Before the Arbiter for Financial Services

Case No. 074/2020

EP

('the Complainant' or 'the Member')

vs

Momentum Pensions Malta Limited

(C52627) ('MPM' or 'the Service Provider'

or 'the Retirement Scheme Administrator'

or 'the Trustee')

Sitting of the 19 October 2021

The Arbiter,

PRELIMINARY

Having seen the **Complaint** made against Momentum Pensions Malta Limited ('MPM' or 'the Service Provider') relating to the Momentum Malta Retirement Trust ('the Retirement Scheme' or 'Scheme'), this being a personal retirement scheme licensed by the Malta Financial Services Authority ('MFSA'). The Retirement Scheme is established in the form of a trust and administered by MPM as its Trustee and Retirement Scheme Administrator.

The Case in question

The Complainant claimed that MPM did not look after his pension and alleged negligence and failure on the part of the Service Provider in its duties of care and its fiduciary duties as trustee of his QROPS pension fund.

The Complainant claimed such failures occurred since the initial transfer of his funds on 9 July 2014 till the existing date of his complaint.[1]

He explained that he invested his pension with MPM through Continental Wealth Management ('CWM') in 2014 and received his annual statement in 2014 which at that point was fine. The Complainant claimed that the next communication he received was only in 2017, when he received an annual statement which stated that his pension of GBP101,000 was then valued at GBP29,000.

The Complainant explained that he subsequently discovered that his pension was invested in professional high-risk structured notes. The Complainant claimed that he was totally unaware of such investments and questioned why his pension was invested in such manner given he was of medium risk.

He submitted that after investigating further, he discovered that:

- MPM had been accepting business from an unlicensed advisory firm, CWM;
- His risk factor was adjusted without his knowledge;
- The dealing instructions were copied as his signature was identical on all of the paperwork.

The Complainant further submitted that he was never contacted in any way with respect to the dealing instructions and had never been given a chance to cancel any of them. He also stated that he was not notified of any dealing charges.

The Complainant also submitted the following:

1. *Fiduciary Duties*

   That a trustee must fulfil its fiduciary duties under section 1124A of the Civil Code, Chapter 16 of the Laws of Malta, and has a duty of care.

   Such duty of care required the trustee to act with the care, skill and prudence exercised by similar fiduciaries in investment related matters, including diversification of investment, risk profile and guidelines; to perform due diligence in matters related to his assets; to incur only costs

[1] *A fol.* 7

that are appropriate and reasonable; and to act in accordance with the applicable statutes, regulations and own guidelines.

It was further stated that the trustee has a legal obligation to act in the member's best interest in accordance with the Retirement Pensions Act, 2011 ('RPA') part B.1.3.1; to undertake due diligence as laid out in the RPA part B.4.1.4(b); and to fulfil the obligations of the RPA.

2. *Liability of Trustees & Retirement Scheme Administrators ('RSA')*

That his losses which totalled GBP72,753, suffered on his pension fund, were totally due *'to the extreme early, wilful and ongoing negligence'*[2] of his trustees and that his trustees were therefore fully responsible for the reimbursement of payment in accordance with RPA part B.1.5.1.

It was claimed that the RPA 4.1.17 on liability states that *'The Scheme Administrator will be liable to the scheme, Members, Beneficiary's and Contributors of the Scheme for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part of its obligations'*.[3]

3. *Introducers*

That the RPA part F.1. requires due diligence to be carried out to ensure that introducers act within the Pension Rules.

4. *CWM Financial Advisors*

That MPM's Application Form states that the appointment of a financial advisor is subject to the trustee's approval.

5. *High risk investments*

That the Skandia/OMI Fund Advisor Form states that *'Options at the discretion of the fund advisor only with Trustee Approval'*.[4]

[2] *Ibid.*
[3] *Ibid.*
[4] *A fol.* 8

That in MPM's Application Form, Investment Guidelines, it is stated that the trustee needs to ensure that the applicant's funds are invested in a prudent manner and in the best interests of the member.

The Complainant further noted that the Pension Rules for Service Providers, part B.4.1.4(b) states that:

'The Service Provider shall act with due skill, care and diligence. Such action shall include: (b) Where applicable, taking all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order'.[5]

6. *Risk Profile*

That the MFSA's Consultation Document on amendments to the Pension Rules issued under the RPA (MFSA Ref: 09-2017) states, on page 4, that *'It considers that the RSA remains responsible for current retail members and in particular they ensure that the investments made reflect the risk profile of such members'*.[6]

That the MFSA's Consultation Document, page 10 part 2.7 states that:

'In the case of member-directed schemes the RSA is expected to have adequate knowledge of the risk profile of the member so as to ensure that the proposed investments are in line with the investment strategy and investment restrictions of the member-directed scheme and with the risk profile of the member, in order to approve proposed transactions in a member's account. In this respect, the RSA is expected to vet and approve the investment advice provided by the investment manager or the investment advisor and raise certain queries when necessary'.[7]

The Complainant noted that MPM declare that they do not see members fact finds. He further noted that such fact finds, however, clearly state that investments should be in *'protected'* and *'guaranteed'* products.

[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*

The Complainant also submitted that the trustee should, as part of its due diligence and *'know your customer code of conduct',* review and independently establish members' risk profiles.[8]

7. *Fees & Charges – OMI Bond*

That the Pension Rules for Service Providers, section B.4 (1.7) state that:

'The service provider shall, before offering any services to the member, provide in writing a description of the nature and amount of any direct or indirect charges or fees a member or beneficiary will or maybe expected to bear in relation to the scheme or fund and investments within the scheme or fund (if applicable).'[9]

That the Skandia Bond form stated that illiquid investments were *'Non-permitted investments for European Executive Investment bond'*.[10]

That the RPA, part B.4.1.3(f) requires the trustee to avoid unfair or unreasonable charges on members also taking into account the charges levied on underlying investments.

8. *Legal right to cancel*

That pursuant to regulation 7 of the Distance Selling (Retail Financial Services) Regulations (S.L. 330.07) a member must be given a period of 30 calendar days to withdraw from the distance contract relating to personal pension arrangements without incurring any penalty and without having to give any reason.

9. *Fraudulent dealing instructions*

That the pension law part B.4.1.4(b) requires the RSA to exercise due diligence, carry out investigations or audits of any potential investment or product to confirm all facts, review all financial records, term sheets and other material documentation like the risk profile and documentation submitted.

[8] *A fol.* 9
[9] *Ibid.*
[10] *Ibid.*

The Complainant submitted that this was the care a reasonable person should take before entering into an agreement or a financial transaction.

The Complainant further noted that the Service Provider is also subject to condition 9.3(b) of Part B, '*Supplementary Conditions in the case of Member Directed Schemes'* of the Pension Rules for Personal Retirement Schemes issued by MFSA which provided that *'members have the right to timely and fair execution of their investment decisions and to written confirmation of these transactions'*.[11]

10. *Fair treatment of all members & beneficiaries*

That as laid out in the RPA, part B.4.1.3(a)(c)(e), a trustee should act honestly, fairly and with integrity.

It was submitted that MPM took the decision to agree compensation and contacted some members offering refunds of fees or waiver of MPM and OMI fees in return for signing a gagging agreement and withdrawing complaints. The Complainant claimed that this was however not offered to all the affected members.

Compensation requested

The Complainant stated that the original amount transferred to his Scheme was of GBP105,244.41.

After deduction of fees (GBP800 related to Momentum fees and GBP2,631.11 related to the 2.5% advisory and arrangement fee), the investment amount totalled GBP101,813.30.

The Complainant requested his pension to be restored to its original transfer value of GBP105,244.41.[12]

In its reply, MPM essentially submitted the following: [13]

[11] *A fol.* 10
[12] *A fol.* 4
[13] *A fol.* 67-71

1. That MPM is licensed by the Malta Financial Services Authority to act as the Retirement Scheme Administrator ('RSA') and Trustee of the Scheme. That the Scheme is licensed as a Personal Retirement Scheme.

2. That Continental Wealth Management ('CWM') is a company registered in Spain. Before it ceased to trade, CWM acted as adviser and provided financial advice to investors. CWM was authorised to trade in Spain and in France by Trafalgar International GmbH ('Trafalgar'). Global Net Limited ('Global Net'), an unregulated company, is an associate company of Trafalgar and offers administrative services to entities outside the European Union.

3. That MPM is not linked or affiliated in any manner to CWM, Trafalgar or Global Net.

4. That MPM is not licensed to provide investment advice.

Competence and prescription

5. That preliminary, and in terms of Article 21(1)(b) of Chapter 555 of the Laws of Malta:

   'An Arbiter shall have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider which occurred on or after the first of May 2004:

   Provided that a complaint about conduct which occurred before the entry into force of this Act shall be made by not later than two years from the date when this paragraph comes into force'.

   The Service Provider submitted that this complaint relates to conduct which occurred before the entry into force of Chapter 555, Article 21(1)(b) came into force on the 18 April 2016. The complaint was filed on the 30 April 2019, therefore, beyond the two-year time period allowed by Article 21(1)(b). MPM submitted that for these reasons, the complaint cannot be entertained.

Reply to the Complainant's complaints

6. MPM noted that in the first place, the Complainant appointed CWM as his adviser and referred to the copy of its application form in relation to the Scheme (attached as Appendix 1 to its reply)[14] as well as the application form of Skandia Life Ireland Limited (attached as Appendix 2 to its reply).[15]

   It was submitted that, in spite of this, MPM is not aware of any attempt by the Complainant to initiate proceedings against CWM or its officials. Additionally, MPM cannot reply with respect to any advice the Complainant received from CWM or with respect to any discussions which the Complainant may have had with CWM. MPM noted that it is not answerable for any information, advice or assurance provided by CWM.

   MPM further noted that CWM has ceased trading and is no longer operating and that this was the only reason why the Complainant has filed a claim against MPM and not against CWM. MPM submitted that it is CWM who is the proper respondent to this claim.

   MPM further replied that it does not work on a commission basis and that it neither receives commissions, nor pays commissions to any third parties. MPM explained that it charges a fixed fee for the services it provides - this fee does not change, regardless of the underlying investment (which the Complainant was advised to invest in by CWM). It was noted that MPM accordingly did not stand to make any gain or benefit as a result of the Complainant investing in any particular underlying investments.

7. MPM noted that according to the section titled *'Describe the complaint in your own words'* of the Complaint Form submitted to the OAFS, the Complainant alleges that his pension had been *'invested in professional high risk structured notes'* and that his risk profile was Medium.

   MPM submitted that this is the risk profile which the Complainant himself chose – a Medium and Medium to High risk profile. With respect to the Complainant's allegation that the *'risk factor was adjusted without my knowledge'*, the Complainant must clarify whether he is alleging that it was

[14] *A fol.* 68 & 73
[15] *A fol.* 68 & 89

MPM who allegedly *'adjusted'* the risk factor. MPM submitted that it received the completed application form signed by the Complainant.

In relation to the investment in structured notes, MPM replied that the investments made were in line with the Complainant's risk profile and in line with the rules and investment guidelines, applicable at the time of the Complainant's application with MPM.

8. MPM noted that the Complainant alleges that he was *'totally unaware …',*[16] that his pension was being invested in this way. MPM refuted this allegation and noted that it had sent annual member statements to the Complainant since 2014.

9. MPM stated that the Complainant alleges that his *'dealing instructions had been copied'* as his *'signature is identical on all the paperwork...'.*[17] MPM replied that dealing instructions are not completed by MPM and that it has no awareness or line of sight of what discussions and arrangements take place between the Complainant and his appointed adviser, CWM, regarding dealing instructions. MPM submitted that it had verified the Complainant's signature against the records held by it.

   MPM noted that the Complainant further alleges that he was not *'contacted in any way with regards to any of these dealing instructions and therefore not given a chance to cancel any of them...'*.[18] MPM re-iterated that dealing instructions are not completed by MPM.

10. MPM further noted that the Complainant alleges that he was *'not notified of any dealing charges'*.[19] MPM replied that the adviser fee was disclosed in the Skandia Investment Application form and furthermore on Section 1 on the Appointment of a Fund Adviser form. MPM submitted that moreover, on the 10 September 2014, correspondence received from Skandia Life Ireland Limited was sent to the Complainant which correspondence included the investment bond *'Charges Schedule'* which

[16] *A fol.* 69
[17] *Ibid.*
[18] *Ibid.*
[19] *Ibid.*

indicated all fees payable. MPM further submitted that the right to cancel was also disclosed in this documentation.

11. MPM also stated that the Complainant also makes reference to consultation documents issued by the MFSA. It noted however that any consultation documents issued by the MFSA (particularly in relation to rules which came into force after the Complainant became a member) are not binding and not relevant to the Complaint.

12. MPM submitted that the reference to *'The Pensions Act 2011 part D.1'* in the Complaint is in the first place unclear.

    MPM replied that Part D of the Pension Rules issued under the RPA with respect to Service Providers dealing with introducers only started to apply to MPM from 1 January 2016 and therefore after the Complainant was already a member.

13. MPM noted that furthermore, Regulation 7 of the Distance Selling (Retail Financial Services) Regulations (S.L. 33.07) does not apply and also submitted that in any event, the Complainant was informed of his right to cancel as stated in its reply.

14. With respect to the allegation that MPM has *'taken the decisions to agree compensation and contact some members offering refunds of fees or the waiving of Momentum & OMI fees in return for signing a gagging agreement and withdrawing complaints ...'*, MPM rejected this as untrue.[20]

    MPM submitted that any alleged compensation agreement or offering to its members is strictly confidential and secondly, any compensation agreement entered into with any third party has no bearing whatsoever on these proceedings.

Momentum does not provide investment advice

[20] *A fol.* 70

15. MPM replied that it has, at all times, fulfilled all its obligations with respect to the Complainant and observed all guidelines, including investment guidelines.

16. MPM submitted that it is not licensed to and does not provide investment advice and, furthermore, did not provide investment advice to the Complainant.

17. MPM noted that this is clear from the application form attached to its reply which specifically request the details of the Complainant's professional adviser. It was pointed out that the Complainant also declared on the application form that he acknowledged that the services provided by MPM did not extend to financial, legal, tax or investment advice and referred to declaration 8 on page 6 of the application form.

18. MPM submitted that to further reinforce the point that MPM does not provide investment advice, an entire section of the terms and conditions of business (attached to the application form), is dedicated solely to this point (as per page 7 of the application form).

Conclusion

19. MPM replied that it is not responsible for the payment of any amount claimed by the Complainant and that it has, at all times, fulfilled all its obligations with respect to the Complainant, including all fiduciary duties as well as all obligations incumbent on it emanating from MFSA rules.

20. MPM submitted that it has not acted negligently nor has it breached any of its obligations in any way.

21. MPM pointed out that the Complainant must show that it was MPM's actions or omissions which caused the loss being alleged. MPM replied that in the absence of the Complainant proving this causal link, MPM cannot be found responsible for the Complainant's claims.

MPM accordingly requested the Arbiter to reject the Complainant's claims.

Having heard the parties and seen all the documents and submissions by the parties:

Further Considers:

The Arbiter will consider the various aspects of the complaint and all the pleas raised by the Service Provider together.

Preliminary Plea regarding the Competence of the Arbiter

The Service Provider raised the plea that the Arbiter does not have the competence to deal with this case in terms of Article 21(1)(b) of Chapter 555 of the Laws of Malta.

Article 21(1)(b) of Chapter 555 of the Laws of Malta stipulates:

'An Arbiter shall have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider which occurred on or after the first of May 2004:

Provided that a complaint about conduct which occurred before the entry into force of this Act shall be made by not later than two years from the date when this paragraph comes into force.'

Firstly, the Arbiter notes that it took nearly four months for the Service Provider to send the Complainant a reply to his formal complaint.[21] The Arbiter does not see a valid reason why the Service Provider took so long to send a reply and related documents.

The Arbiter deems it as very unprofessional for a service provider to make all in its powers to hinder a complaint against it, procrastinate and then raise the plea of lack of competence on the pretext that the action is '*time-barred'*. It is a long accepted legal principle that no one can rest on his own bad faith.

As to Article 21(1)(b), it is noted that the said article stipulates that a complaint related to the '*conduct*' of the financial service provider which occurred before the entry into force of this Act shall be made not later than two years from the

[21] The Complainant's formal complaint dated 2 November 2017 was answered by the Service Provider through a letter dated 22 February 2018 - *A fol.* 12

date when this paragraph comes into force. This paragraph came into force on the 18 April 2016.

The law does not refer to the date when a transaction takes place but refers to the date when the alleged misconduct took place.

Consequently, the Arbiter has to determine whether the conduct complained of took place before the 18 April 2016, or after, in accordance with the facts and circumstances of the case.

In the case of a financial investment, the conduct of the service provider cannot be determined from the date when the transaction took place and, it is for this reason, that the legislator departed from that date and laid the emphasis on the date when the conduct took place.

In this case, the conduct complained of involves the conduct of the Service Provider **as trustee and retirement scheme administrator of the Scheme**, which role MPM occupied since the Complainant became member of the Scheme and **continued to occupy beyond the coming into force of Chapter 555 of the Laws of Malta.**

It is considered that the Service Provider's arguments with respect to Article 21(1)(b) have certain validity only with respect to the alleged failures raised by the Complainant on the legal right to cancel, that is, the cooling off period. This is in view that the right of withdrawal is a distinct right which applied and existed at the time of purchase of the underlying policy of the Scheme, the *European Executive Investment Bond*, in September 2014.[22]

It is noted that the right to cancel is clearly specified in the covering letter to the policy which specifies *inter alia* that *'You have 30 days from the date of this letter to tell us if you want to cancel your Policy'*.[23] The said letter was attached to the email sent by the Service Provider to the Complainant on 10 September 2014. Hence, the Complainant was provided with the legal right to cancel at the time. Moreover, the alleged misconduct of the Service Provider, of not providing the Complainant with the cooling off period, could have only been raised with the

[22] *A fol.* 120
[23] *Ibid.*

Arbiter by 18 April 2018. The complaint filed with the Office of the Arbiter for Financial Services ('OAFS') was received on 30 April 2019.[24] Accordingly, the Arbiter cannot, in any case, consider the part of the complaint relating to the alleged failure of the Service Provider to provide the Complainant with the indicated cooling off period and is thus rejecting this part of the complaint.

In addition to the complaint made with respect to the legal right to cancel, the Complainant raised other key aspects in his Complaint. Even if, for argument's sake only, the Arbiter had to limit himself to the question of the investment portfolio, (which is not the case because the Complainant raised other issues and the Service Provider had other obligations apart from the oversight of the portfolio as explained later in this decision), the Service Provider did not prove in this particular case that the products invested into no longer formed part of the portfolio **after** the coming into force of Chapter 555 of the Laws of Malta. The onus of proof for such evidence rests with the Service Provider.

Furthermore, the Arbiter notes that there is actually clear evidence from a dealing instruction form dated 26.08.2016 and the *Table of Investments* presented by the Service Provider that the structured notes - being the sole products constituting the Complainant's investment portfolio - as will be considered later in this decision - still formed part of his portfolio after 18 April 2016. As per the said statements, the last structured note was indeed purchased on 26/08/2016, after the coming into force of the Act.[25]

It is further noted that the complaint in question involves the conduct of the Service Provider during the period in which CWM was permitted by MPM to act as the advisor of the Complainant in relation to the Scheme. The Service Provider itself declares that it no longer accepted business from CWM **as from September 2017**.[26]

CWM was therefore still accepted by the Service Provider and acting as the investment advisor to the Complainant after the coming into force of Chapter

[24] *A fol.* 1
[25] *A fol.* 50 & *a fol.* 208
[26] Para.44, Section E of the affidavit of Stewart Davies, Director of MPM – *A fol.* 139

555 of the Laws of Malta.[27] The responsibility of MPM in this regard is explained later on in this decision.

The Arbiter considers that the actions related to the Retirement Scheme complained about cannot accordingly be considered to have all occurred before 18 April 2016 and, therefore, the plea as based on Article 21(1)(b) is being rejected, and the Arbiter declares that he has the competence to deal with the Complaint.

The Merits of the Case

The Arbiter will decide the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.[28]

The Complainant

The Complainant, born in 1968, is of British nationality and resided in Spain at the time of application for membership as per the details contained in the *Application Form* for Membership of the Momentum Malta Retirement Trust ('the Application Form for Membership').[29]

The Complainant's occupation was indicated as Travel Agent in the said Application Form.

It was not indicated, nor has it emerged, during the case that the Complainant was a professional investor. The Complainant can accordingly be regarded as a retail client.

The Complainant was accepted by MPM as member of the Retirement Scheme on 12 August 2014.[30]

The Service Provider

[27] *A fol.* 18
[28] Cap. 555, Art 19(3)(b)
[29] *A fol.* 73
[30] *A fol.* 118

The Retirement Scheme was established by Momentum Pensions Malta Limited ('MPM'). MPM is licensed by the MFSA as a Retirement Scheme Administrator[31] and acts as the Retirement Scheme Administrator and Trustee of the Scheme.[32]

Certain allegations made by the Complainant

Allegations in relation to fees

The Complainant claimed that he was not notified of any dealing charges. He also quoted rules requiring service providers to provide details of the direct/indirect charges or fees before the offering of a service and also about the need for trustees to avoid unfair or unreasonable charges.[33]

The Complainant has not provided any further basis and explanation for the allegations made and the reasons why he quoted the rules in question. Nor was any evidence about such allegations or inferences provided.

The Arbiter further notes that the dealing charges and other fees relating to the underlying policy were described in the Charges Schedule which was attached to the covering letter dated 1 September 2014 issued by Skandia International in respect of the policy, a copy of which was sent by email to the Complainant on the 10 September 2014 as evidenced during the proceedings of this case.[34]

In the circumstances, the Arbiter considers that there is insufficient basis and evidence for him to consider further the allegations made in respect of fees.

Allegations relating to the signature on the dealing instructions

The Complainant alleged that the dealing instructions were copied with an identical signature. He further claimed fraudulent dealing instructions.[35]

These are serious allegations which had to be specifically proven by specific facts and in the case of the said alleged allegations of false or copied signatures, the Arbiter must be comforted in such a way as to accept the allegation. However,

[31] *https://www.mfsa.mt/financial-services-register/result/?id=3453*
[32] *A fol.* 162 - Role of the Trustee, pg.4 of MPM's Scheme Particulars (attached to Stewart Davies's affidavit).
[33] *A fol.* 4 & 9
[34] *A fol.* 119
[35] *A fol.* 4 & 9

the Complainant did not provide further clarifications on this matter nor enough evidence to the Arbiter to accept this allegation.

Allegations relating to changes to the Complainant's risk profile

In his Complaint, the Complainant alleged that his risk profile was medium and that this was changed without his knowledge.

It is noted that during the hearing of 3 November 2020, the representative of the Service Provider noted *inter alia* that:

'*... the records that we got and produced as evidence reflect the fact that two boxes were ticked, and that was medium risk and medium to high risk'.*[36]

MPM's Application Form for Membership provides five different options that could be selected by the applicant to describe his risk profile, that is, 'Low', 'Lower to Medium', 'Medium', 'Medium to High' and 'High'.[37]

Two selections, that of 'Medium' and 'Medium to High', were made in MPM's Application Form completed in respect of the Complainant.[38]

The Arbiter considers that such dual selection is however quite odd and creates grounds for confusion given that one is either of 'Medium' risk or 'Medium to High' and not both. If one was of 'Medium to High' risk, then there was no reason to select also the 'Medium' option as was done in this case and vice-versa.

MPM should have thus not accepted such obfuscation of the risk profile of the Complainant, and should have not allowed and accepted multiple risk profiles to be selected in its own Application Form for Membership.

The Legal Framework

The Retirement Scheme and MPM are subject to specific financial services legislation and regulations issued in Malta, including conditions or pension rules issued by the MFSA in terms of the regulatory framework applicable for personal retirement schemes.

[36] *A fol.* 211
[37] *A fol.* 75
[38] *A fol.* 106

The Special Funds (Regulation) Act, 2002 ('SFA') was the first legislative framework which applied to the Scheme and the Service Provider. The SFA was repealed and replaced by the Retirement Pensions Act (Chapter 514 of the Laws of Malta) ('RPA'). The RPA was published in August 2011 and came into force on the 1 January 2015.[39]

There were transitional provisions in respect of those persons who, upon the coming into force of the RPA, were registered under the SFA. The Retirement Pensions (Transitional Provisions) Regulations, 2015 provided that retirement schemes or any person registered under the SFA had one year from the coming into force of the RPA to apply for authorisation under the RPA.

In terms of Regulation 3 of the said Transitional Provisions Regulations, such schemes or persons continued to be governed by the provisions of the SFA until such time that these were granted authorisation by MFSA under the RPA.

As confirmed by the Service Provider, registration under the RPA was granted to the Retirement Scheme and the Service Provider on 1 January 2016 and hence the framework under the RPA became applicable as from such date.[40]

Despite not being much mentioned by MPM in its submissions, the Trusts and Trustees Act (Chapter 331 of the Laws of Malta), ('TTA') is also much relevant and applicable to the Service Provider, as per Article 1(2) and Article 43(6)(c) of the TTA, in light of MPM's role as the Retirement Scheme Administrator and Trustee of the Retirement Scheme.

Indeed, Article 1(2) of the TTA provides that:

'*The provisions of this Act, except as otherwise provided in this Act, shall apply to all trustees, whether such trustees are authorised, or are not required to obtain authorisation in terms of article 43 and article 43A*',

with Article 43(6)(c) in turn providing that:

'*A person licensed in terms of the Retirement Pensions Act to act as a Retirement Scheme Administrator acting as a trustee to retirement schemes shall not require*

[39] *Retirement Pensions Act, Cap. 514/Circular letter issued by the MFSA - https://www.mfsa.com.mt/firms/regulation/pensions/pension-rules-applicable-as-from-1-january-2015/*

[40] As per pg. 1 of the Affidavit of Stewart Davies and the Cover Page of MPM's Registration Certificate issued by MFSA dated 1st January 2016 attached to his affidavit.

further authorisation in terms of this Act provided that such trustee services are limited to retirement schemes …'.

Particularities of the Case

The Retirement Scheme in respect of which the Complaint is being made

The Momentum Malta Retirement Trust ('the Retirement Scheme' or 'the Scheme') is a trust domiciled in Malta. It was granted a registration by the MFSA[41] as a Retirement Scheme under the Special Funds (Regulation) Act in April 2011 [42] and under the Retirement Pensions Act in January 2016.[43]

As detailed in the Scheme Particulars dated May 2018 presented by MPM during the proceedings of this case, the Scheme '*was established as a perpetual trust by trust deed under the terms of the Trusts and Trustees Act (Cap. 331) on the 23 March 2011*'[44] and is '*an approved Personal Retirement Scheme under the Retirement Pensions Act 2011 (Cap. 514 of the Laws of Malta*'.[45]

The Scheme Particulars specify that:

'*The purpose of the Scheme is to provide retirement benefits in the form of a pension income or other benefits that are payable to persons who are resident both within and outside Malta. These benefits are payable after or upon retirement, permanent invalidity or death*'.[46]

The case in question involves a member-directed personal retirement scheme where the Member was allowed to appoint an investment advisor to advise him on the choice of investments.

The assets held in the Complainant's account with the Retirement Scheme were used to acquire a whole of life insurance policy for the Complainant.

[41] https://www.mfsa.mt/financial-services-register/result/?id=3454
[42] Registration Certificate dated 28 April 2011 issued by MFSA to the Scheme (attached to Stewart Davies's Affidavit).
[43] Registration Certificate dated 1 January 2016 issued by MFSA to the Scheme (attached to Stewart Davies's Affidavit).
[44] Important Information section, Pg. 2 of MPM's Scheme Particulars (attached to Stewart Davies's Affidavit) - *A fol.* 160
[45] Regulatory Status, Pg. 4 of MPM's Scheme Particulars (attached to Stewart Davies's Affidavit) - *A fol.* 162
[46] *Ibid.*

The life assurance policy acquired for the Complainant was called the European Executive Investment Bond issued by Skandia International[47]/Old Mutual International ('OMI').[48]

The premium in the said policy was in turn invested in a portfolio of investment instruments under the direction of the Investment Advisor and as accepted by MPM.

The underlying investments comprised solely of investments into structured notes as indicated in the table of investments forming part of the '*Investor Profile*' presented by the Service Provider during the proceedings of the case.[49]

The '*Investor Profile*' presented by the Service Provider in respect of the Complainant also included a table with the '*current valuation'* as at 16/09/2020.

The said table indicated a loss (excluding fees) of GBP69,801 as at that date. [50]

The loss experienced by the Complainant is higher when taking into account the fees incurred and paid within the Scheme's structure. The loss inclusive of fees indeed amounts to GBP82,617 on the total amount invested of GBP101,797 based on a *'current valuation at 16/09/20'* of GBP19,179.

It is to be noted that the Service Provider does not explain whether the loss indicated in the '*current valuation*' for the Complainant relates to realised or paper losses or both.

Investment Advisor

[47] Skandia International eventually rebranded to Old Mutual International - *https://www.oldmutualwealth.co.uk/Media-Centre/2014-press-releases/december-20141/skandia-international-rebrands-to-old-mutual-international/*
[48] *A fol.* 120
[49] The 'Investor Profile' is attached to the Additional Submissions document presented by the Service Provider in respect of the Complainant. *A fol.* 208
[50] *A fol.* 208

Continental Wealth Management ('CWM') was the investment advisor appointed by the Complainant.[51] The role of CWM was to advise the Complainant regarding the assets held within his Retirement Scheme.

In its reply to this complaint, MPM explained *inter alia* that CWM

'*is a Company registered in Spain. Before it ceased to trade, CWM acted as adviser and provided financial advice to investors. CWM was authorised to trade in Spain and in France by Trafalgar International GmbH*'.[52]

In its submissions, it was further explained by MPM that:

'*CWM was appointed agent of Trafalgar International GmbH ('Trafalgar') and was operating under Trafalgar International GmbH licenses*',[53] and that Trafalgar '*is authorised and regulated in Germany by the Deutsche Industrie Handelskammer (IHK) Insurance Mediation licence 34D Broker licence number: D-FE9C-BELBQ-24 and Financial Asset Mediator licence 34F: D-F-125-KXGB-53'*.[54]

Underlying Investments

As indicated above, the investments undertaken within the life assurance policy of the Complainant were summarised in the table of investment transactions included as part of the '*Investor Profile*' provided by the Service Provider.[55]

The investment transactions undertaken within the Complainant's portfolio, as reflected in the information from the said *'Investor Profile'*, are summarised below:[56]

- an investment of GBP20,000 into the *RBC Online Large Caps Income NT* (ISIN no. XS1092556452) purchased on 28/08/2014;
- an investment of GBP20,000 into the *Leonteq 1.5Y Multi Barrier GBP* (ISIN no. CH0245655888) purchased on 04/09/2014;
- an investment of GBP20,000 into the *Leonteq 1.5Y Multi Barrier Expr GBP* (ISIN no. CH0245655904) purchased on 04/09/2014;

[51] As per pg. 1/2 of MPM's reply to the OAFS in respect of the Complainant (*A fol.* 67) and Section 5 of the Application Form for Membership (*A fol.* 74).
[52] Pg. 1 of MPM's reply to the OAFS - *A fol.* 67
[53] Para. 39, Section E titled *'CWM and Trafalgar International GmbH'* of Stewart Davies' affidavit - *A fol.*137
[54] *Ibid.*
[55] Attachment to the additional submissions made by MPM in respect of the Complainant - *A fol.* 208
[56] *Ibid.*

- an investment of GBP20,000 into the *Commerzbank 1.5Y AC PHNX NT ARO* (ISIN no. XS1112506180) purchased on 04/09/2014;
- an investment of GBP20,000 into the *Nomura Inc NT US Diversified ST* (ISIN no. XS1105454521) purchased on 04/09/2014;
- an investment of EUR15,000 into the *EFG Red April 5* (ISIN no. CH0273397270) purchased on 24/04/2015;
- an investment of EUR16,000 into the *EFG Red April 6* (ISIN no. CH0273397429) purchased on 24/04/2015;
- an investment of GBP9,700 into the *RBC GBP Notes Linked to P UN, Yelp UN, CTRP UQ, Expe UQ* (ISIN no. XS1468789208) purchased on 26/08/2016.

During the tenure of CWM, eight structured notes were thus purchased in total between 2014-2016 with such structured notes comprising the only investments in the Complainant's investment portfolio.

Further Considerations

Responsibilities of the Service Provider

MPM is subject to the duties, functions and responsibilities applicable as a **Retirement Scheme Administrator** and **Trustee of the Scheme.**

Obligations under the SFA, RPA and directives/rules issued thereunder

As indicated in the MFSA's Registration Certificate dated 28 April 2011, issued to MPM under the SFA, MPM was required, in the capacity of Retirement Scheme Administrator, '*to perform all duties as stipulated by articles 17 and 19 of the Special Funds (Regulation) Act, 2002 … in connection with the ordinary or day-to-day operations of a Retirement Scheme registered under the [SFA]*'.

The obligations of MPM as a Retirement Scheme Administrator under the SFA are outlined in the Act itself and the various conditions stipulated in the original Registration Certificate which *inter alia* also referred to various Standard Operational Conditions (such as those set out in Sections B.2, B.5, B.7 of Part B and Part C) of the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act*, *2002'* ('the Directives').

In terms of the said Registration Certificate issued under the SFA, MPM was also required to assume and carry out, on behalf of the Scheme, any functions and obligations applicable to the Scheme under the SFA, the regulations and the Directives issued thereunder.

Following the repeal of the SFA and issue of the Registration Certificate dated 1 January 2016 under the RPA, MPM was subject to the provisions relating to the services of a retirement scheme administrator in connection with the ordinary or day-to-day operations of a Retirement Scheme registered under the RPA. As a Retirement Scheme Administrator, MPM was subject to the conditions outlined in the '*Pension Rules for Service Providers issued under the Retirement Pensions Act*' ('the Pension Rules for Service Providers') and the '*Pension Rules for Personal Retirement Schemes issued under the Retirement Pensions Act*' ('the Pension Rules for Personal Retirement Schemes').

In terms of the said Registration Certificate issued under the RPA, MPM was also required to assume and carry out, on behalf of the Scheme, any functions and obligations applicable to the Scheme under the RPA, the regulations and the Pension Rules issued thereunder.

One key duty of the Retirement Scheme Administrator emerging from the primary legislation itself is the duty to *'act in the best interests of the scheme'* as outlined in Article 19(2) of the SFA and Article 13(1) of the RPA.

From the various general conduct of business rules/standard licence conditions applicable to MPM in its role as Retirement Scheme Administrator under the SFA/RPA regime respectively, it is pertinent to note the following general principles:[57]

a) Rule 2.6.2 of Part B.2.6 titled '*General Conduct of Business Rules applicable to the Scheme Administrator*' of the Directives issued under the SFA, which applied to MPM as a Scheme Administrator under the SFA, provided that:

   '*The Scheme Administrator* ***shall act with due skill, care and diligence – in the best interests of the Beneficiaries*** …'.

[57] Emphasis added by the Arbiter.

The same principle continued to apply under the rules issued under the RPA. Rule 4.1.4, Part B.4.1 titled '*Conduct of Business Rules*' of the Pension Rules for Service Providers dated 1 January 2015 issued in terms of the RPA, and which applied to MPM as a Scheme Administrator under the RPA, provided that:

'*The Service Provider* ***shall act with due skill, care and diligence*** …'.

b) Rule 2.7.1 of Part B.2.7 titled '*Conduct of Business Rules related to the Scheme's Assets*', of the Directives issued under the SFA, which applied to MPM as a Scheme Administrator under the SFA, provided that:

'***The Scheme Administrator shall arrange for the Scheme assets to be invested in a prudent manner and in the best interest of Beneficiaries*** …'.

The same principle continued to apply under the rules issued under the RPA. Standard Condition 3.1.2, of Part B.3 titled '*Conditions relating to the investments of the Scheme*' of the Pension Rules for Personal Retirement Schemes dated 1 January 2015 issued in terms of the RPA, provided that:

'***The Scheme's assets shall be invested in a prudent manner and in the best interest of Members and Beneficiaries*** *and also in accordance with the investment rules laid out in its Scheme Particulars and otherwise in the Constitutional Document and Scheme Document.*'

c) Rule 2.6.4 of Part B.2.6 titled '*General Conduct of Business Rules applicable to the Scheme Administrator*' of the Directives issued under the SFA, which applied to MPM as a Scheme Administrator under the SFA provided that:

'*The Scheme Administrator shall organise and control its affairs in a responsible manner and* ***shall have adequate operational, administrative*** *and financial procedures* ***and controls in respect of its own business and the Scheme*** *to ensure compliance with regulatory conditions and to enable it to be effectively prepared to manage, reduce and mitigate the risks to which it is exposed …'.*

The same principle continued to apply under the rules issued under the RPA. Standard Condition 4.1.7, Part B.4.1 titled '*Conduct of Business Rules*' of the

Pension Rules for Service Providers dated 1 January 2015 issued in terms of the RPA, provided that:

'*The Service Provider shall organise and control its affairs in a responsible manner and* ***shall have adequate operational, administrative*** *and financial procedures* ***and controls in respect of its own business and the Scheme*** *or Retirement Fund, as applicable, to ensure compliance with regulatory conditions and to enable it to be effectively prepared to manage, reduce and mitigate the risks to which it is exposed*.'

Standard Condition 1.2.2, Part B.1.2 titled '*Operation of the Scheme*, of the Pension Rules for Personal Retirement Schemes dated 1 January 2015 issued in terms of the RPA, also required that: '

The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative *and financial procedures* ***and controls to ensure compliance with all regulatory requirements****'*.

Trustee and Fiduciary obligations

The Trusts and Trustees Act ('TTA'), Chapter 331 of the Laws of Malta, is also relevant for MPM considering its capacity as Trustee of the Scheme. This is an important aspect on which not much emphasis or reference to, has been made by the Service Provider in its submissions.

Article 21 (1) of the TTA which deals with the '*Duties of trustees*', stipulates a crucial aspect, that of the ***bonus paterfamilias***, which applies to MPM. The said article provides that:

'(1) ***Trustees shall in the execution of their duties and the exercise of their powers and discretions act with the prudence, diligence and attention of a bonus paterfamilias,*** *act in utmost good faith and avoid any conflict of interest'.*

It is also to be noted that Article 21 (2)(a) of the TTA, further specifies that:

'Subject to the provisions of this Act, trustees shall carry out and administer the trust according to its terms; and, subject as aforesaid, the trustees shall ensure that the trust property is vested in them or is under their control and

shall, so far as reasonable and subject to the terms of the trust, safeguard the trust property from loss or damage …'.

In its role as Trustee, MPM was accordingly duty bound to administer the Scheme and its assets to high standards of diligence and accountability.

The trustee, having acquired the property of the Scheme in ownership under trust, had to deal with such property '*as a fiduciary acting exclusively in the interest of the beneficiaries, with honesty, diligence and impartiality*'.[58]

As has been authoritatively stated,

'*Trustees have many duties relating to the property vested in them. These can be summarized as follows:* ***to act diligently, to act honestly and in good faith and with impartiality towards beneficiaries, to account to the beneficiaries and to provide them with information, to safeguard and keep control of the trust property and to apply the trust property in accordance with the terms of the trust'***.[59]

The fiduciary and trustee obligations were also highlighted by MFSA in a publication where it was stated that,

*'**In carrying out his functions, a RSA [retirement scheme administrator] of a Personal Retirement Scheme has a fiduciary duty to protect the interests of members and beneficiaries**. It is to be noted that by virtue of Article 1124A of the Civil Code (Chapter 16 of the Laws of Malta), the RSA has certain fiduciary obligations to members or beneficiaries, which arise in virtue of law, contract, quasi-contract or trusts. In particular, **the RSA shall act honestly, carry out his obligations with utmost good faith, as well as exercise the diligence of a bonus pater familias in the performance of his obligations**'.*[60]

Although this Consultation Document was published in 2017, MFSA was basically outlining principles established both in the TTA and the Civil Code which had already been in force prior to 2017.

[58] Ganado Max (Editor), '*An Introduction to Maltese Financial Services Law*',) Allied Publications 2009) p. 174.
[59] *Op. cit.,* p. 178
[60] Consultation Document on Amendments to the Pension Rules issued under the Retirement Pensions Act [MFSA Ref: 09-2017], (6th December 2017) p. 9.

The above are considered to be crucial aspects which should have guided MPM in its actions and which shall accordingly be considered in this decision.

Other relevant aspects

One other important duty relevant to the case in question relates to **the oversight and monitoring function of the Service Provider in respect of the Scheme including with respect to investments**. As acknowledged by the Service Provider whilst MPM's duties did not involve the provision of investment advice, however, MPM did '*… **retain the power to ultimately decide whether to proceed with an investment or otherwise***'.[61]

Once an investment decision is taken by the member and his/her investment advisor, and such decision is communicated to the retirement scheme administrator, MPM explained that as part of its duties:

'The RSA will then ensure that the proposed trade on the dealing instruction, when considered <u>in the context of the entire portfolio</u>, ensures a suitable level of diversification, is in line with the member's attitude to risk and in line with the investment guidelines (applicable at the time the trade is placed)…'.[62]

MPM had accordingly the final say prior to the placement of a dealing instruction, in that, if MPM was satisfied that the level of diversification is suitable and in order, and the member's portfolio as a whole is in line with his attitude to risk and investment guidelines '*the dealing instruction will be placed with the insurance company and the trade will be executed. **If the RSA is not so satisfied, then the trade will not be proceeded with***'.[63]

This, in essence, reflected the rationale behind the statement reading:

'*I accept that I or my designated professional adviser may suggest investment preferences to be considered, however, **the Retirement Scheme administrator will retain full power and discretion for all decisions relating to the purchase,***

[61] Para. 17, page 5 of the affidavit of Stewart Davies - *A fol.* 132
[62] Para. 31, Page 8 of the affidavit of Stewart Davies - *A fol.* 135
[63] Para. 33, Page 9 of the affidavit of Stewart Davies (*A fol.* 136) & Para. 17 of Page 5 of the said affidavit also refers (*A fol.* 132).

retention and sale of the investments *within my Momentum Pensions Retirement Fund*',

which featured in the '*Declarations*' section of the Application Form for Membership signed by the Complainant.[64]

The MFSA regarded the oversight function of the Retirement Scheme Administrator as an important obligation where it emphasised, in recent years, the said role. The MFSA explained that it:

'… is of the view that as specified in SLC 1.3.1 of Part B.1 (Pension Rules for Retirement Scheme Administrators) of the Pension Rules for Service Providers, the RSA, in carrying out his functions, shall act in the best interests of the Scheme members and beneficiaries. The MFSA expects the RSA to be diligent and to take into account his fiduciary role towards the members and beneficiaries, at all times, irrespective of the form in which the Scheme is established. The RSA is expected to approve transactions and to ensure that these are in line with the investment restrictions and the risk profile of the member in relation to his individual member account within the Scheme'.[65]

The MFSA has also highlighted the need for the retirement scheme administrator to query and probe the actions of a regulated investment advisor stating that:

'the MFSA also remains of the view that the RSA is to be considered responsible to verify and monitor that investments in the individual member account are diversified, and the RSA is not to merely accept the proposed investments, but it should acquire information and assess such investments'. [66]

[64] *A fol.* 80

[65] Pg. 7 of the MFSA's Consultation Document dated 16th November 2018, titled '*Consultation on Amendments to the Pension Rules for Personal Retirement Schemes issued under the Retirement Pensions act*' (MFSA Ref. 15/2018) - https://www.mfsa.com.mt/publications/policy-and-guidelines/consultation-documents-archive/.

[66] Pg. 9 of MFSA's Consultation Document dated 16 November 2018 titled *'Consultation on Amendments to the Pension Rules for Personal Retirement Schemes issued under the Retirement Pensions Act' (MFSA Ref. 15/2018).*

Despite that the above-quoted MFSA statements were made in 2018, **an oversight function applied during the period relating to the case in question as explained earlier on.**

As far back as 2013, MPM's Investment Guidelines also provided that:

'***The Trustee need to ensure that the member's funds are invested in a prudent manner and in the best interests of the beneficiaries. The key principle is to ensure that there is a suitable level of diversification*** *…*',[67]

whilst para. 3.1 of the section titled '*Terms and Conditions'* of the Application Form for Membership into the Scheme also provided *inter alia* that:

'… ***in its role as Retirement Scheme Administrator [MPM] will exercise judgement as to the merits or suitability of any transaction*** *…*'.[68]

<u>Key considerations relating to the principal alleged failures</u>

As indicated above, the Complainant raised a number of **main aspects** in his Complaint alleging that MPM was negligent and had failed in its fiduciary duties and duties of care as trustee claiming, in essence, that:

(i) MPM accepted business from CWM when it approved it as his financial advisor despite being an unlicensed advisory firm;

(ii) MPM did not ensure that his funds were invested in a prudent manner and in his best interests with the funds instead invested in professional high risk structured notes;

(iii) MPM failed to adequately inform him about the investments.

<u>General observations</u>

[67] Investment Guidelines titled January 2013, attached to the affidavit of Stewart Davies (*A fol.* 175). The same statement is also included in page 9 of the Scheme Particulars of May 2018 (also attached to the same affidavit) - *A fol.* 167.
[68] *A fol.* 82

On a general note, it is clear that MPM did not provide investment advice in relation to the underlying investments of the member-directed scheme. The role of the investment advisor was the duty of other parties, such as CWM.

This would reflect on the extent of responsibility that the financial adviser and the RSA and Trustee had in this case as will be later seen in this decision.

However, despite that the Retirement Scheme Administrator was not the entity which provided the investment advice to invest in the contested financial instruments, **MPM had nevertheless certain obligations to undertake in its role of Trustee and Scheme Administrator. The obligations of the trustee and retirement scheme administrator in relation to a retirement plan are important ones and could have a substantial bearing on the operations and activities of the scheme and affect direct, or indirectly, its performance**.

Consideration thus needs to be made as to whether MPM failed in any relevant obligations and duties, and if so, to what extent any such failures are considered to have had a bearing or otherwise on the financial performance of the Scheme and the resulting losses for the Complainant.

A. The appointment of the Investment Advisor

It is noted that the Complainant chose the appointment of CWM to provide him with investment advice in relation to the selection of the underlying investments and composition of the portfolio within the member-directed Scheme. **However, from its part, MPM allowed and/or accepted CWM to provide investment advice to the Complainant within the Scheme's structure**. The Arbiter has also knowledge that **MPM even had itself an introducer agreement with CWM and makes reference to the cases against MPM decided by him on the 28 July 2020**.

There are a number of aspects which give rise to concerns on the diligence exercised by MPM when it came to the acceptance of, and dealings with, the investment adviser as further detailed below.

Inappropriate and inadequate material issues involving the Investment Advisor

i. Incomplete and inaccurate material information relating to the advisor in MPM's Application Form for Membership

It is considered that **MPM accepted and allowed inaccurate and incomplete material information relating to the Advisor to prevail in its own Application Form for Membership**. MPM should have been in a position to identify, raise and not accept the material deficiencies arising in the Application Form.

If inaccurate and incomplete material information arose in the Application Form for Membership in respect of such a key party it was only appropriate and in the best interests of the Complainant, and reflective of the role as Trustee as a *bonus paterfamilias*, for MPM to raise and flag such matters to the Complainant and not accept such inadequacies in its form. **MPM had ultimately the prerogative whether to accept the application, the selected investment advisor and also decide with whom to enter into terms of business**.

The section titled '*Professional Adviser's Details*' in the Application Form for Membership in respect of the Complainant indicated '*Continental Wealth Management'* ('CWM') as the company's name of the professional advisor.

In the same section of the Application Form, CWM was indicated as having a registered address in Spain. It was further indicated in the Application Form that '*Interalliance Worldnet*' was the regulator of the professional adviser.

The Arbiter considers the reference to InterAlliance as regulator of CWM to be inadequate and misleading.

With respect to the reference to '*InterAlliance*' such reference was not defined or explained in the Application Form. Neither was such reference ever explained or referred to during the comprehensive submissions made by the Service Provider during the proceedings of the case.

It has not emerged either that Inter-Alliance are, or were, a regulatory authority for investment advisors in Spain or in any other jurisdiction. It appears that 'InterAlliance Worldnet', an abbreviation apparently for '*Inter Alliance WorldNet Insurance Agents & Advisors Ltd'* was a service provider itself in Cyprus, but

clearly it was not a regulatory authority.[69] **Indeed, no evidence was actually submitted by MPM of CWM being truly regulated.**

The reference to InterAlliance could thus not have reasonably provided any comfort to MPM that this was a regulator of CWM and neither that there was some form of regulation and adequate controls and/or supervision on CWM equivalent to that applicable for regulated investment services providers.

ii. Lack of clarity/convoluted information

It is also noted that the Application Form submitted in respect of the purchase of the underlying policy includes lack of clarity and convoluted information relating to the investment advisor.

MPM, as Trustee of the Scheme had clear sight of the said application and had indeed signed the application for the acquisition of the respective policy in its role as trustee.

It is noted that the Application Form of the policy provider refers to, and includes, the stamp of another party as financial advisor. The first page of the said application form includes a section titled '*Financial adviser details*' and a field for '*Name of financial adviser*', with such section including a stamp bearing the name of '*Inter-Alliance Worldnet Insurance Agents & Advisors Ltd*' ('Inter-Alliance') apart from reference to CWM. Inter-Alliance is then featured in the section titled '*Financial adviser declaration*' of the said form which section also includes the same stamp of Inter-Alliance (with a PO Box in Cyprus), in the part titled *'Financial adviser stamp*'.

There is accordingly a lack of clarity on the exact entity ultimately taking responsibility for the investment advice being provided to the Complainant. For the reasons explained, the information on the financial adviser is also somewhat inconsistent between that included in MPM's application form and the application form of the issuer of the underlying policy.

[69] https://international-adviser.com/iaw-fined-cypriot-regulator/

iii. No proper distinctions between CWM, Inter-Alliance and Trafalgar

It is also unclear why the Annual Member Statement aimed for the Complainant and produced by MPM during the case indicated '*Continental Wealth Management*' as '*Professional Adviser*' whilst at the same time indicated another party, '*Trafalgar International GmbH*' as the '*Investment Adviser*'. [70]

No indication or explanation of the distinction and differences between the two terms of '*Professional Adviser*' and '*Investment Adviser*' were either provided or emerged nor can reasonably be deduced.

Besides the lack of clarity on the entity taking responsibility for the investment advice and the lack of clear distinction/links between the indicated parties in the application forms and statements, it has also not emerged that the Complainant was provided with clear and adequate information regarding the respective roles and responsibilities between the different mentioned entities throughout.

If CWM was acting as an appointed agent of another party, such capacity, as an agent of another firm, should have been clearly reflected in the application forms and other documentation relating to the Scheme. Relevant explanations and implications of such agency relationship and respective responsibilities should have also been duly indicated without any ambiguity.

It is also noted that during the proceedings of this case MPM has not provided evidence of any agency agreement between CWM and Trafalgar.

In the reply that MPM sent directly to the Complainant in respect of his formal complaint, MPM itself explained that '*Momentum in its capacity as Trustee and RSA, in exercising its duty to you ensured: The full details of the Scheme, including all parties' roles and responsibilities were clearly outlined to you in the literature provided ensuring no ambiguity*[71]*, including but not limited to the initial application form and T&C, the Scheme Particulars and Trust Deed and Rules*'.[72]

[70] *A fol.* 118
[71] Emphasis added by the Arbiter.
[72] Section 3, titled '*Overview of Momentum Controls in place in exercising a duty to all members*' in MPM's reply to the Complainant in relation to the complaint made in respect of the Scheme - *A fol.* 15

The Arbiter does not have comfort that such a duty has been truly achieved in respect of the advisor for the reasons amply explained above.

iv. No regulatory approval in respect of CWM

During the proceedings of this case no evidence was produced about the regulatory status of CWM. As indicated earlier, MPM provided no details about Inter-Alliance, and in its submissions only referred to the alleged links between CWM and Trafalgar. In the affidavit of Stewart Davies, reference was made to the authorisations issued to Trafalgar International GmbH in Germany where reference was made that Trafalgar (and not CWM) was authorised and regulated by IHK, the Chamber of Commerce and Industry in Germany with the '*Insurance Mediation licence 34D Broker licence number: D-FE9C-BELBQ-24 and Financial Asset Mediator licence 34F: D-F-125-KXGB-53*'.[73]

MPM's statement that CWM '*was operating under Trafalgar International GmbH licenses*'[74] has not been backed up by any evidence during the proceedings of this case. No comfort can thus be taken either from the authorisation/s held by Trafalgar.

Indeed, no evidence of any authorisation held by CWM in its own name or as an agent of a licensed institution, authorising it to provide advice on investment instruments and/or advice on investments underlying an insurance policy has, ultimately been produced or emerged during the proceedings of this case.

In the absence of such, **the mere explanations provided by MPM regarding the regulatory status of CWM, including that CWM '*was authorised to trade in Spain and in France by Trafalgar International GmbH*'[75], are rather vague, inappropriate and do not provide sufficient comfort of an adequate regulatory status for CWM to undertake the investment advisory activities provided to the Complainant**.

[73] Para. 39 Section E, titled '*CWM and Trafalgar International GmbH*' in the affidavit of Stewart Davies - *A fol.* 137-138.
[74] Para. 39, Section E titled *'CWM and Trafalgar International GmbH'* of the affidavit of Stewart Davies - *A fol.* 137
[75] Pg. 1, Section A titled 'Introduction', of the Reply of MPM submitted before the Arbiter for Financial Services - *A fol.* 67

This also taking into consideration that:

(i) Trafalgar and/or InterAlliance were themselves no regulatory authority;

(ii) the inconsistency and lack of clarity as to the regulatory status of the investment advisor in the Application Forms as well as the confusing and unclear references in the statements relating to the advisor as indicated above;

(iii) legislation covering the provision of investment advisory services in relation to investment instruments, namely the Markets in Financial Instruments Directive (2004/39/EC) already applied across the European Union since November 2007.

No evidence was provided that CWM, an entity indicated as being based in Spain, held any authorisation to provide investment advisory services, in its own name or in the capacity of an agent of an investment service provider under MiFID.

Article 23(3) of the MiFID I Directive, which applied at the time, provided specific requirements on the registration of tied agents.[76]

No evidence of CWM featuring in the tied agents register in any EU jurisdiction was either produced or emerged.

Neither was any evidence produced of any exemption from licence under MiFID or that CWM held an authorisation or exemption under any other applicable European legislation for the provision of the contested investment advice.

The Service Provider noted *inter alia* that '*CWM was appointed agent of Trafalgar International GmbH*'.[77]

The nature of the agency agreement that CWM was claimed to have was not explained nor defined, and it was not indicated either in terms of which European financial services legislation such agency agreement was

[76] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0039&from=EN
[77] Para.39, Section E titled 'CWM and Trafalgar International GmbH of the affidavit of Stewart Davies - *A fol.* 137

in force and permitted the provision of the disputed investment advice. Nor evidence of any agency agreement existing between CWM and any other party was produced during the proceedings of this case as indicated above.

Other observations & synopsis

As explained above, albeit being selected by the Complainant, the investment adviser was however accepted, at MPM's sole discretion, to act as the Complainant's investment advisor within the Scheme's structure.

The responsibility of MPM in accepting and allowing CWM to act in the role of investment advisor takes even more significance when one takes into consideration the scenario in which CWM was accepted by MPM. As indicated above, MPM accepted CWM when, as verified in the Complainant's Application Form for Membership, it was being stated **in MPM's own application form** that CWM was a regulated entity. However, no evidence has transpired that this was so, as amply explained above.

MPM allowed and left uncontested key information in its own Application Form for Membership of the Retirement Scheme with respect to the regulatory status of the investment advisor.

The Service Provider argued *inter alia* in its submissions that it was not required, in terms of the rules, to require the appointment of a regulated advisor during the years 2013-2015 under the SFA regime and until the implementation of Part B.9 titled '*Supplementary Conditions in the case of entirely Member Directed Schemes*' of the Pension Rules for Personal Retirement Schemes issued in terms of the RPA updated in December 2018, where the latter clearly introduced the requirement for the investment advisor to be regulated.[78]

The Arbiter notes in this regard that in his affidavit Steward Davies highlighted that:

[78] *A fol.* 138

'There was no law or rule requiring Momentum to carry out any due diligence or ensure that CWM/ Trafalgar was licensed'. [79]

However, the Arbiter strongly believes that the aspect of scrutinising an investment advisor known to the RSA and Trustee to be operating in relation to a retirement scheme, impinges on the RSA and Trustee duty of care and professional diligence. This goes beyond the mere legalistic approach of shedding off responsibility by interpreting regulatory rules, which are in the first place intended to establish the minimum standards expected of a licensed operator, in such a way as to avoid responsibility.

The Arbiter wants to underscore that the compliance with regulatory rules does not substitute the further obligations that an RSA and Trustee of a retirement scheme have towards the members of the scheme. As amply stated earlier in this decision under the section titled *'The legal framework'*, a Trustee must act diligently and professionally in the same way as a bonus paterfamilias. A bonus paterfamilias does not abdicate from his responsibilities to suite his interests.

The appointment of an entity such as CWM as investment advisor meant, in practice, that there was a layer of safeguard in less for the Complainant as compared to a structure where an adequately regulated advisor is appointed. An adequately regulated financial advisor is subject to, for example, fitness and properness assessments, conduct of business requirements as well as ongoing supervision by a financial services regulatory authority. MPM, being a regulated entity itself, should have been duly and fully cognisant of this. It is was only in the best interests of the Complainant for MPM to ensure that the Complainant had correct and adequate key information about the investment advisor.

Besides the issue of the regulatory status of the advisor, MPM also allowed and left uncontested important information, which was convoluted, misleading, unclear and lacking as explained above, with respect to the investment advisor, namely in relation to:

[79] *Ibid.*

- **CWM's alleged role as agent of another party, and the respective responsibilities of CWM and its alleged principal;**

- **the entity actually taking responsibility for the investment advice given to the Complainant as more than one entity was at times mentioned with respect to investment advice;**

- **the distinctions between CWM, Inter-Alliance and Trafalgar.**

It is also to be noted that apart from the above, MPM had itself a business relationship with CWM, having accepted it to act as its introducer of business. Such relationship gave rise to potential conflicts of interest, where an entity whose actions were subject to certain oversight by MPM on one hand was on the other hand channelling business to MPM.

Even in case where, under the previous applicable regulatory framework, an unregulated advisor was accepted by the Trustee and Scheme Administrator to provide investment advice to the member of a member-directed scheme, **one would, at the very least, reasonably expect the Retirement Scheme Administrator and Trustee of such a scheme to exercise even more caution and prudence in its dealings with such a party in such circumstances.**

This is even more so when the activity in question, that is, one involving the recommendations on the choice and allocation of underlying investments, has such a material bearing on the financial performance of the Scheme and the objective to provide for retirement benefits.

It would have accordingly been only reasonable, to expect the trustee and retirement scheme administrator, as part of its essential and basic obligations and duties in such roles, to have an even higher level of disposition in the probing and querying of the actions of an unregulated investment adviser in order to ensure that the interests of the member of the scheme are duly safeguarded and risks mitigated in such circumstances.

The Arbiter does not have comfort that such level of diligence and prudence has been actually exercised by MPM for the reasons already stated in this section of the decision.

B. The permitted portfolio composition

Investment into Structured Notes

Preliminary observations

The sale of, and investment into, structured notes is an area which has attracted various debates internationally including reviews by regulatory authorities over the years. Such debates and reviews have been occurring even way back since the time when the Retirement Scheme was granted registration in 2011.

The Arbiter considers that caution was reasonably expected to be exercised with respect to investments in, and extent of exposure to, such products since the time of the Scheme's registration. Even more so when taking into consideration the nature of the Retirement Scheme and its specific objective.

Nevertheless, the Complainant's investment portfolio constituted solely of structured notes as detailed in the section titled *'Underlying Investments'* above.

A typical definition of a structured note provides that:

'*A structured note is a debt security issued by financial institutions; its return is based on equity indexes, a single equity, a basket of equities, interest rates, commodities or foreign currencies. The return on a structured note is linked to the performance of an underlying asset, group of assets or index*'.[80]

A structured note is further described as '*a debt obligation – basically like an IOU from the issuing investment bank – with an embedded derivative component; in other words, it invests in assets via derivative instruments'*.[81]

The Complainant presented a number of fact sheets in respect of structured note investments. One of these fact sheets was traced in relation to a structured note which featured in the Complainant's portfolio. This was in respect of the structured note issued by EFG whose ISIN no. CH0273397429 matched that found on the fact sheet.[82] As part of the investigatory powers granted under

[80] https://www.investopedia.com/terms/s/structurednote.asp
[81] https://www.investopedia.com/articles/bonds/10/structured-notes.asp
[82] *A fol.* 51/52 & 208

Cap. 555 of the Laws of Malta, the Arbiter managed to source another fact sheet in respect of a structured note which formed part of the Complainant's portfolio[83] - this being the RBC Online Large Caps Income Note with ISIN no. XS1092556452. [84]

Apart from *inter alia* the credit risk of the issuer and the liquidity risk, the said fact sheets included other risks that are typically highlighted for structured notes with no guarantees on the return of the original capital invested - such as the warning that the investor could possibly receive less than the original amount invested or potentially even losing all of the investment.

The fact sheet referred to above issued by RBC indeed specified *inter alia* that:

'The Notes are not capital protected, and investors may receive back less than the original amount invested…investors can potentially lose all of their investment',[85]

whilst the fact sheet referred to above of the structured note issued by EFG specifies *inter alia* that:

'Products involve a high degree of risk, including the potential risk of expiring worthless. Potential investors should be prepared in certain circumstances to sustain a total loss of the capital invested to purchase this Product'.[86]

The underlying asset to which the structured notes were linked to typically comprised stocks. A particular feature emerging of the type of structured notes invested into, involved the application of capital buffers and barriers. For example, the fact sheets referred to above described and included warnings that the invested capital was at risk in case of a particular event occurring. Such event typically comprised a fall, observed on a specific date of more than a specified percentage, in the value of any underlying asset to which the structured note

[83] A fol. 208
[84] https://www.portman-associates.com/wp-content/uploads/2014/07/RBC-10pa-Online-Large-Caps-Income-FACTSHEET.pdf
[85] https://www.portman-associates.com/wp-content/uploads/2014/07/RBC-10pa-Online-Large-Caps-Income-FACTSHEET.pdf
[86] *A fol.* 51

was linked. The fall in value would typically be observed on maturity/final valuation of the note.

The fact sheet for the RBC structured note highlighted, for example, the risk that where the performance of the worst performing underlying measured a fall of 50% or more, investors would receive a capital amount equivalent to the performance of the worst performing asset.

It is accordingly clear that there were certain specific risks in the structured products invested into and there were material consequences if just one asset, out of a basket of assets to which the note respectively was linked, fell foul of the indicated barrier. **The implication of such a feature should have not been overlooked nor discounted. Given the said particular features neither should have comfort been derived regarding the adequacy of such products just from the fact that the structured notes were linked to a basket of quoted shares.**

Excessive exposure to structured products and to single issuers in respect of the Complainant's portfolio

The portfolio of investments in respect of the Complainant comprised solely of structured products. Such excessive exposure to structured products occurred over a long period of time. This clearly emerges from the Table of Investments forming part of the '*Investor Profile*' provided by the Service Provider as detailed in the section titled *'Underlying Investments'* above.

In addition, high exposures to the same single issuer/s, both through a singular purchase and/or through cumulative purchases in products issued by the same issuer emerged in the Complainant's portfolio.

Even in case where the issuer of the structured product was a large institution, the Arbiter does not consider this to justify or make the high exposure to single issuers acceptable even more in the Scheme's context. The maximum limits relating to exposures to single issuers outlined in the MFSA rules and MPM's own Investment Guidelines did not make any distinctions according to the standing of the issuer. Hence, the maximum exposure limits to single counterparties should have been applied and ensured that they are adhered

to across the board. The credit risk of the respective issuer was indeed still one of the applicable risks.

Moreover, one cannot have comfort that the structured notes were in themselves diversified through the exposure to their underlying as remarked by the Service Provider in its *'Investment Guidelines Commentary'* provided with its submissions,[87] given the particular nature of the structured notes invested into as considered above.

Context of entire portfolio and substance of MPM's Investment Guidelines

For the avoidance of doubt and with reference to the emphasis made by the Service Provider for investments to be seen in the context of the entire portfolio,[88] the Arbiter would like to point out that consideration has indeed been duly made of the entire investment portfolio held in the Complainant's individual account within the Scheme including how such portfolio was constituted at inception and (to the extent possible on the basis of the information provided), how the constitution of the portfolio progressed over the years.

Furthermore, the Arbiter has also considered what percentage of the policy value each respective underlying investment constituted at the time of their respective purchase, on the basis of the information provided by the Service Provider itself in the table of *'Investor Profile'* attached to its submissions.[89] Consideration was then further made of how the said percentage allocation, reflected the maximum limits outlined in the investment restrictions and diversification requirements in the MFSA Rules as well as MPM's own Investment Guidelines that were applicable at the time of purchase.

It is to be pointed out that in the case of a member-directed scheme, each member would have his/her own individual account within the retirement scheme, with such account having its own specific and distinct investment portfolio.

[87] *A fol.* 197
[88] Affidavit of Steward Davies - *A fol.* 135
[89] *A fol.* 208

Hence, it is only reasonable and correct for the principles, including the investment restrictions specified for the Retirement Scheme, to have been applied and adhered to at the level of the individual account.

Failure to do so would have meant that the safeguards emanating from the investment conditions and diversification requirements would have not been adopted and ensured in practice in respect of the individual member's portfolio, defeating the aim of such requirements in the first place.

The application of investment restrictions at a general level, that is, at scheme level without application on an individual account basis, would only make sense and be reasonable in the context of, and where, the members of such a scheme are participating in the same portfolio of assets held within the scheme and not in the circumstance where the members have their own individual separate investment portfolios, as was the case in question.

An analogy can be made in this regard to the market practice long adopted in the context of collective investment schemes, namely in respect of *stand-alone schemes*[90] and *umbrella schemes*.[91]

Whilst investment restrictions would be applied at scheme level in the case of a stand-alone scheme, in the case of an umbrella fund, the investment restrictions are not applied at scheme level but at the sub-fund level and would indeed be tailored for each individual sub-fund given that each sub-fund would have its own distinct and separate investment portfolio and investment policy.

As to the substance of MPM's Investment Guidelines, it is noted that the Service Provider seemed to somehow downplay the importance and weighting of its own Investment Guidelines by stating that these were just to provide guidance,

'but should not be applied so strictly so as to stultify the ultimate objective, that the investment is placed in the best interests of the member'.[92]

Apart that it is contradictory to infer that by not adhering with the guidelines one would be acting in the best interests of the member - given that the scope

[90] i.e., a collective investment scheme without sub-funds.
[91] i.e., a collective investment scheme with sub-funds, where each sub-fund would typically have its own distinct investment policies and separate and distinct investment portfolios.
[92] *A fol.* 136 - Para. 32 of the affidavit of Stewart Davies.

of such guidelines should have been, in the first place, to ensure that the portfolio is diversified and risks are spread and thus to ensure the best interests of the member - it has, in any case, not been demonstrated or justified in any way what instances were somehow deemed appropriate by the Service Provider where it was more in the best interests of the member to depart and not comply with the investment guidelines rather than to ensure adherence thereto.

It is further to be noted that the specific parameters and limits outlined in MPM's Investment Guidelines were themselves stipulated in MPM's key documentation, and as specified in the same documentation, MPM itself had to ensure adherence with the specified limits and conditions in its role of Trustee of the Retirement Scheme.[93]

Furthermore, no qualifications or any disclaimers regarding the compliance or otherwise with such guidelines have emerged in this case. Neither has it emerged in what circumstances, divergences could possibly be permitted, if at all. Hence, the stipulated Investment Guidelines were binding and should have been followed accordingly.

Even if one had to, for the sake of the argument only (which was not the case as outlined above), somehow construe that these were *'just'* guidelines and not strict rules as the Service Provider tried to argue,[94] one would in any case reasonably not expect any major departure from the limits and maximum exposures specified in the stipulated guidelines.

With respect to the Complainant's portfolio, it is considered that not only were various investments not reflective of MPM's Investment Guidelines but, on multiple occasions, there were material departures from such guidelines where the maximum limits were materially exceeded as outlined further below.

Portfolio not reflective of the MFSA rules

The high exposure to structured products (as well as high exposure to single issuers in respect of the Complainant), which was allowed to occur by the Service Provider in the Complainant's portfolio, jarred with the regulatory

[93] For example, as clearly outlined in the Investment Guidelines marked 'January 2013' and 'Mid-2014' in the Scheme's Application Form.
[94] *A fol.* 136 - Para. 32 of the affidavit of Stewart Davies.

requirements that applied to the Retirement Scheme at the time, particularly Standard Operational Condition ('SOC') 2.7.1 and 2.7.2 of the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act, 2002'*, ('the Directives') which applied from the Scheme's inception in 2011 until the registration of the Scheme under the RPA on 1 January 2016*.* The applicability and relevance of these conditions to the case in question was highlighted by MPM itself.[95]

SOC 2.7.1 of Part B.2.7 of the Directives required *inter alia* that the assets were to '*be invested in a prudent manner and in the best interest of beneficiaries …*'.

SOC 2.7.2 in turn required the Scheme to ensure *inter alia* that, the assets of a scheme are '*invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole*'[96] and that such assets are '*properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole*'.[97]

SOC 2.7.2 of the Directives also provided other benchmarks including for the portfolio to be '*predominantly invested in regulated markets*';[98] to be '*properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings',*[99] where the exposure to single issuer was: in the case of investments in securities issued by the same body limited to no more than 10% of assets; in the case of deposits with any one licensed credit institution limited to 10%, which limit could be increased to 30% of the assets in case of EU/EEA regulated banks; and where in case of investments in properly diversified collective investment schemes, which themselves had to be predominantly invested in regulated markets, limited to 20% of the scheme's assets for any one collective investment scheme.[100]

Despite the standards of SOC 2.7.2, MPM allowed the portfolio of the Complainant to comprise solely of structured products.

[95] Para. 21 & 23 of the Note of Submissions filed by MPM - *A fol.* 192
[96] SOC 2.7.2 (a)
[97] SOC 2.7.2 (b)
[98] SOC 2.7.2 (c)
[99] SOC 2.7.2 (e)
[100] SOC 2.7.2 (h)(iii) & (v)

In the case of the Complainant, it has also clearly emerged that individual exposures to single issuers were at times even higher than 30%, this being the maximum limit applied in the Rules to relatively safer investments such as deposits as outlined above. It would have been more sensible for the maximum limit of 10% applicable to single issuers in case of securities to have been similarly applied for those structured products which featured barrier events and provided risk of loss similar to an investment in the worst performing underlying.

Instead, there were exposures to individual securities as high as 29.76% of the policy value at the time of purchase (such as in the case of the *RBC GBP Notes* in 2016) and collective exposures to a single issuer above 39% of the policy value (such as to EFG through the multiple purchases made in 2014).[101]

The structured products invested into were also not indicated, during the proceedings of this case, as themselves being traded in or dealt on a regulated market.

The portfolio also included material positions into high risk investments where the high risk is reflected in the high rate of return - for example of 10%p.a. as featuring in the fact sheet sourced in respect of the RBC Online Large Caps Income.[102]

*Portfolio not reflective of MPM's **own** Investment Guidelines*

In its submissions, MPM produced a copy of the Investment Guidelines marked 'January 2013' and 'Mid-2014', which guidelines featured in the Application Form for Membership, and also Investment Guidelines marked '2015', '2016', 'Mid-2017', 'Dec-2017' and '2018' where, it is understood the latter respectively also formed part of the Scheme's documentation such as the Scheme Particulars issued by MPM.

[101] *A fol.* 208

[102] *https://www.portman-associates.com/wp-content/uploads/2014/07/RBC-10pa-Online-Large-Caps-Income-FACTSHEET.pdf*

Despite that the Service Provider claimed that the investments made in respect of the Complainant were in line with the Investment Guidelines, **MPM has however not adequately proven such a claim**.

The investment portfolio in the case reviewed was ultimately solely invested in structured notes.

It is unclear how a portfolio comprising solely of structured notes truly satisfied certain conditions specified in MPM's own Investment Guidelines such as:

(i) **The requirement that the member's assets had to be '*predominantly invested in regulated markets*'**.

This was a condition which prevailed in all of the presented MPM's Investment Guidelines since January 2013 till that of 2018.[103]

The said requirement of being '*predominantly invested in regulated markets*' meant, and should have been construed to mean, that investments had to be predominantly invested in listed instruments, that is financial instruments that were admitted to trading.

With reference to industry practice, the terminology of '*regulated markets*' is referring to a regulated exchange venue (such as a stock exchange or other regulated exchange).

The term '*regulated markets*' is in fact commonly referred to, defined and applied in various EU Directives relating to financial services, including diversification rules applicable on other regulated financial products.[104] Hence, the interpretation of '*regulated markets*' has to be seen in such context.

The reference to '*predominantly invested in regulated markets*' cannot be interpreted as referring to the status of the issuers of the products and it is

[103] Investment Guidelines attached to the affidavit of Stewart Davies.

[104] Such as UCITS schemes - the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive (Directive 2009/65/EC as updated). The Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EC as repealed by Directive 2014/65/EU) also includes a definition as to what constitutes a 'regulated market'.

typically the product itself which has to be traded on the regulated market and not the issuer of the product.

Moreover, a look through approach, could not either be sensibly applied to the structured notes for the purposes of such condition taking into consideration the nature and particular features of the structured notes invested into.

No evidence was submitted that predominantly the portfolio, which comprised solely of structured notes, constituted listed structured notes in respect of the Complainant. On its part the Service Provider did not prove that the portfolio of the Complainant was '*predominantly invested in regulated markets*' on an ongoing basis.

Furthermore, when investment in unlisted securities was itself limited to 10% of the Scheme assets, as stipulated throughout MPM's own Investment Guidelines for 2013 to 2018, it is unclear how the Trustee and Scheme Administrator chose to allow higher exposures (as indicated in this section) to structured notes, a debt security, which are typically unlisted.

(ii) **The requirement relating to the liquidity of the portfolio.**

The Investment Guidelines of MPM marked January 2013 required no more than a '*maximum of 40% of the fund*[105] *in assets with liquidity of greater than 6 months*'.

This requirement remained, in essence, also reflected in the Investment Guidelines marked 'Mid-2014' which read '*Has a maximum of 40% of the fund in assets with expected liquidity of greater than 6 months*', as well as in the subsequent Investment Guidelines marked 2015 till 2018 which were updated by MPM and tightened further to read a '*maximum of 40% of the fund in assets with expected liquidity of greater than 3 months but not greater than 6 months*'.

[105] The reference to *'fund'* is construed to refer to the member's portfolio.

It is evident that the scope of such requirement was to ensure the liquidity of the portfolio as a whole by having the portfolio predominantly (that is, at least 60%) exposed to liquid assets which could be easily redeemed within a short period of time, that is 3-6 months (as reflected in the respective conditions) whilst limiting exposure to those assets which take longer to liquidate to no more than 40% of the portfolio.

It is noted that the structured notes invested into typically do not have a maturity of a few months but a longer term of one or more years (two years in the case of the fact sheet sourced/presented). It is unclear how the 40% maximum limit referred to above could have been satisfied in such circumstances where the portfolio constituted solely of structured notes which themselves had long investment terms.

It is further noted that the possibility of a secondary market existing for structured notes meant that a buyer had to be first found in the secondary market in case one wanted to redeem a holding into the structured note prior to its maturity.

The secondary market could not have provided an adequate level of comfort with respect to liquidity.

There are indeed various risks highlighted in relation to the secondary market as highlighted in the fact sheet sourced.

MPM should have been well aware about the risks associated with the secondary market as the lower values of the structured notes on the secondary market would have affected the Scheme's value when reporting on such in its own Annual Member Statements.

Hence, no sufficient comfort about liquidity could have possibly been derived with respect to the secondary market in case of unlisted structured notes.

The Arbiter is not accordingly convinced that the conditions relating to liquidity were being adequately adhered to, nor that the required prudence was being exercised with respect to the liquidity of the portfolio when considering the above-mentioned aspects and when keeping into

context that the portfolio of investments that was allowed to develop within the Retirement Scheme was solely invested into structured notes.

It is also to be noted that <u>even if one had to look at the composition of the Complainant's portfolio purely from other aspects, there is still undisputable evidence of non-compliance with other requirements detailed in MPM's own Investment Guidelines</u>.

This is particularly so with respect to the requirements applicable regarding the proper diversification, avoidance of excessive exposure and permitted maximum exposure to single issuers.

Table A below shows some examples of excessive single exposures allowed within the portfolio of the Complainant as emerging from the respective '*Table of Investments*' forming part of the '*Investor Profile*' produced by MPM as part of its submissions.[106]

Table A – Examples of Excessive Exposure to a Single Issuer of Structured Notes ('SNs')

Exposure to single issuer in % terms of the policy value at time of purchase	*Issuer*	*Date of purchase*	*Description*
39.96%	EFG	Sept 2014	2 SNs issued by EFG respectively constituted 19.98% each of the policy value at the time of purchase in Sept 2014.

[106] *A fol.* 208

Exposure to single issuer in % terms of the policy value at time of purchase	*Issuer*	*Date of purchase*	*Description*
Over 31.55%	EFG	April 2015	2 SNs issued by EFG constituted 15.27% and 16.28% respectively of the policy value at the time of purchase in April 2015. This is apart from a previous exposure to another EFG product not indicated as having been sold by the time of these additional purchases - as per the Table of Investments.
29.76%	RBC	August 2016	1 SN issued by RBC constituted 29.76% of the policy value at the time of purchase in August 2016.

The fact that such high exposures to a single counterparty was allowed in the first place indicates, in itself, the lack of prudence and excessive exposure and risks to single counterparties that were allowed to be taken on a general level.

The Arbiter notes that the Service Provider has along the years revised various times the investment restrictions specified in its own '*Investment Guidelines*' with respect to structured products, both in regard to maximum exposures to structured products and maximum exposure to single issuers of such products. The exposure to structured notes and their issuers was indeed progressively and substantially reduced over the years in the said Investment Guidelines.

The specified maximum limit of 66% of the portfolio value in structured notes having underlying guarantees which featured in the '*Investment Guidelines*' marked 2015[107] was reduced to 40% of the portfolio's value in the '*Investment*

[107] MPM's Investment Guidelines '2015' as attached to the affidavit of Stewart Davies

Guidelines' marked December 2017[108] and subsequently reduced further to 25% in the '*Investment Guidelines*' for 2018.[109]

Similarly, the maximum exposure to single issuers for '*products with underlying guarantees*', that is structured products as referred to by MPM itself, in the '*Investment Guidelines*' marked Mid-2014 and 2015 specifically limited maximum exposure to the same issuer default risk to no more than (33.33%), one third of the portfolio. The maximum limit to such products was subsequently reduced to 25%, one quarter of the portfolio, in the '*Investment Guidelines'* marked 2016[110] and mid-2017,[111] reduced further to 20% in the '*Investment Guidelines*' marked December 2017 and subsequently to 12.5% in the '*Investment Guidelines*' for 2018.

In the case reviewed, there were instances where the extent of exposure to single issuers was clearly higher than the limits mentioned above of 33.33% applicable in mid-2014/2015 and the limit of 25% applicable in 2016.

There is clearly no apparent reason, from a prudence point of view, justifying such high exposure to single issuers.

The Arbiter considers that the high exposure to structured products as well as to single issuers in the Complainant's portfolio jarred, and did not reflect to varying degrees, with one or more of MPM's own investment guidelines applicable at the time when the investments were made, most particularly with respect to the following guidelines:[112]

Investment Guidelines marked 'January 2013':
○ ***Properly diversified*** *in such a way as to* ***avoid excessive exposure****:*
▪ ***Singular structured products should be avoided due to the counterparty risk*** *but are acceptable as part of an overall portfolio.*
Investment Guidelines marked 'Mid-2014':

[108] MPM's Investment Guidelines 'Dec-2017' as attached to the affidavit of Stewart Davies
[109] MPM's Investment Guidelines '2018' as attached to the affidavit of Stewart Davies
[110] MPM's Investment Guidelines '2016' as attached to the affidavit of Stewart Davies
[111] MPM's Investment Guidelines 'Mid-2017' as attached to the affidavit of Stewart Davies
[112] Emphasis in the mentioned guidelines added by the Arbiter.

- *Where products with underlying guarantees are chosen,* ***no more than one third of the overall portfolio to be subject to the same issuer default risk****.*

In addition, ***further consideration needs to be given to*** *the following factors:*

- *…*
- ***Credit risk of underlying investment***
- *…*

…

- *In addition to the above, the portfolio must be constructed in such a way as to* ***avoid excessive exposure****:*
  - *...*
  - ***To any single credit risk***

Investment Guidelines marked '2015':

- *Where products with underlying guarantees are chosen, i.e.* ***Structured Notes****, these will be* ***permitted up to a maximum of 66% of the portfolio's values****,*

with ***no more than one third*** *of the portfolio to be* ***subject to*** *the* ***same issuer default risk****.*

In addition, ***further consideration needs to be given to*** *the following factors:*

- *…*
- ***Credit risk of underlying investment***
- *…*

…

- *In addition to the above, the portfolio must be constructed in such a way as to* ***avoid exposure****:*
  - *...*
  - ***To any single credit risk****.*

Investment Guidelines marked '2016' & 'Mid-2017':

- *Where* ***products with underlying Capital guarantees*** *are chosen,* ***i.e. Structured Notes****, these will be* ***permitted up to a maximum of 66% of the portfolio's values****,*

with ***no more than one quarter*** *of the portfolio to be* ***subject to*** *the* ***same issuer/ guarantor default risk****.*

- ***Where no such Capital guarantee exists****, investment will be* ***permitted up to a maximum of 50% of the portfolio's value****.*

…

- *In addition,* ***further consideration needs to be given to*** *the following factors:*
  - *…*
  - ***Credit risk of underlying investment****;*

…

- *In addition to the above, the portfolio must be constructed in such a way as to* ***avoid exposure****:*
  - *...*

- ***To any single credit risk.***

Besides the mentioned excessive exposure to single issuers, it is also noted that additional investments into structured notes were observed[113] to have been allowed to occur within the Complainant's portfolio, in excess of the limits allowed on the overall maximum exposure to such products.

MPM's Investment Guidelines of 2015 and 2016 specifically mentioned a maximum limit of 66% of the portfolio value to structured notes. In the case reviewed the Service Provider still continued to allow further investments into structured products at one or more instances when the said limits should have applied. The additional investments also occurred despite the portfolio being already exposed to structured notes more than the said percentage at the time when the additional purchase was being made.

For the reasons amply explained, the Arbiter has no comfort that MPM's role as RSA and Trustee in ensuring the Scheme's investments are managed in accordance with relevant legislation and regulatory requirements and in accordance with its own documentation, has been truly achieved by MPM generally, and at all times, in respect of the Complainant's investment portfolio.

Other observations & synopsis

The Service Provider did not help its case by not providing detailed information on the underlying investments as already stated in this decision. Although the Service Provider filed a *Table of Investments* it did not provide adequate information to explain the portfolio composition and justify its claim that the portfolio was diversified. It did not provide fact sheets in respect of the investments comprising the portfolio of the Complainant and it did not demonstrate the features and the risks attached to the investments.

[113] '*Table of Investments'* in the '*Investor Profile'* provided by MPM refers - *a fol.* 208

Various aspects had to be taken into consideration by the Service Provider with respect to the portfolio composition. Such aspects include, but are not limited to:

- the nature of the structured products being invested into and the effects any events or barriers that may form part of the key features of such products, would have on the investment if and when such events occur as already detailed above;
- the potential rate of returns as indicative of the level of risk being taken;
- the level of risks ultimately exposed to in the respective product and in the overall portfolio composition; and
- not the least, the issuer/counterparty risk being taken.

The extent of realised losses experienced on the capital of the Complainant's portfolio is in itself indicative of the failure in adherence with the applicable conditions on diversification and avoidance of excessive exposures. Otherwise, material losses, which are reasonably not expected to occur in a pension product whose scope is to provide for retirement benefits, would have not occurred.

Apart from the fact that no sensible rationale has emerged for limiting the composition of the pension portfolio solely to structured products, no adequate and sufficient comfort has either emerged that such composition reflected the prudence expected in the structuring and composition of a pension portfolio. Neither that the allocations were in the best interests of the Complainant despite his risk profile of Medium Risk.

In the circumstance where the portfolio of the Complainant was solely invested into structured products with a high level of exposure to single issuer/s, and for the reasons amply explained above, the Arbiter does not consider that there was proper diversification nor that the portfolio was at all times '*invested in order to ensure the security, quality, liquidity and*

profitability of the portfolio as a whole'[114] **and '*** ***properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole*** **'.**[115]

Apart from the fact that the Arbiter does not have comfort that the portfolio was reflective of the conditions and investment limits outlined in the MFSA's Rules and MPM's own Investment Guidelines, **it is also being pointed out that over and above the duty to observe specific maximum limits relating to diversification as may have been specified by rules, directives or guidelines applicable at the time, the behaviour and judgement of the Retirement Scheme Administrator and Trustee of the Scheme is expected to, and should have gone beyond compliance with maximum percentages and was to, in practice, reflect the spirit and principles behind the regulatory framework and in practice promote the scope for which the Scheme was established.**

The excessive exposure to structured products and their issuers nevertheless clearly departed from such principles and cannot ultimately be reasonably considered to satisfy and reflect in any way a suitable level of diversification nor a prudent approach.

This is even more so when considering the crucial aim of a retirement scheme being that to provide for retirement benefits – an aspect which forms the whole basis for the pension legislation and regulatory framework to which the Retirement Scheme and MPM were subject to. The provision of retirement benefits was indeed the Scheme's sole purpose as reflected in the Scheme Particulars.

C. The Provision of information

Another aspect raised by the Complainant related to the lack of reporting and notifications about his investment transactions. With respect to reporting to the member of the Scheme, MPM mentioned and referred only to the Annual Member Statement in its submissions. The said annual statements issued by the Service Provider to the Complainant are however highly generic reports which only listed the underlying life assurance policy and included no details of the

[114] SOC2.7.2(a) of Part B.2.7 of the Directives.
[115] SOC2.7.2(b) of Part B.2.7 of the Directives.

underlying investments, that is, the structured notes comprising the portfolio of investments.

Hence, the extent and type of information sent to the Complainant by MPM as a member of the Scheme in respect of his underlying investments is considered to have been lacking and insufficient.

SOC 9.3(e) of Part B.9 of the Pension Rules for Personal Retirement Schemes of 1 January 2015 already provided that, in respect of member-directed schemes,

'*a record of all transactions (purchases and sales) occurring in the member's account during the relevant reporting period should be provided by the Retirement Scheme Administrator to the Member at least once a year and upon request* …'.

It is noted that the Pension Rules for Personal Retirement Schemes under the RPA became applicable to MPM on 1 January 2016 and that, as per the MFSA's communications presented by MPM,[116] Part B.9 of the said rules did not become effective until the revised rules issued in 2018.

Nevertheless, it is considered that even where such condition could have not strictly applied to the Service Provider from a regulatory point of view, the Service Provider as a Trustee, obliged by the TTA to act as a *bonus paterfamilias* and in the best interests of the members of the Scheme, should have felt it its duty to provide and report fully to members adequate information on the underlying investment transactions.

Moreover, prior to being subject to the regulatory regime under the RPA, the Service Provider was already subject to regulatory requirements relating to the provision of adequate information to members such as the following provisions under the SFA framework:

- Standard Operating Conditions 2.6.2 and 2.6.3 of Section B.2 of the Directives for Occupational Retirement Schemes, Retirement Funds and

[116] MFSA's letter dated 11 December 2017, attached to the Note of Submissions filed by MPM in 2019.

Related Parties under the Special Funds (Regulation) Act, 2002[117] respectively already provided that:

'2.6.2 *The Scheme Administrator shall act with due skill, care and diligence in the best interests of the Beneficiaries. Such action shall include:*

…

b) ensuring that contributors and prospective contributors are provided with adequate information on the Scheme to enable them to take an informed decision …';

'2.6.3 *The Scheme Administrator shall ensure the adequate disclosure of relevant material information to prospective and actual contributors in a way which is fair, clear and nor misleading. This shall include:*

…

b) reporting fully, accurately and promptly to contributors the details of transactions entered into by the Scheme …'.

There is no apparent and justified reason why the Service Provider did not report itself on key information such as the composition of the underlying investment portfolio, which it had in its hands as the trustee of the underlying life assurance policy held in respect of the Complainant.

The general principles of acting in the best interests of the member and those relating to the duties of trustee as already outlined in this decision[118] and to which MPM was subject to, should have prevailed and should have guided the Service Provider in its actions to ensure that the Member was provided with an adequate account of the underlying investments within his portfolio.

The provision of details on the underlying investments could have ultimately enabled the member of the Scheme to highlight any transactions on which there were any issues.

[117] Condition 2.2 of the Certificate of Registration issued by the MFSA to MPM dated 28 April 2011 included reference to Section B.2 of the said Directives.
[118] The section titled '*Responsibilities of the Service Provider*'.

D. Other - Structured Products Targeted for Professional Investors

The fact sheet traced by the OAFS in relation to the RBC Online Large Caps Income note, **specifies that this structured note was indeed targeted for professional investors only. This is in clear conflict with the profile of the Complainant as a retail investor.**

The said fact sheet clearly indicates that this note was '*For Professional Investors Only'* and *'not suitable for Retail distribution*' with the '*Target Audience*' for this product being clearly specified as '*Professional Investors Only*' as outlined in the '*Key Features*' section of the fact sheet.

No evidence has emerged or been produced by the Service Provider that the products allowed to be invested into within the Retirement Scheme were retail products.

Indeed, in view of the reasons explained above, there is no comfort that the Service Provider has not allowed products targeted solely for professional investments not to feature in the Complainant's portfolio.

Causal link and Synopsis of main aspects

The actual cause of the losses experienced by the Complainant **cannot** just be attributed to the under-performance of the investments as a result of general market and investment risks and/or the issues alleged against one of the structured note providers, as MPM has *inter alia* suggested in these proceedings. [119]

There is sufficient and convincing evidence of deficiencies on the part of MPM in the undertaking of its obligations and duties as Trustee and Retirement Scheme Administrator of the Scheme as amply highlighted above which, at the very least, impinge on the diligence it was required and reasonably expected to be exercised in such roles.

It is also evidently clear that such deficiencies prevented the losses from being minimised and in a way contributed in part to the losses experienced. The actions and inactions that occurred, as explained in this decision, enabled such

[119] For example, in the reference to litigation filed against Leonteq - *A fol.* 140

losses to result within the Scheme, leading to the Scheme's failure to achieve its key objective.

Had MPM undertaken its role adequately and as duly expected from it, in terms of the obligations resulting from the law, regulations and rules stipulated thereunder and the conditions to which it was subject to in terms of its own Retirement Scheme documentation as explained above, such losses would have been avoided or mitigated accordingly.

The actual cause of the losses is indeed linked to and cannot be separated from the actions and/or inactions of key parties involved with the Scheme, with MPM being one of such parties.

In the particular circumstances of the cases reviewed, the losses experienced on the Retirement Scheme are ultimately tied, connected and attributed to events that have been allowed to occur within the Retirement Scheme which MPM was duty bound and reasonably in a position to prevent, stop and adequately raise as appropriate with the Complainant.

Final remarks

As indicated earlier, the role of a retirement scheme administrator and trustee does not end, or is just strictly and solely limited, to the compliance of the specified rules. The wider aspects of its key role and responsibilities as a trustee and scheme administrator must also be kept into context.

Whilst the Retirement Scheme Administrator was not responsible to provide investment advice to the Complainant, the Retirement Scheme Administrator had however clear duties to check and ensure that the portfolio composition recommended by the investment advisor provided a suitable level of diversification, and was *inter alia* in line with the applicable requirements in order to ensure that the portfolio composition was one enabling the aim of the Retirement Scheme to be achieved with the necessary prudence required in respect of a pension scheme. The oversight function is an essential aspect in the context of personal retirement schemes as part of the safeguards supporting the objective of retirement schemes.

It is considered that, had there been a careful consideration of the contested structured products and extent of exposure to such products and their issuers, the Service Provider would and should have intervened, queried, challenged and raised concerns on the portfolio composition recommended and not allow the overall risky position to be taken in structured products as this ran counter to the objectives of the retirement scheme and was not in the Complainant's best interests amongst others.

The Complainant ultimately relied on MPM as the Trustee and Retirement Scheme Administrator of the Scheme as well as other parties within the Scheme's structure, to achieve the scope for which the pension arrangement was undertaken, that is, to provide for retirement benefits and also reasonably expect a return to safeguard his pension.

Whilst losses may indeed occur on investments within a portfolio, a properly diversified and balanced and prudent approach, as expected in a pension portfolio, should have mitigated any individual losses and, at the least, maintain rather than substantially reduce the original capital invested.

For the reasons amply explained, it is accordingly considered that there was, at the very least, a clear lack of diligence by the Service Provider in the general administration of the Scheme in respect of the Complainant and in carrying out its duties as Trustee, particularly when it came to the dealings and aspects involving the appointed investment adviser; the oversight functions with respect to the Scheme and portfolio structure; as well as the reporting to the Complainant on the underlying portfolio. It is also considered that there are various instances which indicate non-compliance by the Service Provider with applicable requirements and obligations as amply explained above in this decision.

The Arbiter also considers that the Service Provider did not meet the '*reasonable and legitimate expectations*'[120] of the Complainant who had placed his trust in the Service Provider and others, believing in their professionalism and their duty of care and diligence.

[120] Cap. 555, Article 19(3)(c)

Conclusion

For the above-stated reasons, the Arbiter considers the complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case and is accepting it in so far as it is compatible with this decision.

Cognisance needs to be taken however of the responsibilities of other parties involved with the Scheme and its underlying investments, particularly, the role and responsibilities of the investment advisor to the Member of the Scheme. Hence, having carefully considered the case in question, the Arbiter considers that the Service Provider is to be partially held responsible for the losses incurred.

Compensation

Being mindful of the key role of Momentum Pensions Malta Limited as Trustee and Retirement Scheme Administrator of the Momentum Malta Retirement Trust, and in view of the deficiencies identified in the obligations emanating from such roles as amply explained above, which deficiencies are considered to have prevented the losses from being minimised and, in a way, contributed in part to the losses experienced on the Retirement Scheme, the Arbiter concludes that the Complainant should be compensated by Momentum Pensions Malta Limited for part of the realised losses on his pension portfolio.

In the particular circumstances of this case, considering that the Service Provider had the last word on the investments and acted in its dual role of Trustee and Retirement Scheme Administrator, the Arbiter considers it fair, equitable and reasonable for Momentum Pensions Malta Limited, to be held responsible for seventy per cent of the net realised losses sustained by the Complainant on his investment portfolio.

The Arbiter notes that the latest valuation and list of transactions provided by the Service Provider in respect of the Complainant is not current. Besides, no

detailed breakdown was provided regarding the status and performance of the respective investments within the disputed portfolio.

The Arbiter shall accordingly formulate how compensation is to be calculated by the Service Provider for the purpose of this decision in order for the performance on the whole investment portfolio to be taken into consideration.

The Service Provider is accordingly being directed to pay the Complainant compensation equivalent to 70% of the sum of the Net Realised Loss incurred within the whole portfolio of underlying investments constituted under Continental Wealth Management and allowed by the Service Provider.

The Net Realised Loss calculated on such portfolio shall be determined as at the date of this decision and calculated as follows:

(i) For every such investment it shall be calculated any realised loss or profit resulting from the difference in the purchase value and the sale/maturity value (amount realised). Any realised loss so calculated on such investment shall be reduced by the amount of any total interest or other total income received from the respective investment throughout the holding period to determine the actual amount of realised loss, if any;

(ii) In case where an investment in (i) above is calculated to have rendered a profit after taking into consideration the amount realised (inclusive of any total interest or other total income received from the respective investment), such realised profit shall be accumulated from all such investments and netted off against the total of all the realised losses from the respective investments calculated as per (i) above to reach the figure of the Net Realised Loss within the indicated portfolio.

The computation of the Net Realised Loss shall accordingly take into consideration any realised gains or realised losses arising within the portfolio.

In case where any currency conversion/s is/are required for the purpose of finally netting any realised profits/losses within the portfolio which remain denominated in a different currency such conversion shall, if and where applicable, be made at the spot exchange rate sourced from the European Central Bank and prevailing on the date of this decision. Such a direction on the currency conversion is only being given in the very particular circumstances of this case for the purpose of providing clarity and enabling the calculation of the compensation formulated in this decision and avoid future unnecessary controversy.

(iii) Investments which were constituted under Continental Wealth Management in relation to the Scheme and are still held and remain open within the current portfolio of underlying investments as at, or after, the date of this decision are not the subject of the compensation stipulated above. This is without prejudice to any legal remedies the Complainant might have in future with respect to such investments.

In accordance with Article 26 (3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Momentum Pensions Malta Limited to pay the indicated amount of compensation to the Complainant.

A full and transparent breakdown of the calculations made by the Service Provider in respect of the compensation as decided in this decision, should be provided to the Complainant.

With legal interest from the date of this decision till the date of payment.

Because the Arbiter did not uphold certain allegations made in the complaint, each party is to bear its own legal costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services