

## **Before the Arbiter for Financial Services**

**Case No. 039/2018**

**YZ ('the Complainant')**

**vs**

**Sovereign Pension Services Limited**

**(C56627)**

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

**Sitting of the 15 September 2020**

**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.

The Complainant submitted that the complaint relates to the maladministration of his retirement scheme by the Service Provider.

He explained that he had been in regular communication with the Service Provider since the commencement of the Scheme, firstly with respect to the charges being levied. The Complainant contested the commissions and fees paid by the Scheme to the initial investment advisor, Justin Harris of Chase Belgrave, who had sold him the product.

He explained that when he questioned the management of his retirement plan and the lack of investment returns being made on his plan, the investment

advisor refused to represent him further and resigned. The Complainant submitted that the Service Provider did not acknowledge any responsibility for the behaviour of the investment advisor.<sup>1</sup>

It was claimed that around GBP36,000 were paid to the investment advisor which, coupled with the payment of other charges to his Scheme, resulted in the Scheme achieving no growth over the past five years.<sup>2</sup>

The Complainant further submitted that he had experienced another issue with the Scheme. The Complainant explained that more recently and importantly, he had discussed with another investment advisor, Eamon Bermingham, the option of withdrawing the money with the aim to achieve better investment returns. It was noted that the Complainant decided to reinvest the money in different investment products following consultations he had with the new advisor and consideration of currency and tax implications. The Complainant claimed that his investments were, however, redeemed by the Scheme and paid into his bank account when he had not yet instructed such redemptions to occur. The Complainant claimed that this action by the Scheme resulted in a *'loss of investment returns on the payment of 15% withholding tax for a transaction I had not requested or authorized'*.<sup>3</sup>

The Complainant explained that the Service Provider had subsequently acknowledged the mistake made from their end with respect to the withdrawal of funds and offered to restore the funds to his account held with the Scheme if he transferred back the amount paid into his account.

The Complainant further explained that he informed SPSL that he would consider transferring back the amount if he received a professional assessment of the investment options that were available to him, which options had to involve lower charges than those he had been paying on his underlying investments within the Scheme.

The Complainant claimed that he had not received such advice 18 days later following his request. The Complainant also pointed out that the Service Provider had informed him that he had to transfer back the money soon and

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<sup>1</sup> A fol. 5

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

that his Scheme could not be left without any investment as this was in breach of the rules governing pensions in Malta.

The Complainant stated that the Service Provider had also informed him that if he did not wish to invest the money held within the Scheme, then his retirement plan could be closed, and the funds paid to him under the Flexible Access Drawdown rules. It was also noted that he was informed that the assets within his Scheme could otherwise be transferred to an alternative Retirement Scheme Administrator.<sup>4</sup>

The Complainant claimed that the attempt by SPSL to switch the responsibility for the unauthorised redemption to him and force him to repay it without receiving the appropriate professional advice represented maladministration and failure to provide a service.<sup>5</sup>

The Complainant demanded a compensation for the claimed long series of failures and sought financial damages from SPSL for the total amount of GBP72,751.

The Complainant calculated the claimed amount as follows:

- a) GBP36,000 in respect of the excessive charges imposed by SPSL for the services of Chase Belgrave *'that were misleadingly presented to me and withdrawn without any legal or contractual justification'*;
- b) GBP30,000 for the withholding tax deducted from his plan without his instruction and authorisation; and
- c) GBP6,751 as payment in respect of interest calculated on GBP30,000, this being the amount referred to in (b) above, based on a compound rate of return of 7% over the three years until his retirement.<sup>6</sup>

The Complainant also requested the release of all his remaining funds invested under his name within the Retirement Scheme without any charges, penalties

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<sup>4</sup> *Ibid.*

<sup>5</sup> *A fol. 6*

<sup>6</sup> *A fol. 6 & 8*

or other fees so that he may invest the proceeds in professionally managed pension funds until his retirement.<sup>7</sup>

**In its reply, SPSL essentially submitted the following:**<sup>8</sup>

1. That, the Scheme was established in the form of a trust where the Scheme Deed made it clear that members of the Scheme, such as the Complainant, are entitled to appoint their own investment advisor to advise them on their investment options and to indicate the member's preferred investment strategy to the Trustee. It was noted that both the Trustee and the Retirement Scheme Administrator are entirely independent of the member's appointed investment advisors and to the extent that the member exercises this right and appoints his own investment advisor, the investments made under the Scheme may be described as *member directed*.

The Service Provider indicated certain extracts from the Trust Deed relevant to the case which included the following:

*'7.1 The investment objective for each Member's Plan shall be to accumulate a Trust Fund from which to provide retirement annuities and other benefits. Each Member shall be entitled to nominate an investment advisor and the Member or his nominated advisor shall be entitled to indicate the preferred investment strategy for the Member's Plan for the Trustee's consideration. The Trustee may have regard to the Member's wishes but shall not be bound by them and shall retain ultimate discretion and responsibility for investments of each Member's Plan in order to ensure compliance with the investment objective of the Scheme and any applicable investment restrictions.*

*17.1 The Trustee shall be liable to the Members and Beneficiaries for any loss suffered by them as a result of fraud, wilful default or negligence. ... The Trustee (including its directors officers or servants) shall not be liable for any actions, claims or demands arising out of anything done or caused to be done or omitted by it (or them) (whether by way of investment or otherwise) in connection with the Scheme or any costs arising therefrom*

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<sup>7</sup> *Ibid.*

<sup>8</sup> *A fol. 30 to 33*

*unless the same shall involve or arise from any fraud, wilful misconduct or negligence, on the part of such Trustee or on the part of any directors or officers of a corporate Trustee.*

*17.2 Save as aforesaid the Trustee (and any and all of its directors officers or servants) shall be and are hereby indemnified out of the Trust Fund to the extent permitted by law against any actions, claims or demands arising out of anything done or caused to be done or omitted by them (whether by way of investment or otherwise) in connection with the Scheme and all costs arising therefrom'.<sup>9</sup>*

2. That in the Application Form to join the Scheme signed by the Complainant and dated 15 May 2013, the Complainant had indicated Chase Belgrave of Switzerland as his advisor with Justin Harris as the contact person.

The Service Provider also pointed out that the Application Form contained the following salient points:

- The Trustee's fee option that was selected by the Complainant was a reduced fee option for applicants choosing to invest in investment products provided by Old Mutual International (formerly Skandia International) or Royal 360°. Old Mutual International and Royal 360° provided investment products tailored for personal pension plans;
- That the Complainant had indicated the product offered by Skandia International as his preferred investment;
- That the Complainant had indicated a '*lower to medium*' tolerance to risk and was '*prepared to take a small amount of risk to provide for the potential growth over the medium to longer term*';<sup>10</sup>
- That the Complainant had signed a declaration stating that:

*'I hereby request that the funds transferred be invested in accordance with my preferences indicated above. I or my financial advisor may*

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<sup>9</sup> A fol. 30-31

<sup>10</sup> A fol. 31

*contact the trustee from time to time to indicate the preferred investment strategy for my pension fund ... The trustee may have regard to my financial advisor's indications without reference to me until such time as his nomination is cancelled by me in writing.*

*I understand that my financial advisor 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 fund and I confirm that my financial advisor has fully explained to me the extent and nature of his fees'.<sup>11</sup>*

- That the Complainant had signed a Deed of Adherence accepting the terms of the Scheme Deed agreeing that his pension plan was to be administered in accordance with the said deed.
3. That in the Application Form for the Scheme the Complainant clearly indicated that his funds were to be invested with Old Mutual International. The application form of Old Mutual International also indicated Chase Belgrave as the investment advisor of the Complainant.
  4. That SPSL does not have any knowledge of fees paid to Chase Belgrave from the member's pension funds. It was remarked that SPSL receives a flat fee for administering the Scheme as set out in the Application Form and that SPSL does not receive any commission or other payment from Old Mutual International or other investment provider.
  5. That the charges that the Complainant makes refers to in his complaint are all charges levied by Old Mutual International for the administration of the bond which charges have been fully explained to the Complainant by the investment advisor Chase Belgrave.

It was further submitted that the Complainant had declared that his financial advisor had fully explained to him both the extent and nature of the said fees.

6. That SPSL does not provide any investment advice and it is not within the scope of its licensable activities to do so. It was submitted that the

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<sup>11</sup> *Ibid.*

Complainant dealt directly with Justin Harris and he chose to appoint Chase Belgrave to provide him with investment advice. SPSL explained that it was the responsibility of Chase Belgrave, as the member's appointed investment advisor, to provide the Complainant with advice on the various investment options available and to discuss the costs involved. It was noted that the Complainant had also confirmed to SPSL in email correspondence that he agreed to the plan set out by his investment advisor.

7. That the Service Provider had sent a welcome letter to the Complainant on the 24 July 2013, which included a copy of the policy documents issued by Old Mutual International and which indicated the charges that Old Mutual International would levy in connection with the said policy. It was accordingly claimed that the Service Provider ensured that the Complainant was fully aware of the charges levied in respect of the third-party investment vehicle offered by Old Mutual International.
8. That, despite the Complainant indicating a desire for growth over the medium to longer term, the Complainant requested on the 31 October 2017, that GBP195,000 be withdrawn from his Scheme as a pension payment. The Service Provider explained that the payment process was started immediately but the Complainant subsequently asked that this payment be put on hold. It was further explained that the payment however went through, and a pension payment was made to the Complainant with withholding tax deducted from the amount paid due as the Complainant was resident for tax purposes in Canada.
9. That in order to resolve the matter relating to the pension payment the Service Provider suggested to the Complainant that he should return the funds to SPSL's bank account in order for his pension to be restored to its position prior to the pension payment. It was noted that this would have resulted in the withholding tax being reimbursed at no cost to the member. The Service Provider also offered to waive its annual fee as a gesture of goodwill. It was submitted that the Complainant, however, decided not to return the funds to SPSL.
10. With respect to the Complainant's claim for compensation, the Service Provider submitted that:

- i. The GBP36,000 charges that the Complainant refers to are not charges imposed or levied by the Trustee;
- ii. That the Trustee acted on the request of the Complainant for an investment account to be set up with Old Mutual International as requested by him when applying to join the Scheme;
- iii. That Old Mutual International has its own administration fees and SPSL had sent a copy of the policy documents of Old Mutual International once the policy account was created. That the documentation in question clearly stipulated the fees that Old Mutual International would be charging in connection with the policy.
- iv. That the total charges incurred to date within the policy of Old Mutual International do not amount to GBP36,000 but approximately to GBP22,000. A transaction history in respect of the policy issued by Old Mutual International as well as a breakdown of the charges levied by SPSL in connection with the administration of the Scheme was presented.
- v. That the policy issued by Old Mutual International will incur an encashment penalty if surrendered within 10 years of set-up as stipulated in the charging schedule within the policy documents of Old Mutual International. SPSL pointed out that this matter should have been explained to the Complainant by his appointed investment advisor. It was also submitted that the Service Provider has, in any case, outlined these fees to the Complainant by sending him a copy of the Old Mutual International policy documents with the Scheme's welcome letter.
- vi. That the encashment penalty is not charged by the Service Provider but by Old Mutual International and the Trustee is, therefore, not in a position to waive the fee in question.
- vii. That from the moment the Service Provider asked Old Mutual International for the amount of the requested pension payment, that amount was deposited and held in a general transaction account



within the policy of Old Mutual International. From that point onwards the funds in question did not generate any interest or participate in any potential returns from the policy.

- viii. That the Complainant should perhaps have obtained tax advice before requesting the pension payment. When the Complainant realised that the pension payment was subject to withholding tax, the Service Provider offered to reverse the tax charge upon the member returning the funds. The Complainant, however, chose not to return the funds.
- ix. That if the funds were returned to the Complainant's pension plan these would need to be reinvested in accordance with the Scheme Deed and local pension regulations. SPSL will not permit the funds to remain in a general transaction account indefinitely.
- x. That the GBP30,000 deducted as withholding tax will be reimbursed to the member's pension plan once the pension payment is returned to SPSL.

### **Having heard the parties and seen all the documents and submissions**

#### **Considers:**

#### **The Merits of the Case**

**The Arbitrator 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.<sup>12</sup>**

#### ***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,<sup>13</sup> originally

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<sup>12</sup> Cap. 555, Art. 19(3)(b)

<sup>13</sup> <https://www.mfsa.com.mt/financial-services-registry/result/?id=4458>

registered under the Special Funds (Regulation) Act 2002 (Chapter 450 of the Laws of Malta).<sup>14</sup>

The Retirement Scheme was established by a trust deed dated 13 July 2012 by SPSL which acts as the Retirement Scheme Administrator and Trustee of the Scheme.<sup>15</sup> SPSL is licensed by the MFSA as a Retirement Scheme Administrator.<sup>16</sup>

As described by the Service Provider, the Scheme is member-directed given that the Complainant, being a member of the Scheme, appointed his own investment advisor to advise him on the investment options.<sup>17</sup>

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'*.<sup>18</sup>

The Complainant became a member of the Scheme on 30 May 2013.<sup>19</sup> The Scheme's underlying investment consisted of the Executive Redemption Bond, this being a life assurance policy issued by Skandia International (subsequently known as Old Mutual International), which policy commenced on the 15 July 2013 with a premium of GBP377,787.22.<sup>20</sup>

*'Sovereign Pension Services Limited as trustee of Centaurus RBS Re: YZ'* was indicated as the policyholder in the said policy issued by Skandia International.<sup>21</sup>

### **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.

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<sup>14</sup> A fol. 64

<sup>15</sup> A fol. 30

<sup>16</sup> <https://www.mfsa.com.mt/financial-services-register/result/?id=4459>

<sup>17</sup> A fol. 31 & 32

<sup>18</sup> A fol. 43

<sup>19</sup> A fol. 64

<sup>20</sup> A fol. 65

<sup>21</sup> A fol. 65 & 90

The Special Funds (Regulation) Act, 2002 ('SFA') was the first legislative framework which applied to the Scheme and the Service Provider. The SFA was repealed and replaced by the Retirement Pensions Act (Chapter 514 of the Laws of Malta). The Retirement Pensions Act ('RPA') was published in August 2011 and came into force on the 1 January 2015.<sup>22</sup>

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 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.<sup>23</sup>

### ***Profile of the Complainant***

The Complainant was born in June 1955, is of British Nationality and was resident in Canada at the time of membership into the Scheme.<sup>24</sup>

The Application Form for membership into the Scheme dated 15 May 2013, indicates the Complainant's occupation as a university professor.<sup>25</sup> The Complainant's previous experience involved lecturing at a college/polytechnic.<sup>26</sup>

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<sup>22</sup> 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/>

<sup>23</sup> 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 ...'*

<sup>24</sup> A fol. 36

<sup>25</sup> A fol. 36 & 39

<sup>26</sup> A fol. 39

### ***Investment Advisor***

The Application Form for membership into the Scheme signed by the Complainant and dated 15 May 2013 indicates the financial advisor of the Complainant as Justin Harris of Chase Belgrave bearing an address in Switzerland.<sup>27</sup> Justin Harris was also indicated as the investment advisor in the application form of Skandia International submitted in 2013 in respect of the purchase of the underlying investment of the Scheme, the Executive Redemption Bond.<sup>28</sup>

### ***Other aspects***

#### *Statements presented*

The statement issued by Old Mutual International to the Service Provider for the period 11 July 2013 till 13 March 2018<sup>29</sup> indicates that, in addition to interest payments and transaction charges, there were other payments as follows:

- a total of approximately GBP19,800 were paid out of the policy over the period July 2013 till February 2018 in '*Regular Policy Management Charges*';
- approximately GBP1,700 were paid out of the policy in respect of '*Administration Charges*' over the same period.

In total these payments amount to around GBP22,000. The said fees reflect, in the main, the GBP96 '*Administration Charge*' payable quarterly and the 0.268750% '*Regular Policy Management Charge*' payable quarterly, which fees were indicated in the acceptance letter of the policy dated 16 July 2013.<sup>30</sup>

The statement issued by the Service Provider in respect of the Scheme dated 14 March 2018<sup>31</sup> indicates the payment of GBP1,673.72 as initial establishment and first annual trustee fee<sup>32</sup> as well as four payments of Eur1,100 each, for the total of Eur4,400, in respect of the annual trustee fee covering the period July 2014

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<sup>27</sup> A fol. 36

<sup>28</sup> A fol. 51, 56 & 59

<sup>29</sup> A fol. 90 - 97

<sup>30</sup> A fol. 65

<sup>31</sup> A fol. 98

<sup>32</sup> Approx. equivalent to Eur1,900 (Eur800 initial establishment fee and Eur1,100 as annual trustee fee) – A fol. 42

till July 2018.<sup>33</sup> The said initial establishment fee and annual trustee fees reflect the charges listed in the Fee Schedule, Option A, page 9 of the Scheme's Application Form signed by the Complainant and dated 15 May 2013.<sup>34</sup>

According to the said statements the total overall fees paid thus amounted to around GBP28,000<sup>35</sup> over the period from 2013 till early March 2018.

#### *Communications between the Complainant and Service Provider*

In his email to the Service Provider dated 19 January 2018, the Complainant claimed that he did not receive adequate information regarding the investment options, which did not carry excessive charges, that were available to him given what he had experienced on the underlying policy issued by Old Mutual International. In the same email the Complainant highlighted that he '*had no wish to take out new investments which carry such charges*'.<sup>36</sup>

In the email to the Service Provider of January 2018, the Complainant also stated that:

*'I have asked Eamon, in response to the urging from you to return the bank funds, to outline clearly what the charges would be on a new OMI investment and what they would be if the money were invested through some other dealing channel. I have been waiting since the beginning of January for a detailed professional breakdown of these costs, as well as advice about the respective options, but I have not received them'*.<sup>37</sup>

With reference to the withdrawn funds, the Complainant emphasised that:

*'I will not return these funds to OMI/Sovereign until I have received all the information and ADVICE I have asked for and I am satisfied that they meet my needs'*.<sup>38</sup>

#### *Hearing of 23 October 2018*

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<sup>33</sup> A fol. 98

<sup>34</sup> A fol. 42

<sup>35</sup> Approx. GBP19,800 Regular Policy Management Charge; Approx. GBP1,700 Administrative Charge; USD 700 Interest Application; GBP1,673 initial establishment fee & initial Annual Trustee Fee; EUR4,400 Annual Trustee Fees.

<sup>36</sup> A fol. 10

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

During the hearing of the 23 October 2018, the Complainant stated *inter alia* that his financial advisor did not explain the relationship between Skandia, Sovereign and Mutual stating:

*'That was never explained to me in any point in time and I still do not understand it'.<sup>39</sup>*

The Complainant had also stated *inter alia* that his financial advisor *'did not give me a full and clear breakdown of the fees that each of these stakeholders were going to be charging to my account'.<sup>40</sup>* Furthermore, the Complainant confirmed that *'at the time of the investment, I say that he explained to me what his fees would be'.<sup>41</sup>*

The Complainant also noted that he was given illustrations about growth plans including percentage rates, referring to a growth rate of 5% per year. The Complainant highlighted that there was no proactive management on his Scheme and he questioned why his retirement plan did not experience any growth whilst the market was growing generally; explaining also that he was dissatisfied with the performance of the investments within the Scheme administered by the Service Provider.<sup>42</sup>

During the same sitting, the Complainant also pointed out *inter alia* that nobody had informed him that an erroneous pension payment was made from his account in December 2017, and that he on his own discovered what happened.

With respect to the erroneous pension payment that occurred in December 2017, SPSL acknowledged that this was a mistake of an employee who failed to follow the email instruction of the Complainant to put the payment on hold after the Complainant had first requested to undertake a payment.<sup>43</sup>

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<sup>39</sup> A fol. 107

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> A fol. 108 & 109

<sup>43</sup> A fol. 110

## **Other Observations and Conclusions**

The complaint revolves around the claim that the Service Provider has maladministered the Retirement Scheme.

In this regard, the Complainant:

- (i) claimed that he had paid excessive fees on his Retirement Scheme, which Scheme had experienced no growth since the time he became a member in 2013;
- (ii) contested the fees and commissions paid to the investment advisor appointed to his Scheme and submitted that there was a lack of proper explanation of the fees applicable within the pension structure;
- (iii) claimed that, in December 2017, funds were withdrawn by the Service Provider from his Retirement Scheme without his consent, leading him to incur withholding tax on the withdrawn amount as well as loss of income on such amount. The Complainant also submitted that he did not receive appropriate professional information regarding suitable alternative investment options which did not carry high charges, as he had requested to receive before he decides to return the pension payment.

The following are the key considerations considered relevant to the case:

- a) **As reflected in the Complainant's calculation of the requested compensation, the complaint relates specifically to the charges paid with respect to the Scheme and the erroneous pension payment made by the Service Provider out of the Scheme's assets. The Complainant has not actually contested the suitability of the investments allowed to be undertaken by SPSL as the Trustee and Retirement Scheme Administrator of the Scheme.**
- b) As to the first matter raised in respect of the fees, the Arbiter considers that, on the basis of the information resulting from the case in question, no evidence has emerged that the Service Provider did not provide the Complainant with sufficient and clear details in a timely manner regarding

the applicable fees as it was required to do in terms of its obligations arising as a Trustee and Retirement Scheme Administrator of the Scheme.<sup>44</sup>

Furthermore, no evidence has emerged regarding the payment of GBP36,000 '*for the excessive charges imposed by Sovereign for the services of Chase Belgrave that were misleadingly presented to me and withdrawn without any legal or contractual justification*'<sup>45</sup> claimed by the Complainant in his request for the payment of such fees.

The statements provided during the proceedings of the case as outlined in the section titled '*Statements presented*' above, indicate the fees that were paid directly out of the Retirement Scheme and those payable out of the underlying investment, that is, the policy issued by Old Mutual International. Firstly, such fees did not amount to the claimed GBP36,000 but in total amounted to approximately GBP28,000 as emerging from the said statements. Additionally, it is noted that the said fees reflect, in the main, the charges outlined in the fee schedules which were included in the respective product documentation.

Additionally, and being cognisant of the Complainant's profile, it is considered that the Complainant was, or should have been well aware, at the time of the respective purchase of the Retirement Scheme and underlying policy, of the charges applicable on such products.

This is in view that the fee schedule for the Scheme was reflected in the Scheme's Application Form signed by the Complainant dated 15 May 2013 whilst the fee schedule for the underlying policy by Old Mutual International was reflected in the acceptance letter dated 16 July 2013 which, as confirmed by the Service Provider was sent to the Complainant on the 24 July 2013 as part of the welcome pack.

During the hearing of the 23 October 2018, the Complainant had himself confirmed that he '*received a welcome package from the key stakeholders from Skandia, Chase Belgrave and Sovereign Pension Services*' and also

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<sup>44</sup> For example, as required in terms of Condition 2.6.2 of Standard Operational Condition of the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties issued under the Special Funds (Regulation) Act, 2002*' and applicable to the Retirement Scheme Administrator at the time of the SFA.

<sup>45</sup> A fol. 6 – Emphasis added by the Arbitrator.



confirmed *'that the pack received included the schedule of Old Mutual fees'*.<sup>46</sup>

**Accordingly, the Arbiter does not consider, in the particular circumstances of this case, that there is a reasonable and justifiable basis on which the claimed compensation of GBP36,000,<sup>47</sup> requested by the Complainant in respect of the charges paid, can be upheld.**

- c) As to the matter relating to the erroneous pension payment, the Arbiter notes that the Service Provider has acknowledged the mistake of withdrawing GBP195,000<sup>48</sup> from the Complainant's Scheme account in December 2017<sup>49</sup> after the Complainant had instructed the Service Provider to put his original request for such withdrawal on hold.

In the circumstances of the case, it is considered that the offer made by the Service Provider in January 2018, to reimburse the withholding tax paid on the withdrawn amount, cover any bank charges, and also offer to waive an annual fee payable to the trustee as a gesture of goodwill,<sup>50</sup> was a reasonable and fair one in order to rectify for the error made by SPSL when withdrawing the Complainant's funds.

With respect to the current impasse, it is to be noted that Part B. 9 of the *'Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act, 2011 ('the Rules')* outlines the *'Supplementary Conditions in the case of entirely Member Director Schemes'*.<sup>51</sup>

Standard Licence Condition ('SLC') 9.2(a) of Part B.9 of the said Rules, specifies that:

*'In the case of a Scheme which is entirely member-directed, such Scheme may permit a Member to direct the investments of their individual accounts (member-directed schemes), based on one or more of the following*

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<sup>46</sup> A fol. 107

<sup>47</sup> A fol. 8

<sup>48</sup> A fol. 32

<sup>49</sup> A fol. 110

<sup>50</sup> A fol. 19 & 32

<sup>51</sup> [https://www.mfsa.mt/wp-content/uploads/2019/04/Personal\\_Retirement\\_Schemes\\_Part\\_A\\_B-Final.pdf](https://www.mfsa.mt/wp-content/uploads/2019/04/Personal_Retirement_Schemes_Part_A_B-Final.pdf)

*grounds, and such direction shall be provided for in the Scheme Document. The Scheme shall:*

- (a) allow the Member to appoint an investment advisor to be approved by the Retirement Scheme Administrator to advise the Member on the choice of investments; and/or*
- (b) allow the Member to appoint an investment manager to be approved by the Retirement Scheme Administrator to manage the Member's investments on a discretionary basis; or*
- (c) allow the Member who qualifies as a "professional member" to manage/direct his/her investments in their account'.*

In terms of SLC 9.2(a) of Part B.9 of the said Rules, the Complainant may thus appoint an investment advisor of his choice, who needs to be approved by the Service Provider, to advise him on the choice of his investments.

Such investment advisor is required to satisfy the eligibility criteria mentioned in SLC 9.6 of Part B.9 of the said Rules which SLC provides that:

*'Where the Scheme allows the Member to opt for the scenario in SLC 9.2(a), the Retirement Scheme Administrator shall:*

- (a) carry out due diligence on the investment advisor and approve such advisor. This due diligence should be documented; and*
- (b) ensure that, as part of the due diligence referred to in paragraph (a):*
  - (i) the investment advisor may either be:*
    - (aa) a person licensed to provide investment advice under the Investment Services Act, 1994;*
    - (bb) a person established in a Member State or EEA State and duly authorised for this activity in that Member State or EEA State and where the services related to this activity are being provided in another Member State or EEA State, the person is duly authorised to*

*provide such services in accordance with Directive 2014/65/EU and/or Directive 2016/97 (in the case of insurance-based investment products), as amended from time to time, and is carrying out its activities in relation to the Member pursuant to the respective Directives, as applicable; or*

*(cc) in the case of a person established in a non-Member State or non-EEA State, a person who is considered by the Retirement Scheme Administrator to be subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, for it to undertake investment advice;*

*(ii) the investment advisor is authorised and regulated to provide such investment advice ...<sup>52</sup>*

Accordingly, the Complainant should seek suitable investment advice from such an eligible investment advisor and follow applicable procedures for the appointment of such. The Service Provider, as Trustee and Retirement Scheme Administrator, should offer all the required assistance for such appointment and in finding an approved investment advisor to be chosen by the Complainant by, for example, indicating a number of potential investment advisors that the Complainant can speak to and seek professional investment advice from, with respect to the underlying choice of investments and investment decisions that need to be taken on his Retirement Scheme.

**The Service Provider should ensure that the Complainant is fully aware of the possible courses of action that the Complainant may consider with the Scheme going forward as permitted in terms of the provisions of the Scheme's Trust Deed and other related Scheme documentation.**

**The Service Provider is also reminded of his role as Trustee and obligation to act as a *bonus paterfamilias*<sup>53</sup> and act in the best interests of the Scheme members and beneficiaries as also required in terms of SLC 1.3.1**

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<sup>52</sup> *Ibid.*

<sup>53</sup> Article 21(1) of the TTA 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'.

**of Part B of the ‘Pension Rules for Service Providers issued in terms of the Retirement Pensions Act, 2011’ by the MFSA, and currently applicable to SPSL.<sup>54</sup> Hence, the provision of relevant and recent information, including applicable costs, on the Scheme and current underlying investments should be provided to the Complainant in a comprehensive manner and be clearly understandable to enable an informed decision to be taken.**

## **Conclusion**

**Further to the above, it is considered fair, equitable and reasonable for the Complainant to receive the claimed amount of GBP30,000 from Sovereign Pension Services Limited in the circumstances stipulated in this decision, and as already agreed to by the Service Provider, in respect of the withholding tax deducted in relation to the erroneous pension payment.**

**For the avoidance of doubt, the said payment of GBP30,000 is, however, only due by SPSL in case where the pension payment effected by SPSL is duly returned in full by the Complainant to his Scheme account.**

**The Complainant’s other requests for compensation and waiver of transfer fees are being rejected given the specific circumstances of this case and for the reasons amply explained and highlighted above.**

**In case where the Complainant wishes to terminate or transfer out of his Scheme, the Arbiter encourages the Service Provider to consider, out of its own free will, a waiver or reduction of the applicable termination fees at the level of the Scheme and possibly seek any concessions on applicable fees that could be offered from the issuer of the underlying policy. This is without commitment and subject to the discretion of the respective product providers.**

**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 amount of GBP30,000 to the Complainant upon the Complainant returning the full amount of money erroneously withdrawn from his pension.**

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<sup>54</sup> The said SLC provides the following: ‘1.3.1 *The Scheme Administrator shall act in the best interests of the Scheme Members and Beneficiaries*’.

**In case where such money is not returned by the Complainant, the pension payment made is to be construed as an authorised withdrawal request made by the Complainant for all intents and purposes and, in such case, the order for the reimbursement of GBP30,000 shall no longer apply.**

**Given the circumstances of the case and the conclusions reached, each party is to bear its own legal costs of these proceedings.**

**Dr Reno Borg  
Arbiter for Financial Services**