

## Before the Arbiter for Financial Services

Case ASF 111/2023

RI ('Complainant')

Vs

CCGM Pension Administrators Limited

Reg. No. C 77072

('Service Provider' or 'CPAL')

### Hearing of 7 March 2024

The Arbiter,

#### The Complaint

Having seen the complaint filed by RI on 09 August 2023 where she complained that through her employment with European Communities, the Director General for Personnel had contacted the Service Provider on 15 November 2021 *“regarding the possibility to transfer the pension rights the EU Agent<sup>1</sup> acquired with your organisation”<sup>2</sup>.*

To this email enquiry there was attached a document titled:

APPLICATION FOR TRANSFER OF PENSION RIGHTS ACCORDING TO ARTICLE 11, § 2 AND 3 TO ANNEX VIII TO THE STAFF REGULATIONS<sup>3</sup>

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<sup>1</sup> EU Agent refers to the Complainant

<sup>2</sup> Page (P.) 43

<sup>3</sup> P. 40 - 41 countersigned by RI

as well as an undated and unsigned letter<sup>4</sup> giving more details about the process of transfer of pension rights which stated in the starting paragraph that:

*“The member of the European Communities staff referred to in the attached request form may possibly be interested in transferring pension rights which he/she has acquired under your scheme/fund.”*

The Complainant stated that as at end December 2019, the value of her pension fund with the Service Provider stood at €57,434.48,<sup>5</sup> and as at end December 2020 stood at €57,129.22.<sup>6</sup> This had increased to €57,820 by end December 2021 around the time that DG Personnel of the European Parliament had made contact with Service Provider to inform about their client’s interest to transfer her pension rights.

RI complained that the Service Provider failed to submit the information requested in a timely manner and she had to make several phone enquiries until early in April 2022, when she was informed that the person to whom the enquiry was addressed had left the Company and that she had to communicate on a different email address.

Despite this, she complained that it was only on 07 October 2022 that she was informed that the requested information was submitted to the EU institutions. However, at about that time, she discovered that the value of her pension pot had reduced to €49,786.14.<sup>7</sup>

The Complainant informed the Service provider on 27 October 2022 that she was not accepting the valuation which had dropped from the first contact of November 2021.<sup>8</sup>

Consequently, she filed her Complaint with the Arbiter and was seeking compensation for the difference between the amount of €57,820.04 being the value of her pension fund as at 31 December 2021 and the amount actually transferred following encashment of her pension investments.

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<sup>4</sup> P. 45 - 46

<sup>5</sup> P. 36

<sup>6</sup> P. 38

<sup>7</sup> P. 61

<sup>8</sup> P. 54

## The Reply of the Service Provider

In their reply of 28 August 2023,<sup>9</sup> the Service Provider raised the following defence:

1. The communication of 15 November 2021 from the EU institutions was merely an enquiry about valuation of the pension portfolio and not a specific request to encash and transfer the funds.
2. That any amount transferred had to be based on specific request for redemption by the account holder and will be based on the market value prevailing on the date of such redemption.
3. Whilst admitting certain delays in processing for valuation requests received from EU institutions, such delay was also contributed to by such institutions that did not do follow ups and took time to process the information provided. For example, they quote that for the valuation they provided on 06 October 2022 it took 6 months<sup>10</sup> for the EU institution to inform Complainant of the ESTIMATE.
4. Until they receive formal specific instructions to liquidate and transfer, the pension portfolio will be retained invested and subject to market value fluctuations.<sup>11</sup>

## Hearings

Two hearing sessions were held on 28 November 2023 and 09 January 2024. The first was dedicated to the evidence of the Complainant with cross-examination. The roles were inverted in the second session.

Following the hearing sessions, the Arbiter gave the parties opportunity to make their final written submissions. In the interest of brevity and concreteness, the Arbiter feels that the arguments of both sides are well represented in their final submissions.

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<sup>9</sup> P. 105 - 108

<sup>10</sup> P. 107

<sup>11</sup> P. 108

## Final submissions by the Complainant

1. That as a preliminary, according to Art. 12§1b of Annex VIII the Staff Regulations of the Officials of the European Union, in the event that one is employed with the European Union for more than one year of service, but less than 10 years, one is entitled to Transfer Out the actuarial equivalent of pension rights into a Private Pension Fund of his choice.
2. That the applicant in this case had terminated her employment with the European Commission (EC) in 2017 and decided to utilise the services of the defendant company, and thus transferred her accumulated pension fund under the auspices of CCGM Pension Administrators Ltd.
3. That the Transfer Out of the actuarial equivalent of pension rights from the EC to CCGM Pension Administrators Ltd occurred on the 31<sup>st</sup> January 2019 and at the time amounted to €54,605.55, which was equivalent to 6 years of service with the European Institutions. Notably, the applicant chose to proceed with the most conservative investment strategy for her pension fund, as indicated by her choice of strategy in her application, "**Dokument B**" in the file.
4. That subsequently the applicant was employed by another European Union Institution i.e. the European Parliament (EP) and she made a formal request with the EP on the 11<sup>th</sup> of November 2021 to start the Transfer In procedure of the actuarial equivalent of her pension rights in terms of Article 11§2 and 3 of Annex VIII to the Staff Regulations, which application is attached and marked as "**Dokument F**" in the file.
5. That on the 15<sup>th</sup> of November 2021, the EP informed via email correspondence Mr. Callum Lamb, an employee within CCGM, of the applicant's request to transfer her pension rights back into the European Institutions, as displayed through "**Dokument G**" in the file. Within this same email, the EP also attached "**Dokument F**" as referred to above, as well as "**Dokument H**" whereby the latter specifically requested the "**amount available for any such transfer, calculated on the date of request**".

6. That, moreover, Mr. Gian Marco Maggio, a representative of the service provider CCGM, confirmed in the sitting held on the 9<sup>th</sup> of January that ***“whether we had received Document F attached to the complaint. The answer is yes; that was an Application for Transfer of Pension Rights submitted by Ms RI through the European Parliament and was part of the email sent from the European Parliament to us with respect to the valuation request”***. Through this statement Mr. Maggio is effectively confirming that he was in receipt of the transfer request on the 15<sup>th</sup> of November 2021.
7. By the following month, i.e., the 31<sup>st</sup> of December 2021, the value of the pension fund as indicated in the yearly statements amounted to €57,820.04c, as exhibited by ***“Dokument I”***.
8. That despite having been notified on the 15<sup>th</sup> of November 2021, the European Union received email correspondence which indicated the value of the pension fund from CCGM on the **6<sup>th</sup> of October 2022** with a valuation of **€47,016.56**, as indicated through ***“Dokument N”***. Hence **CCGM took 11 months to send an email to the European Union consisting of the mere valuation of the pension fund.**
9. That this delay from CCGM took place despite the several reminders the applicant was routinely undergoing, either via verbal communication or email correspondence such as that exhibited in ***“Dokument K”***.
10. Of significant importance is the fact that Mr. Gian Marco Maggio also ascertained in the sitting held on the 9<sup>th</sup> of January that ***“We never disputed that administrative delays occurred”***, which is tantamount to an admission of responsibility of the unreasonable delays which took place from the service provider, despite being reminded routinely of the request by the applicant.
11. Moreover, Mr. Gian Marco Maggio in the same above-mentioned sitting attempted to justify these delays by deflecting the service provider’s responsibility onto the applicant by claiming (i) that a lack of chasers were sent, which ***“Dokument K”*** unambiguously counters and (ii) that the request was not addressed to the official email address of the company, which is contrarily proven by ***“Dokument N”*** whereby Mr. Callum Lamb

explicitly forwarded the applicant's request on the general company email address *administration@ccgm.com.mt* on the same day that Mr. Callum Lamb was notified with the request, i.e. on the 15<sup>th</sup> of November 2021.

12. Furthermore, when Mr. Gian Marco Maggio was questioned in the same above-mentioned sitting whether there was anything the applicant should have done for the request to proceed, the service provider itself professed that ***“there was no input required from her end ... there was nothing more that Ms RI could have been doing in order to obtain what she was requesting from us”***. Hence clarifying that once a request was submitted it was up to the service provider to process the request internally without requiring external input, and thus clearly affirming that **the delay being protested is solely and unequivocally attributable to CCGM.**

13. Moreover, the crux of CCGM's defence centres around the argument that there was no formal transfer request but a mere valuation request from the European Parliament. Such an argument could not be further from reality in view of the email sent by Mr. Greet Van Meel, Head of Operations of the service provider, dated 6<sup>th</sup> October 2022 addressed to the European Parliament, ***“Dokument N”*** in the file, whereby he indisputably stated the following:

*“I am writing in regards to Ms RI, OXXXXXOM. We received a notification indicating that she wishes to transfer out her pension with CCGM LPPS of which we acknowledge receipt.”*

14. Therefore, CCGM was always clearly aware that the applicant's request was not merely a valuation request but a transfer request of her pension fund.

15. That during the course of these pending proceedings, due to the applicant's insistence owing to pressure from the European Institutions for the applicant's pension fund to be transferred back into the Union, the defendant company carried out the transfer of the pension fund on the 13<sup>th</sup> of November 2023 at the value of €48,991.97.

16. Thus, the applicant suffered the loss of €8,828.07, which is representative of the difference between the valuation of her pension fund in 31<sup>st</sup> of December 2021 (a month and a half after the transfer request was made) i.e., €57,820.04c and the amount actually transferred on the 13<sup>th</sup> of November 2023, i.e., €48,991.97.
17. Furthermore, the loss sustained by the applicant evidentially results from the service provider's negligence in processing her request in a timely manner.
18. Therefore, against the backdrop of no justifiable reasons being brought by the defendant counter the administrative delays admitted by the service provider itself to have incurred, as well as evidentiary proof indicating CCGM's full awareness of the applicant's transfer out request, the applicant is respectfully requesting this Arbiter to find the defendant company liable to pay the applicant the sum of €8,828.07, besides legal interest and with judicial costs."<sup>12</sup>

### **Final submissions by Service Provider**

"Reference is made to the Complaint mentioned in caption, the hearing held on 09 January 2024 ("Hearing"), enclosed, for ease of reference, under Annex I, and the final submission made by Ms RI on 30 January 2024, enclosed, for ease of reference under Annex II.

### **Arbiter's requests**

During the Hearing, the Arbiter requested the valuations as at the end of April 2022, as at the end of June 2022, and the valuation on encashment.

Please find below the respective valuations:

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<sup>12</sup> P. 122 - 125



<b>Date</b>	<b>Value</b>
30 April 2022	€53,075.87
30 June 2022	€49,601.14
Encashment	€49,987.97

The Arbiter further requested the Company to clarify whether the request sent by Ms RI on 04 April 2022 was replied to or not.

We confirm that Ms RI's email was replied to on 08 April 2022 (please refer to Page 057 of the Complaint). **It is to be noted that Ms RI had at the time already received the valuation of her portfolio** as at 31 December 2021. This was received by Ms RI on 08 March 2022, as per page 048 of the Complaint.

Whilst Ms RI portfolio valuation as at 31 December 2021 had already provided to Ms RI on 08 March 2022, we can also confirm that we had also provided an updated valuation directly to the European Parliament on 06 October 2022, as per pages 067 and 068 of the Complaint.

We reiterate that the European Parliament request was a **valuation request**. This is amply clear from the content of their email dated 15 November 2021, please refer to page 043 of the Complaint, whereby the European Parliament reached out to the Company *"[...] regarding the possibility to transfer the pension rights the EU agent acquired with your organisation."*

This is also amply clear from the contents of the letter enclosed therewith, please refer to pages 045 and 046 of the Complaint, whereby the European Parliament informed the Company the Ms RI *"may possibly be interested in transferring pension rights which he/she has acquired under your scheme/fund."* [Note underlying text is used by the European Parliament for emphasis purposes]. And that *"we [the European Parliament] would be grateful if you could send us the following information needed to provisionally calculate the rights which the applicant could acquire in the EU pension scheme [...]"*.

The European Parliament further clarifies that *"We [the European Parliament] will inform you in due course of the decision taken by the applicant to the proposal that we will send him/her. If the applicant accepts the proposal, we will inform you of the European Parliament bank account number into which your*



*scheme/fud will be requested to pay the amount updated to the date of actual transfer.*"

The European Parliament request was undoubtedly a valuation request, **no transfer request** was made in November 2021, when the valuation request was received, nor in March 2022, when Ms RI was first provided with a valuation of her portfolio following the European Parliament valuation request, nor in April 2022, when Ms RI sent the first chaser, nor in October 2022, when the September 2022 valuation was sent to the European Parliament.

The first instance where the Company received a transfer request by Ms RI was on 25 October 2023, during mediation discussions, whereby such request was followed up by the European Parliament was on 27 October 2023, please refer to Annex III. Following the transfer request, the Company proceeded to transfer the funds resulting from the redemption in the first half of November 2023.

Finally, in respect to the final submission made by Ms RI on 30 January 2024, of which we are, for ease of reference, providing excerpts in the text boxes below, we wish to clarify the following:

5. That on the 15th of November 2021, the EP informed via email correspondence Mr. Callum Lamb, an employee within CCGM, of the applicant's request to transfer her pension rights back into the European Institutions, as displayed through "Dokument G" in the file. Within this same email, the EP also attached "Dokument F" as referred to above, as well as "Dokument H" whereby the latter specifically requested the "amount

It is to be noted that, document G (pages 040 and 041 of the Complaint) refers to the request made by Ms RI **to** the European Parliament to know her acquired pension rights. This was **not** a transfer request made to the Company. Furthermore, therein, the European Parliament already clarified that *"the actuarial amount to be transferred is communicated on different dates by each scheme, and may change between the date of the communication and the date on which the amount is received"*.

Furthermore, and with reference to document H, pages 045 and 046 of the Complaint, in the final notes submitted by the Complainant, Ms Rleri stated that the European Parliament requested "amount available for any such transfer, calculated on the date of the request" omitting that that letter also stated:

- 1) *“The member of the European Communities staff referred to in the attached request form **may possibly** be interested in transferring pension rights [...]”;*
- 2) *“[...] we [the European Parliament] would be grateful if you could send us the following information needed to **provisionally** calculate the rights which the applicant **could acquire** in the EU pension scheme [...]”;*
- 3) *“We [the European Parliament] will inform you in due course of the **decision taken in response to the proposal** that we will send him/her. **If the applicant accepts the proposal**, we will inform you of the European Parliament bank account number into which your scheme/fund **will be requested to pay the amount updated to the date of the actual transfer** [...]”.*

By only quoting one part of the content of said letter, the Complainant intends to suggest that the European Parliament had submitted a transfer request and that a valuation **had** to be provided as at the date of the request.

It is instead abundantly clear that the request received through the European Parliament only constituted a valuation request, subject to provisional calculations by the European Parliament and a subsequent decision from Ms. RI. The final value, which would eventually be transferred following a decision by Ms. RI, would have had to be updated to the date of the actual transfer.

In their letter, in fact, the European Parliament also requested the Company to provide the amount available for the eventual transfer on “[...] *the date on which this amount is based if it later than the date given above [the date of request] [...]*” and “[...] *the date up to which this amount is guaranteed (where applicable) [...]*”

6. That, moreover, Mr. Gian Marco Maggio, a representative of the service provider CCGM, confirmed in the sitting held on the 9<sup>th</sup> of January that *“whether we had received Document F attached to the complaint. The answer is yes; that was an Application for Transfer of Pension Rights submitted by Ms RI through the European Parliament and was part of the email sent from the European Parliament to us with respect to the valuation request”*. Through this statement Mr. Maggio is effectively confirming that he was in receipt of the transfer request on the 15<sup>th</sup> of November 2021.

We wish to clarify that what we confirmed during the sitting held on the 9<sup>th</sup> of January is that we had received the **valuation** request on the 15<sup>th</sup> of November 2021.

The contents of the letters referred to in the documents G and H, respectively pages 040-041 and 045-046 of the Complaint, were **not** a transfer request **to** the Company through the European Parliament. Instead, these represented the provisional request for calculation of acquired rights made **by Ms RI to the European Parliament** and a **valuation request by the European Parliament to the Company**.

9. That this delay from CCGM took place despite the several reminders the applicant was routinely undergoing, either via verbal communication or email correspondence such as that exhibited in "Dokument K'.

10. Of significant importance is the fact that Mr. Gian Marco Maggio also ascertained in the sitting held on the 9 of January that "We never disputed that administrative delays occurred", which is tantamount to an admission of responsibility of the unreasonable delays which took place from the service provider, despite being reminded routinely of the request by the applicant.

The Company has always, in good faith, recognised that administrative delays have occurred.

The Complainant is however claiming that the Company has admitted "*responsibility of unreasonable delays [...] despite being reminded routinely [...]*" whereas the Company has instead always insisted that those delays were not fully attributable to the Company. Specifically, we have indicated that:

- 1) The European Parliament request was a valuation request;
- 2) That this was only sent by email and no hard copies were received by the Company;
- 3) There was never a chaser from the European Parliament despite lacking initial acknowledgment;

- 4) Despite previous claims made during the first hearing, which have not been substantiated by the Complainant and have since been retracted, Ms RI first followed up with the Company on April 8, 2022 - five months after the valuation request was sent by the European Parliament; *and*
- 5) The chaser sent by Ms RI was only sent after she had already received her portfolio valuation statement (on 08 March 2022, page 048 of the Complaint).

12. Furthermore, when Mr. Gian Marco Maggio was questioned in the same abovementioned sitting whether there was anything the applicant should have done for the request to proceed, the service provider itself professed that *“there was no input required from her end... there was nothing more that Ms Zammit Camilleri could have been doing in order to obtain what she was requesting from us”*. Hence clarifying that once a request was submitted it was up to the service provider to process the request internally without requiring external input, and thus clearly affirming that the delay being protested is solely and unequivocally attributable to CCGM.

We reiterate that there was no further action per se required by Ms RI for us to be able to proceed to provide the **valuation** of Ms RI's portfolio to the European Parliament. Yet, for the reasons highlighted in points 1), 2), 3) and 4) above, we believe that the delays that have regrettably occurred should **not** solely and unequivocally be attributed to the Company.

We wish to also clarify that whilst no further action was required **for us to provide a valuation** to the European Parliament, this did not constitute a transfer request and that we needed further and specific instructions by Ms RI and/ or the European Parliament to affect the sale and transfer of her position.

13. Moreover, the crux of CCGM's defence centres around the argument that there was no formal transfer request but a mere valuation request from the European Parliament. Such an argument could not be further from reality in view of the email sent by Mr. Greet Van Meel, Head of Operations of the service provider, dated 6<sup>th</sup> October 2022 addressed to the European Parliament, "Dokument N" in the file, whereby he indisputably stated the following:

"I am writing in regards to Ms RI, OXXXXX0M. We received a notification indicating that she wishes to transfer out her pension with CCGM LPPS of which we acknowledge receipt."

Therefore, CCGM was always clearly aware that the applicant's request was not merely a valuation request but a transfer request of her pension fund.

We dispute the representations that "[...] CCGM was always clearly aware that the applicant's request was not merely a valuation request but a transfer request of her pension fund." as this was **not** the case.

We regret to note that the statements quoted by the Complainant are also misleading due to omissions.

In fact, in that email, this is Document N in page 068 of the Complaint, we also stated that **"Once we receive further instructions from you [...] we will place the redemption instructions at the first opportunity."**

In any event, it was already abundantly clear that the request submitted through the European Parliament was for a provisional portfolio valuation. Any eventual transfer would have been subject to acceptance and respective instructions by Ms. RI and/or the European Parliament. Additionally, the Company would have eventually been requested to pay the updated amount as of the date of the actual transfer."<sup>13</sup>

### **Arbiter's analysis and considerations**

Having read the Complaint and the reply of CPAL, having heard the evidence, and read the final submissions, the Arbiter shall now proceed to consider and

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<sup>13</sup> P. 127 - 132

adjudge the case in terms of Article 19(3)(b) by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances of the case.

The Arbiter has no doubt that the Service Provider needed clear unequivocal specific instructions to liquidate the pension portfolio of the Complainant and that such instructions were only communicated on 27 October 2023.<sup>14</sup> All communication prior to date were evidently requests for information about the valuation of the investments in the pension portfolio which gave no authority to the Service Provider to do anything but submit the information requested.

It is undeniable, however, that the Service Provider could and should have handled such enquiries more promptly. However, given the long-term nature of pension investments, no evidence has been provided that such delay has prejudiced the Complainant's position.

After all, here we were not dealing with a clean total exit of a pension investment but mere transfer of pension funds to continue to be invested under pension rules. It is a fair assumption that at whatever time the pension investments were transferred out to the EU institution concerned, they would have been immediately re-invested in much the same type of investments suitable for pension funds.

The sharp drop in the market value even of conservative investment portfolios as those normally associated with cautious pension investments, was caused by the exceptional circumstances prevailing from the middle of 2022 when Euro interest rates undertook an abrupt turn following the severely changed inflationary environment, principally caused by the war between Ukraine and Russia. Basically, the point is that the market loss of the pension portfolio would have been incurred irrespective of whether the funds stayed with the Service Provider or transferred out to an EU pension plan.<sup>15</sup>

In the circumstances, while finding fault with the quality of service of CPAL, the Arbiter does not agree that this is strong enough to oblige the Service Provider to make good for the market losses as pretended by the Complainant. This also

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<sup>14</sup> P. 133 - 134

<sup>15</sup> Consider, for example, that a 5-year benchmark Malta Government Bond dropped in value by nearly 21% from the beginning to the end of 2022 when the yield moved from 0.23% to 3.50% (source Central Bank of Malta). Compare this to a drop of some 15.3% from the portfolio value as at end 2021 to date of encashment in November 2023. (see p. 125)

bearing in mind that clear instructions to liquidate the portfolio were only received in October 2023 and then properly and promptly executed.

### **Decision**

In the circumstances, the Arbiter is ruling against the Complainant and dismissing her complaint. However, as a sign of fault in the quality of service of the Service Provider, the Arbiter is ordering for the costs of these proceedings to be borne by the Service Provider.

**Alfred Mifsud**

**Arbiter for Financial Services**

### **Information Note related to the Arbiter's decision**

#### *Right of Appeal*

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

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



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

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### *Costs of the proceedings*

In terms of Article 26 (3)(d) of Cap.555 of the Laws of Malta ('the Act'), the Arbiter has adjudicated by whom the costs of the proceedings are borne and, in what proportion, taking into consideration the particular circumstances of the case.

The costs of the proceedings are not limited to the payment of any applicable cost of filing the Complaint with the Office of the Arbiter for Financial Services (presently Eur25), but may also include any reasonable lawful professional and legal fees paid by the Complainant limited to the acts filed during the proceedings of the case. Such professional fees should not include any contingency judicial fees and charges.