ARBITER FOR FINANCIAL SERVICES

NEWSLETTER

Issue 4 (May 2025)

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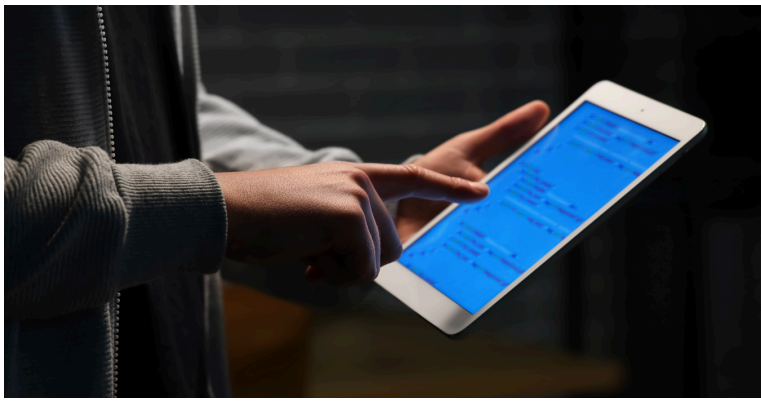


A WORD FROM THE ARBITER

Alfred Mifsud, Arbiter for Financial Services

At OAFS we are pleased to report a busy and productive first quarter of 2025.

Decisions

The Arbiter issued decisions on 38 complaints compared to 29 and 18 in the same period of 2024 and 2023, respectively. The following is a breakdown of Q1 decisions by sector (2023-2025):

Sector	2023	2024	2025
Banking / Payments	3	6	**13**
Corporate Services	0	0	**1**
Insurance	8	8	**14**
Investments	7	15	**10**
Total	**18**	**29**	**38**

At the end of March 2025, the Arbiter had only five cases ready for decision which were in fact decided in the month of April 2025. Another eight cases were awaiting final submissions after conclusion of the evidence collection process.

Another 31 cases were in the evidence hearing stage. All cases awaiting decision, awaiting submissions or in evidence hearing stage were related to complaints filed in 2024 and 2025.

Of these, only nine cases were related to complaints filed in the first half of 2024. One case was decided in April 2025 and the other eight cases are still in evidence gathering stage, being delayed by procedural issues.

Appeals

Of the 38 decisions issued, three were appealed – two appeals by the Service Provider and one appeal by the Complainant. By way of comparison, in Q1/2024, of the 29 decisions issued, there were four appeals, three by the Complainant and one by the Service Provider.

In Q1/2025, the Court of Appeal closed four appeals that were pending at the end of 2024. One of the appeals was closed as it was withdrawn, with the Court confirming the Arbiter's decision on all the remaining three appeals (one of which is summarised in this newsletter).

New complaints

There were 59 new complaints registered in the first quarter of 2025 (compared to 71 and 59 in the same period of 2024 and 2023, respectively). Of these, one was in the decision stage, six were in the evidence hearing stage, 31 were in mediation and 21 were awaiting mediation.

Q1 Complaints by Sector (2023-2025)

Sector	Q1 2023	Q1 2024	Q1 2025
Banking / Payments	18	32	**16**
Corporate Services	17	17	**25**
Insurance	8	20	**18**
Investments	0	2	**0**
Total	**43**	**71**	**59**

Mediation

Of the cases outstanding as at the end of 2024, 30 cases were settled at the mediation stage in the first quarter of 2025 (15 cases in Q1 24). This shift to complaints being settled through mediation is largely due to increased mediation resources. Several cases referred to mediation had similar characteristics to decisions issued by the Arbiter, and our mediators have been trained to guide litigants about the Arbiter's decisions with similar situations related to their complaint. This helps parties to develop realistic expectations about the outcome of their complaints, leading to resolution through mediation rather than adjudication.

Other initiatives

In January 2025, a Technical Note on considerations that the Arbiter will adopt in determining complaints related to 'pig butchering' type of scams was published (see page 3 in this newsletter). This is relevant both to consumers as much as to licensed institutions.

Consumers should be on their guard not to give away the access credentials of their bank account to scammers posing as some authority, being banks, regulators, government officials or police. They should also be extra careful not to be duped by the promise of quick returns on some 'clever' investment and should always bear in mind that, if something seems too good to be true, then it most probably is. **Before parting with their money, consumers should seek advice from trusted sources.** Trying to blame others for not protecting victims from their own negligence is often an exercise in pious hopes.

Licensed institutions should live up to their fiduciary obligations towards their customers by enhancing their transaction monitoring system to spot suspected payments fraud at an early stage and hold appropriate conversations with their customers to make them aware of their findings.

More education on how consumers should protect themselves from falling victim to such scams remains needed at a national level and OAFS is consulting other relevant authorities to achieve this objective.

THREE-YEAR STRATEGIC PLAN LAUNCHED

In January, the Minister for Finance, the Hon. Clyde Caruana, presented the first three-year Strategic Plan (2025-2027) of the Office of the Arbiter for Financial Services to Parliament.

Since its inception, the OAFS has been dedicated to delivering a distinguished public service by maintaining high service standards, promoting transparency and fostering staff competence.

The Office's previous annual strategic plans focused on specific organisational objectives to enhance operational efficiency. It has made significant strides in this regard, bolstering its capabilities, streamlined workflows and communication channels, and optimised processes to ensure maximum efficiency while maintaining the highest dispute resolution standards and value-added services.

This three-year plan builds on these successes. As the financial services landscape continues to evolve in a dynamic manner, the Office's strategic course for the upcoming three-year planning cycle provides the flexibility to modify its annual operating plans in response to circumstances.

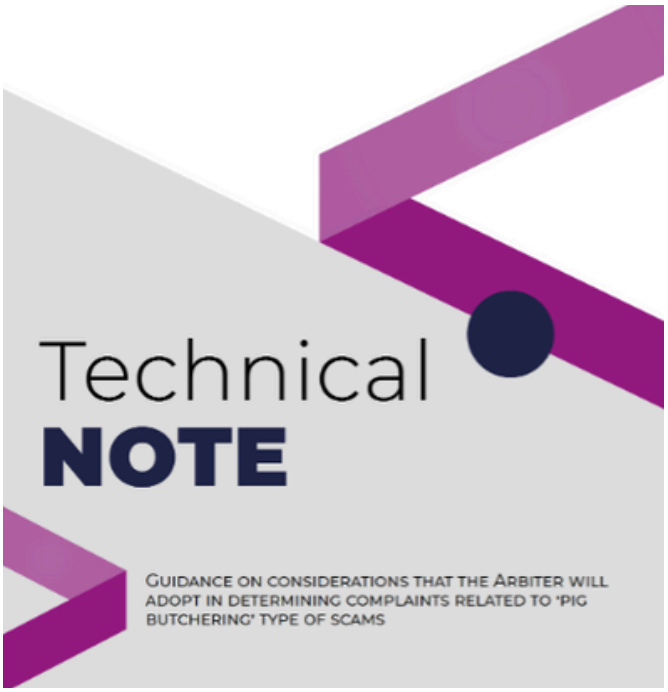
These are the six key priorities identified in the Strategic Plan:

1. Deliver a high-quality dispute resolution service that is, and is perceived to be fair, impartial and timely;
2. Improve consumer accessibility to ensure the services offered are easy to use and available to all;
3. Enhance visibility and share insights, to raise awareness and promote best practices;
4. Influence policy and promote best practices to strengthen the financial services sector;
5. Update legislation to conform with and be relevant to evolving issues, and maintain effectiveness; and
6. Uphold a sound governance and administrative structure to ensure accountability, transparency and operational excellence.

Read the full Strategic Plan on this link:
https://financialarbiter.org.mt/content/strategic-plans-0.

TECHNICAL NOTE ON PIG BUTCHERING SCAMS

The Arbiter for Financial Services issued an important Technical Note on 11 February 2025 providing guidance on determining complaints about 'pig butchering' scams. This followed the Arbiter's model, published in December 2023, regarding responsibility allocation between Payment Service Providers and Payment Service Users in payment fraud cases.



'Pig butchering' is a sophisticated fraud scheme where scammers use social engineering and psychological manipulation to establish relationships (social, romantic or business) with victims. The scammers gain trust over weeks or months before introducing fraudulent investment opportunities, typically involving crypto-assets.

The Technical Note outlines different obligations for three categories of service providers: Banks/Credit Institutions, Financial Institutions, including Payment Institutions, and Virtual Financial Assets Service Providers (VASPs).

Banks are considered to have the highest level of transaction monitoring obligations due to their long-term client relationships, while VASPs face new requirements under Regulation (EU) 2023/1113 and Travel Rule Guidelines from December 2024.

Key guidance for banks includes upgrading their payment monitoring systems, flagging new patterns compared to historical trends and warning clients about risks from abnormal payment patterns.

Financial institutions are advised to adopt robust onboarding procedures for corporate customers and investigate suspicious payment patterns, particularly when retail clients made transfers using only IBAN numbers without clear identification of the beneficiary.

For VASPs, the guidance emphasises enhanced mechanisms to mitigate scam risks, including improved onboarding processes and warnings to retail customers about potential fraudulent schemes. The document notes that, while VASPs aren't subject to PSD2 transaction monitoring obligations, they still maintain fiduciary duties under the Civil Code.

The Technical Note stresses that future decisions issued by the Arbiter would reflect a stricter assessment of transaction monitoring obligations once institutions had time to implement these guidelines. The document also reminds consumers to exercise caution with crypto-assets, referencing ESMA's December 2024 warnings about associated risks.

You can download the Technical Note at this link:
https://shorturl.at/UmCNg

AMENDMENTS TO THE ARBITER FOR FINANCIAL SERVICES ACT

The definitions of "customer" and "eligible customer" in Article 2 of the Arbiter for Financial Services Act have been amended through Act IX of 2025 (the Budget Measures Implementation Act 2025).

Background

Over the past few years, the Arbiter has received numerous complaints from individuals who have fallen victim to financial fraud schemes. In typical cases, these victims had transferred funds to payment accounts controlled by fraudsters, with the IBAN often supplied by payment service providers licensed in Malta.

However, the Arbiter was compelled to reject these complaints on a legal technicality: the victims had no direct contractual relationship with the financial services providers and therefore could not be considered "eligible customers" under the current definition. This left fraud victims without recourse through the redress mechanism offered by the Office of the Arbiter for Financial Services.

Key changes

The amendments widen the two definitions in two important ways:

1. **Definition of "customer"** – Will now include natural persons, micro-enterprises, consumer associations and voluntary organisations. More importantly, it will cover "any person" in cases of suspected fraudulent payment transactions involving financial services providers.

2. **Definition of "eligible customer"** – Currently limited to persons with a direct contractual relationship with the financial service provider. The definition will now explicitly include fraud victims. The new provision states: "In the case of suspicious fraudulent payment transactions involving financial services providers, the victim of fraud exhibiting immediate, genuine and legitimate interest shall be deemed to be an eligible customer."

Important considerations

The main purpose of these amendments is to widen the scope of the Arbiter's jurisdiction to review complaints relating to fraud, even those without a contractual relationship with the financial services provider involved in the transaction.

These amendments will not introduce any new or additional regulatory requirements on financial services providers. Importantly, these providers will only be held responsible for their own shortcomings, and not for failures by other parties in the payment chain.

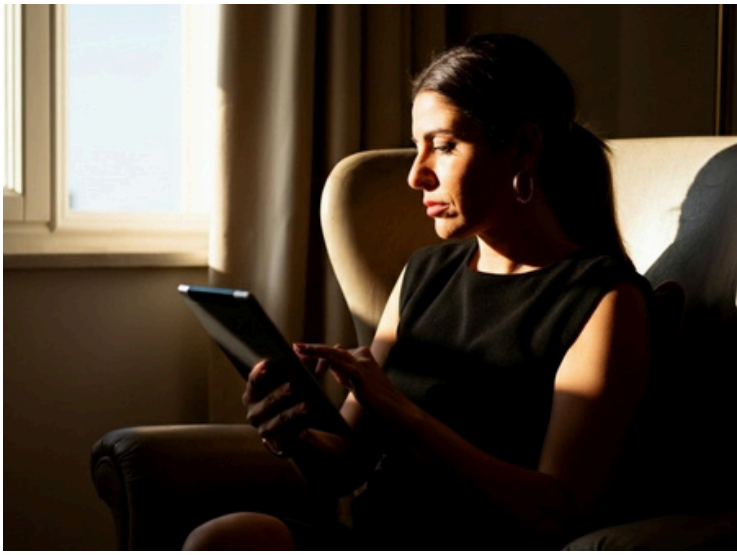
To allow sufficient time for financial services providers to strengthen their procedures and transaction monitoring systems to prevent fraud, the changes to the "eligible customer" definition will not be retroactive; they will only apply to events occurring after the enactment date, specifically from 1 October 2025.

Additional amendments

The Act also includes other amendments, most important of which relate to the addition of formal definitions for both "consumer association" and "voluntary organisation" to align with existing legislation. The definition of "consumer association" matches that found in the Consumer Affairs Act (Cap. 378), and "voluntary organisation" aligns with the Voluntary Organisations Act (Cap. 492). These definitions also include officially recognised associations and organisations from other countries.

LESSONS LEARNED: LEVERAGING THE ARBITER'S DECISIONS FROM A CONSUMER PERSPECTIVE

Each week, in our Facebook post, we regularly feature lessons learned from decisions of the Arbiter for Financial Services and give general guidance in specific situations related to financial products. These are five typical posts related to life insurance premiums, fraud via SMS, loss on high-yield bond investment, crypto investing and invoice scams. Apart from posting in English, we also post in Maltese.



Life insurance premiums

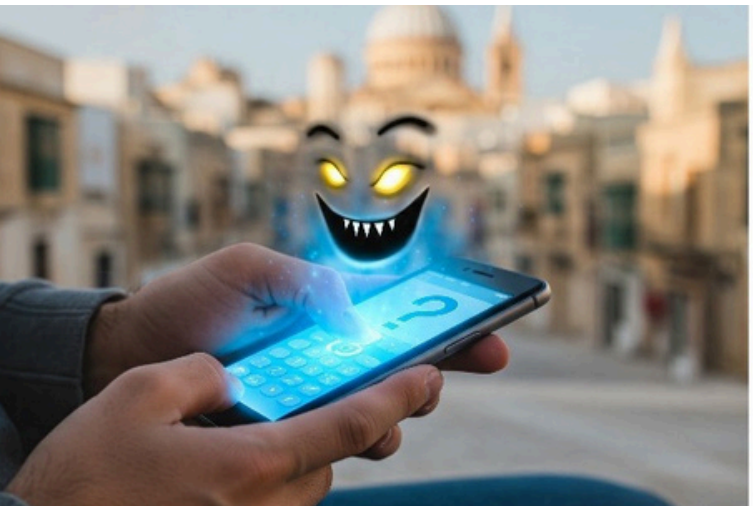
A consumer complained about a loading (extra premium) on her life insurance policy due to a childhood cancer diagnosis, despite being fully recovered. The Arbiter acknowledged the moral argument but rejected the complaint, noting that the EU directive the consumer referenced was not yet in force in Malta, and that insurers have the commercial right to assess and price risk according to their guidelines. Here are key takeaways from this case (ASF 108/2024).

- **Insurance pricing is a commercial decision.** Insurers determine premiums based on their risk assessment criteria and reinsurance arrangements, which are legally within their rights until regulations specifically restrict such practices.

- **Future EU directives don't apply retroactively.** Even when new consumer protection measures are coming (like the "right to be forgotten" for cancer survivors), they only apply after being formally transposed into national law.

- **Voluntary contracts bind both parties.** When you accept terms and sign an insurance contract with full knowledge of conditions (like premium loadings), you generally cannot unilaterally change these terms later.

- **Shop around and compare options.** The case showed the consumer did explore other insurance providers before making her decision, which is always recommended when facing premium loadings.



Fraud via SMS

In this case (ASF 020/2024) a customer lost €6,000 after clicking on a fraudulent SMS link that appeared to come from their bank. The scammer called the customer, claiming to be from the bank, and convinced them to authorise three transactions of €2,000 each through the bank's 3D Secure app. The Arbiter for Financial Services decided the customer should bear 60% of the loss while the bank should cover 40%. Here are the key lessons:

- **Never click links in SMS messages claiming to be from your bank – even if the message appears in the same thread as legitimate bank messages.** Banks typically don't send links asking you to validate accounts or provide credentials. Always access your bank directly through their official website or app.

- **Be suspicious of urgent calls about your account**. Fraudsters create panic by claiming your card is blocked or suspicious transactions are pending. Take a deep breath, hang up and call your bank using the official number on your card. Remember that banks won't ask for your security credentials over the phone.

- **Understand what 3D Secure authentication means**. When you receive a 3D Secure notification, you are actively authorising a payment. Look carefully at the merchant name and amount before confirming. Each authorisation is a deliberate action confirming you want to make that specific payment.

- **Multiple rapid transactions should raise red flags.** Be extremely cautious if asked to authorise several transactions in quick succession, especially for unusual merchants or cryptocurrency platforms. This pattern is common in fraud cases.

- **Share the responsibility.** While consumers must exercise caution, banks also have a duty to implement robust security measures and effectively educate their customers about potential risks.

Loss on high-yield bond time barred

The decision ASF 186/2024 highlights valuable consumer lessons. The complaint concerned an investment in high-yield bonds made in 2015 that rapidly lost value, with the complainant alleging they were not properly informed about the investment. The Arbiter ruled the complaint was time-barred as it was filed in 2022, well beyond the two-year limitation period, despite the complainant being aware of issues shortly after purchase.

- **Act promptly when you spot problems.** Don't delay filing formal complaints about financial products. The Arbiter noted that waiting for informal assurances that "things will improve" doesn't suspend the legal time limits for making complaints.

- **Understand time limitations for complaints.** Under the Arbiter for Financial Services Act, complaints must be filed within two years of becoming aware of the problem. The Arbiter won't consider complaints outside this timeframe, regardless of how valid they might otherwise be.

- **Document everything in writing.** Verbal discussions and promises are not enough. The complainants admitted they hadn't made any formal written complaint until 2022, despite being concerned about the investment since 2015.

- **Be realistic about struggling investments.** When a bond undergoes "forced restructuring" and its nominal value drops drastically (in this case to 28% of its original value), it's unrealistic to expect full recovery, especially with high-yield, non-investment grade bonds.

- **Know your investment profile and history.** The Arbiter noted the complainants had 25 years of experience with this service provider and should have understood the risks of high-coupon, non-investment grade bonds.

Crypto asset investing

Here are more lessons to be learned from some recent decisions of the Arbiter for Financial Services involving crypto asset investing.

- If an investment offer seems too good to be true, it probably is! Stay alert and sceptical, especially when dealing with unfamiliar parties or platforms.
- Understand that crypto platforms primarily facilitate the transfer of funds and may not be involved in or responsible for investment decisions. So, research and understand the investment before proceeding.
- Verify transaction details before submitting instructions to your crypto service provider. You're responsible for ensuring accuracy!
- Once you authorise a crypto transfer, it's final. Always double-check wallet addresses and transaction details before confirming.
- Only as from 2025 are crypto providers required to collect user data when you transfer to an external non-custodial wallet.
- If you've been defrauded, notify local authorities. They can request any relevant information through proper legal channels.
- The crypto market is high-risk and less regulated than traditional financial markets. Before investing, educate yourself on the risks and how to protect your assets.

Invoice scams

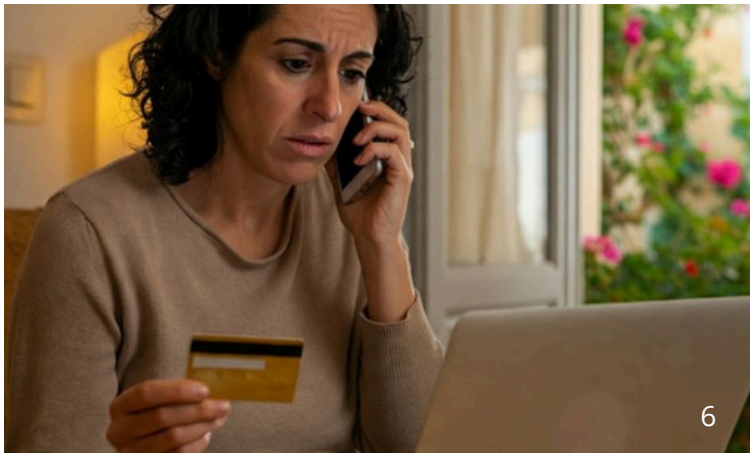
What should we look out for when we receive an invoice to ensure we are not being scammed?

- Scammers often change account details on invoices or intercept emails to redirect payments to their accounts.
- If you receive an invoice, even from a trusted source, and are pressured to pay quickly, it is crucial to verify the account details by calling trusted numbers and ensuring that payment recipients match the expected company or person.
- A typical example of an invoice scam is a wedding booking, where scammers send a fake invoice with altered payment details, leading the victims to lose their life savings.
- Other typical scams involve payment service providers and online retailers. It is important to be aware of the risks associated with urgent messages to re-enter card details already given on popular hotel or other travel-related platforms. Scammers may hack the site of the booked hotel, for example, that is fraudulently personified in such messages.

LINKEDIN POSTS

In our weekly LinkedIn posts, we typically feature a decision of the Arbiter for Financial Services that focuses on a particular issue or area. In the five decisions summarised below, there are decisions related to banking, corporate services, life insurance and travel insurance.

Shared liability for impersonation scam in the credit card fraud decision



A consumer filed a complaint against a financial services provider for refusing to refund €6,000 related to fraudulent payments made from their credit card account to third parties.

The provider argued that the payments were duly authorised by the consumer using their 3D Secure app, and there was no indication of fraud. They maintained that the consumer acted with gross negligence by providing confidential details and following instructions to approve the payments, breaching the card's terms and conditions. The provider claimed they had implemented necessary security measures and issued warnings about such scams.

The Arbiter observed that, while providers cannot prevent fraudsters from using spoofing/smishing to deceive consumers, they were not doing enough to effectively warn clients against clicking on links in these messages. The Arbiter noted that providers should use direct communication like SMS or e-mail for serious fraud cases. The Arbiter also considered the consumer's familiarity with the provider's online payment systems and any special circumstances that may have made the fraudster's message less suspicious.

Applying the decision model that apportions responsibility between the provider and consumer based on various factors, the Arbiter determined that the consumer should bear 60% of the loss and the provider 40%. Despite seeing the amount and beneficiary details, the Arbiter found that the consumer's repeated confirmation of the transactions increased their gross negligence.

However, the simultaneous penetration of both the provider's SMS channel and phone number by the fraudster was deemed a special circumstance, partially excusing the consumer. The Arbiter ordered the provider to pay the consumer €2,400 within five working days.

Read the full decision on this case, ASF 020/2024, which was not appealed, at this link: https://shorturl.at/GtgyL

Arbiter for Financial Services awards €29,221 for CSP's breach of fiduciary duty in tax management case

A complaint was filed about services provided by a licensed Company Service Provider (CSP). The complaint involved allegations that the CSP acted with gross negligence and breached fiduciary duties through delays in handling tax matters, providing wrong advice about a BVI holding company structure and inadequately handling matters on a suspended bank account. The complainant sought compensation of €122,418 for various claimed damages and costs.

The CSP defended its position by stating that tax payments were processed as soon as funds were available, and any interest incurred was due to late remittance of funds and delays in notification by the complainant.

They argued that advice on the BVI company was not within their expertise area and that they had kept the complainant updated regarding the suspended bank situation. The CSP also raised preliminary objections about the Arbiter's competence to hear certain aspects of the case.

The Arbiter determined they had competence specifically regarding the CSP's licensed activities, particularly the directorship services provided. They found that the CSP's director had failed to sign and submit a critical tax agreement in a timely manner, which resulted in additional interest charges.

The Arbiter noted a clear conflict of interest where the director prioritised collecting the CSP's fees over acting in the companies' best interests. The analysis revealed that there was no valid reason for not signing the initial tax agreement, and the director's actions appeared to be influenced by wanting to secure payment of outstanding fees first.

The Arbiter considered this a breach of fiduciary duty resulting from negligence in carrying out directorship services and failing to act with due care and diligence.

The Arbiter awarded compensation of €26,371 for damages suffered due to the failure to handle the tax agreement properly, plus an additional €2,850 in moral damages for the CSP's failure to act in the company's best interests when faced with conflict-of-interest situations.

The total award of €29,221 was ordered to be paid with interest at 3.15% per annum from the date of decision until payment. Each party was ordered to bear their own costs of the proceedings.

Read the full decision on these case, ASF 224/2023, which was not appealed, at this link: https://shorturl.at/qwOWv.

Insurance provider exonerated in policy maturity value dispute

A complaint filed on a life insurance policy taken out in 1998 was not upheld by the Arbiter for Financial Services. The complainants claimed that, despite paying monthly premiums for 25 years, the maturity value of €61,329.83 fell significantly short (by 57.94%) of the estimated value of €145,800.14 quoted at inception.

They argued that the provider demonstrated deceit and incompetence by basing the proposal on unattainable annual rates of return to secure their business.

The provider responded that the complaint was unfounded, emphasising that the estimated maturity values were not guaranteed and were based on bonus rates declared at the time of sale (6.75% for reversionary bonuses and 2.5% for terminal bonuses).

They highlighted that investment returns internationally were lower in recent years, affecting bonus rates. The provider maintained they had acted in good faith, provided sufficient information about the policy's investment nature, and kept complainants informed through annual bonus statements and revised illustrative maturity values.

The Arbiter noted several key points in his analysis. The policy was taken out primarily as a requirement for a bank loan to complete the building of a house. The complainants were aware of the policy's dual nature – life cover and the investment element – and understood that quoted values were not guaranteed.

As company directors and regular bank clients, they should have recognised the responsibility of signing documents and understanding their content.

They had ample time (two months) between the proposal and policy issuance to review and understand the information.

The complainants failed to provide evidence that they requested additional information about bonus rates at the time of sale or that the information provided was incorrect or misleading. The Arbiter observed that the complaint appeared to be motivated by seeking a higher amount rather than addressing unfair or incorrect actions by the provider.

The endowment portion generated an average return of 3.56% per annum, which was considered reasonable given the circumstances, guaranteed invested capital, declared profits and life coverage benefit. The complainants did not demonstrate any proof of opportunity loss from choosing this policy over alternatives.

The Arbiter did not consider the complaint to be fair, equitable and reasonable, and did not uphold it. Each party was ordered to bear its own costs of the proceedings.

Read the full decision on these case, ASF 102/2024, which was not appealed, at this link: https://shorturl.at/hlcin.

Insurance claim for shared accommodation partially denied following flight cancellation

A traveller filed a complaint against an insurance provider who refused full payment for accommodation expenses incurred when her flight from Tokyo was cancelled due to adverse weather in August 2024.

The total claim amounted to €1,000.19 for one night's accommodation and taxi charges. The insurer offered to settle 50% of the claim since the room was shared with another person who was not covered under the complainant's travel policy.

The insurer argued that they had accepted the claim but were only prepared to pay the complainant's share of the expenses (€500.10). They maintained that the policy was clear and only insured the complainant.

The insurer argued they could not be expected to cover an individual who did not have a policy with them, and no deductions were made from the complainant's rightful share.

The Arbiter examined whether the policy covered the entire room cost regardless of occupancy or only the insured's share. The case centred on a section in the travel policy, which covered "reasonable additional travel and accommodation expenses necessarily incurred due to the forced extension of your journey".

The Arbiter acknowledged that the claim would have covered the full room cost if occupied solely by the insured. However, since the economic benefit was shared with an uninsured person, there was merit to the insurer's position that they were only responsible for the insured's share.

The Arbiter noted that the policy was meant to cover only additional expenses incurred by the insured, and there was a possibility that the co-occupant may have settled their share directly with the insured or through their own insurance.

Furthermore, evidence showed that the complainant's previous stay at the hotel was paid through loyalty points belonging to a third party, suggesting a *quid pro quo* arrangement between the complainant and her co-occupant that delivered value for the 50% of the claim being refused.

The Arbiter dismissed the complaint and ordered each party to carry their share of expenses. The decision was made on the grounds that it would be unfair to require the insurer to cover expenses benefiting an uninsured person, especially when the complainant appeared to have received economic benefits from arrangements with her travel companion.

Read the full decision on this case, ASF 197/2024, which was not appealed, at this link: https://shorturl.at/2U5UV.

Virtual IBAN cryptocurrency scam: financial provider ordered to reimburse vulnerable senior

A senior complainant (72 years old) claimed to have been a victim of a cryptocurrency investment scam. She transferred a total of £23,300 in three separate payments from her UK account to what she believed was her own account with the Malta-authorised payment institution. The transfers showed her as the beneficiary.

The complainant, who was described as vulnerable and suffering from MS, was manipulated by scammers who gained remote access to her phone through a remote access app and convinced her to invest in cryptocurrency with "Hudson Trust".

The financial services provider argued that the complainant was never their customer and had no contractual relationship with them. They explained they provide payment services to corporate clients, including cryptocurrency exchanges, and operate a virtual IBAN system.

They claimed the payments were correctly processed according to the unique identifier (IBAN) provided, and they had no obligation to match the beneficiary name with the account holder. They maintained they simply routed the funds to their corporate client's account as per their business model.

The Arbiter found that the complainant qualified as an "eligible customer", despite not having a direct account with the provider. The Arbiter noted that virtual IBANs pose specific risks not addressed in current regulations, as highlighted in a May 2024 European Banking Authority report. The provider's system directed funds to third-party cryptocurrency exchanges despite the payment orders indicating the complainant herself as the beneficiary.

This lacked transparency and proper disclosure to both the complainant and her UK payment service provider, who believed she was transferring money to her own account. The Arbiter considered that innovation should not result in material detriment to financial service consumers, especially vulnerable ones. The provider's actions circumvented consumer protections that would likely have been available in the UK financial system.

The Arbiter determined the complaint was fair, equitable and reasonable, and ordered the financial services provider to pay the complainant the full amount of £23,300 with interest at 4.5% per annum from the date of the decision until payment. The costs of the proceedings were to be borne by the service provider.

The Arbiter concluded that the provider's failure to ensure transparency in the virtual IBAN's system had materially contributed to the complainant's loss.

Read the full decision on these case, ASF 155/2024, which has been appealed, at this link: https://shorturl.at/LrZmT.

After the Arbiter for Financial Services issued a Technical Note on 'pig butchering' scams, he issued three decisions, ASF 085/2024, ASF 122/2024 and ASF 025/2024. The first two were not appealed. Below is a summary of the third case, which is subject to an appeal.

The complainant claimed they had been manipulated by fraudsters, who convinced them to make these payments. When they attempted to withdraw their funds, they were asked to make additional payments, at which point they realised it was a scam. They argued that the bank failed in its regulatory obligations to protect customers from fraudsters and should have monitored the suspicious transactions.

The bank rejected the compensation claim, maintaining that the complainant was fully responsible for their losses. They argued that the customer legitimately authorised all transactions through proper authentication channels.

The bank stated they sent SMS alerts for each transaction, but the customer never reported concerns. They also highlighted that they carried out transaction monitoring with no suspicious triggers detected.

The Arbiter observed that this case involved a typical 'pig butchering' scam in which the fraudster built trust with the victim over months before introducing fraudulent investment opportunities. The complainant's transactions were clearly anomalous compared to their normal account activity.

While individual payments were not exceptionally large, the cumulative amount was substantial – more than the complainant's annual gross salary. The Arbiter considered that banks have significant monitoring obligations under PSD 2, which requires them to have mechanisms to detect potentially fraudulent transactions.

The Arbiter found that, by December 2022, after 19 payments totalling over €40,000 had been made, the bank should have recognised the unusual pattern and intervened to warn the customer about potential fraud, especially given that these were payments to crypto-asset platforms.

The bank's argument that it had no duty to intervene because payments were to the customer's own crypto account was deemed insufficient.

The Arbiter partially upheld the complaint. While accepting the customer had some responsibility, the bank was ordered to refund all payments made after 17 December 2022, amounting to €24,695.82, with interest. Each party was ordered to bear their own costs.

In addition to directing the bank to strengthen its payment monitoring systems to better protect consumer interests from increasingly sophisticated fraudsters, the Arbiter also instructed the bank to fully understand appended Technical Notes on the considerations that will be adopted in assessing complaints related to 'pig butchering' scams.

Read the full decision on this case, ASF 025/2024, at this link: https://shorturl.at/sqK14.

COURT OF APPEAL REVIEWS ARBITER'S DECISIONS

The Appeal Court upholds in substance the Arbiter's decision in investment mis-selling case.

The Court of Appeal (Inferior) largely confirmed a decision by the Arbiter for Financial Services against a bank, though it modified the compensation amount. The case concerned alleged investment mis-selling to a Complainant, who claimed she had suffered losses of €20,378 on investments made through the bank in January 2021. The Court ordered the bank to pay the full claimed amount plus interest, revising the Arbiter's original award, which had included calculations from earlier investments.

The Arbiter had found that the bank failed to follow investment regulations and the MFSA's Code of Conduct in selling investment products to the complainant.

The complaint centred on four equity fund investments totalling €82,000 made in January 2021, which the complainant argued were unsuitable given her lack of financial knowledge and experience. The Arbiter determined the investments were neither appropriate nor suitable for the complainant, who had previously only held fixed deposits. He awarded compensation of €15,264.31 plus interest, taking into account both losses and gains from earlier investments made in 2017 and 2018.

In its appeal, the bank argued that the Arbiter had disregarded the investment context, failed to consider damage mitigation principles, and lacked jurisdiction to decide the complaint.

The bank contended that the investments were suitable for the complainant's objectives and that losses resulted from unforeseeable market conditions. The complainant filed a counter-appeal, arguing that the compensation should focus solely on the 2021 investments' losses without deducting earlier gains.

The Court dismissed most of the bank's arguments, agreeing with the Arbiter's core finding that the equity funds were inappropriate for someone of the complainant's profile. It found particularly concerning that despite being classified as having a "balanced" risk profile, the complainant's portfolio was invested entirely in equities. The Court noted that the bank should have been more diligent in verifying the authenticity of information provided, given the complainant's evident lack of financial sophistication.

However, the Court agreed with the complainant's counter-appeal regarding compensation calculation. It ruled that, while earlier investments were relevant as background context, they should not have been included in computing compensation. The Court therefore modified the award to the full €20,378 claimed by the complainant, representing losses solely from the 2021 investments, plus interest from the date of judgment. The Court ordered the bank to pay three-quarters of the appeal costs, with the complainant responsible for the remaining quarter.

Both the Arbiter's decision (ASF 009/2024) and the Court of Appeal judgment (Ref: 69/2024 LM) are available here: https://shorturl.at/bqBGg.

GET IN TOUCH

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