship and responsibilities of the parties*' and that it was

² A fol. 4

³ A fol. 16-35

⁴ A fol. 16

- considered that *'Therefore, all information on the web-site is relevant for determination of the services and the rights and obligations of the parties'*;⁵
- that the Merchant *'claimed to be a financial investment firm dealing with regulated financial tools, such as CFDs, indices, binary options, commodities etc. ...'* but that a search on the Merchant eventually indicated that the Merchant was *'not licensed to offer regulated financial tools and to provide financial advice to third parties'* and, also, *'that there were warnings and citations for lack of license issued against the Merchant'*;⁶
 - that on the reliance on the claims made by the Merchant, the Complainant ordered the *'... opening of an investment brokerage account to be used for subsequent trading with financial tools in real time'*, following which *'certain amounts of money were withdrawn from [the Complainant's] bank account'*, these being the disputed transactions;⁷
 - that there was an alleged misrepresentation by the Merchant of its services in view of the lack of financial services license and given that the Merchant did not provide the investment brokerage account ordered by the Complainant and did not keep the Complainant's money on his account. It was claimed that the service was not *'as described'* and involved possible fraud as the Merchant never intended or was *'able to provide the claimed services in the described manner'*;⁸
 - that after finding out that he was misled by the Merchant, the Complainant cancelled his account with the Merchant and *'requested return of his money by the Merchant'* which was however *'tacitly refused...'*;⁹
 - that the following breaches of applicable law could have taken place:
 - 'a) Trading regulated financial tools without required license; Facilitating persons to provide financial services without required licence/ possible joint knowledge (accessory) in trading regulated financial tools without required license*

⁵ A fol. 17

⁶ *Ibid.*

⁷ A fol. 17 & 35

⁸ A fol. 17

⁹ *Ibid.*

- b) *Possible neglect of the bank's duty to actively prevent fraud and abnormal payment patterns*
- c) *Possible neglect of the legal provisions for measures against money laundering*
- d) *Possible theft/fraud committed'.¹⁰*

In the said letter of complaint, it was further explained/submitted:

- that the Merchant claimed to be a *'financial broker and provide a self-directed brokerage/investment account with the ability to trade financial instruments ... and withdraw funds on request'* and was also *'advertising and promoting itself as provider of financial advice'* as per the extracts provided from the Merchant's website (attached to the formal complaint);¹¹
- that *'only licensed broker can contact persons intending to deal with regulated financial tools ...'*¹²
- that the business model of the Merchant, involving the provision of financial services should have been disclosed to Truevo when the Merchant applied for Truevo's services and that the due diligence required on Truevo's part prior to commencing processing payments for the Merchant should have raised awareness as to whether the Merchant had the required licence. It was further submitted that the bank/payment services provider should have refused processing payments for such Merchant, who lacked a licence, *'in order to meet the mandatory regulations'*;¹³
- that the Merchant had been cited and warned against by the supervisory authorities as it did not possess the required licence to provide the services it was selling. Reference was made to the extracts from the FCA's website (a copy of which were also attached to the formal complaint). It was

¹⁰ A fol. 18

¹¹ A fol. 27-29

¹² A fol. 18

¹³ A fol. 19

submitted that such information was publicly freely available and Truevo should have known about it;¹⁴

- that not just the Merchant but also the person(s) that allowed and/or contributed in some manner for such situation were deemed as an offender against the financial system stability;
- that Truevo *'could under certain circumstances be considered as a person(s) facilitating provision of financial services by the Merchant or others, as the case may be, unless they prove that they were compliant with the legal provisions applicable for the transactions in question, for example that they were presented with the required know-your-customer documents, including financial license, or if they prove successfully that their due diligence does not include the check-up of such public available information of substantial importance for the concerned transactions'*;¹⁵
- that the Complainant is questioning whether Truevo has performed a diligent check-up of the Merchant including an enquiry in public registries such as regarding identity, licence and activity and whether Truevo was ever in possession of a valid licence of the Merchant as part of its due diligence checks;
- that merchants that buy/sell securities and other financial instruments *'shall be identified with MCC 6211 in line with VISA / Mastercard rules'* and that *'both card schemes set out requirements, consisting of adequate due diligence for merchants engaged in above-described activities ...'*¹⁶
- that *'all financial institutions are generally put under the obligation to meet appropriate measures for prevention of any fraudulent activity and abnormal payment patterns and schemes ...'*, with the applicable standards foreseeing banks and financial institutions making *'efforts so that such measures shall come into effect as a prevention ...'*, requiring *'customer authentication'* to be performed *'in order to protect the initiation of*

¹⁴ A fol. 33-34

¹⁵ A fol. 19

¹⁶ *Ibid.*

internet payments, identify abnormal merchant payment patterns, prevent fraud and protect access to sensitive payment data';¹⁷

- that the funds transferred by the Complainant *'were paid for opening and maintaining a segregated investment account, which never happened'¹⁸* and that the holding of funds by the Merchant does not mean that the funds are owned by the Merchant;
- that the Complainant is questioning the scope and result of the customer authentication that Truevo should have performed concerning the Merchant prior to commencing receiving payments on its behalf, and also queried whether Truevo accessed the Merchant's web-platform, the sites of the regulatory authorities and other sources of relevant information;
- that *'According to the European law all PSP's shall, before start processing payments related to Internet provided services, properly identify the merchants in also line with anti-money laundering legislation in the relevant jurisdiction', with such checks involving not just licences 'but also possible beneficiary owner's identification ... control of the validly existing payments' grounds, control of the transactions' direction (if to countries in suspicious list and with high risk), control of the Merchant's annual closings (filing, contents, correctness) etc', in order 'to prevent any activity in breach of the legal provisions and to hinder the persons to hide the income and the raised funds of any such activity',¹⁹*
- that if, for example, *'the Merchant is receiving continuously transactions for investment activity related services **without being in possession at any time of a valid license** for such activity a diligent PSP will have to cease receiving such payments immediately and to report this to the security authorities. If the bank/PSPS knows or should have known about **possible nominee-UBO structure**, it shall clearly identify the involved parties and to determine the associated risk arising out of such scheme. If the Merchant is not **filing annual financial closings** or is **filing annual financial closings as a dormant company**, but the bank/PSP is receiving payments on behalf of*

¹⁷ A fol. 20

¹⁸ *Ibid.*

¹⁹ A fol. 21

such Merchant, then the bank/PSP has only one option: to reverse processed and refuse future payments on behalf of the Merchant and to inform the security and national revenue authorities, or other competent authorities, about the case. Failing to do so means that the bank/PSP failed to meet material requirements of the anti-money laundering rules and regulations and could possibly become accessory to these unlawful acts';²⁰

- that the Complainant is questioning whether Truevo took measures against money laundering with respect to the disputed transactions and the result of such measures, including, whether the Merchant was assessed by Truevo as not being risky from a money-laundering perspective;
- that the Complainant asked for the reversal of all the transactions given that these were considered as null and void and in breach of the financial laws and resulting out of fraudulent activity in light of Olsson Capital not being duly licensed and thus not authorised to collect and hold funds or provide investment services;²¹
- that the fraudulent activity '*might have been prevented upon proper application of the due diligence standards by all the involved parties*'.²²

Complainant's Request to the OAFS

The Complainant asked to recover his savings of GBP7,500 which he claimed were transferred by his bank, Natwest UK, to Truevo.²³

Having considered Truevo's reply which states that:

'We hereby bring to your attention that Truevo does not have any contractual relationship with the Claimant, but only with Carter Enterprises OU, trading as Olsson Capital ("the Merchant"). As a Payment Card Acquirer, Truevo only deals with merchants. The complaint in question is as a direct result of the use of Merchant's services by the Claimant, and hence needs to be addressed to the Merchant.

²⁰ *Ibid.*

²¹ *A fol. 22*

²² *Ibid.*

²³ *A fol. 4*

*In addition, when the Complainant contacted Truevo Support via what seemingly appeared as his legal counsel, Truevo had immediately replied that as a regulated Financial Institution in Malta, Truevo is prevented by law to divulge any confidential information unless the request stems from the proper channels, such as, the local regulatory authorities. Furthermore, Truevo Support also recommended to the Claimant to directly contact the Merchant to try and resolve the issue.'*²⁴

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

Considers:

The Arbiter notes that the Complaint, in essence, relates as to whether Truevo, which processed payments made by the Complainant to the Merchant, carried out adequate due diligence checks on the Merchant and whether it could have prevented and not facilitated the alleged fraud perpetuated by the Merchant (by not onboarding the Merchant as a client or not processing the payments targeted to him) had it undertaken the said checks. In addition, the Complainant alleged that Truevo did not assist him to recoup his losses from the Merchant.

The Complainant has, on this basis, requested a refund of the payments processed by the Service Provider.

The Jurisdiction of the Arbiter

In its reply,²⁵ the Service Provider submitted that it did not have any contractual relationship with the Claimant *'but only with Carter Enterprises OU, trading as Olsson Capital ("the Merchant")'*.²⁶

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*.

²⁴ A fol. 46

²⁵ *Ibid.*

²⁶ *Ibid.*

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**.*²⁷

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*.²⁸

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.

Article 22(2) of the Act enables the Arbiter to consider whether the complaint falls within his competence.²⁹

'Eligible Customer'

Article 2 of the Act defines an *'eligible customer'* 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.'

²⁷ Article 11(1)(a)

²⁸ 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 ...*

²⁹ Article 22(2) *'Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence.'*

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 particular 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 is in the UK),³⁰ used his bank, Natwest UK to initiate the payments to the Merchant.
- (ii) The Merchant was identified by the Complainant as '*Olsson Capital*',³¹ which was claimed to be '*owned and operated by Carter Enterprises OU*' having a registered address in Bulgaria as per the extracts provided from the website of the Merchant's internet platform.³²

Olsson Capital was indicated by the Complainant as '*acting through the Internet-platform www.olssoncapital.com*'.³³

The Service Provider on its part confirmed *inter alia* that '*Carter Enterprises OU*', being the Merchant, '*operated under the trade name: Olsson Capital*'.³⁴

- (iii) There were six transactions for a total of GBP11,750 that were debited from the Complainant's VISA account held with Natwest UK over the period 5 February 2018 to 15 February 2018.³⁵

As indicated in the emails dated 9 April 2019 and 18 April 2019 sent by the Complainant to the Case Manager, Chargeback Complaints of Natwest, the said six transactions were made to '*two different retailer names*', one being

³⁰ As featured in his Complaint Form - A fol. 1

³¹ A fol. 4 & 16

³² A fol. 16 & 25

³³ A fol. 16

³⁴ A fol. 60

³⁵ A fol. 13 & 35

'*OlssonCapital*' and another one indicated as '*MP1 Me*OlssonCapital*', as follows:

'Olssoncapital

*Atlas Banka AD Podgorica
Bulevar Zorana Djindjica br.144v
Belgrade 11000
Republic of Serbia*

And

*MP1 me*olssoncapital*

*Truevo Payments Ltd
Swish Payments Limited
MWH Building, 1st Floor, Oratory Street
Naxxar NXR2504
Malta³⁶*

The transactions to the retailer under the name of '*Mp1.Me*OlssonCapital*' amounted to GBP4,250 whilst those to '*OlssonCapital*' totalled GBP7,500 as indicated in the email of 18 April 2019 sent by Natwest.³⁷

(The transactions indicated by Natwest involving Truevo accordingly amount to GBP4,250 and not GBP7,500 as claimed by the Complainant).

- (iv) The screenshot of the statement of account held with OlssonCapital, presented by the Complainant, confirms that the sum of GBP11,750 was deposited into Olsson Capital's account and received by the Merchant in February 2018. The '*Transaction Method*' was indicated as being by '*Credit Card*'.³⁸

³⁶ A fol. 12

³⁷ A fol. 13

³⁸ A fol. 9

The same statement of account indicates various unsuccessful attempts by the Complainant (over the period 20 February 2018 - 7 March 2018) to withdraw the funds from his account at OlssonCapital with the '*Transaction Status*' for such withdrawals indicated as '*Canceled*'. The '*Cancellation Reason*' on one of the said '*Canceled*' transactions stated as follows: '*Client decided to keep trading*'.³⁹

- (v) In its reply, the Service Provider submitted that it had no '*contractual relationship with the Claimant, but only with Carter Enterprises OU, trading as Olsson Capital*'.⁴⁰

However, in its affidavit dated 2 November 2020, it was stated that apart that it never had a direct relationship or any form of contractual relationship with the Complainant, '*Truevo does not have any contractual relationship with the Merchant either*'.⁴¹

The Service Provider clarified that '*Truevo only processed transactions for Mistral Pay, with whom it had a direct agreement. In fact, the sole role of Truevo in the above is that it offered payment acquiring services to Mistral Pay directly. The latter then offered processing services to the Merchant, which in turn provided services to the Claimant*'.⁴²

The Service Provider pointed out that '*Truevo's client was solely Mistral Pay of Malta (C63632) which is licensed by the MFSA to act as a financial institution*', where '*Mistral Pay acted as a Payment Facilitator in terms of the Card Scheme Regulations, i.e., an entity that will receive settlement of transaction proceeds from an Acquirer (Truevo), on behalf of its merchants (such as Carter Enterprises OU)*'.⁴³

- (vi) The Complainant sent a formal letter of complaint to the Service Provider more than 19 months after the disputed transactions, by way of its letter dated 29.11.2019.⁴⁴

³⁹ *Ibid.*

⁴⁰ *A fol. 46*

⁴¹ *A fol. 60*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *A fol. 16*

During the proceedings of this case, the Service Provider confirmed that it replied to the formal complaint of 29 November 2019 where it advised the Complainant that the *'cardholder's right of recourse should have been against the Merchant, rather than Truevo'*, and that *'it was not in a position to entertain the cardholder's request given that it does not have any relationship with the Complainant'*, and also *'advised the Complainant to proceed with informing the office of the Attorney General in Malta in line with the European Convention on Mutual Assistance in Criminal Matters, given that the matter related to an alleged fraud'*.⁴⁵

Determination of eligibility

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

The Arbitrator 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.

The Complainant has never claimed that it had a contractual relationship or any direct dealing or contact with Truevo. During the hearing of 21 October 2020, the Complainant confirmed *inter alia* as follows:

'I confirm that I only got to know about Truevo through bank statements and that I got to know at some point in time that Truevo processed payments. Yes, this is the only knowledge I have of Truevo. Being asked if I ever contacted Truevo before making the transaction, I say, no, I never contacted them.

***Being asked if Truevo ever processed any payments for myself, I say, no, I never came across them, I never heard about them'*.**⁴⁶

It is clear that Truevo was not the Payment Services Provider of the Complainant.

The Complainant, as payer, had his own payment service provider, this being his bank, Natwest UK. In fact, the Complainant has first communicated with

⁴⁵ A fol. 61

⁴⁶ A fol. 55

the Chargebacks Unit of Natwest regarding the disputed transactions, as emerging in the emails he exchanged with Natwest in April 2019 (attached to his Complaint Form).⁴⁷ In one of his emails to Natwest, the Complainant complained to Natwest that:

'I still believe that you shouldn't send money to unregulated retailers'.⁴⁸

As to the reasons for claiming a refund from Truevo, it is noted that during the hearing of 21 October 2020, the Complainant *inter alia* further stated that

'Asked why do I think that Truevo has to refund these monies, I reply, because they processed the money on behalf of Olssen Capital. The money was going somewhere. Where did Olssen Capital put the money I sent it? They put in Truevo bank'.⁴⁹

The Arbiter notes that **Truevo, which is not a bank, as at times referred to by the Complainant, but a Payment Services Provider ('PSP'),⁵⁰ had its role limited to processing payments sent to the Merchant from the Complainant's VISA account with Natwest UK.**

It is further noted that, by virtue of its licence as a financial institution under the Financial Institutions Act ('the FIA'), Truevo is not a deposit taker and its activities are 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'*.⁵¹

The Arbiter considers that this case does not relate either 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.⁵² It does not involve

⁴⁷ A fol. 12-13

⁴⁸ A fol. 13

⁴⁹ A fol. 55

⁵⁰ Truevo Payments Limited is a financial institution *'licensed to undertake payment services under the 2nd Schedule to the Financial Institutions Act (Payment Institutions)'* by the Malta Financial Services Authority - <https://www.mfsa.mt/financial-services-register/result/?id=5401>

⁵¹ <https://www.mfsa.mt/financial-services-register/result/?id=5400>

⁵² 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.'*

losses related to, for example, unauthorised payment transactions, non-execution, defective or late execution payment transactions.

The transactions were ultimately clearly consented to by the Complainant and the disputed transactions did not involve incorrectly executed payment transactions as the funds appear to have adequately arrived at the Merchant, being the intended recipient, given that the money feature in the Merchant's (Olsson Capital) statement of account as per the screenshot of the Merchant's account provided by the Complainant himself.⁵³

The Complainant had only contacted Truevo, after contacting his bank and after discovering Truevo's involvement in the payment process during his communications with his bank, Natwest, as he himself confirmed during the proceedings of this case as outlined above.

Moreover, it is noted that the said contact with Truevo occurred various months after the date of the disputed transactions. Over 19 months had indeed lapsed since the letter of complaint dated 29.11.2019 was sent to the Service Provider in relation to the disputed transactions undertaken between 05 February 2018 to 15 February 2018.⁵⁴

The said period even exceeds the permitted period for notifications giving rise to a claim by a payment service user under the PSD2.⁵⁵

The Arbiter considers that there is accordingly no basis on which the Complaint could even be considered from the perspective of the Payment Services Directive for the reasons mentioned.

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 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.

⁵³ A fol. 9

⁵⁴ A fol.16 & 35

⁵⁵ For example, the 13-month period after the debit date referred to in Article 71(1) of the PSD 2.

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