

Before the Arbiter for Financial Services

Case No: 105/2019

TR (the complainant)

vs

HSBC Bank Malta p.l.c. (C-3177)

(the service provider or 'the Bank')

Hearing of the 3 November 2020

The Arbiter,

Having seen the complaint whereby the complainant states that he was refused the opening of a *'salary account'* by the service provider notwithstanding the fact that he had submitted to the Bank several documents namely: the employment agreement, the rental agreement, copies of ID card and passport, *'tax forms'* for the two previous years, statement from a different bank, reference letter from KPMG Malta, reference letter from BDO Malta and a reference letter from Ganado Advocates.

Furthermore, he was not given a reason by the Bank for the refusal of his request to open such an account and was simply informed that the refusal was due to *'internal policy'*.

He is requesting the opening of a current account so that he can receive his salary and pay rent.

Having seen the reply by the service provider which basically states:

That the complaint of TR (the 'Complainant') should be dismissed as unfounded in fact and at law for the following reasons:

In the first place, the Bank had a number of valid reasons to decline the Complainant's application for the opening of an account.

Specifically,

- a) at application stage, the Complainant provided the Bank with information which was inconsistent, as will be shown during the hearing of this case;
- b) the Complainant was connected to and involved in entities which were the subject of negative media reports; and
- c) the Complainant was connected to and involved in entities operating in sectors which are outside the Bank's risk appetite.

Subordinately, and without prejudice to the foregoing, the Bank is not obliged to open an account for an applicant save in the circumstances established by the Credit Institutions and Financial Institutions (Payment Accounts) Regulations (SL 371.18) (the 'Regulations'). More specifically, the Bank may or shall refuse to open a payment account a) if the applicant already holds a payment account with another bank; or b) where to do so would result in a breach of any anti-money laundering and combating the funding of terrorism obligation.

Thus, according to Regulation 18:

'Credit institutions with a branch network in Malta having five or more branches shall offer a payment account with basic features and may also offer online accounts with the same basic features.'

However, the said Regulations themselves provide for exceptions. Regulation 19(4) stipulates that:

- A. *'Credit institutions that offer payment accounts with basic features may refuse an application for such an account where a consumer already holds a payment account with any credit institution located in Malta, and where that account has at least the features set out in regulation 25(1):*

Provided that where a consumer declares that the credit institution with which the payment account is held has given notice in writing that the payment account will be closed.'

Indeed, it results that the Complainant already holds accounts with Bank of Valletta p.l.c. ('BOV') as can be evidenced by the letter of BOV dated 21 November 2019 addressed to Exante Ltd. This letter confirms that the Complainant has held accounts with BOV since 16 October 2019 (the said letter is attached to the Complainant's complaint).

B. Regulation 22(1) provides that:

'A credit institution shall refuse to open a payment account with basic features for a consumer where to do so would result in a breach of any anti-money laundering and combating the funding of terrorism obligation arising from applicable law or from any other enforceable procedure, guidance or provision.'

The reasons cited in paragraphs a), b) and c) above, apart from being, in themselves, valid reasons to decline the Complainant's application, also qualify as an exception under Regulation 22.

For the above-mentioned reasons, and without prejudice to any remedy or action at law, the Bank respectfully requests that the complaint be dismissed.

Subject to further submissions as may be required and reserving the right to present further documents, witnesses and other evidence.

Having heard the parties,

Having seen all the documents,

Considers

The **complainant** is seeking the opening of a current account to deposit his salary and to use it for the payment of his rent. He states that the Bank did not give a valid reason for its refusal to open such an account to *'a trustworthy local resident, and it is licensed to do exactly just that'*.¹

¹ A Fol. 4

On its part, **the Bank** is refusing to open the account basically for the following reasons:

1. At application stage the information given by the complainant was inconsistent;
2. The complainant was connected and involved in entities which were the subject of negative media reports;
3. The complainant was connected and involved in entities operating in sectors which are outside the Bank's risk appetite;
4. In accordance with the *Credit Institutions and Financial Institutions (Payment Accounts) Regulations (SL 371.18)*, the Bank may or shall refuse to open a payment account a) if the applicant already holds a payment account with another Bank; or b) where to do so would result in breach of any anti-money laundering and combating the funding of terrorism obligation. The complainant already has a bank account with Bank of Valletta p.l.c.;
5. Regulation 22(1) of the above-mentioned regulations comforts the Bank for refusing the opening of a basic payment account for reasons mentioned in (1) to (3) above.

Further Considers

Although the complainant was not specific, this complaint relates to the opening of a basic payment account as contemplated in the *Payment Accounts Directive* as transposed in our law in virtue of subsidiary legislation 371.8 titled the **Credit Institutions and Financial Institutions (Payment Accounts) Regulations** introduced on the 7 December 2016 as subsequently amended.

The complainant stated that he wanted the opening of a basic current account in order to receive his salary and pay the rent. That is enough to indicate that he was referring to a basic payment account. It is true that he did not mention the Directive in his complaint but the Arbiter has always taken the position that the procedure to be followed in complaints before the Arbiter are informal and consumers are not expected to file their complaints in a legal format.

All that the law requires is that the complainant indicates the service provider, states the facts of the case, and gives reasons for his complaint. It is not required that the complainant phrases the complaint in a legal format. However, the complainant explained in his final submissions that he was referring to the Payment Accounts Directive, and when the Arbiter analysed the contents of the complaint form, he came to the conclusion that the original complaint tallies with the scope of the PAD as transposed in our law.

Moreover, even the service provider made ample reference to the PAD in its reply and is *inter alia* basing its defence on Regulation 19(4) of the *Credit Institutions and Financial Institutions (Payment Accounts) Regulations* already mentioned above. Therefore, the Arbiter will deal with the case as a request for the opening of a payment account with basic features under the *Credit Institutions and Financial Institutions (Payment Accounts) Regulations*.

In order to decide the case in a fair, equitable and reasonable manner, the Arbiter has to analyse and weigh the facts of the case and the proofs submitted by the parties.

The Version of the Complainant

The complainant states that his application was for an account to receive his salary and to pay his rent. His landlord had an account with HSBC as well.

He claims that the bank '*corrupted*' the information he gave them and refused to give the complainant an explanation why they refused his application. He further states that he is a resident of Malta and has reference letters from '*veritable Maltese businesses*'.

He explained that he had a right to have a bank account to receive his salary through a local bank. He also asserts that during the due diligence process he collaborated with the bank more than an average person. He was asked many questions by many people, but they misrepresented what he had told them. It was not true what the representatives of the Bank said that he had bought a house in his own country with cash.

Another reason the Bank gave him for refusing the opening of the account was that he was involved in an activity which they did not like but failed to indicate to him what was that activity. The only employment he had was with XNT Ltd and had no separate business apart from his employment.

On cross examination he stated that:

'Being asked if I opened a bank account with Bank of Valletta, I say yes. That happened after I couldn't open a bank account with HSBC.

I confirm that I have an account with Bank of Valletta today'.²

He further stated that he had no other business apart from being a company director on a non-remuneration basis. With regards to STSS Malta Ltd he said that this is a company with the only assets being an investment in Maltese Government Bonds and was experimenting in virtual digital asset framework to assist the government identifying opportunities in this area, and also in helping it create legislation around it.

The Version of the Service Provider

Vanessa Soler, Daniela Anastasi and Karen Farrugia are witnesses brought forward by the service provider.

Vanessa Soler testified³ that she met the complainant in July 2019, and he was reluctant to answer to *'certain questions'*.

He provided her with an employment contract issued by XNT Ltd and she alleged that the complainant told her that it was prepared only for bank purposes: namely, the opening of the requested bank account. This employment contract was dated September 2018, whereas the complainant was registered with Jobs Plus in June 2019.

He gave her conflicting versions regarding his property in Russia. He told her that it was paid in cash, but he told her colleague, Daniela, that he only had a share in the property which was acquired by his parents.

² A Fol. 46

³ A Fol. 47 et seq

He did not inform her about his directorship in STSS Ltd but had given such information to Daniela as well. He did not provide her with further information she requested and told her that such information was found on '*public media*'.

Asked whether the complainant carried activities in crypto currency outside the bank's risk appetite, she said that she was never given such information. However, she confirmed on cross-examination that she received the complainant's tax statements from 2017 and 2018. Being asked if the Bank was satisfied with '*the amounts of taxes paid and the amount of capital I was in possession of*',⁴ she replied in the affirmative.

She also testified that the complainant had told her that the property he purchased was paid from his own savings. Being asked if '*she were OK*' with his source of wealth, she replied: '*I say they were tax statements not source of wealth*'.⁵

Daniela Anastasi basically testified⁶ that:

Her role was that of Mortgage and Protection Manager.

She met the complainant for a mortgage quotation and whatever information he gave her she passed it on to the International Team, who had met the complainant, to start the process to open the account. Some of the information which was passed on to her was not the same as that which had been provided to the International Team.

Regarding the complainant's job information, he informed her that he was an Operation's Analyst with XNT. However, his contract of employment showed that he was a Managing Director.

He also mentioned that he had a share of a property in Russia which was acquired from his parents, '*and the information given to the International team was somewhat different*'.⁷

⁴ A Fol. 48

⁵ *Ibid.*

⁶ A Fol. 49-50

⁷ A Fol. 49

She also mentioned that the complainant had informed her that his employer was paying his rent, but she could not find anything in this regard in his employment contract.

She also noticed inconsistencies with his declaration regarding his income.

Karen Farrugia Glanville testified⁸ that she was Branch Manager, International Banking Centre.

She stated that they had inconsistencies about the complainant's employment. At the meeting with Vanessa Soler, he provided her with a contract as a Managing Director of XNT, but then told Daniela that he was an Operations Analyst with the same company. The first meeting was with Daniela (Home Loan Manager) and the second meeting was with Vanessa to onboard the customer to be able to open the account.

Karen Farrugia Glanville confirms the evidence of previous witnesses regarding the inconsistencies regarding the complainant's occupation and employment income, his rent's payments and his involvement in STSS Malta Ltd and Stasis.net. In this regard, the complainant had stated that his involvement with STSS Malta and Stasis.net (which, at first, he did not mention), was that he was the CEO and founder of Stasis and director of STSS Malta Ltd with no income being received from both companies.

He also refused to disclose information about his employment history prior to 2015, but later clarified that he had worked with Portfolio Management for 15 years earning an average income between 20K and 100K.

*'Mr TR disclosed to Vanessa at the onboarding meeting that he was earning €5,000 salary since 2015. However, income tax statements dated 28 March 2019 for year 2018 show an income of €500,000.'*⁹

The Opening of Payment Accounts with Basic Features

Through the *Credit Institutions and Financial Institutions (Payment Accounts) Regulations*,¹⁰ Malta established a legal framework to implement the Payment

⁸ A Fol. 50 *et seq*

⁹ A Fol. 51

¹⁰ SL 371.18

Accounts Directive (PAD) of the European Union. The Regulations *inter alia* provide for the opening of payment accounts to consumers by certain credit institutions.

According to Regulation 18(1):

*‘Credit institutions with a branch network in Malta having five or more branches **shall**¹¹ offer a payment account with basic features and may also offer online accounts with the same basic features. Access to such payment accounts with basic features shall be provided through the entire branch network of the credit institution concerned’.*

It is clear that banks similar to the service provider, which have five or more branches in Malta, cannot shy easily from their legal obligation to offer a payment account with basic features to consumers legally resident in Malta or in any other Member State. The onus of proving that the refusal to open such an account is according to law, rests on the service provider.

Credit institutions are obliged **to facilitate** the opening of payment accounts with basic features, so much so, that:

1. They cannot discriminate against consumers legally resident in Malta or in another Member State by reason of their nationality or place of residence; on the basis of gender or any other form of discrimination as contemplated in the Equality for Men and Women Act and in the Charter;¹²
2. They shall not refuse to open a payment account with basic features on the basis of the consumers’ financial circumstances, including their employment status, level of income, credit history or personal bankruptcy;¹³
3. They shall not introduce or implement any policies or procedures which may directly or indirectly impose any unnecessary, difficult, or

¹¹ Emphasis by the Arbiter

¹² Regulation 17

¹³ Regulation 19(4)(A)

burdensome restrictions or processes to dissuade the consumer from exercising such rights;¹⁴

4. They shall provide detailed information about the application process for the opening of a payment account with basic features.¹⁵

However, an application by a consumer for the opening of a payment account with basic features does not give the consumer an automatic right. The consumer must prove that he/she has a **genuine interest** in opening the account.¹⁶

There are also certain obligations on the credit institution to carry out a due diligence process in respect of its obligations to combat money laundering and the funding of terrorism. If the credit institution is not satisfied that the consumer is a *bona fide* client, and there are **serious doubts** that the opening of the account may breach anti-money laundering rules and regulations, the credit institution shall refuse the application.¹⁷

The credit institution may also refuse the opening of the account where a consumer already holds a payment account with any credit institution located in Malta, and where that account has at least the features set out in regulation 25(1).¹⁸

It is up to the credit institution to prove any of the above limitations and the reasons behind the refusal to the opening of a payment account with basic features.

The Arbiter will decide the case on the basis of the above-quoted Regulations.

Further Considerations and Conclusion

The Arbiter has reservations about the consideration given by the Bank that one of the reasons for the refusal of a basic payment account was that the complainant did not fall within its risk appetite. The Regulations do not contemplate such a situation and only permit credit institutions with five or

¹⁴ Regulation 19(7)

¹⁵ Regulation 20

¹⁶ Regulation 19(3)(a)

¹⁷ Regulation 22(1)

¹⁸ Regulation 19(4)

more branches to refuse the opening of a basic account for three principal reasons, namely:

1. If the consumer does not prove that he/she has a **genuine interest** in opening the account.
2. If the customer already holds a payment account with any credit institution located in Malta, and where that account has at least the features set out in regulation 25(1).¹⁹
3. If the customer fails the due diligence test because there are serious doubts that the opening of the account may breach anti-money laundering/the financing of terrorism, rules and regulations

As to the first requisite, the complainant explained that he had the genuine interest to open the account to transfer his salary to the account and to pay his rent. The Bank did not dispute the complainant's explanation and the Arbiter has no doubt in the complainant's intentions.

For this reason, the Arbiter sees no issue in the complainant's request to open a basic payment account.

The second reason given by the Bank in its reply is that Regulation 19(4) stipulates that:

'If the customer already holds a payment account with any credit institution located in Malta, and where that account has at least the features set out in regulation 25(1)', the Bank could refuse such application.

The Bank further states that the complainant already had accounts with Bank of Valletta p.l.c. and, from evidence, it results that he held BOV accounts since 16 October 2019.

The complainant does not dispute this fact and during his cross-examination he stated that:

¹⁹ Regulation 19(4)

'Being asked if I opened a bank account with Bank of Valletta, I say yes. That happened after I could not open a bank account with HSBC. I confirm that I have an account with Bank of Valletta today'.²⁰

Although the Arbiter does not have information on the type of this account, he assumes that at least it is a payment account with features listed in Regulation 25(1).

The Arbiter has made this assumption because the complainant stated that he opened the Bank of Valletta account *'after I could not open a bank account with HSBC',²¹* meaning that what he did not achieve with HSBC (the basic payment account), he achieved it through Bank of Valletta.

Since regulation 19(4) gives the option to the Bank not to open a basic payment account where the consumer already has a payment account with basic features with another credit institution in Malta, and the complainant already has such an account with Bank of Valletta p.l.c., the Arbiter cannot oblige the Bank to open another payment account with basic features for the complainant.

The Arbiter cannot fail to notice that the complainant did not help his cause by refusing to give, or by giving contradictory information about his source of wealth, specifically, about his property allegedly worth €500,000 situated in Russia.

The Arbiter sees no purpose in dealing with the other pleas raised by the service provider.

For the above-stated reasons, the Arbiter is rejecting the complaint.

The costs of these proceedings are to be borne by the complainant.

Dr Reno Borg
Arbiter for Financial Services

²⁰ A Fol. 46

²¹ *Ibid.*