Before the Arbiter for Financial Services

Case ASF 206/2026

WB

(Complainant)

Vs

OpenPayd Financial Services Malta Limited

Reg No. C 75580

(Service Provider or OpenPayd)

Sitting of 23 September 2026

This complaint[1] relates to various payments effected by Complainant through her account with bank Santander Totta in Portugal through OpenPayd between 23 January 2025 and 08 April 2025. According to a report made to the police authorities in Portugal, these payments were forced on her by criminals who threatened her and her family[2].

In her complaint, she explained:

> ***"On May 23, 2025, I contacted the Central Bank of Malta to request assistance in recovering money that was legitimately in my bank account and that was improperly and illegally transferred to accounts opened in my name in Malta without my consent.***
>
> ***With the help of the Central Bank of Malta, we concluded that several transfers, totalling €160,027.00, were made from my account at the Portuguese bank Santander Totta Plc to an account allegedly opened by***

[1] Pages 1 - 6 and attachments p. 7 - 66
[2] P. 57 - 62

a fraudster in my name at OpenPayd Financial Services Malta Ltd, a financial institution licensed in Malta by the Malta Financial Services Authority (MFSA).

These transfers occurred between January 23, 2025, and April 8, 2025.

I filed a complaint with the Central Bank of Malta, which shared all the information with the MFSA.

I have already given all the necessary authorizations/consents for banking purposes.

I also inform you that a criminal process is underway in Portugal to identify those responsible for withdrawing the money from my account.

I am attaching all relevant documentation, namely, the transfers made, the criminal proceedings, and the consent declarations.

The purpose of this complaint is to reach those responsible, to find out who opened the account, who authorized the transfers, how is it possible to open an account in Malta without my personal data? Who authorized it? Who provided the data? Where did my money go? Is it possible to claim insurance to recover my money?

The amount that was illegitimately withdrawn from my account corresponds to years of savings that were built up with great effort.

I am currently experiencing serious financial difficulties.

I survive thanks to help from family members, which is dwindling.

I am about to lose my home.

It is in this sense that I am submitting this complaint in order to obtain your help and recover my money. [3]*"*

[3] P. 65 - 66

Her complaint relates to the following payments:

DATE	AMOUNT IN €	REF.
23.01.2025	13,000	p. 11
27.01.2025	10,000	p. 12
29.01.2025	5,000	p. 13
04.02.2025	5,000	p. 14
07.02.2025	3,900	p. 15
10.02.2025	4,000	p. 16
19.02.2025	8,990	p. 17
21.02.2025	10,000	p. 18
06.03.2025	5,000	p. 21
27.03.2025	15,000	p. 19
27.03.2025	10,000	p. 22
28.03.2025	10,000	p. 20
04.04.2025	23,137	p. 25
07.04.2025	17,000	p. 23
08.04.2025	20,000	p. 24
TOTAL	**160,027**	

All these payments were showing Complainant as both remitter and as beneficiary quoting IBAN MT80CFTE…..31491.

OpenPayd were not specifically identified as the payment intermediary in the transfers but in their reply, they admitted that the vIBAN quoted was issued by them to one of their corporate clients, Foris MT Ltd (brand name Crypto.com), which is a licensed financial institution operating in Malta. The funds were all credited to the master account of Foris MT showing Complainant as the beneficiary of an account she must have held with them.

Complainant also submitted evidence of how transfer of funds was effected from other accounts she held with other Portuguese banks to her account with Santander Totta, thus being the source of the above-listed transfers.

In her police report, she also mentioned that to fund these transfers she had to borrow €30,000 from financial institutions UNICRE and COFIDIS, and €72,000 from family and friends[4]. The police report was filed on 12 April 2025, being four days after the last payment as above listed.

By way of resolution, she expects OpenPayd to make full refund of her losses stating that they must:

> *"activate the insurance that protects victims of fraud, scams and money laundering"*[5]*.*

She accuses OpenPayd as having failed to protect her by opening a fictitious account in her name allowing forged signatures and false documents.

Reply of the Service Provider

In their reply,[6] the Service Provider raised a preliminary plea that the Arbiter has no competence to hear and adjudicate this complaint as the Complainant was not their eligible customer as defined in Article 2 of CAP 555[7].

The Arbiter's competence

Article 22(2) of Chapter 555 of the Laws of Malta ("the Act") stipulates that:

[4] P. 61
[5] P. 8
[6] P. 70 - 78
[7] P. 74 - 77

"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.**"*[8]

Thus, the Arbiter has to primarily decide whether the Complainant is in fact an **eligible customer** in terms of the Act.

Eligible customer

Article 2 of the Act which defines *"eligible customer"* was amended in 2025 with a proviso 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 1 October 2025".

Decree re preliminary plea

On 11 August 2026, the Arbiter issued a decree inviting Complainant to make submissions challenging the preliminary plea raised by the Service Provider.

In the decree, the Arbiter explained that the complaint is only against OpenPayd and a fresh complaint will have to be filed if she wants to include other sending or receiving institutions involved in the fraud journey.

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[8] Article 11(1)(a)

In her reply[9] of 28 August 2026 to the Arbiter's decree, Complainant makes no defence to challenge the preliminary plea and extends her complaint to Foris MT Limited[10].

Decision re preliminary plea

The fact that OpenPayd was the financial institution that handled the payments subject of this complaint, 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 on-boarding procedures seeking a contractual relationship with OpenPayd, who assert that they do not offer client relationships to personal clients.

On a similar issue in case reference ASF 155/2024,[11] 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[12].

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[9] P. 84 - 85

[10] P. 84 point 6 states "*the Complainant therefore requests those responsible at Foris MT Limited take full accountability for the error committed …..*"

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

[12] 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 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 Arbiter'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-tranżazzjonijiet in mertu, kienet wiesġa 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 leġislattivi 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 kienitx 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 ġie 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."[13]

[13] 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*

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 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'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.

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 categoric assurance that the 1 October 2025 date 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

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.

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 her name with OpenPayd. The Service Provider merely executed the instructions in the transfer orders and could not have had any suspicion of fraud or criminal motivations for these payments.

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 her case before a court or tribunal competent to hear and adjudge it or to consider her rights against the remitter banks in Portugal or against the holders of the vIBAN account indicated in the transfer payments.

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.