

Before the Arbiter for Financial Services

Case ASF 050/2021

VZ & ZZ

(together ‘the Complainants’)

vs

STM Malta Pension Services Limited

(C51028) (‘STM Malta’ or ‘the Service

Provider’)

Sitting of the 27 July 2022

The Arbiter,

Having seen **the Complaint** relating to the STM Malta Retirement Plan (‘the Scheme’ or ‘Retirement Scheme’), 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 Scheme Administrator.

The Complaint, in essence, revolves around (i) the administration fees charged by STM Malta during the period involving the replacement of their long-time investment advisor at the request of STM Malta who it was claimed also refused to accept their proposed new appointment and (ii) the new exit charges imposed by STM Malta on their respective Schemes which, the Complainants claimed, were accepted under duress and only to enable the transfer out of the Scheme.

The Complaint

The Complainants explained that their complaint involved the dismissal by STM Malta of their long-time UK advisor who was instrumental in astute investments made over the years to enhance their pension pot.

They claimed that STM Malta tried to impose instead investment advisors located in the Isle of Man, who were unknown to them.

After the Complainants initially suggested their Spanish advisors, Blevins Franks, they alleged that these were frowned upon by STM Malta who refused to accept them even though Blevins Franks had all the credentials required.

The Complainants expressed their dissatisfaction with the length of time taken to allow alternative arrangements to be made with respect to the investment advisor which they alleged resulted in substantial losses.

With respect to charges, the Complainants submitted that after 12 years of a satisfactory working relationship, STM Malta imposed new terms of reference which involved the imposition of exit charges.

They noted that they had objected to these changes but were forced to sign the conditions to finalise the transfer of their Retirement Schemes to their new advisors and trustee, Blevins Franks Malta. The Complainants claimed that they signed under duress and submitted that English law made such arrangement null and void.

Remedy requested

The Complainants initially requested:¹ the refund of the exit charges;² the initial arrangement fee;³ as well as the losses incurred on their existing funds which they claimed resulted from the lack of financial advisor.⁴

During the hearing of 12 October 2021,⁵ the Arbiter requested the Complainants to quantify the amount they were seeking as compensation and show how they arrived at such amount.

In their subsequent email to the Office of the Arbiter for Financial Services dated 27 October 2021, the Complainants clarified that the funds that appeared to have been suspended (at the time when they made their claim of losses on

¹ Page (P.) 3

² The new exit fees, introduced as of 1 January 2020, amounted to GBP1,000 per member – P. 7

³ The initial arrangement fee amounted to GBP15,000, this being the amount '*originally charged by S.T.M in Gibraltar for administration charges in setting up the 'lifetime' running of Q.R.O.P.S pension plan*' - P. 8

⁴ In their formal complaint to STM Malta, the Complainants indicated a loss of GBP79,000 in their pension portfolio, which they claimed resulted from having no financial advisor during turbulent times. - P. 8

⁵ P. 74-75

investments), were now being sold and re-invested into their pension and *'should no longer be taken into account'*.⁶

The Complainants further clarified that:

'All that we are claiming are the exit charges for both of us & 2 years administration fees for the period we were left waiting without any administration taking place when S.T.M were delaying the transfer. You will see that these figures are 2000.00 & 4050.00 making a total of 6050.00 pounds sterling'.⁷

The figures of GBP2,000 and GBP4,050, in total amounting to GBP6,050 being the sum requested by the Complainants, are in respect of the *'exit fee of £1,000'* (on their respective Scheme) and the *'fixed annual administration fee'* (respectively of £1,350 and £675 per annum) as outlined in the document titled *'Charges'*, which was attached to their email of 27 October 2021.⁸

In its reply, STM Malta essentially submitted the following:⁹

The Service Provider strenuously denied it is at fault and submitted that no equitable determination may be made in favour of the Complainants.

It explained the following in its reply:

Regulatory Background

That with effect from 1 January 2019, the Malta Financial Services Authority ('MFSA') issued revised regulations pursuant to the Retirement Pensions Act, Chapter 514 of the Laws of Malta, in relation to Personal Retirement Schemes in the form of the Pension Rules for Personal Retirement Schemes ('the Rules').

The Rules represented a radical overhaul in relation to the way scheme members could obtain investment advice in relation to their pension assets within a Malta personal pension scheme.

The following points were of particular note:

⁶ P. 76

⁷ *Ibid.*

⁸ P. 77

⁹ P. 46-52

- The power to appoint an investment advisor lies solely with the member in relation to his pension assets (as per Rule B.9.2);
- Since the power is to be exercised by the member for his own benefit it is assumed to be personal and not fiduciary. Nevertheless, the Rules did constrain the exercise of the power and limit the selection to firms which are either regulated pursuant to MiFID II or the Insurance Distribution Directive or an equivalent regulation, and who are regulated to give the investment advice they are giving (Rule B.9.6(b)(i)/Footnote 4 to the Rules).
- The power of the retirement scheme administrator ('RSA') is a negative power, in so far as it must refuse to accept the appointment of an advisor who is not regulated in the right way (Rule B.9.6). The positive power of appointment and therefore the positive power to remove or dismiss an advisor lies solely with the member.
- The RSA is required to enter into an agreement with the Investment Advisor on behalf of the member (Rule B.9.6(c));
- The ongoing investment advice is given to the member in respect of the scheme investments and not to the scheme itself (Rule B.9.2(a)).
- The question of being regulated to give investment advice was carefully considered by STM Malta. The conclusions reached with reference to the relevant European Directives was further explained in its reply.¹⁰

STM Malta further explained that where a member's current advisor appeared not to meet the requirements of the Rules, the Service Provider issued a series of communications to members in respect of their obligation to appoint a suitably regulated advisor. It noted that some members were not willing to engage with it and would not appoint an advisor who met the criteria laid down in the rules.

STM Malta also explained that it was, and is, not comfortable with a situation where a member has not appointed an advisor as the member is required to do under the rules. After consideration of such, STM Malta negotiated with an investment manager to provide investment management services as a fall-back

¹⁰ P. 48

position in order to protect the position of members. STM Malta submitted that it had however also concluded that even this solution would not be possible where the member objected to this appointment.

The Complainants' Circumstances

STM Malta explained that the Complainants joined the Scheme in May 2011 and were generally happy with the service they received over the years.

Over time, external parties placed increasing burdens on STM Malta, and it was concluded that it was necessary to introduce a termination fee in order to cover the costs of the increased administration burden (such as the reporting imposed by UK SI 2006/208) associated with a transfer to another service provider.

STM Malta explained that in October 2019, the termination fee was extended to all existing clients and notified by email to members, with a 30-day notice period before the new fees would be applied. The Service Provider is aware that the Complainants received and read the emails.

At the time when the regulations changed, STM Malta identified that the Complainants' advisor, *Elevation Investment Management Limited*, had not registered to be able to provide investment management services to residents of Spain. STM Malta notified the Complainants of their options in a series of emails, the latest dated 17 January 2020 as evidenced in the Complainants' pack.¹¹

By way of an email dated 28 October 2019 (Appendix 1 to its reply),¹² the Complainants advised STM Malta that they wished to appoint Blevins Franks Financial Management Ltd as their Investment Advisors. Blevins Franks Financial Management Limited is a UK registered investment advisor which had previously been approved by STM Malta as a firm which could give investment advice to members of the Scheme.

On 21 May 2019 (Appendix 2 to its reply),¹³ STM Malta sent a master advisory agreement to Blevins Franks Financial Management Limited. The agreement was re-sent on 13 March 2020 and was never returned.

¹¹ P. 16

¹² P. 54-55

¹³ P. 57

The Complainants subsequently transferred their pension to the Blevins Franks Scheme.

STM Malta explained that the history in relation to the transfer to the new trustee is adequately set out in its email to the Complainants dated 7 December 2020, the contents of which, it noted, were not contested.

The Service Provider reiterated that:

- The Complainants were notified on 31 October 2019 that STM Malta was awaiting a signed agreement from Blevins Franks in order that STM Malta could proceed to approve the appointment;
- By 2 December 2019, STM Malta had nevertheless provided Blevins Franks with all information that it would need to advise the Complainants;
- On 22 July 2020, STM Malta received the transfer out request from the Complainants;
- On 29 July 2020, STM Malta notified the Complainants of the expected charges on the transfer out;
- On 7 August 2020, STM Malta sent Deeds of Assignment to Blevins Franks as the transferee;
- On 13 August 2020, Blevins Franks returned the Deed of Assignment;
- On 24 August 2020, the Complainants acknowledged the charges;
- On 1 September, Blevins Franks confirmed how the charges were to be settled and the Deeds of Assignment were sent to the respective insurers on 4 September 2020;
- Any further time spent in finalising the transfer relates to the internal processing of the investment platforms selected by the Complainants and their advisors. According to available information, STM Malta was able to confirm that all actions were complete on 13 October 2020.

Investment Performance

It noted that the Complainants have indicated, at page 15 of their complaint, a loss of £77,698. STM Malta further noted that the Complainants have not sent to STM Malta copies of their calculations, and STM Malta was unable to verify these figures. In any event, it noted that there is no claim that the investments were not suitable and, indeed, the selection of investments is diversified, liquid and suitable for retail investors.

Response to the Complaint

STM Malta submitted that:

1. The Complainants are wrong to state that STM Malta dismissed the Complainants' advisor. The power of appointment of the advisor lies solely with the Complainants as a result of the Rules. Since the chosen advisor did not meet the regulatory requirements, STM Malta could not approve the appointment.
2. STM Malta has not refused to appoint any Spanish advisor. The request was to appoint a UK regulated advisor. STM Malta accepted that this was permitted. For its own reasons Blevins Franks Financial Management Limited simply refused to enter into an agreement with STM Malta. This is not STM Malta's fault.
3. Any element of duress is denied. The Complainants were notified, in general, that STM Malta had introduced a termination charge long before the Complainants decided to transfer their pension. STM Malta submitted that it did notify the Complainants of the charges applicable at the time the transfer was requested. Strictly, STM Malta was notifying the Complainants of the charges applicable not requesting consent although, for good practice, it requests acceptance in case the member wishes to change their mind to avoid incurring such charges.
4. STM Malta denied that the Complainants have made a financial loss in relation to the investment portfolio. The Complainants have not provided documentation to support the claim and STM Malta's records do not indicate any such loss. In any case, STM Malta denies that there is any

material delay arising from the action or inaction of STM Malta in the transfer to Blevins Franks.

Furthermore, STM Malta observed that the reason that the Complainants were unable to appoint their chosen advisor was entirely due to the unreasonable behaviour of the advisor in refusing to enter into an agreement as required by the Rules.

The Complainants further refused the appointment of STM Malta's default solution of the appointment of a manager. As a result of the combination of the proposed advisor's behaviour and the Complainants' own behaviours, the Complainants' portfolio had remained without a properly appointed advisor and no liability can in any event be attributed to STM Malta for the failure of third parties.

With respect to the remedy requested, STM Malta further submitted that:

- The exit fees were notified to the Complainants in good time and the Complainants were given adequate time to object to the fees but did not do so. It must be concluded that the change to the fees was accepted.
- STM Malta is not involved in the initial arrangement fee (requested in their original request for compensation).
- STM Malta cannot be held responsible for the lack of advisor. It has no power to appoint the investment advisor. It has made vigorous attempts to encourage the Complainants to appoint an advisor. The Complainants refused STM Malta's default appointment. It accordingly submitted that either the Complainants have delayed the appointment of the Investment Advisor themselves or the selected investment advisor has refused to complete the formalities required by the Rules, neither of which was in the control of STM Malta.

Furthermore, the Complainants had produced no evidence of investment losses and STM Malta could find no basis from its own research to support the figures supplied by the Complainants.

STM Malta submitted that in light of the information available to it, there is no basis for the claims made by the Complainants and no equitable award can be made in their favour.

The Merits of the Case

The Arbitrator will decide the Complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.¹⁴

The Arbitrator 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 555¹⁵ which stipulates that he should deal with complaints in '*an economical and expeditious manner*'.

Facts of the Case

Further to the clarifications made by the Complainants in their email of 27 October 2021, with respect to their requested remedy, as outlined above, the Arbitrator shall focus on the two key aspects raised in this Complaint which relate to the requested refund of:

- (i) the administration fees charged by STM Malta for the last two years given the Complainants claim that they '*were left waiting without any administration taking place when S.T.M. were delaying the transfer*'.¹⁶ This matter relates to the alleged delays in the appointment of the new advisor and transfer out of the Scheme.
- (ii) the exit fees charged to the Complainants (which fees were part of STM Malta's '*new charging structure as of the 1st of January 2020*').¹⁷

Timeline

¹⁴ Cap. 555, Article 19(3)(b)

¹⁵ Art. 19(3)(d)

¹⁶ P. 76

¹⁷ P. 7

The following is a timeline of the relevant communications, including a summary thereof, exchanged between the parties as emerging according to the documents presented during the proceedings of the case:

- (a) 17/10/2019 – Communication sent by STM Malta to members of the Scheme in relation to the '*STM Malta Amendment to Fee Schedule*'.¹⁸
- (b) 19/10/2019 – The Complainants notified STM Malta that given their UK financial advisor had no passporting facilities, they had decided to dispense with the use of a financial advisor noting in the process that the Scheme '*has been running on auto pilot quite successfully since 2008*', and that they were '*quite confident that I can keep an eye on this investment*' with Blevins Franks assistance in case of queries.¹⁹
- (c) 21/10/2019 – STM Malta notified the Complainants that '*to be able to manage your own investment you would have to qualify as a professional member*'.²⁰ The Service Provider further informed them that they may choose to appoint Blevins Franks but given that they did not have terms of business with the Spanish office of Blevins Franks (but only with the Malta office), STM Malta would need to do the required due diligence.

STM Malta further notified him that '*If an advisor is not appointed, we will have to appoint a DFM for you, Creechurch because due to new regulations we cannot leave your portfolio without an advisor*'.²¹

- (d) 28/10/2019 - In their email of 28 October 2019 sent to STM Malta, the Complainants nominated Blevins Franks as their official advisors with regard to their QROPS scheme.²²
- (e) 28/10/2019 – STM Malta sent the Complainants the form for them to sign in respect of the appointment of Blevins Franks and also notified the Complainants that Blevins Franks would need to sign the agreement before STM Malta could approve the appointment.²³

¹⁸ P. 14

¹⁹ P. 56

²⁰ P. 55

²¹ *Ibid.*

²² P. 13

²³ P. 54

- (f) 30/10/2019 – The Complainants informed STM Malta that they have completed the paperwork needed for Blevins Franks to become their advisors which paperwork has been posted to Blevins Franks. The Complainants further noted that they were now waiting for a meeting with Blevins Franks to discuss the process, which process the advisor informed them could take some time.²⁴
- (g) 31/10/2019 – STM Malta acknowledged the Complainants’ email and noted that STM Malta was in contact with Blevins Franks regarding an agreement that needed to be signed by Blevins Franks. STM Malta further noted that until it received the said agreement the request for Blevins Franks’ appointment cannot be processed and that Blevins Franks were aware of this.²⁵
- (h) 1/11/2019 – STM Malta sent an email communication to the Scheme members. It referred to its communication of 17 October 2019 relating to the change in fees and explained that *‘the wording of the amendment has in some instances been misunderstood’*.²⁶ In the said email, STM Malta issued clarifications as to the instances when the new fees shall apply.
- (i) 14/11/2019 – In their email to STM Malta, the Complainants queried the new charging structure with regards to their situation, asking the following: *‘As we have been with you for over 11 years are we correct in assuming that these changes will not apply to us? In these circumstances do the previous charges still stand?’*.²⁷
- They also notified STM Malta that they had now signed *‘the necessary documentation for the official transfer of appointing Blevins Franks as our advisors’*.²⁸
- (j) 17/01/2020 – STM Malta sent a communication to the Scheme’s members relating to the arrangement it did with an Isle of Man Regulated investment

²⁴ P. 53-54

²⁵ P. 53

²⁶ P. 14

²⁷ P. 15

²⁸ *Ibid.*

manager, *Creechurch Capital Ltd*, which would apply in case where STM Malta has not received instructions to appoint a regulated investment firm.²⁹

- (k) 30/01/2020 – The Complainants referred STM Malta to the notification they sent back in October 2019 where they informed STM Malta that Blevins Franks were to be appointed as their advisors and that *‘procedure is already under way to facilitate this’*.³⁰ The Complainants further directed STM Malta that *‘Under no circumstances are you to appoint anyone else’*.³¹
- (l) 30/01/2020 – STM Malta confirmed that they will not appoint the Isle of Man regulated investment manager, *Creechurch Capital Ltd*; that Blevins Franks were not yet the appointed advisors (given, in essence, STM Malta had not yet received all the required documents); and requested the Complainants to clarify whether they were *‘looking to transfer out from STM Malta to Blevins Franks’*.³²
- (m) 03/02/2020 – The Complainants notified STM Malta that any trail commissions paid to the original advisor should have stopped. They further notified STM Malta that their pension and investments were still under review, and they were awaiting the outcome. The Complainants also noted that *‘When our decision is made we will of course keep you informed’*.³³
- (n) 05/02/2020 – STM Malta asked the Complainants whether they wished to remove the original advisor or just stop the advisor fees.³⁴
- (o) 05/02/2020 – The Complainants replied to STM Malta referring to STM’s notification of 2019 whereby their original advisor had to be removed and their notification of Blevins Franks replacing the original advisor.³⁵
- (p) 03/07/2020 – STM Malta referred to a telephone conversation held with the Complainants and to STM Malta’s understanding that the Complainants wished to transfer away their scheme. STM Malta requested the

²⁹ P. 16

³⁰ *Ibid.*

³¹ *Ibid.*

³² P. 17

³³ P. 18

³⁴ P. 19

³⁵ *Ibid.*

Complainants to confirm which pension provider the Complainants will be transferring to.³⁶

- (q) 07/07/2020 – The Complainants confirmed that *‘the pension provider will be Providence Retirement Plan with Blevins Franks’* and that STM Malta *‘will be hearing from Blevins Franks in due course’*.³⁷

The Complainants also noted that they *‘assume that there will be no exit charges incurred due to the length of time we have been with [STM Malta] and hope no other charges will be added during the transition’*.³⁸

The Complainants also remarked that they were *‘sorry that late last year this came about due to [STM Malta] no longer being able to accept our longstanding British advisor ...’*.³⁹

- (r) 03/08/2020 – The Complainants expressed their concerns to STM Malta *‘wanting us to agree to terms & conditions at this time of termination’*.⁴⁰ They argued that they *‘should not need to sign as terms were agreed when we first joined STM in Gibraltar’*.⁴¹

In the said email, the Complainants claimed *inter alia* that STM Malta *‘were the party who started all this off with the dismissal of our advisor late last year’* and asked whether this matter could be finalised on amicable terms.

- (s) 14/08/2020 – In their email to STM Malta, the Complainants further indicated that they were still upset with being charged an exit fee. They reiterated that *‘The underlying principal here is that we would never have moved from S T M after you having to dismiss our then advisor, if you would have accepted Blevins Franks who are accredited advisors. Instead, you tried to push us towards taking on advisors totally unknown to us’*.⁴²

³⁶ P. 22

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ P. 23

⁴¹ *Ibid.*

⁴² P. 24

- (t) 19/08/2020 – STM Malta explained to the Complainants that *'The transfer out paperwork were both received in July 2020 and therefore [STM Malta] will charge an exit fee of £1,000 for each transfer out you have requested'*.⁴³

In the said email, STM Malta also stated the following:

'Kindly be advised that STM Malta are happy to establish a business relation with Blevins Franks however they have refused to sign the agreement due to the new regulations imposed by the Malta Financial Authority therefore that is why we were unable to process your change of broker request.

May you kindly send us the signed letter of charges so we will be able to proceed with you transfer out request'.⁴⁴

- (u) 23/08/2020 – The Complainants enclosed the forms that STM Malta directed them to sign and stated that they were signing these under duress in order to finalise this matter and move on. The Complainants also reiterated their objections.⁴⁵
- (v) 30/10/2020 – Confirmation letter issued by STM Malta regarding the transfer of the Complainants' respective schemes to the Providence Retirement Plan held with Blevins Franks.⁴⁶

It is noted that other relevant communications and timeline thereof, namely, the *Transfer Out Request* form signed by the Complainants, which STM Malta indicated it received on 22 July 2020; the submission to Blevins Franks by STM Malta of a *Deed of Assignment* on 7 August 2020 which required to be signed; and the receipt by STM Malta of the *Deed of Assignment* from Blevins Franks on 13 August 2020 and the signed *Letter of Charges* by the Complainants on 24 August 2020,⁴⁷ are referred to and outlined in the email dated 7 December 2020 sent by STM Malta in reply to the Complainants' formal complaint.⁴⁸

⁴³ P. 25

⁴⁴ *Ibid.*

⁴⁵ P. 26

⁴⁶ P. 32-35

⁴⁷ Copies of the said exchanges were not presented during the case. The said timeline was not contested by the Complainants throughout the proceedings.

⁴⁸ P. 6-7

Observations & Concluding remarks

The requested refund of the administration fees

The Arbiter notes that the MFSA had indeed amended the *Pensions Rules for Personal Retirement Schemes* ('the Rules') and communicated new/updated requirements in 2018/2019 which affected the type of investment advisors that were allowed to be appointed in respect of member-directed schemes.⁴⁹

SLC 9.6(b) of Part B.9 titled '*Supplementary Conditions in the case of entirely Member Directed Schemes*' of the said Rules⁵⁰ indisputably provided for the requirement for investment advisors to be regulated. The said amendments to the Rules imposed certain obligations on the Retirement Scheme Administrator to ensure that the investment advisor in respect of such member-directed schemes had to be properly regulated.

Hence, having considered the context which triggered the requested change in advisor, and the communications exchanged as outlined above, the Arbiter does not consider that there are any reasonable, justifiable and equitable grounds on which he can uphold the Complainants' request for the refund of the '*2 years administration fees for the period we were left waiting without any administration taking place when STM were delaying the transfer*'.⁵¹

The Arbiter is accordingly dismissing their request.

Moreover, the process of the replacement of the advisor occurred around over a one-year period (from late 2019 till the transfer of the Scheme in October 2020), and not two years. The Arbiter considers that the Scheme was still being administered by STM Malta, in its role of Trustee and Retirement Scheme Administrator, during such period of the replacement of advisor until the transfer out.

⁴⁹ E.g.: '*Consultation on Amendments to the Pension Rules for Personal Retirement Schemes issued under the Retirement Pensions Act, of 16 November 2018*' issued by MFSA, (Ref. 15/2018) - <https://www.mfsa.mt/publication/consultation-on-amendments-to-the-pension-rules-for-personal-retirement-schemes-issued-under-the-retirement-pensions-act/>
'*Feedback Statement issued further to industry responses to MFSA Consultation Documents*', MFSA Ref. [9-2017 / 15-2018] issued by MFSA on 4 January 2019 - https://www.mfsa.mt/wp-content/uploads/2019/02/Feedback_Statement_04012019.pdf

⁵⁰ Version issued Jan 2015, Updated Dec 2018

⁵¹ p. 76

Furthermore, the Arbiter does not consider that any adequate or sufficient basis has either been produced or emerged to substantiate the claim that STM Malta were themselves responsible for the delay in the replacement of the investment advisor and/or transfer of the Complainants' respective Scheme.

Accordingly, the Arbiter is rejecting the Complainants' claim for compensation in respect of the two-year administration fees for the reasons mentioned.

The requested refund of exit charges

With respect to the exit charges, the Arbiter notes that, as explained by STM Malta, the Scheme members were sent, in late 2019, an email outlining STM Malta's new charging structure, applicable, as of 1st January 2020, where it was *'also specified that all transfers out will incur an exit fee of £1,000'*.⁵²

The Scheme members were notified by STM Malta of amendments to its fee schedule on 17 October 2019 and on 1 November 2019. In its notice of 1 November 2019, (which referred to the communication sent to members on 17 October 2019), STM Malta notified Scheme members of the following:

'... we have identified that the wording of the amendment has in some instances been misunderstood. Please rest assured, the new fees that have been introduced for the administration work relating to 'change of advisor' and 'change of investment platform' will only be charged if you transfer out of STM to another service provider within the 5 years following the date of the change'.⁵³

The Arbiter further notes that, as per the timeline of events outlined above, the Complainants were in the process of replacing the advisor during the period of the said notifications relating to the fee changes.⁵⁴ In the same month of STM Malta's notice of November 2019, the Complainants further queried the application of the new charging structure in their circumstance.⁵⁵

⁵² p. 7

⁵³ p. 14

⁵⁴ p. 13

⁵⁵ p. 15

It is also noted that on 30 January 2020, STM Malta itself asked the Complainants whether it was their intention to transfer out.⁵⁶

According to the communications presented during the case, it transpires that by July 2020, the change in advisor had not yet been formalised and completed and the Complainants requested to transfer out.⁵⁷ In their email of 19 August 2020, STM Malta confirmed and explained why they *'were unable to process [the Complainants'] change of broker request'*.⁵⁸

In the particular circumstances of this case, the Arbiter considers that there is a reasonable and valid justification for the Complainants' request of reimbursement of the exit fees, taking into consideration various factors including the following:

- i. **That it has not emerged that the GBP1,000 exit fee charged to the Complainants' respective Scheme was part of their initial fee structure, but this was rather only introduced through the notifications sent by STM Malta in October and November 2019.**

Furthermore, such notifications occurred at the time of material developments occurring in respect of the Scheme, namely, the replacement of the investment advisor which process was still in its early stages in respect of the Complainants' Scheme.

- ii. **That the Complainants had queried the fee structure as per their email of 14 November 2019,⁵⁹ and also clearly contested the application of the disputed fees prior to the transfer out, as per their emails of 3rd and 23rd August 2020.⁶⁰**
- iii. **That in case of a material revision to the fee structure of a financial product already acquired by a consumer, such as was the case, it would be reasonable and appropriate for the consumer to be notified in good time with details of the intended revisions and the consumer is provided with a sufficient and reasonable period within which an informed decision can be**

⁵⁶ P. 17

⁵⁷ P. 6 & 22

⁵⁸ P. 25

⁵⁹ P. 15

⁶⁰ P.23 & 26

made and action taken by redeeming or exiting from the product, should the consumer not be happy and not accept the new fee structure.

Furthermore, cognisance needs to be also taken of the nature of the financial product in question. A transfer out from a Retirement Scheme, such as the one of the Complainants', is quite a material matter. The implications and consequences of a transfer (to exit from the Retirement Scheme) need to be carefully and thoroughly considered with professional and expert assistance sought in order for an informed decision to be taken.

A decision relating to the transfer out of such a Scheme may accordingly not be done as quickly and easily and could have reasonably taken a certain amount of time, even more so, when also considering the particular events occurring in 2020.

- iv. That apart from the fact that a material development involving the replacement of the advisor was in its early process at the time of the notification of the new fees as outlined above, it is also noted that within a short period of time (of around 3 months), following STM Malta's notification of 1 November 2019, there were already communications between the parties seeking clarification as to whether they intend to transfer out as outlined above.⁶¹**
- v. That whilst the form of the transfer out was signed by the Complainants in July 2020, it is noted that over the period involving the notice of the revised fees and the submission of the transfer out form, there were various ongoing communications between the Complainants and STM Malta relating to the process of the change in advisor and eventually the transferring out of the Scheme.**

Whilst the Complainants' intentions seemed to initially involve just the replacement of the advisor, however, during the same process of the change in advisor, which was still ongoing and had not been finalised yet, their decision was revised to one involving a transfer out altogether.

⁶¹ Email dated 30/01/2010 - P. 17

Accordingly, it seems that the Complainants formalised the transfer out in July 2020, after being able to make an informed decision with respect to the material developments in question, this being within a financial year since the notifications done in late 2019 relating to the change in fees.

- vi. That as indicated in the notification sent by STM Malta of 1 November 2019, the new fees were *'introduced for the administration work relating to "change of advisor" and "change of investment platform"'*.⁶²

The process for the change in advisor had commenced by the Complainants around the same time in October 2019 and was still ongoing as per the various communications exchanged in 2020, outlined under the section titled *'Timeline'* above.

- vii. That ultimately, no evidence was produced nor emerged that the replacement/change in advisor to Blevins Franks was finalised within the Complainants' Scheme prior to the date of the transfer out. The transfer out of the Scheme (completed in October 2020)⁶³ seems to have prevailed the change in advisor.

In its email of 1 November 2019, STM Malta itself stated that the new fees *'introduced for the administration work relating to the 'change of advisor' and 'change of investment platform' will only be charged if you transfer out of STM to another service provider within the 5 years following the date of the change'*.⁶⁴

Accordingly, given that the change in advisor had not been finalised prior to the transfer out and there was no effective change of advisor, as STM Malta was unable to process the change of advisor request,⁶⁵ and given *'the lack of advisor'*⁶⁶ which it itself acknowledged in its reply, the deduction of the fees does not conform either to STM Malta's own declaration detailed above.

⁶² P. 14

⁶³ P. 32-35

⁶⁴ P. 14 – Emphasis added by the Arbiter

⁶⁵ Email of 19/08/2020 sent to the Complainants by STM Malta

⁶⁶ P. 52

The exit fees should have thus not been applied in the circumstance where the transfer out did not follow *'the date of the change'* in advisor. In this case, no such effective date of the change in advisor has been demonstrated nor determined in the first place.

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 case⁶⁷ and is accepting it in so far as it is compatible with this decision.

The Arbiter decides that the Complainants should be refunded the exit fee of GBP1,000 each that they were respectively charged.

The Arbiter is not accepting the other claims made by the Complainants as amply explained above in this decision.

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 refund and pay the sum of GBP1,000 to each of the Complainants in respect of their respective Scheme, in total amounting to GBP2,000 (two thousand pounds sterling), as compensation.

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

Each party is to bear its own legal costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services

⁶⁷ *Ibid*, Art.19(3)(b)