Before the Arbiter for Financial Services

Case ASF 078/2023

ZR

('the Complainant')

vs

Integrated-Capabilities (Malta) Limited

(C 50348) ('ICAP')

and

Optimus Fiduciaries (Malta) Limited

(C 90147) ('OFML')

Sitting of 11 October 2024

The Arbiter,

Having seen the **Complaint** made against *Integrated-Capabilities (Malta) Limited* ('ICAP') and *Optimus Fiduciaries (Malta) Limited* ('OFML') relating to *The Optimus Retirement Benefit Scheme No. 1* ('the Retirement Scheme' or 'Scheme'), this being a personal retirement scheme established in the form of a trust and licensed by the Malta Financial Services Authority ('MFSA').

ICAP was the original trustee and Retirement Scheme Administrator ('RSA') of the Scheme before being replaced by OFML as the successive trustee and RSA of the Scheme on 29th May 2020.[1]

[1] Page (P.) 131, https://www.mfsa.mt/financial-services-register/

The Complaint as explained by the Complainant[2]

The Complainant explained that his complaint is levied against *'Integrated Capabilities'* and *'Optimus Fiduciary Malta Ltd'*.[3]

He submitted that he does not believe they carried out sufficient due diligence to protect his interests and ensure that a duty of care was sufficiently carried out in accepting several investments into his pension portfolio.

He further claimed that his pension was mismanaged by *'Optimus Pension Trustees Ltd'*.[4]

The Complainant explained that he was advised by *Gerard Associates* in the UK, who carried out a pension transfer analysis report, TVAS, to transfer his frozen final salary pension into a Qualifying Recognised Overseas Pension Scheme ('QROPS'). He noted that (at the time) he was aided by Stephen Joseph Burdett of *Strategic Wealth UK* (4878500) whose offices are based in Wales and Gibraltar, and connected to *Synergy Wealth Ltd*, an Appointed Representative of *Synergy Wealth*.

He further explained that, unfortunately, these companies no longer operate and that he believes Stephen Joseph Burdett is no longer registered with the FCA. The Complainant claimed that all these companies appear to have been connected with *The Resort Group*, a property development company who, allegedly was using people's pensions to build hotels on the island of Sal and Buena Vista in Cape Verde.

The Complainant claimed that he was advised that by transferring his pension he could invest in several asset types, all of which would generate an income, with the commercial property especially yielding 50% of the rental income paid quarterly in arrears.

He further claimed that he was advised that upon retirement, he would be able to sell the asset at a substantial profit. The Complainant noted that he was provided with glossy documents and financial trends in this regard. He added that, furthermore, a bond investment was also to generate a substantial return

[2] Complaint Form on Page (P.) 1 - 6 with extensive supporting documentation on P. 7 - 118
[3] P. 7
[4] *Ibid.*

upon maturity. The Complainant pointed out that there was to be no more than 50% invested in such assets, with the remaining 50% to be invested in UK-based liquid assets of *Prudential* and *Apollo*, being FCA-regulated.

The Complainant noted that he received a letter from ICAP dated 7th March 2016 advising him that GBP 212,904.15 had been transferred from his *Capita* defined benefit scheme into the Retirement Scheme (membership number FR1096). He understood that the fund initially stood at GBP 218,000. He further explained that the monies were then invested into various investments which went against the original advice document produced by Stephen Burdett of *Strategic Wealth*. The Complainant claimed the investments were to be as follows:

> *'30% - The Resort Group (Commercial Property)*
> *20% - TRG Bonds, 7%*
> *25% - Prudential Dynamic Portfolio Cautious Growth*
> *25% - Apollo Athena International IV Cautious Growth Scheme.*'[5]

The Complainant listed the breakdown of investments as per the statements dated 31st December 2016, 31st December 2017 and 24th October 2019.[6] He noted that Stephen Burdett appears to have left *Strategic Wealth Ltd* in December 2016 and that as per the statement of 24th October 2019, an advisor had to be appointed. The Complainant explained that presumably *Strategic Wealth Ltd* was no longer acting as advisor at the time, as allegedly it had been directed by the UK FCA to discontinue pension dealings.

The Complainant further noted that he received a Statement dated 24th September 2020, which stated that: '*We strongly recommend that you discuss your investments with your appointed investment advisor and if you do not have one, it is highly recommended that you consider appointing an ongoing investment advi[sor]*'.[7]

The Complainant believes he lost money and has certainly not seen any real growth on his Scheme. He noted that he held Optimus responsible for these losses, especially with regard to the investments made into *The Resort Group*.

[5] *Ibid.*
[6] P. 8
[7] *Ibid.*

He believes that Optimus failed to operate to the standards expected of a regulated pension provider and professional trustee, and that such failures directly led to these losses.

He added that the statements presented show varying investments but there was no appointed advisor and accordingly questioned the basis on which these investments had been made.

The Complainant submitted that he believes that ICAP and Optimus failed to act in his best interests, failed to conduct business with due skill and care given that unsuitable investments were allowed within his pension portfolio, which were of high-risk, illiquid and not in conformity with his attitude to risk.

He claimed that whilst his *Risk Profiler Report* showed an attitude to risk of 7, this was, however, not a true reflection of his risk attitude as he considered himself to be '*at best a 5*'.[8] The Complainant believes that the profile was construed to meet requirements and had since been informed that a figure no less than 7 was required in order to force the transfer through.

The Complainant submitted that had ICAP at the outset complied with its duties and made any attempts to assess his personal circumstances, they would have realised that the said investments were unsuitable.

He further claimed that no adequate due diligence was undertaken as, otherwise, ICAP would have not allowed the transfer of funds into the investments.

The Complainant added that, alternatively, in the instance where due diligence was undertaken, ICAP and Optimus failed to act on it with due skill and care and continued to allow the investments to take place despite their total unsuitability.

He further submitted that Optimus failed to act in his best interests upon taking over the trusteeship and to treat him fairly. It was claimed that Optimus should have realised that the investments were of high risk and should have refused to allow them or, at least, obtain appropriate clarification before proceeding. The Complainant believes that there is no evidence that this was carried out and considers that this resulted in the loss of his pension.

[8] *Ibid.*

The Complainant also claimed that Optimus knew that there was a significant risk that the investments were illiquid and should have considered what was fair, reasonable and good industry practice.

The Complainant stated that he wishes to complain about the investments made during these years, which he claimed were made without his knowledge and authority. He referred to the Statements which he claimed showed these irregularities.

The Complainant noted that he raised issues with Optimus previously, who replied that they were not the trustees at the time, as it was ICAP.

He pointed out that the *Strategic Wealth Document*, attached to his Complaint, particularly the first paragraph thereof, however, states that *Optimus Pension Trustees Ltd* had asked *Strategic Wealth* to offer advice on the investments in the portfolio. The Complainant enclosed documents that were sent to him which he claimed clearly showed a direct relationship between the parties.

It was noted that Arnold Galea, CEO of *Optimus Fiduciaries Malta Ltd*, stated that the company was not in existence in 2020. The Complainant submitted that all references on Optimus yet state that the group head office is in the Isle of Man with the Maltese operation set up on January 8th, 2019. He added that research further shows that several directors, Mark Schofield, Maureen Schofield (Quayle) and Richard Brent Thomas, are also registered directors of *Optimus Isle of Man*. The Complainant submitted that this, therefore, suggests that there was, and is, a connection between the Isle of Man and Malta, possibly in contradiction of Arnold Galea's claim that Optimus was not involved. The Complainant reiterated that even the (initial) documents presented to him incorporate the name *'Optimus'*.

The Complainant further noted that the first statement he received was dated December 2016 and showed a much different breakdown than that he had been advised on. He submitted that there was no Athena investment, but a significant value placed in a *Westbury Managed Account*.

The Complainant continued that in 2019, a significant amount was then placed into *Apollo Athena* (50.21%). He drew attention to a brief description and introduction to *Apollo Athena*, which he quoted as follows:

'The Athena International Portfolios consist of a range of actively managed investment portfolios designed to suit a wide variety of clients and risk appetites. Investment in an Athena Portfolio can provide your client with access to a carefully researched blend of differing investments which typically includes c. 30-45 underlying holdings, which in turn may provide exposure to hundreds of individual investment ideas and themes, through our use of pooled and collective investments.

Traditionally, ***discretionary fund management (DFM) has been the preserve of the wealthy, with many investment managers only accepting clients with assets in excess of £100,000 or even £250,000.*** *This has typically been due to the many additional costs associated with running individual portfolios, such as transaction, dealing, administration and custody costs as well as the minimums imposed on investors to enter specific underlying funds when held individually. As a result of what we saw as the limitations, Apollo launched the Athena range of portfolios at the end of 2011 ahead of the significant changes brought about by the Retail Distribution Review (RDR) in the UK. Taking what we felt were the restrictions in turn, we created a modern version of the discretionary fund management service that not only improved the 'traditional' method but then also opened it up to clients with much smaller amounts to invest.*

The Athena portfolios invest 60% of clients' assets in a blend of the Apollo Multi Asset funds, while the remaining 40% is invested into carefully selected satellites. These satellites are intended to be high quality, lower cost, long term holdings which, while monitored constantly, should be traded relatively infrequently, thereby reducing trading costs. ***Each Apollo Multi Asset fund within your client's portfolio is domiciled in the UK, regulated by the FCA and is highly liquid in terms of its underlying holdings and very well diversified across asset class, region and theme.***'[9]

The Complainant accordingly asked the question: '*Was such a high value invested to meet the minimum criteria and was this in my best interests or that of Integrated Capabilities/Optimus in which case did they receive a substantial commission for placing this business?*'[10] He further asked whether this was the

[9] P. 9 – Emphasis in bold made by the Complainant.
[10] P. 9

reason why such a heavy investment was placed without his knowledge or authority.

It was further claimed that the Statements the Complainant received were brief and did not show any movements into and out of the portfolio. He stated that he would have expected to see rental income from the commercial property, which is held in the *Llana Beach Hotel in Sal, Cape Verde,* and any movement in the *Apollo Athena* account, especially any DFM fees.

The Complainant added that subsequent Statements show discrepancies, the latest being May 2022 with 58.59% held in the Athena account.

He added that he had also been made aware of *James Brearley*, and that it was only when reading the Statement of 25th November that he learnt they were holding or managing a number of accounts, notably the Athena portfolio, which had increased to over 61%. The Complainant claimed that all this activity was being conducted without his knowledge.

The Complainant submitted that he has requested information about James Brearley on several occasions, but these questions were not satisfactorily answered by Optimus. He noted that he has neither received an explanation about James Brearley's role.

The Complainant explained that he then contacted James Brearley himself and obtained a statement of account which showed a balance of GBP 89,028.64 and a cash balance of GBP 4,416.13. He claimed that GBP 30,200 of this was toxic and that James Brearley, as a firm, had not previously made contact with him and had certainly not introduced themselves nor explained their role.

The Complainant pointed out that he emailed Optimus several times to query the investments without receiving a satisfactory response. He stated that he complained to them about their mismanagement, but *'was basically "fobbed off"'.*[11]

The Complainant stated that at Optimus's insistence, he tried to appoint an FCA regulated advisor to manage his portfolio but whoever he appointed was refused

[11] P. 10

and deemed unsuitable, despite being fully FCA regulated, and then directed to their listed firms.

The Complainant believes that he has every right to appoint an independent financial advisor and a firm of his choosing and not to be driven down a route dictated by Optimus. He noted that he has now appointed another firm, and it appears they are also having problems with Optimus who are refusing to transfer the liquid element into a suitable UK fund by stating that they will only transfer *in specie* the entire portfolio which they know cannot happen.

The Complainant submitted that Optimus yet are working with other firms in the UK and have allowed the transfer of liquid funds, to enable the funds to be managed at their insistence. He claimed that these firms included *Hoyl Independent Financial Advisors*, *Money Honey* (who, he stated, wanted him to pay GBP 750 to consider whether they would be willing to take on the portfolio, with no guarantees); *Templar EIS* (who, he stated, only have a temporary licence with the FCA in the UK); and *Evelyn Partners* (who, he stated, would not accept the portfolio despite being on the Optimus list).

The Complainant submitted that he has also been made aware that the commercial property element of his portfolio, which is held in the *Llana Beach Resort,* was registered with Companies House in the UK as a Limited Company by Guarantee. He claimed that this meant that he or his pension does not own the asset and, therefore, can never be sold. He pointed out that he was told that this was a breach of pension rules.

The Complainant explained that he has also recently learnt that there are four anonymous directors: one being represented by *The Resort Group*, with Robert Jarratt, CEO of TRG being the person of significant interest. He submitted that had ICAP and Optimus carried out the due diligence that they were obliged to undertake, they would have seen and taken this into account. He claimed that the investment should have been deemed unsuitable as the trustee/RSA should have known that the asset was unrealisable, and he should have been advised accordingly.

The Complainant claimed that it is now known in the UK that the Pension Ombudsman found against *Rowanmoor Pensions Ltd* on the grounds that they had not carried out due diligence to protect the clients' interests, which case he

claimed, included reference to the Limited Company by Guarantee. He noted that *Rowanmoor* have since gone into administration and taken over by another firm. He further stated that, in a separate case, the Ombudsman declared the Optimus scheme in Malta *"fraudulent".*[12]

The Complainant also pointed out that he complained with Optimus but is not satisfied with their response. He noted that in their email response, Optimus attached copies of letters addressed by Steve Burden of Strategic Wealth to Martin Hall of ICAP c/o Optimus Fiduciaries Ltd in the Isle of Man dated 19th March 2016 and 1st April 2016. The Complainant claimed that he had never previously seen such communications and neither the one dated 24th April 2017 addressed as '*Dear Member*'.[13]

He further pointed out that, several Statements enclosed with his Complaint stated '*Appointed Advisor - To Be Appointed*'.[14] Therefore, he questioned who has been advising on the placement of the investments, given that Optimus said that they are not advisors and do not have the capacity to act as such. The Complainant claimed he never received a satisfactory response from Optimus on this matter.

In conclusion, and as to the question of why he had transferred his pension, the Complainant explained that he had a final salary pension but could not access it until he was sixty-five. He noted that he had been permanently signed off from work due to medical reasons, having been diagnosed with Chronic Paroxysmal Hemicrania, which prevented him from carrying out his duties. He was advised that by transferring the pension he could: invest into funds to enable growth; draw down tax-free cash after aged 55; have a flexible drawdown as opposed to a fixed annuity; and that he could also bequeath it to his wife upon death, which were not possible with the company's scheme that he previously had. He stated that, at the time, the advice and the reasons for QROPs appeared sound and he had trusted the regulated advisor.

The Complainant asked the Arbiter to investigate ICAP and Optimus. He claimed that if they had carried out the correct and proper due diligence, they would

[12] P. 10
[13] *Ibid.*
[14] *Ibid.*

have advised him that the investments were unsuitable for his requirements, and he could have investigated more suitable alternatives.

The Complainant claimed that due to their actions or lack thereof, he now has an asset that is not owned by his pension plan, cannot be realised and has not provided any rental income for over three years, apart from a bond that has failed and is unlikely to make a return for some time.

Remedy requested

The Complainant is claiming damages to compensate for the loss.[15]

He also demands that Optimus comply with his request to transfer the liquid element of the portfolio into a suitable UK fund and to follow the instructions of his appointed investment firm, *MB Capital Ltd,* in London.[16]

Having considered, in its entirety, the reply by Integrated-Capabilities (Malta) Limited ('ICAP'),[17]

Where ICAP explained and submitted the following:

1. That the Complaint is unfounded and ought to be rejected because of the following reasons:

   ICAP's submissions on the Preliminary Plea

2. That preliminarily the Arbiter does not have competence to determine this claim by virtue of Article 21(1)(b) and (c) of Chapter 555 of the Laws of Malta. It submitted that the Complainant *ex admissis* states that the statements sent to him in 2016 did not reflect the investments as chosen by him together with his financial advisor.

   It noted that the Complainant also refers to the 2019 statement in which the disputed *Apollo Athena* was listed, together with a description of the investment. ICAP submitted that the Complaint is thus time-barred and

[15] No amount was specified in his Complaint Form. Further clarifications on the claimed amount were provided during the proceedings of the case as shall be considered further on in this decision.
[16] P. 11
[17] P. 128 - 132

ought to be dismissed for reasons which it shall elaborate on during the course of the proceedings.

ICAP added that the Complainant also failed to register his complaint with it as required by law prior to submitting his Complaint before the Office of Arbiter for Financial Services('OAFS'). It stated that this is also corroborated by the fact that the Complainant refers to his written complaint against the other defendant in these proceedings (Optimus), where the Complainant stated that '*I have issued a complaint to Optimus to which I have received a response and which I am not satisfied with*'.[18] ICAP noted that this same reference was not made by the Complainant with regard to a complaint to ICAP. It submitted that this is because a complaint was never raised with ICAP and claimed that ICAP had not been made aware of the merits of the Complaint and of the remedy requested, at any time, prior to being notified with these proceedings. It submitted that the Arbiter thus ought to declare that he has no competence to deal with this Complaint according to law.

ICAP's submissions on Merits

3. Without prejudice to that submitted earlier and, on the merits, ICAP submitted as follows:

(a) Lack of due diligence

It noted that, according to the Complaint, the Complainant claimed that ICAP did not '*carry out sufficient due diligence to protect my interest and to ensure that a duty of care was sufficiently carried out in accepting several investments into my pension portfolio*'.[19]

ICAP submitted that the above-mentioned allegation is unsubstantiated both at fact and at law and that, on the contrary, ICAP did conduct a thorough due diligence exercise on:

a. *Strategic Wealth* ('SWL') a regulated entity licensed by the regulatory authority in Gibraltar (which the MFSA considered to be of *'an*

[18] P. 128
[19] *Ibid.*

equivalent standard' and was therefore considered to have an equivalent licence to licence holders in Malta);

b. *Steve Burdett* - the adviser which was chosen by the Complainant and who was licensed by the FCA to give financial advice; and

c. *The Resort Group*, which was the investment chosen by the financial advisor and the Complainant in tandem.

ICAP further explained that financial records were examined and background checks were conducted at a time when there was **no regulatory obligation** imposed on ICAP to conduct such audit.[20]

It added that, however, in 2015 and in line with its aim to constantly act cautiously and prudently, ICAP conducted a commercial, financial and legal due diligence on a voluntary basis taking a qualitative approach in order to identify any red-flags or accounting inconsistencies. It further pointed out that none were identified.

(b) Member-directed scheme

ICAP noted that, according to the Complaint, the Complainant was advised by *Gerard Associates* in the UK who carried out a TVAS to transfer his salary pension into a QROPS, aided by Stephen Joseph Burdett of Strategic Wealth UK. It noted that the Complainant also states that '*all these companies appear to have been connected with The Resort Group, a property development company who as it transpired were using people's pensions to build hotels on the island of Sal and Buena Vista in Cape Verde*'.[21]

It submitted that, at the outset, it must be made amply clear that ICAP never had any link, connection, broker agreement or any form of commission agreement with Strategic Wealth, Stephen Burdett or any of the entities mentioned by the Complainant in his Complaint.

ICAP noted that the Complainant seems to allude to the fact that there could have been some form of collusion between the entities, an allegation that ICAP noted that it takes extremely seriously. It affirmed that without

[20] Emphasis made by ICAP.
[21] P. 129

any evidence of this fact (because it claimed there is none), the Complainant ought to withdraw such inference with regards to ICAP as trustee. It submitted that it acted and continued to act in the best interests of its members and independently from Strategic Wealth, Westbury or any other entity referred to in the Complaint.

With regards to SWL, ICAP noted that SWL was the Complainant's financial advisor as appointed by him prior to joining the Scheme. It explained that SWL was regulated by a financial regulator and noted that the signatory to most of the investment documentation was Stephen Burdett who was regulated by the FCA in the United Kingdom.

ICAP submitted that it must be made clear that the Scheme is a personal pension scheme which is member-directed, meaning that the retirement scheme administrator (ICAP) does not make investment decisions on behalf of its members. It explained that members appoint an investment adviser and/or investment manager to advise/manage their investment. ICAP added that since the Scheme is member-directed, it should be presumed that the Complainant carefully vetted his financial professional/planner's credentials, experience, and knowledge prior to instructing ICAP to execute his investment choices - choices made by and between him and Stephen Burdett.[22] It concluded that, therefore, the *res gestae* of the investment transaction is only known to the Complainant and his financial advisor.

(c) List of investments made by the Complainant

ICAP noted that, in his Complaint, the Complainant states that '*the monies were then invested into various investments which went against the original advice document produced by Stephen Burdett of Strategic Wealth*'.[23]

It submitted that from this statement and numerous inferences made throughout the Complaint, it is apparent that the Complainant's grievances are mainly addressed to his financial advisor and not ICAP as trustees. It further highlighted that ICAP is not licensed to provide financial advice, and

[22] Emphasis added by ICAP.
[23] P. 130

any attempt, using the strictest interpretation, to recommend, suggest or opine on any investment choice would trigger a licence requirement as ICAP would be doing so without the necessary regulatory licence to give advice.

ICAP also submitted that, in line with the principle of prudence and best interest, up until it resigned (on 29th May 2020), the investment portfolio attributable to the Complainant was diversified and liquid according to law and in line with the Scheme requirements.[24] It stated that the Complainant must accordingly provide evidence of unsuitability, and should his grievance be one of mis-selling, then his target defendant is one - his financial services advisor who *ab initio* chose the investment portfolio for the specific member after having taken all circumstances into consideration.

In addition to the above, and in reply to the Complainant's allegation, ICAP submitted that the trustees do not receive any commission from the investments. It stated that it is the financial advisor who is paid *'a substantial commission'* based on a percentage of the capital invested.[25] ICAP explained that the trustee receives a yearly disclosed fee for its services as custodians of the assets being held on behalf of its members. It added that this fee is not *ad valorem* and is a standard fee disclosed in the application document signed by the member.

ICAP explained that during its tenure, and after taking due regard of the copious suitability reports, signed instruction letters and other investment documentation, no concerns were raised as to the investment choices made by the Complainant and his investment advisor as it shall prove.

ICAP further submitted that, in fact, as presented by the Complainant himself, during ICAP's tenure his original capital investment increased from GBP 216,739.37 in December 2016, to a further increase of GPB 227,436.48 in October 2019, to a further increase of GBP 229,300.89 in December 2019.[26] It asserted that, therefore, there can be no doubt that,

[24] Emphasis made by ICAP.
[25] P. 130
[26] Emphasis made by ICAP.

at the time that ICAP was trustee the investment choices 'worked' and the Complainant was receiving a substantial increase on his pension fund on a yearly basis.

In addition, and with reference to The Resort Group ('TRG') investment, it submitted that, to date, this is not a failed investment and has started to generate rental income now that the COVID-19 pandemic is no longer impacting travel. ICAP further submitted that the insinuation that TRG is a failed investment is another wrong assumption made by the Complainant or his current financial advisor.

(d) Ownership of asset and alleged breach of pension rules

ICAP noted that the Complainant claims that '*he has been made aware*' that he or his pension do not own *'the asset'* and, therefore, this can never be sold, which is a breach of pension rules. The Service Provider submitted that the person who made the Complainant aware of this breach is, however, incorrect.[27]

It explained that, on behalf of the Complainant (and others), ICAP acquired investments which would have been classified as *'fractional ownership'* whereby Scheme members would have acquired a fraction of ownership in The Resort Group property concerned - in this case the Llana Beach Resort.

It further explained that ICAP, on behalf of the Scheme member, would become a member of a private limited company that would have been established for the sole purpose of providing an ownership and administration structure that enables Scheme members to purchase *'memberships'*. ICAP explained that with this membership, the Scheme member would be entitled to rental income, which income is proportionate to the size of the fraction or membership purchased. It explained that the return the member receives is linked to the occupancy level of the resort and the revenues generated from the use of the specific unit in which the Scheme member has invested.

[27] Emphasis made by ICAP.

ICAP further noted that Part B.4.7.1 of the Pension Rules for Service Providers states that '*In the case of a Retirement Scheme, title to assets shall be registered in the name of a Retirement Scheme Administrator on behalf of the Scheme ...*'.[28] It explained that the member's title, in this case, is the title to beneficial interest and rental income from the fractional ownership in the TRG property. ICAP highlighted that this is in accordance with the applicable pension rules and emphasised that there is nothing extraordinary, illegal or unsound in this type of investment. It further added that it is rather standard especially when considering the long-term investment objective of a pension fund.

(e) New Trustee

ICAP submitted that Optimus Fiduciaries Limited (C 90147) are the trustees who have replaced it as of the 29th of May 2020. It submitted that, consequently, all queries raised by the Complainant in relation to statements sent post-2020, or the refusal for their acceptance to accept the Complainant's suggested advisor are addressed to Optimus and not ICAP. It stated that, in fact, the Arbiter is to be made aware that member data and investment information has been transferred to Optimus in order for them to effectively take over their role as trustees of the Scheme.

4. ICAP submitted that all allegations are unfounded in fact and at law and that, as shall be amply evidenced, it has acted in the best interest of the Complainant, with prudence, diligence and utmost good faith and has adhered to its statutory obligations according to law. It further submitted that it has always acted in line with its regulatory obligations ensuring that investments were permitted and were in accordance with the Scheme's investment policy, the Scheme rules, and the statutory rules issued by the MFSA that were applicable at the time of the investment.

5. ICAP reserved the right to produce further oral and documentary proof and to make additional submissions both oral and also in writing during the sittings before the Arbiter, to substantiate its position as above indicated.

[28] P. 131

6. For the stated reasons, ICAP submitted that all the Complainant's demands are to be rejected, with the Complainant to bear the costs.

Having considered, in its entirety, the reply by Optimus Fiduciaries (Malta) Limited ('OFML'), including attachments,[29]

Where OFML explained and submitted the following:

1. That it received notice of the Complaint submitted by the Complainant before the OAFS at its registered office on the 20th June 2023.

2. That the Complaint contains a plethora of accusations and statements of fact that are not only ambiguous but also lacking in substantiation. It added that, furthermore, a significant portion of the allegations do not pertain to OFML in any meaningful way. It submitted that, without prejudice to the foregoing, and the consequent implications on the proceedings and overall clarity of the case, the Complainant's claims should be rejected in their entirety as unfounded in fact and at law, for the reasons explained in its reply, and throughout the proceedings.

   Submissions regarding the alleged failure to carry out significant due diligence when accepting certain investments in the portfolio

3. OFML submitted that it was not the Trustee and RSA of the Retirement Scheme when the investments were accepted into the Complainant's portfolio. It noted that OFML was incorporated on the 8th January 2019 and was appointed as Trustee and RSA of the Scheme on the 29th May 2020 ('the Appointment Date').
   It further noted that the acceptance of investments is executed by the Trustee and RSA, a role which at the time was occupied by the co-defendant, ICAP.

   OFML submitted that, consequently, with respect to the Complainant's contentions pertaining to the acceptance of investments and modifications

[29] P. 134 - 140, with attachments on P. 141 - 178

to the compositions of his portfolio carried out prior to the Appointment Date, it is evident that OFML is not the proper defendant.

4. It further noted that the Complainant refers to several entities that are affiliated with OFML, including *Optimus Pensions Administrators Ltd* (of the Isle of Man) or its parent company *Optimus Pension Trustees Ltd* (also of the Isle of Man), and *OFL Administrators (Malta) Ltd* (collectively, 'the Affiliated Entities'), in an effort to establish the involvement of OFML with the investments prior to the Appointment Date.

   It pointed out that the Complainant has been informed, as he himself confirmed in his Complaint, that the Affiliated Entities previously served as back-office administrators to the Retirement Scheme. It was further explained that their role was authorised by the MFSA and limited to the provision of back-office services and did not extend to approving investments. The Affiliated Entities ceased providing back-office administration to the Retirement Scheme when OFML was appointed Trustee and RSA. It further added that *OFL Administrators (Malta) Ltd*, surrendered its MFSA recognition as back-office administrator on the 2nd March 2021. The function of back-office administrators eventually became defunct pursuant to the enactment of revised legislation governing RSAs.

   OFML further submitted that, in any case, the Affiliated Entities are not listed as defendants in the Complaint and, consequently, they bear no obligation or legal standing to respond to any of the allegations made against them.

Submissions regarding the alleged failure to: act in the best interests of the Complainant and to treat him fairly; realise investments were high risk; and refuse to allow the investments or obtain appropriate clarification before proceeding.

5. OFML noted that the Complainant asserts that:

   '*Optimus failed to act in my best interests upon taking over the trusteeship and treat me fairly. I further claim that Optimus should have realised that the investments were of high risk and should have refused*

> *to allow them or, at least, obtain appropriate clarification before proceeding*", and "*I also claim that Optimus knew that there was a significant risk that the investments were illiquid, and should have taken into consideration what was fair, reasonable and good industry practice*'.[30]

It submitted that these assertions lack logical consistency and are devoid of any legal basis. OFML noted that it cannot '*refuse to allow*' investments which had been executed well before the Appointment Date. It added that nor could OFML redeem the investments following the Appointment Date since the investments had not yet matured.

OFML claimed that this specific charge is, therefore, predicated on an expectation of conduct on the part of OFML that, due to its inherent impossibility, renders fulfilment unattainable.

It noted that equally perplexing is the Complainant's charge that the Service Provider '*should have taken into consideration what was fair, reasonable and good industry practice*' on the basis that it '*knew that there was a significant risk that the investments were illiquid*'.[31]

It submitted that although it is the case that OFML was aware of the risk and the challenges associated with the investments prior to the Appointment Date, the Complainant subjects it to a vague standard of fairness, reasonableness and prevailing industry practice while failing to provide specific actionable conduct with respect to the investments.

It added that, furthermore, regarding the contention that it neglected to seek '*appropriate clarification*' before assuming the role of Trustee and RSA of the Retirement Scheme, it noted that as has already been submitted OFML was well-informed about the complexities linked to the investments. It noted that, in fact, OFML has consistently provided updates to the Complainant, the scheme auditors and the MFSA on the progress and status of this investment since the Appointment Date.

[30] P. 136/ P. 8
[31] P. 136

6. It also submitted that, as will be elaborated throughout the proceedings, OFML has undertaken efforts beyond seeking mere '*appropriate clarificatio*n' in fulfilment of its duties since the Appointment Date. OFML highlighted that, in particular, it:

   a. Voted in favour of a restructuring plan intended to restore TRG to a financial condition where it can continue to make payments on the investments and return capital to investors. It noted that the restructuring became imminent when TRG suffered a sharp drop in revenues due to COVID-19 and was a more attractive alternative to potential administration. It further noted that COVID-19 had a specific impact on the tourism industry which also brought about a strong recovery. OFML added that it now expects TRG to resume payments on the investments in 2023 in accordance with the restructuring plan.

   b. Took steps to engage an independent and reputable valuer for the valuation of the TRG investments, a step which could facilitate a potential sale of the investments, evidence of which was to be submitted throughout the proceedings.

   c. Extended support to the Complainant in seeking clarifications and, if required, redress from *Strategic Wealth Ltd*, the investment advisor responsible for ensuring the suitability and appropriateness of the investments, as evidenced by the suitability report attached to its reply and signed by the Complainant and the investment advisor.

   d. Provided support to the Complainant in pursuing compensation from the *Financial Services Compensation Scheme* in the UK, as evidenced by correspondence attached to its reply.

   It further submitted that, as shall be evidenced throughout the proceedings, its track record since the Appointment Date and the tangible outcomes attained contradict the assertion made by the Complainant that OFML acted contrary to the Complainant's best interests or that he was treated unfairly.

Submissions regarding the alleged failure to allow the Complainant to appoint an investment advisor of his choice and the alleged failure to accept to transfer the liquid part of the pension to another RSA

7. As to the Complainant's requests for the appointment of an independent financial advisor ('IFA') and the transfer-out of his pension to an alternative RSA, OFML claimed that the interactions with it had been misrepresented.

   OFML explained that it has no objection to fulfil the Complainant's requests. It noted that, however, prior to granting such requests, OFML is duty bound to ensure that the proposed IFA or RSA operates within a jurisdiction that upholds regulatory standards similar to those upheld in Malta, is in good standing and, generally, that such appointment or transfer is in his best interests.

   It noted that where the Complainant laments any rejection of an IFA or RSA by it, such rejection would have been made on the basis that such IFA or RSA would not have satisfied the afore-mentioned criteria.

   OFML explained that this was the case with *AXG Asset Management*, the IFA initially indicated as a preference by the Complainant. It added that *MB Capital*, an alternative IFA proposed by the Complainant, satisfied OFML's due diligence and was approved as the Complainant's IFA on the 26th of May 2023.

8. Regarding the request to transfer-out only the assets that are immediately realisable or transferable (referred to in the Complaint as the liquid element), OFML explained that it notes with concern that doing so would leave his portfolio with the Retirement Scheme lacking the mandatory diversification. OFML submitted that it is also concerned that transferring out the pension in parts is unnecessarily costly, and accordingly, its policy is that pensions can only be transferred out in their entirety.

   Submissions regarding the claim that the Service Provider was running a scheme deemed as 'fraudulent' by the Financial Ombudsman in the UK

9. OFML submitted that it is evident that the scheme referred to by the Complainant has no relation to the Retirement Scheme or to Optimus. It

claimed that a cursory review of the scheme referred to in the Complaint reveals that the scheme found fraudulent by the UK Ombudsman is the *Optimum Retirement Benefit Plan*, a scheme which has no connection whatsoever to the Retirement Scheme or Optimus.[32] It emphasised that, on the contrary, the Retirement Scheme is listed on the HMRC list of approved QROPS as per the link provided in its reply.[33]

10. OFML further submitted that the Complaint is characterised by a pattern of indiscriminate and unsubstantiated accusations, seemingly aimed at casting a wide net in the hope of stumbling upon a viable claim. It stressed that this approach lacks the requisite particularity, clarity and supporting evidence that is necessary to sustain a legitimate legal action. It added that such course of action is emblematic of a *'fishing expedition'* where the Complainant seeks redress through broad and baseless claims, rather than through a genuine and well-founded legal basis. It also submitted that given the absence of substantive and specific allegations related to OFML, it urged the Arbiter to exercise his discretion and dismiss the Complaint.

11. OFML submitted that the abovementioned facts will be confirmed and elaborated at the opportune moment during the proceedings.

Preliminary

Competence of the Arbiter

In its reply, ICAP raised the preliminary plea that the Arbiter has no competence to hear this Complaint against it based on Article 21(1)(b) and Article 21(1)(c) of Chapter 555 of the Laws of Malta ('the Act') and also given that no complaint was made with it prior to the proceedings before the Arbiter was initiated.

The above-mentioned aspects were highlighted by the Arbiter during the sitting of 20th November 2023,[34] during which the Arbiter gave the Complainant the opportunity to make any submissions solely on the preliminary pleas raised by ICAP. During the said sitting, the Arbiter decreed that ICAP was to then have the

[32] Emphasis added by Optimus.
[33] P. 139 – Footnote 3
[34] P. 184 - 187

opportunity to make any final submissions on the said pleas. The Arbiter further asked ICAP to make other clarifications about the lack of formal complaint filed by the Complainant against it.

In its subsequent submissions, the Complainant mainly highlighted:

> *'that a complaint had not been registered against Integrated Capabilities (ICAP)'* due to *'the confusion and understanding based on all documents that ICAP and Optimus are an integrated entity, including the folder that contained documentation'*.[35]

The Complainant submitted that ICAP and Optimus *'were intrinsically linked'* explaining *inter alia* that *'all documentation at the time refers to Integrated Capabilites and Optimus'* and that:

> *'… Optimus Malta is part of the Optimus Group whose head office is in Douglas Isle of Man and whose main board of directors apply to both geographical locations*. *In the case of Integrated Capabilities Group they also have offices in both the Isle of Man (Ramsey) and Malta (Mosta). In which case it was presumed that the companies were intrinsically linked*'.[36]

No specific submissions were made by the Complainant with respect to the aspects raised by ICAP regarding Article 21(1)(b) and 21(1)(c) of the Act.

In its subsequent reply, ICAP submitted *inter alia* that *'it holds strongly its position that the Complainant failed to file a written complaint against it prior to proceedings with a formal complaint before the Arbiter'*. [37] It highlighted that Article 21(1)(c) *'clearly states that the Arbiter shall have competence to hear complaints 'if a complaint is registered in writing with the financial services provider …''*.[38] ICAP reiterated that:

> *'The fact that the Complainant did not register a written complaint with the service provider means that the Arbiter does not have the competence*

[35] P. 189
[36] P. 194
[37] P. 205
[38] *Ibid.*

> *required by law to determine this complaint against ICAP and consequently the Complaint against ICAP should be dismissed'*.[39]

ICAP further submitted that *'there has not been a substantive compliance with law'* and *'the Arbiter thus does not have the power to rule …'* given that the Complainant did not register his Complaint with it as required by law, despite that he knew of the service provider's involvement.[40] It referred to the *'local judgement in re Neg. John Coleiro ne v Onor. Dr. Giorgio Borg Olivier ne et (First Hall Civil Court 22 June 1957)'*, to substantiate its point.[41]

ICAP also submitted that *'the fact that ICAP replied to the Complaint by entering into the merits in its reply to the Complaint form, does not and should not equate to a waiver of its preliminary plea'* regarding the Arbiter's competence.[42]

Concerning the aspect that it could be treated as a party to the Complaint as per the definition of *'parties'* in Article 2 of the Act, ICAP also noted *inter alia* that:

> *'should the Arbiter declare that it has no competence to determine the matter due to the lack of a written complaint, then consequently the Arbiter does not have the competence, power or authority to enter into the merits of the complaint and order that ICAP is to be treated as a party to the Complaint. The 'no competence' rule means that, ab initio, from the start, the Arbiter cannot determine the Complaint and the Complaint is dismissed outrightly. The Arbiter cannot, on the one hand, determine that he might not have competence, yet order ICAP to be treated as a party by virtue of Article 2 of Chapter 555 of the Laws of Malta'*.[43]

The said pleas and related submissions were subsequently dealt with in the Arbiter's decree dated 21st December 2023,[44] where after giving the Parties sufficient opportunity to make their submissions on these issues, the Arbiter dismissed the submissions made by ICAP with reference to Article 21(1)(b) given that the disputed TRG investments *'still featured within and/or applied to the Complainant's Scheme after 18 April 2016'* and also considering that ICAP,

[39] *Ibid.*
[40] P. 206
[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*
[44] P. 210 - 214

furthermore, still *'occupied its functions and roles as trustee and RSA of the Retirement Scheme until its replacement by OFML on 29 May 2020'*.[45]

Article 21(1)(b) was, therefore, not considered to apply to the case in question given also that the conduct complained of was considered to have been rather continuing in nature as per Article 21(1)(d).

In the said decree, the Arbiter, then considered ICAP's submissions with respect to the Complainant's failure to make a formal complaint with it where he decreed that ICAP's submissions on this point were valid and ought not to be dismissed given that it could not be legitimately disputed that the Complainant failed to file a written complaint against ICAP prior to filing a complaint with the Arbiter. The Arbiter, furthermore, noted that:

> *'Apart from the Complainant's submissions – that he considered ICAP and OFML as 'am integrated entity' and/or 'intrinsically linked' – not having been adequately substantiated, the Arbiter considers that such submissions cannot validly and sufficiently justify either his lack of formal complaint with ICAP when the latter is clearly, a separate and distinct legal entity from OFML'*.[46]

In the particular circumstances of this case, the Arbiter accordingly decided to decline to exercise his powers under the Act with respect to the Complaint filed with the OAFS against ICAP. The Arbiter's decision was taken without prejudice to any further right of action that the Complainant may decide to pursue, including before the Arbiter, after following the required procedures according to law.

No other complaint was filed by the Complainant before the OAFS against ICAP until the date of this decision.

The Arbiter shall consider the pleas raised by OFML and other key preliminary aspects next.

[45] P. 212
[46] P. 213

Preliminary - Nature of Complaint and the plea that Optimus is not the legitimate defendant in respect of certain allegations

It is noted that in his Complaint, and throughout the proceedings, the Complainant mentioned various entities and made several allegations, frequently not clearly distinguishing against whom such allegations were being exactly directed.

The Arbiter shall, accordingly, first consider the nature of the Complaint and then outline the key allegations against OFML that are considered material to this Complaint in order to provide clarity about the aspects considered in this decision.

(i) Parties against whom the Complaint has been made

It is noted that the Complainant firstly clarified that his complaint was *'against Integrated Capabilities and Optimus Fiduciary (sic) Malta Ltd'*,[47] where he also specifically mentioned the address of Optimus Malta, indicated as being located at *'Intermediate Level, The Quay, Triq ix-Xatt, Ta' Xbiex Malta'*,[48] (this being the previous address of OFML in Malta).[49]

His Complaint, however, then refers to other Optimus entities, such as when he mentioned that his complaint was *'secondly against Optimus Pensions Trustees Ltd for the mis-management of my pension'*, and then referring to just 'Optimus' in general.[50]

The reference to *'Optimus Pensions Trustees Ltd'* and *'Optimus Isle of Man'* (at later stages of his complaint)[51] involve other entities affiliated to OFML. As outlined by OFML in its reply, *'The Complainant refers to several entities that are affiliated with Optimus, including Optimus Pensions Administrators Ltd (of the Isle of Man) or its parent company Optimus Pension Trustees Ltd (also of the Isle of Man), and OFL Administrators (Malta) Ltd (collectively, 'the Affiliated Entities') …'*.[52]

[47] P. 7
[48] *Ibid.*
[49] P. 322
[50] P. 7
[51] E.g. P.9
[52] P. 135

It is noted that OFML was appointed as trustee and RSA of the Scheme on 29th May 2020 ('the Appointment Date') and continued to occupy such roles thereafter.[53] Prior to the Appointment Date, the function of trustee and RSA of the Scheme was solely held by ICAP.

The MFSA duly authorised both ICAP and OFML in their role as trustee and RSA of the Retirement Scheme during their respective tenure.

OFML (with registration number C 90147) was incorporated in Malta only in 2019 as per the records held with the Malta Business Registry[54] – with the company being originally set-up as *'Optimus (Malta) Ltd'* and shortly thereafter altering its name to *'Optimus Fiduciaries (Malta) Ltd'*.[55]

Prior to divesting of its roles of trustee and RSA of the Scheme in May 2020, it is noted that ICAP had outsourced certain back-office administration functions to other entities forming part of the Optimus Group - namely, *Optimus Fiduciaries Limited* and *Optimus Pension Administrators Limited*, both based in the Isle of Man and eventually to *OFL Administrators (Malta) Ltd* (the latter being a company with registration number C 79258, incorporated in Malta in January 2017).[56] This emerges from the Information Pack document about the Scheme,[57] the reply sent by OFML[58] and the testimony of OFML's official during the hearing of 23rd April 2024.[59]

It is also noted that the report issued in January 2016 to the Complainant by his financial adviser, Strategic Wealth, which included a note that *'This Report will be sent to Optimus Pension Trustees Limited'*,[60] further outlined that '*Optimus Fiduciaries Limited'* and '*Optimus Pension Administrators Limited'* were appointed by ICAP *'to complete limited administration functions for and on behalf of Integrated-Capabilities (Malta) Ltd as agreed from time to time'*.[61]

[53] P. 135 & 244
[54] https://register.mbr.mt/app/query/search_for_company
[55] P. 141-142
[56] P. 105, https://register.mbr.mt/app/query/search_for_company
[57] P. 105
[58] P. 135
[59] P. 244
[60] P. 58
[61] P. 66

Upon taking over the role of trustee and RSA of the Scheme in May 2020, such back-office administration functions were no longer outsourced but started to be undertaken by OFML itself.

As outlined in the said Information Pack, during its tenure, ICAP retained '*full liability and responsibility to the Scheme and its Members*' in respect of the outsourced back-office administrative services.[62]

It is thus amply clear that any allegations about other entities involved in the provision of general administration services (prior to OFML's appointment) as outlined above should have been duly directed and made to ICAP.

The Arbiter would also like to outline that, in terms of the Arbiter for Financial Services Act, Chapter 555 of the Laws of Malta ('the Act'), he only has jurisdiction on those complaints filed by an *'eligible customer'* against a *'financial services provider'* as defined in Article 2 of the Act. The Arbiter accordingly determines that the allegations and claims against other entities (other than ICAP and OFML) mentioned by the Complainant which are/were not based nor licensed in Malta, are thus outrightly excluded for consideration under this Complaint.

Given that the Arbiter has, earlier in this decision, determined that he has no competence to consider the allegations against ICAP under this Complaint for the reasons and in the circumstances amply mentioned, the Arbiter determines that he shall thus only consider and decide on the specific allegations and claims made by the Complainant against OFML (as also outlined in his decree referred to earlier above).

For the avoidance of doubt and in light of the various general references to Optimus and mention of other entities within the Optimus group, the Arbiter further rules that it is sufficiently clear, and indeed uncontested, that there are, however, elements of the Complaint which involve, and are directed to or against OFML.

The Arbiter shall accordingly proceed next to outline the specific key allegations raised by the Complainant against OFML which the Arbiter shall proceed to consider under the merits of this Complaint.

[62] P. 105

(ii) Allegations specific to OFML

In its reply to the Office of the Arbiter for Financial Services, OFML submitted that it was not the proper defendant for certain allegations made by the Complainant, such as *'with respect to the Complainant's contentions pertaining to the acceptance of investments and modifications to the compositions of the Complainant's portfolio carried out prior to the Appointment Date'*.[63]

The Arbiter outrightly states that the fact that certain affiliated entities to OFML had previously provided administrative services to ICAP and that the Complainant was of the understanding that *'ICAP and Optimus are an integrated entity'*,[64] does not, reasonably and justifiably, form any adequate basis on which specific claims directed and applicable to ICAP can be somehow automatically attributed as allegations and claims against OFML, as the Complainant did at various points in his Complaint.

The Arbiter recognises that ICAP is an entity in its own right, which is separate and distinct from OFML. The fact that certain affiliated entities to OFML had entered into a business arrangement to offer administrative services to ICAP does not justify, nor validate in any way the treatment of these distinct entities as one and the same thing as was, in essence, done various times by the Complainant in this Complaint, even throughout the proceedings of the case. This approach was taken by the Complainant despite the previous explanations provided by OFML and also in the Arbiter's decree of 21st December 2023 regarding the clear distinction between the said entities.

It is noted, for example, that in one of the extensive communications exchanged between OFML and the Complainant, OFML itself had *inter alia* informed the Complainant (in its email of 25th April 2023) that:

> *'Trustees responsible for the Administration of the Scheme:*
>
> *Integrated Capabilities (Malta) Ltd*
>
> *Kindly note that when you joined this scheme, they were the Trustees responsible for approving your appointed adviser and they were also responsible for approving and executing the investments recommended by*

[63] P. 135
[64] P. 189

your appointed adviser. If you have any concerns that are related to decisions made by them in their capacity as Trustees when they were the appointed Trustees/RSAs, you can contact them directly'.[65]

ICAP was furthermore still in existence and in operation at the date of this decision, as evidenced by the MFSA's Financial Services Register.[66]

After careful consideration of the Complaint as filed by the Complainant, the Arbiter considers the following as the key allegations made by the Complainant specifically directed against OFML:

1) The claim of loss that the Complainant alleged he suffered on his Retirement Scheme given that: *'Optimus failed to act in my best interests failing to conduct its business with due skill and care given that it allowed unsuitable investments within my pension portfolio which were of high risk, illiquid and not in conformity with my attitude to risk'*;[67]

2) The claim that *'no adequate due diligence was undertaken … in the instance where due diligence was undertaken ... Optimus failed to act on it with due skill and care and continued to allow the investments to take place despite their total unsuitability'*;[68]

3) The claim that *'Optimus failed to act in my best interests upon taking over the trusteeship and treat me fairly. I further claim that Optimus should have realised that the investments were of high risk and should have refused to allow them or, at least, obtain appropriate clarification before proceeding … and this resulted in the loss of my pension. I also claim that Optimus knew that there was a significant risk that the investments were illiquid, and should have taken into consideration what was fair, reasonable and good industry practice'*;[69]

4) OFML refused to allow his investment advisor of choice;

[65] P. 951
[66] https://www.mfsa.mt/financial-services-register/
[67] P. 8
[68] *Ibid.*
[69] *Ibid.*

5) OFML did not explain to him the role of *James Brearly*, nor satisfactorily provided the requested information about such party which was allowed to be involved with his Scheme; and

6) OFML refuses to transfer the liquid portion of his investments within the Retirement Scheme to another pension plan and to follow the instructions given by his newly appointed investment advisor.

Having listed the above key alleged shortfalls, which were deemed to have been specifically made by the Complainant against OFML, the Arbiter would like to outrightly point out, however, that there is no basis for him to treat any alleged shortfalls specifically directed at the time of the initial purchase of the disputed investments as valid allegations against OFML. This aspect will also be dealt with further in this decision.

The Arbiter shall thus limit himself only to consider those alleged shortfalls raised by the Complainant specifically against OFML and which involve OFML's actions or lack thereof at the time and from the date of OFML's appointment to the Scheme.

Preliminary – Compensation already awarded to the Complainant

Before considering the merits of the case, the Arbiter shall also consider first the plea raised by OFML regarding compensation already received by the Complainant.

In his Decree of 16th September 2024, the Arbiter noted and quoted various key exchanges and submissions made by the parties relating to the compensation received by the Complainant from the *Financial Services Compensation Scheme* in the UK ('FSCS').[70]

The Arbiter also quoted certain parts from the declaration signed by the Complainant to the FSCS in respect of such compensation and, in terms of Article 25(5) of the Act, proceeded to direct the Complainant:

'to produce a copy of a formal letter issued by FSCS at least confirming that:

[70] P. 1042 - 1046

(i) the FSCS is aware of the complaint dated 20 June 2023, filed by the Complainant against OFML with the Office of the Arbiter for Financial Services and requested compensation from OFML; and

(ii) the FSCS grants rights to the Complainant to pursue such claim and complaint against OFML, explaining any conditions for granting such rights.' [71]

The Complainant subsequently provided a copy of a letter issued from FSCS dated 1st October 2024 and also a Reassignment of Rights Agreement entered into between FSCS and the Complainant in September 2024.

It is particularly noted that Part C of the said Reassignment of Rights Agreement stipulates that *'The parties have agreed that the Claims against the following party/ies shall be reassigned to the Claimant'*, with the party in question indicated as *'Optimus Fiduciaries (Malta) Limited'*.[72] It is also noted that clause 5 of the said agreement further provides that:

'5. The Claimant agrees that in respect of the Reassigned Rights the proceeds of the claim shall first be applied to:

a. repay from the proceeds the Claimant's reasonable legal costs incurred in pursuing a claim in respect of the Reassigned Rights;

b. repay an amount equal to the Compensation Sum to FSCS; and

c. pay any applicable interest falling due in accordance with clause 6'.[73]

Further to the above, the Arbiter decides to refute OFML's allegation about the payment of compensation for *'… twice for the same (unrealised) loss'* and its claim that the Complaint was *'vexatious'*.[74] This also when taking into consideration that:

(a) The Complaint made by the Complainant against his financial advisor *Gerard Associates* in the UK, in respect of which he received compensation from FSCS is a distinct and separate complaint which involves and relates

[71] P. 1045
[72] P. 1051
[73] P. 1052
[74] P. 283

to the investment/pension advice and actions undertaken by Gerard Associates in its capacity as an advisor on the pension transfer.

(b) The Complaint being considered by the Arbiter is a distinct and separate complaint which solely involves the alleged shortcomings of the Administrator and Trustee of the Retirement Scheme, whose functions are completely distinct, separate and different to those of the investment/pension advisor.

(c) The calculations taken into consideration by FSCS for its payment of compensation involve other material aspects (such as the *'Hypothetical value'* of the Complainant's previous pension Scheme), which are separate and not taken into account by the Arbiter for the purpose of determining any compensation that may be due under this Complaint (namely, any net loss on the TRG investments).

For the reasons mentioned, the complaint before the FSCS and that before the Arbiter are not considered to deal with the same subject matter.

Having also verified that the Complainant has a right to pursue a claim against OFML (as ultimately allowed by FSCS), the Arbiter shall accordingly next proceed to consider the merits of the case concerning the allegations addressed against OFML.

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.[75]

The Arbiter is considering all pleas raised by OFML 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[76] which stipulates that he should deal with complaints in '*an economical and expeditious manner'.*

[75] Cap. 555, Art. 19(3)(b)
[76] Art. 19(3)(d)

The Scheme

The Optimus Retirement Benefit Scheme No. 1 ('the Retirement Scheme' or 'the Scheme'), is a trust domiciled in Malta and authorised by the MFSA as a personal retirement scheme.[77]

The Scheme was established on 24th June 2014 and operated as a member-directed scheme.[78]

The Complainant

The Complainant born in 1966 and of British nationality,[79] was accepted as a member of the Scheme on 16th February 2016 as emerging from the *'Annual Statements'* issued to the Complainant by ICAP in respect of the *'Optimus Directus – Optimus Retirement Benefit Scheme No. 1'*.[80]

His UK pension was transferred to the Retirement Scheme on 4th March 2016 for the amount of GBP 212,904.15 with other transfers of GBP 5,285.82 from Prudential and GBP 2,259.58 from Blackrock undertaken on 17th March 2016 and 11th April 2016 respectively. The total amount transferred into his Retirement Scheme was thus of GBP 220,449.55 as also evidenced in the *'RBSI Scheme Account Statement'* and letter dated 13th April 2016 produced during the case.[81]

As indicated in the report dated 27th January 2016, issued by his adviser *Strategic Wealth Limited* situated in Gibraltar, the Complainant was 49 years of age at the time, married and had no dependants.[82]

His work experience involved acting as a Technical Operator in *'the operation of XXX works …'*.[83] At the time of his application for membership into the Scheme (February 2016), the Complainant was *'Not Employed'*.[84]

[77] https://www.mfsa.mt/financial-services-register/
[78] P. 38
[79] P. 780
[80] P. 42 - 46
[81] P. 268, 270 & 520
[82] P. 58
[83] P. 52
[84] P. 781

No indication was made, and it has indeed not emerged during the proceedings of this case, that the Complainant was anything other than a retail investor.

His risk profile in the Application Form for Membership into the Scheme (dated 05 February 2016) was indicated as being of *'Balanced Risk – some risk to capital potential for growth over longer term'*.[85]

Original and latest Investment Advisor/s

During the proceedings of the case, the Complainant presented an advisor's report dated 27th January 2016 as well as a Risk Profiler Report issued by *Strategic Wealth Limited* ('SWL'), the latter being his original investment advisor in respect of the portfolio of investments underlying the Scheme.[86]

In the said report, Strategic Wealth Limited was indicated as being based in Gibraltar and *'licensed by the Gibraltar Financial Services Commission Ref: FSC1175B'*.[87]

The said document further stipulated that the Complainant engaged the services of Strategic Wealth Limited *'on a limited advice basis'*, *'further to [his] decision to transfer [his] UK paid up pensions to the … Malta based Qualifying Recognised Overseas Pension Scheme (QROPS)'*.[88]

Strategic Wealth Limited still featured as the Complainant's appointed advisor in his annual statement for the year ended December 2017.[89] Subsequent statements (for 2018 to 2022) indicate, however, that an advisor was *'To be appointed'*.[90]

In an email dated 26th May 2023, OFML confirmed to the Complainant that *'MB Capital are now approved at scheme level to act as your appointed investment advisors'*.[91]

[85] P. 785
[86] P. 58 - 76 & P. 77 - 88
[87] P. 22
[88] *Ibid*.
[89] P. 43
[90] P. 44, 46 - 49
[91] P. 175

Underlying investments

With respect to the TRG investments, which are the key disputed investments in this Complaint, it is noted that according to the first Annual Statement for the year ending 31st December 2016 issued by ICAP, '*The Resort Group (TRG) plc – Commercial Property'* was valued at the time at GBP 63,000 whilst the *'TRG PLC Corporate Bonds'* at GBP 40,365.[92] The said market value at the time reflected exactly the purchase price of the investments.[93]

At the time the TRG investments were purchased, the said investments thus comprised 46.89% of the total pension amount transferred into the Scheme[94] (with the TRG commercial property comprising 28.58% whilst the TRG bond being 18.31%).

The investment portfolio comprised other investments as emerging from the various statements produced during the case proceedings, which given the scope and material aspects of this decision will not be delved further into at this stage.

Observations & Conclusion

(A) Claimed loss and demand for monetary compensation in view of the alleged failures of OFML with respect to the disputed investments

It is noted that during the sitting of 23rd April 2024, the Arbiter requested a proper explanation from the Complainant on the exact compensation he was seeking in order to remedy his complaint.[95]

In his note of submission sent on 9th May 2024, the Complainant subsequently stated that:

> *'I wish to be put back into the same position as I would have been had I not entered into the agreement, a fact that I would not have, had I been aware*

[92] P. 695
[93] As outlined in an email issued by OFML dated 22 December 2022, *the 'TRG direct fractional property – purchased for £63,000'*, and the *'TRG Bond IV – purchased for £40,365'* – P. 924
[94] (GBP63,000 + GBP 40,365) of GBP 220,449.55
[95] P. 253

of the details held within the Agreement for Sale document that was not made aware of until October 2022.

£220,449.55

Less £46,408.30 (tax free cash allowance against liquidity)

Less £6000 (income July 2022)

Less £6000 (income July 2023)

(£58,408.30)

£162,041.25

Value at Dec 2016 was £216,739.37; a difference of £3,710.18?

Value at Sept 2023 was £111,567.34 plus £58,408.30 = £169,975.64

Value at Inception £220,449.55 less value now (before drawdown) £169,975.64. Therefore, overall Pension devaluation being £46,763.73.

Considering the overall loss as according to the FSCS was estimated to be £384,471.12, had Optimus been FCA regulated based on other cases such as Rowanmoor, who allowed the toxic investments into The Resort Group where complaints had been upheld (over 750) due to the lack of due diligence then I would have been looking at the maximum compensation of £85,000 as of current rules, and it this amount that I am claiming.

Furthermore, I request that the pension is closed down with the value of the assets at the time of transfer i.e. Property £63,000 plus Bonds £40,365 to be included i.e. £103,365. An overall total of £188,365. Any compensation awarded to be paid directly to MB Capital, my financial advisor firm, who will then invest in an appropriate UK FCA regulated scheme.' [96]

It is noted that compensation was being particularly requested by the Complainant as he claimed he would have not entered *'into the Agreement for Sale document'* regarding TRG had he been made aware of such agreement. The

[96] P. 262

requested compensation was again here linked to alleged shortfalls specifically occurring and applicable at the time of purchase of the investments.

The Arbiter notes that despite his decree of 21st December 2023, where the Arbiter had ruled that he has no competence to hear the Complaint against ICAP and that ICAP was *'clearly, a separate and distinct legal entity from OFML'*,[97] the Complainant kept referring to and based his Complaint on aspects specifically occurring at the time of ICAP and outside OFML's tenure.

As outlined above, the Complainant linked his request for monetary compensation to events occurring at the specific time of purchase of the disputed investments (that is, in 2016) claiming that he was not made aware of the details, (nor did he sign the Agreement for Sale document dated March 2016), which he claimed only came to his knowledge in *'October 2022'*[98] (or *'October 2023'* as indicated in other parts).[99] He submitted that he would not have entered into such an investment had he been aware of the said agreement.

Throughout the case proceedings and even in the final submissions, the Complainant's case against OFML again kept being convoluted and mixed with actions specifically applicable to and at the time of ICAP.

During the hearing of 9th January 2024, Ray Barnes (the person assisting the Complainant in his Complaint), indeed noted *inter alia* that *'… the Agreement for the Sale which Mr ZR was not aware of until October 2023; which is, I believe, a very, very significant aspect to the whole complaint, where I believe that a lack of due diligence has occurred'*.[100]

The Arbiter notes that during the hearing of 9th January 2024, Ray Barnes for the Complainant stated, with reference to 'Optimus', that *'They built the portfolio in conjunction with FRPS and SWL'*,[101] where he continued *inter alia* that:

> *'I would like to know what the arrangement was between Optimus and FRPS and SWL because it appears that the portfolio was already agreed well*

[97] P. 213
[98] As claimed in the submissions of 9th May 2024 - P. 262
[99] As claimed in the submissions sent on 1st December 2023 (P. 196) and, also, of 9th May 2024 (P. 257) as well as during the hearing of 9th January 2024 (P. 216).
[100] P. 216
[101] *Ibid.*

before Mr ZR got into this. Having seen this set-up in 2014, Mr ZR did not enter into this agreement until 2016/2017.

And the fact is that there are elements in the Suitability Report which clearly state that commercial property is saleable and can be sold, however, Mr ZR at no time had been made aware that the property itself – and this is a very, very crucial part of the entire Scheme – was actually registered as a limited company by guarantee which cannot be sold because he is a member of a company and he does not actually own it. And, therefore, Optimus themselves, (and although we excluded ICap's culpability at this point), when they set up the portfolio, they must have known the contents and, therefore, the limitations within'.[102]

The Arbiter further notes that, in his final submissions (where the Complainant explained the sum of compensation being requested), the Complainant furthermore reiterated that:

'The complaint was made to Optimus because all the documentation I had received contained the details for both Integrated Capabilities and Optimus and as the scheme was entitled The Optimus Fiduciaries Pension No 1 Scheme and based on what I have been informed were the designers of the scheme as well as instigators of the pension it was to them that I made my complaint.

…

I believe that Optimus who designed the portfolio knew of the toxicity of the assets and upon taking over the trusteeship should have carried out a thorough due diligence investigation. However, as they designed and created the portfolio in conjunction with Integrated Capabilities, The Resort Group and Strategic Wealth I do not believe they thought it appropriate to conduct such an investigation …

…

I have also been informed by my advisor firm that the majority of the investments were illiquid and in high risk and not suitable for my

[102] P. 217

requirements. A fact that Optimus would have known about as being the authors of the portfolio'.[103]

The Arbiter considers that OFML could not, however, itself have been the author of the portfolio, the designer and/or instigator of the pension and neither be held responsible for such an Agreement for Sale document (which was entered into by ICAP). Nor can OFML reasonably be held responsible for the lack of disclosure thereof at the time of purchase of the investments, given that it did not occupy the functions of trustee and RSA at the time (but only occupied such functions on 29th May 2020), as it was not even incorporated at the time as outlined above.

It is evidently clear that considering the overall context of the complaint, the key allegations as made by the Complainant are directed to the wrong party.

As outlined above, the Arbiter can only focus on and consider OFML's own actions at, and from, the date of its appointment as trustee and RSA of the Scheme, that is, from May 2020 onwards. Most of the key allegations made by the Complainant and his focus throughout the proceedings are, however, considered to be on issues falling outside OFML's actions and rather related to the specific actions of ICAP and/or other third parties.

When considering the essence and context of the Complainant's Complaint as elaborated further on above, the Arbiter concludes that, in the main and with respect to the requested compensation, the Complaint does not really involve and relate to OFML's remedial actions involving an alleged breach of trust committed by the previous trustee and RSA of the scheme.

With respect to the alleged failures of OFML at the point of taking over as trustees and RSA of the Scheme in May 2020, as specifically raised by the Complainant in his Complaint, it is furthermore noted the following:

- *'Claim that OFML allowed unsuitable high-risk and illiquid investments not in conformity with his attitude to risk; continued to allow the investments to take place despite their unsuitability; and failed to refuse to allow them or obtain appropriate clarification before proceeding*.'

[103] P. 256 & 262

The Arbiter notes that the alleged unsuitable investments already existed and formed part of the disputed portfolio when OFML took over.

It is further noted that within less than six months after its appointment as the new trustee and RSA of the Scheme (on 29th May 2020), OFML highlighted, in its communication of 13th November 2020, the difficulties with the TRG bond and fractional property investments as well as certain material aspects relating to these investments.[104]

In its communication, OFML: (i) clearly highlighted in bold that the said assets were deemed an *'Illiquid Asset'* (ii) drew the Complainant's attention to *'TRG's financial difficulties'* (iii) noted a *'decrease in fair value of 30% ... due to the issuer's financial difficulties'* in the case of the TRG bond and *'a fair value decrease of 30%*' in the case of the TRG property; (iv) described the said investments as being *'non-standard investments'* where it noted that the trustee *'cannot reasonably provide you with an accurate valuation, as such companies are not providing the assurances required. These investments do not have a realisable value at this stage and may be valued lower or even of no value if or as and when they become realisable'*.[105]

It is clear that at the time OFML took over as trustee and RSA of the Scheme, the disputed investments already existed within the Complainant's portfolio, had material financial difficulties and were illiquid and could thus not be easily disposed of by the incoming trustee.

Shortly after taking over as trustee, OFML had furthermore itself highlighted certain significant issues to the Complainant regarding these investments (that is the illiquid nature, the non-traditional nature, the financial difficulties and lack of realisable value that such investments had as well as the risk of resulting in a lower to nil value).

Whilst the substance of the alleged failures, as made by the Complainant, is rather attributed to the time of the purchase of the disputed investments, the issues as raised by the Complainant as to OFML's failures

[104] P. 705 - 708
[105] P. 706

at the time of its appointment cannot either be reasonably determined to have led to the claimed losses.

At the time when OFML had highlighted the material issues with the investments (in November 2020), and even in subsequent years, the Complainant had furthermore every opportunity to raise a complaint with the original trustee, ICAP, about the unsuitability of the investments allowed within his pension scheme.[106]

For the reasons mentioned, and in the absence of clear claims and allegations linking the alleged loss on the TRG investments to the specific actions and alleged shortfalls of OFML at the time at and since, its appointment to the Scheme in May 2020, the Arbiter considers that there is no adequate and satisfactory basis on which he can reasonably and justifiably uphold the Complainant's requested compensation.

This is particularly so when limiting the Arbiter's considerations specifically to, and within, the particular parameters as set by the Complainant in his Complaint.

(B) OFML refused to allow his investment advisor of choice

Having considered the limited submissions made and explanations provided by the Complainant with respect to the refusal of his chosen investment advisor, the Arbiter cannot conclude that the Service Provider acted unreasonably or in breach of its role. This is particularly so when considering the detailed explanations and summary of events provided by OFML to the Complainant in its email of 20th September 2022.[107]

The communications issued by OFML of 10th June 2022 and 31st May 2022 also particularly refer.[108]

The Arbiter accordingly finds no adequate basis on which he can consider this aspect any further and dismisses the claim made by the Complainant in this regard.

[106] As indicated earlier in the decision, ICAP is an entity which is still in existence and in operation as at the date of this decision.
[107] P. 495 & 496
[108] P. 827 & 829

(C) Allegation of inadequate explanations and lack of information provided by OFML about James Brearley

It is unclear on what basis the Complainant raised this aspect in his Complaint to the Arbiter. This is particularly so when considering the following:

(i) It is noted that in his email dated 11th October 2022 to OFML, the Complainant requested certain explanations and clarifications regarding James Brearley as custodian of his portfolio – namely to *'supply information regarding the appointment of James Bleary and reasons for that appointment with an explanation of their duties … as I am not aware of any correspondence regarding this appointment'*.[109]

OFML replied soon thereafter on 13th October 2022, explaining *inter alia* the following:

> *'Kindly note that James Brearley ('JB') are the investment platform and custodians of the majority of the assets held within your pension. It is worth noting that the same role was previously carried out by Reyker Securities until they went into administration and Smith and Williamson ('S&W') became the appointed special administrators.*
>
> *Once appointed, S&W were responsible to transfer the role and responsibilities carried out by Reyker to another properly regulated party. In this regard, JB were chosen by S&W to execute this role. Kindly refer to the attached communication update we had sent highlighting the 5 nominated brokers that S&W had chosen at that time. If you open the PDF attachment within the email you will note that JB was listed as one of these nominated brokers.*
>
> *Regarding communication with JB, it is worth noting that as Trustees of the scheme, we are the legal owners of the assets held with them on your behalf. Therefore, should you have any queries, these have to be referred to us in the first instance and if we then feel that JB's input is required, we will contact them directly. This is because JB will not deal*

[109] P. 917

with other individuals aside the legal owners to ensure data privacy and security'.[110]

(ii) In his complaint to OFML dated 24th April 2023, the Complainant then asked the following about James Brearley:

'… can you please respond to the following:

…

2. Who is James Brearley
3. What role does James Brearley perform.
4. Who do James Brearley report to.
5. Why were they appointed.
6. Why was I not informed'.

In an ensuing email dated 25th April 2023, OFML explained to the Complainant the following with respect to James Brearley:

'My colleagues from our Administration Team will provide you with more information on the communications sent out to you in respect of James Brearley explaining how, why, when and who chose them to act as custodians of the assets which were previously held via Reyker (custodians) which went into administration. All of this was communicated to you as a member of the scheme and to our regulator and as you will note, once the information is provided, we had no option but to switch your assets into an alternative custodian since Reyker went into administration, this should also demonstrate that we acted in your best interests in those circumstances. Again, we respectfully ask you to review the information which will be re-sent to you and then revert back to correct your statements'.[111]

In his subsequent email to OFML of 28th April 2023, the Complainant himself then confirmed that:

[110] P. 916
[111] P. 943

'… Regarding James Brearley I have since found documentation regarding the appointment so would like to withdraw that part of complaint …'.[112]

(iii) It is ultimately further noted that as confirmed by the Complainant himself in his final submissions: *'I have now received a satisfactory explanation from MB Capital regarding the role of James Brearley'*.[113]

The Arbiter finds no basis on which this matter can be pursued or considered any further and is dismissing this claim accordingly.

(D) Allegation regarding OFML's refusal to transfer the liquid portion of his investments and to follow the instructions given by the Complainant's new investment advisor

In his Complaint and submissions made throughout the proceedings of the case, the Complainant did not explain nor provide evidence of the exact instructions given by MB Capital, his new advisors, that OFML was not following - other than the Complainant's request for a transfer out of the liquid portion of his investments to another scheme.

No evidence has, however, been presented of any official communication from MB Capital to OFML about such transfer of the liquid portion and/or any other instructions that were not being followed. Neither was any specific mention made or evidence provided of what conditions or terms OFML was considered not to be in compliance with or in breach of with respect to such matter.

The Arbiter considers that no adequate grounds have indeed emerged in this case on which he can order OFML to either close the Scheme or order it to transfer parts of the Complainant's investment portfolio to another scheme. This position is also based when taking into consideration the explanations provided by OFML on this point (both during the proceedings of the case and, also, in its previous communications with the Complainant).

[112] P. 537
[113] P. 259

It is noted, for example, that in an email dated 6th May 2022 (to which the Complainant was in copy), OFML explained the following with respect to a transfer out from the Scheme:

> *'Please note that we do not allow partial transfers.*
>
> *The rationale behind this is that members of the scheme would incur higher costs and duplicate unnecessary charges i.e. IFA fees, Administration fees, etc. Mr ZR is required to have proper diversification of assets in our Scheme, being liquid and illiquid assets, until the redemption date of illiquid assets is reached.*
>
> *However, if you and/or Mr ZR are able to find a legitimate receiving scheme which is willing to take over the current investments held within the pension, we would be able to process a full transfer as in-specie'.* [114]

In another email dated 27th May 2022, OFML again *inter alia* explained that:

> *'It's worth noting that we would still not allow partial transfer out due to the reason provided in our previous e-mail (duplicate charges) and also because we are required to ensure that members of the scheme have a properly diversified pension, as otherwise Mr ZR will end up with an Optimus pension being 100% illiquid.*
>
> *Having said this, if Mr ZR would like to transfer out, he needs to find a receiving scheme which is willing to take over the illiquid asets and transfer in full as in-specie'.* [115]

In its email of 14th April 2023, OFML again explained *inter alia* that:

> *'Our policy is that we do not allow partial transfers out from this scheme and there are various reasons for this as follows:*
>
> *i) If scheme members wish to transfer out, usually, it's not in their interest to only transfer out partially and it will cost you more as you will still be required to pay fees due to us and the new pension providers and same*

[114] P. 832
[115] P. 830

will likely apply in relation to services offered by IFAs for both your pensions ...'.[116]

In the circumstances, the Arbiter finds no satisfactory and justifiable basis on which he can accept the Complainant's claim nor on which the Arbiter can direct OFML to close and/or transfer such liquid portion in light of the explanations provided.

Whilst the Complainant can rightly request a transfer out in terms of the applicable rules and requirements, the Trustee and Retirement Scheme Administrator is also duty bound to act within, and adhere to, the provisions of the laws, rules and requirements applicable in respect of its roles.

The Trustee and Retirement Scheme Administrator is ultimately required to act in the best interests of the Complainant in relation to a request to transfer out and fully cooperate in the context of a favourable outcome of a reasonable due diligence exercise regarding such transfer out. [117]

Conclusion and Decision

The Arbiter is accordingly dismissing this case for the reasons amply explained.

Given the particular circumstances of this case and considering the nature of this complaint and events as outlined in this case, the Arbiter decides that each party bears its own costs of these proceedings.

Given also the Complainant's particular situation, the Arbiter strongly recommends, without obligation on the part of and at the sole discretion of the Service Provider, that as a sign of goodwill, OFML waives any exit fee applicable on the Complainant's Retirement Scheme in case of a transfer out.

Alfred Mifsud
Arbiter for Financial Services

[116] P. 440

[117] Such as in line with Condition 4.1.17 *of 'Part B.4.1 Conduct of Business Rules'* of the *Pension Rules for Service Providers issued in terms of the Retirement Pensions Act, 2011* and the provisions outlined in the section titled *'B.5.3 Transfer out of the Retirement Scheme'* of section B.5 *'Conditions relating to information for Scheme Members and Beneficiaries'* of Part B of the Pension Rules for Personal Retirement Schemes issued by MFSA.

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.