

Before the Arbiter for Financial Services

Case No. 006/2019

MF ('the complainant')

vs

Bank of Valletta p.l.c. (C 2833)

('the service provider'/'Bank')

Hearing of the 24 June 2019

The Arbiter,

Having seen the complaint whereby the complainant states that the Bank refused to open a basic payment account in his name which is a basic right of all EU citizens without giving him a valid reason.

He states that the Bank refused to open a basic payment account because he is a Muslim and, thus, is violating the 'Equality Act'.

He relates that on 10 December (2019) (presumably 2018), he received a call from BOV Sliema Branch and asked him to visit the Branch personally taking with him his identity card. He told them that his Maltese identity card along with his passport were deposited with the Maltese Courts because he was undergoing criminal proceedings which relate to '*the accusations of abusing of authority and breach of duties*' which allegations he was contesting. He also said that he was a diplomat engaged by the Government of Malta on an indefinite basis.

He alleges that he is being discriminated by the Malta Police and the Maltese Courts on religious grounds because he is a Muslim, thereby, acting in breach of his fundamental human rights.

He reiterates that the Bank is refusing the opening of an account because he is a Muslim.

Having seen the reply by the Bank which states:

The Bank respectfully submits that the complainant's requests should not be acceded to for the reasons outlined below:

1. Firstly, by way of a preliminary plea, the complainant is to prove that he is 'legally resident in Malta or in another Member State' in terms of Regulations 19(1) of the Credit Institutions and Financial Institutions (Payment Accounts) Regulations (S.L. 371.18) (the '**Regulations**') and as further defined in Regulation 2(1) of the same.
2. Secondly, and also by way of a preliminary plea, that this is not the judicial forum to hear and adjudicate the complainant's allegations of breach of his fundamental human rights and/or the Equality for Men and Women Act (Chapter 456 of the Laws of Malta). In terms of article 4(1) of the European Convention Act (Chapter 319 of the Laws of Malta), any action based on an alleged breach of fundamental human rights ought to be heard and determined by the First Hall Civil Court, whereas, in terms of article 19(1) of the Equality for Men and Women Act, a right of action on the basis of the same exists solely before 'the competent court of civil jurisdiction'. Consequently, the Bank submits that the Arbiter ought to disregard any claims based on alleged breaches of fundamental human rights and/or equality and declare that he is not competent to hear and adjudicate the same.
3. Without prejudice to the above, and as to the merits, the Bank refutes the complainant's allegations that the Bank acted in a discriminatory manner when it did not re-activate the account held by the Bank in the complainant's name. The Bank did not refuse to re-activate the account based on the complainant's nationality or his religious beliefs. If the Bank had really been motivated by the reasons which complainant alleges, it wouldn't have opened the account at all in 2010.
4. The Bank could not re-activate the complainant's account after having duly considered the obligations imposed on the Bank by the Prevention

of Money Laundering Act (Chapter 373 of the Laws of Malta) and the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01) ('PMLFTR').

In terms of Regulation 22(1) of the Regulations, the Bank is *obliged* at law to refuse to open a payment account with basic features for a consumer (or in this case, to re-activate such payment account) where to do so would result in a breach of any anti-money laundering and combating the funding of terrorism obligation arising from applicable law or from any other enforceable procedure, guidance or provision.

In the present case and in line with the obligations imposed on the Bank as per applicable regulations, the complainant was requested to provide his identification documentation so that a customer due diligence could be carried out. However, the customer did not do so for the reasons set out in paragraph 5 below. Furthermore, the Bank could not rely on the identification documentation which has been provided by complainant upon the account being opened, since the ID card which had been provided upon account opening expired in 2013 (see copies of documents provided with the account opening in 2010 attached hereto and marked 'Doc. AA').

In terms of article 7 of the PMLFTR:

'(2) The ongoing monitoring of a business relationship ... shall consist in ... ensuring that the documents, data or information held by the subject person are kept up-to-date.

...

(7) Customer due diligence measures under these regulations shall be repeated whenever, in relation to a business relationship, doubts arise about the veracity or adequacy of the previously obtained customer identification information.'

In the present case, the previously obtained identification information clearly was not adequate, since the complainant's ID card had expired in 2013. The Bank was, therefore, required to repeat its customer due diligence measures (see ID card attached to Doc. AA), which it also

required to do as part of its ongoing monitoring obligations following the complainant's request for a re-activation of his account and/or opening of a new account.

5. *Ex admissis*, the complainant declared that he is not in possession of his ID card and/or passport as these were seized by the Executive Police upon being arrested and arraigned before the Maltese Criminal Courts. Consequently, the complainant failed to submit the required documentation and insisted instead that regardless of this failure, the Bank should proceed with the re-activation of his account and/or opening of a new account. Such documentation and the information contained therein are indispensable and mandatory for the Bank to be able to abide by its obligations at law, including the execution of a proper due diligence exercise *prior* to re-activating and/or opening of a payment account – particularly since the identification documentation which has been provided by complainant upon the account being opened expired in 2013.
6. On the online media, it was reported (in 2018) that the complainant '*has been remanded in custody on charges of using false documents to obtain citizenship.*' (see documents marked 'Doc. BB' attached hereto). The Bank understands that the case is still ongoing.
7. At the time of complainant's request, the Bank confirmed that the complainant was being accused of fraud, forgery and/or falsification of public documents and certificates, making false declarations, making use of such documents and certificates and holding himself out to be a public officer at a time when his engagement had already been terminated. To date, the Bank understands that these criminal proceedings have not yet been concluded.

Facts

8. On 8 April 2010, the complainant opened a savings account with number 40018961735 (the '**Account**') with the Bank. At the time of opening of the account, the complainant's occupation was 'Sales – Real Estate Activities'. The complainant never credited any salary to his account.

9. On 9 April 2010, the Bank granted the complainant use of a Cashlink Electron Debit Card. The card was linked to the Account.
10. In January 2015, the Account's status changed from 'active' to 'idle' as no transactions had occurred in the preceding thirty-six months (see statement of account herewith attached and marked as **Doc. A**). The complainant's account therefore is and remains open – its status has, however, been changed to 'idle'.
11. On 13 October 2017, the complainant sent an email to the Arbiter, introducing himself as a 'Maltese national by birth' and 'a career diplomat' with the Government of Malta. The complainant claimed that the Bank failed to activate his account. The Arbiter forwarded this email to the Bank on the same day (without the attachments thereto). The Bank replied on the 17 October 2017 by highlighting the fact that since the account's status is 'idle', the Bank would need to review the matter and revert in due course (email exchanges attached and marked **Doc. B**)
12. On 18 October 2017, the Bank sent an email to the complainant, informing him that the Bank is unable to re-activate the account and would consider reinstating the relationship after conducting a due diligence review (see **Doc. C**). To this effect, the Bank invited the complainant to visit one of the Bank's branches.
13. On 1 January 2019, the complainant contacted the Arbiter once again and made a series of unfounded allegations. Amongst these allegations, he claimed that the Bank failed to reply to his emails and that the Bank is refusing to re-activate his account because he is a '*Maltese Muslim permanent diplomat at Ministry of foreign affairs Malta*' and that the Bank '*has illegal instructions from government of Malta not to open my account.*' He claims that he was informed of this by telephone. With all due respect, these allegations are, simply put, untrue and the complainant did not submit any proof to substantiate his said allegations. Complainant again demanded that the Bank activate his account (see **Doc. D**). This email was forwarded to the Bank on 7 January 2019 (see **Doc. D**).

14. On 11 January 2019, the complainant sent an email to the Bank and confirmed that he was unable to submit his ID card and/or passport as both of these documents were seized by the Executive Police due to the criminal proceedings presently pending against him (see **Doc. E**).
15. On 14 January 2019, the Bank clarified that it had replied to the previous communication received in October 2017 and confirmed that it is unable to activate the account as the complainant's ID card and/or passport were still being withheld by the police in view of the pending criminal proceedings (see **Doc. F**). The complainant replied on the same day, stating that criminal proceedings have nothing to do with activating his account (see **Doc. G**).
16. On 15 January 2019, the Bank replied by clarifying that it needs to '*satisfy its due diligence obligations prior to deciding whether it could activate your account or otherwise*' (see **Doc. G**).
17. On 16 January 2019, the claimant sent another email to the Bank and to the Arbiter, stating that he does not agree with the Bank (see **Doc. H**).

Conclusions

18. The Bank replies that in view of all of the above, the complainant's request should not be acceded to. The Bank replies that it abided by all obligations on it according to law and that it acted correctly and in accordance with the applicable banking and financial laws.
19. The Bank reserves its right to bring forth any witnesses and/or any further documentary evidence in support of its defence and to make oral and written submissions.
20. With costs.

Having heard the parties

Having seen all the acts of the case

Considers

The complainant is basing his complaint on the premise that he has a right for the opening of a basic account in terms of Directive 2014/92/EU (or as is known the Payment Accounts Directive) and the Bank refused him the exercise of this right on religious grounds because he is a Muslim.

The Bank rejects the allegation that it acted discriminately against the complainant on religious grounds, and refused the opening or renewal of the bank account simply because he did not produce his identity card or passport and, therefore, it could not carry out a proper due diligence as it is obliged by law.

Preliminary Pleas

The first preliminary plea raised by the Bank states that the complainant has to prove that he is legally resident in Malta or in another member State in terms of Regulation 19(1) of the of the *Credit Institutions and Financial Institutions (Payment Accounts) Regulations (SL 371.18)* and as further defined in *Regulation 2(1)* of the same.

From the documents filed by the complainant which were not contested by the Bank during the proceedings of this case, it results that the complainant resides at XXXXXXXXXXXXXXXX.¹ This address is corroborated by the fact that it was the staff of BOV Sliema Branch that contacted the complainant to ask him to visit them and take with him documents proving his identity.

Furthermore, the Bank did not prove otherwise. Therefore, the first plea is being rejected.

As to the second plea that the Arbiter is not the right forum to decide the complainant's allegations of breach of his fundamental human rights, the Arbiter agrees with the service provider that cases for breaches of fundamental human rights have to be addressed to the First Hall Civil Court in its Constitutional Jurisdiction and allegations of breaches of the Equality for Men and Women Act should be referred to the competent Court of Civil Jurisdiction.

However, if it results to the Arbiter that the refusal of the opening of the basic payment account was based on the fact that the complainant is a Muslim, then,

¹ A fol. 104

the Arbiter would be acting legally correct to decide that such reason is not fair, equitable or reasonable in accordance with Article 19 (3)(b) of Chapter 555 of the Laws of Malta.

The Juridical Context

The complainant is basing his grievance on EU Directive 2014/92/EU. This Directive entitled the *Payment Accounts Directive* was transposed into Maltese law in virtue of Legal Notice 411 of 2016 and the regulations in question are termed the *Credit Institutions and Financial Institutions (Payment Accounts) Regulations, 2016*.

'(2) The purpose of these regulations is to implement the Payment Accounts Directive.

(3) These regulations lay down rules concerning the transparency and comparability of fees charged to consumers on their payment accounts held in Malta, rules concerning the switching of payment accounts within Malta and other Member States and rules to facilitate cross-border payment account-opening for consumers.

*(4) These regulations also define a framework for the rules and conditions to which Malta is required to guarantee a right for consumers to open and use payment accounts with basic features in Malta.'*²

Article 17 of the said Regulations states that:

'A credit institution shall not discriminate against consumers legally resident in Malta or in another Member State by reason of their nationality or place of residence or by reason of any other ground referred to in Article 21 of the Charter, the Equality for Men and Women Act and in other provisions contained in any other Maltese law as may be in force and amended from time to time, when those consumers apply for, or access, a payment account.'

This is further reiterated in Article 19 (1):

² Bold by Arbiter

*'In order to be eligible for a payment account with basic features, a consumer shall be legally resident in Malta or in another Member State.'*³

(2) Such a right to open and use a payment account with basic features as indicated in sub-regulation (1) shall apply irrespective of the consumer's place of residence.'

The Directive also obliges credit institutions not to introduce burdensome procedures to make it difficult to consumers to open a basic payment account:

*'Credit institutions shall not introduce or implement any policies or procedures which may directly or indirectly impose any unnecessary, difficult, or burdensome restrictions or processes to dissuade the consumer from exercising such rights as they arise under this regulation.'*⁴

It is also incumbent on the credit institution to provide the customer with all the information necessary to open the Bank account:

*'Credit institutions offering a payment account with basic features shall provide detailed information about the application process for the opening of a payment account with basic features. Such information shall include an application form, as well as a list of any documents required to be submitted with the application.'*⁵

The Directive makes it clear that an application for a basic payment account can be refused in the following instances:

*'A credit institution shall refuse to open a payment account with basic features for a consumer where to do so would result in a breach of any anti-money laundering and combating the funding of terrorism obligation arising from applicable law or from any other enforceable procedure, guidance or provision.'*⁶

So the Arbiter has to consider whether the refusal by the Bank to open a basic bank account is justified.

³ Bold by the Arbiter

⁴ Art. 19(7) of the Regulations

⁵ Art. 20 of the Regulations

⁶ Art. 22(1) of the Regulations

In order to reach a conclusion which is fair, equitable and reasonable in the particular circumstances of the case,⁷ the Arbiter has to consider the following:

The Arbiter is faced with a situation where the complainant is asking for the opening or renewal of his bank account on the basis that as a national and person residing in Malta he has a right to have a basic payment account on the basis of the provisions of the PAD.

On the other hand, the Bank states that in view of anti-money laundering obligations, the Bank was not in a position to open/renew the bank account because since the complainant did not provide the necessary identification documents, it could not carry out a proper due diligence of the client as it is obliged to do under the **Prevention of Money Laundering Act (Chapter 371 of the Laws of Malta)** and the **Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01). (PMLFTR)**

The Arbiter believes that while consumers should be given all the opportunities to open a basic payment account, they have the duty to comply with the requisites of a solid due diligence exercise in conformity with the prevention of money-laundering and the funding of terrorism regulations.

While the EU has gone a long mile to guarantee the opening of payment accounts for EU nationals, on the other hand, it enacted robust legislation to combat money laundering and the funding of terrorism.

The Arbiter has to consider this case in the context of a holistic approach to respect this balancing act by the EU and local legislation which sought to give effect both to the PAD and also legal norms respecting the combating of money laundering and the funding of terrorism.

Article 7 of the ***Prevention of Money Laundering and Funding of Terrorism Regulations*** provides that the Bank is obliged to carry out a customer due diligence:

'Customer due diligence measures shall consist in:

⁷ Cap. 555, Art. 19 (3)(b)

*(a) the identification of the customer, and the verification of the identity of the customer on the basis of documents, data or information obtained from a reliable and independent source.*⁸

Article 7(2)(b) of the said Regulations stipulates that the Bank should ensure:

'that the documents, data or information held by the subject person are kept up-to-date.'

So, in terms of these regulations, the Bank is not only obliged to conduct a due diligence exercise on the advent of the establishment of a banking relationship with a customer but is further required to keep updated the acquired information about its customer because it is expected to monitor the business relationship as an ongoing process.

In this case, the complainant says *ex admissis* in the complaint and also in his evidence before the Arbiter, that he could not present his identity card and passport because they were deposited and held in Court as he was facing criminal procedures.

The Bank states in its reply that at the time of the complainant's request, the Bank *'confirmed that the complainant was being accused of fraud, forgery and/or falsification of public documents and certificates, making false declarations, making use of such documents and certificates and holding himself out to be a public officer at a time when his engagement had already been terminated. To date the Bank understands that these criminal proceedings have not yet been concluded.'*⁹

The complainant had every opportunity to contest this allegation before the Arbiter but he did not. He confirms that he told the Bank that he could not give them his identity card and passport because he was *'facing criminal proceedings, allegations against me are abusing of authority and breach of duties'*.¹⁰

However, during cross-examination,¹¹ he was evasive and not credible when he answered:

⁸ Art. 7(1)(a)

⁹ A fol. 19

¹⁰ A fol. 4

¹¹ A fol. 63

'Being asked what the criminal charges against me are, I reply that the accusation that the police are making against me is that as a public officer I am dismissed or suspended'.

This version is different from that stated in the complaint and, furthermore, the Arbiter is not cognizant of any crime or contravention based on the premise that a *'public officer is dismissed or suspended'*.

The Arbiter firmly believes in the presumption of innocence of an accused person but, in these circumstances, he cannot blame the Bank for asking the complainant to produce the original identification documents when it resulted that they had been expired.

The complainant did not produce any solid evidence to show that the Bank was discriminating against him because he was a Muslim. As correctly stated by the Bank, it had already opened a bank account for him in 2010, and was prepared to renew it had he presented the identification documents as required by law.

For the above-stated reasons, the Arbiter decides that the Bank has acted according to law, as it is obliged to do, and since the complainant failed to produce the updated identification documents, it could not conduct the client's due diligence as a prerequisite for the opening or renewing of a bank account.

Therefore, the complaint is not fair, equitable or reasonable in the particular circumstances of the case and the Arbiter is rejecting it.

The expenses of these proceedings are to be borne by the complainant.

Dr Reno Borg
Arbiter for Financial Services