

Before the Arbiter for Financial Services

Case ASF 101/2026

SK

(Complainant)

Vs

OpenPayd Financial Services Malta Limited

(C 75580)

(Service Provider or OpenPayd)

Sitting of 21 May 2026

The Arbiter refers to the preliminary plea raised in the reply¹ of OpenPayd challenging his competence to hear this complaint on the basis that Complainant is not an eligible customer in terms of the definition of Article 2 of CAP. 555 of the Laws of Malta (The Act) that codifies the operation of this Arbitration.

Preliminary Plea

Article 22(2) of the ACT stipulates that:

“Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence.”

Moreover, in virtue of Article 19(1) of the Act, the Arbiter can only deal with complaints filed by **eligible customers**:

*“It shall be the primary function of the Arbiter to deal with complaints filed by **eligible customers** through the means of mediation in accordance with Article 24 and where necessary, by investigation and adjudication.”*

¹ P. 68 - 71

The Act stipulates further that:

“Without prejudice to the functions of the Arbiter under this Act, it shall be the function of the Office:

*(a) To deal with complaints filed by **eligible customer**.”²*

Eligible customer

Article 2 of the Act defines an “*eligible customer*” as follows:

“a customer who is a consumer of a financial services provider, or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from a financial services provider.”

The Arbiter, before proceeding to hear evidence on the merits of the case, has to primarily decide whether the Complainant is in fact an **eligible customer** in terms of the Act. The Arbiter would not be competent to adjudicate the complaint unless the Complainant qualifies as an **eligible customer**.

Case made by OpenPayd for no competence

In their official reply of 22 April 2026, OpenPayd stated:

‘We further respectfully submit that the customer is not an eligible customer. Pursuant to article 11(1)(a) and article 19(1) of Chapter 555 of the Laws of Malta (the "Act"), the Arbiter must deal with complaints filed by eligible customers. If the Complainant does not qualify as an eligible customer of OpenPayd, then the Arbiter lacks jurisdiction to adjudge the Complaint.

At the outset, OpenPayd states again that it does not provide a(n) (bank) account, payment or investment service to the Complainant.

The definition of 'eligible customer'

Art 2 of the Act provides the following definition for the terms “eligible customer”:

shall include:

² Article 11(1)(a)

- (a) a customer who is a consumer of a financial services provider;*
- (b) a customer to whom the financial services provider has offered to provide a financial service;*
- (c) a customer who has sought the provision of a financial service from a financial services provider;*
- (d) the lawful successor in title to the financial product which is the subject of the relevant complaint;*
- (e) consumer associations; and*
- (f) voluntary organisations;*

...

None of the above paragraphs (a)-(f) apply to OpenPayd, as shall be proved throughout the proceedings. The Complainant has no contractual relationship with OpenPayd. OpenPayd provides payment processing services exclusively to its corporate customer, the Merchant. The Complainant is a customer of the Merchant, not of OpenPayd.

The Complainant makes it clear in the Complaint that he was a victim of fraudsters, and OpenPayd is not, in any way, involved in the scam:

"I am filing this complaint against OpenPayd Financial Services Malta Limited (the 'Provider') regarding a fraudulent investment transaction amounting to 44.100 EUR.

Fact is: The OpenPayd's infrastructure (Virtual iBAN) was used by fraudsters to facilitate an investment scam! The scammers provided me the OpenPayd-IBAN-number and the IBAN-account-name ("OpenPayd"). [.]"

OpenPayd can also confirm that it has never "offered to provide a financial service" (including, for the avoidance of doubt, any account, payment or investment service) to the Complainant (nor, as OpenPayd only provides its services to corporate clients, could OpenPayd ever have provided any such

services to the Complainant) nor has the Complainant "sought the provision of a financial service from OpenPayd".

Similarly, we would like to make exceptionally clear that the basis on which a number of the Complainant's concerns seem to be based (that OpenPayd is a bank that has accepted deposits or provided the Complainant with a bank account) is similarly entirely incorrect.

As there is no contractual relationship between OpenPayd and the Complainant, the Complainant cannot be regarded as an eligible complainant in terms of Article 2 of the Act.

Furthermore, with respect to the following proviso in the definition of 'eligible customer':

Provided that 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 of any one of the financial services providers involved in the suspicious fraudulent payment transaction and this proviso shall be applicable with effect from 1st October 2025;

OpenPayd submits that since the conduct complained of occurred before 1 October 2025, the proviso does not apply.”³

OpenPayd made arguments that non-competence would have applied even if the payments were dated after September 2025, but these arguments are not relevant for this particular case where all payments were made before 1 October 2025.

Case made for competence by Complainant

By decree of 24 April 2026,⁴ the Arbiter gave Complainant the opportunity to make his case against the preliminary plea raised by OpenPayd.

In his reply of 28 April 2026, Complainant submitted:

³ P. 68 -70

⁴ P. 74 - 76

1. 'Jurisdiction and Status as an "Eligible Customer":

Distinction from Case ASF 155/2024: I contest the Respondent's claim that my case is identical to the cited Court of Appeal decision. In my case, I explicitly designated "OpenPayd" as the beneficiary on all 5 transfer instructions. By doing so, I "sought the provision of a financial service" directly from the Respondent, which satisfies the definition of an eligible customer under Art. 2(c) of CAP. 555.

Furthermore, I qualify as an "eligible customer" under the amendment effective from 1 October 2025, as I am a victim of a fraudulent transaction with an immediate and legitimate interest in the funds processed by the Respondent.

- 2. Acceptance by Conduct:** *By accepting and processing funds addressed to its own name, OpenPayd established a factual relationship with me. Denying jurisdiction would allow a licensed provider to accept consumer funds under its own name and then evade accountability by claiming the consumer is not an "eligible customer."*
- 3. Legitimate Interest:** *As a victim of fraud where the Respondent's infrastructure (vIBAN) was the central tool for the deception, I have a "genuine and legitimate interest" in this matter. I request the Arbiter to exercise jurisdiction to prevent a manifest injustice and to examine the Respondent's failure to flag the beneficiary name mismatch.⁵*

On 29 April 2026, he further submitted:

1. 'Direct Interaction and Visual Counterparty

Between 15 September 2025 and 25 September 2025, I conducted five separate transfers totaling €44,100. In all these transactions, the beneficiary was explicitly and exclusively listed as "OpenPayd Financial Services Malta Limited".

I acted under the clear understanding and intention of engaging with OpenPayd as my financial service provider. Unlike the circumstances in ASF

⁵ P. 79

155/2024, OpenPayd was not an "invisible" intermediary to me, but the primary and named recipient of my funds.

2. No Knowledge of Third Parties (Klickl)

I would like to emphasize that the company "Klickl" was completely unknown to me at the time of the transactions. My intent was to utilize the services of a regulated Maltese institution (OpenPayd).

The fact that OpenPayd allowed these funds to be moved further to a third party in Poland without my knowledge or consent constitutes a failure in their service delivery and duty of care towards me as the person providing the funds.

3. Active Request for Service

By sending funds directly to an IBAN registered under the name of OpenPayd, I made an active request for the Service Provider to handle my funds securely. This qualifies me as an "eligible customer" under the definition of a person who has sought a financial service

4. Failure of Anti-Money Laundering (AML) and Duty of Care

A series of five high-value transfers within only ten days should have triggered immediate "Know Your Customer" (KYC) and "Know Your Transaction" (KYT) protocols. OpenPayd's failure to contact me during this period further cements my status as a customer whose funds were being managed by them, albeit negligently.

Conclusion

The Service Provider cannot use its complex internal infrastructure with third-party platforms to strip consumers of their rights, especially when the Service Provider's own name is used to solicit funds. I respectfully ask the Arbiter to uphold jurisdiction and proceed with the merits of the case.

I have attached copies of the five transfer confirmations as evidence.⁶

⁶ P. 83 - 84

With both replies, he submitted evidence that the transfer in question had clearly identified OpenPayd as the receiving institution and made no reference to the Merchant beneficiary of the (v)IBAN.

Analysis and observations

On a similar issue in case reference ASF 155/2024,⁷ the Arbiter had decreed that as the beneficiary was clearly indicated as being the remitter himself, the Arbiter did not accept that the Complainant:

‘Never sought the provision of a financial service from OPFS.’

The Arbiter accordingly had decreed that the complainant in case ASF 155/2024, qualifies as an eligible customer and proceeded to adjudicate the case.

The said decision was appealed by OpenPayd. On 25 February 2026, the Court of Appeal revoked the Arbiter’s decision in case ASF 155/2024 and decided that the Arbiter should have declared incompetence to adjudicate the case, as it considered complainant not compliant with the definition of **‘eligible customer’** in terms of Article 2 of the ACT.⁸

The major difference between this particular case and the case ASF 155/2024 is that in this case, rather Complainant naming himself as beneficiary of the transfer, he disclosed OpenPayd as *‘Zahlungsbeteiligter’* which means *‘payment participant’*.

There is no question that the payment was handled by OpenPayd who had issued the vIBAN to its merchant client. However, naming the handling institution for the payment does not necessarily establish a direct contractual relation with the remitter. Banks and financial institutions handle many payments from remitters who are not their customers.

In the appeal decision that overturned the Arbiter’s original decision in case ASF 155/2024, the Court stated:

⁷ <https://financialarbiter.org.mt/sites/default/files/oafs/decisions/2097/ASF%20155-2024%20-%20PU%20vs%20OpenPayd%20Financial%20Services%20Limited.pdf>

⁸ <https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=159164>

*'Filwaqt li l-Qorti tifhem l-interpretazzjoni li ta l-Arbitru, xorta tqis li dak li għandu u kellu jiġi segwit huwa proprju l-kelma tal-liġi. Ma jirriżultax lil din il-Qorti li d-definizzjoni li kienet tagħti l-liġi fiż-żmien meta seħħew it-tranzazzjonijiet in mertu, kienet wiesgħa biżżejjed sabiex persuna bħall-appellata titqies li kienet klijent eliġibbli ta' soċjetà li tipprovdi servizzi bħas-soċjetà appellanta. Dan aktar u aktar meta din il-Qorti qed issib li mhuwiex minnu li l-appellata kienet talbet xi servizz mingħand is-soċjetà appellanta, u dan fid-dawl tal-fatt li l-appellata kienet konxja li hija kienet qed tittrasferixxi flusha favur SWAPS. Il-Qorti hija konvinta minn dan anki fid-dawl tal-emendi legiżlattivi introdotti riċentement fil-Kap. 555 tal-Liġijiet ta' Malta, u li speċifikament issa jagħtu l-possibbiltà lill-vittmi ta' frodi f'każijiet ta' pagamenti frawdolenti suspettużi li jinvolvu fornituri tas-servizzi finanzjarji, sabiex jikkwalifikaw bħala klijenti eliġibbli. Possibbiltà li l-liġi ma kinitx tipprovdi għaliha qabel, u li għalhekk kienet eskluża. Il-Qorti fl-aħħarnett tqis ukoll dak li qal l-Arbitru fir-rigward tad-differenzi bejn dan il-każ, u każijiet oħra fejn kien għe meqjus li l-klijent ma kienx klijent eliġibbli. Il-Qorti hawnhekk ukoll tqis li dawk id-differenzi ma humiex differenzi li għandhom xi portata legali, u għalhekk ma tistax tqis li dawk id-differenzi huma biżżejjed sabiex jinstab li l-appellata kienet klijenta eliġibbli. Fid-dawl ta' dan kollu, il-Qorti tqis li s-soċjetà appellanta għandha raġun f'dan l-aggravju tagħha, u għalhekk sejra tilqgħu.'*⁹

As the circumstances of this case, insofar as the preliminary plea is concerned, are intrinsically similar to that applicable for ASF 155/2024 (particular in view of the fact that all payments complained of were all transacted before 01 October 2025 when the definition of 'eligible customer' was widened by a change in

⁹ Liberal translation: *While the Court understands the interpretation given by the Arbitrator, it still considers that what should and had to be followed is precisely the word of the law. It does not result for this Court that the definition given by the law at the time when the transactions in question occurred was broad enough for a person like the appellee to be considered an eligible client of a company providing services such as the appellant company. This is even more so when this Court finds that it is not true that the appellee requested any service from the appellant company, and this in light of the fact that the appellee was aware that she was transferring her money in favor of SWAPS. The Court is convinced of this also in light of the legislative amendments recently introduced in Cap. 555 of the Laws of Malta, which specifically now give victims of fraud in cases of suspicious fraudulent payments involving financial service providers the possibility to qualify as eligible clients. A possibility that the law did not provide for it before, and that it was therefore excluded. The Court also finally considers what the Arbiter said regarding the differences between this case and other cases where it had been considered that the client was not an eligible client. The Court here also considers that these differences are not differences that have any legal significance, and therefore it cannot be considered that these differences are sufficient to find that the respondent was an eligible client. In light of all this, the Court considers that the appellant company is correct in this grievance, and therefore it will be upheld.*

legislation) and, in view of the above-cited decision of the Court of Appeal, the Arbiter upholds the preliminary plea and declares non-competence to hear the merits and adjudicate this Complaint.

The Arbiter considers that the differences between this case and case ASF 155/2024 are not significant to alter the judgement of the Court of Appeal. This in view that the Court of Appeal's decision made heavy reliance on the legislative changes which went into effect on 1 October 2025 and, therefore, cannot be extended to payments made before this date on the basis of what the definition of 'eligible customer' was in terms of the applicable law at the time of these payments.

For these reasons, the Complaint is being dismissed for reason of non-competence and this without prejudice to any rights the Complainant may have to take his case before a court or tribunal competent to hear and adjudge it.

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter's decision

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. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.