MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF LAWRENCE MINTOFF

Seduta tal-10 ta' Lulju, 2026

Appell Inferjuri Numru 100/2025 LM

Malcolm Mason (K.I. nru. 42373A)
('l-appellat')

vs.

Aventis Financial Planning Limited (C 49564) (ġja Lawsons Equity Limited)
('is-soċjetà appellanta')

Il-Qorti,

<u>Preliminari</u>

1. Dan huwa appell magħmul mis-soċjetà intimata **Aventis Financial Planning Limited (C 49564)** [minn issa 'l quddiem 'is-soċjetà appellanta'] mid-deċiżjoni mogħtija fit-22 ta' Lulju, 2025 [minn issa 'l quddiem 'id-deċiżjoni appellata'] mill-Arbitru għas-Servizzi Finanzjarji [minn issa 'l quddiem 'l-Arbitru'], li ddeċieda t-talbiet magħmula mill-ilmentatur **Malcolm Mason (K.I. nru. 42373A)** [minn issa 'l quddiem 'l-appellat'] fil-konfront tagħha, kif ġej:

"For the reasons amply stated in this decision, the Arbiter considers the Complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case, (fn. 89: Cap. 555, Article 19(3)(b) and is accepting it in so far as it is compatible with this decision.

The Arbiter concludes that Aventis Financial Planning Limited should compensate the Complainant for the losses and damages suffered by him on his pension as a result of the inadequate investment, the Prestige Alternative Finance fund recommended by the Service Provider.

The amount of compensation is calculated as follows:

a) An amount of GBP 11,944 for the unrealised loss suffered on the Prestige Alternative Finance GBP fund in order to put him back to his original position on this investment; AND
b) An amount of GBP 7,000 reflective of the fees applicable to his pension structure overall (that is, involving both the Self-Invested Pension Plan and the Hansard Policy) starting from the period 2021 onwards. This period is the time when the Complainant submitted the correct, completed forms to withdraw his remaining funds from his pension, as earlier considered in this case.

The amount of fees in this regard is approximated and rounded up by the Artbiter to GBP 7,000 for the purpose of this decision. (fn. 90: the fees charged on the Hansard Policy as from March 2021, calculated to be around GBP 3,500, together with the yearly annual trusteee of approx. GBP 900 p.a. from 2021.)

The Arbiter further considers that, given the particular status of the Prestige Alternative Finance GBP as outlined above, any future proceeds that may be derived from such investment are to be allocated fully to the Service Provider who thus gain practical control of this investment and permits closure of the pension fund to avoid further accumulation of charges.

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Aventis Financial Planning Limited to pay the amount of GBP 18,944 (eighteen thousand, nine hundred and forty-four pounds sterling), whilst future proceeds (if any) in respect of the Prestige Alternative Finance GBP are assigned to the Service Provider as stipulated above.

With interest at the rate of 4.25% p.a. (fn. 91: equivalent to the current Bank of England Bank Rate) from the date of the decision till the date of payment. (fn. 92: It is to be noted that in case this decision is appealed, should this decision be *confirmed on appeal, the interest is to be calculated from the date of this decision).*

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

Fatti

2. Il-kwistjoni odjerna tittratta ilment li sar mill-ilmentatur wara li huwa rċieva pariri u servizzi ta' investiment mingħand is-soċjetà intimata, fejn l-ilmentatur ġarrab telf sostanzjali fuq il-pensjoni tiegħu, minħabba li l-investiment sar f'portafoll b'riskju għoli minflok f'portafoll bbilanċjat.

Mertu

3. L-ilmentatur spjega li għal xi raġuni, is-soċjetà intimata investiet il-fondi tiegħu f'portafoll wieħed b'riskju għoli minflok offrielu investiment bilanċjat. Qal li huwa ttrasferixxa l-pensjoni tiegħu fl-2013, bil-ħsieb li jkun jista' jirtira fi żmien għaxar snin, iżda meta huwa pprova jirtira l-fondi tiegħu, ġie mgħarraf li l-irtirar ta' dawn il-fondi seta' jieħu madwar sena, sakemm eventwalment irrealizza li dawn il-fondi qatt ma kienu ser jitħallsu lilu. Qal li huwa staqsa għal liema raġuni l-investimenti li huwa kellu fil-*BMIFML O/S Multi Strat. Growth Strat*., *BMIFML O/S High Income* u fl-*Alquity Africa Fund B GBP* inbiegħu, għaliex huwa ma kien għamel l-ebda talba għal dan, la ġie mgħarraf bil-bejgħ u lanqas ma rċieva l-fondi jew xi forma ta' rikavat minn dan il-bejgħ. L-ilmentatur elenka wkoll numru ta' tranżazzjonijiet fejn inġibdu fondi mill-iskema tal-pensjoni tiegħu, li huwa qal li qatt ma ntalbu jew ġew riċevuti minnu. Qal ukoll li filwaqt li fl-2015 huwa kien irċieva somma globali waħda, din is-somma ma kienitx tirrifletti dak kollu li nġibed mill-pensjoni tiegħu. L-ilmentatur qal li huwa ma kellux għarfien

finanzjarju sod, u li huwa fada l-pensjoni tiegħu f'idejn is-soċjetà intimata, hawnhekk is-soċjetà appellanta, mingħajr wisq '*input*' min-naħa tiegħu, għaliex huwa emmen li dawn kienu jafu x'qegħdin jagħmlu. Qal ukoll li ċ-ċifri sottomessi mis-soċjetà intimata mhumiex preċiżi, u li huwa staqsa x'kien sar mill-investimenti tiegħu diversi drabi. Ir-rikorrent qal li huwa mhux espert finanzjarju, iżda lilu jirriżultalu li s-soċjetà intimata investiet il-fondi tiegħu kollha f'fond tal-investiment li jġorr riskju għoli, u li b'hekk il-portafoll tal-investiment tiegħu ma kienx wieħed bilanċjat. Qal ukoll li kieku huwa tħalla jirtira l-fondi meta xtaq u meta talabhom, huwa seta' jirċievi lura ammont raġonevoli dak iż-żmien. Qal li huwa kien iriċieva l-aħħar ħlas annwu fl-2021 minn Baker Tilly fl-Isle of Man, u li huwa ma kienx jaf għal liema raġuni huwa kien irċieva dawn il-fondi meta huwa kien ħalla kollox f'idejn is-soċjetà intimata. L-ilmentatur saħaq li huwa kien fada l-pensjoni tiegħu f'idejn is-soċjetà intimata sabiex din tinvestiha f'fond bilanċjat, iżda minflok din investiet flusu fi skemi riskjużi, u b'hekk huwa tilef il-flus kollha derivanti mill-pensjoni tiegħu.

4. Permezz tal-ilment li ressaq quddiem l-Arbitru, l-ilmentatur talab li dan jordna r-ritorn l-ammont tal-pensjoni kollha tiegħu, fis-somma ta' GBP 30,713.90, li huwa kien talab li tiġi rritornata lilu f'Marzu tal-2020.

5. Is-soċjetà intimata wieġbet li hija kumpannija liċenzjata mill-Awtorità għas-Servizzi Finanzjarji, u li hija awtorizzata tipprovdi servizzi ta' investiment skont il-liġi. Qalet li l-allegazzjonijiet tal-ilmentatur huma infondati fil-fatt u fid-dritt, u li r-rimedji mitluba minnu mhumiex fondati fil-liġi, u għandhom jiġu miċħuda mill-Arbitru. Qalet li hija bl-ebda mod ma kisret l-obbligi fiduċjarji tagħha fil-konfront tal-ilmentatur, u li l-ilmentatur kien jaf sew bir-riskji involuti. Qalet ukoll li hija

dejjem żammet lill-ilmentatur infurmat u pprovdietlu d-dokumentazzjoni meħtieġa, u li mhuwiex minnu li hija nvestiet flus l-ilmentatur f'fondi li kellhom riskju għoli.

6. Is-soċjetà intimata spjegat li l-ilmentatur, li hija ddeskriviet bħala '*retail client',* kien avviċinaha fl-2013 fejn talab pariri dwar it-trasferiment tal-pensjoni tiegħu u pariri dwar l-investiment. Qalet li kien sar '*fact find*' fuq il-*klijent ai termini* tal-liġi, u li l-attitudni tal-klijent fil-konfront tar-riskju tqieset bħala waħda bilanċjata, u li l-ilmentatur ikkonferma dan kollu b'dikjarazzjoni ffirmata minnu li tgħid: "*I wish to invest in investments whose overall volatility and riskiness, that is size of movements, up or down, is broadly equivalent to the UK stock market e.g. a mainstream UK equity fund or similar."* Qalet li eventwalment l-ilmentatur għażel li jinvesti GBP 15,000 fil-*BMIFML O/S Multi Strategy Growth Strategy*, u li dan il-fond kien suġġerit lilu għaliex huwa kbir u stabbli, u kien joffri potenzjal għat-tkabbir; GBP 15,000 fil-*BMIFML O/S High Income*, li kien suġġerit lilu għaliex huwa kbir u stabbli u l-investiment fih isir b'mod diversifikat; GBP 6,949 fl-*Alquity Africa Fund B GBP* li huwa investiment iżgħar, li jipprovdi aktar diversifikazzjoni mill-fondi ta' qablu li huma aktar konservattivi; u GBP 12,275 fil-*Prestige Alternative Fund* li kien suġġerit lill-ilmentatur minħabba li huwa fond ta' investiment ibbażat fuq assi, u għalhekk mhux daqstant volatili. Is-soċjetà intimata spjegat li l-*BMIFML O/S Multi Strategy Growth Strategy* ra tkabbir ta' 33%, u li ma kien hemm l-ebda telf mill-*BMIFML O/S High Income*. Qalet ukoll li kien l-ilmentatur innifsu li ta struzzjonijiet rigward il-bejgħ ta' ċerti fondi. Is-soċjetà intimata spjegat li l-uniku telf sostnut kien fl-*Alquity Africa Fund B GBP* u fil-*Prestige Alternative Fund*. Qalet li l-*Alquity Africa Fund B GBP* inbiegħ f'Settembru tal-2015 sabiex jiġi evitat aktar telf, u li dan inbiegħ għal GBP

4,843.58. B’riferiment għall-*Prestige Alternative Fund*, qalet li dan kellu prestazzjoni tajba sa Novembru 2021, bi tkabbir fil-prezz ta’ 43.2%, imma l-pandemija fl-2020 ġabet ċerti sfidi li ma kinux prevedibbli lura fl-2013. Qalet li l-fondi li fihom saru l-investimenti kienu jinkwadraw perfettament fil-profil tar-riskju tal-ilmentatur, u li hija m’għandhiex iġġorr ir-responsabbilità għat-telf sostnut. Qalet ukoll li d-deċiżjoni li ttieħdet mill-Prestige Fund li jkun hemm dewmien fil-ħlas, ma kienitx xi ħaġa li hija kellha kontroll fuqha.

Id-Deċiżjoni Appellata

7. L-Arbitru, fid-deċiżjoni tiegħu tat-22 ta’ Lulju, 2025, iddeċieda li t-talbiet tal-ilmentatur għandhom jiġu milqugħa, u ordna lis-soċjetà intimata tħallas lill-ilmentatur l-ammont ta’ tmintax-il elf, disa’ mija u erbgħa u erbgħin Euro (€18,944), b’imgħax bir-rata ta’ 4.25% mid-data tad-deċiżjoni sal-eventwali ħlas, u dan wara li għamel is-segwenti konsiderazzjonijiet:

*“**Preliminary***

Pleas raised by the Service Provider

It is noted that certain pleas were only raised by the Service Provider in its final submissions. These pleas relate to the nature of the Complaint, the date of first knowledge, and the claim that the Service Provider is not the proper defendant for this case. The said pleas are, however, outrightly dismissed by the Arbiter not only because they were raised at a very late stage of the proceedings, but also if one had to consider other factors as further outlined below:

(a) Nature of the Complaint

*The Service Provider argued in its final submissions that ‘*throughout the proceedings the Complainant made contradictory comments on the nature of his complaint’. *(fn. 9: p. 149) It pointed out that in his last submissions, ‘*he complains of mis-selling and mismanagement but when examining his testimony in examination and cross-examination it is clear that his complaints should have been directed to the trustee *…'. (fn. 10: Ibid)*

Cognisance needs, however, to be made of the fact that this is a complaint filed by a retail client (fn. 11: as confirmed by the Service Provider in its reply/submissions (p. 124&149) and the Service Provider's Client Fact Find (p. 16) who described himself as not being 'financial astute'. *(fn. 12: p. 4) The Complaint with the OAFS was filed without professional assistance and the Complainant was not assisted professionally during his testimony and in his submissions. One needs to also take into consideration the explanations provided by the Complainant regarding his Complaint against the Service Provider, as particularly outlined in the Complaint Form, (fn. 13: p. 3-4) his letter of formal complaint dated 23 August 2024, (fn. 14: p. 8) his testimony and cross-examination, (fn. 15: p. 127-131 (particularly the explanations provided on p. 127-128) as well as the Company's replies to the Complainant's complaint. (fn. 16: p. 9-14 & 123-125)*

The Arbiter observes that as outlined above, the Complaint can, in essence, be summarised as involving the following key allegations and failures with respect to the investment advisory services provided to the Complainant by the Service Provider regarding his pension scheme which he claimed was reduced to no value:

(i) That the Company advised a high-risk investment not reflective of his needs and wishes of a balanced investment and his profile;

(ii) That the sale of investments and withdrawals undertaken from his pension were done without his knowledge, where he also questioned where these withdrawals from his pension had gone.

The above mentioned are considered the subject matter of this case as shall be further elaborated on later in this decision.

(b) Date of knowledge

*The Service Provider also raised the plea '*that the Complainant was not truthful when claiming to have first hand knowledge of the matters complained about on the 14th September, 2024'*. (fn. 17: p. 149)*

This aspect is particularly relevant in case of a plea related to the competence of the Arbiter under Article 21(1)(c) of the Arbiter for Financial Services Act (Chapter 555 of the Laws of Malta) ('the Act'). Given that no plea of prescription was raised in terms of such article and taking into consideration also the proviso to Article 19(3) of the Act, (fn. 18: This provides that '... the financial services provider may only raise the plea of prescription in the first written submissions provided for by article 22(3)(c) unless otherwise authorised by the Arbiter giving reasons for that authorisation') *the Arbiter considers that there is no relevance and need to consider this aspect any further, and this plea is dismissed accordingly.*

(c) Not the Proper Defendant

In its final submissions, the Service Provider also claimed that it is not the proper defendant arguing that 'his complaints should have been directed to the trustee, Baker Tilly'. *(fn. 19: Ibid.) It submitted in this regard:*

> 'That the Respondent Company is not the rightful defendant in relation to the claims brought forward and it is blatantly clear the Complainant is complaining about the conduct of a third party, namely the trustee, Baker Tilly and henceforth the request for compensation cannot be directed to the exponent'. *(fn. 20: p. 152)*

Apart from the fact that this matter was only raised in the final submissions, it is amply clear that the Complaint involves claims about the investment advisory services provided by the Service Provider for which the Service Provider is the proper and legitimate defendant. There is accordingly no basis on which the said plea could be upheld, and the Arbiter shall proceed to consider the merits of the case next.

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. *(fn. 21: Cap. 555, Art. 19(3)(b))*

The Arbiter is considering all pleas raised relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555 (fn. 22: Art. 19(3)(d) which stipulates that he should deal with complaints in 'an economical and expeditious manner'.

Background

Complainant's profile, objective and wishes

The Service Provider's Confidential Client Fact Find ('CCF') dated 30 August 2013, signed by both parties and completed in respect of the investment advisory services provided by the Company to the Complainant, classifies the Complainant as a 'Retail Client'. *(fn. 23: p. 16-30)*

The CCF identifies the Complainant as a British national born in 1962, having no 'financial related qualification'. *(fn. 24: p. 17-18) His gross income and that of his spouse were indicated as GBP15,500 and GBP12,000 respectively. (fn. 25: p. 18) The*

CCF further outlines that the Complainant had no other investments at the time. (fn. 26: Ibid.)

*His risk profile and attitude to risk was furthermore indicated as 'Balanced' (from a scale ranging from '*Cautious', 'Defensive', 'Balanced', 'Ad*venturous' to* 'Speculative'*). The term* 'Balanced' *was described as follows:*

> 'I wish to invest in investments whose overall volatility and riskiness, that is size of movements, up or down, is broadly equivalent to the UK stock market e.g. a mainstream UK equity fund or similar*'. (fn. 27: p. 21-22)*

The Complainant was indicated as not satisfying the criteria to be treated as a 'Professional Client' *under the MiFID Directive.(fn. 28: p. 23)*

Decree of 9 June 2025

Given that certain documentation and clarifications requested during the hearing of 18 March 2025 remained pending even after the parties' final note of submissions, the Arbiter issued a decree on 9 June 2025, listing the documentation and clarifications that remained outstanding and requesting them to be produced accordingly by the Service Provider. (fn. 29: p.153-154) The information subsequently provided enabled the Arbiter to obtain a clearer and more comprehensive picture of the issues at hand.

The Scheme, its underlying policy and investment portfolio

The Complainant joined the retirement scheme (a Self-Invested Pension Plan, 'SIPP') issued by Baker Tilly Isle of Man Group on 9 September 2013. (fn. 30: p. 32) His pension scheme then acquired the Universal Personal Portfolio issued by Hansard International – this being 'a whole-of-life unit-linked insurance contract that allows for the investment of lump-sum contributions'. *(fn. 31: https://www.aesinternational.com/hubfs/Independent%20Reviews/Hansard%20International/Universal%20Personal%20Portfolio%20Key%20Information%20ocument.pdf)*

The Hansard Policy that was acquired for the Complainant commenced on 13 November 2013, with an initial investible premium of GBP 51,272.20. (fn. 32: p. 181)

The following four investments were then purchased during November-December 2013 and held within the said Hansard policy: (fn. 33: Ibid)

- GBP 15,000 (consisting 29.3% of the initial investible premium) into BMIFML O/S Multi Strat Growth Strat;

- GBP 15,000 (consisting 29.3% of the investible premium) into BMIFML O/S High Income;
- GBP 6,949 (consisting 13.6% of the investible premium) into Alquity Africa Fund B GBP;
- GBP 12,275 (consisting 24% of the investible premium) into Prestige Alternative Finance GBP.

The Service Provider indicated a total of GBP 23,767.67 as having been paid in fees from the Complainant's pension scheme. (fn. 34: p. 136) It also indicated the Complainant as having withdrawn the sum of GBP 20,271.71 from his pension. (fn. 35: p. 135) This data is summarised (for ease of reference) in Table A below.

Table A – Overview of Transfer, fees and withdrawals

	GBP
Complainant's pension initial transfer	*51,272.20*
Total fees paid overall from the SIPP & Hansard policy (fn. 36: p. 126)	*(23.767.67)*
Withdrawal by Complainant	*(20,271.71)*
Difference	*7,232.82*
Loss experienced on his pension (inclusive of fees paid)	*31,000.49*

The figures provided by the Service Provider were analysed further and compared with the data emerging from official Cash Statements that were requested by the Arbiter to be produced in respect of the Hansard policy (covering mainly the period 13 Nov 2013 to 30 Sept 2024). (fn. 37: Arbiter's decree of 9 June 2025 – P. 154)

According to the said Cash Statements, a total of over GBP 16,000 emerges to have been paid in fees on the underlying Hansard policy alone as per the summarised breakdown provided in Table B below. (fn. 38: The breakdown in the Table omits certain fees applicable from 13 Nov 2023 to Dec 2023 and from 1 Jan 2024 to 11 Feb 2024 given that such data did not feature in the Cash Statements provided p. 181-213)

Table B – Breakdown of the fees charged on the Hansard policy

	Adm. Fee	Dealing charge	Establishment fee	Investment Advisor Fee	Management Fee	Bank charges	Interest paid	Mandated Fee
2013	70.49	144	170.91	124.82	103.25	-	-	
2014	134	37	256.36	124.03	192.27	10	2.27	
	134		256.36	123.63	192.27			
	137		256.36	124.69	192.27			
	137		85.45	122.96	192.27			
2015	137	37		125.32	192.27	10	2.56	
	137	25		119.37	192.97		3.53	
	138			112.61	192.27		0.74	
	138			113.86	192.27			
2016	138			114.3	192.27	10		
	138			115.1	192.27			
	139			118.59	192.27			
	139			117.86	192.27			
2017	139			119.26	192.27	10	0.58	
	139			118.86	192.27			
	142			116.4	192.27			
	142			117.64	192.27			
2018	142	50		80.07	192.27	10		
	142			81.03	192.27	10		
	147			78.68	192.27			
	147			74.59	109.73			
2019	147	25		76.21	38.11	10	0.64	
	147			77.44	38.72			
	151			75.58	37.79			
	151			75.98	37.99			
2020	151	25		68.7	34.35	10	3.12	
	151	25		72.37	36.18		5.2	
	156			72.08	36.04		7.76	
	156			72.13	36.07		4.22	
2021	156	50		72.58	36.29	10	0.35	

	Adm. Fee	Dealing charge	Establishment fee	Investment Advisor Fee	Management Fee	Bank charges	Interest paid	Mandated Fee
	156			67.18	33.59		0.4	
	159			67.16	32.73		2.53	
	159			67.38	33.69			
2022	159	50		64.89	32.44	10	0.71	
	159	25		58.59	29.3	10	1.88	
	166			57.69	28.84	10	5.23	
	166			45.9	22.95		3.95	
2023	166	25		45.34	22.67	10	0.48	
	166			37.56	18.78		2.14	
	175			34.91	17.45			
2024	175	25			16.9	10	5.55	33.32
	175	25			14.99			29.5
	182							0.72
Totals	**6,385.49**	**568.00**	**1,025.44**	**3,553.34**	**4,502.68**	**140.00**	**53.84**	**63.54**

In addition to the fees paid on the Hansard policy, a total of over GBP 7,000 was also paid separately to the trustee, Baker Tilly, in respect of the SIPP as indicated by the Service Provider. (fn. 39: p. 136)

The total fees paid on the Hansard policy (as emerging from Hansard's Cash Statements) and the fees paid to Baker Tilly (in respect of the SIPP) reflect the figure of over GBP 23,000 in fees paid overall on the Scheme's structure as listed by the Service Provider.

With respect to the four investments underlying the Hansard policy, the following transactions and current status were indicated by the Service Provider: (fn. 40: P.133-134)

- *BMIFML O/S Multi Strat Growth Strat fully redeemed after various partial sales occurring over a period of time, yielding an overall net gain of GBP 5,303.15;*
- *BMIFML O/S High Income sold in 2018 yielding a net gain of GBP 2,707.46;*
- *Alquity Africa Fund B GBP sold in 2015 yielding a net loss of GBP 2,105.42;*
- *Prestige Alternative Fund (partial sale in 2020) with an* 'approximate unrealised loss' *as at 2024 of -GBP 11,941.35. (fn. 41: p. 134)*

The transactions undertaken in respect of the said investments as listed according to the official Cash Statements issued by Hansard are summarised in Table C below: (fn. 42:p. 181-213)

Table C – Investment Transactions

	Date	Purchase GBP	Date	Sale GBP	Income/ Dividends GBP	Net gain/loss GBP
BMIFML O/S Multi Strat Growth Strat	21/11/13	15,000	11/11/14 01/06/15 15/01/18 28/08/19 19/11/20 26/04/21 12/05/21 14/01/22 04/04/22 14/11/22 28/04/23 12/02/24 21/05/24	660 640 3,000 1,000 2,125 2,500 420 1,060 1,300 2,015.57 1,917.28 1,576 1,279.27	810.03	5,303.15
BMIFML O/S High Income	21/11/13	15,000	15/01/18	14,603.67	3,103.79	2,707.46
Alquity Africa Fund B GBP	26/11/13	6,949	22/09/15	4,843.58	-	-2,105.42
Prestige Alternative Fund	02/12/13	12,275	30/09/20	331.15	-	*
Total						-6,038.66

**Unrealised loss of GBP 11,943.85*

The Policy Value statement issued by Hansard International as at 31 July 2024, indicates the Prestige Alternative Fund valued at zero. (fn. 43: p. 232) It is clear that there are material issues on this investment and it is unclear whether the investor will receive any funds, if at all, following the completion of the ‘managed sell-down process’ *on this investment as reflected in the communication of 17 July 2024. (fn. 44: p. 78)*

This aspect will be duly taken into consideration in the conclusion reached in this decision.

As to encashments, the Cash Statements issued by Hansard indicate various encashments done from the Hansard policy throughout the years. These withdrawals as well as the encashments paid to the Complainant as listed by the Service Provider are summarised in Table D below.

Table D – Breakdown of Encashments

Encashments emerging from the Hansard Policy (GBP) [45]				Encashments paid to Complaint as indicated by the Service Provider (GBP) [46]	
08-Oct-14	Encashment	900			
28-Sep-15	Encashment	913.2			
17-Aug-16	Encashment	903.83			
25-Aug-17	Encashment	903			
01-Feb-18	Encashment	14,036		05/02/ 2018	14,032.18
08-Sep-18	Encashment	909			
03-Sep-19	Encashment	917			
15-Dec-20	Encashment	889			
24-May-21	Encashment	2500		16/06/2021	1,322.78
25-Jan-22	Encashment	150			
06-Apr-22	Encashment	1560		27/05/2022	1,653.48
15-Nov-22	Encashment	901			
04-May-23	Encashment	1654		30/05/2023	1,653.48
29-May-24	Partial Surrender	1280.99		03/06/2024	1,279.09

Out of the encashments emerging from Hansard's Cash Statements, only six payments were listed by the Service Provider to have been paid to the Complainant – namely, £14,032.18 in February 2018, £1,322.78 in June 2021, £1,653.48 in May 2022, £1,653.48 in May 2023 and £1,279.09 in June 2024 apart from a payment of £330.70 indicated as reclaim of tax on 27/05/2022). (fn. 47: p. 1325)

Various other encashments of around £900 annually appear to have been made to settle fees payable under the SIPP to Baker Tilly. (fn. 48: p. 242-243), fn. 49: apart from an 'Establishment fee' *of £350, the fees of Baker Tilly included an* 'Annual trustee, consultancy administration & accountancy fee' *of £750 plain disbursements (p. 170). An email dated 10/25/2024 issued by Baker Tilly explained that* 'With regards to the encashments for Baker Tilly fees ... His annual fee is £750 + vat + disbursements at cost' (p. 278). *As at 31 June 2024, the Hansard Policy indicated a remaining cash balance of GBP 471.57. (fn. 50: p. 231), fn. 51: NO details are available of any cash balances remaining in the SIPP of Baker Tilly).*

Request to fully withdraw his pension

It is noted that in his Complaint to the OAFS, the Complainant requested, as remedy, the return of his pension where he indicated that this stood at GBP 30,713.90 at the time he had first requested his pension to be returned to him in March 2020. (fn. 52: p. 4)

In his final submissions, the Complainant reiterated that:

> 'Finally, as originally stated even with all this overcharging and mismanagement, had I been able to withdraw funds when I requested it, there was £30,000 still in the fund'. *(fn. 53: p. 147)*

A Benefit Statement issued by Baker Tilly, Isle of Man, indicated the Complainant's scheme valued at GBP 30,724.93 as at 30 June 2019. (fn. 54: p. 32)

It is noted that despite the Complainant's initial request to withdraw his pension was indicated as being in March 2020, the properly completed form for the full withdrawal of his pension was only received by the SIPP's trustee a year later in March 2021. In an email dated 9 March 2021, sent to the Complainant, Baker Tilly inter alia explained that:

> 'We received a request from you in March 2020 in relation to withdrawing funds from the pension scheme. We responded to you in March 2020, via email, along with the retirement form and fully outlined all options available to you in respect of your pension. We then resent your retirement options to you in December 2020 following a phone call from you requesting this information again. We received your retirement form at our offices in January 2021.
>
> Upon receipt of your form, I contacted you in respect of the retirement options you had chosen advising that you had completed the incorrect sections and had already withdrawn your maximum tax free cash, as advised in 2020. Therefore, you couldn't withdraw this lump sum again. Further to an exchange of emails, my colleague reiterated **how to complete the form in order to withdraw your full pension balance.**
>
> We received a second form from you in February 2021, however, this was not completed in accordance with the exchange of emails you had with our team in January. We have fully outlined your options and confirmed how the form should be completed, however, the forms received to date from you have not been correctly completed **on the basis you wish to withdraw all your funds** …'. *(fn.* 55: *p. 74 – Emphasis added by the Arbiter)*

In a subsequent email of 17 March 2021, Baker Tilly confirmed to the Complainant that they 'have received the fully completed form and this is currently being processed'. *(fn. 56: p. 73)*

Instructions to redeem the remaining full holding of the Prestige Alternative Finance GBP was made on 1 April 2021. (fn. 57: p. 253 – 256) It is noted that in an email dated 22 March 2021, Baker Tilly had however informed the Complainant that:

'Please note that Hansard have advised us that although the Prestige fund isn't a yearly dealing fund, they are aware that all deals placed lately for this asset have settlements date of a year or more and that this now means that although we can place a request to sell 100% of the holding, you should be aware of the dealing timeframe involved meaning that you have to wait until the asset had sold before we could pay your fund remnant lump sum'. *(fn. 58: p. 72)*

The Complainant replied to Baker Tilly on 22 March 2021, stating:

'The timescale is annoying but we have no choice, please go ahead and sell the assets and release the funds to us, as soon as you can'. *(fn. 59: p. 71)*

Observations & Conclusions

(a) Claim of a high-risk investment not reflective of his needs, wishes, profile

It is noted that during the first hearing of 24 February 2025, the Complainant elaborated on his Complaint and testified as follows:

'I gave them the money to be invested in a balanced manner until I took the money out for my pension a few years later. …

I put my investment in a balanced fund; I do not know why I was put in something that was so risky ….

After I asked for the money back, they said that this fund was for experienced investors only. That's not me. That is the only investment I have. I have no other monies.

… I don't believe that it was originally put where it should have been put; accessible when I got to 60 and where the money was safe and would earn around the rate of the UK stock market …'*. (fn. 60: p. 127 & 128)*

On the aspect of not being an experienced investor, the Complainant further pointed out the following in his final submissions:

'In the letter from Prestige I received once I was told my pension value was nothing, the following paragraph shows how risky Prestige was:

PALTF is an experienced investor fund and not for retail investors. In the UK PALTF is for professional investors and not for retail investors. Potential investors should seek professional independent financial advice prior to making any decision to invest. Please also refer to the Information Memorandum of PALTF before making any final investment decisions. In no way am I a professional Investor'. *(fn. 61: p. 146)*

On its part, the Service Provider rejected the allegations and claimed inter alia *that no responsibility should be borne by it for the losses incurred, given that the issues with the Prestige fund were not within its control and that* 'the funds invested perfectly fit the risk profile of the Complainant'. *(fn. 62: p. 125)*

In its final submissions, the Service Provider submitted inter alia *that the investment portfolio was balanced and that there were external factors (*like 'the pandemic of Covid-19 and the negative interest rates in 2021'*) (fn. 63: p. 151) which affected the value of the Prestige fund and the SIPP's ability to entertain the withdrawal request.*

As outlined above, the Complainant suffered losses on two investments within his investment portfolio. The two investments were the Alquity Africa Fund B GBP and the Prestige Alternative Finance GBP (ISIN Code KYG722711283), (fn. 64: p.80, 83 & 236) the latter being the main investment disputed by the Complainant during his Complaint filed with the Arbiter.

No details were provided by the parties in respect of the Alquity Africa Fund B GBP investment (which constituted the smallest investment within the portfolio, with the amount invested being 13.6% of the investible premium as outlined above). A general internet search yielded a prospectus which indicated this as a UCITS fund based and regulated in Luxembourg, classified as a retail fund (with a minimum initial subscription amount of GBP 5,000).

According to the sourced Prospectus, the Alquity Africa fund mainly invested in equities (listed on regulated markets of African countries or exposed to the African continent). (fn. 65: Pages 52 & 72 of the Prospectus of the Alquity SICAV https://www.fundsquare.net/download/dl?siteId=FSQ&v=089yK+J0/8sNJytj8/oslocK4/Jfx5z7nNOxXh177KOqhZD9RXdJuGMIZP2XQ36NcPrnq83V/UV6Os4dsPBbvUCE6rVfCTzNB8bC35+MT8L3C6Zw+pw+bQs9yhz7yn5mVyM_7gLOMUCR/YrF2kjw4Mw==). It is noted that the said prospectus indicated the following with respect to the target investor:

'PROFILE OF THE TYPICAL INVESTOR:

> The sub-fund is suitable for investors who are prepared to accept a high level of risk and who plan to maintain their investment over a medium to long term period.' *(fn. 66: page 73 of the Prospectus of the Alquity SICAV – Emphasis added by the Arbiter)*

The Service Provider presented a Fact Sheet (dated 08/2011), in respect of the Prestige Alternative Finance GBP (which fund constituted a higher portion, 24% of the *investible premium at the time of investment). The Arbiter notes the following factors which emerge with respect to this investment:*

a. *The provided Fund Fact Sheet stated that this fund is:*

   '**an experienced investor, asset-based lending strategy**, which invests in a highly diversified portfolio of rural, commercial and industrial loans and leasing agreements in the United Kingdom'. *(fn. 67: p. 235 – Emphasis added by the Arbiter)*

b. *This fund was further described as follows:*

   '… **is an experienced investor fund** and potential investors should seek professional independent advice prior to making any decision to invest. Furthermore as **the fund is domiciled within the Cayman Islands it is classified as an Unregulated Collective Investment Scheme (UCIS). UCIS are classified as higher risk investments and are therefore not suitable for all types of investor.** If you are uncertain with regards to your eligibility you should seek professional advice …'. *(fn. 68: p. 236 – emphasis added by the Arbiter)*

c. *It is also noted that this fund had a high entry limit (that is, minimum investment) of GBP 60,000. (fn. 69: Ibid.) This is further reflective of the non-retail nature of this fund.*

Whilst the Complainant was eligible to invest in the Alquity Africa Fund - albeit one could question the elevated risk and concentration to the African sector brought by the exposure to this fund which was, however, relatively smaller - it is clear and evident that the Prestige Alternative Finance GBP was outrightly not a suitable investment for the Complainant for which he was eligible.

The Complainant, a retail investor who had no other investments (as indicated in the Confidential Client Fact)**, (fn. 70: p. 18 & 23)* ***and who thus lacked experience, was indeed not eligible to invest in the Prestige Alternative Finance fund in the first place. It is noted that the Prestige fund also had a minimum entry limit (of GBP 60,000), a limit which was even higher than the Complainant's overall total pension (of GBP 51,272.20).

Furthermore, the Prestige fund, a specialised fund focused on direct lending, was a **'higher risk investment'** ***by its very nature, as also described in the Fund Fact Sheet. The nature and type of this fund indeed clearly contrasted with and went against the Complainant's*** **'Balanced'** ***attitude to risk and his wish for a*** **'mainstream UK equity fund'** ***specified in his Client Fact Find.*** *(fn. 71: p. 21)*

The extent invested into this fund (nearly one fourth of the investible premium at the time of investment), was also quite high on its own in the context of the pension portfolio with a 'Balanced' *risk profile, even more so when coupled with the particular risk element of the Alquity Africa Fund as mentioned above.*

In one of its notes of submissions, the Service Provider claimed that:

> 'When advising the Complainant it conducted a suitability test to ascertain that:
>
> a. It meets the investment objectives of the client in question;
> b. It is such that the client is able financially to bear any related investment risks consistent with his investment objectives;
> c. It is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio'. (fn. 72: p. 150)

It is amply clear that the investment in the Prestige Alternative Finance GBP failed each of the above-mentioned criteria for the reasons mentioned. This is when considering the Complainant's profile, risk attitude and investment objective as outlined in his Confidential Client Fact Find.

Furthermore, the very fact that somehow the minimum investment limit (GBP 60,000) meant to present a barrier to entry by non-professional investors, was somehow circumvented and the customer was allocated a position of GBP 12,275, being just 20% of the entry threshold, indicates how inappropriate this investment was in relation to the Complainant's risk profile.

The Service Provider's argument that notwithstanding the investment allocated to Prestige being clearly unsuitable for a retail investor, the portfolio overall still honoured the balanced risk profile of the investor is refuted.

A balanced risk portfolio is meant to include a spread of diversified investments with different risk scores but must respect the retail profile of the investor even at the individual component level.

The fact that following withdrawals and encashments to finance charges, the portfolio was left totally exposed to a sole unsuitable investment shows the undue risks incurred by including a professional type of investment in a retail portfolio.

(b) Claim that the sale of investments and withdrawals were undertaken without his knowledge and the question of where his pension had gone

The Complainant's signature is not apparent in a number of Hansard's withdrawal/redemption forms that were produced during the proceedings of the case. (fn. 73: p. 238 – 262, 270 & 273)

It has, however, emerged that the cash held within the Complainant's SIPP and policy was, on various occasions, insufficient to provide for the settlement of ongoing fees. Redemptions from investments were made on various occasions, with such redemptions providing for the settlement of outstanding fees and the negative balances that regularly accumulated in the Hansard policy. This is evident from the Hansard's Cash Statements starting from late 2014 onwards. (fn. 74: Example: Oct 2014 – p. 183; June 2015 – P. 186; Jan 2018 – P. 195; Nov. 2020 – P. 204; April 2021 – P. 205; Jan. 2022 – P. 207; Nov. 2022 – P. 210; April 2023 – P. 211)

It is noted that in an email dated 25 October 2024 from Baker Tilly Isle of Man to the Service Provider, Baker Tilly indeed explained that:

> 'With regards to the encashments for Baker Tilly fees, they were done in line with the fee schedule to which the member agreed to at outset. His annual fee is £750 + vat + disbursements at cost. At the time the invoice was raised, if there was sufficient cash in the Hansard account, a withdrawal would have been completed. If there was insufficient cash on account then we would have contacted Lawsons to determine funding …
>
> …
>
> Some of the sales quoted in the spreadsheet were keyed by Hansard themselves to cover fees and the 2015 and January 2018 sales were keyed directly by the advisor; Peter Hardy.'(fn. *75: p. 173)*

As to the question where his pension had gone, it is clear that, as emerging from the information provided, over 46% of the Complainant's initial pension was taken in fees within eleven years (from 2013 to 2024).(fn. 76: GBP 23,767.07 in fees of his initial premium of GBP 51,272.20)

The remaining balance on his pension involves the overall losses arising from his investment portfolio and the withdrawals made by the Complainant as summarised in the tables above, as well as any cash balances potentially remaining in his SIPP and underlying policy. (fn. 77: No full details were provided to determine the remaning cash balances exactly)

It is noted that, during the hearing of 24 February 2025, the Complainant testified:

> '… And there were some charges. They told me that they were £675 a year and yet about £23,000 have gone out in 10 years so that would be like

£7,500/£8,000. They did not advise me of that, otherwise, I would not have put the money in knowing they would have taken half the money out in ten years*'. (fn. 78: p. 128)*

On the subject of fees, the Complainant further testified the following during his cross-examination:

'So, it is being said, that I was aware of what the charges were going to be. I say that it was £750 a year but then, in ten years, it came to £23,000 not £7,500'. (fn. 79: *p. 130)*

The Complainant again noted in his final submissions that:

'… I never knew the extent of fees, at the original meeting I was told £750.00 per year in fees, I was never given an updated figure. However, I appear to have been charged closer to £2500 per year'. *(fn. 80: p. 146)*

The Complainant also referred to various annual withdrawals and redemptions from the BMIFML O/S Multi Strat Growth Strat and reiterated that:

'… I never received it or instructed the withdrawals.

… Once again, I never received these funds, what were they for, now I believe to pay fees.

I was never informed that there would be 3 companies involved all taking fees'. *(fn. 81: p. 146-147)*

As outlined in the hearing of 18 March 2025, the Service Provider was requested by the Arbiter to clarify the fees that the Complainant had signed for (not just those payable to the Service Provider, but also those charged and applicable to his SIPP, as well as the underlying Hansard Policy). (fn. 82: p. 137-145)

This information was not produced after the hearing, nor in the parties' final submissions. The Arbiter accordingly issued a decree on 9 June 2025 requesting, inter alia*, such information to be provided by the Service Provider. (fn. 83: p. 153-154)*

Despite the Arbiter's additional decree, the Service Provider just produced the contract signed by the Complainant with Lawsons Equity for the provision of investment advisory services and the form signed with Baker Tilly. No contract or form signed in respect of the Hansard policy was produced.

The form signed by the Complainant with Baker Tilly included the schedule of fees applicable to the SIPP. This schedule listed the annual trustee fee of '£750 plus disbursements'. (fn. 84: p. 170)

As to the Hansard policy, the Service Provider failed to produce the signed contractual agreement in respect of such policy, but only attached an extract thereof outlining the schedule of fees on the policy (with such schedule bearing no signatures). (fn. 85: p. 237)

The Arbiter observes that the lack of disclosure of and/or consent to the fees charged on the Hansard policy was an aspect that the Complainant only specifically mentioned and highlighted during the sittings and not in his original formal complaint with the Service Provider and with the OAFS. (fn. 86: p. 3-4 & 8)

However, the Arbiter notes that his original complaint included queries of several drawings (which, according to him, were never explained and never received), and it results that by implication, these drawings were related to charges which he claims were unauthorised.

Whilst the Arbiter understands and sympathises with the Complainant that the extent of fees he was charged within the overall structure of his pension was remarkably high and unreasonable for the very small size of his pension, the Arbiter does not consider that, in the case before him, there are sufficient and strong grounds on which compensation could be granted with respect to the subsequent claimed lack of disclosure/consent of fees on the Hansard policy. The Hansard policy documents seem to have been signed on Complainant's behalf by Baker Tilly who must have committed themselves to these charges considering them as 'disbursements' *signed for by the Complainant.*

The Arbiter shall thus focus his decision on the alleged lack of suitability of the chosen investments, as was raised in the Complaint filed by the Complainant.

<u>Conclusion</u>

As a remedy to his Complaint, the Complainant requested that the money remaining in his pension fund (indicated as GBP 30,724) as of 2019 be returned to him.

It is noted that, in its submissions, the Service Provider identified certain withdrawals that were paid to the Complainant in subsequent years after 2019 (with these payments not being contested during the proceedings). (fn. 87: Example – Income indicated as paid to the member of GBP 1,322.78 on 16/06/2021; GBP 1,653.48 on 27/05/2022; GBP 330.70 on 27/05/2022; GBP 1,653.48 on 30/05/2023; GBP 1,279.09 on 03/06/2024 – P. 135)

Given the shortcomings identified by the Arbiter with respect to the Prestige Alternative Finance fund investment as amply explained above, the Arbiter shall thus calculate the amount of compensation which, in his opinion, is fair, just and *reasonable in the particular circumstances of this case, taking into consideration the loss experienced in this specific investment and the damages attributed by the Arbiter as arising from this investment to the Complainant's pension.*

As to the damages, it is noted that the lack of redemption possibility for the Prestige Alternative Finance GBP Fund in 2021, (this being the time when the Complainant had validly requested his pension to be withdrawn), and thereafter, effectively ended up prolonging the existence of the prohibitively expensive pension structure further on his even smaller pension pot. The Complainant continued to incur multiple fees in the process to his detriment. (fn. 88: It is considered that the Prestige Alternative Finance fund was the main stumbling block for the closure altogether of his pension scheme as per the communications exchanged between the Complaiant and Baker Tilly in March 2021 – P. 71 – 72).

This aspect shall accordingly be reflected in the amount of compensation awarded in this case."

L-Appell

8. Is-soċjetà appellanta ppreżentat ir-rikors tal-appell tagħha fit-8 t'Awwissu, 2025, fejn talbet lil din il-Qorti sabiex:

"... jogħġobha tirrevoka, tħassar jew tvarja d-deċiżjoni li ttieħdet fit-22 ta' Lulju, 2025 u dan salv dawk il-provvedimenti li jidhrilha xierqa u opportuni dina l-Onorabbli Qorti."

9. L-appellanta tibbaża r-rikors tal-appell tagħha fuq tliet aggravji: (i) id-deċiżjoni hija *ultra vires,* nulla u bla effett peress li l-Arbitru wasal għal deċiżjoni li tmur kontra d-dispożizzjonijiet tal-Kap. 555 tal-Liġijiet ta' Malta; (ii) l-investiment kien idoneu skont l-*investment objectives* tal-ilmentatur; (iii) l-Arbitru ma kellux il-kompetenza jattribwixxi l-miżati mħallsa lil terzi bħala danni dovuti mis-soċjetà appellanta.

10. Is-soċjetà appellanta tagħti sfond tal-fatti kif seħħew, u li taw lok għal dawn il-proċeduri. Tgħid li l-appellat ressaq ilment quddiem l-Arbitru fis-26 ta' Settembru, 2024, u skont hu l-ewwel darba li sar jaf bil-fatti lamentati kien fl-14 ta' Settembru, 2024 *[recte].* Tgħid li l-ilment tal-appellat fih diversi inkonsistenzi, hekk kif hemm drabi fejn jgħid li kellu jkollu portafoll bilanċjat, iżda imbagħad jgħid li ntefa' kollox f'basket wieħed b'ammont għoli mitfugħ f'investiment riskjuż. Qalet li l-appellat spjega li huwa ried il-flus fi żmien għaxar snin minn meta investihom, jiġifieri fi żmien għaxar snin mill-2013, iżda huwa talab il-flus fis-sena 2021, u kien infurmat li l-proċess biex ikun jista' jieħu flusu lura, kellu jdum madwar sena. Qalet li l-appellat kien għamel kuntatt magħha fis-sena 2013, u ġie nnutat li dak iż-żmien huwa kellu attitudni bilanċjata għar-riskju, u li dan il-fatt ġie dokumentat. Qalet ukoll li matul is-snin l-appellat ġibed l-ekwivalenti ta' GBP20,271.71, u li huwa ħallas GBP16,000 bħala miżati *ai termini* tal-Hansard Policy u GBP7,000 rappreżentanti *fees* lit-*trustee* Baker Tilly. Qalet li l-Arbitru nnifsu kkonferma li mill-*BMIFL O/S Multi Strategy Growth Strategy*, l-appellat għamel gwadann ta' GBP 5,303.15 u li mill-*BMIFML O/S High Income* għamel gwadann ta' GBP 2,707.46. Kien hemm telf ta' GBP 2,105.42 fuq l-*Alquity Africa Fund B GBP,* u *approximate unrealised loss* fl-2024 ta' GBP 11,941.35 fuq il-*Prestige Alternative Fund*. Qalet li mid-deċiżjoni appellata, ma jirriżultax li l-Arbitru qies is-sottomissjonijiet tagħha rigward il-fatturi li wasslu għat-telf sopra-indikat, jiġifieri l-pandemija tal-Covid-19 u l-imgħaxijiet fis-sena 2021.

11. L-appellat min-naħa tiegħu jwieġeb billi qal li d-deċiżjoni appellata hija ġusta u timmerita konferma, filwaqt li l-appell imressaq mill-appellant għandu jiġi miċħud bl-ispejjeż.

Konsiderazzjonijiet ta' din il-Qorti

12. Din il-Qorti ser tgħaddi sabiex tikkunsidra l-aggravji li qiegħda tressaq is-soċjetà appellanta, u dan fid-dawl tas-sottomissjonijiet tal-appellat, u tad-deċiżjoni tal-Arbitru.

L-Ewwel Aggravju: *[Id-deċiżjoni hija* ultra vires*, nulla u bla effett pererss li l-Arbitru wasal għal deċiżjoni li tmur kontra d-dispożizzjonijiet tal-Kap. 555 tal-Liġijiet ta' Malta]*

13. Is-soċjetà appellanta tgħid li s-setgħat tal-Arbitru u r-rimedji li dan jista' jordna fi kwalunkwe każ, huma limitati u ristretti għal dawk li huma previsti mil-liġi. Tgħid li l-Arbitru m'għandux is-setgħa li jiddeċiedi kif irid sabiex jagħti rimedju xieraq. Is-soċjetà appellanta tgħid li fil-konklużjonijiet tiegħu, u wara li ordna li jitħallsu d-danni lill-appellat, l-Arbitru ddeċieda li kwalunkwe rikavat mill-investiment *Prestige Alternative Finance GBP Fund* jiġi assenjat lilha. Tgħid li *ai termini* tal-artikolu 26(3)(ċ)(iv), l-Arbitru għandu jipproċedi għal deċiżjoni, u jordna lill-provditur tas-servizzi finanzjarji jħallas ammont ta' kumpens għal kull telf ta' kapital jew dħul jew danni sofferti mill-persuna li tagħmel l-ilment minħabba l-imġieba li fuqha jkun sar l-ilment, mingħajr imgħax jew bl-imgħax fil-parametri stabbiliti mil-liġi. Tgħid li dan ifisser li l-kompitu tal-Arbitru huwa li jagħti kumpens permezz ta' deċiżjoni finali, liema deċiżjoni finali tkun torbot lill-partijiet, u titqies bħala titolu eżekuttiv. Tgħid li l-Arbitru ma setax jordna kumpens fuq it-telf allegat fuq il-Prestige Alternative Finance Fund, jekk dan it-telf mhuwiex ikkonfermat.

14. L-appellat jilqa' għal dan l-aggravju billi jagħmel riferiment għall-artikolu 26(3)(ċ)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta fl-intier tiegħu, u għar-rimedji li jista' jagħti l-Arbitru. Jgħid li ladarba l-Arbitru sab li l-*Prestige Alternative Finance Fund* ma kienx jgħodd għalih, dan ried jirreintegrah fl-i*status quo ante* tiegħu fir-rigward ta' dan l-investiment. Jgħid ukoll li ladarba l-Arbitru sab li dan l-investiment ma kienx jgħodd għall-appellat, dan kellu jtemm ir-relazzjoni tiegħu miegħu, u għalhekk kien ġust u ekwu li l-appellat jiġi kkumpensat billi anki jitħalla jaqta' r-relazzjoni tiegħu minn ma' dan l-investiment, u ordna lis-soċjetà appellanta tassumi dan l-investiment hi u tirregola ruħha fir-rigward. Jgħid li d-direzzjoni tal-Arbitru hija waħda li tirrettifika l-konsegwenzi tal-għemil tas-soċjetà appellanta, u li din il-Qorti m'għandhiex taċċetta li s-setgħat tal-Arbitru jiġu ridotti għal eżerċizzju akkademiku. Jgħid li l-ispirtu tal-Kap. 555 huwa li l-Arbitru għandu jiffoka fuq il-ġustizzja sostantiva, billi joffri rimedji effikaċi u prattiċi, u li għalhekk dan l-aggravju għandu jiġi miċħud.

15. Il-Qorti tirrileva li d-deċiżjoni tal-Arbitru hija waħda li ngħatat b'osservanza sħiħa tal-liġi u lejn il-kompetenzi li huwa għandu li joħorġu mil-liġi. L-aggravju tas-soċjetà appellanta jidher li huwa bbażat fuq il-fatt li l-Arbitru ordna li hija tieħu l-Prestige Fund taħt idejha u tirregola ruħha hi fir-rigward, wara li tħallas id-danni lill-appellat, sabiex b'hekk dan ikun qiegħed jaqta' kull rabta legali li seta' kellu ma' dan il-fond partikolari. L-artikolu 26(3)(ċ) tal-Kap. 555 fir-rigward tal-poteri li għandu l-Arbitru, fejn dan isib li l-fornitur tas-servizz ikun naqas, jipprovdi illi:

> "(ċ) Jekk l-ilment jinstab totalment jew parzjalment sostanzjat, l-Arbitru jista' jordna lill-fornitur tas-servizzi finanzjarji jagħmel waħda jew iżjed minn dawn li ġejjin:

(i) Li jirrevedi, **jirrettifika**[1], jimmitiga jew ibiddel l-imġiba li fuqha jkun sar l-ilment jew il-konsegwenzi tagħha;

...

(iv) Li jħallas l-ammont ta' kumpens għal kull telf ta' kapital jew dħul jew danni sofferti mill-persuna li tagħmel l-ilment minħabba fl-imġieba li fuqha jkun sar l-ilment, mingħajr imgħax jew bl-imgħax, b'dik ir-rata raġonevoli u fil-parametri stabbiliti bil-liġi kif l-Arbitru jista' jiddeċedi, fuq il-flus kollha jew xi parti mill-flus, u fuq iż-żmien kollu jew xi parti mill-perijodu bejn id-data li fiha l-imġiba li fuqha jkun sar l-ilment tkun bdiet sad-data li fiha jsir il-ħlas."

16. Din il-Qorti tqis li l-ordni li ta l-Arbitru sabiex tkun is-soċjetà appellanta bħala l-provditur tas-servizz li tieħu l-Prestige Fund taħt idejha, tinkwadra ruħha perfettament fis-sub-inċiż (i) tas-sub-artikolu 26(3)(ċ) tal-Kap. 555, li jgħid li l-Arbitru jista' jagħti ordni sabiex jassigura li l-imġieba li dwarha jkun sar l-ilment tiġi rettifikata. M'hemm xejn li huwa *ultra vires* fid-deċiżjoni mogħtija mill-Arbitru, u m'hemm xejn li jirrendi d-deċiżjoni waħda nulla jew mingħajr effett. Għaldaqstant in vista ta' dawn il-konsiderazzjonijiet, dan l-aggravju qiegħed jiġi miċħud.

It-Tieni Aggravju: *[L-investiment kien idoneu skont l-oġġettivi tal-ilmentatur]*

17. Is-socjetà appellanta tgħid li l-artikolu 789(1) tal-Kap. 12 tal-Liġijiet ta' Malta, jipprovdi li l-att, hawnhekk l-ilment, għandu jkun miktub b'mod ċar sabiex l-entità li għandha tirrispondi għal tali ilment tkun f'pożizzjoni li tiddefendi ruħha kif mixtieq, u dan peress li huwa d-dritt tagħha li jkollha l-opportunità li tagħti l-verżjoni tagħha tal-fatti kif ġraw. Tgħid li l-appellat għamel diversi allegazzjonijiet fil-konfront tagħha, minn *mis-selling,* għal nuqqas ta' informazzjoni u kważi kważi

[1] Enfasi tal-Qorti.

anki abbuż minn persuna vulnerabbli, u negliġenza. Tgħid li l-allegazzjonijiet kollha magħmula fil-konfront tagħha, huma infondati u żbaljati. Tgħid ukoll li l-oġġettivi tal-appellat ġew milħuqa kollha, u li l-appellat xtaq li jagħmel investiment bilanċjat bit-tir li jkollu dħul. Tgħid li t-twettiq ta' *suitability test* huwa obbligu regolatorju li jirregola jekk l-investiment irrakkomandat jew il-portafoll li qed jinħoloq, jilħaqx l-għanijiet tal-klijent in kwistjoni, inkluż it-tolleranza għar-riskju, humiex tali li l-klijent ikun kapaċi jġorr finanzjarjament, riskji tal-investimenti relatati li huma konsistenti mal-obbligi tal-investiment tiegħu; u li l-klijent għandu l-esperjenza u l-għarfien neċessarju biex jifhem ir-riskji involuti fit-transazzjoni.

18. Is-soċjetà appellanta tgħid li l-appellat ried dħul ogħla mill-medju ta' imgħax fiss f'kont bankarju, imma meta l-ammont ta' imgħaxijiet jew dħul jiżdied jew ikun jista' jiżdied, ir-riskju jiżdied ukoll. Tgħid li l-appellat għamel profitt tajjeb ħafna fuq BMIFML O/S Multi Strategy Growth Strategy u BMIFML O/S High Income, u li r-raġunijiet li wasslu għall-allegat telf ma kinux relatati man-natura jew mal-livell tar-riskju tal-investiment. Tgħid li r-raġunijiet li wasslu għall-allegat telf kienu relatati mal-pandemija, mat-tibdiliet fir-rati tal-imgħax, li ma kinux previsti. Tgħid li jekk l-appellat ġarrab telf, ma jsegwix li hija neċessarjament u awtomatikament responsabbli għal dan versu l-appellat. Tgħid ukoll li *dato ma non concesso* li hija ma kienx messha ħalliet lill-appellat jinvesti fi prodott li ma kienx jgħodd għalih, li ma kienx il-każ hawnhekk, dan qatt ma jista' jwassal għall-kundanna għall-ħlas tad-danni, għaliex ma kien hemm l-ebda ness bejn l-allegat ħażin kommess minnha u t-telf allegatament soffert mill-appellat.

19. L-appellat jgħid li kull riferiment għall-artikolu 789(2) tal-Kap. 12, huwa inapplikabbli u għal kollox irrilevanti, għaliex dan jipprovdi għan-nullità tal-atti ġudizzjarji. Jgħid li d-dettami ta' kif isir ilment quddiem l-Arbitru jinsabu elenkati fl-artikolu 22 tal-Kap. 555, li jgħid li l-ilment għandu jsir bil-miktub u għandu jinkludi r-raġunijiet għall-ilment, il-parti li kontra tagħha qiegħed isir l-ilment, u r-rimedju li jkun qiegħed jintalab. Is-sub-inċiż 22(8) tal-Kap. 555 imbagħad jgħid li l-Arbitru għandu jirregola l-proċedimenti kif jidhirlu xieraq skont ir-regoli tal-ġustizzja naturali, u li l-ebda proċedimenti quddiem l-Arbitru m'għandhom ikunu invalidi minħabba f'xi nuqqas ta' osservanza tal-formalitajiet, jekk kien hemm konformità sostantiva mal-liġi. L-artikolu 19(3)(b) u (d) tal-Kap. 555 imbagħad jipprovdi li l-Arbitru għandu jiddeċiedi skont dak li jkun ġust, ekwu u raġonevoli fiċ-ċirkostanzi partikolari tal-każ, u li dan għandu *'jittratta ilment b'mod proċeduralment ġust, informali, ekonomiku u mħaffef.'*.

20. Jgħid li huwa għal kollox irrilevanti l-argument li huwa għamel profitt mill-BMIFML O/S Multi Strategy Growth u mill-BMIFML O/S, għaliex id-deċiżjoni tal-Arbitru kienet ibbażata biss fuq jekk il-Prestige Alternative Finance GBP kienx adegwat għalih. Jgħid ukoll li permezz ta' dan l-aggravju s-soċjetà appellanta qiegħda titlob lil din il-Qorti teżamina l-fatti mill-ġdid, xi ħaġa li din il-Qorti m'għandhiex tagħmel b'mod leġġer. Jgħid ukoll li r-raġunijiet mogħtija mill-appellanta għat-telf sostnut minnu, huma fiergħa u bla bażi. L-appellat jgħid li l-Arbitru spjega li sal-31 ta' Lulju, 2024 dan il-fond ma kellu l-ebda valur, u li wara l-*managed sell-down process,* kien hemm il-prospett li l-appellat ma jieħu xejn. Jgħid li n-nuqqas ta' adegwatezza ta' dan l-investiment għalih ma kienx imprevedibbli, anzi, skont l-Arbitru nnifsu, kien ben evidenti, partikolarment meta wieħed iqis li marbut mad-dħul f'dan l-investiment kien hemm il-kriterju li

l-limitu minimu tal-investiment irid ikun ta’ GBP 60,000, iżda s-soċjetà appellanta sabet mod kif iddur ma’ dan l-ammont. Jgħid li l-provditur li huwa marbut b’obbligi fiduċjarji stretti, ma jistax jeżonera ruħu mir-responsabbilità tan-nuqqasijiet statutorji tiegħu, u li għalhekk l-Arbitru kien tassew ġust u korrett meta fir-rimedju tiegħu pprova jirreintegra lil-appellat fl-i*status quo ante* l-investiment li ġie *mis-sold.*

21. Fl-ewwel lok il-Qorti tibda billi tirrileva li kull riferiment li sar għall-artikolu 789 tal-Kap. 12 tal-Liġijiet ta’ Malta, huwa bla bażi u bla rilevanza għal dawn il-proċeduri, li huma regolati b’liġi speċjali, il-Kap. 555 tal-Liġijiet ta’ Malta, li jipprovdi għall-mod kif għandu jsir ilment quddiem l-Arbitru. Fil-każ odjern ma jirriżultax li l-appellat ma mexiex mal-mod preskritt dwar kif għandhom jitressqu ilmenti bħal dawn. Is-soċjetà appellanta tilqa’ għas-sejbien ta’ ksur tal-obbligi tagħha, billi timplika li kien l-appellat li talab forma ta’ investiment li jirrendi dħul ogħla minn investiment ieħor, u li dan neċessarjament ifisser li r-riskji relatati ma’ investiment bħal dan, huma akbar. Iżda l-Qorti tirrileva li l-appellat ried investiment bilanċjat, u li jipprovdi rata ta’ dħul komparabbli għal dik li jagħtu l-i*stocks* fir-Renju Unit. Fil-każ odjern l-Arbitru sab li kien hemm bejgħ ta’ prodott finanzjarju mis-soċjetà appellanta li ma kienx jgħodd għall-appellat, li ma kienx tajjeb għal-livell ta’ riskju li huwa ried li jkun espost għalih, u li anki minn ħarsa lejn il-*fact find sheet* tal-prodott, għandu jirriżulta li l-appellat ma kienx investitur idoneu għal dan l-investiment, kemm minħabba r-riskju li huwa ried li jkun espost għalih, kif ukoll minħabba l-fatt li dan il-fond kien domiċiljat fil-Cayman Islands, u għalhekk awtomatikament jiġi kklassifikat bħala skema ta’ investiment kollettiv mhux regolat. Il-fond suġġerit u eventwalment mibjugħ lill-appellat, kellu jattira investiment minimu ta’ GBP 60,000, iżda b’xi mod is-soċjetà appellanta sabet

mezz kif tissorvola dan il-minimu, u investiet ftit aktar minn GBP12,000 mill-fond tal-pensjoni li kellu l-appellat fil-fond in kwistjoni, li mal-medda taż-żmien tilef kull valur li kellu. Is-soċjetà appellanta kienet taf li dan l-investiment ma kienx jgħodd għall-appellat, iżda għal xi raġuni daħħlitu fih xorta waħda. Dan meta l-appellat kellu jitqies bħala '*retail client*' li ma setax jesponi ruħu għal ċerti riskji, kemm għaliex l-ammont ta' flus li kellu x'jinvesti ma kienx wieħed sostanzjali, kif ukoll għaliex huwa wera xewqa li ma jkun espost għall-ebda riskju, u għalhekk ipprefera investiment f'fondi ġestiti b'mod konservattiv. Minflok is-soċjetà appellanta ddeċidiet li tinvesti madwar 20% tal-flus tal-appellat f'fond domiċiljat f'ġurisdizzjoni b'ċerti riskji u li kien meqjus bħala wieħed riskjuż. Ċertament li din il-Qorti ma ssib xejn x'tiċċensura fid-deċiżjoni tal-Arbitru fir-rigward tal-fatt li l-appellat ma kienx l-investitur idoneu għal dan it-tip ta' investiment, u għalhekk ser tkun qiegħda tiċħad dan l-aggravju wkoll.

It-Tielet Aggravju: *[L-Arbitru ma kellux il-kompetenza jattribwixxi miżati mħallsa lil terzi bħala danni dovuti mis-soċjetà appellanta]*

22. L-appellanta tgħid li fid-deċiżjoni tiegħu l-Arbitru ffissa danni fl-ammont ta' GBP 7,000 li:

> *'is reflective of the fees applicable to his pension structure overall (that is, involving both the Self-Invested Pension Plan and the Hansard policy) starting from the period 2021 onwards. This period is the time when the Complainant submitted the correct, completed forms to withdraw his remaining funds from his pension, as earlier considered in this case.'*

Tgħid li l-artikolu 2 tal-Kap. 555 tal-Liġijiet ta' Malta jipprovdi li l-provditur tas-servizzi finanzjarji għandu jkun provditur liċenzjat mill-MFSA jew skont kwalunkwe liġi oħra li tirregola s-servizzi finanzjarji, u li jkun relatat ma' servizzi ta' investiment, ibbankjar, istituzzjonijiet finanzjarji, karti ta' kreditu, pensjonijiet, assigurazzjoni u kwalunkwe servizz ieħor li fil-fehma tal-Arbitru jkun jikkostitwixxi servizz finanzjarju, li huwa jew li kien residenti f'Malta, jew li huwa jew li kien residenti fi Stat Membru tal-Unjoni Ewropea ieħor, jew fi Stat Membru ieħor taż-Żona Ekonomika Ewropea, u li jipprovdi, jew li kien jipprovdi permezz tas-servizzi finanzjarju tiegħu, fi jew minn Malta, u s-soċjetà appellanta tagħmel riferiment wkoll għad-dikjarazzjoni tal-appellat li l-ewwel qal li ma kienx jaf bil-miżati ta' terzi, imbagħad ammetta li kien iffirma għalihom. Tgħid li f'dan ir-rigward, l-Arbitru qies illi:

> *'the Arbiter does not consider that, there in the case before him, there are sufficient and strong grounds on which compensation could be granted with respect to the subsequent claimed lack of disclosure/consent of fees on the Hansard policy. The Hansard policy documents seem to have been signed on Complainant's behalf by Baker Tilly who must have committed themselves to these charges considering them as 'disbursements' signed for by the Complainant.'*

Is-soċjetà appellanta tgħid li Baker Tilly hija soċjetà reġistrata fl-Isle of Man, u għalhekk la hija reġistrata f'Malta, u lanqas m'hija reġistrata sabiex tippovdi servizzi ta' investiment f'Malta. Tgħid li l-ilment u d-deċiżjoni appellate huma msejsa fuq miżata maħruġa minn Baker Tilly, u li l-applikazzjoni in kwistjoni hija ta' Baker Tilly. Tgħid li għalhekk l-Arbitru qatt ma messu attribwixxa kumpens ekwivalenti għal miżati maħruġa u mħallsa lil Baker Tilly. Tgħid ukoll li l-miżata mhijiex miżura li ttieħdet jew li kellha tiġi meħuda minnha, u li l-Arbitru kien konxju minn dan il-fatt, iżda fid-deċiżjoni tiegħu xorta waħda injora dan il-punt u għażel li jikkundannaha sabiex tagħmel tajjeb għall-miżati mħallsa lil Baker Tilly.

23. L-appellat jiċċita estensivament mid-deċiżjoni appellata sabiex jindika l-Arbitru kif wasal għal din il-parti tad-deċiżjoni tiegħu, u jgħid li l-miżati imposti huma riżultat dirett tal-investiment li ġie mibjugħ lill-appellat b'mod illegali, u li hija biss is-soċjetà appellanta li għandha tirrispondi għal dan in-nuqqas.

24. Il-Qorti tqis li fil-każ odjern ir-relazzjoni kienet waħda bejn l-appellat u s-soċjetà appellanta, u li kienet is-soċjetà appellanta li b'mod dirett jew indirett inkarigat lil Baker Tilly bħala *trustee,* sabiex tamministra jew tiġġestixxi parti mill-investiment li xtaq jagħmel l-appellat. Għaldaqstant hija s-soċjetà appellanta li għandha tagħmel tajjeb għad-danni likwidati mill-Arbitru fir-rigward tal-miżati li tħallsu lil Baker Tilly, wara li ġie stabbilit mill-Arbitru li l-appellat mhux neċessarjament ingħata l-informazzjoni kollha dwar il-miżati addizzjonali li kien ser ikun mistenni jħallas. Kien għalhekk li l-Arbitru ddeċieda li jiffoka fuq il-fatt li l-prodott '*Prestige Alternative Finance GBP'* ma kienx jgħodd għall-appellat, u dan bi ksur tal-obbligi li kellha s-soċjetà appellanta fil-konfront tal-appellat, u llikwida d-danni li jirriflettu l-miżati li tħallsu lil Baker Tilly bħala *trustee.* In vista ta' dawn il-konsiderazzjonijiet, dan l-aggravju qiegħed jiġi miċħud ukoll.

<u>Decide</u>

Għar-raġunijiet premessi l-Qorti taqta' u tiddeċiedi dan l-appell billi tiċħdu, filwaqt li tikkonferma d-deċiżjoni tal-Arbitru tat-22 ta' Lulju, 2025, fl-ismijiet premessi, fl-intier tagħha.

L-ispejjeż ta' dan l-appell għandhom jitħallsu mis-soċjetà appellanta.

Moqrija.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Christian Sammut
Deputat Reġistratur