

Before the Arbiter for Financial Services

Case ASF 134/2024

BA (the 'Complainant')

Vs

HSBC Bank Malta p.l.c.

(C 3177)

(the 'Bank' or the 'Service Provider')

Hearing of 16 September 2024

This is a Complaint filed by the Complainant on 27 June 2024¹ where he reports a case of racism against him at HSBC Bank Paola branch.

The Complaint

"I am BA, a Maltese citizen originally from Nigeria. I have been residing in Malta since 2003 and studied at the University of Malta, where I earned my Bachelor's and Master's degrees. I am a XXX with the XXX.

I am writing to report a recent incident at the HSBC XXX Branch. I went to the HSBC XXX to open an account about one and a half months ago, as requested by my XXX. They called me the first day to open the account, but I was sent back because I didn't come with the work contract, and they never asked me to make it available during the appointment. I returned the next day with the contract, and they registered it and told me they would call as soon as they received the clearance from their Head Office in Santa Venera.

¹ Pages (p.) 1 - 5 with attachments p. 6 - 14

I was humiliated and racially abused with some nasty questions that had nothing to do with the bank; for instance, they asked me how I got my citizenship, and I responded with marriage and residence, having lived here for over twenty years.

I waited until Monday, the 27th of May, without any response, so I decided to visit the branch to find out the reason for the delay, but to my greatest surprise, I was told by their staff XX, that their Head Office declined my application without any explanation. I tried to understand the reason behind that decision to no avail.

However, she told me I would be contacted by email with the reason, which I am still waiting to receive. I only received a correspondence from their Head Office asking me to challenge the decision if I wish to without providing the reason for the decline again.

I came to Malta legally, and my police conduct is spotless. Due to this delay and injustice, I have missed two payments from the XXX. My only crime was, perhaps, that I am a black Maltese citizen and a government official and, therefore, don't deserve to have an account with HSBC.

It is unprofessional and inappropriate for such a financial institution like HSBC to render its services with prejudice and discrimination based on my racial affiliation. I was humiliated and starved of my wages due to the colour of my skin, and this had placed a huge financial burden on my family, with my wife struggling to feed the family since I couldn't receive my wage yet without an account.

These types of racial abuse and incompetence shouldn't be tolerated in any sane society, and I demand an open apology and financial compensation from HSBC for this injustice. I have written to the Office of the Ombudsman who referred me to you.

I also write an opinion article for the Times of Malta and will wait for your decision before I share this ugly experience with the public through the newspaper. Who knows how many voiceless black people have met with this racial and derogatory attitude before now?

I look forward to your urgent intervention and your holding HSBC accountable for discrimination and prejudice as a deterrent in the future. This cannot be

allowed to continue, where someone can just declare you guilty without charge based on subjective instinct.

I appreciate and bank on your professionalism in this case.”

The Reply

In their reply dated 18 July 2024, HSBC stated:

“The Bank is revising its position and it will engage with customer to effect a proper due diligence which will hopefully lead to a positive resolution. We will encourage customer to co-operate and engage with the Bank to provide all necessary information and documentation in line with the Bank’s Know Your Customer policies and regulations per Maltese Law.”²

The Hearing

A hearing was held on 03 September 2024. Complainant stated:

“I made this complaint because I was humiliated when I went to open an account at HSBC because of my colour.

I work with XXX. And they require that I have an account to be able to get paid normally. I say that, primarily, I use my wife’s account. My money was going to my wife’s account in HSBC. But I was directed to open my own account so that they can transfer the money directly to me instead of through my wife. So, I approached HSBC and they asked me to bring some documents.

The first time I went, they sent me back and told me to get my contract. I said, ‘OK’ and I went back again. I went a second time, and they took everything. They asked me some questions which I answered and they told me that they will get back to me.

Then, after three to four weeks, they told me that the application was rejected and I asked them why. They replied that they did not know the reason for this. Then I went back to complain. Some people told me that normally HSBC do things like that. I said, ‘OK’. Then, I went to BOV and it took them only just one week to open an account for me.

² P. 20

My wife wanted to close her account with HSBC due to this racial attitude and racial abuse towards me because they asked me all sorts of regulatory questions like how I got my citizenship. All these stuff.

From that time on, after wasting about two to three months, till now, they still haven't given me a reason why they rejected opening an account for me, so, I did not get paid for two months even though I gave them every single document that they asked for. I gave them every information that they wanted.

My wife had an account with them and all the money I made goes through her account at HSBC so they were aware of it but they rejected opening an account for me for no reason.”³

It was established that it took over 2 months from the initial request in mid-April to the denial of 21 June for HSBC to issue a decision refusing Complainant's request to open an account. It was also established that Complainant had no problem opening an account with another bank.

In fact, after he filed the Complaint with OAFS, HSBC contacted him to inform that they were revising their position and were ready to continue their due diligence process.

However, Complainant informed that he does not wish to follow up his application following their refusal, as he was by then well served by another bank.

HSBC replied stating:

“First of all, I want to apologise to Mr BA for this thing that happened. We reviewed the situation and it resulted that the person who was dealing with Mr BA did not have the proper experience and there was some sort of miscommunication.

I sincerely apologise for any misunderstanding that could have occurred and, as a gesture of goodwill, but without prejudice to anything, I would like to offer a small token of €100 unless he wants to go through the process of due diligence again but I do not think that he wants to.”⁴

³ P. 21 - 22

⁴ P. 23

Complainant considered the apology and the compensation offered as inadequate and asked the Arbiter to adjudge this case.

Decision

Having considered the merits of the case, the Arbiter notes that HSBC have admitted that they were deficient in handling the application of the Complainant. This has no doubt caused him embarrassment and humiliation.

The Arbiter agrees with the Complainant that the compensation offered is inadequate for the grievances caused and hereby, in terms of Article 26 (3)(c)(iv) of Chapter 555, orders HSBC to:

1. Pay the Complainant by way of damages caused an amount of €500 (five hundred euro);
2. Issue to the Complainant a formal letter of apology;
and in terms of Article 26(3)(c)(iii) to:
3. Take steps to ensure their staff are properly trained in treating clients without discrimination.

Alfred Mifsud
Arbiter for Financial Services

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.