

08 May 2024

Dear Chief Executive Officer
Dear Compliance Officer

Re: Mystery Shopping Exercise –Payment Accounts - Financial Institutions

You are receiving this letter as the Chief Executive Officer and Compliance Officer of a Financial Institution supervised by the Malta Financial Services Authority (referred herein as "MFSA" or "the Authority").

Background

The MFSA endeavours to ensure compliance with applicable rules governing financial institutions which it licenced such that these entities, *inter alia*, provide fair, clear and not misleading information and documentation to its clients. This will strengthen consumer protection leading to increased confidence in the market. To this end, the Authority's continuous supervision is aimed at achieving high compliance standards by its licenced entities through an array of tools including off-site work, on-site inspections and also through mystery shopping exercises.

Mystery shopping is considered as a form of research to support and enhance current market practices within the industry and therefore, the Authority, through its Conduct Supervision Function, has chosen to collaborate in a Mystery Shopping exercise conducted by the European Banking Authority ("EBA") during the first half of 2023.

The purpose of this exercise was to determine the conduct practices being adopted by financial institutions in the provision of payment accounts. A number of Maltese authorised financial institutions were selected for this exercise. The report as published by the EBA, highlighting the findings of this exercise, may be accessed from this link: [Mystery shopping exercise into Personal Loan and Payment Accounts \(EBA/REP/2023/30\)](#).

This letter relates to the findings of this mystery shopping exercise with respect to local financial institutions, which was carried out between the month of February and March 2023. The fieldwork for the mystery shopping exercise was conducted on behalf of the MFSA by an outsourced and independent external provider.

This letter provides an insight of the identified observations arising out of this exercise, as reported to the MFSA by the EBA, and highlights good and bad practices observed in the market.

1.0 Scope and Methodology

In view of its consumer protection mandate, the EBA was mandated to undertake this exercise, following the outcomes of exercises done throughout the past years to determine the effectiveness of **Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features** which is accessible via this [Link](#) (hereinafter referred to as the "Payment Accounts Directive") as well as the outcomes of the Consumer Trends Report which is accessible via this [Link](#) and following thematic reviews conducted by the EBA, which revealed a number of deficiencies and inconsistencies across Member States.

The mystery shopping exercise focused on the **pre-contractual phase with respect to the payment accounts offered by the financial institution - that is when a customer makes an initial enquiry** to open a payment account, including a payment account with basic features. More specifically, the scope of the exercise was to:

- **Assess compliance with the requirements of the Payment Account Directive 2014/92/EU, and Regulatory Technical Standards on Fees and Charges.** This included an assessment of whether the relevant financial institutions' staff went through a proper process of establishing the client's needs by asking relevant questions, making good recommendations, and following requirements to ensure that fees and charges are disclosed in a manner which is transparent, fair, clear, and not misleading. The purpose was also to establish whether there are any irregular practices in place such as those relating to cross-selling of products.
- **Verify whether relevant and adequate information was effectively disclosed to the consumer at the pre-contractual stage, at the time of initial enquiry, in a timely manner.** This included evaluating:
 - (i) the adequacy of information disclosure concerning the products and services selected and possible promotion of tied/bundled products and services. Focus was made on the provision of pre-contractual information and the relating selling practices;
 - (ii) use of personal data at the pre-contractual phase; and
 - (iii) any additional information over and above the prescribed information which should be provided during the pre-contractual stage such as general information or forms (where applicable) available on websites. Moreover, the mystery shoppers' role was also to determine what information was provided by default and what needed to be prompted by the mystery shopper.
- **Assess whether the relevant staff interacting with prospective clients possessed an adequate level of knowledge, competence and a general level of professionalism when selling products such that consumers are able to make an informed decision on the basis of the information provided.** This included assessing whether the relevant staff of institutions possessed and maintained an adequate and up-to-date level of knowledge and competence in relation to the offering, and/or selling of the selected products and services demonstrating a high level of professionalism.

The exercise was conducted through off-site engagement and included a total of **5** out of the 51 financial institutions licensed by the MFSA under the Financial Institutions Act and which is equivalent to 10% of all financial institutions licenced by the Authority. 10 interactions per financial institution were conducted and were carried out mainly through phone, email and chats. The objective of the interaction conducted by mystery shoppers was to understand what information and guidance is provided to prospective clients at the very initial enquiry stage and did not delve into the more intensive and detailed pre-contractual stage, where there is a more concrete discussion prior to the opening of a payment account.

2.0 Findings/Observations

A total of 50 interactions were made in relation to Payment accounts.

(i) Regulatory requirements

The Payment Accounts Regulations (S.L. 371.18) which transpose the requirements of the Payments Account Directive, apply to payment accounts through which consumers are able at least to:

- (a) place funds in a payment account;
- (b) withdraw cash from a payment account; and
- (c) execute and receive payment transactions, including credit transfers, to and from a third party.

Additionally, Regulation 2(1) of the abovementioned Regulations clearly defines that “fees” means all charges, tariffs, and penalties, if any, payable by the consumer to the payment service provider for or in relation to services linked to a payment account.

Consumers are to be provided with the Fee Information Document (“FID”) in good time before entering a contract for a payment account as per Regulation 8 of the Payment Accounts Regulations, while the said FID shall meet the requirements set out in Schedule 1 of the same Regulations. This document is necessary for the client to be able to compare fees charged by different financial institutions, for the setting up of payment accounts.

In addition, as stated in Regulation 9, the payment service provider is required to ensure that the FID and the glossary of terms are made available at any time, in both electronic form on the Institution’s website and should also made accessible to consumers when visiting the premises of the payment services provider. Furthermore, the FID is to be provided to clients upon their request and free of charge, in hard copy or another durable medium.

The above-mentioned Regulations also defines “*Bundling*” as the offering of one or more ancillary service with a payment account in a package, where the payment account or the ancillary service may also be made available to the consumer separately, but not necessary on the same terms or conditions as when offered bundled. Regulation 14 tackles such scenarios and payment service providers are required to clearly provide all the necessary information to clients while also reflecting fees applicable in the context of such bundled products or services in the FID.

Part 4 of the Payment Accounts Regulations relates to access to payment accounts.

(ii) Objective

The main objective of the mystery shopping exercise was to assess whether clients, when approaching a financial Institution to enquire about opening a payment account, are being provided with the full portfolio of payments accounts available and whether the clients’ needs are being identified. Following this, the exercise also sought to determine whether the FID related to the payment account which best meets the clients’ needs was being provided, as required in terms of the abovementioned Regulations. The Mystery Shopping exercise investigated the information provided by financial institutions on the conditions required to open a payment account, the personal information which needs to be provided to the financial institution by the client, the disclosure of the costs associated with the accounts and respective services together with any reference to optional services offered with the account.

(iii) Observations

The results of the mystery shopping exercise show that most detailed information was provided to clients during phone calls, followed by email and chat. This shows that there is inconsistency in the level of information provided depending on the medium which the client chooses to communicate with the financial institution.

Mystery shoppers were also not always provided with the full array of products for the client to take an informed decision when choosing the most appropriate payment account which meets that client's needs.

Information on costs was generally provided but there was no consistency in the level of information provided. There were instances when staff explained that the account has no fees. In very few instances, mystery shoppers were informed of costs associated with the services offered with the account.

Online Chats emerged as the least accessible informative means of communication for clients to be provided with essential information.

Basic information to open a payment account was required, namely ID card, payslip and residency. Such requirements are essential for identification purposes and to meet AML obligations.

(iv) Identified Bad Practices

The Authority observed that the channels used by financial institutions for the provision of FIDs to prospective customers were in most of the cases either through publication in their respective website or provided to mystery shoppers through email or chat only following a prompt by the mystery shopper. Mystery shoppers were not provided and could not find an FID on the websites of 2 out of the 5 financial institutions which were part of the mystery shopping exercise.

Conclusions and Expectations

It can be noted that in general, financial institutions' staff are not providing the FID at enquiry stage. Offering the FID at such an early stage would enable the clients to easily compare similar information with respect to other accounts, possibly offered by other entities, in order to take a fully informed decision which payment account to choose. Furthermore, it appears that the optional services linked to the accounts are not being discussed with clients (e.g. the possibility of effecting outward payments and the use of a debit card), hence clients are not being made aware of the potential services available to account holders as part of the payment accounts being discussed.

Costs need to be clearly discussed and highlighted, while it may be the case that there are no administration fees associated with the accounts, there may be other fees which account holders may be liable for in the context of the operation of the account itself. Such fees, which may relate, *inter alia*, to the status of the account (for example, a dormant account fees) or to its operation (for example, fees for effecting online or outward payments) should also be clearly disclosed to the potential client. These must still be explained to the client when discussing the product via online interaction or provided in a simple graphical way on the website. Otherwise, there is a risk that a client may get the wrong impression that there are no fees whatsoever associated with such accounts. It is expected that such fees are also disclosed at a very early enquiry stage.

The Authority noted that the level of information provided by financial institutions through off-site interactions needs improvement, so that clients would be provided with clear and concise information irrespective through which channel information is being sought. Information from websites is to be more easily accessible especially given that the business model of most financial institutions is via an online presence such that it would be easier for potential clients to compare offers between different service providers. The Authority expects that all call centre agents and live chat agents need to pro-actively provide full information to clients without prompting. Even at enquiry stage, staff should provide the FID to clients either electronically or in hardcopy so clients can conduct their own research before selecting the account depending on their specific requirements.

When discussing with clients the payment account options available, staff are expected to highlight the spectrum of options if more than one type of account is available to choose from. On the other hand, if the financial institution has only one type of account, this is to be highlighted to the client immediately.

In order to ensure that customers are being treated fairly, institutions should ensure that consistent approaches are being applied both in terms of the level of service and level of information being provided. This is applicable both to the services provided through different off-site interactions (i.e. phone, email and chat), in view of the differences noted in the level of service. This is particularly important in the context of the move towards digitisation as the customer should be provided with the same level of information about products, irrespective which channel is used to interact with the financial institution.

Institutions should also remain mindful of the need to invest in competent and professional staff who possess a sufficient level of knowledge about products when dealing with customers. Continuous training to ensure that staff knowledge remains up to standard is a must and will also lead to more consistent approaches being adopted across the same institution.

Further to the above financial institutions are further encouraged to train staff in conducting a fact-finding exercise while gathering as much information as possible from the client, at initial stage, in order to be in a position to identify their customers' needs, so as to be able to propose the best options for the customer at the earliest stage.

4.0 Way forward

The ultimate aim of this exercise was to enable financial institutions to become more compliant with regulatory requirements, thereby enhancing consumer protection. The interactions carried out as part of this mystery shopping exercise have shown that there are gaps in effective compliance with the Payment Accounts Directive as transposed locally through the Payment Accounts Regulations (S.L.371.18). In this regard, all financial institutions offering payment accounts are expected to conduct a gap analysis and update their processes and procedures in order to come in line with the requirements emanating from such regulations. The Authority will engage with financial institutions in the future through other supervisory interactions with a view to assess the adherence of such entities to the applicable regulatory requirements.

Financial Institutions are encouraged to also go through the full EBA Report: [Mystery shopping exercise into Personal Loan and Payment Accounts \(EBA/REP/2023/30\)](#) referred to earlier in this letter.

Kindly be guided accordingly.

Yours faithfully
Malta Financial Services Authority

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