

## Before the Arbiter for Financial Services

Case ASF 110/2026

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(Complainant)

Vs

OpenPayd Financial Services Malta Limited

(C 75580)

(Service Provider or OpenPayd)

### Sitting of 29 May 2026

The Arbiter refers to the preliminary plea raised in the reply<sup>1</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.

#### 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:

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<sup>1</sup> P. 72 - 81

*‘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>2</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.’*

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 04 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;*

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<sup>2</sup> Article 11(1)(a)

*(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 she was a victim of fraudsters, and OpenPayd is not, in any way, involved in the scam:*

*"I was tricked by a company pretending to be Morgan Stanley, claiming they would invest my money in stocks. I transferred a significant amount of money to the accounts they gave me, including an account through 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.<sup>13</sup>*

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<sup>4</sup>.

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

By decree of 08 May 2026,<sup>5</sup> the Arbiter gave Complainant the opportunity to make her case against the preliminary plea raised by OpenPayd.

In her reply of same date, Complainant submitted:

*‘With reference to the Decision dated 8 May 2026 and within the time limit granted, I hereby submit the following observations regarding the preliminary objection raised by OpenPayd Financial Services Malta Limited.*

*I understand that the main issue is to determine whether I qualify as an “eligible customer” under Article 2 of Chapter 555 of the Laws of Malta.*

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<sup>3</sup> P. 77 -79

<sup>4</sup> P. 37; 42, showing payments made between 26.08.2025 and 24.09.2025

<sup>5</sup> P. 82 - 84

*In this regard, I consider that such status should indeed be recognised for the following reasons:*

**1. Existence of a direct relationship with OpenPayd**

*The transactions subject to the complaint were carried out through the infrastructure and financial services provided by OpenPayd. Although there was no traditional contract signed directly with the entity, OpenPayd effectively and necessarily participated in the provision of the financial service linked to the transfers carried out.*

**2. Request and actual use of a financial service**

*The legal definition includes not only those who formally hold an account with the entity, but also those who have requested the provision of a financial service. In this case, the transfers carried out necessarily involved the use of payment and processing services provided by OpenPayd, I being the person directly affected by such transactions.*

**3. Purposive and protective interpretation of the regulation**

*The purpose of the law governing the Office of the Arbiter for Financial Services is to provide effective protection to users of financial services. An overly restrictive interpretation of the concept of "eligible customer" would leave without protection individuals who, as in my case, have been directly harmed by actions related to financial services provided by the respondent entity.*

**4. Good faith and legitimate expectation of protection**

*The transactions were carried out under the legitimate expectation that the entities involved in payment processing were acting under regulatory supervision and were subject to the control and complaint mechanisms provided for under Maltese law, including this Office.*

**5. Need to assess the specific circumstances of the case**

*Although the Court of Appeal has ruled on case ASF 155/2024, I consider that each proceeding must be assessed on the basis of its own specific circumstances. In the present case, the direct impact arising from the*

*provision of the financial service justifies recognising my standing to submit the complaint.*

*For all the above reasons, I respectfully request that the preliminary objection raised by OpenPayd be dismissed and that the proceedings continue so that the merits of the complaint may be examined.<sup>6</sup>*

### **Analysis and observations**

On a similar issue in case reference ASF 155/2024,<sup>7</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>8</sup>.

There is no question that the payments in question were handled by OpenPayd who had issued a vIBAN to its merchant client. In some cases, OpenPayd was identified as Beneficiary in the transfer orders<sup>9</sup>. In other cases, it is not clear who was the named beneficiary as the section has been covered rendering it illegible<sup>10</sup>.

In submissions attached with her complaint, OpenPayd was defined as involved as intermediary<sup>11</sup>.

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<sup>6</sup> P. 87 - 88

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

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

<sup>9</sup> P. 54 - 58

<sup>10</sup> P. 44 - 53, 59 - 63

<sup>11</sup> P. 65

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 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 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 jinvolve 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 daww id-differenzi ma humiex differenzi li għandhom xi portata legali, u għalhekk ma tistax tqis li daww 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>12</sup>

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<sup>12</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

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 judgment 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 and this without prejudice to any rights the Complainant may have to take her case before a court or tribunal competent to hear and adjudge it.

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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

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*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.*

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.