

Before the Arbiter for Financial Services

Case No. 074/2019

MF ('the complainant')

vs

Lombard Bank Malta p.l.c. (C 1607)

(the Bank/service provider)

Sitting of the 27 December 2019

The Arbiter,

Having seen the complaint whereby the complainant states that the Bank refused to open a basic payment account in his name because he is a PEP and states that he is a citizen of Malta, has a permanent employment with the Ministry of Foreign Affairs, and MaltaPost and Lombard Bank are breaching Directive 2014/92/EU by refusing to grant him a basic payments account.

Having seen the reply whereby the Bank submits that:

The Complainant had stated that he was employed with the Ministry of Foreign Affairs as an envoy.

That during the diligence process conducted in terms of law, it transpired that in May 2018 the complainant was arraigned in the Criminal Court and charged with forgery and using falsified documents. From searches on the internet it was reported that the complainant claimed that he was a full-time employee of the Foreign Affairs Ministry, however, the prosecution insisted that he had not worked there since 2013. This gave rise to tangible and reasonable doubts as to

the veracity and authenticity of the documentation submitted and declarations made to the Bank.

In view of these findings and on the basis of Regulation 22 of the Credit Institutions and Financial Institutions (Payment Accounts) Regulations (Subsidiary Legislation 371.18) the application by MF to open a basic payment account with the Bank was declined.

Since the case is still pending before the Criminal Courts, it was felt prudent not to divulge the reason for refusing the application and this in line with Regulation 23(1) of the Regulations mentioned above.

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 because he is a PEP.

The Bank is refuting the complainant's application to open a basic payment account on the basis that the complainant made false declarations in his application form, and on the basis of Regulation 22 of the Credit Institutions and Financial Institutions (payment Accounts) Regulations (S.L. 371.18) and Regulation 23(1) of the said Regulations.

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.¹

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.’*²

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.’*³

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.’*⁴

¹ Bold by Arbiter

² Art. 19(7) of the Regulations

³ Art. 20 of the Regulations

⁴ Art. 22(1) of the Regulations

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

The Arbiter believes that while consumers should be given all the opportunities to open a payment account with basic features, 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 granted consumers this basic right of having a payment account, it has also 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:

(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.’⁵

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.

⁵ Art. 7(1)(a)

In this case, the Complainant not only failed to co-operate with the Bank to carry out the due diligence according to law but made false declarations, namely, that he was employed as an envoy with the Ministry of Foreign Affairs when it was not the case. He did not reveal to the Bank that he was being prosecuted for forgery and fraud.

Due to the Complainant's misgivings, the Bank could not conduct a proper due diligence according to the above-quoted anti-money laundering regulations.

In these circumstances, the Complainant cannot blame the Bank for refusing to open a basic payment account because he was acting in bad faith when he supplied the Bank with false declarations.

Therefore, the Bank is justified in stating that it could not establish a proper banking relationship with a person that was making false declarations and blocking it from carrying a proper due diligence as obliged by law.

The Complainant was obliged to present true and proper documents to facilitate the due diligence exercise which the Bank is expected to carry out to satisfy anti-money laundering regulations. The complainant failed to do so.

In his testimony before the Arbiter, the Complainant admitted that the criminal proceedings against him have not yet been completed and there is no court judgement yet. He also stated that when he applied for the opening of the basic payment account, he did not inform the Bank about the criminal proceedings against him.

The Bank's representative testified that since MF declared that he was a PEP as part of its due diligence process, the Bank wanted to meet the client. However, the Complainant failed to visit the Bank and instead filed a complaint with the Bank. As part of the due diligence exercise the Bank established that MF was not a PEP and in May 2018 he was charged for forgery. The Complainant had also stated that he had a monthly salary of €2,500. From the Bank's system it transpired that he was no longer employed with the Foreign Ministry since 2015 and, therefore, his declaration of income resulted to be incorrect. The Complainant also declared in his application form that the contents were true whereas it resulted that the contents were not true. This made the client an untrustworthy person.

From the facts of the case, the Arbiter has no hesitation in deciding that the Complainant did not co-operate with the Bank to carry out a true and proper due diligence exercise by failing to visit the Bank when requested, and by making untrue declarations in his application form.

For the above stated reasons, the Arbiter decides that the complaint is not fair, equitable or reasonable in the particular circumstances of this case and is rejecting it.

The costs of these proceedings are to be borne by the Complainant.

Dr Reno Borg
Arbiter for Financial Services