

Before the Arbiter for Financial Services

Case ASF 034/2021

BE and EE

(‘the Complainants’)

vs

ITC International Pensions Limited

(C72355) (‘ITC’ or ‘the Service Provider’)

and

Boal & Co. Malta Pension (‘the Scheme’)

Sitting of the 14 November 2022

The Arbiter,

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

The Complaint, in essence, involves the claim that ITC mishandled the Complainants’ affairs, where the Service Provider’s actions allegedly led to unnecessary delays in the investment of their money. It was claimed that the time wasted resulted in a loss on their cash assets given that the investment products they had originally selected for investment had appreciated in value by the time they got access to their money.

Preliminary

Background and Nature of Complaint

The Complainants, who are spouses, were respective members of the Scheme.¹ In 2020, ITC was requested to top up the Scheme's account of EE ('EE'). The top-up was to be made by way of a transfer of assets from *ECL Chemicals Limited Directors Pension Scheme*, a UK Self-Administered Pension Scheme ('SSAS'), whose sole beneficiary was indicated as EE, and in respect of which, the Complainants both acted as trustees.²

The Service Provider was not satisfied with the documentation relating to the source of funds of the cash assets transferred from the SSAS and it accordingly returned the money that was intended to top up her Scheme.

Apart from the disagreements arising between the parties in respect of the adequacy of the documentation provided and the requested details in respect of the transfer of cash assets, an issue arose with the return of the money which resulted in a delay for the Complainants to access their money.

This is given that the money received by ITC from the SSAS was returned back to sender but the bank account from which the transfer was originally made had however been in the meantime closed. Certain time elapsed until the returned money was eventually traced and accessed by the Complainants.

The Complaint in question is being made by EE in her capacity as a member of the Scheme as well as trustee and beneficiary of the SSAS, and by her husband also as administrator and joint trustee of the SSAS.

The Complainants are seeking redress in respect of their alleged loss as further detailed below.

The Complaint as described by the Complainants

The Complainants claimed that the Complaint falls into three categories, involving administration, money laundering procedures and the handling and accountability of the money held.

¹ Page (P.) 56

² P. 9 & 57

The Complainants submitted that the consequences of the mishandling of the Complainants' affairs were that: (1) nothing was ever concluded resulting in a complete waste of time for a period of 6 weeks (2) the loss of access to the Complainants' money meant that they missed investment growth in the financial markets (3) they needed to find alternative trustees and administration (4) they were to dispense with the services of Abbey Wealth.

It was claimed that the reasons why they have been let down lie with the failure in the management systems and quality of the staff of the Service Provider. The Complainants highlighted and claimed the following:

- 1) The Service Provider as trustee refused to engage with the Complainants at any time meaning that the MLRO never had any facts and background to the Scheme to properly address how to conduct compliance procedures.
- 2) The Complainants were only able to deal with just one official of ITC and were denied the possibility to speak directly to senior management.
- 3) There was a lack of commercial knowledge in understanding the documents sent to the Service Provider's attention.
- 4) Poor to non-existent communication with all parties. It was noted that in the ITC's Complaints Report,³ the MLRO seems to only speak to the case handler and no one else outside ITC.
- 5) Poor decision making which the Complainants suspected was because of a total lack of supervision of staff and case handling.
- 6) Panic on the part of the Service Provider as evidenced in the reply to the Complainants' email of 21 December 2020 and similarly reply on 6 January 2021 where the Complainants indicated they had to pressure to get anything done. The Complainants further pointed out the lack of communication between staff where they indicated that one official advised them that their funds will be transferred to Quilter only for the transfer to be then blocked by the MLRO.

Additional background given by the Complainants

³ Page (P.) 14 - 19

In an attachment to their Complaint, the Complainants provided additional background where they noted *inter alia* the following:⁴

- That in 2019, the Complainants engaged the services of *Abbey Wealth* who recommended *Boal & Co* as pension trustees subsequent to which they transferred their existing pension schemes from Guernsey to *Boal & Co Malta*.
- That when they transferred no money laundering procedures were undertaken even though on one of the schemes, the lump sum benefit had been taken.
- That one of the complainants (EE), had a further *Self-Administered Pension Scheme* ('SSAS') in the UK set up 36 years ago initially as a hybrid scheme.
- In October 2020, the assets of the SSAS were encashed and the funds were to be transferred to *Boal & Co* as an addition to EE's pension scheme. *Morfitt & Turnball (Management Services) Ltd* were the investment advisors and were to continue in that role.
- *Abbey Wealth* never had any involvement with the SSAS as the Complainants were the trustees, with one of the Complainants acting as administrator and another (EE) as sole beneficiary. The Complainants were the only persons who had knowledge of the SSAS's assets, access to its papers and documentation.
- A number of administrative issues occurred in attempting to undertake the transfer of the SSAS to *Boal & Co* as outlined in their formal complaint to the Service Provider dated 21 January 2021.⁵ In the said complaint letter, the Complainants, in summary, stated the following:
 - They referred to the trail of emails exchanged with ITC and highlighted that they never got the opportunity to be in contact with any other official and were not contacted by/able to speak to the MLRO.
 - Highlighted that they and their financial adviser had to expend unnecessary amount of time on random requests for information with

⁴ P. 9 - 10

⁵ P. 11 - 13

these requests being wrongly directed as they should have gone to *Abbey Wealth* or themselves as trustees. It was noted that the investment advisor did not hold the type of information that was sought by ITC, as should have been evident from the adviser's authorisation.

- Pointed out that ITC took 2 months to reply to their financial advisor and the Complainants had to contact *Abbey Wealth* to ask them to intervene to force a reply from ITC.
- Noted that 4 requests to obtain particulars were made. The Complainants suspect that they only got the facts when they threatened to refer the matter to the regulator. It was further noted that even then, they were never told why they had not been notified.
- Noted that the funds arrived in ITC's account on 30 November 2020 and the Service Provider had confirmed that the money would be transferred to *Quilter* on the 2 December 2020.
- That the MLRO apparently blocked the transfer, and nothing was heard until they were contacted by *Abbey Wealth* on 10 December 2020 with a request for some information relating to money laundering and a threat that if the information was not provided within the next days the money would be returned.
- That they were informed that the MLRO had done a search on *ECL Chemicals Ltd* and sought a power of attorney, a bank letter from the trustees and a lump sum confirmation which was all very confusing.
- They claimed that the MLRO had never contacted them, had no facts and background to the SSAS and was conducting searches that were totally futile.
- That the Complainants ultimately arranged a phone call with *Abbey Wealth* and put together a number of documents which they considered might be useful. These were sent to ITC together with a comprehensive list of documents that they had available to provide if required. EE was also to pick up any other documents in UK.

- That on 19 December 2020, the Complainants learned that the money had been returned on 16 December 2020 which absolutely staggered them.
- That on 21 December 2020, the Complainants wrote to express their belief that the money laundering procedures carried out were basically non-existent. They claimed that ITC's instant reply to *Abbey Wealth* on the same day showed an alarming lack of knowledge of facts, understanding of security issues and how the tax system worked in relation to pension schemes.
- That their reply of 30 December 2020 was never replied to.
- That effectively, after 3 weeks from receiving the funds, the MLRO actually put a document request with the funds then returned. The Complainants noted that they were never contacted, nor were any facts obtained from *Abbey Wealth*. They claimed that the MLRO was incompetent, and that the anti-money laundering activity was effectively non-existent, never got concluded and there was never a hope it could be.
- That the return of their money had been a matter of major serious concern. They noted that their bank could never trace the funds as the account from which they were transferred was closed. They told the Service Provider about this on various occasions, but this was never accepted by ITC.
- That the Service Provider eventually sent a document which showed a transfer between ITC's bank account to another RBS account which was completely useless in enabling the funds to be traced.
- That the Complainants emailed and specified on 2 occasions what was necessary for ITC to provide. They also phoned on 15 January 2021. It was further noted that ITC agreed to obtain a trace document and despite that it said this would take days, the Complainants actually got, on 18 January 2021, something they could present to their bank.
- That a lot of time was thus wasted due to the many failings.

- That on 26 October 2020 they signed off a list of investments to be placed on the markets comprising GBP460,000. The Complainants claimed that, had there been an intelligible and professional approach to the money laundering procedures, these investments would have been placed. They further stated that they still did not have access to their funds and were waiting for them to be traced.
- That, as and when, they can enter the markets they will be claiming against ITC any loss in uplift value of the portfolio since 16 December 2020 apart any other areas of claims under consideration.
- The Complainants noted that the ITC's report to their complaint glosses over the issues raised in their complaint and in some cases denied their existence.
- It was further noted that EE's husband was a Chartered Accountant and a Chartered Tax Adviser, having spent 35 years in private practice and having himself dealt with money laundering procedures in relation to his and his wife's affairs and on behalf of clients.
- That their email of 21 December 2020 wherein they expressed their comments regarding the events surrounding money laundering prompted a same response sent to *Abbey Wealth* which, for the first time ever, set out a schedule of document requests. The Complainants noted that 21 days after the transfer of the funds, they finally received something formal in writing. It was claimed that the schedule was however hastily put together based upon a limited number of documents sent through *Abbey Wealth* to *Boal & Co* on 10 December 2020. A copy of the email dated 30 December 2020 which details the Complainants response to the document request was provided.⁶ The Complainants submitted that some of the requests were nonsensical and not possible to fulfil.
- The Complainants noted that the original trust was drawn 36 years ago and was sent to *Boal & Co*. They further noted that a request for sight of the trust deed and one year bank statements on both accounts

⁶ P. 27 - 29

would have comprised some 80 pages of documentation which they deemed ridiculous.

- That the bank letter from *Nat West* dated and submitted on 1 December 2020, which was rejected after 20 days by *Boal & Co*, could not have been more concise and was signed by a bank official in name. No account numbers were put on for security and a request for an updated tax reference highlighted the MLRO's lack of knowledge.
- That the Complaints Report from *Boal & Co* referred to evidence of the proceeds from the sale of a property and a copy of recent bank statement. The Complainants noted they never had these requests.
- That there was a complete contradiction where the Complaints Report stated that the MLRO was not involved in the case after their funds were returned on 16 December 2020, but yet a schedule was sent to *Abbey Wealth* by ITC on 21 December 2020.
- That on 21 December 2020 they were told to expect a reply to their email of the same day, but they never received a reply to this nor to their email of 30 December 2020.
- The Complainants considered that there was no serious attempt to carry out the requisite checks in a professional manner and they considered the MLRO of the Service Provider as totally incompetent.
- That apart from the money transferred from *Nat West*, *Boal & Co* received funds from previous trustees in relation to the Complainants. They further pointed out that the Complainants finally received a reply on 6 January 2021, this being on the fourth occasion of requesting accountability of the money.
- That the pension transfer was sent back by ITC to *Nat West* on 16 December 2020. The Complainants acknowledged that *Boal & Co* did notify the adviser and *Abbey Wealth* that they intended to do this. They noted that ITC's Complaint Report stated that this had to be done due to AML/CFT obligations. The Complainants however questioned how they only received a formal money laundering request from ITC, 5 days after the money had been returned.

- The Complainants noted that of greater concern was the fact that *Nat West* was unable to trace the funds returned by ITC. They claimed that the transaction confirmation sent by ITC, dated 16 December 2020, which showed the transfer of funds between two RBS accounts was of no relevance. On 15 January 2021, ITC finally sent an RBS trace document which was in turn submitted to *Nat West* and ultimately enabled the money to be traced.
- The Complainants highlighted they were able to make their investments only 6 weeks after the transfer of funds. They considered that no real effort was made by ITC to pursue the matter. A copy of their follow up letter dated 23 January 2021 was also attached.⁷
- It was further claimed that ITC's Complaints Report left them seriously disappointed with ITC's reply and included incorrect statements of facts.
- A copy of relevant documentation and correspondence exchanged with the parties were attached to their Complaint.⁸

Remedy requested

The Complainants sought compensation both in relation to their time and the stress of dealing with the whole matter.⁹

It was noted that if one of the Complainants had been charging out for this time on a professional basis, then around 12 hours would equate to GBP2,400.

It was further noted that if loss on investment return could be considered, then they would need their financial adviser to compute the figure based on the movement in the chosen investments between 16 December 2020 to the time when the investments are placed in the markets which was dependent upon the new investment platform.¹⁰

Clarifications on the requested remedy

⁷ P. 42 - 43

⁸ P. 11 - 48

⁹ P. 4

¹⁰ P. 4 & 7

During the hearing of 31 May 2021, the Complainants were asked to send an email indicating the amount of compensation being claimed.¹¹

In their subsequent email of 2 June 2021, the Complainants indicated that their claim was for the total sum of GBP18,134.98.¹²

The Complainants stated that this figure was calculated based on the movements in the share market of the investments between 16 December 2020 and 15 January 2021, this being the period during which they indicated they had no access to their money.¹³

A breakdown of the calculations of the indicated sum was provided as per the attachments to their email of 2 June 2021. The said attachments comprised a letter dated 23 October 2020, which listed the investments recommended by their advisor together with percentage allocations,¹⁴ as well as a table with details of the difference in value of the respective investments as at 16 December 2020 and 15 January 2021.¹⁵

In its reply, ITC essentially submitted the following:¹⁶

The Service Provider first provided some general background information about the different parties mentioned in the Complaint as per the table included in its reply.¹⁷

In summary, the Service Provider submitted:

1. That the Complainants were existing members of *Boal & Co Malta Pension* having transferred their assets *in specie*, from a Guernsey regulated pension provider on 14 October 2019 and 27 January 2020 respectively.

¹¹ P. 160

¹² P. 161

¹³ *Ibid.*

¹⁴ P. 162

¹⁵ P. 163

¹⁶ P. 55-65

¹⁷ P. 56

2. That in August 2020, a request was made by EE to ITC to transfer assets from a self-administered pension scheme to her existing membership as a top up.
3. That a letter from the Complainants dated 9 December 2020 explained that the funds were from the proceeds of a sale of property held within the scheme. The letter stated that the funds had already been transferred to *Boal and Co Malta Pension* and that the *ECL Chemicals* scheme bank account had been closed.¹⁸
4. That the source of funds documentation submitted was not deemed sufficient. It noted that the majority of transfers come from well-known regulated pension providers who understand the overseas transfer process and mutual AML/CFT procedures. It was very rare to receive funds from individuals with self-administered pension schemes who are not familiar with Malta's robust AML/CFT regime. It further noted that it was the request for additional source of funds documentation that triggered the discontent.
5. That a certified bank statement in the name of the scheme was requested to show the proceeds of the property sale entering the scheme bank account together with evidence of the sale but instead an editable letter was submitted in word format, unsigned by *NatWest* simply saying a transfer had been sent to the *Boal & Co Malta Pensions* scheme bank account.¹⁹
6. That several requests between the date funds were received into the Malta scheme bank account until 16 December (2020) were sent to the financial advisors and the Complainants requesting the correct source of funds documents or the funds would be returned. ITC was advised again by the Complainants that funds could not be returned due to the bank account being closed. ITC advised it would use the return to sender process to reverse the transaction.

¹⁸ P. 57 & 81

¹⁹ P. 57 & 80

7. By 16 December 2020, the requested documents could not be produced, therefore, the Scheme's bank *Royal Bank of Scotland* was instructed to return funds to the sender's bank, *NatWest*. The financial adviser and the Complainants were advised to contact their bank in order to access the returned funds.
8. Several days later, the Complainants informed ITC that *NatWest* were denying receipt of funds but the Scheme's account with *Royal Bank of Scotland* ('RBSI') was showing that the funds had definitely left the Scheme account. The Complainants were urged to keep calling their bank to trace at their end, but they were demanding that ITC was to contact *NatWest*. It noted that *NatWest* refused to divulge information to non-account holders. *RBSI* confirmed by telephone that funds were showing as received by *NatWest* and that it needed the account holders to initiate a trace of funds at their end. ITC communicated this both to the financial adviser and Complainants passing on the instruction for the Complainants to initiate the trace of funds from their end.
9. ITC was on shutdown from 24 December 2020 and reopened on 4 January 2021. Closing down dates had been displayed on all email signatures and the Complainants were reminded that the office would be closing on 24 December and not reopening until the new year.
10. The Complainants advised ITC that funds had still not been received by 5 January (2021) and the Complainants were again reminded that the trace of funds needed to be done at *NatWest*.

The Complainants requested *RBSI* to do another check with *RBSI* advising ITC that funds were with *NatWest*. ITC continued to call *RBSI* to see if they could provide written evidence of this. On 12 January (2021), a SWIFT message advising that the funds were with *NatWest* was received. The Complainants were again advised to contact their own bank to trace funds at their end.

In addition to the above summary, the Service Provider provided additional information, in its reply, on the points raised by the Complainants.²⁰

The Service Provider, in essence, submitted in this regard:

- That a full investigation was undertaken, and a report was provided to the Complainants. The conclusion was that all procedures were carried out in accordance with its own AML/CFT obligations and administrative procedures.
- That the loss of funds access claim should be made against *NatWest* as *RBSI* was instructed to return funds to the sender on 16 December (2020) when the source of funds documents could not be supplied by the Complainants.
- That if the bank statement and property sale documents had been sent when requested, the matter would have been resolved within a day of receiving the funds. Instead, various other documents were being submitted for review other than the ones requested.
- That *NatWest* would have released the Complainants' funds sooner if the Complainants had initiated the *NatWest* trace of funds at their end when requested by ITC following guidance from *RBSI* before Christmas, but the Complainants insisted that ITC communicates directly with *NatWest* despite ITC explaining GDPR obligations to them. The Complainants started calling on a daily basis demanding ITC contact *NatWest*, but they were not understanding that *NatWest* would only communicate with account holders.
- That with respect to not being able to invest the funds from 16 December 2020, ITC submitted that this is a matter for the Complainants to take up with *NatWest* given it was *NatWest* that was holding the funds in its main holding account.
- That the claim of loss on investment return is a matter between the Complainants and *NatWest* given that the return to sender instructions had

²⁰ P. 58 - 65

been sent to *RBSI* on 16 December 2020 with a confirmation that *NatWest* had received them on 18 December 2020.

- That *Boal & Co* are not a party to the scheme and were at no point involved in the administration of the Scheme.
- That all document requests had been communicated to the financial adviser, *Abbey Wealth*, to try to obtain the *ECL Chemicals* scheme bank statement and evidence of the sale of property as requested.
- That the funds had been returned on 18 December 2020. The schedule referred to by the Complainants was provided by ITC to list the additional items required for the future should the Complainants still want to transfer the top-up in the new year. A scheme bank statement and evidence of a sale of property continued to remain the primary documents. These were not documents to be considered as a 'ridiculous' request under AML/CFT procedures in any jurisdiction.
- That the *NatWest* letter was not signed by a bank official, it was an editable word document. The number on the letter was called and it was *NatWest*, but they were unable to confirm any details to non-account holders nor would they acknowledge the letter or agree to resend a signed copy unless the account holders called to request it directly. The letter would still have been in addition to the sale of property and scheme bank statements.
- That *Abbey Wealth* was in regular contact with the Complainants passing on the requests for the bank statements and the sale of property. Even after funds were returned, ITC was giving the Complainants a chance to submit the documents in the new year for review but given the continued resistance to submit, a decision not to accept the funds in the future was communicated in a letter on 15 January 2021. This letter also provided a timeline of events on the return of funds outlining the reasons why.
- That there were numerous emails and telephone calls between the Complainants, ITC, and *Abbey Wealth* following the advice that funds were being returned. The gap was due to the closure of the offices over the Christmas period from 24 December 2020 to 4 January 2021.

- That in the Complainants' letters there were too many assumptions being made about ITC's processes without any factual evidence.

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

Further Considers:

The Merits of the Case

The Arbiter is considering the complaint and all pleas raised by the Service Provider relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555²¹ which stipulates that he should deal with complaints in '*an economical and expeditious manner*'.

Timeline of events

The Arbiter notes the extensive submissions made including the main relevant communications exchanged between the parties as emerging from the documentation produced during the case.

A summary of the said exchanges is reproduced below:

- 31 August 2020 – Letter dated 31 August 2020 from EE informing ITC that she wished to transfer to her Scheme all the assets held in her existing self-administered pension scheme, *ECL Chemicals Limited Directors Pension Scheme*.²²
- 1 December 2020 – Letter dated 1 December 2020 from NatWest confirming that '*the closing balance for the ECL Chemicals Ltd Directors Pension of £482,677.86 was transferred at closure to an RBS international account*'.²³
- 1 December 2020 – Email from Complainant to ITC confirming permission to transfer money to the *Quilter* policy.²⁴
- 2 December 2020 – Email sent by ITC to the Complainant detailing *inter alia* that the payment to the Quilter policy will be made within the day. Other

²¹ Art. 19(3)(d)

²² P. 107

²³ P. 20

²⁴ P. 33

aspects relating to previous transactions were also considered. ITC's official notified that it needs to revert to management to confirm whether they can accept certain documents, highlighting also the importance of certain information that ITC needed to have on file.²⁵

- 2 December 2020 – Email sent by ITC to the Complainant confirming that the transfer of funds from *ECL Chemical* for £482,677.86 was now received in its bank account. It was further noted that ITC was in the process of investing the funds and the Complainant '*will shortly receive a top-up confirmation letter from Quilter International once the monies are invested.*'²⁶
- 2 December 2020 – Email sent by ITC to *Abbey Wealth* referring to their telephone call regarding the information and documents needed. In the said email, ITC listed the information and documentation required that needed to be sorted for ITC to be in a position to transfer the money received from the *ECL Chemicals Pension Scheme* to the *Quilter* policy.

Other matters were also raised in the said email, including with respect to the requirement of a power of attorney for the husband to represent his wife. ITC also pointed out to *Abbey Wealth* that if the information required is not provided within the week, ITC has the authority to send the money back to the *ECL Scheme* as they would not have enough information for reporting and auditing purposes.²⁷

- 2 December 2020 – Email from *Abbey Wealth* to ITC informing it that they tried to contact one of the Complainants but only managed to leave a voicemail. *Abbey Wealth* noted that they will keep trying and report back to ITC when they manage to speak to him.²⁸
- 3 December 2020 – Email from ITC to *Abbey Wealth* suggesting that *Abbey Wealth* contact the Complainants by email.²⁹

²⁵ *Ibid.*

²⁶ p. 34

²⁷ p. 88-89

²⁸ p. 88

²⁹ *Ibid.*

- 4 December 2020 – Email from ITC to *Abbey Wealth* requesting any updates with respect to the Complainants case and whether *Abbey Wealth* managed to get in touch with the Complainants.³⁰
- 9 December 2020 – Confirmation issued by the Complainants as joint trustees of the *ECL Pension Scheme* relating to the proceeds of the pension scheme and also indicating *inter alia* that the *NatWest* bank account has been closed.³¹
- 9 December 2020 – Email from Complainant to *Abbey Wealth* regarding the difficulties they were experiencing with the transition to ITC and *Quilter* and dissatisfaction with the process. An update and indication of the status as well as assurances on the matters in hand was requested by the Complainant.³²
- 10 December 2020 – Email from *Abbey Wealth* to the Complainants indicating that it understood the Complainants’ frustrations. *Abbey Wealth* explained the situation and the reasons why ITC required the information prior to crediting the funds. It further noted that ITC was trying to find solutions to meet the minimum regulatory requirements and that ITC asked for a copy of the Trust Deed of the SSAS. *Abbey Wealth* pointed out to the Complainants that if there was nothing that could be provided ITC will have no option but to return the funds back as they have already held on to them longer than usually permitted.³³
- 10 December 2020 – Email from *Abbey Wealth* to ITC providing certain information and asking whether this was sufficient to have the money transferred to *Quilter*.³⁴
- 11 December 2020 – Internal email between ITC officials noting that further to *Abbey Wealth’s* email of 10 December 2020, this was the only piece of information that the Complainants could provide apart from some other information that *Abbey Wealth* had provided earlier in the week. It was

³⁰ *Ibid.*

³¹ P. 81

³² P. 85-86

³³ P. 84

³⁴ P. 97

- noted that if the said information would not suffice an arrangement will be made to have the money sent back the following week.³⁵
- 16 December 2020 – Email from *Abbey Wealth* to ITC explaining that the Complainants were keen to try and resolve the outstanding issues and that further documentation is held back in the UK which could be accessed by one of the Complainants who was then in the UK (as the Complainants were resident in Italy).³⁶ *Abbey Wealth* included some documentation with its email in relation to the *ECL Scheme* to help in the information required by ITC. It also asked ITC for a simple list of what is needed for the Complainants to provide as a further attempt to get the matter sorted.³⁷
 - 14, 15 & 16 December 2020 – Email communications (marked as urgent) between ITC and RBSI regarding the return of funds.³⁸
 - 18 December 2020 – Email sent by ITC to *Abbey Wealth* confirming the final requirements for ITC to accept the funds from the *ECL Scheme*. It was *inter alia* noted that the attachments sent by *Abbey Wealth* on 16 December would have come in handy had they been provided by the Complainants earlier on when ITC had requested additional information as ITC might have avoided sending the money back.³⁹
 - 18 December 2020 – Email sent by ITC to the Complainant confirming that money had been returned to the original source. Details of the bank transaction confirmation were also included.⁴⁰
 - 21 December 2020 – Email sent by Complainant to ITC raising various questions as a result of the manner in which ITC operated their affairs.⁴¹
 - 21 December 2020 – Email sent by *Abbey Wealth* to Complainant attaching a schedule of the final requirements needed by ITC to accept the funds from the *ECL Scheme*.⁴²

³⁵ *Ibid.*

³⁶ P. 1

³⁷ P. 82-83

³⁸ P. 150-151

³⁹ P. 82

⁴⁰ P. 30

⁴¹ P. 21-23

⁴² P. 24-26

- 21 December 2020 – Email sent by ITC to the Complainant notifying *inter alia* that certain matters need to be looked into by MLRO and also asking the advisor to ensure that he discusses the case in full with the Complainants given that ITC considered it had already gone through the majority of the questions raised by the Complainants.⁴³
- 30 December 2020 – Reply by Complainants to ITC’s email of 21 December 2020 which *inter alia* highlighted that *NatWest* had not yet confirmed receipt of money returned by ITC. The Complainants also included various details in reply to the list of requirements needed by the Service Provider.⁴⁴
- 5 January 2021 – Email sent by Complainant to ITC as a reminder on the money held.⁴⁵
- 6 January 2021 – Email sent by ITC to Complainant which *inter alia* indicated that ITC had already considered most of the Complainants’ queries with their financial adviser.⁴⁶
- 11, 12 & 15 January 2021 – Email communications (highlighted as urgent), between ITC and RBSI.⁴⁷
- 15 January 2021 – Letter from ITC to the Complainants confirming that payment of £482,677.86 was returned to the original bank account it was sent from. Details were provided of the said transfer including a timeline of events.

The Complainants were also directed to contact their own bank to ask them for the release of their funds. They were also directed to contact their financial advisor to find an alternative solution given that the supporting documentation in relation to the source of funds was insufficient and that this was the reason why ITC was unable to accept them into the Scheme’s bank account. The Complainants were also informed that ITC will continue

⁴³ P. 21

⁴⁴ P. 27-29

⁴⁵ P. 32

⁴⁶ P. 31-32

⁴⁷ P. 146-149

with their communication with RBSI to try and obtain an official letter but that the Complainants had to contact their own bank.⁴⁸

- 15 January 2021 – Email sent by ITC informing the Complainant that it has asked for full bank details.⁴⁹
- 18 January 2021 – Email exchanges between ITC and RBSI relating to the transfer.⁵⁰
- 18 January 2021 – Email sent by ITC notifying the Complainants of updates received from RBSI noting also that RBSI advised that the Complainants bank could reach RBSI via swift message regarding the matter.⁵¹
- 20 January 2021 – Email from ITC seeking any updates from RBSI.⁵²
- 21 January 2021 – Formal complaint sent by the Complainants to the Service Provider.⁵³
- 22 January 2021 – Acknowledgement of receipt by ITC of the formal complaint.⁵⁴
- 23 January 2021 – Letter dated 23 January 2021 sent by the Complainants to ITC highlighting *inter alia* that they are not prepared to wait for 15 days for a reply to their complaint.⁵⁵
- 25 January 2021 – Letter from ITC to the Complainants that the 15-day period for a reply is the timeframe permitted by the regulations and their own procedures for formal complaints.⁵⁶

⁴⁸ P. 135-136

⁴⁹ P. 35

⁵⁰ P. 144-146

⁵¹ P. 137

⁵² P. 143-144

⁵³ P. 11-13

⁵⁴ P. 68

⁵⁵ P. 42-43

⁵⁶ P. 71

- 4 February 2021 – Complaint Report sent by ITC to the Complainants.⁵⁷

Observations & Conclusions

Having considered the particular circumstances of this case, the submissions made, and the documents presented, **the Arbiter considers that no satisfactory and sufficient evidence has emerged of any material deficiencies arising on the part of the Service Provider which can justifiably and reasonably be deemed to be the actual cause of the losses or damages alleged by the Complainants and/or that merit the payment of compensation as requested.**

This is for the reasons outlined below:

- a) Whilst the Arbiter notes the Complainants' frustration as they were not expecting the requests made and the delay in the finalization of the process, **it is however clear and justifiable that the Service Provider had its own requirements which plainly needed to be satisfied according to its internal procedures and obligations.**

The Service Provider was indeed obliged by duty to request relevant clarifications and documentation to adequately satisfy itself of the provenance of funds in terms of the applicable regulatory framework.⁵⁸

- b) It is noted that the Complainants referred *inter alia* to their experience with previous transfers of pension schemes, where they pointed out in their Complaint that, '*When they were transferred no money laundering procedures were undertaken ...*'.⁵⁹

Whilst this is not so credible given that subject persons are required to adhere to rigorous anti-money laundering requirements, **the Complainants could not either assume that the same approach done in case of other transfers (which could have involved different scenarios) would apply also to their case or expect reasonable checks and queries not to be made.**

⁵⁷ P. 72-79

⁵⁸ Such as the various laws and standards applicable to combat money laundering and terrorist financing.

⁵⁹ P. 9

The requested clarifications, confirmations, and documents made by the Service Provider, such as those outlined in its communications of 2 December 2020,⁶⁰ and 18 December 2020,⁶¹ are not deemed by the Arbiter to have been unreasonable or excessive. Likewise, details about the SSAS (such as bank statements, a copy of the trust deed, or relevant extracts thereof) and relevant details relating to the sale of property which resulted in the cash assets transferred, asked for by ITC ought to have reasonably been expected by the Complainants, as part of official evidence regarding the SSAS and its source of funds.

This is also when **taking into consideration the material sum involved and the nature of the transfer from a UK Self-Administered Pension Scheme.**

- c) The Arbiter further notes that **the attitude taken by the Complainants towards the requests made and also towards the officials of the Service Provider has, unfortunately, not helped the situation either - nor did it contribute to the effective and prompt resolution of the pressing matters at the time.⁶² The Complainants ultimately had to, on their part, also offer their full cooperation and assistance** in order to satisfy the reasonable requests and clarifications needed by the Service Provider.

Whilst there were certain instances where communications could have possibly been better, (even from the part of the Service Provider where, for example, the exact requirements could have been communicated more comprehensively/completely and/or requested at an earlier stage), however, **the Service Provider cannot reasonably be held responsible for the delays in the process when the Complainants had not promptly themselves provided the requested clarifications and documentation.**

⁶⁰ p. 89

⁶¹ p. 82 & 87

⁶² The Complainants' attitude and mindset clearly emerges in the email sent to *Abbey Wealth* of 9 December 2020 where it was *inter alia* stated that '*... have no confidence in Zammit. Now ... we are stuck with a MLRO, probably as they usually are pedantic and slow moving, who proceeds to make searches when he/she has no facts ... and even now probably does not know what to do. i have dealt with these paper pushers before they need to be stood on ...*', (P. 85), '*... we are at the end of our tether with all this nonsense*' (P. 86). A rather confrontational attitude also comes out in other communications, such as in their communication of 21 December 2020 (P. 21-23) and 23 January 2021 (P. 42-43) wherein the latter they were not even '*prepared to wait 15 days*' for the investigation of, and reply to, their complaint.

- d) It is noted that communication of the intention to transfer assets from the SSAS was done by the Complainants on 31 August 2020.⁶³ The cash assets were then actually transferred and received by the Service Provider on 30 November 2020.⁶⁴

Whilst there is no evidence of what communications if at all, occurred between the parties regarding the intended transfer during the intervening period, **it is clear that the issues arose upon the actual transfer of cash assets by the Complainants to the Scheme's account.** Communication as to what documentation was needed for the transferred assets to be accepted seems to mainly have occurred after the actual transfer.

No evidence emerged that it was the Service Provider who requested the cash transfer to be made first.

The transfer of cash assets from the SSAS to the Scheme accordingly appears to have been done prematurely and it **would have been more prudent for the Complainants to have first clarified the exact documentation required,** considering the nature of the transfer in question, prior to them making the actual transfer of money.

- e) As emerging from the communications of 2, 10, and 16 December 2020 outlined in the section of this decision titled *'Timeline of events* above, **there were clearly various discussions between ITC and the Complainants advisor, Abbey Wealth, as to the details and documents needed** just after the transfer was made.⁶⁵

Furthermore, **the Complainants were clearly aware of the implications resulting, that is, of their cash transfer to be returned by ITC if the details requested by ITC were not to be satisfied.**

The Service Provider indeed highlighted, in its email of 2 December 2020 to the Complainants,⁶⁶ the importance of the receipt of the requested information and also again in its email of 2 December 2020 to *Abbey Wealth*.⁶⁷

⁶³ P. 107

⁶⁴ P. 12

⁶⁵ P. 88-89

⁶⁶ P. 33

⁶⁷ P. 88-89

It is also noted that the Complainants were also warned by *Abbey Wealth* about the potential of their funds being returned as per the email of 10 December 2020.⁶⁸

- f) The Arbiter notes that the Service Provider returned the money to the original source on 16 December 2020.⁶⁹ **The original bank account had however been closed by the Complainants upon the transfer of the cash assets to the Scheme. The closure of such an account contributed to the delays in the Complainants receiving their funds back when these were returned by the Service Provider.**

Whilst the reasons for the closure of such a bank account have not emerged, **it accordingly appears that the said account was also closed prematurely by the Complainants.**

Responsibility for the premature transfer of the cash assets and premature closure of the bank account cannot reasonably be attributed to the Service Provider.

- g) It is ultimately noted that the Complainants requested compensation for the period when they claimed they did not have access to their money, this being indicated by them as 16 December 2020 to 15 January 2021.⁷⁰

There is also a lack of basis on which the Arbiter can accept the Complainants' request in this regard **for the following additional reasons:**

- ***Inconsistencies* – Certain inconsistencies have emerged as to the claimed period when the Complainants stated they did not have access to their money.**

In their formal complaint to the Service Provider dated 21 January 2021, the Complainants stated that

'Even now we do not have access to our funds as we await for them to be traced'.⁷¹

⁶⁸ P. 84

⁶⁹ P. 142

⁷⁰ P. 161

⁷¹ P. 13

During the hearing of 31 May 2021, one of the Complainants testified that

*'... we lost a month from the 1 December and, so, till the end of January, for two months there was a total lack of access to that money and, therefore, obviously, there was no opportunity for the money to be invested.'*⁷²

The said statements do not reflect the claim ultimately made by the Complainants in their email of 2 June 2021, wherein they indicated that they did not have access to their money between 16 December 2020 and 15 January 2021 and selected this period as the basis of their claim.

- *Alleged loss* – As outlined above, the Complainants calculated the alleged loss based on the difference in price, from 16 December 2010 to 15 January 2021, of the targeted investment products they were going to invest into which were outlined in their advisors (Morfitt & Turnbull) letter of 23 October 2020.⁷³

The alleged loss accordingly relates to a 'foregone' appreciation in value or a higher purchase cost applicable for the investments in question.

The Arbiter however does not consider this to form a valid basis for compensation in the particular circumstances of this case also for the additional reasons outlined further below.

Apart that, **no evidence was provided of the investments actually undertaken by the Complainants and the date when these were purchased**, it has not been demonstrated either that the targeted investments were executed at the price applicable on 15 January 2021 (also given the inconsistencies raised above).

Furthermore, there were **no assurances about the performance of the price of the targeted investments** which could have had a lower value.

Moreover, it is unclear why the targeted investments were not undertaken at an earlier stage, such as in October/November 2020, prior to the actual

⁷² P. 158-159 – Emphasis added by the Arbiter

⁷³ P. 162

cash transfer and then followed by a transfer *in specie* if the timing was a material issue and the Complainants wanted to take advantage of the market opportunities applicable at the time.

Whilst the Complainants may have assumed that the process would be finalized quickly, the Service Provider cannot however be held liable for such an assumption considering the particular circumstances of this case.

It has ultimately not emerged that the Service Provider returned the Complainants' money to an incorrect party or did not properly execute the transfer. The Service Provider could only reverse the funds back to the original remitter bank.

The Arbiter furthermore considers that **ITC made reasonable attempts to assist the Complainants in the tracing of the funds as evidenced in the multiple communications exchanged between ITC and RBSI** as detailed in the *'Timelines of Events'* above.

The reasons and responsibility for the delays indicated by the Complainants in having access to their funds cannot ultimately be satisfactorily attributed to the Service Provider.

In the particular circumstances, the Arbiter considers that there is accordingly no sufficient and substantive basis justifying the Complainant's request for compensation.

Conclusion & Compensation

For the above-stated reasons, the Arbiter is rejecting the complaint.

Given the particular nature of this case, each party is to bear its own legal costs of these proceedings.

Dr Reno Borg

Arbiter for Financial Services