

## **Before the Arbiter for Financial Services**

**Case ASF 122/2026**

**TR**

**(‘Complainant’)**

**Vs**

**OpenPayd Financial Services Malta Limited**

**(C 75580)**

**(‘Service Provider’ or ‘OpenPayd’)**

### **Sitting of 30 June 2026**

This is a complaint<sup>1</sup> related to a claim for compensation amounting to €461,000 being value of bank transfers made from his personal account with WiDiBa, digital bank of Monte dei Paschi di Siena of Italy, showing himself a beneficiary of these transfers. These transfers were directed to virtual IBAN(s) that routed these payments to OpenPayd. The latter allocated the funds to the virtual IBAN account of a merchant, KlickL Europe, that was not in any way indicated in the bank transfer orders.

These transfers were affected between 31 July 2025 and 04 September 2025 as evidenced by copies of the transfers included with the complaint<sup>2</sup>.

The Arbiter refers to the preliminary plea raised in the reply<sup>3</sup> 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.

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<sup>1</sup> Pages (p.) 1 - 6 and attachments p. 7 - 38

<sup>2</sup> P. 9 - 20

<sup>3</sup> P. 43 - 53

## **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.”*

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**.”<sup>4</sup>*

## **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.”*

This definition was applicable at the time when the contested transactions being the subject of this complaint took place between 31 July 2025 and 04 September 2025.<sup>5</sup>

By means of an amendment enacted by ACT IX of 2025 effective as from 17 April 2025, a proviso has been added to this definition stating:

*“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*

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<sup>4</sup> Article 11(1)(a)

<sup>5</sup> P. 7

*one of the financial service providers involved in the suspicious fraudulent payment transaction and this proviso shall be applicable with effect from 1<sup>st</sup> October 2025.”*

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 14 May 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:*

- (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:*

*'In January 2025, Complainant came across a social media advertisement on Instagram promoting a so-called "Wells Fargo Academy". The advertisement invited users interested in online trading to join a WhatsApp group, where participants were promised real-time buy/sell instructions for shares allegedly traded on the primary (Off the Counter) market.*

*The schemed falsely represented that such shares could be purchased at 20-30% below their official market quotation, with the promise of extraordinary profits.*

*Complainant joined the afore-mentioned WhatsApp group and, on 26 July 2025, after sending a copy of his identity document to the chat administrators as instructed, was granted access to a purported online trading platform called WFALGOAI, which he downloaded from the Apple Store.*

*On 31 July 2025, Complainant made the first of several bank transfers, as instructed by the perpetrators, in order to fund his trading activities on the platform ...".*

*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.”<sup>6</sup>*

OpenPayd made further arguments that non-competence would have applied even if the payments were dated after September 2025.

The Arbiter will consider these arguments only if he determines that the proviso above mentioned renders the Complainant as an eligible customer.

OpenPayd also pointed out that by virtue of Article 21(3)(a) of the Act, the Arbiter is restricted to award compensation up to €250,000 and interest and charges, so the compensation sought exceeding this figure is outside the competence of the Arbiter.

### **Case made for competence by Complainant**

By means of a decree of 25 May, the Arbiter invited the Complainant to make his case against the preliminary plea of non-competence made by Service Provider as above described.<sup>7</sup>

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<sup>6</sup> P. 48 - 50

<sup>7</sup> P. 55 - 57

In his submissions of 08 June 2026,<sup>8</sup> the Complainant argues that the above-quoted proviso qualifies him as an eligible customer even though the transactions took place before 1 October 2025 for these reasons:

1. His complaint with OpenPayd was made on 17 December 2025<sup>9</sup>
2. His complaint with OAFS was registered on 27 April 2026<sup>10</sup>
3. The quoted proviso applies to complaints registered after 1 October 2025 as it has no restrictions making it applicable only to transactions occurring as from that date.

He asserts that he is definitely a consumer as fitting the EU ADR Directive (2013/11/EU) and states:

*“That accordingly, provided that the Complainant qualifies as a ‘consumer’, and that the dispute concerns the provision of financial services within the meaning of Chapter 555, the concept of ‘eligible customer’ must be interpreted purposively and not restrictively. Any contrary approach would risk undermining the effectiveness of both national law and EU law;*

*That the Directive clearly favours broad and effective access to ADR mechanisms and discourages overly restrictive or formalistic interpretations which would deprive consumers of an accessible remedy.”<sup>11</sup>*

He then argues that even if, for argument’s sake, he is not fitting the definition of ‘eligible customer’ of the Act because his transfers were affected before the definition was widened effective 01 October 2025, he should still be considered as eligible for these reasons:

22. *“That in terms of Article 11(1)(a) of Chapter 555 of the Laws of Malta, the Arbiter is vested with the function:*

*“to deal with complaints filed by eligible customers”*

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<sup>8</sup> P. 59 - 66

<sup>9</sup> P. 24 - 25

<sup>10</sup> P. 1

<sup>11</sup> P. 61

23. That the previous definition of 'eligible customer' in Chapter 555 of the Laws of Malta was as follows:

*"eligible customer" means 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 ...*

24. That this definition may be broken down as follows:

*(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;*

*(d) the lawful successor in title (not applicable here).*

25. That the Court of Appeal in **Flaye Diane vs OpenPayd Financial Services Malta Limited** held that the Complainant did not qualify as an "eligible customer" due to the absence of a direct nexus with OpenPayd. The Court stated:

*"... m'hemm l-ebda ness dirett bejn l-appellata u s-soċjetà appellanta ... ir-relazzjoni tal-appellata kienet mal-bank tagħha Wise, u mal-klijenti tas-soċjetà appellanta ..."*

26. That the Court's reasoning was expressly based on the nature and means of the transactions, and the absence of any direct relationship or identifiable link between the complainant and OpenPayd;

27. That the present case however is fundamentally different. Unlike the circumstances in *Diane Faye*, the funds transferred by the Complainant were credited to accounts held with OpenPayd in the name of the Complainant himself;

28. That the Court of Appeal moreover considered that Flaye was not even aware of OpenPayd's role, thereby concluding that:

*"bl-ebda tiġbid tal-immaginazzjoni ma jista' jitqies li l-appellata kienet talbet li tingħata servizz ..."*

29. *That in the present case, that nexus clearly exists in particular: (i) the accounts to which the funds were transferred were held with OpenPayd in the name of the Complainant; (ii) OpenPayd received and processed funds under the Complainant's identity; (iii) OpenPayd operated accounts attributed to the Complainant, irrespective of whether such accounts were fraudulently opened. It is to be noted that in Diane Flaye's case, OpenPayd acted as solely as a payment conduit;*
30. *That it is respectfully submitted that the Court of Appeal in Flaye Diane did not fully address the first limb of the definition, namely, whether the complainant was:*
- "a customer who is a consumer of a financial services provider"*
- Instead, the Court focused predominantly on whether the complainant had sought or been offered services.*
31. *That in the present case, the Complainant clearly satisfies this first limb insofar as:*
- a. *OpenPayd held accounts in the Complainant's name;*
  - b. *OpenPayd processed substantial funds through those accounts;*
  - c. *such activities constitute the provision of financial services in an objective and operational sense.*
32. *That the existence of a consumer relationship does not depend exclusively on a formally concluded contract or on direct interaction, but may arise from the actual provision of services linked to an individual's identity and financial position;*
33. *That even if the accounts were opened fraudulently, it is submitted that OpenPayd treated the Complainant as the account holder within its systems and that the services and the*

*financial activity were rendered in connection with him - This suffices to establish that he was, at the very least, a de facto consumer of the services in question;*

34. *That furthermore, and without prejudice to the above, the present case is also distinguishable from Flaye Diane in relation to the third limb of the definition of 'eligible customer'. The Court of Appeal concluded that:*

- a. *the complainant knew she was transferring funds to SWAPS;*
- b. *she did not intend to engage OpenPayd at all.*

35. *That in the present case, however:*

- a. *the Complainant was induced to transfer funds into accounts purporting to be his own;*
- b. *the structure of the fraud necessarily implied that financial services would be provided in his name and for his benefit;*
- c. *the transactions were not directed toward a third-party merchant, but toward accounts attributed to him.”<sup>12</sup>*

He concluded stating:

36. *That Complainant humbly submits, whilst making reference to the above submissions, that ultimately Chapter 555 must be interpreted in light of its underlying purpose, namely, to provide accessible redress mechanisms to consumers in financial services disputes, as requested by Directive 2013/11/EU;*

37. *That a restrictive interpretation excluding individuals whose identity was used to open accounts; who suffered direct financial loss through those accounts; and in whose name financial services were provided, would*

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<sup>12</sup> P. 64 - 66

*undermine the effectiveness of the ADR Directive and even so to the objective and effectiveness of the revised definition of 'eligible customer';*

38. *That in conclusion, Complainant therefore humbly submits that the current definition of 'eligible customer' should apply in his regard;*

39. *That in any event, and strictly without prejudice to the submission that the amended definition of 'eligible customer' ought to apply, the Complainant humbly submits that the present case is materially distinguishable from the Court of Appeal judgment in Flaye Diane, insofar as the latter was premised on the complete absence of any direct nexus between the complainant and OpenPayd. In the present case, by contrast, the funds were transferred into accounts held with the Respondent in the name of the Complainant himself, with the result that OpenPayd received and processed transactions under his identity. This establishes a clear and direct connection between the Complainant and the Respondent, which was expressly lacking in Flaye Diane.*

*Accordingly, and even under the previous definition set out in Chapter 555, the Complainant may properly be regarded as a consumer of financial services provided by OpenPayd and, therefore, qualifies as an 'eligible customer' for the purposes of the Act.”<sup>13</sup>*

### **Analysis and observations**

The Arbiter notes that in his Complaint, Complainant admitted that the payments disputed were made in the belief that he was making a profitable investment on investments under the direction of fraudsters through online chats platform WFALGOAI, which later turned out to be fictitious and fraudulent.

This supposed investment platform was showing huge profits showing asset growth to over €2,000,000. He only realised that this was a scam when he attempted to withdraw €30,000 from the platform but instead, he was asked for further payments.<sup>14</sup>

He reported this fraud to the Italian Authorities.<sup>15</sup>

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<sup>13</sup> P. 66

<sup>14</sup> P. 7 - 8

<sup>15</sup> P. 21 - 23

The Arbiter finds difficulty to accept the argument that these funds were intended to stay in his account with OpenPayd (which he never had) when he was seeing the said funds being ‘invested’ on platform WFALGOAI on which he was enthusiastically following the huge theoretical profits being made.

It is evident that OpenPayd, with whom he never had any contact before making these transfers and are only referred to as the recipient bank (even though in reality OpenPayd have no bank status), have never in any way confirmed the assertion made in point 31 above quoted that Complainant held an account in his name with OpenPayd.

The fact that OpenPayd was the recipient bank does not make the remitter or the beneficiary a client of theirs, as banks and payment institutions often act as intermediaries between the remitter and the beneficiary of the IBAN specifically identified in the payment orders.

No evidence has been provided that Complainant had conducted any onboarding procedures when he sought to open an account with OpenPayd, who assert that they do not offer client relationships to personal clients.

On a similar issue in case reference ASF 155/2024,<sup>16</sup> 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.<sup>17</sup>

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<sup>16</sup> <https://financiararbiter.org.mt/sites/default/files/oafs/decisions/2097/ASF%20155-2024%20-%20PU%20vs%20OpenPayd%20Financial%20Services%20Limited.pdf>

<sup>17</sup> <https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=159164>

There is no question that the payment was handled by OpenPayd who had issued a vIBAN to its merchant client. Also, there is no issue that the payments in question occurred before 1 October 2025.

In the appeal decision that overturned the Arbitrator's original decision in case ASF 155/2024, the court stated:

*“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 tipprovdni servizzi bħas-soċjetà appellanta. Dan aktar u aktar meta din il-Qorti qed issib li mhux 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 leġislattivi introdotti riċentement fil-Kap. 555 tal-Liġijiet ta’ Malta, u li speċifikament issa jagħtu l-possibbiltà lill-vittmi ta’ frodi f’kazijiet ta’ pagamenti frawdolenti suspettużi li jinvolvu fornituri tas-servizzi finanzjarji, sabiex jikkwalifikaw bħala klijenti eliġibbli. Possibbiltà li l-liġi ma kienitx tipprovdni 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-kaz, u kazijiet oħra fejn kien gie 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”.<sup>18</sup>*

<sup>18</sup> 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 Arbitrator 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.

## Decision

As the circumstances of this case, insofar as the preliminary plea is concerned, are intrinsically similar to that applicable for ASF 155/2024 (particularly 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 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 of this case from case ASF 155/2024 are not significant to alter the judgement of the Court of Appeal. This in view that the Court of Appeal 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.

The Arbiter has consistently interpreted the provision introduced by ACT IX of 2025 as applying to transactions which occurred as from 1 October 2025 for these reasons:

1. The wording of the proviso is sufficiently clear that it does not apply to transactions occurring before 1 October 2025 and the Court of Appeal judgement above referred to supports this interpretation.
2. ACT IX of 2025 was effective as from 17 April 2025. If the legislator had intended the proviso to cover all complaints filed after the date of enactment irrespective of the date of occurrence of the disputed transactions, there would have been little scope to fix a future date as 1 October 2025.
3. The Arbiter was a promoter of the change of legislation and was involved in discussions with the Ministry and the industry during the legislative process. He can give categorical assurance that 1 October 2025 was set as an effective date as from which transactions would apply to render Complainant as an eligible customer, purposely to give time to the industry to absorb the changes and adjust their internal systems to abide

by the new obligations introduced by ACT IX of 2025. There should be no doubt what the intention of the legislator was.

The Arbiter therefore does not accept that the Complainant was an 'eligible customer' of the Service Provider either by virtue of the definition of eligible customer as was applicable for payments transacted before 1 October 2025 or because the Complainant had any account in his name with OpenPayd. Complainant clearly never intended for the funds to transit such a non-existent account as the funds were clearly intended for investments on a get-rich-quick platform which later turned out to be fraudulent.

For these reasons, the Complaint is being dismissed as in terms of Article 22(2) of the Act, the Arbiter does not have competence to hear its merits and to adjudge it.

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.

Parties are to carry their own costs of these proceedings.

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**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.