

Before the Arbiter for Financial Services

Case No. 057/2018

RW (the complainant)

vs

MeDirect Bank (Malta) p.l.c.

(C 34125)

(the service provider/the Bank)

Hearing of the 11 February 2019

The Arbiter,

Having seen the complaint where the complainant states that the Bank refused to open a basic payment account for him in accordance with EU Directive 2014/92/EU and the reasons given by the Bank fall outside the framework of the basic payment account regulation as laid down in the Directive.

He stated that he gave the Bank all the required information and even more than required according to the Directive. This included proof of income and a thorough discussion of bank account statements for the last 3 years from another Maltese bank that has since gone out of business.

He asks the Arbiter to order MeDirect to grant him a basic payment account.

The Service Provider briefly stated that:

From 14 December 2017, RW wrote to the Bank enquiring about the account opening procedures. He provided the Bank with due diligence information such as:

ID; address; Political Status (Not a PEP); previous bank details and statements (with Nemea Bank); Source of Wealth (income earned from working in a Bank between 2001-2009 and gains from investments).

On 18 December 2017, and as per normal banking practice, one of our Call Centre agents replied to RW's email confirming that the information provided "was sufficient" to proceed with the online application **whilst** also highlighting the fact that the Bank would require additional information on the current employment and income.

However, when the Client went through the account opening apply flow on the Bank's online platform on 22 December 2017, the Bank felt it did not have sufficient information from a due diligence perspective to continue with the opening of the bank account and the need was felt to probe further and request additional information, and this in accordance with the Bank's anti-money laundering obligations and its internal policies and procedures.

Following the replies received from RW upon further probing, the Bank felt that RW did not satisfy the Bank's due diligence processes in accordance with its anti-money laundering obligations, and therefore refused to open the relevant bank account on this basis.

After taking the above into consideration the Bank informed RW that his application had been declined since the client did not satisfy the Bank's due diligence policies and procedures in accordance with the Bank's anti-money laundering obligations.

Having seen all the documents and heard both parties

Considers:

The Arbiter shall determine and adjudge the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.¹

The complainant requested the opening of a basic payment account in accordance with the provisions of the Payment Accounts Directive (PAD).

This 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* which *inter alia* stipulate:

'(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

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

'22. (1) 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.

(2) Credit institutions shall consider whether there are any grounds for the circumstances surrounding a refusal to open a payment account with basic features as set out in sub-regulation (1) to be disclosed to the Financial

¹ Cap. 555, Art. 19(3)(b)

² Bold by Arbiter

Intelligence Analysis Unit in terms of applicable anti-money laundering and combating the funding of terrorism legislation’.

The reason given by the Bank for refusing to open the basic payment account is that in accordance with Regulation 22 (above quoted) the complainant did not disclose the source of funds as part of its due diligence process.

The Arbiter is not convinced that the Bank was not given information about the source of income by the complainant.

He clearly stated that:

‘Source of wealth is mainly income earned from working in a bank (2001-2009) and gains from investments. There are also gains from Betfair exchange betting (those transactions appear on the Nemea account statement).

I am completely self-sufficient now and for the last 8 years have been investing and trading in financial markets, real estate etc.³

He attached a copy of his ID Card, a copy of a recent Melita bill, a copy of Nemea bank account statements from 2014 showing transfers from and to his German bank account which he used later to fund the MeDirect account, and transfers from Betfair sporting exchange.

He also *‘provided the Bank with (i) his monthly rent received (ii) the purchase of his two apartments, and (iii) a statement for his stock portfolio’.*⁴

On the 18 December 2017, the Bank informed him that from their Online Banking system he could operate his accounts online such as *‘making transfers’*.⁵

They also informed him that the information he had supplied them ***‘is sufficient in order for you to apply for the Account Opening. However, we would like to know what is your current employment and what constitutes you current income’.***⁶

³ A fol. 7

⁴ A fol. 65 Affidavit by the Bank’s representative

⁵ A fol. 8

⁶ Ibid.

In a few hours the complainant responded that the source of his income *'is mainly dividends/interest from a portfolio of stocks/financial assets and also rent paid by tenants of 2 apartments I own in Berlin and Frankfurt'*.

He also informed the Bank that:

'For a quick review I have also attached 2 info sheets regarding the apartments.

Also, I have recently requested a statement of assets for one of my stock portfolios and I have attached a copy of this statement and a translation'.⁷

After further questioning by the Bank, and the complainant's reply, he had the account online. That included entering his data, verifying his smartphone for mTan use and transferring an initial funding from his German bank account to his MeDirect account.⁸

The Bank informed him that he could operate the account and once they received the funds they would notify him accordingly. A day later, they told him that they had sent back the funds to origin since they wanted further information.

After the complainant sent the information requested, specifically every Nemea transaction made from the opening of the account in 2014 till 2017, the Bank withdrew the account by stating that they *'cannot proceed with account opening application since information falls outside the Bank's internal parameters. Hence, we will close account opening application from our end.'*⁹

It was after the complainant intimated the Bank that he would seek a remedy through MFSA that the Bank mentioned the money anti-laundering legislation and that they were not satisfied with the information regarding his source of wealth as part of their due diligence exercise.

The Arbiter is not convinced that the complainant did not reveal his source of wealth because he mentioned his previous career with a German Bank, his rental income from Germany and income received from investments and also from sports betting.

⁷ A fol. 9

⁸ A fol. 10

⁹ A fol. 13

The Bank's representative stated¹⁰ that they had carried research on the internet and found that the complainant took part in poker tournaments and he made some winnings *'and whilst there is nothing inherently wrong with this, that falls outside the bank's risk appetite'*. Later, she added *'from anti-money laundering point of view'*.

During the proceedings, the complainant also filed a character reference from a German lawyer, a reference from his Maltese landlord and, also, authorised the Bank to seek any information it deemed necessary from his previous employer --- Bank in Frankfurt (now called -----). This Bank issued a statement confirming the complainant's employment with it from 2001 to 2010, as had already been stated by the complainant.

The Arbiter is conscious of the fact that banks are requested by the Financial Intelligence Analysis Unit (FIAU) to observe anti-money laundering legislation to thwart criminal activity, terrorist acts and money laundering. This is also part of European and national law and should be scrupulously followed before, during, and after the opening of a bank account including payment accounts with basic features as sanctioned by the Payment Accounts Directive.

However, credit institutions should not use anti-money laundering legislation as a pretext to refuse the opening of payment accounts with basic features especially for EU citizens for whom the PAD was specifically drafted.

Each case has to be treated on its own merits. In this case, the Bank did not produce enough evidence to convince the Arbiter that the complainant falls within the parameters of Regulation 22 above quoted.

The Bank had already opened an account for the complainant on information which was less comprehensive than it acquired at a later stage. With the exception of detailed information about his previous employment, (which was later disclosed and confirmed by ----), the complainant produced all the information requested from him by the Bank supported by documents which are considered adequate to confirm the source of his income.

Therefore, the Arbiter concludes that the reasons given by the Bank do not justify the refusal to open a payment account with basic features. The

¹⁰ A fol. 42

complainant also showed a genuine interest in opening the account and confirmed to the Bank (and also during these proceedings) that he needs the payment account to pay the rent and other expenses while he is residing in Malta.

Furthermore, the complainant was not a newcomer to Malta and already had a banking account with another Bank registered in Malta from 2014 to 2017 which was closed because the Bank ceased its operations and not because of any misdemeanour by the complainant.

The PAD is very specific and, while it highlights the duty of credit institutions to observe anti-money laundering laws, at the same time emphasizes that credit institutions should not unjustifiably refuse to open a payment account with basic features.

Article 19(7) of the Regulations provide that:

'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.'

Moreover, the Regulations stipulate that:

'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. Such information shall be made available online on the credit institution's website and, if so requested by the consumer, on a durable medium, free of charge. It shall be the duty of the credit institution to keep such information updated at all times.'

At a very late stage in the proceedings, the Bank stated that it does no longer have five-branches operating in Malta and does not offer any cash withdrawals and, therefore, it is not bound by the PAD to offer basic payment accounts.

In this respect the Bank did not provide enough evidence to support this declaration. It filed an unsigned note, DOK JC, which only contains replies by an MFSA employee to questions asked by the Bank.

However, even if the Bank had closed branches during the proceedings, or had ceased to offer cash withdrawals, this does not absolve it from opening the basic payment account for the complainant. It has been established by the Court of Appeal¹¹ that if circumstances change during the proceedings, especially through actions taken by the defendant, this should not affect the original claim:

‘Illi mbaghad kif gie ritenut minn din il-Qorti ta’ l-Appell hu principju fundamentali li ghandu jigi mhares fil-gudizzju tal-kawzi li “id-domanda ghandha titqies in relazzjoni ghall-fatti kif kienu meta giet proposta l-istess domanda; ghaliex kien appuntu dak l-istat ta’ fatt li, meta intavola l-kawza, ha in konsiderazzjoni, tajjeb jew hazin, l-attur.” U “l-ezami tal-fondatezza jew le tad-domanda “ex nunc” ma jistax jigi maghmul jiddependi fuq kambjamenti ta’ fatt konsegwenti ghad-domanda, aktar u aktar jekk dawn il-kambjamenti jsiru fil-mori tal-gudizzju mill-konvenut interessat. Dan il-principju hu inkorporat fl-aforisma ‘Pendente lite nihil innveratur’” (Kollez. Vol. XXXVI. I. 269)

Moreover, the PAD does not exclude Banks with less than five branches from opening a basic payment account; it does not make it obligatory on them to do so. In this case, the Bank did not prove that it had less than five branches before the date of the filing of the complaint, or that it did not offer cash withdrawals. Moreover, this line of defence was not raised in the original reply to the complaint.

For the above-stated reasons, the Arbiter declares that the complaint is fair, equitable and reasonable and is upholding it in so far as it is compatible with this decision.

Therefore, the Arbiter orders MeDirect Bank (Malta) p.l.c. to open a payment account with basic features to the complainant with immediate effect.

However, the Bank should monitor this account, and any other similar accounts, in accordance with Regulation 22(1) of the Credit Institutions and

¹¹ Joseph Aquilina noe vs Filippo Borg et, QA, 28/09/2006

Financial Institutions (Payment Accounts Regulations) or with any other applicable law, any other enforceable procedure, guidance or provision for combating money laundering and the funding of terrorism.

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

**Dr Reno Borg
Arbiter for Financial Services**