

## Before the Arbiter for Financial Services

**Case No. 137/2018**

**ZK**

**(‘the Complainant’ or ‘the Member’)**

**vs**

**Momentum Pensions Malta Limited**

**(C52627) (‘MPM’ or ‘the Service Provider’**

**or ‘the Retirement Scheme Administrator’)**

### **Sitting of the 28 July 2020**

#### **The Arbiter,**

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

The Complainant originally filed a complaint against the Service Provider in relation to:

- (a) the claimed substantial loss of over GBP100,000 on her Retirement Scheme, where it was *inter alia* alleged that despite that her risk profile was low/medium, the Service Provider had allowed her pension to be invested in very high-risk funds which led to significant losses;<sup>1</sup>

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<sup>1</sup> A fol. 4

(b) a claimed fraudulent activity involving the payment of a GBP15,000 arrangement fee to her advisor, Continental Wealth Management, from her pension. The Complainant claimed that the signature on the form authorising the said arrangement fee<sup>2</sup> was not hers.<sup>3</sup> It was submitted that MPM has consistently failed to explain why this had happened and also ignored emails asking for an explanation.

During the proceedings of the case, the Complainant revised the complaint against the Service Provider confirming that she no longer wished to lodge the complaint made in relation to the substantial losses as she discovered that the losses were before MPM became the trustees of the Scheme.<sup>4</sup> The Complainant wished, however, to pursue her complaint in relation to the GBP15,000 fee that she alleged was paid to her advisor without her consent.<sup>5</sup>

With respect to the payment of the GBP15,000 advisory fee, the Complainant submitted that the signature on the authorisation form relating to the payment of such fee was clearly not hers. The Complainant further submitted that the said form could have not been checked by MPM. The Complainant submitted that such large amount of payment was just processed by MPM and not checked for validity.<sup>6</sup>

The Complainant submitted that as Trustees, MPM should have stopped the payment of the indicated fee if it had properly checked the signature on the said form.<sup>7</sup>

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

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

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<sup>2</sup> A fol. 20

<sup>3</sup> A fol. 4 & 90

<sup>4</sup> A fol. 90 (Emails from the Complainant dated 22 and 28 August 2018 also refer).

<sup>5</sup> *Ibid.*

<sup>6</sup> A fol. 90

<sup>7</sup> A fol. 19

<sup>8</sup> A fol. 163 to 166

Trafalgar and offers administrative services to entities outside the European Union.

2. That MPM is not linked or affiliated in any manner to CWM, Trafalgar or Global Net and that MPM is not licensed to provide investment advice.
3. The Complaint relates to conduct which occurred before the entry into force of Chapter 555 of the Laws of Malta on 18 April 2016. It was noted that the complaint was filed on 21 June 2018, and that this was therefore beyond the two-year time period allowed by Article 21(1)(b) of the said law.

The Service Provider further submitted that if the Arbiter determines that the conduct complained of is conduct which occurred after the entry into force of Cap. 555, the complaint still cannot be entertained pursuant to Article 21(1)(c) as more than two years have lapsed since the conduct complained of took place.

4. With respect to the advisory fee, the Service Provider noted that the Complainant alleged that there *'was also clear fraudulent activity of a £15,000 arrangement fee being paid to CWM from my pension. It is clearly not my signature and Momentum have consistently failed to explain why this happened by totally ignoring emails that I have sent asking for an explanation'*.<sup>9</sup>

MPM submitted that, in the first place, the Complainant must clarify whether she is directing her allegation of fraud against MPM or CWM and must prove her allegations.

MPM further submitted that the document attached to the complaint and signed by the Complainant, dated 13 January 2015, acknowledges that an arrangement fee is payable to CWM which is a fixed fee of GBP15,000.

The Service Provider also submitted that additionally it has also addressed this matter in its reply to the Complainant dated 23 April 2018.<sup>10</sup>

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<sup>9</sup> A fol. 38

<sup>10</sup> A fol. 76

5. MPM submitted that it is not responsible for payment of any amount claimed by the Complainant and that it has, at all times, fulfilled all its obligations with respect to the Complainant.

MPM further submitted that it has not committed any fraud, nor has it acted negligently. MPM submitted that it has not breached any of its obligations in any way and further submitted that the losses sustained by the Complainant are attributable to the adviser appointed by the Complainant.

MPM pointed out that the Complainant has not suffered any loss and that without prejudice to the aforesaid, if a loss is proved, the Complainant must show that it was MPM's actions or omissions which caused the loss being alleged. MPM replied that in the absence of the Complainant proving this causal link, MPM cannot be found responsible for the Complainant's claims.

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

**Considers:**

The Arbiter notes that during the proceedings of the case, the Complainant revised the complaint against the Service Provider confirming that she no longer was complaining in regard to the substantial losses as she discovered that the losses occurred before MPM became the trustees of the Scheme.<sup>11</sup>

The Complainant wished, however, to pursue her complaint in relation to the GBP15,000 fee that she alleged was paid to her adviser without her consent.<sup>12</sup>

She submitted in this respect that the signature on the authorisation form relating to the payment of such fee was clearly not hers and MPM failed to check the validity of the payment of such a large amount and should have checked the signature on the said form.

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<sup>11</sup> *A fol.* 90

<sup>12</sup> *Ibid.*

### ***Preliminary Plea regarding the Competence of the Arbiter***

The Service Provider raised the plea that the Arbiter does not have the competence to consider this case because it is time-barred under Article 21(1)(b) of Chapter 555 of the Laws of Malta, which states:

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

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

Article 21(1)(b) stipulates that a complaint related to the 'conduct' of the financial service provider which occurred before the entry into force of this Act shall be made not later than two years from the date when this paragraph comes into force. This paragraph came into force on the 18 April 2016.

The law refers to the date when the alleged misconduct took place. The Complaint in question relates to the payment of the fees to the adviser. The form authorising the fee structure and the payment to CWM of a fixed advisory and arrangement fee of GBP15,000, is dated 13 January 2015.

The payment of the said advisory and arrangement fee was processed by MPM and paid from the assets of the Scheme on 2 March 2015.<sup>13</sup> Such payment was indicated as 'Adviser Fees' in the Annual Member Statement for the year ending 31 December 2015,<sup>14</sup> which statement was sent to the Complainant by the Service Provider.<sup>15</sup>

The Arbiter determines that, **in the particular circumstances of this case**, the conduct complained of occurred before the 18 April 2016, and the Complainant accordingly had until 18 April 2018 to lodge her complaint with the Office of the Arbiter for Financial Services. The Complaint Form signed by the Complainant is dated 31 May 2018 and was received on 21 June 2018.<sup>16</sup>

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<sup>13</sup> A fol. 71

<sup>14</sup> Ibid.

<sup>15</sup> A fol. 37

<sup>16</sup> A fol. 1

The Arbiter accordingly considers that in the particular circumstances of this case, the plea made by the Service Provider as based on Article 21(1)(b) of Chapter 555 of the Laws of Malta is justified and is upholding it and declares that he has no competence to deal with this complaint.

**Given the particularities of this case, and that the case was decided on a preliminary plea, each party is to bear its own costs of these proceedings.**

**Dr Reno Borg**  
**Arbiter for Financial Services**