

## Before the Arbiter for Financial Services

**ASF 028/2021**

**GN**

**(‘the Complainant’)**

**vs**

**STM Malta Pension Services Limited**

**(C51028) (‘STM Malta’ or ‘the Service  
Provider’)**

### **Sitting of the 24 May 2022**

#### **The Arbiter,**

Having seen **the Complaint** relating to the STM Malta Retirement Plan, this being a personal retirement scheme licensed by the Malta Financial Services Authority (‘MFSA’), established in the form of a trust and administered by STM Malta Pension Services Limited (‘STM Malta’ or ‘the Service Provider’), as its Trustee and Retirement Scheme Administrator.

The Complaint, in essence, revolves around the claim that STM Malta failed in its duty of care and diligence, as trustee of the Scheme, as it disregarded the Complainant's risk and financial profile and preference for low-risk investments by not questioning the risk element of his Scheme and the underlying investments including the *RL360* policy which he considered as being inappropriate.

### *The Complaint*

The Complainant explained that in November 2012, he appointed *IFA International* as financial advisers and his private pension was moved into a Qualifying Recognised Overseas Pension Scheme (QROPS), this being the STM Malta Retirement Plan ('the Retirement Scheme' or 'Scheme'). The Scheme, in turn, purchased an underlying policy, the *Skandia International Executive Bond* (issued by Royal Skandia) for £120,648, giving him a pension of around £750 per month.<sup>1</sup>

He explained that all was well until in August 2014, *IFA International* contacted him and recommended a better offer (involving the switching of the underlying policy, the *Skandia International Executive Bond* with another policy, the *RL360*). He agreed to transfer the balance of his investment of £105,037 to *RL360*. Later, through a letter dated August 2014, he learned that *Royal Skandia* would no longer conduct business with *IFA International*.

The Complainant submitted that his original dealing instructions to STM Malta through his advisers, *IFA International*, was for low and cautious risk investments. This was detailed in a Client Profile that *IFA International* should have submitted with the application. He submitted that, from the *Terms and Conditions*, it was a requirement to undertake due diligence, and STM Malta should have asked for such. STM Malta, however, confirmed to him that it did not have sight of his risk preferences.

The Complainant explained that he initially spent considerable time trying to find out why his pension fund had depleted so much by investigating the financial aspects. He claimed that this was, however, the result of the complete disregard of his risk preference and financial position detailed in the Client Profile.

The Complainant noted that his investment has now reduced to a level where he can no longer draw a pension.

He further stated that he was professionally advised that the *RL360* was not a regular retail pension plan for an individual personal pension, and when the fund

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<sup>1</sup> Page (P.) 4

reduced to Euro40,000 no payments could be made. It was submitted that this was in no way comparable to his original policy with *Skandia*.

The Complainant considered that STM Malta, as trustees, should not only have identified it as an inappropriate scheme but, also, had they paid due regard to his client profile, STM Malta should have raised questions about the risk element.

The Complainant noted that he has the option of withdrawing the balance of his pension investment into an endowment policy which matures after 99 years but at Euro40,000 this would be subject to fees of nearly Euro7,000.

*Other background information relating to the switch to RL360*

In his formal complaint to STM Malta dated 21 November 2020,<sup>2</sup> the Complainant provided further explanations relating to the switch of his underlying policy from *Royal Skandia* to *RL360*.

With respect to such transfer, the Complainant noted that he discovered that although the *RL360* was sold to him as a more beneficial scheme with the added inducement of a windfall payment from commission, this was actually forced onto *IFA International* following a letter to them from *Skandia* where it was stated that *Skandia* would no longer carry out any business with *IFA International*.

The Complainant noted that although he agreed to the transfer, as *IFA International* had gained his trust over a couple of years, no windfall payment was ever received by him as a cash sum or addition to his pension fund.

He further noted that (eventually he became aware that) while the publicity material for *IFA International* at the time he appointed them indicated that they were regulated by the *Financial Services Authority (FSA)* with the Head Office in the UK, they had already been rejected by the FSA.

The Complainant accepted that STM Malta also no longer dealt with *IFA International*, but he noted that their history at the time of his transfer should have raised concerns within investments and pensions services given that Andrew Caddick and his businesses were of dubious integrity.

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<sup>2</sup> Presented as the first attachment to his Complaint Form - P. 7

He further noted that STM Malta may also be aware that Caddick had recently lost a court case concerning *Old Mutual* (formerly *Skandia*) where Caddick was convicted of falsifying inputs on a client's document with regard to another scheme.<sup>3</sup>

The Complainant submitted that, in the circumstances, and considering the unusual proposal to transfer an individual's pension into a non-retail scheme, he would have expected STM Malta, as trustees, to have carried out further checks and also contacted him as to his agreement to the proposals. He explained that when he agreed to the transfer from *Skandia* to *RL360*, he had signed a document that stated that he agreed to enter into an alternative scheme with terms at least equivalent to the scheme from which he was transferring. The Complainant submitted that he would have expected STM Malta, as trustees, to ensure that this was the case.

#### *Additional Information to his Complaint*

In a further attachment to his Complaint Form,<sup>4</sup> the Complainant noted that bearing in mind his customer profile and the conditions detailed in the *Nomura UK Titans 5 notes* (obtained by a pensions professional during his investigations into the loss of his pension), it was his contention that there was liability on STM Malta's part for the loss of his monthly pension payments in view of the lack of due diligence in respect of his customer profile and the requirement for STM Malta to safeguard the assets of the plan.

He further noted that it had taken five years of extreme hardship to get this far as his initial investigations were to determine if there was some financial irregularity. He explained that this did not appear to be the case and that solicitors then investigated the part of his advisers, *IFA International*, and determined that they clearly had some liability and other court cases against them had been proven. The Complainant noted that there was, however, no chance of any compensation as the solicitors identified a serious deficit in the company's finances and given that his solicitors were operating on a no-win-no-fee basis they understandably advised him to withdraw.

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<sup>3</sup> P. 8

<sup>4</sup> P. 12A

The Complainant further remarked that the administrative failings, in his view, of STM Malta, were his last course of action to recover his pension and have only become the main focus of his investigations over the past year or so.

*Request made by the Complainant*

The Complainant submitted that he did not think it was unreasonable, in the circumstances, for STM Malta to return his initial investment with *RL360* less the sum of Euro12,000 which he withdrew from the Scheme in 2017.<sup>5</sup>

(In his email to STM Malta of 21 November 2020, the Complainant further remarked that *'Pension payments since then could be considered as compensation for the embarrassment, stress and trauma I have suffered over the last 4 years and documented in about 100 transcript pages of emails with both STM and IFA Int, some of which show that I was near suicidal and living off loans from friends and family, still to be repaid!'*).<sup>6</sup>

The Complainant further requested that the early redemption fees should also be waived.

He further submitted that had due regard been made to his original investment instructions, it was likely that none of this would have been necessary.

**In its reply, STM Malta essentially submitted the following:<sup>7</sup>**

The Service Provider noted that the Complainant has alleged that, as a result of failures by STM Malta, investments were selected which do not meet the stated investment profile of the Complainant and, as a result, he has incurred significant losses, with his pension having insufficient value to provide the level of pension he needs to support himself. In the wider context of the Complaint, he stated that he cannot wind up his investment due to the exit charges that apply.

STM Malta further noted that the Complainant is asking it to return the initial investment less an amount of Eur12,000 lump sum withdrawal made on 14 February 2007, with the balance of any withdrawals being paid in respect of his embarrassment, stress and trauma.

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<sup>5</sup> P. 4

<sup>6</sup> P. 7

<sup>7</sup> P. 41-45

STM Malta denies that, viewed objectively, the selected investments are not suitable for the Complainant's profile and, in any event, denies that there are investment losses arising from the investments. Accordingly, it submitted that there can be no order for compensation made. Furthermore, STM Malta submitted that it is not within the Arbiter's power to make an order in respect of embarrassment, stress and trauma.

### *Background*

STM Malta stated that the Complainant was admitted to the STM Malta Retirement Scheme on 20 August 2012, and agreed that on 4 March 2015, at the Complainant's request, a transfer was made to an RL360 investment platform.

The Service Provider noted that it became only aware, very recently, from the complaint of 21 November 2020, that the Complainant had expected to receive a financial inducement for agreeing to the transfer.

The amount transferred to the RL360 platform was GBP75,926.14, which was received by RL360 as Eur105,037.08. This is a material difference of fact from the information that the Complainant provided, although it appreciated that the error was simply a misstatement of the currency of the figure. STM Malta referred to a valuation dated 21 December 2020 which it noted confirms the initial parameters of the portfolio.<sup>8</sup>

STM Malta noted that it agreed that it was not provided with a copy of *IFA International's* fact find and it noted that the Complainant did not indicate any investment preferences on his application to STM. It noted, however, that the base currency indicated by STM Malta on his investment fact find is '*Stirling*'.

Based on the advice of *IFA International*, the funds were invested in the following manner:

*GBP50000 into Nomura Quarterly Autocallable Notes Linked to UK Equities GBP 09/04/2021*

*GBP24000 into Nomura Quarterly Autocallable Notes Linked to UK Equities GBP 01/05/2021*

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<sup>8</sup> P. 42 & 111

The Service Provider explained that over time, parts of the notes have been sold to cover, principally, the Complainant's withdrawals. In total, since March 2015, the Complainant withdrew a total of Eur31,316.26 in pension benefits.

It further noted that in 2016, STM Malta calculated the maximum pension available, which was lower than the Eur760 per month that the Complainant had been drawing and STM Malta brought this to the attention of the Complainant and his adviser, and the Complainant elected to receive a one-off withdrawal of Eur12,000 and, thereafter, quarterly payments of Eur1,000.

STM Malta notes that the Complainant feels locked into the investment. The Service Provider pointed out that the quoted maturity date for the investment platform represents only the maximum term applicable to that investment and it is not expected that the investment would be locked in for that period. Partial or total withdrawals are permitted at any time.

STM Malta further ascertained that a surrender penalty of Eur4,839.58 would be incurred rather than Eur7,000, if the investment were encashed at the present time. This charge was detailed in the terms and conditions of the Investment Application which the Complainant signed in 2015.

#### *The Complaint - Investment Performance*

STM Malta remarked that the Complainant continues to assert that the investments selected have performed badly and that this has damaged the value of his pension. The Service Provider explained how this was not the case in its response to the Complainant of 3 June 2019.<sup>9</sup>

In its reply, STM Malta presented the following tables in respect of the respective investments:

#### *Nomura Quarterly Autocallable Notes Linked to UK Equities GBP 09/04/2021*

<i>Transaction</i>	<i>Nominal</i>	<i>Proceeds</i>	<i>Cost</i>
Purchase	50000	0	-50,000.00
Sale	-5000	4,200.00	0
Sale	-3000	2,340.00	0
Sale	-3000	2,902.50	0

<sup>9</sup> P. 43 & 10-12

Sale	-5000	5,259.50	0
Sale	-12000	12,622.80	0
Sale	-22000	28,050.00	0
Totals	0	55,374.80	-50,000.00

*Nomura Quarterly Autocallable Notes Linked to UK Equities GBP 01/05/2021*

<i>Transaction</i>	<i>Nominal</i>	<i>Proceeds</i>	<i>Cost</i>
Purchase	24000	0	-24,000.00
Sale	-5000	3,800.00	0
Sale	-5000	5,461.50	0
Totals	14000	9,261.50	-24,000.00

STM Malta submitted that from the said information, it can be seen quite clearly that the total cost of the investments was GBP74,000, and that the total value of sales and the remaining nominal will be GBP78,636.30, a profit of GBP4,636.30, assuming that the *Nomura Quarterly Autocallable Note Linked to UK Equities GBP 01/05/2021* is held to maturity and that the current market conditions prevail at that time.

*The Complaint - Suitability*

STM Malta further submitted that notwithstanding its assertion that the Complainant cannot claim investment losses from the two *Nomura* notes since there are none, it noted that the Complainant suggests that the two notes are not suitable for a client whose stated profile was cautious/balanced.

The Service Provider attached to its response product information for the two structured notes which are issued on ostensibly the same terms. STM Malta accepted that the notes should be considered complex products and the risk warnings are noted. It also remarked that the Complainant took advice as recommended in the product particulars prior to making his investment. In any event, in relation to the risks it noted:

- That the counterparty for the note is *Nomura*, rated A- by *Standard and Poor's*, which should give sufficient comfort that the note will be repaid on maturity;

- That the capital protection for the note is linked to the performance of the *FTSE100 index*. This index would be required to fall by 40% for the note to repay less than the amount invested on maturity. STM Malta has not analysed every five-year period since the inception of the *FTSE100 index*, but it observed that the likelihood of a drop of 40% in such a period was remote. It claimed that, indeed, despite the global pandemic and the fallout from Brexit in relation to UK business, it appeared more likely than not that the note will repay on maturity.

STM Malta further noted that whilst it does not claim to advise on which specific investments should be bought by particular clients, and indeed it is not regulated to provide such advice, it was however of the view that the counterparty risk and the capital protection featured in these Notes mean that they are prospectively suitable for clients with a cautious/balanced profile.

### *Conclusion*

The Service Provider submitted that it has shown clearly that the performance of the investments selected does not account for the reduction in value of the Complainant's portfolio, and it explained that, in any event, the likelihood of a loss from the investment would have been considered low even at the time when the investment was made.

Accordingly, STM Malta respectfully submitted that it would not be equitable to make an order of restitution in favour of the Complainant in respect of investment losses or the selection of investments.

Furthermore, the Service Provider affirmed its position that it is not within the power of the Arbiter to make an order in respect of the Complainant's alleged embarrassment, stress and trauma, however sympathetic one might be to the Complainant's position.

### *Other comments*

STM Malta further submitted that whilst the Complainant has focused on the contribution of the investment performance in relation to the difference between his investment in 2015 and the current valuation, he has ignored all factors that need to be considered. In particular the following:

- *Withdrawals* - STM Malta noted that benefits in excess of Eur31,000 have been paid to the Complainant. Whilst STM Malta does not claim to advise the Complainant in respect of his benefit drawings, it was plain that the larger the drawings, the smaller the pot left to pay his pension.
- *Foreign exchange movements* - STM Malta further noted that in 2012, the Complainant selected Sterling as his investment currency. The Service Provider submitted that it was not party to the discussions and cannot comment on how that conclusion was reached. The investments were made exclusively in Sterling. On 23 June 2016, the UK voted by referendum to leave the EU. As a result, there was a massive depreciation in the value of Sterling. At the time when the Complainant took out the RL360 bond, the exchange rate for GBP to EUR was around 0.73. It noted that the current rate was around 0.86 after some recent strengthening of the pound.

The Service Provider submitted that this is significant, and it estimates that the effect of this depreciation in Sterling for the Complainant's fund will have been in excess of Eur20,000. It further submitted that it will also have impacted the fund's ability to sustain regular pension payments since the assets were denominated in Sterling and larger amounts would need to be sold to keep the level of pension payments.

The Service Provider further explained that this was unconnected to the investment performance.

STM Malta pointed out that despite the fact that it clearly drew this point to the Complainant's attention on 3 June 2019, the Complainant has given no weight to this matter which is clearly outside STM Malta's control.

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

**Further Considers:**

*Preliminary*

**The Complaint to the Office of the Arbiter for Financial Services ('OAFS') was filed within the structure of Chapter 555 of the Laws of Malta by the Complainant himself, a 75-year-old, inexperienced retail consumer of financial**

**services.<sup>10</sup> The Complaint, as formulated, has accordingly to be seen in such context.**

The Arbiter notes that, in its reply, the Service Provider summarised the Complainant's allegations as involving claims of significant losses as a result of failures by STM Malta given that investments, which did not meet the Complainant's stated investment profile, were selected.<sup>11</sup>

The Complainant's grievances were also summarised by STM Malta in its email to the Complainant dated 3 June 2019. The said email formed part of the attachments filed with the Complaint,<sup>12</sup> and was also referred to by the Service Provider itself in its reply.<sup>13</sup>

In the email of 3 June 2019, STM Malta stated the following:

*'If I may summarise your complaint it is as follows:*

- 1. The investment in the current structured note is outside your risk profile and should never have been authorised;*
- 2. The Investment has lost money*
- 3. The Switch into RL360 should not have been permitted.*
- 4. Your pension has fallen by 50% and you would like to flexibly access your pension in order to maintain a level income.'*<sup>14</sup>

The Arbiter further notes that during the hearing of 6 July 2021, the Complainant explained the following with respect to his Complaint:

*'I consider that the Trustees, now known as STM Pension Services Limited, failed in their duty of care and due diligence in 3 key areas:*

- 1. They transferred my fund into a scheme that was in no way comparable with the original investment plan.*

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<sup>10</sup> P. 15 & 20

<sup>11</sup> P. 41

<sup>12</sup> P. 10-12

<sup>13</sup> P. 43

<sup>14</sup> P. 10

2. *My risk profile was never considered and they accepted that they had neither seen nor asked for a copy of it, although it was one of the documents required at the application stage.*
3. *They placed my fund into a non-retail product that is only available for purchase by qualified professional investors, Offshore Life companies buying as principal and corporate and institutional clients buying as principal'.<sup>15</sup>*

Having considered the Complaint in question and the aspects that emerged during the proceedings of this case, the Arbiter considers that, in essence, the key aspects of the Complaint filed with the OAFS involve the alleged losses and depletion of his pension fund and the claim that STM Malta failed in its duty of care and due diligence to safeguard his pension given that the:

- (i) underlying investments within the Scheme were outside the Complainant's cautious risk profile and preference for low risk investments;
- (ii) the *RL360 Policy* was inappropriate for him, was not '*a regular retail pension plan for an individual personal pension*' and was not '*comparable to the original Scheme with Skandia*'.<sup>16</sup>

### **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.<sup>17</sup>**

The Arbiter is considering the complaint and all pleas raised by the Service Provider 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<sup>18</sup> which stipulates that he should deal with complaints in '*an economical and expeditious manner*'.

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<sup>15</sup> P. 121/122

<sup>16</sup> P. 4

<sup>17</sup> Cap. 555, Article 19(3)(b)

<sup>18</sup> Art. 19(3)(d)

## Facts of the Case

### *The Complainant*

The Complainant, born in 1945 and of British nationality, was retired and resident in Spain at the time of his membership into the Scheme, as emerging from the Retirement Scheme's '*Client Profile Questionnaire and Application Form*' dated August 2012<sup>19</sup> and the '*Confidential Client Profile*' of IFA International dated 2 October 2012.<sup>20</sup>

His state pension/annuity was indicated in the said *Confidential Client Profile* as the Complainant's only income.<sup>21</sup> The said document also indicated a low '*Monthly/Annual Disposable Income*' of £100.

The *Confidential Client Profile* described the Complainant as an '*inexperienced investor*' having a '*cautious/balanced*' attitude to investment risk, with his base currency for investments being indicated as '*stirling*'.<sup>22</sup>

### *The Scheme & the underlying policies*

The Complainant applied to become a member of the Retirement Scheme in August 2012.<sup>23</sup>

Following the Scheme's membership, an application was filed by STM Malta, as trustee of the Scheme, to purchase the *Executive Investment Bond* issued by *Royal Skandia* ('the Royal Skandia Policy').<sup>24</sup>

The application in respect of the *Royal Skandia Policy* indicated that the policy was to be valued in Euros. Regular yearly withdrawals (of GBP1,355), to be paid to the Complainant in Sterling were indicated in the same form.<sup>25</sup>

The Royal Skandia Policy was acquired on 26 October 2012 with a premium of EUR137,822.40.<sup>26</sup>

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<sup>19</sup> P. 133-144

<sup>20</sup> P. 14

<sup>21</sup> P. 16 - An attachment to the Confidential Client Profile also indicated minimal income from a Bed & Breakfast whose running costs were indicated as a big drain (P. 18).

<sup>22</sup> P. 20

<sup>23</sup> P. 144

<sup>24</sup> P. 145

<sup>25</sup> P. 151

<sup>26</sup> P. 155

After just two years, the trustee applied to surrender the *Royal Skandia Policy* by way of a letter dated 28 October 2014, with the actual surrender occurring on 30 January 2015.<sup>27</sup> The Royal Skandia Policy was replaced by the *RL360 Policy* issued by *RL360 Insurance Company Limited* ('the RL360 Policy').

An application for the purchase of the RL360 Policy, as the new underlying policy of the Complainant's Scheme, was signed on 27 October 2014.<sup>28</sup>

The currency selected in respect of the RL360 Policy was Euros.<sup>29</sup> The application form in respect of this policy also indicated (similarly to the Royal Skandia Policy), that there were to be regular withdrawals of GBP1,365 yearly.<sup>30</sup>

The Scheme acquired the RL360 Policy on 16 March 2015 with a premium of EUR105,037.08.<sup>31</sup> The said premium was in turn used to purchase investment products, initially comprising of structured note investments (the Nomura investments) and subsequently also investment funds.

#### *The Alleged losses/depletion of the Complainant's pension scheme*

The Complainant claimed that his pension scheme was significantly depleted and was '*reduced to a level where [he] can no longer draw a pension*'.<sup>32</sup>

**As indicated above, the Royal Skandia Policy acquired in October 2012 commenced with a premium of EUR137,822.40.<sup>33</sup> Following surrender of this policy in January 2015,<sup>34</sup> the new underlying policy, the RL360, acquired in March 2015, commenced with a premium of EUR105,037.08.<sup>35</sup> The value of the RL360 Policy as at 20 December 2020 stood at EUR36,243.34.<sup>36</sup>**

**It is clear that the value of the Complainant's underlying policy as at December 2020, is substantially lower than the initial value of the premium with which the Complainant originally commenced his pension plan.**

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<sup>27</sup> P. 172 & 200

<sup>28</sup> P. 204 & 217

<sup>29</sup> P. 206

<sup>30</sup> P. 214

<sup>31</sup> P. 34-35; 232-233

<sup>32</sup> P. 4

<sup>33</sup> P. 155

<sup>34</sup> P. 172 & 200

<sup>35</sup> P. 34-35; 232-233

<sup>36</sup> P. 112

**The Arbiter will consider the pertinent aspects relating to the loss or depletion in value of the Complainant's pension plan.**

*The underlying investments within the RL360 Policy*

One of the aspects raised in the Complaint is whether the underlying investments were outside the Complainant's cautious risk profile and preference for low-risk investments.

It is noted that, in his attachments to the Complaint, the Complainant referred to the *Nomura UK* notes, these being the structured note investments, underlying the RL360 Policy.<sup>37</sup>

Reference to the said structured notes were also made during the hearing of 6 July 2021. During the said hearing, the Complainant made, *inter alia*, the following statement:

*'I contacted a major UK pension company and a pension specialist of 40 years' experience offered to look at the financial aspects of my investment. Although he found no irregularities, he confirmed that my fund had been invested in a complicated non-retail, high-risk investment scheme unsuitable for a normal individual pension plan.*

*This was confirmed in a fact sheet he had obtained from Nomura, the investment holding bank for the Scheme. The Notes issued offer a very limited diversity of investment and were described to me as a wealthy speculator's lottery ticket, whereby those investors can afford to stand the loss, but hope to make a killing!! This is not a pension plan ...'*<sup>38</sup>

In the said statement, the Complainant also quoted a paragraph relating to the nature of the investors to whom the Nomura notes were considered suitable according to the notes' documentation, and indicated how this did not reflect '*a low risk and cautious investment*'.<sup>39</sup>

**The Service Provider, however, submitted in its reply:**

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<sup>37</sup> P. 12A, P. 31-33

<sup>38</sup> P. 119

<sup>39</sup> *Ibid.*

***'that the performance of the investments selected does not account for the reduction in value of the Complainant's portfolio'.<sup>40</sup>***

**With respect to the structured note investments underlying the RL360 Policy, STM Malta submitted in its reply that *'assuming that the Nomura Quarterly Autocallable Note Linked to UK Equities GBP 01/05/2021 is held to maturity',<sup>41</sup> and if *'current market conditions prevail'*, the Complainant would have actually made *'a profit of GBP4,636.30'* on the two Nomura notes invested.<sup>42</sup>***

**It is further noted that in its email to the Complainant of 3 June 2019, the Service Provider explained *inter alia* that:**

***'We would reiterate that the performance of the investment product as a whole does not seem to us to be highly negatively impacted by the Structured note. The reduction in value appears to be caused by withdrawals, charges and currency fluctuation ...'<sup>43</sup>***

### ***The cause of the losses***

**The Arbiter must consider first whether the said investments were indeed the cause of the alleged losses/depletion of the Complainant's pension plan in light of the submissions made by the Service Provider on this aspect.**

A detailed *Policy Transaction Statement* dated 6 April 2022, was provided during the proceedings of this case, which statement clearly indicated the status and performance of the respective underlying investments held within the RL360 Policy.<sup>44</sup>

Table A below summarises the underlying investments that were constituted within the RL360 Policy from its commencement, in 2015, till the date of this Complaint as emerging from the *Policy Transaction Statement* of April 2022. The table also indicates the performance of the said investments as at the date of the statement.

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<sup>40</sup> P. 44

<sup>41</sup> As at the date of the Service Provider's reply, the said investment had not yet matured or been redeemed, and accordingly the position on the *Nomura Quarterly Autocallable Note Linked to UK Equities GBP 01/05/2021* was still open.

<sup>42</sup> P. 43

<sup>43</sup> P. 11

<sup>44</sup> P. 232-246

**Table A** – Underlying Investments within the RL360 Policy as at the date of the Complaint

Investment Name	Date bought	Units purchased	CCY	Purchase amount	Date sold/ matured	Units Sold	CCY	Maturity/ Sale price	Capital Loss/ Profit (exclusive of dividends)
<i>Nomura Quarterly Autocallable Notes Linked to UK Equities GBP 09/04/2021</i>	09-Apr-15	50,000	GBP	50,000	24-Nov-15	5000	GBP	4,200	<b>+GBP 5,374.8</b>
					20-Jun-16	3000	GBP	2,340	
					19-Aug-16	3000	GBP	2,902.50	
					16-Jan-17	5000	GBP	5,259.50	
					18-Jan-17	12,000	GBP	12,622.80	
					09-Jan-18	22,000	GBP	28,050.00	
<i>Nomura Quarterly Autocallable Notes Linked to UK Equities GBP 01/05/2021</i>	08-May-15	24,000	GBP	24,000	17-Aug-15	5,000	GBP	3,800	<b>-GBP739</b>
					31-Oct-17	5,000	GBP	5,461.50	
					11-May-21	14,000	GBP	14,000	
<i>JPM Global Income A (acc) - EUR</i>	16-Nov-20	35.085	EUR	5,000	Open position				
<i>Muzinich Global Tactical Credit Fund Acc R EUR</i>	17-Nov-20	45.901	EUR	5,000	Open position				
<i>Lazard Rathmore Alternative Fund A Acc EUR H</i>	19-Nov-20	52.63	EUR	6,000	31-Mar-22	52.63	EUR	6,585.50	<b>+EUR 585.50</b>

Other investments were undertaken in the year 2021 and 2022 within the RL360 Policy, that is, subsequent to the Complaint filed by the Complainant in 2021 with the OAFS according to the same *Policy Transaction Statement*.<sup>45</sup>

<sup>45</sup> Namely, an investment of: (i) Eur5,000 in *JO Hambro Global Opportunities Fund EUR I* on 18-Oct-2021; (ii) Eur5,000 in *GAM Star Credit Opportunities (EUR) Ord EUR Acc* on 20-Oct-2021 and (iii) Eur6,000 in the *Smith & Williamson Short Dated Corporate Bond Fund DD* on 26-Jan-2022 – P. 240 & 241

It is clear, from Table A above, that the Complainant has not realised a loss overall on the disputed Nomura structured note investments.<sup>46</sup>

Furthermore, according to another *Policy Valuation Statement* issued in December 2020, presented during the case, it emerges that the Complainant had also not experienced, at the time of the said statement, any realised nor unrealised losses on the remaining investments which existed at the time of the Complaint.<sup>47</sup>

The Arbiter is accordingly accepting the Service Provider's submissions that the disputed Nomura structured note investments did not result in a loss of the Complainant's pension scheme.

Since the Complainant did not make a loss on the Nomura investments, the Arbiter considers there is no scope, for the purposes of this case, to enter into the merits of the allegations made on the suitability or otherwise of the Nomura investments and shall proceed to consider the other key aspects of the Complaint.

*Depletion of the Complainant's pension plan - Withdrawals from the RL360 Policy*

It is noted that, in its reply, the Service Provider submitted that:

***'Whilst the Complainant has focused on the contribution of the investment performance ... he has ignored all factors that need to be considered'***.<sup>48</sup>

One of the factors that was referred to in this regard by the Service Provider involved the extent of withdrawals undertaken by the Complainant. STM Malta pointed out *inter alia* that ***'benefits in excess of Eur31,000 have been paid to the Claimant'***.<sup>49</sup>

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<sup>46</sup> Whilst the *Nomura Quarterly Autocallable Notes Linked to UK Equities GBP 09/04/2021* yielded a realised capital gain of GBP5,374.80, the *Nomura Quarterly Autocallable Notes Linked to UK Equities GBP 01/05/2021* yielded a realised capital loss of GBP739. Collectively, the two investments resulted in a net gain of GBP4,635.80.

<sup>47</sup> According to the *Policy Valuation Statement* dated 20 December 2020, the investment into the *JPM Global Income A (acc)* and the *Muzinich Global Tactical Credit Fund ACC* both had unrealised profits as they were valued at EUR5,115.39 and EUR5,050.95 respectively at the time of the said statement – P. 112. A realised gain of EUR585.50 was experienced on the other investment, the *Lazard Rathmore Alternative Fund A Acc EUR H*.

<sup>48</sup> P. 44

<sup>49</sup> P. 45

The Arbiter notes that multiple and significant withdrawals did occur over the years from 2015 to 2022.

As emerging from the *Policy Transaction Statement* dated 6 April 2022 in respect of the RL360 Policy,<sup>50</sup> which statement covered the transactions from the date of the policy commencement till early April 2022, there were cumulative withdrawals amounting in total to EUR43,976.25 and GBP5,696.78 over the said period. Table B below provides a breakdown of the said withdrawals according to the said statement.

**Table B** – *Withdrawals from the RL360 Policy*

Date	EUR	GBP
06-Aug-15	1,943.35	
21-Aug-15	2,774.30	
01-Oct-15	2,774.30	
01-Jan-16	2,774.30	
20-Jun-16	2,490.00	
24-Aug-16	2,400.00	
26-Aug-16		1,365.00
10-Nov-16	2,375.00	
08-Feb-17	13,045.00	
03-Aug-17		1,365.00
14-Sep-17	1,045.00	
15-Oct-17	1,045.00	
15-Jan-18	1,045.00	
15-Apr-18	1,045.00	
15-Jul-18	1,045.00	
14-Aug-18		1,365.00
15-Oct-18	1,045.00	
15-Jan-19	1,045.00	
15-Apr-19	1,045.00	
29-Oct-19		1,365.00
30-Mar-20		236.78
04-Apr-22	5,040.00	
	<b>EUR 43,976.25</b>	<b>GBP 5,696.78</b>

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<sup>50</sup> P. 232-246

The bulk of these withdrawals were drawdowns taken by the Complainant as confirmed by the Service Provider in its reply received by OAFS on 17 March 2021, where the Service Provider stated that *'since March 2015 the Complainant has withdrawn a total of Eur31,316.26 in pension benefits'*.<sup>51</sup>

This was not contested by the Complainant.

The Arbiter observes that, accordingly, in addition to the yearly withdrawal of GBP1,365 that was indicated in the respective Royal Skandia and RL360 Policy application form, it appears that the Complainant made other material withdrawals in Euro from his Scheme, such as the *'€12,000 to repay money [he] had borrowed from the bank and others, and to re-roof [his] property'* in 2017 as indicated during the hearing of 6 July 2021,<sup>52</sup> as well as the latest drawdown indicated of Eur5,000 in 2022.<sup>53</sup>

Other withdrawals could have possibly been made to cover other applicable charges, such as the *'Routine Administration Annual Charge'* directly applicable on the Retirement Scheme.<sup>54</sup>

#### *Depletion of the Complainant's pension plan - Currency conversions*

**Another factor that was mentioned by the Service Provider as contributing to the depletion of the Complainant's pension plan involves the claimed adverse foreign exchange movements, namely, the depreciation in value of the GBP against the EUR.**

The Arbiter notes that various conversions from GBP to EUR were done over the seven-year period from August 2015 to January 2022 as emerging from the *Policy Transaction Statement* dated 6 April 2022.

The said currency conversions are summarised in Table C below which also indicates the depreciation in value of Sterling against the EURO over the said period.

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<sup>51</sup> P. 42

<sup>52</sup> P. 118

<sup>53</sup> As indicated in the Complainant's email of 17 February 2022 - P. 247

<sup>54</sup> P. 143

**Table C – Currency conversions**

<i>Date</i>	<i>Transaction</i>	<i>CCY</i>	<i>Value</i>	<i>Transaction</i>	<i>CCY</i>	<i>Value</i>	<i>Conversion Rate GBP to EUR</i>
06-Aug-15	Sell	GBP	437.14	Buy	EUR	620.26	1.418905
21-Aug-15	Sell	GBP	2,047.20	Buy	EUR	2,822.30	1.378615
04-Dec-15	Sell	GBP	5,400	Buy	EUR	7,432.75	1.376435
20-Jun-16	Sell	GBP	3,016.80	Buy	EUR	3,839.40	1.272673
24-Aug-16	Sell	GBP	1,117.51	Buy	EUR	1,296.97	1.160589
08-Feb-17	Sell	GBP	14,246.35	Buy	EUR	16,508.84	1.158812
14-Sep-17	Sell	GBP	2,690.94	Buy	EUR	2,995.20	1.113068
30-Jan-18	Sell	GBP	3,745.89	Buy	EUR	4,208.01	1.123367
06-Jul-18	Sell	GBP	2,725.86	Buy	EUR	3,050	1.118913
10-Jan-19	Sell	GBP	5,478.21	Buy	EUR	6,000	1.095248
11-Nov-20	Sell	GBP	18,594.76	Buy	EUR	20,739.60	1.115346
13-Oct-21	Sell	GBP	10,000	Buy	EUR	11,674.26	1.167426
20-Jan-22	Sell	GBP	4,000	Buy	EUR	4,753.66	1.188415

Whilst during the proceedings of this case no explanations were provided as to the rationale for the said conversions, it is noticed that the period of the said conversions was often reflective of the period of the withdrawals and/or the period of the purchase of investments denominated in Euro as listed in Tables A and B above.

#### *Depletion of the Complainant's pension plan – Fees paid*

**In his Complaint, the Complainant highlighted *inter alia* that now he can no longer draw a pension and also referred to the high early redemption fees that would apply on his remaining pension amount in case of surrender of his current policy.**

**The Complainant also referred to the impact that fees had left on his pension plan, during the hearing of 6 July 2021. During the said hearing he pointed out that:**

***‘Management fees are likely to have been considerably less than the quarterly service fee of £90 and a £20 dealing charge on each transaction. Early redemption charges and other commissions would also possibly have reduced the values of my fund’.***<sup>55</sup>

According to Article 19(3)(b) of Chapter 555 of the Laws of Malta, in determining the complaint, the Arbiter has to take into consideration *‘the particular circumstances of the case’*; and, in this particular case, the question of fees features prominently in the complaint, and which cannot be ignored by the Arbiter.

After a careful analysis of the facts as resulting from the documents and from the submissions made during the hearing of the case, the Arbiter is convinced that fees paid had a material bearing on the performance of the Scheme, as also acknowledged by the Service Provider itself.<sup>56</sup>

The Arbiter shall consider this aspect in more detail given the particular circumstances of this case which includes the purchase, redemption and further purchase of an underlying policy within the Complainant’s Retirement Scheme.

Firstly, it is noted that, as indicated earlier in this decision, the Royal Skandia Policy was redeemed *just after two years from its purchase*. This led to considerable early surrender charges being applied.

At the time of surrender, the Royal Skandia Policy had a Policy Value of EUR114,704.40. After the payment of the surrender fees, the actual surrender value ended up being EUR105,163.36.<sup>57</sup>

The Charges Schedule of the Royal Skandia Policy specified an *‘Early Withdrawal Charge’* of *‘8.500000% reducing by 1.062% per year from the Policy date to nil after 8 years based on the relevant Premium paid’*.<sup>58</sup>

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<sup>55</sup> P. 122

<sup>56</sup> In its email of 3 June 2019, STM Malta stated that *‘The reduction in value appears to be caused by withdrawals, charges and currency fluctuation...’* – P. 11

<sup>57</sup> P. 200

<sup>58</sup> P. 159

Such charge was reflected in the *Confirmation of Full Surrender* letter dated 30 January 2015 issued by Old Mutual International (formerly Royal Skandia) in respect of the surrender of the Royal Skandia Policy.

**According to the said letter, an *Early Surrender Charge* was applied at the time of the surrender of the Royal Skandia Policy in the amount of EUR8,786.18.<sup>59</sup> Other charges were also applied on the policy at the time of surrender, with the '*Total surrender costs*' of the Royal Skandia Policy amounting overall to EUR9,541.04.<sup>60</sup>**

**This reflects a staggering 8.3179% in surrender fees applicable on the policy value at the time.<sup>61</sup>**

**The said surrender fees are in addition to, and apart from, the other charges that applied on the Royal Skandia Policy since inception as per the *Charges Schedule* dated 30 October 2012 enclosed with the policy document.<sup>62</sup>**

**With respect to the RL360 Policy that replaced the Royal Skandia Policy, the Arbiter notes that, as emerging from the *Policy Transaction Statement* dated 6 April 2022, multiple fees were charged on this Policy (such as a '*Percentage Administration Fee*'; '*Flat Administration Fee*'; '*Renewal/Trail Commission*'; '*Custody Charge*'; '*Dealing Charge*'; '*Interest Charge*'; and '*Investment Adviser Fee*').**

**Over a seven-year period, from April 2015 to March 2022, the charges applied and accumulated altogether on the RL360 Policy alone, were calculated according to the *Policy Transaction Statement* dated 6 April 2022, to amount in total to the material amount of EUR14,306.75.<sup>63</sup> This amounts to 13.621% in fees charged on the initial premium placed into this policy over the said period.<sup>64</sup>**

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<sup>59</sup> P. 200

<sup>60</sup> *Ibid.*

<sup>61</sup> EUR9,541.04 of EUR114,704.40

<sup>62</sup> P. 185-186

<sup>63</sup> Made up of the following totals as at 6 April 2022: EUR7,131.88 in *Percentage Administration Fee* (€254.71 charged every three months); EUR4,630.72 in *Flat Administration Fee* (ranging from €150 to €180 charged also every three months); Eur1,186.18 in *Renewal/Trail Commission* (ranging from €42 to €118 charged every three months from Jun 2015 to Feb 2019); Eur768 in *Custody Charge*; Eur144 in *Dealing Charges*; Eur90.75 in *Interest Charge*; and Eur355.22 in *Investment Adviser Fees*.

<sup>64</sup> EUR14,306.75 of EUR105,037.08

**In addition to the material amount of fees already paid on the RL360 Policy, the Complainant would now be subject to a further exit surrender charge on the RL360 Policy to surrender this policy.**

**The Complainant indicated that he *'would be subject to fees of nearly 7000 euros'*<sup>65</sup> to exit from his current RL360 Policy with the Service Provider submitting in turn that the surrender penalty would actually be lower given that *'a surrender penalty of Eur4,839.58, rather than the Eur7,000 would be incurred if the investment were encashed at the present time'*.<sup>66</sup>**

**These surrender fees are over and above the fees already paid on the RL360 Policy.**

### Other observations

#### *Obligations of the Service Provider*

One key duty, which emerges from the primary legislation itself, applicable to STM Malta as the Retirement Scheme Administrator, is the duty to *'act in the best interests of the scheme'*.

This is outlined in Article 19(2) of the Special Funds (Regulation) Act, 2022 ('SFA') - which was the first legislative framework which applied to the Scheme and the Service Provider until this framework was repealed and replaced by the Retirement Pensions Act (Chapter 514 of the Laws of Malta) ('RPA') that eventually came into force on the 1 January 2015.<sup>67</sup> The duty to act in the best interests of the scheme is also outlined in Article 13(1) of the RPA.

Apart from the main legislation itself, there are various principles and conditions outlined in the general conduct of business rules/standard licence conditions issued by the Malta Financial Services Authority ('MFSA') under the SFA/RPA regime respectively applicable to the Service Provider in its role as Retirement Scheme Administrator.

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<sup>65</sup> P. 4

<sup>66</sup> P. 42

<sup>67</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/>

With respect to this case, it is pertinent to note the following general rules:<sup>68</sup>

- a) Rule 2.6.2 of Part B.2.6 titled '*General Conduct of Business Rules applicable to the Scheme Administrator*' of the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act, 2002*' ('the Directives'), which applied to STM Malta as a Scheme Administrator under the SFA, provided that:

***'The Scheme Administrator shall act with due skill, care and diligence – in the best interests of the Beneficiaries ...'***

The same principle continued to apply under the rules issued under the RPA.

Rule 4.1.4, Part B.4.1 titled '*Conduct of Business Rules*' of the Pension Rules for Service Providers dated 1 January 2015 issued in terms of the RPA, and which applied to STM Malta as a Scheme Administrator under the RPA, provided that:

***'The Service Provider shall act with due skill, care and diligence ...'***

- b) Rule 2.7.1 of Part B.2.7 titled '*Conduct of Business Rules related to the Scheme's Assets*', of the Directives issued under the SFA, which applied to STM Malta as a Scheme Administrator under the SFA, provided that:

***'The Scheme Administrator shall arrange for the Scheme assets to be invested in a prudent manner and in the best interest of Beneficiaries ...'***

The same principle continued to apply under the rules issued under the RPA. Standard Condition 3.1.2, of Part B.3 titled '*Conditions relating to the investments of the Scheme*' of the Pension Rules for Personal Retirement Schemes dated 1 January 2015 issued in terms of the RPA, provided that:

***'The Scheme's assets shall be invested in a prudent manner and in the best interest of Members and Beneficiaries and also in accordance with the investment rules laid out in its Scheme Particulars and otherwise in the Constitutional Document and Scheme Document'***

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<sup>68</sup> Emphasis added by the Arbitrator.

### *Trustee and Fiduciary obligations*

The Trusts and Trustees Act ('TTA'), Chapter 331 of the Laws of Malta is also relevant for STM Malta considering its role as Trustee of the Scheme.

Article 21(1) of the TTA which deals with the '*Duties of trustees*', *inter alia*, stipulates that the trustee should act as a ***bonus paterfamilias***.

The said article provides that:

***'(1) Trustees shall in the execution of their duties and the exercise of their powers and discretions act with the prudence, diligence and attention of a bonus paterfamilias, act in utmost good faith and avoid any conflict of interest'.***

It is also to be noted that Article 21(2)(a) of the TTA, further specifies that:

***'Subject to the provisions of this Act, trustees shall carry out and administer the trust according to its terms; and, subject as aforesaid, the trustees shall ensure that the trust property is vested in them or is under their control and shall, so far as reasonable and subject to the terms of the trust, safeguard the trust property from loss or damage ...'.***

**In its role as Trustee, STM Malta was accordingly duty bound to administer the Scheme and its assets to high standards of diligence and accountability.**

The trustee, having acquired the property of the Scheme in ownership under trust, had to deal with such property '*as a fiduciary acting exclusively in the interest of the beneficiaries, with honesty, diligence and impartiality*'.<sup>69</sup>

As has been authoritatively stated:

***'Trustees have many duties relating to the property vested in them. These can be summarized as follows: to act diligently, to act honestly and in good faith and with impartiality towards beneficiaries, to account to the beneficiaries and to provide them with information, to safeguard and keep control of the trust property and to apply the trust property in accordance with the terms of the trust'.***<sup>70</sup>

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<sup>69</sup>Editor Max Ganado, '*An Introduction to Maltese Financial Services Law*', Allied Publications 2009, p. 174

<sup>70</sup>*Op. Cit.*, p. 178

The fiduciary and trustee obligations were also highlighted by MFSA in one of its publications where it was stated that:

***‘In carrying out his functions, a RSA [retirement scheme administrator] of a Personal Retirement Scheme has a fiduciary duty to protect the interests of members and beneficiaries. It is to be noted that by virtue of Article 1124A of the Civil Code (Chapter 16 of the Laws of Malta), the RSA has certain fiduciary obligations to members or beneficiaries, which arise in virtue of law, contract, quasi-contract or trusts. In particular, the RSA shall act honestly, carry out his obligations with utmost good faith, as well as exercise the diligence of a bonus paterfamilias in the performance of his obligations’.***<sup>71</sup>

Although this Consultation Document was published in 2017, MFSA was basically outlining principles established both in the TTA and the Civil Code which had already been in force prior to 2017.

**The above are considered to be crucial aspects which should have guided STM Malta in its actions.**

*Final observations - Lack of care and diligence*

**In the particular circumstances of this case, the Arbiter considers that there is certain validity to the Complainant’s claim regarding the Service Provider’s lack of ‘*duty of care and due diligence*’,<sup>72</sup> and the claim of the RL360 Policy<sup>73</sup> being inappropriate considering his financial position.**

**This is in view of various factors and particular circumstances of the case in question, including the following aspects:**

- (i) Profile/Financial Position – The fact that the Complainant was already retired, and close to 70 years old when he applied to join the Scheme, as well as the size of his pension scheme which initially had an investible premium of Eur137,822.40, the Complainant’s low disposable income and**

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<sup>71</sup> Page 9 – Consultation Document on Amendments to the Pension Rules issued under the Retirement Pensions Act [MFSA Ref: 09-2017], dated 6 December 2017.

<sup>72</sup> P. 121

<sup>73</sup> The RL360 Policy is still in existence and held by the Service Provider on behalf of the Complainant in its role as trustee of the Scheme.

his need for regular withdrawals as outlined in more detail above, cannot be ignored or not given their due importance altogether.

This is particularly in the context of the feasibility of the whole arrangement and the possibility of achieving the Scheme's purpose, that of providing retirement benefits.

The material decisions taken within the Scheme, including the surrender of an already existing policy to a similar one and the extensive withdrawals made along the years have also to be considered in such context together with other factors as outlined below.

- (ii) **Extent of Charges** - The Arbiter cannot also help but notice the extent of charges that the Complainant ended up paying, and is still subject to, with respect to the policies underlying the Scheme.

As already highlighted in this decision, such fees do result in a material adverse impact on his Retirement Scheme which impinge on the achievement of the same objective of the Scheme.

The adverse material impact of substantial charges, including surrender fees incurred by (and still applicable to) the Complainant, substantially compound further the adverse impact of the material withdrawals undertaken throughout the years and the adverse exchange rate movements mentioned above.

The fees of EUR14,306.75 that the Complainant paid in total over the years on the RL360 Policy till 6 April 2022, and the hefty surrender charges of EUR9,541.04 paid on the surrender of the Royal Skandia Policy together, on their own, account to 17.30%<sup>74</sup> of the Complainant's original premium of EUR137,822.40.

The actual total charges paid between the two policies would actually be higher as such figure excludes other fees paid on the Royal Skandia Policy paid prior to the surrender of such policy. Such figure also excludes the new surrender charges that would apply in case of the surrender of the RL360 Policy.

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<sup>74</sup> €23,847.79 (€14,306.75+€9,541.04) of the original premium of €137,822.40

As indicated above, there is still a high surrender fee that would be incurred by the Complainant on the RL360 Policy if the Complainant proceeds to surrender this policy.

Had the Complainant retained his original Royal Skandia Policy, the Complainant would have avoided paying the surrender fees of EUR9,541.04 and would now not be subject to a further exit fee, as the exit fee structure on the Royal Skandia Policy would have become nil after 8 years, that is, by end October 2020.<sup>75</sup>

Moreover, he would have been able to surrender the underlying policy by the end of the year 2020, as the option indicated in his Complaint filed in 2021, and thus also avoid incurring the recurrent administration fees applicable on the RL360 Policy which themselves also have an adverse material impact on his remaining pension value.

The additional exit fee on the RL360 Policy was indicated by the Service Provider as amounting to Eur4,839.59 at the time of its reply in March 2021.

It is noted that this further fee is equivalent to approximately 13% of his recent policy value which as at 20 December 2020 stood at Eur36,243.34.<sup>76</sup>

The Arbiter further notes that since the last policy valuation of December 2020, the Complainant's pension kept incurring over Eur1,700 in yearly fees on the RL360 Policy in *Percentage Administration Fee*<sup>77</sup> and *Flat Administration Fee*.<sup>78</sup> These two administration fees alone together amount to nearly 5% in recurrent fees of the Complainant's remaining value of his pension scheme.<sup>79</sup>

- (iii) **Inadequate basis for the transfer to a similar policy and for incurring the hefty early surrender fees on the original policy whilst being subject to a new, lengthier and higher exit fee structure on the new policy**

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<sup>75</sup> P. 156

<sup>76</sup> P. 112

<sup>77</sup> Of Eur254.71 every three months.

<sup>78</sup> Of approx. Eur175 every three months.

<sup>79</sup> (Eur254.71 x 4 =Eur1,018.84) + (Eur175x4=Eur700) of Eur36,243.

**The transfer from an existing policy (Royal Skandia Policy) that the Complainant originally had, to a similar policy (the RL360 Policy), resulted in material adverse implications on his Retirement Scheme.**

The Arbiter notes that both policies were issued by entities based in the Isle of Man and have similar features/aims.

**It is unclear why the trustee has not raised concerns and actually permitted the transfer from the Royal Skandia Policy to the RL360 Policy when these two policies had similar features/aims, when high surrender charges which had a material impact on the Complainant's Scheme were to apply for such transfer and, also, given that the Complainant was going to end up again on a new, lengthier and more penalising surrender fee structure applicable on the new underlying policy. This has to be also seen in the context of the Complainant's profile as further outlined above.**

The respective charges of the Royal Skandia Policy and the RL360 Policy were outlined in their respective policy documents.<sup>80</sup> Whilst certain fees between the two policies are comparable, **it is noted that the RL360 Policy had even a relatively higher exit fee of '9.7% reducing to NIL after 10 yrs'<sup>81</sup> when compared to the lower '8.500000% reducing by 1.062% per year from the Policy date to nil after 8 years' that applied on the Royal Skandia Policy.<sup>82</sup>**

**No apparent benefit or any reasonable justification supporting the surrender of the Complainant's Royal Skandia Policy and transfer to the RL360 Policy and maintenance thereof has indeed emerged as being in *the best interests of the Complainant* given his particular circumstances.**

**This is evident particularly when taking into consideration the similar nature of such policies, the relatively higher exit fees and the material surrender charges that applied for an early surrender of the Royal Skandia Policy.**

**It is further noted that the investment portfolio of the Complainant was a rather passive one with only two major investments (into structured notes**

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<sup>80</sup> P. 186-187; P. 222

<sup>81</sup> P. 35

<sup>82</sup> P. 187

amounting in total to GBP74,000) undertaken in 2015 with subsequent investments of a much smaller value being undertaken only 5 years thereafter, in 2020, in an additional three investment funds (for the total of EUR16,000), as indicated in Table A above.

**For the above-stated reasons, the Arbiter considers that there is validity to the claim that the RL360 Policy was inappropriate in the particular circumstances of the Complainant.**

**Also taking into consideration the financial situation and status of the Complainant who was already retired when joining the Scheme, the fact that the Complainant was already invested into a similar policy to that of the RL360 Policy, the hefty surrender charges applicable on the exit from the Royal Skandia Policy and the higher and new exit fees applicable on the RL360 Policy as already outlined above.**

**The Arbiter considers that the surrender of the Royal Skandia Policy and purchase of the RL360 Policy instead should have, at the very least, been challenged and queried by STM Malta in its role as trustee of the Scheme, and only permitted after carefully verifying that this was indeed in the Complainant's best interest. It was by no means normal or ordinary for such policy transfer to occur after just two years.**

**The relatively small pension pot of the Complainant, passive portfolio and the fact that he was already retired and thus needing more withdrawals should have triggered questions and actions on the part of the trustee, as part of its duties to safeguard the Complainant's pension.**

**The Retirement Scheme Administrator and Trustee has rather let the Complainant's pension portfolio to be practically decimated by fees.**

### **Concluding remarks**

**The Complainant ultimately relied on STM Malta as the Trustee and Retirement Scheme Administrator of the Scheme as well as other parties within the Scheme's structure, to achieve the scope for which the pension arrangement was undertaken, that is, to provide for retirement benefits and also reasonably expect a return to safeguard his pension.**

For the reasons amply explained, it is considered that there was a clear lack of diligence by the Service Provider in the general administration of the Scheme in respect of the Complainant and in carrying out its duties as Trustee, particularly, when it came to the transactions involving the underlying policies.

It is also considered that the Service Provider failed to act with the prudence, diligence and attention of a *bonus paterfamilias* to safeguard the Complainant's pension from being depleted through the application of unnecessary charges that could have been easily avoided given his particular circumstances.<sup>83</sup>

The Arbiter also considers that the Service Provider did not meet the '*reasonable and legitimate expectations*'<sup>84</sup> of the Complainant who had placed his trust in the Service Provider and others, believing in their professionalism and their duty of care and diligence.

### Conclusion & Compensation

For the above-stated reasons, the Arbiter is *partially* accepting the complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case<sup>85</sup> and is accepting it in so far as it is compatible with this decision.

Whilst the Arbiter cannot accept the Complainant's requested amount of compensation for reasons stated above in this decision, the Arbiter however considers that it is fair, equitable and reasonable for the Complainant to be compensated by STM Malta Pension Services Limited for the damages suffered by him as a result of the lack of protection afforded by STM Malta to safeguard his pension scheme. This is being mindful of the key role of STM Malta as Trustee and Retirement Scheme Administrator of the STM Malta Retirement Plan.

In calculating the amount of compensation payable to the Complainant, the Arbiter is accordingly taking into consideration the amount of surrender fees

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<sup>83</sup> Cap. 331 of the Laws of Malta, Art. 21(1)

<sup>84</sup> Cap. 555 of the Laws of Malta, Art. 19(3)(c)

<sup>85</sup> *Ibid*, Art.19(3)(b)

**paid on the Royal Skandia Policy as well as the administration fees paid on the RL360 Policy since end December 2020.**

**Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders STM Malta Pension Services Limited to pay the sum of EUR11,710 (eleven thousand, seven hundred and ten Euros)<sup>86</sup> as compensation to the Complainant as well as for STM Malta to pay itself the remaining early redemption fees applicable on the RL360 Policy should the Complainant decide to surrender this policy.**

**With legal interest from the date of this decision till the date of effective payment.**

**The expenses of this case are to be borne by the Service Provider.**

**Dr Reno Borg  
Arbiter for Financial Services**

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<sup>86</sup> EUR9,541.04 in surrender fees paid on the Royal Skandia Policy + EUR1,273.55 in '*Percentage Administration Fee*' paid on the RL360 Policy over the period January 2021 till end March 2022 (€254.71 in March 2021, June 2021, September 2021, December 2021 and March 2022 respectively) + EUR896.13 '*in Flat Administration Fee*' paid on the RL360 Policy over the period January 2021 till end March 2022 (€175.85 in March 2021, €180.07 in June 2021, September 2021, December 2021 and March 2022 respectively).