Before the Arbiter for Financial Services

Case No. 077/2020

TM

('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 14 December 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.

Apart from the Complaint Form (which is only provided by the Office of the Arbiter for Financial Services (OAFS) to assist complainants), the Complainant expounded his complaint on other documentation attached to the Complaint Form. Since there is no established formality on the presentation of complaints, because the legislator wanted an informal procedure to make the life of consumers easier, the Arbiter will take into consideration all the documentation filed with the Complaint Form to establish the totality of the

Complaint. Substance should prevail over formality in these informal proceedings. This aspect is further considered below in this decision when the Arbiter deals with preliminary pleas.

The Complaint

The Complainant claimed losses arising on his pension scheme. In his Complaint to the Office of the Arbiter for Financial Services (OAFS) he made various allegations in respect of the Service Provider and/or his investment advisor, Continental Wealth Management ('CWM'), which allegations, in essence, are summarised below:[1]

1. *Sale Pressures and claim of being rushed into signing the Application Form*

   The Complainant explained that he was rushed into signing for the investment into the Scheme as he was told that he was running out of time to take an advanced pay-out on his pension given he was approaching his 55th birthday. Although he hesitated at first as he was not convinced on the proposal, he proceeded with the pension proposal after another adviser of CWM was brought into the discussions. The Complainant referred to the contacts he had with Graham Michaels and Neil Hathaway of CWM in this regard.

2. *No charges discussed*

   The Complainant claimed that no charges were discussed and that he was only referred to the details contained in the documentation.

3. *Lack of information*

   The Complainant alleged that he seldom received any information from CWM or MPM.

4. *No correct advice/No assistance*

[1] *A fol.* 4-12

It was submitted that correct advice was never given and that *'after the Company failed, i asked the people stated above, for any advice, but was given nothing, and assisted in no way at all'*.[2]

5. *Dealing notes not signed by him*

The Complainant alleged that notes were supposedly signed by him but never were.

6. *Unfulfilled promises*

The Complainant referred to documentation signed in 2015 concerning his pension and claimed that all the promises made to him at the time of signing never materialised.[3]

The following allegations and background, in essence, also featured in one of the first attachments that the Complainant included to his Complaint Form.

a) *Background*

The said attachment referred to an initial complaint made to MPM; to copies of email conversations relating to the complaint; to a copy of a complaint letter sent to MPM; and to the reply received by MPM.

b) *Acceptance of business from unlicensed advisors & lack of control*

In the said attachment, the Complainant states that whilst some offshore pension trustees do legitimately take business from unlicensed advisors these only do so if they have carried out detailed *'fit and proper'* checks.

It was claimed that MPM however accepted business from unlicensed advisers until September 2017 despite that CWM allegedly had a role in a series of scams (such as the Evergreen QROPS liberation scam) which had been clearly documented from at least 2013.

[2] *A fol.* 4
[3] *A fol.* 7

It was further alleged that no action was taken by MPM *'to stem the haemorrhaging of investors' funds'*[4] despite the heavy losses reported by MPM itself in its annual reports from at least 2013.

By the time of membership in 2015, it was alleged that *'the carnage of the failed structured notes was well known'*[5] to MPM and yet the pension was invested in the same assets which suffered the same terrible fate.

c) *Acceptance of instructions without checking original Fact Find*

It was claimed that MPM accepted instructions from CWM without checking the original fact find document which, it was claimed, stated that his risk profile will be maintained through diversification and use of 100% capital protected products. Moreover, MPM never asked for a copy of the Fact Find and accordingly never checked the member's attitude to risk or what was wanted as investments.

It was questioned how a trustee could carry out its fiduciary duties without having due regard to the personal circumstances and risk profiles of the members and that the risk profiles should act as a safety valve to ensure unsuitable investments are not made.

d) *No cooling off period*

Funds were allegedly invested into structured notes through an offshore bond with Old Mutual before there was any opportunity to change one's mind.

e) *Acceptance of unsuitable investments*

It was further submitted that MPM accepted dealing instructions to purchase assets unsuitable to a retail investor and which did not meet the financial aims of the investor.

The dealing instructions allegedly involved high risk structured notes from RBC, Commerzbank, Nomura and Leonteq which were against the risk profile stated on the fact find.

[4] *A fol.* 9
[5] *Ibid.*

The information sheets of the structured notes, which allegedly were never provided to the member, warned that the notes were for Professional Investors Only.

It was alleged that 100% of the pension fund was invested into these structured notes against even MPM's own guidelines, where it was claimed that several points in the guidelines were not adhered to.

f) *Not acted in best interests of the member and not investing prudently*

The Complainant further submitted that MPM's role as trustee was to act in the best interests of the member and to invest the funds prudently, which they have not done. This was the over-riding factor indicated of why they failed him.

Moreover, MPM has attempted to lay the blame on the member by saying that it was the member's decision to appoint CWM as adviser. It was submitted that it was however their duty to make sure the people they deal with are properly regulated and insured in the jurisdiction they operate in.

g) *Lack of notification about losses*

The Complainant claimed that when the structured notes started to fail, the member was not sent any notification or explanation and MPM continued to allow people to lose money.

h) *Expensive underlying insurance bond*

Furthermore, the underlying investment bond was prohibitively expensive making it impossible for the pension to grow and provide an income on retirement. It was further claimed that the member was not made aware of the fees nor of documentation showing acceptance of the fees. MPM was aware of the fees and made no attempt to alert the member of the effect of the fees on the pension fund, claiming that even without the investment losses, the pension fund was bound to lose over 35% of its initial value purely due to the fees applicable on the insurance bond and structured notes.

i) *MPM still allowing Trafalgar International*

The Complainant stated that MPM was blaming Trafalgar International for the problems but still retained terms of business with them and was still allowing Trafalgar to send investment instructions for clients when they are not licensed for investment advice. Despite the regulations in Malta have been changed, MPM still has terms of business with Trafalgar International.

j) *Compensation to another victim & No changes to checking procedures*

MPM allegedly paid out compensation to at least another victim and despite the issues with CWM, it was claimed that MPM has not changed its checking procedures and dealing instructions continue to be ticked and accepted.

Compensation requested

The Complainant requested his pension scheme to be reinstated to its original value (indicated as GBP85,262.11)[6] and be reimbursed for all the losses, fees and charges incurred. He further requested a 4% to 6% return to be added as compensation for the loss of growth on his scheme.[7] The Complainant also requested to exit from the underlying policy, the OMI bond, with no penalties or MPM paying for such penalties in order for him to be able to leave.[8]

The Complainant claimed a total of GBP45,457.02 (apart from the waiver/ payment of the exit fees) as compensation, which figure he noted will continue to change as more fees are deducted for the OMI Bond and for MPM.[9]

In an additional letter attached to the Complaint, the Complainant stated that *'I do not wish to make anything to which I am not entitled to from this Pension Problem, just to be where I was in the First Place, and having the option to remove my Restored Fund, and place it elsewhere, with no penalties incurred'*.[10]

[6] *A fol*. 6
[7] *A fol.* 4 & 6
[8] *A fol.* 6
[9] *Ibid.*
[10] *A fol.* 7

A further attachment to the Complaint featured a different figure of GBP33,173.72 as amount of compensation being claimed and also a different original value indicated at GBP28,598 (rather than GBP85,262.11).[11]

These discrepancies in the said figures will be considered further on in this decision.

In its reply, MPM essentially submitted the following: [12]

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 primarily, 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:

[11] *A fol.* 12
[12] *A fol.* 120-124

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 6 August 2020, therefore beyond the two-year time period allowed by article 21(1)(b). MPM submitted that for these reasons, the complaint cannot be entertained. It further submitted that the Complainant was cognisant of his complaint in October 2019, as the complaint form bears this date, although it was filed on the 6 August 2020.

Reply to the Complainant's complaints

6. MPM noted that, in the first place, the Complainant appointed CWM as his adviser. It referred to the copy of its application form in relation to the Scheme (attached as Appendix 1 to its reply)[13] as well as the application form of Old Mutual International Ireland Limited (attached as Appendix 2 to its reply).[14]

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 which advised the Complainant to invest in products which have led to the Complainant's alleged losses. 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 stated that it is not answerable for any information, advice or assurance provided by CWM.

MPM further submitted 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 and/or Trafalgar who is the proper respondent to this claim.

[13] *A fol.* 121 & 126
[14] *A fol.* 121 & 141

MPM further replied that any business introduced by CWM to MPM fell within the MFSA's Pension Rules for Service Providers, as they relate to RSAs. MPM further replied that it does not work on a commission basis and 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 stated that it is amply clear from the complaint form that the complaint is with respect to the advice, or alleged lack thereof, received from CWM - reference was made to page 4 of the complaint filed before the Arbiter. It was submitted that the only allegation levelled against MPM is that the Complainant *'seldom received'* information from MPM - this was rejected by MPM. In addition to the initial information provided to the Complainant where reference was made to the welcome letter to the Complainant's Application to become a member of the Scheme,[15] MPM referred to the annual member statements that it sent to the Complainant from 2015.[16]

   MPM noted that the Complainant states that he feels that '*... correct advice was never given, and notes were supposedly signed by me, But never were, after the Company failed, I asked the people stated above, for any advice, but was given nothing, and assisted in no way at all*'.[17]

   MPM reiterated that it cannot reply with respect to any advice, or lack thereof, which the Complainant may have received or failed to receive from CWM or its representatives. It submitted that this complaint is not levelled against MPM and therefore cannot be upheld against MPM. It further noted that the Complainant clearly acknowledges in his own

[15] *A fol.* 175
[16] *A fol.* 176 - 196
[17] *A fol.* 121

complaint that he was dealing with Graham Michaels and Neil Hathaway from CWM, who he alleges *'rushed'* him into signing.

MPM noted that with respect to the Complainant's statement that *'notes were supposedly signed by me'* - the Complainant must clarify whether he is alleging that the *'notes'* were not signed by him or otherwise. MPM submitted that the Complainant must clarify what he is alleging - stating that the notes were '*supposedly'* signed by him is not sufficient and does not clearly explain his complaint in this respect.

8. MPM submitted that it was also clear that the sheets attached to the Complaint Form on pages 9-12 do not relate to the present complaint. MPM noted the following:

   - On page 9, there is reference to the initial complaint having been sent to MPM on the 05/04/2019. MPM submitted that this was not correct as the Complainant's complaint to MPM is dated 3 April 2018;

   - On page 9, there is reference to MPM's response having been sent with a date 22/08/2019. MPM submitted that this is again not correct given that MPM's reply to the Complainant is dated 22 June 2018;

   - On page 12, it is stated that the Complainant is *'looking to have a fund of £28,598.00 that I started with available to re-invest elsewhere'* and *'total I am claiming therefore is 33,173.72 in £...'*.[18]

     MPM submitted that this is not what the Complainant claimed on page 6 of the Complaint, where the Complainant requested the following: *'I am therefore looking to have a fund of £...85,262.11' and 'total I am claiming therefore is ... 45,457.02..£'*.[19]

     It further noted that page 6 is signed off as follows: *'Regards, … TM ……'*. MPM submitted that it is clear that the Complainant's claim is that on page 6, and not on pages 9-12 of the Complaint.

[18] *A fol.* 122
[19] *Ibid.*

MPM submitted that the Complainant has attached sheets to his own Complaint which were not prepared by him. MPM therefore requested the Arbiter to expunge from the records of the case pages 9-12. MPM noted that without prejudice to this request, it will still address the generic allegations on pages 9-12 so as not to prejudice its position in the event that the request is not upheld.

9. MPM noted that in sheets 9-12, the following is stated:

- That heavy losses were allegedly reported by MPM themselves on their annual reports and no action was taken to *'stem the haemorrhaging of investors' funds'*.[20] MPM submitted that in the first place, the Complainant must bring evidence in order to substantiate this allegation;

- By the time *'I became a member in 2015 the carnage of the failed structured notes was well known to Momentum, and yet my pension was invested in the same assets ...'*.[21] MPM replied that the investments were made in line with the applicable investment guidelines. It noted that in September 2015 (5 months after the initial investments were made), the investment guidelines had then been updated. It submitted that the initial investments made, however, must be assessed against the guidelines then applicable, evidence of which will be submitted during the proceedings of the case;

- Instructions were accepted by MPM without it checking the original fact find document (which it was noted the Complainant says was attached, but it was not) and that MPM never checked the attitude to risk. MPM replied that it was not obliged to look at the fact find document, but it was obliged to look at the chosen risk profile on the application form, which it did. MPM replied that furthermore, in fulfilling its obligation, it took into account the Complainant's risk profile.

[20] *Ibid.*
[21] *Ibid.*

- That instructions to purchase assets which were not suitable for a *'retail investor'* and did not meet his financial aims were accepted. MPM submits that the investments made were in line with the Complainant's risk profile and in line with the guidelines applicable at the time of the Complainant's application.

- That no cooling off period was allowed. MPM replies that this is not correct and referred to the email sent to the Complainant by MPM on 13/10/2015 and the documentation that was attached thereto, which it noted clearly stipulated the right to cancel.[22]

- Dealing instructions were to purchase high risk, structured notes from RBC, Commerzbank, Nomura and Leonteq which were against his risk profile and that the accompanying information sheets stated that the products were for professional investors only.

  MPM replied that, in the first place, it was the Complainant who signed off on the dealing instructions. Additionally, it noted that the Complainant was not invested in Nomura. MPM further referred to the replies made in the preceding paragraph in relation to the investment guidelines.

- Crippling losses were reported in 2013 and 2014. MPM replied that the Complainant became a member in 2015 - and that this further substantiated what MPM stated in paragraph 8 of its reply. MPM further noted that *'crippling losses'* could not have been reported with respect to the Complainant since he was not even a member during 2013 and 2014.

- That MPM did not act in his best interests as a member. MPM replied that this is unsubstantiated and refuted such a claim. With respect to the statement that it was MPM's duty to *'make sure the people they deal with are properly regulated and insured in the jurisdiction they operate in'*,[23] MPM replied that there was no such obligation incumbent on MPM at the time the Complainant became a member.

[22] *A fol.* 123 & 173
[23] *A fol.* 123

MPM claimed that it has fulfilled all its obligations with respect to the Complainant.

- That the bond was *'prohibitively expensive'* and that he wasn't made aware of fees until 2017. MPM submitted that this was not correct. Reference was made to the documents sent to the Complainant on 13/10/2015 and the fee schedule signed by him on the 18/3/2015.[24] MPM submitted that the Complainant was aware of the fees and never complained about them.

Momentum does not provide investment advice

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

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

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

13. 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 10 of the application form).

Conclusion

14. 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.

[24] *A fol.* 123, 173 & 174

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

16. 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 made including the affidavit, the notes of submissions, the additional submissions made and respective attachments,

Further Considers:

Preliminary Pleas

Since the Service Provider raised the question of competence and also requested the Arbiter to expunge from the records of the case a number of pages (pg. 9-12 of the Complaint), the Arbiter will deal with these pleas first.

Preliminary Plea regarding the Competence of the Arbiter

Plea number 3[25] raised in the reply submitted by the Service Provider, relates to the competence of the Arbiter under 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.'

[25] *A fol.* 120

Firstly, the Arbiter notes that it took nearly three months for the Service Provider to send the Complainant a reply to his formal complaint.[26] 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 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 failure on the

[26] The Complainant's formal complaint dated 3 April 2018 was answered by MPM through a letter dated 22 June 2018 - *A fol.* 77

right of withdrawal, that is the cooling off period. This is in view that the cooling off period is a distinct right which applied and existed at the time of purchase of the policy in April 2015.[27] The alleged misconduct of the Service Provider in this regard, of not providing the Complainant with the cooling off period at the time of purchase of the policy in 2015, could have thus only been raised with the Arbiter by 18 April 2018. The complaint with the Office of the Arbiter for Financial Services ('OAFS') was filed on the 6 August 2020. Accordingly, for the reasons explained, the Arbiter is rejecting and not considering the part of the complaint relating to the alleged failure of the Service Provider to provide the Complainant with the indicated cooling off period.

Other key aspects were however raised as considered above. Even if, for argument's sake only, the Arbiter had to limit himself to the question of the investment portfolio, 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 the Annual Member Statement for the year ending 31 December 2019 that the portfolio still included a structured note as part of his portfolio as at the date of the said statement.[28]

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**.[29]

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

[27] *A fol.* 19
[28] *A fol.* 193-194
[29] Para.44, Section E of the affidavit of Stewart Davies, Director of MPM – *A fol.* 231

The Arbiter considers that the actions related to the Retirement Scheme complained about cannot 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.

Request to expunge documents and substance of complaint

In its reply, MPM *inter alia* submitted that the Complainant attached sheets to his complaint *'which were not prepared by him'* and which *'do not relate to the present complaint'*.[30] The Service Provider listed certain inconsistencies between the details included in the said sheets and the Complainant's case as justification of its claims and request. MPM requested the Arbiter to accordingly expunge from the records of the case pages 9-12 of the complaint filed with the OAFS.

The Arbiter would first like to point out that he is not ordinarily amenable to requests for the expunging of documents in cases considered under Chapter 555 of the Laws of Malta. This is in view of the nature of the proceedings and complaints covered under the said Act which relate to customers of financial services. The Arbiter is ultimately in a position to himself determine what documentation submitted during the proceedings of the respective case is applicable and what is relevant or not when deciding a case under Cap. 555. Documentation submitted by the parties to the complaint will be attributed the merited importance, if any, as considered appropriate by the Arbiter when deciding the case.

The Arbiter considers that requests for the expunging of documents for cases considered under Cap. 555 should accordingly be exceptional and really and truly justified in the particular circumstances of the respective case.

The Arbiter would also like to highlight with respect to the case in question that this is a Complaint filed by a retail consumer of financial services within the structure of Chapter 555 of the Laws of Malta. The Service Provider should accordingly consider the complaint made by the Complainant in such context and not expect the client, who chose to file the complaint himself, as allowed

[30] *A fol.* 122

within the parameters of the law, to reply in a legalistic manner or with the knowledge and expertise of a professional in the field.

With respect to this Complaint, the Arbiter would furthermore like to make the following observations:

- That the sheets (pages 9-12) that were requested to be expunged constitute part of the very first attachments the Complainant made to his Complaint Form (of 5 pages) and his voluminous attachments (110 pages in all);
- That the said sheets include various serious allegations against MPM. Expunging the said sheets would have a material implication on the complaint and significantly alter its substance;
- That the fact that the said sheets include certain inconsistencies, namely:
- in respect of the dates of the initial complaint and MPM's reply thereto,
- in the amount originally invested and, in the amount, claimed as compensation by the Complainant, as raised by MPM in its reply, does not, in itself, justify or form a sufficient and solid basis for the said sheets to be expunged. This is also in view that the inconsistencies identified by MPM are not considered as changing or affecting whatsoever the Complaint in question.

The Arbiter can actually clearly determine the correct dates of the initial complaint and of MPM's reply thereto (these respectively being the 3 April 2018 and 22 June 2018) given that the Complainant himself attached a copy of his actual initial complaint and MPM's reply as part of the attachments to his complaint.[31]

The Arbiter can also clearly determine the correct figure of the original amount invested, this being GBP85,262.11 as indicated in the sheet on page 6 filed by the Complainant and corroborated in the table of the investor profile provided by MPM itself and the covering letter to the Old Mutual International bond.[32] The actual amount of compensation requested by the Complainant can also be

[31] *A fol.* 77 & 110
[32] *A fol.* 19 & 203

determined as GBP45,457.02 - this being the figure reflected in the first attachment[33] to the Complaint Form (where the correct figure of the original amount invested is included). The said figure of GBP45,457.02 indicated by the Complainant as *'Per Statement From Momentum/Old Mutual International Dated: 22nd August 2019'*[34] also closely reflects the loss (inclusive of fees paid)[35] indicated by MPM in the table of investor profile that it provided during the proceedings of this case based on the *'Current Valuation at 16/09/2020'*[36] as well as the amount of loss originally indicated in the formal complaint that the Complainant sent to the Service Provider.[37]

- MPM has also not submitted evidence or sufficient basis to back its claim that the said sheets *'do not relate to the present complaint'*. Whilst the dates or figures quoted in the said sheets, as indicated above, where indeed incorrect however, on its own, this does not make the various allegations included in the said sheets as not being applicable to the present complaint.

- To justify its request for the expunging of the documents, MPM also noted that the *'Complainant has attached sheets to his own complaint which were not prepared by him'*. This is again not considered by the Arbiter as sufficient basis to expunge the said documents. Even if the said sheets were prepared by someone else other than the Complainant, this does not change the fact that such allegations were included and attached as part of his Complaint Form. If the allegations included in the said sheets are relevant to the Complainant's case then the said allegations cannot accordingly be ignored or removed by the Arbiter.

- It is further noted that certain allegations made in the contested sheets, such as those relating to the acceptance of CWM as an unlicensed advisor and that his fund was invested into high-risk professional investor only structured notes which did not reflect his risk profile as a retail investor, were indeed also reflected in the Complainant's formal complaint with the Service Provider.[38]

[33] *A fol.* 6
[34] *Ibid.*
[35] Loss of GBP27,458 + Fees of GBP10,077 & GBP 4,375 = GBP41,910 (*A fol*. 203)
[36] *A fol.* 203
[37] *A fol.* 110
[38] *Ibid.*

Hence, the Arbiter finds no justifiable reason why the allegations included in the said sheets should be discarded given also that they are not inconsistent and in substance further reflect allegations made in the formal complaint that the Complainant made with the Service Provider.

In the circumstances and for the reasons amply indicated above, the Arbiter considers that there is no sufficient and adequate basis on which he can accept the request to expunge the said sheets and is accordingly refuting the Service Provider's request.

Having reviewed the Complaint, it is furthermore considered that whilst the Complainant could have structured, and presented his Complaint in a more articulate manner, the Arbiter does not agree with MPM that *'it is amply clear from the complaint form that the complaint is with respect to the advice, or alleged lack thereof, received from CWM'* and that *'The only allegation levelled against Momentum is that complainant 'seldom received' information from Momentum'*.[39]

At the outset the Arbiter would like to point out that he shall not delve into claims made in this complaint against CWM given *inter alia* that CWM is not a party to this complaint or eligible as a financial service provider under Cap. 555. However, the role played by CWM as advisor will be considered in the apportionment of responsibility and payment of compensation later on in this decision.

Having reviewed the Complaint, the key alleged shortcomings in respect of MPM, are considered, in substance and in essence, to mainly involve the claim that MPM did not act in the best interests of the Complainant by (1) accepting CWM when this was an unlicensed investment advisor and (2) not ensuring that his funds were invested in a prudent manner as funds were allegedly invested in high-risk structured notes aimed only for professional investors with such investments not being in line with his profile of a low/medium risk retail investor and not in conformity with the investment guidelines (3) lack of information provided to the Complainant.

[39] *A fol.* 121

MPM provided and made extensive submissions on these aspects, *inter alia*, during the proceedings of this Case which the Arbiter shall consider accordingly.

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.[40]

The Complainant

The Complainant, born in 1960, 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').[41]

The Complainant's occupation was indicated as Company Director 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 24 March 2015.[42]

His risk profile was indicated as *'Lower to Medium'* out of the five options available of *'Low'*, *'Lower to Medium'*, *'Medium'*, *'Medium to High'*, and *'High'* in the Application Form for Membership.[43]

The Service Provider

The Retirement Scheme was established by Momentum Pensions Malta Limited ('MPM'). MPM is licensed by the MFSA as a Retirement Scheme

[40] *Cap. 555, Art 19(3)(b)*
[41] *A fol.* 33
[42] *A fol.* 15
[43] *A fol.* 34

Administrator[44] and acts as the Retirement Scheme Administrator and Trustee of the Scheme.[45]

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.

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.[46]

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.[47]

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

[44] *https://www.mfsa.mt/financial-services-register/result/?id=3453*
[45] *A fol.* 254 - Role of the Trustee, pg. 4 of MPM's Scheme Particulars (attached to Stewart Davies's affidavit).
[46] *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/*
[47] As per pg. 1 of the Affidavit of Stewart Davies and the Cover Page of MPM's Registration Certificate issued by MFSA dated 1 January 2016 attached to his affidavit – *A fol.* 220 & 244-246

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 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[48] as a Retirement Scheme under the Special Funds (Regulation) Act in April 2011[49] and under the Retirement Pensions Act in January 2016.[50]

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*'[51] and is '*an approved Personal Retirement Scheme under the Retirement Pensions Act 2011*'.[52]

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*

[48] https://www.mfsa.mt/financial-services-register/result/?id=3454
[49] Registration Certificate dated 28 April 2011 issued by MFSA to the Scheme (attached to Stewart Davies's Affidavit).
[50] Registration Certificate dated 1 Jan 2016 issued by MFSA to the Scheme (attached to Stewart Davies's Affidavit).
[51] Important Information section, Pg. 2 of MPM's Scheme Particulars (attached to Stewart Davies's Affidavit) - *A fol.* 252
[52] Regulatory Status, Pg. 4 of MPM's Scheme Particulars (attached to Stewart Davies's Affidavit) - *A fol.* 254

payable to persons who are resident both within and outside Malta. These benefits are payable after or upon retirement, permanent invalidity or death'.[53]

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.

The life assurance policy acquired for the Complainant was called the European Executive Investment Bond issued by Old Mutual International ('OMI').[54]

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 at times comprised solely or predominantly of 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.[55]

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 -GBP27,458 as at that date.[56] 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 -GBP41,910 on the total amount invested of GBP85,262 based on a *'current valuation at 16/09/20*' of GBP43,352. 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.

[53] *Ibid.*
[54] *A fol.* 67
[55] The '*Investor Profile'* is attached to the Additional Submissions document presented by the Service Provider in respect of the Complainant. *A fol.* 203
[56] *A fol.* 203

Investment Advisor

Continental Wealth Management ('CWM') was the investment advisor appointed by the Complainant.[57] 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*'.[58]

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*'[59] 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'*.[60]

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.[61]

The investment transactions undertaken within the Complainant's portfolio as reflected in the said *'Investor Profile'*, are summarised below:[62]

- an investment of GBP28,000 into the *Commerzbank 2Y AC Phoenix On AAPL EDC ROVI P* (ISIN no. XS1218203823);
- an investment of GBP14,000 into the *Leonteq 6.76% Multi Barrier Rev Conv on 4 Equities* (ISIN no. CH0266685335);

[57] As per pg. 1/2 of MPM's reply to the OAFS in respect of the Complainant (*A fol.* 121) and Section 5 of the Application Form for Membership (*A fol.* 160).
[58] Pg. 1 of MPM's reply to the OAFS - *A fol.* 120
[59] Para. 39, Section E, titled *'CWM and Trafalgar International GmbH'* of Stewart Davies' affidavit - *A fol.*229
[60] *Ibid.*
[61] Attachment to the additional submissions made by MPM in respect of the Complainant - *A fol.* 203
[62] *A fol.* 203

- an investment of GBP14,000 into the *Leonteq 2Y Multi Barrier Express Cert 8.64%* (ISIN no. CH0273397221);
- an investment of GBP14,000 into the *Leonteq 2Y Multi Barrier Exp Cert 9% Pharmaceutical* (ISIN no. CH0273397288);
- an investment of GBP14,000 into the *Leonteq 5Y Express Cert GAP Coors Pfizer Sandisk* (ISIN no. CH0266685236);
- the said table also indicates an investment of GBP3,000 into a collective investment scheme, the *Invest Fd Serv Ltd Brooks Macdonald Balanced D* done in 2016.

During the tenure of CWM, the investment portfolio was clearly invested at times solely or predominantly into structured notes.

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;[63]

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*** …'.

   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

[63] Emphasis added by the Arbiter.

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

As highlighted in the section titled '*The Legal Framework*' above, 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 on, and 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*'.[64]

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'***.[65]

The fiduciary and trustee obligations were also highlighted by MFSA in a recent 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 paterfamilias in the performance of his obligations**'*.[66]

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.

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

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

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***'.[67]

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 in the context of the entire portfolio, 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)**…'*.[68]

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***'.[69]

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, 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.[70]

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,

[67] Para. 17, page 5 of the affidavit of Stewart Davies - *A fol.* 224
[68] Para. 31, Page 8 of the affidavit of Stewart Davies - *A fol.* 227
[69] Para. 33, Page 9 of the affidavit of Stewart Davies (*A fol.* 228) & Para. 17 of Page 5 of the said affidavit also refers (*A fol.* 224).
[70] *A fol.* 133

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'.[71]

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'.* [72]

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 indeed 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*** *…*',[73] 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*** *…*'.[74]

[71] 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/.
[72] 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).*
[73] Investment Guidelines titled January 2013, attached to the affidavit of Stewart Davies (*A fol.* 267). The same statement is also included in page 9 of the Scheme Particulars of May 2018 (also attached to the same affidavit)- *A fol.* 259.
[74] *A fol.* 168

Other Observations and Conclusions

Allegations in relation to fees

The Complainant claimed that no charges were ever discussed with him at the time of joining the Scheme and that the fees for the underlying OMI bond were prohibitively expensive.[75]

The Complainant has not provided any further basis, explanations and/or evidence for the allegations made.

The Arbiter further notes that the Complainant himself provided a charges sheet signed by him dated 18/03/15.[76] Dealing charges and other fees relating to the underlying policy were also described in the *Charges Schedule* which was attached to the covering letter dated 21 April 2015 issued by Old Mutual International in respect of the policy, a copy of which was sent by email to the Complainant by the Service Provider on the 13 October 2015 as evidenced during the proceedings of this case.[77]

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.

On the point of fees, the Arbiter would however like to make a general observation. The Arbiter considers that the trustee and scheme administrator of a retirement scheme, in acting in the best interests of the member as duty bound by law and rules to which it is subject to, is required to be sensitive to, and mindful of, the implications and level of fees applicable within the whole structure of the retirement scheme and not just limit consideration to its own fees.

In its role of a *bonus paterfamilias,* the trustee of a retirement scheme is reasonably expected to ensure that the extent of fees applicable within the whole structure of a retirement scheme is reasonable, justified and adequate overall when considering the purpose of the scheme. Where there are issues or concerns these should reasonably be raised with the prospective member

[75] *A fol.* 4 & 11
[76] *A fol.* 46
[77] *A fol.* 18-22

or member as appropriate. Consideration would in this regard need to be given to a number of aspects including: the extent of fees vis-à-vis the size of the respective pension pot of the member; that the extent of fees are not such as to inhibit or make the attainment of the objective of the Scheme difficult to be actually reached without taking excessive risks; neither that the level of fees motivate investment in risky instruments and/or the construction of risky portfolios.

Allegation relating to the signature on the dealing instructions/lack of information

The Complainant alleged that the dealing instructions were supposedly signed by him but never were.[78] The Complainant further claimed that he has seldom received any information from MPM.

It is noted that the dealing instructions[79] presented by the Complainant himself during the proceedings of the case did include a signature.[80] Given that no further explanations or evidence was provided by the Complainant on the issue the dealing instructions the Arbiter cannot accept this allegation.

Nonetheless, the Arbiter would like to comment on the practice adopted by the Service Provider, particularly with respect to the dealing instructions and the nature of regular reporting made by MPM to the Complainant.

Communications relating to dealing instructions seem to have only occurred between MPM and the investment adviser without the Complainant being in copy or made promptly and adequately aware of the investment instructions given by the investment adviser and executed by MPM. It has indeed not emerged during the proceedings of the case that the Complainant was being adequately and promptly notified by MPM about material developments relating to his portfolio of investments within the Scheme as would reasonably be expected in respect of a consumer of financial services.

[78] *A fol.* 4 & 10
[79] *A fol.* 71 & 72
[80] *A fol.* 64

In its submissions, MPM referred to the Annual Member Statements as to the regular reporting to the Complainant. The said Annual Member Statements from 2015 till 2018, however, did not provide details of the underlying investments but were generic in nature and only mentioned the underlying policy.[81] Such statements did not include details of the investment transactions undertaken over the respective period nor details about the composition of the portfolio of investments as at the year end. Indeed, it is noted that only in the Annual Member Statement for the year ending 31 December 2019, has MPM provided a summary of the underlying investments.[82]

In its capacity as Trustee and Scheme Administrator, MPM had full details of the investment transactions undertaken and the composition of the portfolio, yet it did not report about such nor ensure that the Member had received the said information for the period 2015 to 2018.

This indicates an apparent lack of adequate controls and administrative procedures implemented by MPM which reasonably put into question MPM's adherence with the requirements to have adequate operational, administrative and controls in place in respect of its business and that of the Scheme as it was required to do in terms of Rule 2.6.4 of Part B.2.6 of the Directives under the SFA and Standard Condition 4.1.7, Part B.4.1 of the Pension Rules for Service Providers issued under the RPA as well as Standard Condition 1.2.2, Part B.1.2 of the Pension Rules for Personal Retirement Schemes issued in terms of the RPA during the respective periods when such rules applied as outlined above.

The lack of adequate controls and administrative procedures features on other aspects involving the ongoing activities of the Scheme Administrator. This is particularly so with respect to the controls on the verification of compliance with the Investment Guidelines as shall be considered below in this decision.

[81] *A fol.* 177-186
[82] *A fol.* 193-194

Key considerations relating to the principal alleged failures

The Arbiter will now consider the key alleged failures as indicated above and whether there were any shortcomings in MPM's duties and responsibilities as a trustee and retirement scheme administrator of the Scheme in relation to the following aspects:

- MPM not acting in the best interests of the Complainant by:

    - accepting business from an unlicensed advisory firm, CWM;
    - not ensuring that his funds were invested in a prudent manner given that funds were allegedly invested in high-risk structured notes aimed only for professional investors where such investments were not in line with his profile of a low/medium risk retail investor and not in conformity with the investment guidelines;
    - the lack of information provided to the Complainant.

General observations

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. <u>The Appointment of the Investment Advisor</u>

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**.

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.

<u>Inappropriate and inadequate material issues involving the Investment Advisor</u>

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 even a different name '*Continental Wealth Trust*' rather than *'Continental Wealth Management*' ('CWM') as the company's name of the professional adviser.

In the same section of the Application Form, the adviser was indicated as having a registered address in Spain and that it had '*Global Net*' as regulator. The field for *'Licence Number'* in the same section was left unanswered.[83]

The Arbiter considers the reference to *Global Net* as regulator to be inadequate and misleading.

With respect to the reference to '*Globalnet*' as the regulator of the adviser, it is to be noted that MPM itself had explained that '*Global Net Limited ('Global Net'), an unregulated company, is an associate company of Trafalgar and offers administrative services to entities outside the European Union*'.[84] Global Net could have thus not been the regulator of a professional adviser.

Global Net is clearly not a regulatory authority and, being an unregulated and connected company itself, could not have reasonably provided any comfort that there was some form of regulation nor that there were any adequate controls and/or supervision equivalent to that applicable for regulated investment services providers.

Indeed, no evidence was actually submitted by MPM of CWM being truly regulated.

ii. Lack of clarity/convoluted information

It is noted that the lack of clarity and convolution relating to the investment adviser has also prevailed in the Application Form submitted in respect of the acquisition of the underlying policy, that is, the one issued by Old Mutual International.

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 adviser. The first page of the said application form includes a section titled '*Financial adviser details*' and a

[83] *A fol.* 127
[84] *A fol.* 120

field for '*Name of financial adviser*', with such section including a stamp bearing the name of '*Trafalgar International GmbH'* ('Trafalgar') apart from reference to *'Continental Wealth'*.[85] Trafalgar is then featured in the section titled '*Financial adviser declaration*' of the said form which section also includes the same stamp of Trafalgar (with a PO Box in Cyprus and Head Office in Germany), 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.

iii. No proper distinctions between CWM and Trafalgar

It is also unclear why the Annual Member Statements aimed for the Complainant and produced by MPM for the years ended 31 December 2015 to 31 December 2016 indicated '*Continental Wealth Management*' as '*Professional Adviser*' whilst at the same time indicated another party, '*Trafalgar International GmbH*' as the '*Investment Adviser'*.[86]

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

[85] *A fol.* 141
[86] *A fol.* 177-180

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*[87]*, including but not limited to the initial application form and T&C, the Scheme Particulars and Trust Deed and Rules*'.[88]

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 has emerged either about the regulatory status of CWM. As indicated earlier, MPM only referred to the alleged links between CWM and Trafalgar and only indicated authorisations issued to Trafalgar International GmbH (and not CWM) by IHK, (the Chamber of Commerce and Industry in Frankfurt) with the '*Insurance Mediation licence 34D Broker licence number: D-FE9C-BELBQ-24 and Financial Asset Mediator licence 34F: D-F-125-KXGB-53*'.[89]

MPM's statement that CWM '*was operating under Trafalgar International GmbH licenses*'[90] has not been backed up by any evidence during the proceedings of this case. No comfort can be thus taken either from the authorisation/s held by Trafalgar.

[87] Emphasis added by the Arbiter.
[88] 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.* 95
[89] Copy of authorisations issued to Trafalgar were specifically referred to in para. 39 Section E, titled '*CWM and Trafalgar International GmbH*' in the affidavit of Stewart Davies - *A fol.* 229
[90] Para. 39, Section E titled *'CWM and Trafalgar International GmbH*' of the affidavit of Stewart Davies - *A fol.* 229

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*',[91] 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**.

This also taking into consideration that:

(i) Trafalgar is itself no regulatory authority but a licensed entity itself. Similarly, GlobalNet was not a regulatory authority and as explained by the Service Provider itself this was just '*an unregulated company*', being '*an associate company of Trafalgar*' offering '*administrative services to entities outside the European Union*';[92]

(ii) the inconsistency and lack of clarity in respect of the investment advisor, including its regulatory status 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,

[91] Pg. 1, Section A titled '*Introduction*', of the Reply of MPM submitted before the Arbiter for Financial Services - *A fol.* 120

[92] Page 1, Section A of the Reply filed by MPM to the OAFS – *A fol.* 120

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, indeed provided specific requirements on the registration of tied agents.[93]

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*'.[94]

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 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

[93] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0039&from=EN
[94] Para. 39, Section E, titled 'CWM and Trafalgar International GmbH' of Stewart Davies's affidavit - *A fol.*229

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.[95]

The Arbiter notes in this regard that in its affidavit Steward Davies highlighted that: *'There was no law or rule requiring Momentum to carry out any due diligence or ensure that CWM/ Trafalgar was licensed'*. [96]

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 and their 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*

[95] *A fol.* 230
[96] *Ibid.*

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 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:

- **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 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 (on

the basis of clear understanding by the member of such unregulated status and implications of such, and the member's subsequent clear consent for such type of advisor), **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. <u>The permitted portfolio composition</u>

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 at times solely or predominantly 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*'.[97]

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'*.[98]

No fact sheets were presented by the Complainant during the case and, as part of the investigatory powers granted under Cap. 555, the Office of the Arbiter for Financial Services was unable to trace fact sheets publicly available over the internet in respect of the structured notes featuring in the Complainant's investment portfolio. [99]

Whilst there are different types of structured notes, the Arbiter is aware that various structured notes available at the time of the investments of the Complainant's portfolio, involved the application of capital buffers and barriers where 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 was linked (typically a basket of stocks or indices) 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.

[97] https://www.investopedia.com/terms/s/structurednote.asp
[98] https://www.investopedia.com/articles/bonds/10/structured-notes.asp
[99] Traced from Case 130/2018 against MPM decided on 28 July 2020

Such type of structured note investments were typical of those done on the advice of CWM in similar member-directed pension portfolios as emerging in various other similar cases against MPM decided by the Arbiter on the 28 July 2020. On the balance of probabilities, the Complainant's portfolio must have included such type of structured notes given the extent of material losses experienced by the Complainant on his portfolio.

The Arbiter shall nevertheless focus on the exposure to the structured products as emerging from the information provided by the Service Provider.

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 at times solely or predominantly of structured products. 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. Four out of the five structured notes were all Leonteq structured notes as reflected in the name of the products.[100]

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.

[100] *A fol.* 203

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,[101] 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.[102] 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. 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

[101] Affidavit of Steward Davies - *A fol.* 227
[102] *A fol.* 203

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*[103] and *umbrella schemes*.[104] Whilst investment restrictions would be applied at scheme level in the case of a stand-alone scheme (given that the investors into such scheme would be participating, according to their respective share in the scheme, in the performance of the same underlying investment portfolio), 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'*.[105]

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 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.

[103] i.e., a collective investment scheme without sub-funds.
[104] 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.
[105] *A fol.* 228 - Para. 32 of the affidavit of Stewart Davies.

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. 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,[106] 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 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.[107]

[106] *A fol.* 228 - Para. 32 of the affidavit of Stewart Davies.
[107] Para. 21 & 23 of the Note of Submissions filed by MPM - *A fol.* 207

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*'[108] and that such assets are '*properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole*'.[109]

SOC 2.7.2 of the Directives also provided other benchmarks including for the portfolio to be '*predominantly invested in regulated markets*';[110] to be '*properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings'*[111] 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.[112]

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

In the case of the Complainant it has also clearly emerged that individual exposures to single investments and 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 is noted that the investment portfolio included an exposure of 32.84% of the policy value to a single structured note at the time of purchase (the *Commerzbank 2Y AC Phoenix On AAPL EDC Rovi P*) and collective exposures to a single issuer above 32% of the

[108] SOC 2.7.2 (a)
[109] SOC 2.7.2 (b)
[110] SOC 2.7.2 (c)
[111] SOC 2.7.2 (e)
[112] SOC 2.7.2 (h)(iii) & (v)

policy value (such as to EFG and Leonteq & TCM through multiple purchases).[113]

The table of investments further indicates material positions into seemingly high risk investments where the high risk is reflected in the high rate of return - for example of 9% and 8.64% as featuring in the name of some of the structured notes constituting the Complainant's investment portfolio.

*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.

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/ predominantly invested in structured notes.

If one had to look at the composition of the Complainant's portfolio there is undisputable evidence of non-compliance with requirements detailed in MPM's own Investment Guidelines.

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*

[113] *A fol.* 203

of Investments' forming part of the '*Investor Profile*' produced by MPM as part of its submissions.[114]

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*
32.84%	Commerzbank	April 2015	1 SN issued by Commerzbank constituted 32.84% of the policy value at the time of purchase in April 2015.
32.84%	EFG	April 2015	2 SNs issued by EFG respectively constituted 16.42% each of the policy value at the time of purchase in April 2015.*
32.84%	Leonteq & TCM	April 2015	2 SNs issued by *'Leonteq & TCM'* respectively constituted 16.42% each of the policy value at the time of purchase in April 2015.*
**Furthermore, both the 2 structured notes whose issuer was EFG and the 2 structured notes whose issuer was 'Leonteq & TCM' were all Leonteq structured notes as reflected in the name of these products. Accordingly 65.68% were invested into Leonteq structured notes.*			

The fact that such high exposures to a single investment and single counterparties was allowed in the first place indicates, in itself, the lack of prudence and excessive exposure and risks that were allowed to be taken on a general level, particularly when no capital guarantees were involved.

Indeed, no evidence has been produced during the proceedings of this case that these products had underlying guarantees. The extent of losses experienced actually indicate that there were no guarantees on the capital invested (which guarantees could have possibly justified high exposures) as

[114] *A fol.* 203

otherwise such losses on the principal would have not occurred. (As indicated above, the exposures allowed by MPM were even higher than the 30% maximum limit on deposits held with any one bank as reflected in MFSA's rules). There is clearly no apparent reason, from a prudence point of view, justifying such high exposures as allowed within the Complainant's investment portfolio.

Indeed, 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:[115]

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':
• ***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****.*

[115] Emphasis in the mentioned guidelines added by the Arbiter.

*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**.*

MPM had also to ensure that the investments were *'in line with the underlying member's attitude to risk'* as reflected in MPM's Investment Guidelines marked *'Mid-2014'* and *'2015'*.

It is unclear how MPM considered the permitted investments to reflect the Complainant's *'Lower to Medium'* risk profile. The extent of losses suffered indeed further substantiates the notion that the investments were not reflective of the Complainant's risk profile.

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.

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 specific features of such products would have had on the investment as 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 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/predominantly 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 or reflective of his risk profile of *'Lower to Medium'* Risk.

In the circumstance where the portfolio of the Complainant was solely/ predominantly 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*'[116] and '*properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole*'.[117]

[116] SOC2.7.2(a) of Part B.2.7 of the Directives.
[117] SOC2.7.2(b) of Part B.2.7 of the Directives.

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

With respect to reporting to the member of the Scheme, MPM mentioned and referred only to the Annual Member Statement in its submissions. As explained above, the said annual statements (for the years ending 2015 till 2018) 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 underlying investments, that is, the structured notes comprising the portfolio of investments.[118]

[118] *A fol.* 177-186

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,[119] 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 indeed 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 Related Parties under the Special Funds (Regulation) Act, 2002[120] respectively already provided that:

[119] MFSA's letter dated 11 December 2017, attached to the Note of Submissions filed by MPM in 2019.
[120] 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.

'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,[121] 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.

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

[121] The section titled '*Responsibilities of the Service Provider*'.

structured note providers, as MPM has *inter alia* suggested in these proceedings. [122]

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 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

[122] For example, in the reference to litigation filed against Leonteq - *A fol.* 232

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*'[123] 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.

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

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

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.

(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.

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

Dr Reno Borg
Arbiter for Financial Services