Before the Arbiter for Financial Services

Case No. 096/2020

OH

('the Complainant')

vs

Sovereign Pension Services Limited

(C56627)

('SPSL' or 'the Service Provider' or 'the Retirement Scheme Administrator')

Sitting of the 8 February 2022

The Arbiter,

Having seen **the Complaint** relating to The Centaurus Retirement Benefit Scheme ('the Retirement Scheme' or 'Scheme'), this being a personal retirement scheme established in the form of a trust and administered by Sovereign Pension Services Limited ('SPSL' or 'the Service Provider'), as the Trustee and Retirement Scheme Administrator of the Scheme.

Preliminary

On 9 February 2021, the Arbiter issued a decree relating to this Complaint.[1]

The said decree was issued by the Arbiter after he considered the following:

- The records of the proceedings of the first hearing of the 19 January 2021.[2]

[1] *A fol.* 295-296

- The correspondence exchanged between the Isle of Man Ombudsman and the Complainant.

- That the Complainant stated in his Complaint Form that he was lodging the Complaint against SPSL and *'RL360',* whereas in the letter dated 21 August 2020, which was an integral part of the Complaint, the Complainant also included *Chase Belgrave* and submitted that he was complaining against the three entities (SPSL, '*RL360*' and *Chase Belgrave*) together.

- That *'RL360*' and *Chase Belgrave* were neither licensed nor authorised by the Malta Financial Services Authority.

- That the Complainant had included them in his Complaint.

By virtue of the decree of 9 February 2021, and following consideration of the afore-mentioned aspects, the Arbiter:

- Decided that he has no jurisdiction in relation to *'RL360*' and *Chase Belgrave* in accordance with Article 2 and 22(2) of Chapter 555 of the Laws of Malta;

- Directed the Complainant to summarise his original complaint and list clearly his grievances against SPSL without adding new defences;

- Directed the Complainant to also not include in the summarised version of his Complaint any grievances that he might have lodged against *'RL360*' and/or *Chase Belgrave* in other jurisdictions;

- Indicated that the Complainant cannot file other cases against SPSL in other jurisdictions on the same subject matter of the Complaint before the Arbiter.

The decree of 9 February 2021 was notified to SPSL and the Service Provider was given the opportunity to make its comments on the summarised Complaint filed by the Complainant on the Arbiter's order.

[2] *A fol.* 232-242 - During the said hearing, it was noted *inter alia* that: *'At this point of the proceedings, the complainant informed the Arbiter that he has lodged another complaint with the Isle of Man Ombudsman and he is obliging himself to send a copy of the complaint made to the Isle of Man Ombudsman to the Arbiter so that the Arbiter will decide if he has jurisdiction to continue hearing this case or not'*. (*A fol.* 242)

The Complaint as summarised by the Complainant following the Arbiter's decree

Where, in the summarised Complaint filed by the Complainant following the Arbiter's decree of 9 February 2021, the Complainant, in essence, claimed that SPSL as trustee must be held responsible for failure to provide a *'pension for life'* as it was negligent in its duty as trustee. The Complainant claimed that the *'lack of care and trusteeship has caused [his] pension fund to diminish from £170,000 (£230,000 minus £60,000 OTP) to <£50,000.'*[3]

The Complainant explained and submitted the following:

(i) That his Scheme, which was recommended by his Financial Advisor (in 2013), was chosen based on the statements: - *'the Trustee shall ensure that the Trust Fund shall be invested in the best interests of the member'* and also the *'security, liquidity and profitability of the trust fund and properly diversified'* as well as *'Under applicable regulations in Malta the trustee must retain ultimate discretion on investment decisions'*.[4]

In SPSL's 20 November 2013 letter, the Scheme was promoted as *'Pension for Life'*.

The Financial Advisor was contracted by SPSL *'to provide financial advice as an intermediary'*.[5]

The Complainant signed a contract (the Scheme's Application Form) in September 2013 with SPSL only and in October 2014 the sum of €290,000 was transferred from his previous scheme, '*New Ireland*', to SPSL.

(ii) That dealing instructions were presented as *fait accompli*, with no alternatives, no discussions and with SPSL directing investments.

(iii) That at no time did SPSL inform him that any of their actions absolved them from responsibility as trustee for his pension.

[3] *A fol.* 298
[4] *Ibid.*
[5] *Ibid.*

(iv) That he was never made aware of the Member Directed status of his Scheme, neither in writing nor verbally.

(v) That a proposed yield of approx. 7% p.a. net of fees was realistic.

(vi) That the investment portfolio was not suitably diversified from the start and not *'in best interests of policy holder'*.[6]

(vii) That there was an over-reliance on structured products as per the excel sheet attached to his original complaint.[7]

The Complainant claimed that structured products required a professional investor status to be accessed and questioned how SPSL could have allowed them if the Scheme was Member Directed.

He further noted that 55% was invested in two structured products (one with oil as underlying) versus 42% in two mutual funds.

The Complainant claimed that the EU IORP 2003 required investments to be made on regulated markets. He also submitted that structured products were not regulated.

The Complainant further noted that, in March 2015, one of the structured products matured early after 3 months and £15,000 was used to purchase another structured product also with oil as underlying.

It was also submitted that in 2016/2017 oil prices dropped further but no effort was made by SPSL to restructure the remaining structured products.

The structured products matured after 5 years in 2019 where an investment value of £70,000 ended up with a maturity value of £29,000 inclusive of dividend.

(viii) That the ongoing management of his portfolio was not *'in best interests of policy holder'*.[8]

[6] *Ibid.*
[7] *A fol.* 298 & 32
[8] *A fol.* 298

(ix) That smaller sums should have been invested in a larger variety of mutual funds. He noted that apart from the structured products he had losses on all funds since start of the policy in October 2013.

(x) That he only received valuations and no statements until his request in March 2016. He questioned how one can do Member Directed without statements.

(xi) That he believed that SPSL were managing the portfolio, but it now transpired that they were not.

(xii) That the investment in *RWGE Fund* (for an amount of £50,000) kept losing steadily and had a capital loss of £31,000 in 2018 and no dividends in 4 years.

(xiii) That the decision of the sale of the *RWIF Fund* (an investment of £50,000 sold for £46,000) was not in his best interest. It was noted that this was the only fund with a dividend of 7% p.a., where by 2019, the RWIF had regained its previous losses and was paying 7% p.a.

(xiv) That in September 2016, the *Darwin Leisure Property Fund* ('DLP Fund') was bought for an investment amount of 40,000 with this investment being funded from the sale of the RWIF Fund. He submitted that the new investment had no benefit to him but had a trailing commission to the financial advisor. The Complainant further submitted that the DLP Fund has a 5-year early redemption penalty clause and was now the only active investment which impacts the availability of income. He claimed that the decisions were not made in his best interests and questioned why SPSL allowed the investment.

(xv) That there was a lack of duty of care and non-compliance with the EU Consumer Rights Directive.

(xvi) That on 27/08/2017, SPSL's 'intermediary', the Financial Advisor, was liquidated in Zurich and his contact was lost in 2017 but SPSL had only reacted after he discovered this and notified them on 22/4/2019. He questioned why SPSL was not aware of the decision of 27/08/2017 and questioned the business relationship between the Financial Advisor and SPSL. He further noted that in April 2019, SPSL promised a list of

prospective replacement Financial Advisors but the list never materialised.

(xvii) That his policy was locked between Dec 2017 - end 2019 when he had sourced a new Financial Advisor and was not being managed at all.

(xviii) That the structured products were declining but no 'restructure' recommendations were forthcoming from SPSL.

(xix) That his request to pause payment of fees until a new Financial Advisor is found was ignored and he was now faced with withdrawal fees if he changed provider.

(xx) That his current fees are £3,800 p.a. which was more than the yield from the one remaining investment, the DLP Fund.

Remedy requested

The Complainant requested the restitution in full of his *'Pension for Life'* indicated in the Service Provider's letter to *'New Ireland'* of 20 November 2013, together with the freedom to move without any penalties whatsoever to another pension scheme.[9]

Having considered SPSL's reply where it was essentially submitted the following:[10]

In its letter of 19 February 2021, which SPSL filed in reply to the Complainant's summarised complaint, SPSL submitted that it would like to make additional statements along its response to the Office of the Arbiter for Financial Services ('OAFS') of 15 October 2020.[11]

Response of 15 October 2020

In its reply to the OAFS of 15 October 2020,[12] SPSL submitted:

[9] *A fol.* 298
[10] *A fol.* 117-215 and 301
[11] *A fol.* 301
[12] *A fol.* 117-215

1. That SPSL ('the Trustee') established the Centaurus Retirement Benefit Scheme ('the Scheme') by a trust deed dated 13 July 2012 ('the Scheme deed') as per Appendix 1 to its reply. The Scheme is administered by the Trustee as the retirement scheme administrator ('RSA') and the Trustee/RSA is regulated by the Malta Financial Services Authority.

2. That, as confirmed in the Scheme Deed, the members of the Scheme have the right to appoint their own investment adviser to provide advice in relation to their investment options and indicate the member's preferred investment strategy to the Trustee accordingly. The Trustee/RSA is entirely independent of the member's appointed investment adviser and, as the member exercises this right and appoints his/her own investment adviser, the investments made under the Scheme may be described as member directed.

3. That in his application to join the Scheme ('the Application Form') signed by the Complainant ('the Member') dated 18 September 2013, (reproduced as Appendix 2 to its reply), the Member identified Chase Belgrave as his appointed investment adviser. The Trustee/RSA does not and is not authorised to provide investment advice to the members, and therefore any advice is to be provided solely by the investment adviser as nominated by the member.

4. That on page 11 of the Application Form, the Member, together with his investment adviser, identified RL360 as his chosen investment provider. The Trustee received the RL360 application form, (as per Appendix 3 to its reply), completed by Chase Belgrave on the 8 October 2014. In the RL360 application form, Chase Belgrave was noted as the investment adviser to be appointed. Therefore, the RL360 product was clearly recommended to the Member by his investment adviser - Chase Belgrave. The RL360 application form outlined the policy currency to be denominated in Pounds Sterling (GBP). This was received and accepted in good faith and forwarded on to RL360 for processing.

5. That a copy of the Scheme's welcome pack dated 15 December 2014, as per Appendix 4 to its reply, was sent to the Member's postal address in original. The welcome pack includes a copy of the RL360 policy

documents as received from RL360 - these illustrate the fees applicable to the policy. The investment adviser had gone through these fees with the Member at the time. The correspondence between Justin Harris from Chase Belgrave and the Member, (reproduced as Appendix 5 to its reply), addresses the Member's queries in relation to fees and setup of his pension and underlying investments.

6. The Trustee/RSA reiterated that there is no contractual agreement between itself and Chase Belgrave. Consequently, the Trustee/RSA has no knowledge of any fees paid to Chase Belgrave and the Trustee/RSA only receives a flat fee as set out in the Application Form and does not receive any payments from RL360 or Chase Belgrave.

7. That in light of the above, the Trustee/RSA responds to the Member's major areas of complaint as follows:

   a) The investment product was recommended to the Member by his appointed investment adviser - Chase Belgrave. All fees relating to the product were explained to him by his adviser. The Trustee/RSA sent out a welcome pack to the Member on the 15 December 2014 - this included a copy of the RL360 policy document, which illustrates the charges which RL360 would levy in connection to the bond. The relationship between the Trustee/RSA and RL360 is a contractual one, particularly since the Trustee/RSA is the policyholder of the RL360 bond. Therefore, by sending the welcome pack to the Member, the Trustee/ RSA ensured that the Member was fully aware of the charges which the third-party investment vehicle - RL360 - would levy in connection with the bond.

   b) The completed RL360 application form received and signed by the Member's appointed investment adviser indicated a Pound Sterling (GBP) denomination. The form was accepted in good faith and sent to RL360 for processing.

   c) i. As the Scheme is member directed, the Member appoints his own investment adviser to advise on the investments. In this case, the Member appointed Chase Belgrave to provide the ongoing investment advice. Any investment recommendations are reviewed

by the Trustee/RSA to ensure that they are within the Scheme's investment guidelines and Member's elected risk profile. The investment instructions received by Chase Belgrave were signed by Justin Harris (representative of Chase Belgrave) and also by the Member. The Member was fully aware of the investment recommendations. As these investment instructions dated 27 October 2014 (Appendix 6 to its reply) and 29 June 2016 (Appendix 7 to its reply) were within the Scheme's investment guidelines at the time (Appendix 8 to its reply) and the Member's risk profile, they were accepted and signed by the Trustee/RSA.

The investment guidelines at the time of investment allowed 66% of the member's fund value to be invested in structured products. All instructions received from the Member's appointed investment adviser were within these guidelines and within the Member's stated risk profile. The investment guidelines of the Scheme were amended in 2019 to comply with the updated pension regulations issued by the Malta Financial Services Authority.

If the Member is unhappy with the advice received from his appointed investment adviser, this is a matter he will need to take up with them. The Trustee/RSA is not authorised to provide investment advice.

ii. As the investment instructions were provided by the Member's appointed investment adviser and were in line with the Scheme's guidelines, the Trustee/RSA proceeded with processing the request. The Member signed the investment instructions and was also sent an annual statement and was fully aware of the structure of his portfolio. It is up to the member's appointed investment adviser to advise on the underlying investments within the portfolio and is not within the Trustee/RSA's remit.

Additional Statements following the Complainant's summarised complaint

In its reply to the OAFS of 19 February 2021,[13] SPSL submitted the following additional statements:

Retirement Scheme Administrator Duties:

That SPSL, in its capacity of Retirement Scheme Administrator of the Scheme, administers the pension of its members by undertaking the below, amongst other administrative functions:

- Ensuring that the investments chosen by the Member's investment adviser are in line with the investment restrictions of the Scheme - such restrictions were provided to the member in his Application Form to join the Scheme;

- Ensuring that the investments chosen by the Member's investment adviser - and agreed by the member - are in line with the member's elected risk profile;

- Maintaining suitable records;

- Issuing of annual valuations which provide information to the Member regarding the performance of his investments, which he can then discuss with his appointed investment adviser for advice;

- Forwarding on of any notifications received from the investment provider in relation to the investment account or policy held on his behalf;

- Reviewing and executing pension benefit payments which the Member requests when s/he reaches pensionable age;

- Processing the relevant death claim upon the demise of the Member and distributing the death benefits in accordance with the Member's beneficiary nomination.

Purpose of the Scheme

With respect to the Complainant's statement that the Scheme was promoted as *'Pension for Life'*, SPSL submitted that the objective and purpose of the

[13] *A fol.* 301-308

Scheme is not to provide *'pension for life'* as asserted by the Complainant. The Scheme is a personal pension scheme registered in Malta which meets HMRC's criteria to qualify as a Qualifying Recognised Overseas Pension Scheme.

The Scheme is established as a defined contribution scheme to provide retirement benefits and distribute a pension from the fund accumulated within a member's investment portfolio, which means that the amount of income received by a member is entirely dependent upon the amount of money contributed and the performance of the investments.

The term *'pension for life'* is sometimes used in the pensions industry to explain the means as to how the income within the pension pot can be paid out. Pension income should be capped to ensure that the remainder of the funds after the initial lump sum is paid is designated to provide for *'income for life'* - the term widely used is *capped drawdown*. The way an RSA determines the rate at which the pension payment is capped is by making an actuarial calculation that takes various factors into consideration, namely the member's age and UK Government Actuary Department (GAD) rates. As the Scheme is a defined contribution scheme and the value of the pension is dependent on the performance of the underlying investments, the amount of capped drawdown the member is able to withdraw is reviewed every three years until the member reaches age 75 and annually thereafter.

With regards to the claim that the letter to *New Ireland* promoted the Scheme as *'Pension for Life'* - the context is incorrect; in order for the transfer from *New Ireland* to be permitted, the RSA was required to provide confirmation to the Complainant's previous scheme administrators, that full access to the fund would not be granted and the maximum lump sum payable will not exceed 30%. The letter addressed to *New Ireland Assurance* dated 20 November 2013 states that

'In accordance with the Maltese Pensions Legislation the Scheme has the following relevant characteristics: 70% of the fund must be used to provide an income for life'.[14] This was to confirm that the Scheme did not permit the member to fully withdraw and thereby exhaust his pension fund at one go.

[14] *A fol.* 302

With reference to the Complainant's statement that the EU IORP 2003 required investments to be made on regulated markets and the Complainant's claim that structured products were not regulated, SPSL submitted that the Directive being referred to is Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provisions. SPSL further submitted that the Scheme is a personal pension scheme as aforementioned and not an occupational one and consequently this Directive is not relevant to it.

Duties as Trustees of the Scheme

SPSL submitted that it, and its directors, are aware of their duty to act in the best interests of the Scheme's members and, when considering how to exercise the Scheme's investment powers, they must take a number of factors into consideration, including the requirement for diversification, any restrictions on investments, the suitability of investments and underlying assets and the requirement to obtain investment advice, where necessary.

Whilst the application form notes that *'... the trustee must retain ultimate discretion on investment decision'*[15] the same application form refers the applicant to the Scheme Particulars document, which notes:

'The Trustee may consider any such preference, however, the Trustee shall retain ultimate discretion on investments taking into account the investment objective and purpose of the Scheme along with any applicable investment restrictions'.[16]

Consequently, such ultimate discretion is required purely to ensure that the relevant investment restrictions laid out to protect the Member are not breached.

It was in recognition of its duties that the RSA, pursuant to clause 10.1 of the scheme deed, by a deed dated 3 December 2012, appointed Sovereign Asset Management Limited ('SAM') as its investment adviser.

[15] *A fol.* 303
[16] *Ibid.*

SPSL explained that in recognition of the fact that members of the Scheme administered by the RSA have different financial requirements, investment preferences, risk profiles, tolerance to risk and so on, the RSA has sought the necessary advice from SAM and set out its own investment administration system ('the System') through which every proposed investment was 'stress-tested' for suitability before deeming it as acceptable.

It noted that the System, which was unique at the time, involved a complex programme into which the declared investment preferences and risk profile for the member were entered along with any investment restrictions imposed by the MFSA and/or SPSL and a risk score for all possible assets that the Scheme might invest in. The asset risk score was based on standard deviation from the mean - the higher the standard deviation, the higher the risk score of the investment. The resulting risk score for the portfolio matched to a member was converted into a percentage to give a score out of 100. The standard deviation scores of investments are reviewed regularly by SAM and this formula was settled on after extensive consultation with many industry professionals.

In order to include structured notes in the System, all notes were given a medium-risk score of 50/100. This was on the basis that all structured notes provided a reasonable layer of protection, typically 30% to 50%, with many underlying investments being used, e.g., stocks and index-trackers in sectors such as oil, technology and finance. Structured notes still offered 30% to 50% barriers (being the amount a holding could drop before a member's capital is at risk) and in most cases the stocks had large market capitalisation.

Structured notes are debt securities issued by financial institutions. The performance of a structured note is linked to the return on an underlying asset, group of assets or index. They are flexible in that they can provide a wide variety of potential payoffs that are difficult to find elsewhere, offer increased potential returns, but they can also be volatile with an increased downside risk and overall volatility. There is an element of capital protection if the underlying assets fall under 50% and most structured notes are well regulated. For the above reason, structured notes have been popular with

QROPS members and their advisers but increasingly unpopular with retirement scheme administrators, trustees and regulators.

To this end, the RSA imposed its own restrictions on investments to not more than 66% of funds being allowed to be invested in structured notes and not more than 33% being allowed to be invested in structured notes with one issuer; this restriction set by SPSL was even more stringent than the ones imposed in applicable regulations.

A representative of SAM had discussed the establishment of the aforementioned investment guidelines with the Malta Financial Services Authority (MFSA), and the details regarding the method of scoring all investments based on volatility were provided. Such impositions were unpopular with advisers and members alike at the time and, as a result - in the business sense - favoured other competing administrators who allowed a greater exposure to structured notes. The MFSA was further informed that SAM would sign off all dealing instructions requested by the members' appointed advisers to ensure compliance with the investment restrictions. The MFSA had raised no objection to this approach to the Scheme's investments. At a later stage and subsequent to a further meeting with the MFSA, SAM widened its risk-scoring of structured notes to a range between 35/100 and 70/100 based mainly on the term of the individual note. This is all evidence of the diligent and prudent approach that the RSA has taken towards investments in general and the oversight of the individual members' funds held within the Scheme.

<u>Investments within the Scheme and duties of the member's investment adviser</u>

SPSL submitted that the Scheme is entirely member directed, which means that any investments are directed by the member by way of the appointment of an investment adviser of their choosing. When the Member joined the Scheme, he agreed to the RSA's Terms and Conditions - reference was made to the Declaration on page 12 of the Scheme's Application Form. In point 7 of this Declaration, the Complainant agreed that:

'the Trustee may have regard to my financial adviser's indications without reference to me until such time as his nomination is cancelled by me in writing.

I understand that my financial adviser may be remunerated by commission and/or trail fees payable by the bond issuer or investment house from charges to be deducted from my pension funds and I confirm that my financial adviser has fully explained to me the extent and nature of his fees'.[17]

It noted that by virtue of this Declaration, any instructions received by the member's appointed investment adviser were reviewed and, after making the necessary verifications as aforementioned, were accepted in good faith. Additionally, the investment instructions were also signed and agreed by the Complainant, which gave SPSL additional comfort that the Member agreed and understood the investments recommended to him by his appointed investment adviser.

The Member also acknowledged that the RSA was the trustee and administrator of the Scheme by virtue of point 2, page 12 of the Scheme's Application Form and therefore nowhere in the documentation was it denoted that the RSA was *'managing his portfolio'*.[18]

With respect to the Complainant's claim that the dealing instructions were presented as a *fait accompli* and that there were no alternatives, no discussions, and the claim that SPSL were directing investments, the Service Provider submitted that there is no *fait accompli* as the RSA is unable to offer investment advice as to the investments given that it is not licensed to provide any advice or direct a member's investments. As mentioned above, there is the System in place to ensure that all investments are entirely in accordance with the investment objective. Investment propositions lie solely within the domain of the member and his relationship with his investment adviser and, as the RSA, SPSL accepts or refuses any propositions put forward to it using the benchmarks set out above.

As to the claim that the Financial Advisor was contracted by SPSL *'to provide financial advice as an intermediary'*,[19] SPSL noted that the Member referred to email correspondence exchanged between himself and his appointed investment adviser to sustain the argument that the adviser was contracted by

[17] *A fol.* 304
[18] *Ibid.*
[19] *A fol.* 305

the RSA yet failed to provide tangible proof of any contractual relationship between the appointed adviser and the RSA. SPSL submitted that it did not contract Chase Belgrave to provide a service to the Member, but rather the Member himself appointed Chase Belgrave to provide advice to him, and this as indicated in Appendix 2, page 3 of the Application Form, where he specifically nominates Chase Belgrave as his appointed investment adviser. SPSL noted that for the avoidance of doubt, the RSA does not make any fee or commission payments to the investment adviser.

As to the claim of no statements, SPSL submitted that it was reasonable to assume that the Member was in communication with his appointed adviser at all material times and the annual valuation, supplied to the Member year ending 31 December 2016, would have included an overall valuation of the RL360 Bond and details of all assets held within that investment.

With reference to the Complainant's claim that small sums should have been invested in a larger variety of Mutual Funds, SPSL submitted that this statement is a subjective one based on the adopted investment strategy that was recommended to him by his appointed investment adviser and which the Member should have directed to the said adviser that he selected and engaged.

Investment product selected

SPSL noted that the Complainant indicated on the application form that he wished to invest with Royal London 360.

RL360 designs financial products to suit various requirements, provides offshore savings, protection and investment products to expats and local nationals around the world and is a company regulated in the Isle of Man, which is considered to be a well-regulated jurisdiction, with offices in Asia, Africa, the Middle East, Latin America and the UK.

SAM's advice to the RSA was that a majority of Malta personal pension funds were invested through life assurance wrappers. Such offshore insurance bonds have their own criteria for permitted investments within their bonds which gives an additional layer of comfort to SPSL.

As to the Complainant's comments on the RWGE Fund steady losses, the over-reliance on structured products, and the requirement of professional investor status to access such products, the Service Provider referred to the comments provided under the section *'Duties as Trustees of the Scheme'* whereby it described the System that it adopted when setting out its own investment administration system.

SPSL submitted that, furthermore, the above statements should not mean that the RSA is responsible for all investment decisions or that the RSA's duties are breached if the RSA acts on the requests of the Member or his nominated adviser. If structured notes are available within the RL360 Bond and the investment in them does not take the Member's overall portfolio outside his tolerance for risk, it does not follow that an investment in structured notes should not have been allowed. While structured notes were risk-scored by SAM for the purposes of the system, for each of the Member's requests the structured notes were not considered in isolation (as being of medium risk). They were considered in the context of the overall portfolio, which was held within the RL360 Bond precisely for the purpose of providing a balanced portfolio which satisfied the Member's risk profile. RL360 bonds were reflective of a balanced and diversified portfolio with moderate risks that fitted the Member's own specified investment preferences and risk profile.

Furthermore, the structured notes were well diversified across industries and sectors:

- *Notenstein Express Certificate on Apple et al USD 2.5% 24/10/2019 - IT x 2, Pharmaceutical and Oil*

- *EFG Express Certificate on Barclays GBP 17/03/2020 - Banking, Insurance, Pharmaceutical and Oil*

Within the application form signed by the Member, the investment restrictions identified that *'Not more than 66% of funds may be invested in structured notes and not more than 33% may be invested in structured notes with one issuer.'*[20] Consequently, this investment instruction received fell within the

[20] *A fol.* 306

Member's risk tolerance and was well diversified - the RSA acceded to the investment request on that basis, thereby satisfying its duty as trustee.

As to the claim of a proposed yield of 7% p.a., the RSA submitted that it has no knowledge of the proposed yield the Member was referring to.

Withdrawal fees

With reference to the Complainant's claim that his request to pause fee payment (until the appointment of a new Financial Adviser) was ignored and that he was faced with withdrawal fees if he changed provider, SPSL noted that it was not clear of the meaning of the withdrawal fee. SPSL explained that its fees relate to the retirement scheme administrator and not investment management and since it carried on performing its mandate as RSA and trustee, those fees were owed to it. SPSL further submitted that the RSA fees were clearly quoted on the application form and agreed to by the Member.

Exculpatory provisions

With regards to the RSA being absolved from its trustee responsibility, it is accepted that it cannot be absolved if there is a breach of trust. In the event that there is no breach of trust found, then the trustee should be entitled to rely upon the exculpatory provisions in the application form which the member signed, that is, Appendix 2, page 12, clause 8.

As to the claim of negligence, SPSL noted that a trustee owes various fiduciary duties to its members. These duties are typically set out in the trust deed or provided by statute and a trustee should carefully review, understand and comply with the terms of the trust instrument and the fiduciary duties imposed by law. It submitted that the RSA is fully compliant in this respect.

To manage a trust efficiently, a trustee must be very familiar with the terms of the trust, the trust's assets and liabilities, the circumstances of the members and the purpose of the trust. Effective management systems should be in place to ensure that the appropriate decisions are made in a timely manner and taking into account the terms of the trust and the interests of the members. It submitted that the RSA is fully compliant in this respect.

Some investments involve risks. Clause 7.7 of the Scheme Deed acknowledges that the value of investments can go down as well as up. Therefore, it cannot follow that the RSA has strict or absolute liability for all losses incurred by the Member's investment in the RL360 bond and underlying assets.

The Member complains of the RSA's *'negligence'* but he has failed to provide any evidence or proof of that. He makes no claim of dishonesty or bad faith and none has been established.

SPSL further submitted that to establish that a breach of trust has occurred, the onus is on the Member to show that the RSA has acted in a way which violates the trustee's fiduciary duties, or which is contrary to the terms of the trust instrument pursuant to which the trustee has been appointed.

Conclusion

SPSL submitted that RSAs allowing investment in the structured notes as indicated by the Member and his appointed investment adviser did not amount to a breach of trust and no such breach was proven or established. This investment was entirely in accordance with the investment objective of the Scheme, the Member's risk profile and tolerance for risk for the RSA.

It further submitted that no negligence, dishonesty, lack of diligence or lack of good faith has been established on the part of the RSA and the RSA is entitled to rely on the exculpatory provisions contained in page 12 of the Scheme's application form, clause 8 and clause 17 of the Scheme Deed and acknowledged by the Member in his application form.

SPSL reiterated that it acted in accordance with its designated purpose as stipulated in the pension rules for personal retirement schemes issued in terms of the Retirement Pensions Act, that is, checking that the investments are in line with the investment guidelines relevant at the time. It noted that of extreme importance is the fact that these rules have changed from time to time, main amendments having been in 2016 when the Special Funds Act was amended to the Retirement Pensions Act and then again in January 2019 when new rules for retirement scheme administrators administering personal retirement schemes were introduced. SPSL submitted that it has always acted

in accordance with the rules **as applicable and relevant at the time** and has even in certain instances gone over and above that which was required by the said rules.

In conclusion, it noted that an RSA should not be held responsible if the Member feels aggrieved by the investment choices that were made by his investment adviser a few years prior.

It was therefore suggested that the Member refers the matter to the Swiss Financial Services Ombudsman so that the appropriate parties are answerable for his alleged grievances.

Having heard the parties and seen all the documents and submissions made,

Considers:

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.[21]

The Complainant

The Complainant, born in September 1948, is of British Nationality and was resident in Germany at the time of membership into the Scheme.[22]

The Application Form for membership into the Scheme dated 18 September 2013 ('the Application Form'), indicates the Complainant's occupation as a *'Self-Employed Computer Consultant'*.[23]

It was not indicated, nor has it emerged, during the case that the Complainant was a professional investor. It is noted that during the hearing of 19 January 2021, the Complainant's wife testified *inter ali*a that the Complainant *'was never in a position to know about the investments. Mr Bundell is a computer*

[21] Cap. 555, Art. 19(3)(b)
[22] *A fol.* 142
[23] *Ibid.*

engineer and I was a medical technician so we had absolutely no experience in the financial world.'[24]

This was not contested either by the Service Provider and accordingly the Complainant can be regarded as a retail client.

His Risk Profile was indicated in the Application Form as *'Medium Risk'* out of the five risk category options of *'Lower Risk'*, *'Lower to Medium Risk'*, *'Medium Risk'*, *'Medium to High Risk'*, and *'High Risk'*.

The Application Form also indicates that the *'Investment Objective'* selected by the Complainant was as follows:

'I am comfortable with risk and prepared to take a longer term view. This may mean the overall portfolio value fluctuates over the medium term however provides for the potential for growth over the portfolio over the long term' [25]

As also detailed in the Application Form, the Scheme was to be funded from the transfer of the previous pension fund held by the Complainant, the *'New Ireland Retirement Bond'*, with an approximate transfer value of €272,200.[26]

The Service Provider

SPSL acts as the Retirement Scheme Administrator and Trustee of the Scheme,[27] and is licensed by the MFSA as a Retirement Scheme Administrator.[28]

Legal Framework

The Retirement Scheme and SPSL 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

[24] *A fol.* 239
[25] *A fol.* 149
[26] *A fol.* 84
[27] *A fol.* 121 & 117
[28] https://www.mfsa.com.mt/financial-services-register/result/?id=4459

repealed and replaced by the Retirement Pensions Act (Chapter 514 of the Laws of Malta). The Retirement Pensions Act ('RPA') was published in August 2011 and came into force on the 1 January 2015.[29]

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 a licence by the MFSA under the RPA.

The Trusts and Trustees Act (Chapter 331 of the Laws of Malta), ('TTA') is also much relevant and applicable to the Service Provider, as per Article 1(2) and Article 43(6)(c) of the TTA, given that SPSL also acted as the Trustee of the Retirement Scheme.[30]

Particularities of the Case

The Product in respect of which the Complaint is being made

The Centaurus Retirement Benefit Scheme ('the Retirement Scheme' or 'Scheme') is a trust domiciled in Malta registered with the Malta Financial Services Authority ('MFSA'), as a Personal Retirement Plan,[31] originally registered under the Special Funds (Regulation) Act 2002 (Chapter 450 of the Laws of Malta).[32]

[29] 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/

[30] 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'.* Article 43(6)(c) in turn provides 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 …'.*

[31] https://www.mfsa.com.mt/financial-services-register/result/?id=4458

[32] *A fol.* 96

The Retirement Scheme was established by a trust deed dated 13 July 2012 by SPSL.[33]

As described by the Service Provider, the Scheme is member-directed where, the Complainant, as a member of the Scheme, appointed his own investment adviser to advise him on the investment options.[34]

The Application Form for membership into the Retirement Scheme specifies *inter alia* that:

'*The investment objective of The Centaurus Retirement Benefit Scheme is to accumulate a trust fund from which to provide benefits in retirement*'.[35]

The Scheme's trust deed specifies *inter alia* that the Scheme was established '*... to provide retirement annuities and other retirement benefits for the purpose and in the manner more particularly set out therein,*'[36] and that the Scheme '*... is to be operated as a defined contribution retirement benefit scheme within the provisions of the Retirement Pensions Act ...*'.[37]

The objective and purpose of the Scheme are further specified in clause 5.1 of the trust deed which stipulates that:

> *'The objective of the Scheme shall be limited to (a) the receipt of contributions from Contributors and the investment thereof in accordance with the investment policy of the Scheme with the aim of maximising return on investments and to provide retirement benefits to the Members and (b) the carrying out of all matters or functions connected to or ancillary to the above. The principal purpose of the Scheme shall be to provide retirement benefits and the Trustee shall hold the Trust Fund and administer each Member's Plan during the Trust Period for that said purpose ...'*.[38]

[33] *A fol.* 121
[34] *A fol.* 117, 118 & 304
[35] *A fol.* 149
[36] *A fol.* 121
[37] *A fol.* 122
[38] *A fol.* 125

The Complainant became a member of the Scheme on 3 October 2013.[39] The assets held in the Complainant's account with the Retirement Scheme were used to acquire the Royal London 360 policy ('the RL360 Policy'), Policy no. PM10003817, this being a life assurance policy which commenced on the 21 October 2014 with a premium of GBP230,260.[40]

The policyholder of the RL360 Policy was indicated as '*The Centaurus Retirement Benefit Scheme Re: OH*'.[41]

The premium in the RL360 Policy was in turn invested in a portfolio of investment instruments under the direction of the Investment Adviser, Chase Belgrave, and as accepted by SPSL.

The underlying investments of the RL360 Policy constituted structured products and mutual funds. According to the transaction statement produced by the Service Provider during the proceedings of the case the following investments were undertaken between 21 October 2014 to 10 November 2020:[42]

Table A

Nature/ ISIN NO.	**Investment**	**Date bought**	**CCY**	**Purchase Amt.**	**Date - Units Sold**	**Maturity/ Sale price**	**Capital Loss/ Profit (excluding dividends)**
Fund	Rudolf Wolff Income Fund Ltd	27 Oct 14	GBP	50,000	1 Apr 2016 20 Apr 2016 15 Sep 2016	420 11,445.92 34,219.54	-3,914.54
Fund	Rudolf Wolff Global Equity Fund Ltd	27 Oct 14	GBP	50,000	16 Mar 2016 Jan 2018	8,276.73 10,996.80	-30,726.47
Structured Note	EFG Multi Barrier Autocallable	29 Oct 2014	GBP	69,715	13 Apr 2015	73,000	+3,285
Structured Note	Notenstein Express Certificate on Apple	7 Nov 2014	USD	89,000	7 Nov 2019	29,489.24	-59,510.76

[39] *A fol.* 96
[40] *A fol.* 97-99, 305
[41] *A fol.* 98
[42] *A fol.* 218 -227

Structured Note	EFG Express Certificate on Barclays	20 April 2015	GBP	15,000	20 Apr 2020	1,365.48	-13,634.52
Fund	Darwin Leisure Property Fund	21 Sep 2016	GBP	40,000	Position still open*		

** According to a table presented by the Complainant the Darwin Leisure Property Fund had a current value of GBP50,102 as at 4 Jul 2020*[43]

Table A above indicates substantial losses overall experienced on the structured note investments. It is further noted that, as indicated in Table B below, even when taking into consideration the dividends received from the respective investments (based on the information available from the *Policy Transaction Statement*),[44] two out of the three structured notes experienced substantial losses.

Table B

Investment	**CCY**	**Capital Loss/ Profit (excluding dividends)**	**Dividends received**	**Total Dividends**	**Total Loss/Profit (inclusive of dividends)**	**% of Total Loss/ Profit (incl.of div) on capital invested**
Rudolf Wolff Income Fund Ltd	GBP	-3,914.54	1,814.66 1,716.95 1,629.73	5,161.34	+GBP1,246.80	+2.49%
Rudolf Wolff Global Equity Fund Ltd	GBP	-30,726.47	-	-	-GBP30,726.47	-61.45%
EFG Multi Barrier Autocallable	GBP	3,285	2,102.40 2,102.40	4,204.80	+GBP7,489.80	+10.74%
Notenstein Express Certificate on Apple	USD	-59,510.76	2,242.80 2,242.80	4,485.60	-USD55,025.16 (Approx. -GBP42,919 using conversion rates as at 7	-61.83%

[43] *A fol.* 32

[44] *A fol.* 218-227 - This also reflects the information on dividends as summarised by the Service Provider in Appendix 10 of its submissions, *A fol.* 228-231

					Nov 2019)	
EFG Express Certificate on Barclays	GBP	-13,634.52	375 375 1,875 375 1,125 375 375	4,875	-GBP8,759.52	-58.40%

Investment Adviser

The Application Form indicates the financial advisor of the Complainant as Justin Harris of Chase Belgrave based in Switzerland.[45] Chase Belgrave was also indicated as the investment adviser in the application form of the underlying policy, the RL360, dated October 2014.[46]

Further Considerations

The Complaint involves, in essence, the claim that SPSL was negligent in its role of trustee and that there was a lack in its duty of care given that:

(i) SPSL did not ensure that the Retirement Scheme was invested in the Complainant's best interests.

The Complainant claimed that his investment portfolio was not suitably diversified and had an over-reliance in structured products which required a professional investor status.[47] He also submitted that smaller sums should have been invested in a larger variety of mutual funds, highlighting the loss he made in the RWGE Fund and questioning the sale of the RWIF Fund which sale was used to purchase the DLP Fund which had no benefit to him but trailing commissions to the financial adviser.[48]

It is further noted that as also testified by the Complainant during the hearing of 19 January 2021:

[45] *A fol.* 80
[46] *A fol.* 170 & 172
[47] *A fol.* 298
[48] *Ibid.*

> *'… my complaint lies fundamentally with the structured products that were recommended by Chase Belgrave and accepted by Sovereign. My complaint lies with Sovereign because there was insufficient variety in the investments.'*[49]

(ii) No statements were provided until his request in March 2016.[50]

(iii) SPSL was not aware that his financial adviser, with whom the Complainant claimed SPSL had a business relationship, was liquidated in Zurich on 27 August 2017, leaving his underlying policy *'not being managed at all'* by a financial adviser.

The Complainant claimed that SPSL reacted only after it was the Complainant who discovered about the liquidation and notifying them of such in 2019. He claimed *inter alia* that his underlying policy was locked between end 2017 till end 2019 until he sourced a new financial adviser with the investments not being managed during the said time and his structured products left declining.[51]

It is noted that during the hearing of 19 January 2021, the Complainant testified as follows on this particular aspect:

> *'In January/February 2019 I discovered that Chase Belgrave in Switzerland had closed their business and moved to Mauritius. I discovered that. I was not informed of that by Sovereign. Chase Belgrave did not inform me because I had no contract with Chase Belgrave. Sovereign only became aware of this when I wrote to them and gave them the pointer to the Zurich business director which gave all the details why Chase Belgrave in Switzerland had closed their business.*
>
> *This is an issue that I hold totally against Sovereign because at that very point one of the structured products that was starting to go down, if you think of what happened in the oil industry in 2017-19,*

[49] *A fol.* 236
[50] *Ibid.*
[51] *A fol.* 298

then there was a large dip but there was nobody looking at the product …"[52]

(iv) Fee payments were not paused until the new financial adviser was found and the Complainant now also faced withdrawal fees to change the provider.[53]

The Arbiter shall consider each alleged failure taking into consideration the responsibilities of the Service Provider.

Responsibilities of the Service Provider

SPSL 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

The obligations of SPSL as a Retirement Scheme Administrator under the SFA are outlined in the Act itself and the applicable conditions stipulated in the Standard Operational Conditions of the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act*, *2002'* ('the Directives') as applied to personal retirement schemes.

Following the repeal of the SFA and eventual registration under the RPA, SPSL 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, SPSL 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').

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.

[52] *A fol.* 236-237
[53] *A fol.* 298

From the various general conduct of business rules/standard licence conditions applicable to SPSL in its role as Retirement Scheme Administrator under the SFA/RPA regime respectively, it is pertinent to note the following general principles:[54]

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 SPSL 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 RPA, and which applied to SPSL 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 SPSL 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*'.

[54] Emphasis added by the Arbiter.

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 SPSL 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 SPSL considering its capacity as Trustee of the Scheme. This is an important aspect which has not been referred to much 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 SPSL.

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, SPSL 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*'.[55]

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'***.[56]

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

[55] Ganado Max (Editor), '*An Introduction to Maltese Financial Services Law*' (Allied Publications 2009) p.174.
[56] *Op. cit.* p. 178

'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****'.*[57]

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 SPSL in its actions and which shall accordingly be considered in this decision.

Other relevant aspects - Oversight and monitoring function

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 testified by the Service Provider during the hearing of 19 January 2021:

> *'Our responsibilities included that we ensure that any investment recommendations made by the investment advisor or by the member are in line with those guidelines and with the regulations stipulated by the regulator.*
>
> *Additional to that, we ensure that the members provide us with a risk profile, which in OH's case was a medium risk; we ensure that any investment recommendations made are in line with these guidelines and with the member's risk profile.'* [58]

[57] Consultation Document on Amendments to the Pension Rules issued under the Retirement Pensions Act [MFSA Ref: 09-2017], (6 December 2017) p. 9.
[58] *A fol.* 240

Such monitoring function was also explained by the Service Provider in its submissions.[59]

SPSL had accordingly the final say prior to the placement of a dealing instruction, which reflects the rationale behind the statement reading:

'*... the trustee retains ultimate discretion on investment decisions and that investment recommendations made by myself or my financial advisor shall not fetter the discretion of the trustee ...*',

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

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

'… is of the view that as specified in SLC 1.3.1 of Part B.1 (Pension Rules for Retirement Scheme Administrators) of the Pension Rules for Service Providers, the RSA, in carrying out his functions, shall act in the best interests of the Scheme members and beneficiaries. The MFSA expects the RSA to be diligent and to take into account his fiduciary role towards the members and beneficiaries, at all times, irrespective of the form in which the Scheme is established. The RSA is expected to approve transactions and to ensure that these are in line with the investment restrictions and the risk profile of the member in relation to his individual member account within the Scheme.' [60]

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

[59] Example - *A fol.* 118; 301; 303

[60] Pg. 7 of the 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) - https://www.mfsa.com.mt/publications/policy-and-guidelines/consultation-documents-archive/.

diversified, and the RSA is not to merely accept the proposed investments, but it should acquire information and assess such investments'. [61]

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.

Other relevant aspects - Function specified in the Trust Deed

It is further noted that clause 7.3 of the Trust Deed stipulated the following key function:

'7.3 the Trustee shall ensure that the Trust Fund shall be:-

7.3.1 invested in the best interests of the Members;

7.3.2 invested in such a manner as to ensure the security, quality, liquidity and profitability of the Trust Fund as a whole;

7.3.3 properly diversified in such a way as to avoid accumulations of risk in the Trust Fund as a whole'

Other Observations and Conclusions

General observations

On a general note, it is clear that SPSL 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 Chase Belgrave.

This would reflect on the extent of responsibility that the financial advisor 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, **SPSL had nevertheless certain obligations to undertake**

[61] 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).*

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 directly, or indirectly, its performance.

Consideration thus needs to be made as to whether SPSL 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 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 established in 2012.

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 establishment. Even more so when taking into consideration the nature of the Retirement Scheme and its specific objective.

Nevertheless, the exposure to structured notes allowed within the Complainant's portfolio was extensive, as detailed in the section titled *'Underlying Investments'* above, with investments into the first two structured notes comprising more than 50% of the initial premium of GBP230,260.[62]

A typical definition of a structured note provides that:

[62] GBP69,715 invested into the *EFG Multi Barrier Autocallable* on 29 Oct 2014; USD89,000 invested into *Notenstein Express Certificate* on 7 Nov 2014 which was equivalent to approx. GBP56,177 using the rate 1 USD = 0.6312 GBP as at 7 Nov 2014 - https://www.poundsterlinglive.com/bank-of-england-spot/historical-spot-exchange-rates/usd/USD-to-GBP-2014.

'*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*'.[63]

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'*.[64]

The parties presented no fact sheets in respect of the underlying disputed structured note investments. Whilst the Arbiter was not able to source,[65] from general internet searches, fact sheets of the structured notes forming part of the Complainant's portfolio, the Arbiter is however much aware of the features and characteristics of such structured products applying capital barriers as referred to by the Service Provider in its submissions.[66] [67]

It is noted that the Service Provider, in its submissions, explained *inter alia* that:

'… all notes were given a medium-risk score of 50/100. This was on the basis that all structured notes provided a reasonable layer of protection, typically 30% to 50%, with many underlying investments being used, e.g. stocks and index-trackers in sectors such as oil, technology and finance. Structured notes still offered 30% to 50% barriers (being the amount a holding could drop before a member's capital is at risk) and in most cases the stocks had large market capitalisation.' [68]

It is further noted that the Service Provider tried to justify the substantial exposure to the structured note investments by also explaining that:

[63] https://www.investopedia.com/terms/s/structurednote.asp
[64] https://www.investopedia.com/articles/bonds/10/structured-notes.asp
[65] As part of the investigatory powers granted under Cap. 555.
[66] *A fol.* 303
[67] Such awareness arises from the multiple structured note investments considered by the Arbiter in various other distinct cases decided by the Arbiter involving other retirement scheme administrators such as the cases of Momentum Pensions Malta Limited and STM Malta Pension Services Ltd.
[68] A *fol.* 303

> *'There is an element of capital protection if the underlying assets falls under 50% and most structured notes are well regulated.'*[69]

The Arbiter is aware that the application of capital buffers and barriers (such as the 50% barrier referred to by the Service Provider) would however rather expose the invested capital to material consequences in case of a particular event occurring, such as a fall in value (below the specified barrier) on an underlying asset.

Through his experience in dealing with complaints involving structured products, the Arbiter has seen multiple fact sheets of structured note investments where the invested capital would indeed be subject to the risk of a fall, observed on a specific date of more than a specified percentage (typically 50% or more as referred to by the Service Provider), in the value of any underlying asset to which the structured note is linked.

The fall in value would typically be observed on maturity/final valuation of the note and such products would typically highlight **the risk that where the performance of the worst performing underlying measured a fall of 50% or more, investors would receive a capital amount equivalent to the performance of the worst performing asset.**

Whilst not all structured products are the same, the Arbiter has no reason to believe that the structured notes allowed within the Complainant's portfolio are different to those applying the features explained above. This is in light of the Service Provider itself referring to the 50% barrier in its submissions and also taking into consideration the substantial losses experienced on two, out of the three, structured note investments featuring in the Complainant's portfolio.

Contrary to what was stated by the Service Provider that *'there is an element of capital protection if the underlying assets fall under 50%',*[70] there is actually no capital protection if the underlying assets or typically even just one of the underlying assets (in case the note is linked to a basket of assets such as stocks or indices), falls under 50%. Such feature did not provide any

[69] *Ibid.*
[70] *Ibid.*

capital protection in such circumstances but would rather lead an investor to experience losses on his capital which could be substantial in the instance of a trigger event.

If there was truly adequate capital protection on the amount invested the Complainant would have not experienced a -61.83% loss on the *Notenstein Express Certificate* (inclusive of its dividends) and a -58.40% loss on the *EFG Express Certificate* (inclusive of its dividends) as indicated in Table B above. The statements made by the Service Provider indeed are considered to reflect a lack of understanding or underestimation of the implications of the indicated capital barriers.

The Service Provider has ultimately not shown that the structured note investments that it allowed to extensively feature within the Complainant's portfolio had any proper guarantees for the safe return of the original capital invested. In the absence of any adequate full capital protection, the high exposures allowed to be made to such products cannot in any way be reasonably justified when considering the scope of the Scheme, the investment objective and member's risk profile.

Furthermore, whilst the Scheme's Application Form did indeed contain an investment restriction that *'Not more than 66% of funds may be invested in structured notes…'*[71] as highlighted by the Service Provider,[72] it is considered that this does not however either reasonably justifies or exonerates the Service Provider in allowing the extensive exposure to structured notes up to the said limit.

Such restriction cannot reasonably be interpreted on its own but has to be seen and considered within the whole context - taking into consideration not only the nature and specific features of the respective notes; the risk being taken on an individual and collective basis; the composition of the investment portfolio overall; but importantly the adherence with and application in practice of the overriding key requirements and principles of the Scheme which cannot be ignored or minimised.

[71] *A fol.* 150
[72] *A fol.* 306

Such key requirements were ultimately those of ensuring that the assets are invested *'in the best interests of the Members'*; *'in such a manner to ensure the security, liquidity and profitability'*; and *'properly diversified in such a way as to avoid accumulations of risk',*[73] as outlined in the Trust Deed as well as the principal purpose for which the Scheme was created, that is, to provide for retirement benefits which requirements and principles ultimately prevail.

As rightly pointed out by the Complainant's wife during the hearing of 19 January 2021,

***'This is not a speculative portfolio; the aim of purchasing this product is a pension for life as stated in the brochure …'*.**[74]

It is indeed reasonable to expect that a product whose principal scope is to provide for retirement benefits is operated and managed in such context with no excessive risk exposure being taken.

The Arbiter has furthermore noted the explanations provided by the Service Provider in its extensive submissions with respect to its internal system and the risk-scoring method used by SPSL *'in its own investment administration system … through which every proposed investment was "stress-tested" for suitability before deeming it as acceptable'*.[75]

Despite the explanations provided, no adequate comfort has however emerged regarding the appropriateness of the high exposure to the said products for the reasons mentioned.

The Service Provider further submitted *inter alia* that *'the structured notes were well diversified across industries and sectors'*[76] and that *'in most cases the stocks had large market capitalisation'*.[77]

This could however neither be used to justify the extent of exposures to such instruments or the claim that this provided diversification; taking into

[73] Emphasis added by Arbiter.
[74] *A fol.* 238
[75] *A fol.* 303
[76] *A fol.* 306
[77] *A fol.* 303

consideration, the particular way how such products operated in practice as explained above. Moreover, one cannot have comfort that the structured notes were in themselves diversified through the exposure to their underlying, in the circumstance where the risk of loss was similar to an investment in the worst performing underlying and in light of the material losses experienced on such investments as outlined above.

Lack of comfort regarding adherence with rules under the Special Funds (Regulation) Act

The Arbiter refers to the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act, 2002'*, ('the Directives') which directives applied until the registration of the Scheme under the RPA.

Standard Operational Condition ('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 that the assets of a scheme are '*invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole*'[78] and that such assets are '*properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole*'.[79]

SOC 2.7.2 of the Directives also provided further benchmarks - including for the portfolio to be '*predominantly invested in regulated markets*';[80] to be '*properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings'*[81] 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, these

[78] SOC 2.7.2 (a)
[79] SOC 2.7.2 (b)
[80] SOC 2.7.2 (c)
[81] SOC 2.7.2 (e)

were to be limited to 20% of the scheme's assets for any one collective investment scheme.[82]

Despite the standards of SOC 2.7.2, the Service Provider allowed the Complainant's investment portfolio to comprise higher exposures and inadequate diversification.[83]

The Arbiter has no comfort that the prudence as indicated in the said rules was ultimately reflected in a corresponding way in the portfolio composition allowed in respect of the Complainant's portfolio.

Moreover, the Arbiter cannot either reconcile the safeguards reflected in MFSA's rules with the statement made by SPSL that its restriction of 66% maximum exposure to structured notes and 33% with one issuer *'set by SPSL was even more stringent than the ones imposed in applicable regulations'*.[84] This is far from being the case.

Other observations & synopsis

The Service Provider did not help its case by not providing detailed information on the underlying investments.

SPSL 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 events or barriers that may form part of the key features of such

[82] SOC 2.7.2 (h)(iii) & (v)

[83] The investment of GBP50,000 respectively into the *Rudolf Wolff Income Fund Ltd* and *Rudolf Wolff Global Equity Fund Ltd* on 27 Oct 2014 was 21.7% each of the premium of GBP230,260; the GBP69,715 investment into the *EFG Multi Barrier Autocallable* on 29 Oct 2014 was 30.28% of the said premium; the USD89,000 (approx. GBP 56,177) into the *Notenstein Express Certificate* on 7 Nov 2014 was 24.40% of the said premium.

[84] *A fol.* 304

products, would have on the investment if and when such events occur as already detailed above;

- the potential rate of returns as indicative of the level of risk being taken;
- the level of risks ultimately exposed to in the respective product and in the overall portfolio composition taking into consideration the risks exposed on other investments allowed within the portfolio.

The extent of realised losses experienced on the capital of the Complainant's portfolio overall is in itself indicative of the lack of prudence and 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 the composition of the pension portfolio being highly exposed to structured products, no adequate and sufficient comfort has either emerged that such composition reflected the prudence expected in the structuring and composition of a pension portfolio. Neither that the allocations were in the best interests of the Complainant despite his risk profile of Medium Risk.

For the reasons explained, the Arbiter cannot agree with SPSL's statement that *'RL360 bonds were reflective of a balanced and diversified portfolio with moderate risks'.* [85]

Whilst insufficient details have emerged on the RWGE Fund it is however unclear how a balanced, properly diversified retail fund, of medium risk could have sustained the extensive losses experienced by the Complainant on this fund over a four-year period from 2014 to 2018.

Having considered the particular circumstances, the Arbiter has ultimately no comfort that SPSL's role as RSA and Trustee in ensuring the Scheme's investments are in accordance with applicable requirements: *'invested in the best interest of the Member'*; *'invested in such a manner as to ensure the security, quality, liquidity and profitability of the Trust Fund as a whole'*;

[85] *A fol.* 306

***'properly diversified in such a way as to avoid accumulations of risk in the Trust Fund as a whole'*.[86]**

The Service Provider did not generally, and at all times, respect these requirements in respect of the Complainant's investment portfolio.

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 risky investments as evidenced in the material losses incurred 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 SPSL were subject to. The provision of retirement benefits was the Scheme's principal purpose as reflected in the Scheme's Trust Deed.

B. Status of the financial adviser and the claim that fees were not paused until the new financial adviser

SPSL has not contested the claim that it was not aware that Chase Belgrave in Switzerland had closed its business in 2017 as it was put into liquidation and that this was discovered and notified to SPSL by the Complainant in 2019.

It is further noted that in reply to the formal complaint made by the Complainant of 14 July 2020 where the Complainant mentioned *inter alia* the

[86] *A fol.* 127

bankruptcy of the investment adviser in 2017, the Service Provider stated the following to the Complainant:[87]

'With regards to your comments about Chase Belgrave's bankruptcy, kindly note that SPSL conduct ongoing monitoring on the relevant investment advisers appointed on the member's plan from time to time and no records were found of Chase Belgrave's (Switzerland) bankruptcy at the time. The matter has been looked into further and it seems that there are specific online channels one would have to go through to find the bankruptcy records.

SPSL's email sent to you on the 16th September 2019 to take the necessary steps to change your investment adviser was sent as a result of changes in the Malta regulatory pension rules, which necessitated that all members have an appropriately regulated investment adviser. Sovereign's communication to you was therefore not pursuant to Chase Belgrave's (Switzerland) bankruptcy, but to bring your plan in line with the new pension rules introduced earlier that year. Indeed, on 23rd April 2019 an option was provided to you: either keep Chase Belgrave as your investment adviser, albeit operating in Mauritius, or appoint a different entity altogether. Kindly note that there was no issue in putting forth that option to you as Chase Belgrave Limited in Mauritius hold a SEC2.4 Investment Adviser (unrestricted) license by the Financial Services Commission."[88]

The Arbiter confirms that there is evidence, following general searches over the internet, that Chase Belgrave in Zurich was put into liquidation due to bankruptcy in 2017.[89]

The Arbiter also notes that in an email dated 3 September 2013, Chase Belgrave had informed the Complainant that the costs of the Royal London 360 PIMS, is *'1.264% per year of the value of the pension at the time of transfer plus £90 per quarter. This is for the wrapper <u>and includes our fees</u>'*.[90] [91]

[87] Email of 11/08/2020 – *A fol.* 59
[88] *A fol.* 59-60
[89] https://business-monitor.ch/de/companies/416797-chase-belgrave-gmbh-in-liquidation
https://www.easymonitoring.ch/it/registro-di-commercio/chase-belgrave-gmbh-959776
[90] *A fol.* 73
[91] Emphasis added by the Arbiter.

Having reviewed the *'Policy Transaction Statement'*[92] as well as the summarised *'Fees Deducted by RL360'*[93] provided by the Service Provider, the Arbiter notes that despite the said developments relating to Chase Belgrave Zurich and the claim by the adviser that the fees of the policy included their own fees, the fees deducted by RL360 remained practically consistent along the years including the period end 2017 till end 2019.[94] This seems to corroborate the Complainant's claim that the fee payments to the financial adviser were not paused until the new adviser was found.

Whilst the Arbiter notes SPSL's submissions that the Trustee/RSA had *'no contractual agreement between itself and Chase Belgrave'*[95] and, consequently, it had *'no knowledge of any fees paid to Chase Belgrave'*[96] as well as the statement that *'the RSA does not make any fee or commission payments to the investment adviser'*,[97] one however needs to keep in mind that in its role as a *bonus paterfamilias* the Trustee had to safeguard the Scheme's property as outlined in the section titled *'Trustee and Fiduciary Obligations'* above.

Hence, it is considered that the Trustee had an obligation to ensure that the Complainant was not charged any fees from the underlying policy which were not due in view that the financial advisor, Chase Belgrave Zurich, was no longer operational and in liquidation during the contested period.

It is also considered as being inappropriate for the Service Provider to seemingly having dismissed this aspect raised by the Complainant altogether and not verified whether there was an improper payment of fees done from the assets of the underlying policy to the financial advisor, Chase Belgrave, during the indicated period.

[92] *A fol.* 218 - 227
[93] *A fol.* 229 - 230
[94] *'Percentage Admin fee'* of £618.82 and *'Flat Admin. Fee'* of approx. £90-£100 every quarter for a total of approx.£2,800 charged yearly during the years 2015 to 2019 which comes close to the 1.264% indicated to the Complainant by Chase Belgrave.
[95] *A fol.* 118
[96] *Ibid.*
[97] *A fol.* 305

C. Withdrawal Fees

The Complainant claimed that he is faced with withdrawal fees if he changes provider.

However, on the basis that the termination fees were clearly disclosed in the *Fee Schedule* to the Scheme's Application Form signed by the Complainant dated 18 September 2013,[98] the Arbiter considers that there is insufficient basis for him to consider this aspect further.

Causal link and Synopsis of main aspects

The actual cause of the losses experienced by the Complainant **cannot** just be attributed to under-performance of the investments as a result of general market and investment risks.

There is sufficient and convincing evidence of deficiencies on the part of SPSL 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 SPSL 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, such losses would have been avoided or mitigated accordingly.

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

[98] *A fol.* 148

In the particular circumstances of this case, 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 SPSL was duty bound and reasonably in a position to prevent, stop and adequately raise as appropriate with the Complainant.

Final remarks

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

Whilst the Retirement Scheme Administrator was not responsible to provide investment advice to the Complainant, the Retirement Scheme Administrator had, however, clear duties to check and ensure that the portfolio composition recommended by the investment adviser 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 investment portfolio and extent of exposures being taken, 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 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 SPSL 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 oversight functions with respect to the Scheme and portfolio structure as well as in certain administrative aspects as considered above.

The Arbiter also considers that the Service Provider did not meet the '*reasonable and legitimate expectations*'[99] 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.

However, cognisance needs to be taken 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 Sovereign Pension Services Limited as Trustee and Retirement Scheme Administrator of the Centaurus Retirement Benefit Scheme and, in view of the deficiencies identified in the obligations

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

emanating from such roles as amply explained above, which deficiencies are considered to have prevented the losses from being minimised and in a way contributed in part to the losses experienced on the Retirement Scheme, the Arbiter concludes that the Complainant should be compensated by Sovereign Pension Services 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 Sovereign Pension Services 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 statement provided in respect of the RL360 policy is not current as it only covers the transactions up to 10 November 2020.

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 Chase Belgrave 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) Any investment constituted under Chase Belgrave and which is still held within the current portfolio of underlying investments as at, or after, the date of this decision is 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 investment.

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

Sovereign Pension Services Limited is also being directed, in terms of Article 26(3)(c)(i) of Chapter 555 of the Laws of Malta, to check and verify whether there were any inappropriate payments made from the underlying RL360 policy to the financial adviser Chase Belgrave, at the time Chase Belgrave Zurich was not operational in view of the said liquidation and, in terms of Article 26 (3)(c)(iv) of Chapter 555, also pay to the Complainant the total amount of any such charges as appropriate.

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 of eight per cent per annum 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