Before the Arbiter for Financial Services

Case ASF 051/2021

JD ('the Complainant')

vs

Sovereign Pension Services Limited

(C56627)

('SPSL' or 'the Service Provider')

Sitting of 13 October 2023

The Arbiter,

Having seen **the Complaint** relating to The Centaurus Retirement Benefit Scheme ('the Retirement Scheme' or 'Scheme'), this being a personal retirement scheme established in the form of a trust and administered by *Sovereign Pension Services Limited* ('SPSL' or 'the Service Provider'), as the Scheme's Trustee and Retirement Scheme Administrator.

The Complaint

The Complaint relates to the claim that the Complainant's cash holdings held within his Retirement Scheme were converted and invested, without his approval, into assets which led to material losses, with such transactions occurring after a new investment adviser was appointed to his Scheme by SPSL as a result of changes to the regulatory requirements.

The disputed transactions were allegedly undertaken without the Complainant's authorisation and without him being notified of such and, also, despite that he had already notified SPSL of his intention to transfer out of the Scheme.

Background and submissions made by the Complainant

The Complainant explained that he became a member of the Retirement Scheme in December 2016.

It was noted that in June 2019, he informed SPSL that he wished to transfer out his holdings in the Retirement Scheme out of Malta and into (a different scheme in) the United Kingdom. Such transfer instructions were acknowledged by (the administrator of the UK scheme), *Sovereign Wealth UK* [1] on 1 July 2019.

The Complainant noted that on 9 July 2019, his holdings were held in cash at a value of GBP 510,728.72, according to a valuation issued on that date. The cash holding was actually held in USD but reported in GBP.

On 10 July 2019, the Complainant sent specific transfer instructions to *Sovereign Wealth UK* under the understanding that the transfer would be a transfer of cash holding.

On 21 November 2019, with all key players copied in, the Complainant was notified that the documents for the transfer were sent, and the transfer was completed.

The Complainant explained that he was however shocked to learn on 4 March 2020, that the SPSL in Malta had in the meantime re-balanced his portfolio, in that, notwithstanding the evident USD cash holding strategy, his cash holdings were used to purchase funds in GBP.

He claimed that he had specifically informed SPSL of his intention to transfer out his holdings and submitted that despite this SPSL negligently ignored his instructions and without any due care to his holdings, re-balanced his portfolio.

The Complainant further claimed that the said re-balancing occurred without his authorisation and that of his advisers, and despite that SPSL had, months before, been informed in writing that he intended to transfer out.

He also claimed that SPSL never informed him that his portfolio had been re-balanced and submitted that, in fact, on 3 March 2020, believing that he was

[1] Sovereign Wealth UK is a different (but sister) entity to Sovereign Pensions Services Ltd.

still holding USD cash, he sent dealing instructions to purchase a number of securities.

The Complainant alleged that a valuation of his holdings as at 2 March 2020, revealed a loss of GBP 40,000 which losses caused him grave prejudice.

Remedy requested

The Complainant requested that, in terms of Article 26(3)(c) of Chapter 555 of the Laws of Malta, the Arbiter orders SPSL to pay an amount of compensation for the losses incurred by him, in the amount of GBP 40,000, which sum, he claimed, represents the losses suffered by him as a result of the conduct complained of. His claim of compensation was also being made with interest.[2]

In its reply, SPSL essentially submitted the following:[3]

1. That SPSL as Trustee established the Retirement Scheme by a trust deed dated 13 July 2012 ('the Scheme Deed') as per Appendix 1 to its reply.[4] The Scheme is administered by the Trustee as its Retirement Scheme Administrator ('RSA'). The Trustee/RSA is regulated by the Malta Financial Services Authority.

2. That, as the Scheme Deed makes clear, the members of the Scheme have the right to appoint their own investment adviser to provide advice in relation to their investment options and indicate the member's preferred investment strategy to the Trustee.

   The Trustee/RSA is entirely independent of the member's appointed investment adviser and, as the member exercises this right and appoints his/her own investment adviser, the investments made under the Scheme may be described as member-directed.

3. In his application to join the Scheme ('Application Form'), signed by the Member dated 14 November 2016 (as per Appendix 2 to its reply),[5] the Member identified *Monfort International GmbH* as his appointed investment adviser. SPSL submitted that the Trustee/RSA does not, and is

[2] Page (P.) 3
[3] P. 29-32
[4] P. 34-51
[5] P. 52-69

not authorised to, provide investment advice to the members, and therefore any advice is to be provided solely by the investment adviser.

4. That, the Member, together with his investment adviser, identified *Quilter International*, previously known as *Old Mutual International*, as his chosen investment provider. The Trustee received the *Quilter International* application form (as per Appendix 3 to its reply),[6] completed by *Monfort International GmbH* and the Complainant on 14 November 2016.

5. That, on 1 January 2019, the MFSA issued new pension rules for personal retirement schemes in terms of the Retirement Pensions Act ('Pension Regulations'), which changed the requirements of who can provide investment advice to any members within the Scheme.

   SPSL noted that Section B.9.6 (b) of the Pension Regulations lays down the criteria of any investment adviser allowed to provide advice to members within the Scheme. It explained that, as a result of this, the MFSA provided all RSAs with a six-month transitional period to ensure that all members within the Scheme are compliant with the Pension Regulations.

   The Member's appointed investment adviser, *Monfort International GmbH* at the time did not meet the criteria set out in the Pension Regulations. Consequently, the Trustee/RSA wrote to the Member three times in the course of the year 2019 – in May, July and October (as per Appendices 4 to 6 of its reply)[7] via electronic mail to the email address, XXXXXXX@XXXXXX.XX, which email was provided by the Complainant himself as per page 3 of the Application Form for Membership.

6. SPSL noted that the communication sent to the Member explained, and advised, that an appropriate investment adviser as defined in the Pension Regulations was to be appointed on his plan; that his appointed adviser, *Monfort International GmbH* did not satisfy the mandatory criteria as required by the Pension Regulations which came into force at the start of the year 2019 and that an alternative investment adviser was to be nominated as soon as possible.

[6] P. 70-80
[7] P. 81-87

It noted that despite the various attempts, all efforts by the Trustee/RSA were ignored and an investment adviser that meets the criteria set out in the Pensions Regulations was never appointed by the member, which put the Scheme in breach of the Pension Regulations.

SPSL pointed out that the MFSA required action to be taken by RSAs in situations where members did not comply with the regulations within the stipulated 6-month transitionary period.

7. That in view of the fact that no investment adviser was nominated and appointed on the Member's plan, the Trustee/RSA was required and obliged to take the necessary action to ensure that its members and the RSA itself, were not in breach of the regulations beyond the said statutory period.

   As a result, the Trustee/RSA informed the Member that *Sovereign Asset Management Ltd*, trading as Sovereign Wealth ('SW') was to be appointed to satisfy the said mandatory requirements by law in default of, and until such time, as any other suggested investment adviser is requested by the member. It was also confirmed to the Member that SW satisfied the new Pension Regulations.

8. That the said alternative procedure had to be taken by the Trustee/RSA following consultation with the MFSA due to the given circumstances where no reply was received from those members who, despite various attempts to communicate with them, remained in breach of the Pension Regulations.

   SPSL submitted that despite the Member's intention to transfer his pension, at the time, the Scheme was still in breach of the Pension Regulations which necessitated the Trustee/RSA to take action.

9. The Complainant was informed by SW that they would be conducting a review of the portfolio to ensure that this was in line with the investment guidelines and, in the event that any breach of guidelines was discovered, they were duty-bound to have the appropriate changes made accordingly.

   SPSL noted that the correspondence provided all of the said information and allowed a seven working day period for the Complainant to object to

these changes. Following receipt of this communication, the Complainant did not object to the appointment of SW or the changes to his portfolio.

10. That during the said period, the holdings within the Complainant's investment portfolio were held entirely in cash. SPSL pointed out that this was in breach of section B3.2.1 (ii) of the Pension Regulations which requires the Complainant's assets within the portfolio to be diversified. As a result of this, the portfolio had to be re-balanced by the then newly appointed investment adviser – SW – as was mentioned to the Member in the communication sent to him in October 2019 (as per Appendix 6 to its reply).[8]

    A dealing instruction (as per Appendix 7 to its reply),[9] was sent to *Quilter International* as per SW's recommendation in order to bring the Complainant's portfolio in line with the Pension Regulations.

11. SPSL further explained that meanwhile, *MW SIPP Limited*, which was the Complainant's new nominated Trustee, received the Transfer Out Form (as per Appendix 8 to its reply),[10] on 1 July 2019.

    MW SIPP Limited subsequently forwarded the Application to Transfer Out Form to the Trustee/RSA on 30 September 2019.

    Upon conducting a review of the transfer out request form, it was noted that the Trustee/RSA was not able to move forward with the request since an updated Proof of Address document and tax residency declaration were required before the transfer could proceed. This information was passed on to the member and the outstanding requirements were requested accordingly. The tax residency declaration was received by the Trustee/ RSA on 2 January 2020 and the proof of address document requirement was settled on 5 February 2020.

12. That the instruction to reassign the policy to the new trustees was sent to *Quilter International* on 5 February 2020 and the re-assignment was completed by *Quilter International* on 3 March 2020.

[8] P. 86
[9] P. 88
[10] P. 89-92

13. That, on 12 June 2020, the Complainant sent an email request to his current investment adviser, which was then forwarded to SPSL, requesting a letter from SPSL, as his former Trustee/RSA, to confirm the timeline of events.

    A letter covering all queries was sent to the member on 16 June 2020 (as per Appendix 9 to its reply),[11] and therefore the Complainant's request for information was responded to within the timeframe required.

    The Complainant subsequently sent a judicial protest, which judicial protest was received by the Trustee/RSA on 2 December 2020 (as per Appendix 10 to its reply).[12] The counter-protest was then submitted to the Courts of Malta on 30 April 2021 (as per Appendix 11 to its reply).[13]

    SPSL noted that whilst the counter-protest was not submitted within 15 working days, there was no regulatory requirement that stipulates a 15 working day turnaround time when replying to a judicial protest. Since the Complainant's appointed lawyer opted to send a judicial protest, the Trustee/RSA had to engage a lawyer and legal procurator to file the necessary counter reply and to have the said reply translated in Maltese.

14. That, in reply to the Complainant's six major areas of the Complaint the Trustee/RSA accordingly submits that:

    a. On 1 January 2019, the MFSA issued new pension rules for RSAs, which changed the requirements of who can provide investment advice to any member within the Scheme, and therefore, the Complainant's appointed investment adviser at the time did not meet the criteria set out in the Pension Regulations. The Member was made aware of this change and of the requirement to appoint an alternative investment adviser.

    b. Despite the communications that were sent out to the Complainant, a suitable investment adviser was never appointed by him, which put the Scheme in breach of the Pension Regulations.

[11] P. 93-94
[12] P. 98-100
[13] P. 101-106

c. Given that the Complainant's pension was in breach of the Pension Regulations, the Trustee/RSA informed the Complainant that SW was going to be appointed to satisfy the mandatory requirements by law, until the Complainant decided to appoint an alternative investment adviser of his choice. The Complainant never objected to this appointment.

d. The Complainant's holdings within the portfolio were also in breach of section B3.2.1(ii) of the Pension Regulations, which required the Complainant's portfolio to be diversified, though the member's holdings were held entirely in cash. SW did notify the Complainant that his portfolio had to be re-balanced. SW allowed seven working days for the Complainant to protest the re-balancing, but the Complainant never objected the change within the portfolio.

e. That *MW SIPP Limited*, the Complainant's new UK Trustees, received the Transfer Out Form on 1 July 2019, and this request reached SPSL on 30 September 2019. After review, it transpired that an updated tax residency declaration and proof of address document were required before SPSL was able to move forward with the transfer. The tax residency declaration and proof of address document were provided on 2 January 2020 and 5 February 2020 respectively.

f. That whilst the necessary documentation was being collected, the Complainant's plan was in breach for the mentioned reasons, which breaches had to be addressed and rectified, primarily to ensure compliance with the Pension Regulations and secondary to adhere to the MFSA's instructions in ensuring that all existing plans are regularised and brought in line with the Pension Regulations.

15. SPSL submitted that it should accordingly not be held responsible for taking the necessary course of action in ensuring its compliance with the Pensions Regulations. It claimed that it always kept the Complainant duly informed of any actions which were to be taken in relation to his portfolio and his subsequent queries were always replied to in an efficient manner and within the relevant timeframes stipulated by law.

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

Considers:

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.[14]

The Complainant

The Complainant, born in February 1970, is of Italian nationality and was resident in Zurich at the time of application for membership into *The Centaurus Retirement Benefit Scheme* ('the Retirement Scheme' or 'Scheme').[15]

The Application Form for membership into the Scheme dated 14 November 2016 ('the Application Form'), indicates the Complainant's occupation as *'Partner Deloitte'*.[16] During the hearing of 22 November 2021, the Complainant confirmed that he was *'a Management Consultant'*.[17]

As detailed in the Application Form, the Scheme was to be funded from the transfer of the previous pension fund held by the Complainant with *Transact* for an approximate transfer value of GBP 470,000.[18]

The Service Provider

SPSL acts as the Retirement Scheme Administrator and Trustee of the Scheme and is licensed by the MFSA as a Retirement Scheme Administrator. [19]

The Product in respect of which the Complaint is being made

The Scheme is a trust domiciled in Malta registered with the Malta Financial Services Authority ('MFSA'), as a Personal Retirement Plan, originally registered

[14] Cap. 555, Art. 19(3)(b)
[15] P. 54
[16] P. 54 & 69
[17] P. 218
[18] P. 58
[19] P. 29 & 34

under the Special Funds (Regulation) Act 2002 (Chapter 450 of the Laws of Malta) and subsequently under the Retirement Pensions Act.

The Retirement Scheme was established by a trust deed dated 13 July 2012 by SPSL.[20] As described by the Service Provider, the Scheme is member-directed where, the Complainant, as a member of the Scheme, appoints his own investment adviser in relation to the investment options.[21]

Monfort International GmbH based in Switzerland, was the Financial Adviser indicated in the Scheme's Application Form for Membership.[22]

The Complainant became a member of the Scheme in December 2016[23] and the assets held in the Complainant's account with the Retirement Scheme were used to acquire the *Executive Investment Bond*, a life assurance policy, ('the Policy') issued by *Old Mutual International* ('OMI'), through which underlying investments were made and held. An application to acquire the *Executive Investment Bond*,[24] signed on 14 November 2016 was filed by the Scheme's Trustee (in its capacity as Applicant)[25] and by the Complainant (as Life Assured).[26]

The Policy held by the Scheme commenced on 26 January 2017.[27] The Policy's Currency was not specified under section A of the OMI's Application Form. The said section however specified the following in bold:

'Please note if no currency is entered your bond currency will be pound sterling (£). The BOND CURRENCY CANNOT BE CHANGED AFTER THE BOND IS SET UP'.[28]

Timeline of Events

The following is a summary of the timeline of relevant events according to the documentation produced and information that emerged during the proceedings of the case:

[20] P. 35 & 64
[21] P. 29
[22] P. 54
[23] P. 95
[24] P. 70-80
[25] P. 71 & 77
[26] P. 72, 77 & 80
[27] P. 131
[28] P. 71

- 13 May 2019 – Email from SPSL to the Complainant notifying him about changes to the regulatory regime introduced by MFSA on 1 January 2019 with respect to the required licensing status of investment advisers. The said email encouraged:

  > *'Members to contact their current Investment Adviser as soon as possible to ascertain whether they hold the correct authorisation'.* [29]

  SPSL noted in the said email, that if the current investment advisers are not duly authorised:

  > *'Members will need to appoint an alternative MiFID-licensed Investment Advisor, and/or appoint a MiFID-licensed Investment Manager to manage their pension scheme investments on a discretionary basis, prior to 1 July 2019'*.[30]

- 25 June 2019 – Application for Membership into the *MW SIPP 2* (with the product referred to as *'The Sovereign International SIPP'*, this being *'the generic name of the product purchased by the applicant established under the MW SIPP 2 Trust Deed'*),[31] signed by the Complainant on 25 June 2019. The Trustee of this retirement plan was indicated as '*MW SIPP Trustees Ltd',* with its Scheme Administrator indicated as *'Sovereign Pension Services (UK) Limited'.* [32]

- 25 June 2019 – An *'Application To Transfer Out'* form issued by SPSL was signed by the Complainant on 25 June 2019.[33] The said form related to the transfer out from the Retirement Scheme to another pension plan named *'MW SIPP 2'*,[34] with the method of transfer being *'in specie'*.[35]

[29] P. 81
[30] *Ibid.*
[31] P. 152
[32] P. 151-168
[33] P. 89-91
[34] The MW SIPP 2 was a scheme set up under UK Law which the Complainant eventually became a member of in September 2019 – P. 19
[35] P. 90

(According to SPSL, the Transfer Out Form was received by the trustee *MW SIPP Trustees Ltd* on 1 July 2019, and was in turn forwarded to SPSL in September 2019).[36]

- 1 July 2019 – Email sent by SPSL to the Complainant highlighting that, following its communication of 14 May 2019, action was required in respect of the Complainant's Investment Adviser given that the current adviser *'has either failed to respond to our communication'* or it did not meet the new criteria introduced by the MFSA.[37]

  SPSL reiterated that '*a regulated investment adviser needs to be appointed to your plan'* and explained the need to receive a signed written instruction from the Member for the new appointment and that SPSL will also be in touch to discuss the Member's options.[38]

- 18 Sept 2019 – The Complainant became a member of another retirement plan (set up under UK Law), the *Sovereign International SIPP No. 4046*, ('the MW SIPP') on 18 September 2019.[39] The Trustee of the Sovereign SIPP was MW SIPP Trustees Ltd with the administrator being *'Sovereign Pension Services (UK) Ltd'*.[40]

- 25 September 2019 – Letter dated 25 September 2019 where *Sovereign Pension Services (UK) Ltd* notified SPSL of the Complainant's wish to transfer his pension to the *MW SIPP* pension scheme.[41]

- 15 October 2019 – Email from SPSL to the Complainant noting *inter alia* that *'With effect from 1 July 2019…'*, any investment adviser not meeting the new MFSA criteria regarding who is able to provide members with investment advice in relation to their pension scheme, '*is no longer permitted to carry on providing investment advice in respect of accounts held by a Malta Retirement Scheme'.*[42]

[36] P. 31
[37] P. 84
[38] *Ibid.*
[39] P. 6 & 19
[40] P. 19
[41] P. 231-232
[42] P. 86

In the said email, SPSL also informed the Complainant the following:

'*According to our records, you do not currently have a properly authorised investment adviser appointed to your plan. As your Retirement Scheme Administrator, we wrote to you in May, and again in June, but we have not as yet heard back from you. We are now in breach of these new rules and are therefore obliged by the MFSA to take action to rectify this position.*

Sovereign Asset Management Ltd (SAM) is the in-house investment arm of the Sovereign Group. It is authorised and regulated by the Gibraltar Financial Services Commission….

Sovereign Wealth, a trading name of SAM, meets the MFSA criteria as a properly authorised investment adviser. As you have not provided us with an alternative, in our capacity as Retirement Scheme Administrator we will be appointing Sovereign Wealth (SW) as the investment adviser to your pension plan.

SW will shortly begin to review your portfolio…

…If the value of your pension fund exceeds £50,000, your portfolio will be invested in a Model Portfolio solution with an appropriate risk profile that matches your current portfolio. The New portfolios will be managed by WH Ireland, which is authorised and regulated by the UK Financial Conduct Authority…

…

Members may still appoint an alternative investment adviser that meets the MFSA criteria. If you do not wish to proceed with the appointment of SW, please report back to us within seven (7) working days with an instruction to appoint an alternative authorised investment adviser…' [43]

- Part of the documents produced during the proceedings of the case involved a copy of a *'Dealing Instruction Form'* dated 31 October 2019. The said form featured the contact details of Simon Bartlett (Sovereign Wealth

[43] P. 86-87

Gibraltar), issuing instructions to purchase a number of investments as per the allocation indicated in the dealing instruction form.[44]

The form instructed the following purchases:

- a 50% allocation into *TC New Horizon Global Balanced Fund*
- a 5% allocation into *iShares Global Agg Bond ETF GBP Hedged Dist*
- a 2.5% allocation into *iShares JP Morgan EM Local Government Bond*
- a 7.5% allocation into *UBS MSCI World SRI USD*
- a 12.5% allocation into *SPDR UK Dividend Aristocrats*
- a 15% allocation into *Amundi IS MSCI Emerging Markets ETF*
- a 2.5% allocation into *ETFS Physical PM Basket*

The Dealing Instruction Form also included the following additional comments:

> *'Please FX all USD into GBP. Please use GBP cash to cover EUR deficit. Once done please then invest in line with weightings listed above retaining 5% in cash'* [45]

- 15 November 2019 – Email to the Complainant from Simon Bartlett, Wealth Advisor of Sovereign Wealth Gibraltar, noting that:

> *'Following on from the email correspondence…please note that the re-balancing of your existing asset allocation and the appointment of Sovereign Wealth will be conducted on Monday 18th November 2019, in order to rectify the scheme's current regulatory position and to ensure your plan is meeting the necessary requirements provided by MFSA'* [46]

The Wealth Advisor invited the Complainant to discuss the matter further with him should he like to.

- 15 November 2019 – Exchange of emails between SPSL and *Sovereign Pension Services (UK) Limited* regarding the Complainant's transfer out of the Scheme where *Sovereign Pension Services (UK) Limited* requested *'an*

[44] P. 88
[45] *Ibid.*
[46] P. 85 & 277

update regarding the [Complainant's] in-specie transfer' and asking when it could expect receipt of the Deed of Assignment.[47]

- 19 November 2019 – During the hearing of 22 November 2021, the official of the Service Provider declared that *'The dealing instructions were submitted on 19 November [2019]*'.[48]

- The *'Historical Cash Account Transactions'* statement issued in respect of the Policy indicates multiple investment transactions (including the conversion of USD cash into GBP) being undertaken on 25 November 2019. Other purchases of investments were undertaken on 26 and 27 November 2019.[49]

- February/March 2020 – According to the Service Provider, following the submission of certain outstanding documentation (such as the tax residency declaration and proof of address document), the instruction to re-assign the Policy to the new trustee was sent in February 2020 with the re-assignment of the Policy completed by *Quilter International* (previously OMI)[50] on 3 March 2020.[51]

- 12 June 2020 – Email from the Complainant to his adviser, *Monfort International*, where it was *inter alia* indicated that:

> *'● My stated and deployed holding strategy for 2019 was cash only, in USD*
> *● In June 2019 we decided to move the pension fund away from Malta to the UK*
> *● The transfer was requested as 'in kind', USD to USD*
> *….*
> *● In March…we placed a buy order as the markets bottomed out, and we were only then told that the portfolio had other assets…and not USD cash*

[47] P. 267
[48] P. 222
[49] P. 212 & 215
[50] https://forthcapital.com/omi-has-rebranded-to-quilter/#:~:text=Part%20of%20the%20Quilter%20family,their%20parent%20company%2C%20Quilter%20plc.
[51] P. 31

● *We immediately disposed of the assets once we discovered their existence*

● *The assets had also generated a loss of over £40,000'* [52]

- 15 June 2020 - Letter/declaration from the Director of *Monfort International*, where it was stated *inter alia* that:

'…Both myself and JD had no idea that his QROPS/ SIPP had been switched from cash into funds. In 2019 we specifically went in USD cash as a hedge against possible problems with BREXIT, GBP and the world economy in general.

In July 2019 there was a change in policy in Malta…Therefore, JD and I decided to move the Malta QROPS to a UK SIPP…

We were not informed that in November the trustees of Sovereign appointed the financial advisor arm, Sovereign Wealth, as financial advisors and they in turn rebalanced the portfolio into funds unbeknown to JD or myself.

Once the transfer to the UK had taken place in March 2020 we then discovered that the positions had changed from USD cash into GBP funds. We sent a dealing instruction on the 30 March 2020. It was only then we discovered we were not in USD cash but in funds. We complained to Sovereign Malta as to why we had not been informed and we immediately asked to sell the positions…

JD and I did not have internet access to his portfolio during this time and we were completely in the dark not worrying about anything as the markets started to decline and we thought we were in USD cash a good place to be in the conditions. Also JD in fact lost money as both the GBP and the funds went down'.[53]

[52] P. 93
[53] P. 205

Other Observations and Conclusion

Actions of the Service Provider

The Arbiter notes that following the changes to the regulatory framework setting out new criteria as to who could act as investment adviser for member-directed retirement schemes and, also, after the lack of feedback from the Complainant for the replacement of his investment adviser, SPSL chose to itself appoint an investment adviser which satisfied the new regulatory requirements.

The new investment adviser appointed by SPSL in respect of the Complainant's Scheme account then undertook a *'rebalancing'* of the Complainant's holdings. SPSL, as trustee and RSA, allowed the various investment transactions that the new adviser subsequently sent for execution to be undertaken within the Complainant's Scheme.

Whilst the Arbiter notes and appreciates that SPSL as trustee and RSA of the Scheme had to ensure that the Scheme is in line with the new requirements within the required deadlines, **the Arbiter however cannot consider the actions taken by SPSL, as the Trustee and RSA, as being reasonable nor justified in the particular circumstances of the case, and neither reflective of its duty to act in the best interests of the Complainant** which it was also required to ensure in the said roles.

The Arbiter considers that SPSL, as trustee and RSA of the Scheme, failed to act properly and in a manner reflective of its key duties as Trustee and RSA of the Scheme, including *inter alia*: to '*act with the prudence, diligence and attention of a bonus paterfamilias'* as required in terms of Article 21(1) of the Trusts and Trustees Act ('TTA'), Chapter 331 of the Laws of Malta; to *'carry out and administer the trust according to its terms'* in terms of Article 21(2)(a) of the TTA; *'to act in the best interest of the scheme'* as per Article 13(1) of the Retirement Pensions Act ('RPA'); and the requirement to act *'with due skill, care and diligence'* as required under Rule 4.1.4, Part B.4.1 titled '*Conduct of Business Rules*' of the Pension Rules for Service Providers dated 1 January 2015 issued in terms of the RPA.

The above-mentioned decision is based taking into account various factors, particularly, the following:

i. *Actions went beyond terms of appointment and without consent of the Complainant*

In its reply, and throughout the proceedings of the case, the Service Provider indicated that the new investment adviser, *Sovereign Wealth Gibraltar* was appointed as an investment adviser and accordingly not as a discretionary investment manager. This is an important aspect given the material distinctions emanating between the role of an investment adviser (with no discretion) and that of an investment manager.

As an investment adviser (with no discretionary mandate), the role of *Sovereign Wealth Gibraltar* should have been limited to the provision of investment advice to the Complainant, with the latter then deciding on whether to proceed with the advice provided by the adviser.

It has neither been indicated, nor evidence provided, in the first place that *Sovereign Wealth Gibraltar* had some sort of discretion regarding investment transactions that were equivalent or similar to that of an investment manager.

It is indeed unclear on what basis and authority *Sovereign Wealth Gibraltar* has sent the investment transactions for execution when its role was limited to just acting as an investment adviser (that is, with no discretionary mandate on investments).

The appointment of a default investment adviser by the Trustee/RSA, should not have been taken to mean that such adviser had authority to take and instruct the execution of investment decisions on a discretionary basis.

The consent of the Complainant should have accordingly been clearly and unequivocally first sought prior to proceeding with the execution of the disputed investment transactions. SPSL, in its role of trustee and RSA should have ensured that this was indeed the case.

Notwithstanding that:

a. there was no such consent by the Complainant for the investment transactions recommended by the adviser, and

b. the role of *Sovereign Wealth Gibraltar* was just limited to an investment advisory role

SPSL, as trustee and RSA, still permitted and allowed the investment transactions to be undertaken, itself actually co-signing the dealing instruction form of 31 October 2019.[54]

ii. *No evidence that the Complainant was adequately informed of what investment transactions were recommended to him/were going to be undertaken if he did not revert.*

It is noted that no clear evidence has either emerged throughout the proceedings of this case that the Complainant was adequately notified of the investment transactions recommended to him.

During the hearing of 22 November 2021, the senior official of the Service Provider testified that:

> *'Asked who advised Mr JD of the type of investments we would be dealing in, I say it would be Simon Bartlett. In his email of the 15 November, he informed him what changes had to be made to his policy and what portfolio they would be investing in'*.[55]

The Arbiter notes that no such evidence however emerged from the email of 15 November 2019 as explained further below.

During the hearing of 18 January 2022, the senior official of the Service Provider testified that:

> *'Being referred to Doc SPS 8, an email dated 15 November 2019 (a fol. 277) by which we notified Mr JD that there would be a rebalancing, I say that this is an email which Mr Simon Bartlett sent to Mr JD.*
>
> *…*
>
> *Asked to confirm that this was the only form of communication to Mr JD in relation to the rebalancing, I say, no; that was not the only communication, there is Document SPS 7 (a fol. 273 & 275) where we,*

[54] P. 11
[55] P. 222

> *Sovereign Pensions, on the 15 October 2019, sent an email to Mr JD saying that we were appointing Sovereign Wealth and it also goes on to say that the pension fund would be invested in The New Horizon Model Portfolio that Sovereign Wealth has selected'.*[56]

The email dated 15 November 2019 sent by the Wealth Advisor of *Sovereign Wealth Gibraltar* did not however include details informing the Complainant of what investment transactions will be undertaken but only made a general reference to *'re-balancing'* just stating that:

> *'…please note that the re-balancing of your existing asset allocation and the appointment of Sovereign Wealth will be conducted on Monday 18th November 2019, in order to rectify the schemes current regulatory position and to ensure your plan is meeting the necessary requirements…*
>
> *If you would like to discuss this further with me, I would be more than happy to schedule a telephone appointment, my contact details can also be found below'*.[57]

The said email also did not either clearly and categorically inform the Complainant that if he did not revert, the adviser and the Scheme would be proceeding with undertaking the material investment transactions.

The other email dated 15 October 2019 by SPSL, where reference was made to *'a Model Portfolio solution…The New portfolios will be managed by WH Ireland'* and that *'If your pension funds are invested in the New Horizon Model Portfolio, SW will monitor the portfolio's performance…'*, does not reasonably either provide sufficient details nor a proper indication of the investment transactions that were to be selected/recommended.

Such part of the said email of 15 October 2019, which is rather unclear and insufficient, did not mention the selected investments and proposed allocations thereof (as ultimately featured in the *Dealing Instruction Form* of 31 October 2019). Nor did it explain what was the nature of the *'New*

[56] P. 337
[57] P. 277

Horizon Model Portfolio', and neither did it provide any details about the composition of the said '*New Horizon Model Portfolio'*.[58]

iii. *No adequate prior discussions and notifications to the Complainant*

The Arbiter cannot also help but notice the short timeframes provided to the Complainant within which he was being asked to revert and within which material decisions were being taken with respect to his Scheme.

It is noted that in the document presented by the Service Provider ('DOC SPS12') indicated as *'Consultation on Amendments to Pension Rules for Personal Retirement Schemes. Feedback to statements issued further to industry responses to MFSA consultation documents 4 January 2019 (page 6 – transitory 6 month period)'*,[59] MFSA had stated that:

> *'Furthermore, in paragraph 2.1.11 of the Feedback Statement dated 4 January 2019, the MFSA noted that notwithstanding a six month transitional period is granted (until 1 July 2019), the necessary measures are to be taken without delay…'.*[60]

As outlined under the section titled *'Timeline of Events'* above, the Complainant seems to have been first notified by SPSL about the changes in the regulatory framework on 13 May 2019, in essence giving him just one and a half months' notice about *inter alia* the removal of the investment adviser *'as of 1 July 2019'* if his adviser did not meet the new criteria.[61]

Five months thereafter, on 15 October 2019, SPSL informed the Complainant that given they had not heard back from the Complainant they will be appointing *Sovereign Wealth* (in Gibraltar) as investment adviser to his pension plan.

After a further one month from the said notification, the Complainant received an email dated 15 November 2019 from *Sovereign Wealth Gibraltar*, notifying him that on 18 November 2019, (within a mere 3 days) a re-balancing of his asset allocation will be undertaken.

[58] P. 273-275
[59] P, 227
[60] P. 328 – Emphasis added by the Arbiter
[61] P. 81

As indicated in the timeline above, the transactions were eventually undertaken on 25 November 2019.

It is noted that, in its reply to the complaint received by OAFS, the Service Provider pointed out that:

> *'SW did notify the Member that his portfolio had to be re-balanced. SW did allow 7 working days for the Member to protest the re-balancing, but the Member never objected the change within the* portfolio'.[62]

The provision of a mere few days within which to protest material transactions was in itself clearly inadequate. This is apart from not being justified in the context of the Complainant's particular situation as shall be considered further on below.

The Arbiter ultimately cannot understand how the material disputed transactions were allowed to be somehow undertaken without being actively first discussed with the Complainant. It is clear that the Service Provider failed to ensure that such important discussions were held in the first place by its own appointed adviser (which it is furthermore noted is a related group company and which could accordingly give rise to possible conflicts of interest).

iv. *SPSL was aware of the Transfer Out Request before permitting the investment transactions*

Another key aspect that emerges in the particular circumstances of this case is that the Service Provider was (or should have been) aware of the Complainant's request to transfer out of the Scheme. This key aspect does not seem to have been given much importance by SPSL.

It is noted that during the hearing of 18 January 2022, the Service Provider confirmed that:

> *'…Sovereign Wealth, who were already appointed as the investment advisor (as Mr JD had not rejected the appointment), telling him that*

[62] P. 31-32

the rebalancing would happen in the next few days. This was on the 15 November and the rebalancing happened on the 18 November.

Asked if the company was aware at the time of Mr JD's transfer out to Sovereign UK, I say, yes, we were aware but we were still in breach of the regulations; the transfer to the UK would take some time to be finalised'. [63]

The Arbiter furthermore considers that whilst, *prima facie*, it might appear that the Complainant ignored communications regarding the appointment of the new investment adviser and subsequent rebalancing, it is however understandable that, in light of his communication at the time to transfer out and also considering that he only had a cash holding remaining in his Scheme, the Complainant did not feel obliged to adopt the indicated changes in the circumstances.

Once the Complainant had decided to transfer out and the Service Provider was aware of this, the trustee should indeed have reasonably not proceeded with the material changes to his Scheme.

v. *No apparent imminent threat to the value of the Complainant's holdings*

The underlying assets held within the Scheme's underlying Policy were all in cash (part in GBP and part in USD as shall be considered in detail further on in this decision).

No imminent risk was indicated, nor has it emerged, that existed to the Complainant's holdings which necessitated some urgent action by the Service Provider to preserve and safeguard his assets. This, taking also into consideration the Complainant's intention to transfer out of his Scheme as described above.

The Service Provider submitted that the portfolio, which was held in cash at the time, was not adequately diversified and hence it was felt by the new adviser/trustee that the Complainant's portfolio needed to be instantly invested. According to the Service Provider, this (apart from the new

[63] P. 338

regulatory requirements about advisers) also justified the multiple investment transactions to be somehow rashly undertaken.

Such submissions, however, cannot reasonably and justifiably be accepted. It is considered that the question of diversification primarily arises, and is rather pressing, at the point of investment when selecting the instrument/s for investments and, also, thereafter with respect to the composition of the overall portfolio of investments, rather than at the point in time when the underlying assets are just held in cash and (typically) in their original state of transfer.

The retention of all, or the majority of, the Scheme's assets in cash in the long term, is rather considered to raise other issues (such as *inter alia* with respect to the performance and the achievement of a return and the scope of the Scheme) rather than the issue of diversification raised by the Service Provider. As indicated above, such concerns however were not really applicable and/or material in the Complainant's particular circumstances.

vi. *No direction provided by an authority for SPSL to act in the way it did*

It is noted that in the extracts of a meeting held on 22 October 2019 between MARSP (Malta Association of Retirement Scheme Practitioners) and MFSA, the following was stated (with respect to investment advisers in Switzerland):

> *'MARSP confirmed that this is still work in progress and the MFSA understood this but confirmed that each RSA would need to clearly document the position vis a vis each member and advisory firm in terms of migration <u>to a suitably qualified advisor or to another territory</u>'.* [64]

The above emerges from an email dated 25 October 2019 that was presented during the proceedings of the case.[65]

No evidence has emerged that the MFSA provided the Service Provider with any direction to allow material investment decisions to be taken without the member's consent. Indeed, the above extract actually

[64] P. 336 – Emphasis added by the Arbiter
[65] P. 227 & 335-336 ('Doc SPS 13')

indicates the possibility of the '*migration…to another territory'* which was one of the options applicable at the time, and which was ultimately the route taken by the Complainant.

The Complainant's wish to transfer out and migrate his Scheme to another territory was indeed already communicated to SPSL prior to the disputed transactions as considered above.

The trustee's concerns about the alleged lack of compliance with the new framework and any possible regulatory action being taken against it by MFSA were accordingly not applicable and should have not arisen in the circumstances.

For the reasons amply explained, the actions of the Service Provider are therefore considered by the Arbiter to have been unjustifiable and inappropriate at the time.

In order to award any compensation to the Complainant in terms of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter needs to however be satisfied that there is actually a *'loss of capital or income or damages suffered by the complainant as a result of the conduct complained of'*.[66] This aspect shall be considered in detail in the next sections.

Alleged losses claimed by the Complainant & Proof of Loss

The Complainant claimed a loss of GBP 40,000 in his Complaint to the Arbiter.[67] The Service Provider however contested the alleged loss during the proceedings of the case.

It is noted that during the hearing of 22 November 2021, the Complainant testified that:

'It is being said that my portfolio is actually making a good gain and has suffered no loss till today, I say that this is not a correct interpretation of what happened. My portfolio was transferred in kind after you have made the new asset allocation. The moment we saw that it was transferred in kind, we had to sell all the holdings because I work for a regulated entity

[66] Article 26(3)(c)(iv) of Cap. 555
[67] P. 3 & 219

> *and I have to get permission to hold any asset, so we had to close all the positions. The moment we closed the positions, we generated a loss of about £40,000. The fact that today I am making some money, the entire market is going up so it is a completely irrelevant question. The relevant question is why did you do the asset reallocation and why did you force me to close the positions'*.[68]

During the same hearing of 22 November 2021, the Managing Director of SPSL testified that:

> *'The dealing instructions were submitted on 19 November. At that point, the policy was valued at GBP 496,094 and, then the portfolio was making a gain so up until the 31 December 2019, it was valued at GBP 507,498. So, the portfolio was making a gain with the assets purchased by Sovereign Wealth…*
>
> *The transfer happened on the 8 January...and at the point of transfer, the value was GBP 497,435. So, at the point of transfer, Mr JD made a gain, not a loss'*.[69]

The Arbiter further notes the declaration made by the Complainant during the same sitting of 22 November 2021, that:

> *'Asked by the Arbiter if up till now I made a loss or a profit, I say that I made a profit'*.[70]

There were accordingly **conflicting statements and divergent positions provided by the parties on whether a loss resulted from the disputed transactions**.

It is noted that, as emerging from the judicial protest filed in the First Hall of the Civil Court by the Complainant against SPSL of 13 November 2020,[71] the Complainant has calculated his loss by comparing the market value of his holdings as at 7 July 2019 of GBP 510,728.72[72] against the market value of the

[68] P. 219
[69] P. 222
[70] P. 219
[71] P. 98-100
[72] P. 98 & P. 173

holdings as at 2 March 2020 of GBP 470,267.60.[73] The difference between these two valuations indeed amounts to GBP 40,461.12.

The reference to the *'valuation of the holdings as at the 2nd March, 2020'* which *'revealed a loss of forty thousand British pounds (GBP 40,000)'* was also mentioned in the Complainant's final submissions, where it was noted that *'In fact, the valuation as at 7th July 2019 show a cash position of GBP 510,728.72 while a valuation received on the 2nd March, 2020 shows a valuation of GBP 470,267.60'*.[74]

On its part, the Service Provider compared the market value of the holdings applicable on 19 November 2019, on 31 December 2019 and on 8 January 2020. In its final submissions, SPSL indeed reiterated that:

> *'The service provider contends that the Complainant suffered no loss and the values which must be taken into consideration are the value as at the day the re-balancing occurred and the value when the policy was assigned to the UK'*.[75]

First, the Arbiter notes that no evidence has emerged that the transfer from the Scheme to the *MW SIPP* pension scheme actually happened on 8 January 2020 as claimed by the Service Provider during the hearing of 22 November 2021.[76] In its reply to the Complaint, the Service Provider moreover indicated a different date, that of 3 March 2020, as to when *'the re-assignment [of the policy] was completed by Quilter International'*.[77] Indeed, it is further noted that a statement as at 8 January 2020 still indicated the *'Policyholder'* as *'Sovereign Pensions Services Limited as trustee of Centaurus RBS Re: JD'*.[78]

Apart from the conflicting statements made, the Arbiter considers that, for the purposes of this decision, the submissions provided by both parties to the Complaint are inappropriate in determining whether a loss or profit has in practice emerged as a result of the disputed transactions undertaken in 2019.

[73] P. 100 & 196
[74] P. 350
[75] P. 353
[76] P. 222
[77] P. 31
[78] P. 299

This is in view that apart from the different arbitrary dates taken to compare the value of the portfolios in GBP, both parties also compared values that involved paper or unrealised losses/ profits – including in respect of a material FX position (i.e., the value of the cash position of USD 507,480.31 reported in GBP), **which until the disputed transactions was still a variable position.**[79]

The Arbiter has, in this regard, considered the multiple Valuation Statements at different time periods which were produced by the parties during this case.

It is first noted that, according to a Valuation Statement issued by OMI, the *'Total Current Market Value'* of the Policy as at 31 December 2018 was GBP 507,252.47. This figure was made up of cash in the amount of GBP 109,322.33 and cash of USD 507,480.31 (valued in GBP at 397,930.14 GBP) as at 31 December 2018, as specified in the said statement.[80]

The Arbiter further notes that, as detailed in the said Valuation Statement as at 31 December 2018, the Complainant previously held a portfolio of investments (under a GBP account and a USD account), which investment instruments were sold by end of December 2018 and the respective proceeds retained in cash.[81]

Various other OMI Valuation Statements were also produced during the proceedings of the case – namely as at 1 May 2019; 7 July 2019; 19 November 2019; 31 December 2019; 8 January 2020 and 2 March 2020.[82, 83, 84, 85]

The following emerges from the said valuation statements:

- The statement as at 1 May 2019, indicated the *'Total Current Market Value'* of the Policy as GBP 496,324.37.[86] The said market value was made up of cash in the amount of GBP 106,931.36 (less GBP 17.91 from a conversion

[79] The cash position of USD 507,480.31 was actually converted into GBP, (for the amount of GBP 392,185.59 at the rate of USD/GBP 1.29398) and thus crystallised on 25 November 2019 as per the *'Historical Cash Account Transactions'* Statement issued by Quilter International – P. 212
[80] P. 135- GBP 109,322.33 + GBP 397,930.14 = GBP 507,252.47.
[81] P. 136
[82] P. 140-146
[83] P. 171-177
[84] P. 279-285
[85] P. 194-203
[86] P. 142

of -20.72 EUR) and cash of USD 507,480.31 (valued in GBP at 389,410.92 at the time).[87, 88]

- The statement as at 7 July 2019, indicated the *'Total Current Market Value'* of the Policy as GBP 510,728.72.[89] The said market value was made up of cash in the amount of GBP 105,638.36 (less GBP 18.85 from a conversion of -21 EUR) and cash of USD 507,480.31 (valued in GBP at 405,109.21 at the time).[90 91]

- The statement as at 19 November 2019, indicated the *'Total Current Market Value'* of the Policy as GBP 496,094.81.[92] The said market value was made up of cash in the amount of GBP 104,345.36 (less GBP 18.33 from a conversion of -21.28 EUR) and cash of USD 507,480.31 (valued in GBP at 391,767.78 at the time).[93, 94]

- The statement as at 31 December 2019, indicated the *'Total Current Market Value'* of the Policy as GBP 507,498.86.[95]

  The said figure was made up of *'Cash'* of GBP 24,772.24, *'Collectives'* (i.e. collective investment schemes) of GBP 251,259.45 and *'Exchange Traded Funds'* of GBP 231,467.17.[96]

  It is noted that according to the said statement, the *'Collectives'* and *'Exchange Traded Funds'* comprised the following seven investment products at the time:[97]

  Collective

  - *'Equity Trustees Fund Services New Horizon Global Balanced c ACC'* (at a Book Value of GBP 248,256.35)

[87] P. 144
[88] GBP 106,931.36 – GBP 17.91 + GBP 389,410.92 = GBP 496,324.37
[89] P. 175
[90] P. 144
[91] GBP 105,638.36 – GBP 18.85 + GBP 405,109.21 = GBP 510,728.72
[92] P. 281
[93] P. 283
[94] GBP 104,345.36 – GBP 18.33 + GBP 391,767.78 = GBP 496,094.81
[95] P. 289
[96] *Ibid.* – GBP 24,772.24 + GBP 251,259.45 + GBP 231,467.17 = GBP 507,498.86
[97] P. 290-291

Exchange Traded Funds

- *'Amundi MSCI Emerging Markets UCITS ETF'* (at a Book Value of GBP 74,137.01)
- *'ETFS Metal Securities ETFS Physical PM Basket*' (at a Book Value of USD 15,967.36 equivalent to GBP 12,350.99)
- *'Ishares III plc Global Aggregat BD UCITS ETF'* (at a Book Value of GBP 24,821.84)
- *'Ishares III Plc JP Morgan EM Local Govt Bon'* (at a Book Value of GBP 12,389)
- *'SPDR ETF S&P UK Divd Aristocrats'* (at a Book Value of GBP 61,330.43)
- *'UBS ETF SICAV MSCI WRD SOC ESP UCIT A USD'* (at a Book Value of GBP 36,963.13)

The above-mentioned seven investments reflect the investments listed in the OMI Dealing Instruction Form dated 31 October 2019 referred to earlier on.[98]

A breakdown of the *'Unrealised – Profit Loss'* for each of the investment instruments indicated above was included in the same statement.[99]

- The statement as at 8 January 2020 indicated the *'Total Current Market Value'* of the Policy as GBP 497,435.56.[100]

  The said figure was made up of *'Cash'* of GBP 24,772.44, *'Collectives'* of GBP 239,447.25 and *'Exchange Traded Funds'* of GBP 233,215.87.[101] A breakdown of the *'Unrealised – Profit/Loss'* for each of the investment instruments was included in the same statement.[102]

- The statement, issued by *Quilter International* (previously Old Mutual International), as at 2 March 2020 in respect of the Policy (now held by the

[98] P. 192
[99] *Ibid.*
[100] P. 301
[101] *Ibid.* – GBP 24,772.44 + GBP 239,447.25 + GBP 233,215.87 = GBP 497,435.56
[102] P. 302

'MW SIPP Trustees Ltd as trustee of MW SIPP2'),[103] indicates the *'Total Current Market Value'* as GBP 470,267.60.[104]

The said figure was made up of *'Cash'* of GBP 23,081.13, *'Collectives'* of GBP 228,085.52 and *'Exchange Traded Funds'* of GBP 219,100.95.[105] A breakdown of the *'Unrealised – Profit/ Loss'* for each of the investment instruments is included in the same statement.[106]

Given that the Arbiter required more information to finalise his decision, a decree was issued on 28 August 2023 requesting the parties to provide further details, namely, evidence of the proceeds resulting from the actual reversal (i.e. the actual sale) of the disputed investment transactions which the Complainant had claimed that he had ordered once discovering about the disputed investments and also a copy of the valuation statement reflecting the cash holdings just prior to the rebalancing.[107]

The following pertinent matters emerge from the information provided by the parties following the Arbiter's decree:

(i) As to the exact cash holdings of the policy just prior to rebalancing, the Service Provider referred to the statement as at 19 November 2019, which indicated total value of the policy as GBP 496,094.81. [108]

As noted above, this figure consisted of cash in the amount of GBP 104,327.03 and cash of USD 507,480.31 (valued in GBP at 391,767.78 at the time).[109]

(ii) Six out of the seven disputed purchased investments were indeed sold on 11 and 18 March 2020. The realised profit/losses emerging from such transactions on the respective investments are detailed in Table A below.

[103] P. 194
[104] P. 196
[105] *Ibid.* – GBP 23,081.13 + GBP 228,085.52 + GBP 219,100.95 = GBP 470,267.60
[106] P. 197
[107] P. 361
[108] P. 363
[109] P. 283

Table A

Details emerging from the *'Historical Cash Account Transactions'* statement of Quilter International as at 04/03/20[111] and the statement issued by Quilter International as at 17/03/20[112]

Name of Investment	Date bought	CCY	Purchase amount	Date sold	Sale price	Realised Capital Loss/Profit (exclusive dividends/ interest)
Equity Trustees Fund Services New Horizon Global Balanced c ACC	27.11.2019	GBP	248,256.35	18.03.2020	232,740.33	-15,516.02
Amundi MSCI Emerging Markets UCITS ETF	26.11.2019	GBP	74,137.01	11.03.2020	65,175.35	-8,961.66
ETFS Metal Securities ETFS Physical PM Basket	25.11.2019	USD	15,967.36	No details emerged that this investment was sold. The account statement actually indicates that further purchases were made into this investment on 11/03/2020 [110]		
Ishares III plc Global Aggregat BD UCITS ETF	25.11.2019	GBP	24,821.84	11.03.2020	25,500.04	+678.20
Ishares III Plc JP Morgan EM Local Govt Bon	25.11.2019	GBP	12,389.00	11.03.2020	11,420.15	-968.85
SPDR ETF S&P UK Divd Aristocrats	25.11.2019	GBP	61,330.43	11.03.2020	55,524.23	-5,806.20
UBS ETF SICAV MSCI WRD SOC ESP UCIT A USD	25.11.2019	GBP	36,963.13	11.03.2020	32,899.11	-4,064.02
Total realised loss in GBP (excluding dividends and transaction fees)						-34,638.55

According to the statements provided, the total cash dividends received from the disputed investments until these were sold as well as the transaction fees incurred on the purchase/sale of the disputed investments are as follows:

[110] P. 419
[111] P. 212 & 215
[112] P. 418 & 420

- a cash dividend of GBP 197.74 from *Ishares III plc Global Aggregat BD UCITS ETF* on 29.01.2020;[114]

- a cash dividend of USD 420.78 and USD 296.40 on 29/01/2020 and 06/02/2020 respectively on *Ishares III plc JP Morgan EM Local Govt Bon* and *UBS ETF SICAV MSCI WRD SOC ESP UCIT A USD*.[115] According to the USD/GBP conversion rate applicable on the indicated dates these are calculated to be the equivalent of GBP 323.159 and GBP 229.295 respectively (in total thus amounting to GBP 552.45);[116]

- Transaction charges incurred on the purchase/sale on the six investments that were actually sold calculated as GBP 164 (GBP14x10 + GBP12x2).[117]

The above corroborates that the Complainant did indeed promptly sell the disputed investments (with the exception of one investment) and that a total realised loss arose from the disputed investments (taking into consideration dividends received, any realised gains and transaction fees incurred). [118, 119]

Other observations

It is noted that as part of the information provided by the Complainant following the Arbiter's decree, the Complainant indicated a new figure of loss (based on a valuation of July 2019 and on 17 March 2020) claiming that:

> *'In summary, net loss from the full cash position of July 2019: GBP 505,273.28 – GBP 429,661.29 = GBP 75,611.99. Additionally, this doesn't include a currency loss which we cannot estimate as Sovereign rebalancing in November was done in GBP when all our cash was in USD. GBP lost value vs USD since 2017 and worsen steeply during early 2020 because of the pandemic*'. [120]

[114] P. 418
[115] P. 419
[116] Spot rate as at 29.01.2020 was 1 USD = 0.768 GBP whilst Spot rate as at 06.02.2020 was 1 USD = 0.7736 GBP
https://www.exchangerates.org.uk/USD-GBP-spot-exchange-rates-history-2020.html
[117] P. 212 & 418-419
[118] Any FX conversions excluded
[119] - GBP 34,638.55 + GBP 197.74 + GBP 552.45 - GBP 164 = - GBP 34,052.36
[120] P. 392

Apart that the Complainant cannot change the claimed losses at such late stage of the proceedings, the Arbiter still considers that the benchmarks used to calculate his loss (by taking the valuation as at July 2019 and comparing it to that of 17 March 2020) is not appropriate for the reasons outlined in the section titled *'Alleged losses claimed by the Complainant'* above.

The Arbiter shall next proceed to determine how, in his opinion, and given the particular circumstances of the case, the Complainant is to receive compensation, if any, to put him close to his original position (of cash GBP 104,327.03 and cash of USD 507,480.31) had the disputed transactions not been undertaken.

Calculation of any applicable compensation

For the purposes of this decision, the following calculations, taking into consideration the latest statement provided of 17 March 2020, are being made to arrive at a figure of shortfall or otherwise:[121]

(i) The opening Cash balance in GBP (upon the re-assignment of the policy to the new retirement scheme on 3 March 2020 excluding the regular fees and charges that would have in any ways applied) is considered to amount to GBP 24,953.73 (i.e., GBP 24,755.99 plus the cash dividend of GBP 197.74).[122]

(ii) The sum of the proceeds received from the sale of investments (as per Table A above) - that is, the sum of GBP 32,899.11, GBP 25,500.04, GBP 55,524.23, GBP 11,420.15, GBP 65,175.35 and GBP 232,740.33 - amounts in total to GBP 423,259.21.[123] Less the indicated transaction fees of GBP 70, the resulting figure is GBP 423,189.21.

(iii) The resulting total cash position in GBP (following the sale of the disputed investments) is accordingly calculated to amount to GBP 448,142.94.[124]

[121] P. 412 - 420
[122] P. 418
[123] P. 418 & 419
[124] GBP 24,953.73 + GBP 423,189.21 = GBP 448,142.94

(iv) The opening Cash balance in USD (upon the re-assignment of the policy to the new retirement scheme on 3 March 2020) was USD 738.93.[125]

(v) The resulting position in USD in total is accordingly calculated to be USD 16,706.29 (USD 738.93 plus the retained investment of USD 15,967.36 as indicated in Table A above and as emerging from the statement of 17 March 2020).

(vi) The spot exchange rate applicable at the date of the reversal done by the Complainant (that is, on 11 March 2020) was 1GBP = USD1.2887 (or 1USD = GBP0.7760).[126] The 11 March 2020 is the cut-off date being applied for the purposes of this decision.

(vii) The resulting cash position of GBP 448,142.94 in March 2020 less the Complainant's GBP position in November 2019 of GBP 104,327.03 as mentioned above equals to GBP 343,815.91. According, to the above-mentioned spot USD rate this figure is calculated to be the equivalent of USD 443,075.56 as at 11 March 2020.[127]

Together with the USD balance of USD 16,706.29, as referred to above, the total USD balance is thus calculated to amount as USD 459,781.85.

The difference between the resulting figure of USD 459,781.85 and the Complainant's original USD position in 2019 of USD 507,480.31, results into a shortfall of USD 47,698.46. The said shortfall is calculated to be the equivalent of GBP 37,014 as at the date of the reversals of 11 March 2020.[128]

Decision and Compensation

For the reasons stated throughout this decision, the Arbiter considers the Complaint to be fair, equitable and reasonable in the particular circumstances

[125] P. 419

[126] https://www.bankofengland.co.uk/boeapps/database/Rates.asp?TD=11&TM=Mar&TY=2020&into=GBP&rateview=D

[127] GBP 343,815.91 converted to USD using the exchange rate of 1GBP = USD1.2887

[128] USD 47,698.46 converted to GBP using the exchange rate of 1USD = GBP0.7760

and substantive merits of the case and is accepting it in so far as it is compatible with this decision.

The Arbiter considers that in the particular circumstances of this case, it is fair, equitable, and reasonable for the Service Provider to pay to the Complainant the sum of the shortfall as calculated above for the sum of GBP 37,014.

In accordance with Article 26 (3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter accordingly orders Sovereign Pension Services Limited to pay the sum of GBP 37,014 (thirty-seven thousand and fourteen pounds sterling) as compensation to the Complainant.

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

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

Alfred Mifsud
Arbiter for Financial Services