

## Before the Arbiter for Financial Services

Case ASF 026/2024

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(‘the Complainant’)

vs

Sovereign Pension Services Limited

(C 56627)

(‘SPS’ or ‘the Service Provider’)

### Sitting of 28<sup>th</sup> June 2024

#### The Arbiter,

Having seen the **Complaint** made against *Sovereign Pension Services Limited* (‘SPS’ or ‘the Service Provider’) relating to *The Centaurus Retirement Benefit Scheme* (‘the Retirement Scheme’ or ‘Scheme’), this being a personal retirement scheme licensed by the Malta Financial Services Authority (‘MFSA’), established in the form of a trust and administered by SPS as its Trustee and Retirement Scheme Administrator (‘RSA’).

The Complaint, in essence, relates to a claim of excessive and unreasonable time taken for the Service Provider to transfer his funds from his Retirement Scheme to his new pension scheme in New Zealand.

The Complainant requested compensation for the interest lost during the additional time taken for the transfer, a refund of the exit fee charged on his Retirement Scheme, and compensation for his time and energy in dealing with the alleged prolonged and bureaucratic process of the transfer.

### *The Complaint*<sup>1</sup>

The Complainant explained that, as a client of SPS, he would have expected SPS to be able to arrange a transfer of his pension fund within a reasonable timeframe. Two separate advisers advised him that this should take no more than two to three months, but this has not happened in practice, and the transfer has actually taken close to eight months.

The Complainant explained that during this time, he and his financial adviser had to continually negotiate workarounds to SPS's standard protocols. He claimed that, on each occasion, SPS effectively backed down on their requests and agreed to a more acceptable way forward.

The Complainant claimed that this took far too much time, caused him a tremendous amount of personal stress and resulted in him being financially disadvantaged.

He noted that the assets in his pension fund were sold in July 2023 and, since 1<sup>st</sup> August 2023, had been sitting in a non-interest-bearing account awaiting transfer to his New Zealand-based financial adviser.

The Complainant claimed that he had to continually chase SPS during this process, and that all SPS had done was to respond by saying, *'sorry, but we are just following policy'*.<sup>2</sup>

The Complainant pointed out that SPS did not acknowledge that they were at fault at all during this process or that they had delayed the transfer of his funds unnecessarily. He added that there has been no empathy for him as a retired individual battling against their corporate business and no appreciation of the sums involved and the knock-on effects these delays have had on his financial position or mental health.

He noted that his formal complaint to the service provider detailed how he was financially disadvantaged and what compensation he requested.<sup>3</sup>

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<sup>1</sup> Complaint Form on Page (P.) 1-8 with extensive supporting documentation on P. 9-34.

<sup>2</sup> P. 3

<sup>3</sup> P. 9-10

The Complainant explained that SPS let him down because what should have been a simple process was made unnecessarily complicated. He reiterated that SPS had taken no responsibility or accountability for their role in making this transaction the worst he had ever experienced in his adult life. He further submitted that it was beyond him how SPS thought the eight months were reasonable when it should not have taken that long.

*Remedy requested*

In his Complaint form to the Office of the Arbiter for Financial Services ('OAFS'), the Complainant requested the following remedies:

1. A refund of the EUR 1,000 exit fee charged by SPS;
2. Compensation for the loss of interest on his funds from 1<sup>st</sup> October 2023 to 4<sup>th</sup> January 2024. The Complainant explained that he has calculated this on the basis that he has given SPS a period of just over four months to make the transfer happen, from mid-May 2023 to 30<sup>th</sup> September 2023, which he considered should have been more than enough time. He noted that since the transfer took nearly eight months, he was claiming three months of lost interest.

The Complainant noted that the claimed interest is based on the sum of NZD 666,000 (which, he explained, is what was converted on 5<sup>th</sup> January 2024 by *NZ Funds*), at an interest rate of 5.18% (being the interest rate of the *NZ Funds* cash portfolio). The Complainant arrived at the sum of \$94.52 per day, making a total for 96 days of \$9,073.92; (\$ refers to New Zealand Dollars NZD)

3. A further EUR 1,000 for the Complainant's time and mental energy dealing with what he claimed as a hugely bureaucratic and inflexible company over the last eight months. (The Complainant pointed out that, prior to that, there were a further eight months with another aborted attempt to transfer his funds out of Malta).

Therefore, the Complainant requested a total of EUR 7,246 (using the then-present forex conversion rate from NZD to EUR of 0.5782).<sup>4</sup>

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<sup>4</sup> P. 4

**Having considered, in its entirety, the Service Provider's reply, including attachments,<sup>5</sup>**

Where the Service Provider explained and submitted the following:

*Introduction*

1. SPS explained that a completed transfer-out request form bearing the Complainant's signature was received by email from the Complainant's appointed investment adviser on 15<sup>th</sup> December 2022 (as per Appendix 1 to its reply).<sup>6</sup>

It noted that initially, the Complainant's request was to transfer his pension fund from the Scheme to the *Sovereign International SIPP*. Subsequently, on 18<sup>th</sup> May 2023, the Complainant formally requested the cancellation of the transfer to the *Sovereign International SIPP* and advised that he would like to instead transfer his pension to the *NZ Funds Managed Superannuation Service* scheme (the 'Receiving Scheme') (as per Appendix 2 to its reply).<sup>7</sup> It noted that the latter request occurred after the completion of the administrative procedures by both SPS and the UK (Sovereign International SIPP) administration teams, as the transfer process had reached the final stage of instructing the investment provider, *Utmost International Isle of Man Limited* ('Utmost') to reassign the policy to Sovereign International SIPP. SPS noted, with emphasis, that no fees were charged for the time and resources invested in this process.

*Suitability report*

2. On 22<sup>nd</sup> May 2023, SPS received the completed transfer-out request form from the Receiving Scheme, which, it noted, was reviewed immediately (as per Appendix 3 to its reply).<sup>8</sup> An email was sent to the Complainant and the Receiving Scheme two days later on 24<sup>th</sup> May 2023, confirming that the review of the submitted documentation was conducted and listing also the

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<sup>5</sup> P. 42-46, with attachments from P. 47-260

<sup>6</sup> P. 51

<sup>7</sup> P. 63

<sup>8</sup> P. 42

outstanding requirements necessary for the transfer process (as per Appendix 4 to its reply).<sup>9</sup>

3. SPS noted that one of the requisite documents was a suitability report, demonstrating that the Complainant had received advice from a suitably licensed and regulated investment adviser regarding the transfer. This report is a standard requirement for members seeking to transfer out of the Scheme, particularly when a surrender of underlying investments is intended. It added that in the exercise of SPS's duty of care, the advice report is reviewed to ascertain that members receive appropriate advice and that they are not unnecessarily disadvantaged by the transfer.
4. SPS explained that in his reply to the email dated 24<sup>th</sup> May 2023, the Complainant declined to provide a suitability report. It added that despite SPS's thorough explanation regarding the necessity of the required document, the Complainant insisted that this requirement be waived (as per Appendix 5 to its reply).<sup>10</sup> It noted that since this request deviated from standard protocols, the matter was referred to senior management for review and approval. In an earnest attempt to accommodate the Complainant's request, a customised deed of indemnity was specifically drafted for this purpose and sent to the Complainant requesting his signature (as per Appendix 6 to its reply).<sup>11</sup> It noted that, regrettably, despite SPS's willingness to accommodate the Complainant's reluctance to follow standard protocols which are in place for his own protection, the Complainant also declined to sign the Deed of Indemnity (as per Appendix 7 to its reply).<sup>12</sup>
5. The Service Provider added that, subsequently, it proposed an alternative solution by preparing a bespoke declaration, which the Member signed and returned to it on 31<sup>st</sup> August 2023 (as per Appendix 8 to its reply).<sup>13</sup>

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<sup>9</sup> P. 101

<sup>10</sup> P. 146

<sup>11</sup> P. 150

<sup>12</sup> P. 165

<sup>13</sup> P. 170

### *Receiving scheme indemnification*

6. SPS emphasised that accommodating the Complainant's reluctance to follow standard procedures involved an extensive three-month effort on its part. It added that despite the persistent refusals, SPS remained actively engaged in seeking alternative solutions and in making sincere attempts to accommodate the Complainant's requests. It noted that once the Complainant accepted the alternatives offered and the transfer could proceed, however, another hurdle was presented when the Receiving Scheme submitted a transfer out request form with one of the declaration clauses crossed out. Despite SPS's request for an unmodified declaration to be signed, the Receiving Scheme refused to comply (as per Appendix 9 to its reply).<sup>14</sup>
7. The Service Provider submitted that, once again, it made significant efforts to expedite and conclude the transfer in accordance with the Complainant's wishes whilst ensuring full compliance with the regulatory obligations that it operates under. This included a series of email exchanges and out-of-office hours phone calls with the Receiving Scheme to accommodate the time difference between Malta and New Zealand between September and November 2023.
8. It further explained that, following persistent efforts, a mutually acceptable agreement was reached between SPS and the Receiving Scheme, leading to the preparation of another bespoke agreement for this specific purpose. The signed agreement was received from the Receiving Scheme on 15<sup>th</sup> November 2023 (as per Appendix 10 to its reply).<sup>15</sup>
9. The Service Provider explained that as all the requirements were met at this point, an instruction was sent to Utmost to initiate the surrender process. It noted that both the Complainant and the Receiving Scheme were duly informed, and surrender charges applied by Utmost were obtained from Utmost and quoted to the Complainant requesting acceptance, in line with standard processes (as per Appendix 11 to its

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<sup>14</sup> P. 171

<sup>15</sup> P. 173

reply).<sup>16</sup> SPS explained that, however, the Complainant raised concerns regarding the surrender charges, resulting in the cancellation of the surrender instruction to Utmost, as further detailed in the section below on fees and charges.

### *Fees and charges*

10. SPS explained that on 16<sup>th</sup> May 2023, shortly after being notified that the Complainant wishes to transfer his pension to a pension scheme in New Zealand instead of the Sovereign International SIPP, an email was sent to the Complainant confirming SPS's termination fees applicable on transfers to schemes not administered by the Sovereign Group, which amount to EUR 1,000 (s per Appendix 12 to its reply).<sup>17</sup>

It further explained that the early surrender penalties applied by Utmost, of GBP 18,144.89 was forwarded to the Complainant on 10<sup>th</sup> August 2023 (as per Appendix 13 to its reply),<sup>18</sup> and acceptance of the charges was requested before proceeding with the instruction of the policy surrender to Utmost. It was noted that this figure was also specified as '*approximately £18,000*' in the Deed of Indemnity, acknowledging its subjectivity to change.

11. SPS noted that on 10<sup>th</sup> August 2023, the Complainant expressed his non-acceptance of the surrender charges applied by Utmost. In an effort to continue to assist the Complainant, SPS proposed an alternative option to the Complainant to avoid incurring Utmost's surrender penalties, suggesting the reassignment of the Utmost policy to his new pension provider instead of surrendering it (as per Appendix 14 to its reply).<sup>19</sup>
12. On 15<sup>th</sup> November 2023, the surrender instruction was submitted to Utmost, however, this was cancelled on 20<sup>th</sup> November 2023 due to questions raised by the Complainant regarding the surrender fee quoted by Utmost (as per Appendix 15 to its reply).<sup>20</sup> SPS further explained that the Complainant contacted Utmost directly, expressing his belief that there

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<sup>16</sup> P. 180

<sup>17</sup> P. 181

<sup>18</sup> P. 195

<sup>19</sup> P. 207

<sup>20</sup> P. 231

might be a mistake in the surrender charges provided, suggesting that the quoted value should be lower. On 21<sup>st</sup> November 2023, the Complainant informed SPS that Utmost had acknowledged an error on their part despite them having provided SPS with the same figure of approximately £18,000 on three separate occasions (as per Appendix 16 of its reply).<sup>21</sup>

SPS emphasised that it relies on Utmost as investment provider to accurately provide quotes of surrender penalties in line with their own fee schedules and terms. It further emphasised that additionally, the sum would have been recalculated prior to closure, ensuring accuracy in the final settlement value. It pointed out that, moreover, Utmost's oversight did not cause any significant delays, and even if the error had come to light after closure, Utmost would have promptly refunded any overcharged amount.

13. The Service Provider noted that during this email exchange, the Complainant also requested a refund for fees paid to his advisers, *Blacktower Financial Management (International) Limited* ('BFMI'), stating that their services were terminated in January 2023. SPS notified the Complainant that it had not received an instruction to remove BFMI as advisers on his pension plan. It noted that, nevertheless, in exercising diligent care and assistance to the Complainant, SPS reached out to BFMI to inquire whether they had indeed stopped servicing the Complainant's plan and whether they were willing to refund fees paid to them since January 2023.
14. SPS explained that on 7<sup>th</sup> December 2023, BFMI agreed to refund the fees they received from August 2023. It added that they also mentioned that, as a result of a separate complaint that the Complainant had raised directly with BFMI, details of which SPS are not privy to, the Complainant accepted a settlement from BFMI in September 2023. SPS submitted that the Complainant accepted the refund value and was informed on 12<sup>th</sup> December 2023 that Utmost will be instructed to initiate the clawback of fees process. SPS also informed the Complainant that the full surrender

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<sup>21</sup> P. 236



cannot be instructed to Utmost until the adviser fees have been refunded (as per Appendix 17 to its reply).<sup>22</sup>

*Fund held in cash*

15. SPS submitted that the Complainant signed a dealing instruction, authorising the sale of all his investments, which was then submitted through his appointed adviser at the time, BFMI on 20<sup>th</sup> July 2023 (as per Appendix 18 to its reply).<sup>23</sup> It pointed out the importance to note that the Scheme is member-directed and thus required the appointment of an investment adviser by members. SPS added that its responsibility is to verify the validity and adequacy of instructions and to act upon them accordingly.

*Concluding remarks in its reply*

16. SPS acknowledged the concerns raised regarding the perceived lengthiness of the process and underscored its considerable investment of time and resources to accommodate the Complainant's evolving demands at various stages of the process.

It noted that despite the Complainant's persistent deviations from standard procedures and unwarranted demands, SPS remained committed to finding equitable solutions, going above and beyond to accommodate the Complainant's changing preferences and resistance. It added that, furthermore, the Complainant's queries and complaints were dealt with promptly with comprehensive responses provided which explained the position each time as shown in the copies of correspondence attached to its reply (particularly, as per Appendix 14).<sup>24</sup>

SPS submitted that any delays or disruptions encountered were directly attributable to the Complainant's actions rather than any deficiency on its part. It added that its commitment to resolving the matter remained firm and that it has acted diligently in fulfilment of the responsibilities attributed

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<sup>22</sup> P. 254

<sup>23</sup> P. 256

<sup>24</sup> P. 207

to it as trustee and in compliance with the regulations. SPS thus categorically rejected any liability for the duration of the transfer process.

17. The Service Provider further submitted that the Complainant's request for a refund of the termination fees is unwarranted, considering the extensive efforts undertaken to accommodate his requests. It added that not only should the Complainant be liable for the basic termination fee, but it should also be recognised that the bespoke services provided far exceed the standard scope of transfer procedures outlined in SPS's fee schedule and the additional work falls under '*work undertaken which is not covered by the fees stated above*' (as per Appendix 19 to its reply).<sup>25</sup>

SPS emphasised that despite the option to apply time charges, it chose not to do so, in an effort to minimise inconvenience to the Complainant. It submitted that, therefore, it is only reasonable to expect that the Complainant fulfils his obligation of covering the minimal cost for the services rendered.

18. SPS submitted that it cannot accept responsibility for any potential loss of interest incurred, as it was the Complainant who instructed the sale of his underlying assets. It noted that SPS fulfilled its obligation of acting in accordance with the Complainant's instructions.
19. The Service Provider further submitted that the Complainant's claim for compensation '*for my time and mental energy*' lacks legal basis. It pointed out that Article 1045(1) of the Civil Code, Chapter 16 of the Laws of Malta, specifies that compensation for moral or psychological harm is only applicable in cases of certain criminal offences, such as those affecting the dignity of persons under specific sections of the Criminal Code.

It further noted that since the situation in question does not involve offences outlined in these provisions, the claim for compensation on the grounds of moral or psychological harm cannot be supported. SPS added that, furthermore, it is important to note that it has consistently demonstrated its commitment to addressing the Complainant's queries

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<sup>25</sup> P. 259

promptly and efficiently, ensuring timely responses without causing undue stress.

20. Based on the reasons outlined above and considering that no additional time charges for the bespoke services rendered were applied, SPS firmly rejected any requests for compensation payment and dismissed the Complainant's claims.
21. In conclusion, it submitted that, considering all of the aspects presented, the Complainant's accusations and complaint lack merit, substance and validity. It reiterated that despite the challenges posed by the Complainant's actions, his current pursuit of compensation is unwarranted and should not be entertained.

SPS further submitted that, if the Arbiter concurs, the complaint in question should be declared as frivolous and vexatious in accordance with Article 21(2)(c) of Chapter 555 of the Laws of Malta.

### **Other aspects raised**

During the hearing of 2<sup>nd</sup> April 2024, the Complainant raised another aspect to his Complaint where he explained that:

*'... I tried to pursue a separate complaint against Utmost and that could not be processed on the basis that the policy was in Sovereign's name as Trustee for me and not in my sole name. So, the Ombudsman in the Isle of Man basically said that Sovereign would need to join in the complaint for them to process it and Sovereign refused to do that.*

*So, I have also asked for Utmost fees be refunded and for the additional stress of over one month's delay caused by the error that Utmost made at the end of the process ...*

*... I tried to pursue a complaint against [Utmost] and the only way they could pursue is if Sovereign joined in my complaint because the policy was in Sovereign's name and not mine. Sovereign refused to do that so,*

*therefore, I'm more financially disadvantaged because Sovereign did not comply or did not agree to support that complaint'*<sup>26</sup>

SPS did not object to the inclusion of this additional aspect as part of the case.

The Arbiter issued a decree on 15 April 2024, requesting the Complainant to elaborate on this new element of the Complaint and, also, quantify the remedy sought on this aspect.<sup>27</sup> The Service Provider was also provided with the opportunity to provide its reply on this additional aspect and to undertake its cross-examination.<sup>28</sup>

The Complainant consequently sent an email dated 16<sup>th</sup> April 2024, stating *inter alia* that the part of the complaint against Utmost relating to loss of interest was already covered in his Complaint to the OAFS against SPS. However, the Complainant '*... was looking for other fees to be refunded, and a compensation sum for the huge amount of stress caused by Utmost's mistake in miscalculating the surrender value of my policy*'.<sup>29</sup> The Complainant, furthermore, referred to the details contained in the complaint he had lodged against Utmost with the *Isle of Man Financial Services Ombudsman* ('IOM Ombudsman').<sup>30</sup>

In the said complaint, the Complainant described the losses/costs he attributed to Utmost's actions as follows:

*'Had the surrender gone through in mid-November, and the funds sent to my new advisor (NZ Funds Management Ltd) they would have been earning at least 5% interest. Based on a fund value of GBP330,000 and an exchange rate of 2:1 (NZD:GBP) this would have been \$90.41 per day. This has cost me \$2,712.32 over the last 30 days, and is ongoing. The other points covered off in my complaint, which Utmost have ignored are 1) that I shouldn't be charged ongoing account fees, when the funds have been sitting in cash since the end of July 2023. 2) the actual surrender cost should be calculated on the number of months remaining under my policy which is currently 30. Utmost have just based this on 3 years of the policy term remaining. The policy expires in June 2026. If the surrender fee is calculated*

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<sup>26</sup> P. 261 - 262

<sup>27</sup> P. 266

<sup>28</sup> P. 267

<sup>29</sup> P. 268

<sup>30</sup> P. 269 - 273

*on a pro rata basis, this reduces the fee from GBP 15,375.24 to GBP 12,812.70 a further GBP 2,562.54 in my favour. 3) Is there not a duty of care as an investment company, for Utmost to place the cash funds in an interest earning account pending the transfer of my funds to NZ? To me, this is the most basic courtesy that any investment company should do. The sum involved may not be significant to them (GBP 350k approx.), but this is my pension fund, and I am relying on this to support me in my retirement, which has already commenced. Based on the same interest rate mentioned above, this equates to a daily interest sum that I have 'lost' since 1<sup>st</sup> August 2023 of \$13,136.98 or GBP 6,568.49 (\$700k x 5% x 137 days). In summary, the mistake made by Utmost, which lead to me requesting a detailed breakdown of the surrender statement caused me a huge amount of stress, and has actually been to my financial detriment as detailed above. There has been no duty of care to me as an investor'.<sup>31</sup>*

In its reply of 25<sup>th</sup> April 2024, SPS, in essence, submitted the following:<sup>32</sup>

- That the complaints to the IOM Ombudsman were regarding the alleged double deduction of surrender penalties; the holding of funds in a non-interest-bearing account; the charging of ongoing account fees and 'stress caused by Utmost's mistake';<sup>33</sup>
- SPS clarified the events as follows:
  1. *Complaint to Utmost and Resolution* – That the Complainant submitted a written complaint to Utmost on 21<sup>st</sup> November 2023, claiming a double deduction of surrender penalties. Utmost explained the position, acknowledged a system error in their initial calculations and corrected this without undue delay by 13<sup>th</sup> working day on 8<sup>th</sup> December 2023 following a review of the matter, compensating the Complainant with a goodwill gesture of GBP 100 (as per Appendix 1 to its reply).<sup>34</sup>

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<sup>31</sup> P. 272

<sup>32</sup> P. 275 – 276 with attachments included on P. 277 to 301

<sup>33</sup> P. 275

<sup>34</sup> P. 277

2. *Interest of Funds held in Cash* – The funds in question were held in cash at the instruction of the Complainant following his decision to liquidate his assets in anticipation of the transfer. The resulting lack of earnings during this period was a direct consequence of his instructions and actions, not a failure by Utmost or SPS.
  3. *Request for loss of interest compensation* – SPS claimed that the Complainant voluntarily halted the surrender process, which led to delays. Although Utmost addressed the calculation error, they justifiably did not compensate for the loss of interest as the delay was instigated by the Complainant himself.
  4. *Ongoing Account Fees* – SPS noted that the ongoing account fees which were agreed upon at the inception of the investment policy account, are standard and not contingent on the account balance but on its management. It submitted that these charges would accrue regardless of the surrender process (as per Appendix 2 to its reply).<sup>35</sup>
- That in response to the above issues, SPS disagreed with the nature of the complaint, deeming it frivolous and vexatious. It submitted that, nevertheless, SPS provided all necessary assistance and information pertaining to the investment contract as required by the Complainant.
  - That SPS adhered to all legal and procedural guidelines, assisting with facilitating communication with Utmost to ensure that any discrepancies were addressed promptly and fairly (as per Appendix 3 to its reply).<sup>36</sup>

Given the circumstances and the nature of the complaints, SPS believed that there was no justifiable basis for supporting the complaint to the IOM Ombudsman. Consequently, SPS did not consent to endorsing the Complainant's complaint (as per Appendix 4 to its reply).<sup>37</sup>

- SPS further submitted that the situation seemed to be another attempt by the Complainant to recoup fees and seek compensation for matters that were explicitly agreed upon at the commencement of the contracted

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<sup>35</sup> P. 284

<sup>36</sup> P. 286

<sup>37</sup> P. 291

services. It noted that, additionally, Utmost had already addressed the miscalculation, making any further complaint unwarranted.

### **Preliminary – Competence of the Arbiter**

In his final submissions, the Complainant explained that he felt he was *'badly let down by all 3 corporate organisations who were entrusted with [his] pension'*, namely, *'1) Blacktower Financial Management Group (Advisor). 2) Sovereign Pension Services Limited (Trustee). 3) Utmost International Isle of Man (Investment Platform)'*.<sup>38</sup> The Complainant noted that he received compensation from his advisor, Blacktower, who had taken responsibility for its failings. He further pointed out that, *'This complaint therefore relates specifically to Sovereign and Utmost'*.<sup>39</sup>

The Arbiter would like to highlight, (as already outlined during the hearing of 2<sup>nd</sup> April 2024), that he has no competence to hear complaints about *Utmost International Isle of Man Limited* ('Utmost').<sup>40</sup>

Utmost is an entity based outside and not licensed in Malta and has furthermore not offered its financial services in or from Malta. Hence, Utmost falls outside the definition of a *'financial services provider'* as provided for in article 2 of the Arbiter for Financial Services Act, Cap.555 of the Laws of Malta ('the Act').

In terms of article 19(1) of the Act (which deals with the functions and powers of the Arbiter) and article 21(1) of the Act (regarding the Arbiter's competence), the Arbiter only has jurisdiction on complaints filed by an *'eligible customer'* against the conduct of a *'financial services provider'* (as both defined in article 2 of the Act).

For the reasons outlined, the Arbiter, therefore, has no competence to hear a complaint against Utmost, and his competence is, in terms of the Act, thus limited to the conduct of Sovereign Pension Services Limited ('SPS' or 'the Service Provider'). In this decision, the Arbiter is accordingly limiting himself to only consider the alleged failings of SPS, namely:

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<sup>38</sup> P. 309

<sup>39</sup> *Ibid.*

<sup>40</sup> P. 261

- (a) the excessive and unreasonable time the Complainant claimed was taken by SPS to deal with the transfer out of his Retirement Scheme;
- (b) the manner such a transfer out process was handled by SPS;<sup>41</sup> and
- (c) SPS's failure to support his complaint against Utmost and to join him in lodging his complaint against Utmost with the Financial Ombudsman in the Isle of Man - which failure allegedly removed the possibility for him to pursue a legitimate claim against Utmost with the IOM Ombudsman.

## The Merits of the Case

**The Arbitrator will decide the Complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.**<sup>42</sup>

## Background

*The Centaurus Retirement Benefit Scheme* ('the Retirement Scheme' or 'the Scheme') is a trust domiciled in Malta and authorised by the MFSA as a personal retirement scheme.<sup>43</sup>

As explained by the Service Provider, the Scheme was operated as a member-directed scheme.<sup>44</sup>

The Complainant, who was based in New Zealand,<sup>45</sup> became a member of the Retirement Scheme and his Retirement Scheme was invested into an insurance policy, the *Executive Redemption Bond* issued by *Old Mutual International* on 24 June 2016 with a policy premium of GBP 512,507.93. Old mutual International eventually changed/rebranded into *Utmost International Isle of Man Limited* ('Utmost').<sup>46</sup> An investment portfolio was held within the said policy, which,

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<sup>41</sup> In his final submissions, the Complainant further alleged that he '*... felt constantly under pressure, bullied and certainly not valued as a client. There has been no duty of care shown ... no comprehension of my personal situation, or the financial implications that the delays in the process have resulted in for me*', also claiming that the Service Provider has not lived up to its claimed values of '*Listening, Understanding, Planning or Delivery*' (P. 309 - 310). He claimed he '*had a constant battle to get my funds transferred to where I want them*' and that '*There has been no empathy or comprehension of the sums involved*' (P. 310).

<sup>42</sup> Cap. 555, Art .19(3)(b)

<sup>43</sup> <https://www.mfsa.mt/financial-services-register/>

<sup>44</sup> P. 45

<sup>45</sup> P. 55

<sup>46</sup> <https://utmostinternational.com/quilter-international/>



portfolio was redeemed and turned into cash at the Complainant's instruction in July 2023.

*Blacktower Financial Management International Limited* ('Blacktower'), based in Gibraltar, was the appointed investment adviser. Blacktower provided investment advice to the Complainant regarding the selection and composition of the investments underlying his Scheme.

The investments within the Complainant's Retirement Scheme were accordingly directed by the member on the investment advice received from Blacktower.

The investment adviser, Blacktower, remained appointed in its role as investment advisor until it was removed in 2023.

## Timeline

The following is a timeline and summary of key events and communications relating to the transfer process as emerging from the evidence produced during the proceedings of the case:

- a) 15 Dec 2022 – Email sent by SPS to the Complainant's investment adviser, Blacktower, regarding the intended transfer out (*in specie*) from his Retirement Scheme to a *Sovereign International SIPP*. The said email enclosed a '*Transfer Out Request Form*'.<sup>47</sup>
- b) 15 Dec 2022 – Email from Blacktower to SPS asking details of the estimated timescale for the completion of the transfer process.<sup>48</sup>
- c) 28 Apr 2023 – Email from Sovereign UK welcoming the Complainant as a member of the *Sovereign International SIPP* effective 28/04/2023 enclosing his membership certificate and other documents.

Reference was made to the transfer in (of approx. GBP 346,000 from the Retirement Scheme) and that the Complainant had '*30 days from receipt of the above transfer funds to cancel the transfer*'.<sup>49</sup>

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<https://www.isleofman.com/news/view/22009442/old-mutual-international-announces-it-will-rebrand-as-quilter-international>

<sup>47</sup> P. 51 & 54

<sup>48</sup> *Ibid.*

<sup>49</sup> P. 68

- d) 29 Apr 2023 - Complainant sent an email to Sovereign's UK Pension team (with SPS and other parties in copy) referring to the switch of his pension from Malta to UK which '*has taken in excess of 6 months to action*', noting that, he has, in the meantime, appointed NZ Funds to take care of his investments and his understanding that a request was lodged by NZ Funds that '*when the funds arrive in the UK, they will then be sent to NZ Funds*'.<sup>50</sup> The Complainant further noted that it had been agreed with SPS and Blacktower there will be no administration or transfer fees charged in view of the significant delays and asked for timescale for receipt of funds so that NZ Funds '*can get things moving asap*'.<sup>51</sup>
- e) 3 May 2023 – Complainant sent an email to Sovereign's UK Pension team (with SPS and other parties in copy) requesting update.
- f) 3/4/6 May 2023 – SPS liaison with Sovereign UK Pensions.<sup>52</sup>
- g) 9 May 2023 – Email from the Complainant to SPS (with other parties in copy) asking for an urgent update as it was unclear when the transfer was happening or what was causing the delays. He noted that he had received an email from Sovereign UK Pension office on 28<sup>th</sup> April 2023 welcoming him as a member of the UK SIPP and questioned what had happened since then. He noted *inter alia* that:

*'I have been waiting for this transfer to happen for 7+months, which is absolutely unacceptable. Since initiating the request to move my fund from Sovereign Malta to Sovereign in the UK, I have decided to move my funds to be managed on a more local basis, where I live, in New Zealand. The delays in the process are now becoming costly to me, as well as extremely stressful and time consuming*'.<sup>53</sup>

The Complainant further noted that he may need to access some of his funds in relation to a property transaction and was very concerned with the situation and the delays which were putting him '*in an extremely difficult*

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> P. 187 - 189

<sup>53</sup> P. 67

*position*'. He also noted that *'I am now exposed to break costs on funds in NZ if I can't access my UK fund in time, the foreign exchange rate is now moving against me ...'*<sup>54</sup> The Complainant asked whether SPS and Blacktower will meet any costs incurred as a result of the further delays and asked the UK Pension team to confirm the timescale to extract funds from the UK SIPP to send to NZ Funds and for paperwork to be provided in this regard as a matter of urgency.

- h) 10 May 2023 – SPS sent email to the UK team (with the Complainant in copy) attaching the transfer out form and deed of assignment for their review. The Complainant was informed that *'there will be no termination fee from us incurred for your transfer to IFGL pension. However, IFGL will need to confirm regarding their applicable fees'*.<sup>55</sup>
- i) 10 May 2023 – Email from the Complainant to SPS (with IFGL apart from other parties in copy) asking who IFGL are and what they would be charging him fees for. The Complainant noted that he was expecting no fees to be charged from *'Sovereign in Malta or the UK'*.<sup>56</sup> He requested *'a timeline for what needs to be done to make this happen'* expressing his unhappiness with the lack of service and client care.
- j) 13 May 2023 – SPS sent email to the Complainant noting his intention *'to transfer to the UK SIPP and then transfer from the UK SIPP to the New Zealand Fund'*. SPS asked for *'the rationale for this and why you will not transfer from Sovereign Malta to the New Zealand fund'*.<sup>57</sup>
- k) 13 May 2023 – Complainant sent an email to SPS (with IFGL apart from other parties in copy) referring to the discussions he had with Blacktower a year before, and the advice he had received to switch to a UK SIPP as he was trying to reduce his ongoing costs after he realised how much he was being charged by Sovereign, Utmost and Blacktower and, also, for tax purposes. He noted, in the said email, that in October 2022 (after travelling for several months) he went back to New Zealand and *'At that point [he]*

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<sup>54</sup> *Ibid.*

<sup>55</sup> P. 66

<sup>56</sup> P. 65

<sup>57</sup> *Ibid.*

*initiated the transfer process with [Blacktower] and signed the relevant paperwork ...'.<sup>58</sup> He also noted that 'Subsequently, I made some further inquiries about moving my funds to be managed in NZ' and re-connected with NZ funds who he 'had also spoken to in early 2022'. The Complainant explained that:*

*'Having had time to understand the current investment, and extortionate charging structure with Sovereign/Utmost/Blacktower and also what the implications of moving the fund to NZ would be, I decided that my funds would best placed, with me, here in NZ. This was done in late November/early December.*

*On the basis that the request had already been sent to Sovereign to switch the funds from Malta, and this was only supposed to take a couple of months at worst, we thought it was best to let it run its course.*

*In hindsight, that was possibly a big mistake, given that nothing has happened in the last 7+ months!!'<sup>59</sup>*

The Complainant highlighted *'the extremely poor service in this matter from all concerned'* and noted that his decision to move the funds was *'looking pretty good'*. He accordingly asked IFGL certain questions including what was needed to stop the transfer to the UK SIPP and how quickly can the funds be sent to NZ Funds.

The Complainant also asked whether there were any comments or concerns about transferring directly from Malta to NZ.<sup>60</sup>

- l) 16 May 2023 – Email from IFGL Pensions to the Complainant where reference was made of the intention to *'transferring out to New Zealand QROPS once the funds are transferred into the SIPP'*.<sup>61</sup> IFGL further noted that:

*'Before this point, we were not aware of this intention from SIPP perspective. I was in conversation with Sovereign Malta and with*

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<sup>58</sup> P. 113

<sup>59</sup> *Ibid.*

<sup>60</sup> P. 65

<sup>61</sup> P. 63

*Blackmore in Gibraltar last week as the above intention means that accepting your QROPS to SIPP may not result in a good client outcome.*

*The instruction we received is to transfer the current assets in-specie for which we have the deed of assignments which we have put on hold. If we are to continue with this process it will take few weeks or a month minimum before the asset are assigned to the SIPP and then the required confirmation to come from Sovereign Malta before our system can be updated.*

*Transfer out process cannot start until transfer in is received, the disinvestment of the funds will only happen once the transfer out request is received and you make a money helper appointment (last we know is money helper appointment may take 6 weeks). We need to ensure we receive all we need from your New Zealand QROPS provider and the process goes through our technical team for transfer out approval.*

*Besides the above processing times you will also incur establishment, annual administration and transfer out fees on the SIPP.*

*We can see time is of essence for you, and we won't be able to complete the transfer in process and transfer out process on the timescale you are expecting due to the complexity and parties involved. If you want us to close the SIPP, we just need an email from you to confirm'.<sup>62</sup>*

- m) 16 May 2023 – Complainant sent email to SPS asking for timeframe for the funds to be transferred once SPS has received the completed documents. He asked for confirmation that the Eur1,000 termination fee be waived in view of the delays over the past seven-plus months.<sup>63</sup>
- n) 16 May 2023 - Email from SPS to the Complainant enclosing the transfer out form required to be completed and outlining other documents that needed to be submitted (including the Suitability Report). The said email

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<sup>62</sup> *Ibid.*

<sup>63</sup> P. 110 - 111

also indicated the application of the Eur1,000 termination fee for the transfer out to the NZ fund.<sup>64</sup>

- o) 18 May 2023 – Complainant confirmed to UK Pensions (IFGL) (with Sovereign Malta in copy) that the transfer of his *'pension fund from Sovereign Malta to the UK SIPP can be cancelled'*.<sup>65</sup> It was further noted that the Complainant and his advisor *'will now deal directly with Karen/Sovereign Malta to expedite the closure of my fund with Sovereign, and the transfer of the funds to New Zealand'*.<sup>66</sup>
- p) 18 May 2023 – Transfer Out Request Form signed by the Complainant,<sup>67</sup> with the Receiving Scheme indicated as the *NZ Funds Managed Superannuation Service* ('NZ Fund'), a Recognised Overseas Pension Scheme (ROPS status), and his adviser being *New Zealand Funds Management Limited* ('NZFM').<sup>68</sup> The reason for the transfer was indicated as being *'Cheaper fees, better accessibility and flexibility'* apart from the funds being in NZ dollars which was more relevant to the Complainant's needs. The method of transfer selected to NZ Fund was in cash (and not *in specie*).
- q) 18 May 2023 – Complainant sent email to SPS querying why it was difficult for SPS to provide him with a timeline. He *inter alia* stated that he was *'NOT paying any fees to Sovereign to process this request'* given the *'extremely poor'* service provider over the last 7 months and given that SPS had previously agreed to waive fees.<sup>69</sup>
- r) 18 May 2023 – SPS noted that it is unable to provide timescales for transfers as it is dependent on third parties, noting also that it will continue the transfer process once the transfer out form is received. It noted that the form received was for the transfer to UK SIPP and it required the same to be completed for the transfer to the NZ Fund. SPS explained that the

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<sup>64</sup> P. 181

<sup>65</sup> P. 63

<sup>66</sup> *Ibid.*

<sup>67</sup> P. 70 - 72

<sup>68</sup> P. 71

<sup>69</sup> P. 108

termination fee will apply as the transfer is now to an external pension provider.<sup>70</sup>

- s) 20 May 2023 – Complainant sent email to SPS expressing his disappointment that SPS is *'not taking any responsibility for the delays in processing [his] original request over the last 7 months'*.<sup>71</sup> He further complained about the level of service and noted that SPS was considering this as a new request which he considered was not. The Complainant submitted that the only reason he was going down this path was because SPS and Blacktower's failure to deliver his original request. He requested the standard fee to be waived as he claimed SPS had agreed to do on the original request. The Complainant also requested a definite timeframe as to when he will be receiving his funds in NZ.
- t) 20 May 2023 – SPS sent email to the Complainant reiterating that it is not in a position to confirm timescales for completion of the transfer out request given it is dependent on third parties. It further noted that the termination fee was applicable in line with the fee schedule. SPS explained that *'As the request to transfer to the UK SIPP was initiated when Sovereign was still the trustee of the MW SIPP 2 which is now IFGL Pensions, the termination fee was not applicable'*.<sup>72</sup> It further noted that SPS will continue the transfer process once it receives the completed transfer out form.
- u) 22 May 2023 – Email from NZFM to SPS attaching the completed transfer out form. NZFM noted *inter alia* that *'Prior to the transfer being made, [NZFM] want the following addressed and will not accept anything less than what is fair and reasonable given the umpteen delays caused by your organisation and total lack of transparency with respect to fees charged, lack of actioning requests in a timely manner, and the continued obstruction to allow Mr GY to transfer. To be clear, there has been an inordinate layering of fees and it is becoming increasingly clear that none of these are in the Mr GY interest ...'*.<sup>73</sup>

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<sup>70</sup> P. 109

<sup>71</sup> P. 105

<sup>72</sup> P. 107

<sup>73</sup> P. 104

NZFM requested all fees and charges levied on the Complainant to be disclosed and requested *'the termination fee of Eur 1,000' and 'the surrender fee' to 'be waived in light of the dreadful service and continued delays that have been caused'*.<sup>74</sup> NZFM further noted that *'We will not move on the above and [NZFM] expect [SPS] to demonstrate everything that has been done to put Mr GY's interests above the constant fee clipping that he has been subject to date'*.<sup>75</sup>

Another email was sent by the Complainant on the same day requesting SPS to *'action this request, with professionalism, integrity and speed'*.<sup>76</sup>

- v) 22 May 2023 – SPS acknowledged the Transfer Out Request Form and noted that it will start reviewing the said document and revert soon.<sup>77</sup>
- w) 24 May 2023 – Email from SPS to the Complainant and NZFM providing its comments following the review of the documents provided. SPS explained *inter alia* that given that the Complainant opted to transfer out in cash (as compared to an *in specie*) it required an advice/suitability report. In case of an *in specie* transfer they can accept the advice report from an adviser they did not have terms of business with. SPS also noted that they had no terms of business with NZFM and that if the Complainant still wished to proceed with a transfer out in cash, SPS *'will either be required to set up terms of business with [NZFM] or alternatively the suitability report and adviser details needs to be completed by a suitable investment adviser which [SPS] have terms of business with'*.<sup>78</sup> SPS also indicated the documents required for them to have a terms of business with NZFM.
- x) 24 May 2023 – Complainant replied to SPS noting he will liaise with NZFM to complete missing information. He queried the need for the suitability report and possibility to waive this requirement and requested details on the process/costs of SPS entering into terms of business with NZFM.<sup>79</sup>

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<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> P. 103

<sup>77</sup> P. 102

<sup>78</sup> P. 101/148

<sup>79</sup> P. 147



- y) 25 May 2023 – SPS explained to the Complainant the rationale for the requested suitability report and that this was required in his best interest.<sup>80</sup>
- z) 26 May 2023 – Complainant sent an email to SPS contesting the need for the suitability report given his previous explanations and process. He reiterated that he was not happy with the service and for his funds to be released as a matter of urgency. He complained about the level of costs charged by SPS and his Scheme structure.<sup>81</sup> The Complainant again requested and emphasised his transfer of funds to be '*actioned asap*' and that he was ready to sign a waiver.
- aa) 27 June 2023 – SPS informed the Complainant that it has considered his request not to provide a suitability report from an investment adviser and that it was agreed that SPS will need a signed Deed of Indemnity instead. SPS noted that this was being drafted and will be sent to the Complainant.<sup>82</sup>

With respect to the Complainant's request to transfer out in cash, SPS reminded the Complainant that it had no terms of business with NZFM. SPS however referred him to the arrangement he had with Quilter Cheviot as Discretionary Fund manager and asked him to confirm whether it was agreeable to request Quilter Cheviot to undertake the selling down of his assets within the policy to avoid requiring setting up terms of business with NZFM.

SPS also reminded NZFM about certain missing documentation that are required from their end.<sup>83</sup>

- bb) 27 June 2023 – Complainant requested SPS to email him the indemnity form and asked for details of the costs for the selling down of his fund and contact at Quilter Cheviot. He also asked whether Blacktower could handle the selling down.

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<sup>80</sup> P. 146

<sup>81</sup> *Ibid.*

<sup>82</sup> P. 204

<sup>83</sup> P. 205

- cc) 29 June 2023 – Email from SPS to the Complainant notifying him that the deed of indemnity was being reviewed. Contact details of Quilter Cheviot were also provided.<sup>84</sup>
- dd) Early July 2023 – Communications between the Complainant and Quilter Cheviot regarding the sale of investments on his Utmost policy.<sup>85</sup> This followed an email dated 6 July 2023 sent by SPS to Quilter Cheviot where it was noted that *'The member is enquiring about having Quilter Cheviot who is appointed as Discretionary fund manager, to sell down all the assets currently held within the Utmost policy'* and for details about applicable charges for doing this.<sup>86</sup>
- ee) 3 July 2023 – NZFM sent email to SPS requesting certain clarifications regarding the Deed of Indemnity; raising an aspect about the indemnification of the Trustee/RSA of the pension fund outlined in the Receiving Scheme declaration; and enclosing requested documentation/information relating to the transfer out.
- ff) 14 July 2023 – Email from Complainant to SPS where the Complainant stated that he did not need investment advice but just needed action in selling down his portfolio and for SPS to arrange this. He questioned the fees being charged and noted that he was still waiting for the indemnity form. He highlighted his concern and frustration about the situation and that he was still waiting a reply to his complaint regarding the delays.<sup>87</sup>
- gg) 15 July 2023 – SPS asked Complainant whether Blacktower can provide him with investment advice for the surrender of the policy into cash as they had the required licence (given that Quilter Cheviot no longer had authority).<sup>88</sup>
- hh) 18 July 2023 – SPS sent email to NZFM requesting a copy of its signatory list in respect of the Transfer Out form signed by the Receiving Scheme. A copy of the trust deed was also requested.<sup>89</sup>

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<sup>84</sup> P. 202 - 203

<sup>85</sup> P. 152 - 160

<sup>86</sup> P. 159

<sup>87</sup> P. 151

<sup>88</sup> *Ibid.*

<sup>89</sup> P. 200

- ii) 20 July 2023 – Dealing Instruction Form signed by the Complainant for the sale of his investments held within the Utmost policy.<sup>90</sup>
- jj) 21 July 2023 - SPS sent email to Complainant noting that: it is not authorised/licensed to provide advice; it received the dealing instructions from Blacktower and instructed these to be processed; terms of business with NZFM will not be required; the deed of indemnity was in final review; it will continue to process once all remaining documentation/information is received.<sup>91</sup>
- kk) 24 July 2023 – Email from SPS to the Complainant and NZFM regarding the deed of indemnity and other scheme documents.<sup>92</sup>
- ll) 25 July 2023 – SPS provided the Complainant with a deed of indemnity for him to sign reminding also NZFM regarding the missing documents.<sup>93</sup>
- mm) 26 July 2023 – Complainant sent email to SPS raising issues about the terms of indemnity supplied by SPS which were not workable for him. He complained about the Early Withdrawal Fee which he considered as obscene and complained about the level of service he received and performance of his fund which did not match the *'high level of fees'*.<sup>94</sup>

He questioned the need for advice and suitability report when he considered his interactions with previous accredited advisers as being poor and actions not taken in his best interests, where he complained that *'The whole investment structure of the bond was based on an unnecessary level of layering and complexity, which has simply lined the pockets of Sovereign, Utmost, Blacktower and PWS'*.<sup>95</sup>

The Complainant questioned the fund performance which had been average and claimed poor management of his Retirement Scheme which was continually being drained through fees. He complained that he could not accept full responsibility for costs/ penalties resulting from the

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<sup>90</sup> P. 256 - 258

<sup>91</sup> P. 150

<sup>92</sup> *Ibid.*

<sup>93</sup> P. 209

<sup>94</sup> P. 208

<sup>95</sup> *Ibid.*

withdrawal/closure given his claim that SPS and Blacktower failed him over the past months. He questioned how SPS still wanted him to indemnify them.

He requested the Early Withdrawal Fee to be waived as compensation for the delays in actioning his requests.

- nn) 1 Aug 2023 – SPS sent an email to the Complainant, drawing his attention to the charging structure he had previously signed in 2016,<sup>96</sup> where he had confirmed his agreement to the policy terms and associated fees levied by Utmost. SPS explained that the surrender charges are levied by Utmost and *'To avoid these charges the only option available is to reassign the Utmost policy in-specie to the new scheme'*.<sup>97</sup> Other aspects relating to upfront fees claimed to have been paid in 2016 to a previous adviser (PWS) were also considered in the said email.

As to the Complainant's complaint sent in April 2023, SPS explained the Scheme's structure and pointed out that it *'cannot proceed with the surrender request/liquidation until the Deed of Indemnity is duly signed'*.<sup>98</sup> SPS further suggested that the Complainant handle any grievances that the Complainant may have with Blacktower regarding advice and fees directly with them.

- oo) 7 Aug 2023 – Email from NZFM notifying SPS that it will receive shortly the requested signatory list and, also, asking SPS to attend to the Complainant's email regarding *'the inordinate fees levied on his account totalling £17,813.16 GBP and what [SPS] propose to do to have these fees significantly reduced/waived'* given that *'The fees attributable are not acceptable nor reasonable'*.<sup>99</sup>

- pp) 9 Aug 2023 – Communications between NZFM and SPS regarding a disputed paragraph which SPS claimed was a standard clause in its

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<sup>96</sup> P. 226 - 230

<sup>97</sup> P. 207

<sup>98</sup> *Ibid.*

<sup>99</sup> P. 199

literature.<sup>100</sup> NZFM asked SPS to re-review its literature and amend it accordingly to reflect its position.

- qq) 9 Aug 2023 – Complainant noted that his investments were sold down by Blacktower but were *‘sitting in a non-interest-bearing account with Utmost’*. He noted that *‘This is not acceptable, as this is again at my cost’*.<sup>101</sup> He calculated this to cost him *‘approx £53 per day’* and asked SPS to confirm whether it is happy to cover this whilst it was continuing *‘to ask for irrelevant information and adopt a totally inflexible approach’*.<sup>102</sup> He highlighted that he wanted his *‘funds available in NZ asap’* and had reservations about signing the indemnity provided by SPS.<sup>103</sup>
- rr) 10 Aug 2023 – Valuation issued by Utmost regarding the *‘Estimated Surrender Value’* of the Complainant’s policy where the *‘Outstanding charges’* were indicated at GBP 18,144.89.<sup>104</sup>
- ss) 10 Aug 2023 – SPS notified the Complainant that it was currently reviewing the requirement for the deed of indemnity and was to revert shortly. It noted that before it can proceed any further, it required the Complainant to confirm that he accepted the Utmost surrender charges.<sup>105</sup>
- tt) 31 Aug 2023 – Declaration letter/waiver of liability signed by the Complainant confirming *inter alia* that he resolved to proceed with the transfer of his pension without obtaining the suitability report and also to proceed with the transfer despite the applicable early withdrawal charge which he indicated was approx. GBP 18,400 on the Utmost policy.<sup>106</sup> In the said declaration the Complainant further confirmed that *‘In making this choice, I take full responsibility for my decision and release and exonerate Sovereign Pension Services Limited and its employees and representatives from any liability, losses, claims, costs, charges, taxes, expenses, actions,*

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<sup>100</sup> P. 196 - 198

<sup>101</sup> P. 195 - 196

<sup>102</sup> *Ibid.*

<sup>103</sup> P. 165

<sup>104</sup> P. 206

<sup>105</sup> P. 195

<sup>106</sup> P. 170

*demands, penalties proceedings, and judgements whatsoever which Sovereign may incur in relation to this Transfer*'.<sup>107</sup>

- uu) 14 Sept 2023 – Email to SPS from Mike Gray, Principal Senior Counsel of NZFM, regarding the declaration requested by SPS from the Receiving Scheme.<sup>108</sup> NZFM suggested some proposed amendments to the requested indemnity in the declaration form and asked for direct lawyer-to-lawyer conversation to speed up and resolve the matters.
- vv) 29 Sept 2023 – Email from Complainant to a number of parties requesting confirmation as to whether all outstanding documents were sent to SPS and also requesting SPS what could be done to get some interest on his funds.<sup>109</sup>
- ww) 15 Nov 2023 - Email from Mike Gray, Principal Senior Counsel of NZFM to SPS confirming that he updated and signed the Receiving Scheme Declaration form. The said form was also sent in an electronically signed version to facilitate the release of the Complainant's funds in advance of receiving the hard copy of the declaration.<sup>110</sup>
- xx) 15 Nov 2023 – Receiving Scheme Declaration signed by NZFM on 15 November 2023.<sup>111</sup>
- yy) 15 Nov 2023 – SPS confirmed to the Complainant/NZFM that it *'will request the full surrender from Utmost today'*.<sup>112</sup>
- zz) 16 Nov 2023 – SPS informed the Complainant and NZFM that the surrender was instructed online the day before. It noted that it was unable to provide a specific timescale at that point but confirmed that Utmost initiated the surrender process as per its online portal. SPS further noted that the online portal is being monitored for updates every day and the Complainant was to be notified as soon as Utmost confirms that the funds have been released. SPS confirmed to NZFM that *'once the money reach our account,*

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<sup>107</sup> *Ibid.*

<sup>108</sup> P. 171

<sup>109</sup> P. 23

<sup>110</sup> P. 173

<sup>111</sup> P. 174 - 179

<sup>112</sup> P. 180

*we can affect the payment to the receiving scheme on the same day* and asked to NZFM to reconfirm the bank account for the transfer.<sup>113</sup>

aaa) 16 Nov 2023 - Complainant sent an email to SPS requesting a breakdown of how the surrender fee has been calculated, given that the figure of over GBP18,000 still seemed high.<sup>114</sup>

bbb) 17 Nov 2023 – Complainant asked SPS for clarifications regarding the fees charged by Utmost which he considered as appalling and needed to be waived. He claimed that since May 2023, it had cost him at least another GBP6,000. The Complainant queried how his pension fund could have reduced further in value when *‘the investment was cashed in several months ago and has been in cash form awaiting transfer to NZ’*.<sup>115</sup> He asked for explanations regarding the sudden drop in value and noted that *‘It looks like the surrender fees have been taken twice’*.<sup>116</sup> Accordingly, he requested SPS to confirm whether this was a clerical error.

ccc) 17 Nov 2023 – SPS informed the Complainant that they sought clarification on the surrender charge from Utmost, who provided a detailed breakdown of their charge. SPS requested the Complainant to confirm whether the full surrender should be stopped given that this was already being processed.<sup>117</sup>

ddd) 20 Nov 2023 – SPS notified the Complainant that Utmost was asked to cancel the full surrender. SPS also asked the Complainant to liaise directly with Utmost on his queries about the surrender charges.<sup>118</sup>

eee) 21 Nov 2023 – Detailed email sent by the Complainant (followed by another one by NZFM) to Utmost *‘querying the ongoing fees applied on [his] investment policy, which was cashed in late July’*.<sup>119</sup> The calculation of the surrender charge was also questioned given that the Complainant claimed

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<sup>113</sup> P. 234 - 235

<sup>114</sup> P. 233

<sup>115</sup> P. 231

<sup>116</sup> *Ibid.*

<sup>117</sup> P. 231 - 232

<sup>118</sup> P. 244

<sup>119</sup> P. 243

that *'It looks like your extortionate surrender fee has been deducted twice from the cash sum'*.<sup>120</sup>

The Complainant also noted that Blacktower have not been advising him in 2023 and that no ongoing fees should be paid to them.

He further argued that *'On the basis that Utmost haven't been providing any investment services since my assets were cashed in, then there should also be no ongoing charges, particularly as the funds have been sitting in a non-interest earning account for over 4 months now'*.<sup>121</sup>

The Complainant further added that:

*'This is extremely urgent, as my original request to move my fund to NZ was initiated over 12 months ago. Due to complete incompetence by Blacktower, the first attempt to move the funds was aborted in May 2023. Since then, Sovereign has been extremely slow, bureaucratic and inflexible in processing this request. We had finally agreed wordings on various documents, which have now all been signed, so we are just awaiting confirmation of the final sum to be transferred ...'*.<sup>122</sup>

fff) 21 Nov 2023 – Complainant updated SPS that Utmost confirmed that his calculations were correct and that there was *'misinformation' in the surrender sum quoted by Utmost'*, which was forwarded by SPS without question.<sup>123</sup> He *inter alia* submitted that he was let down again by SPS noting that more of his time was taken for the matter to be sorted out. The Complainant confirmed that Blacktower were sacked in January 2023, and he had asked for their fees to be refunded to his account.<sup>124</sup>

ggg) 22 Nov 2023 – Utmost sent an estimated surrender valuation as at *'14/11/2023'* with a breakdown of the charges and approximate surrender value.<sup>125</sup>

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<sup>120</sup> P. 243

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> P. 236

<sup>124</sup> P. 236 - 237

<sup>125</sup> P. 287 - 288



- hhh) 22 Nov 2023 – SPS informed the Complainant about the surrender quote obtained from Utmost’s online portal and noted that Utmost was contacted about the charges for explanations regarding the discrepancy. SPS noted that it intended *‘to address this discrepancy with Utmost, as it appears to be a significant error on their part’*.<sup>126</sup>
- iii) 24 Nov 2023 – Complainant emailed SPS noting that he was *‘still battling for [his] funds to be released’*.<sup>127</sup> SPS was asked if it could help speed up the process with Utmost given he had received different responses from Utmost.
- jjj) 25 Nov 2023 – The Complainant emailed SPS noting the treatment of uninvested funds in a UK SIPP through the payment of a *‘reasonable rate of interest’*.<sup>128</sup> In the said email, he explained that he expected this to be the norm in any investment situation and highlighted that it was unacceptable for him that his funds had been sitting in a non-interest earning account for 4 months.
- kkk) 28 Nov 2023 – SPS explained, in its email to the Complainant, that the funds were at the time held in cash with Utmost and that *‘The policy cannot be surrendered until the surrender fee issue is rectified’*.<sup>129</sup> SPS noted that they will liaise with Utmost to prioritise the matter with urgency.
- lll) 28 Nov 2023 – Email from Complainant to SPS highlighting *inter alia* how he was being disadvantaged until the matters are sorted out and requesting that responsibility is taken for the delays.<sup>130</sup>
- mmm) 1 Dec 2023 - Email from SPS to the Complainant, confirming that they are working to expedite the transfer and that there was an escalation with Utmost. SPS noted *inter alia* that *‘Your consistent inquiries, while appreciated, divert our focus from addressing the matter at hand. We have responded to your queries on numerous occasions, and we kindly*

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<sup>126</sup> P.236

<sup>127</sup> P. 29

<sup>128</sup> P. 30

<sup>129</sup> P. 28

<sup>130</sup> P. 27 - 28

*request your understanding of the operational timeframes involved in dealing with third parties’.*<sup>131</sup>

nnn) 1 Dec 2023 – Complainant sent lengthy email to SPS expressing his frustration and disappointment with the process.<sup>132</sup> The Complainant also asked whether the surrender could take place in advance of the refund of the commission/fees from Blacktower paid in 2023, *‘with Utmost adding these fees back to [his] account and then getting them from Blacktower in due course, rather than further delaying the process’.*<sup>133</sup>

ooo) 8 Dec 2023 – Utmost sent email to the Complainant acknowledging that the surrender value provided with the breakdown was incorrect and apologised for such. The reason for the incorrect surrender value quote was explained as follows:

*‘... the full surrender was input by Sovereign on 15 November 2023, through Wealth Interactive. On the same date, the outstanding charges were deducted in preparation for the funds to be released. When Ms Xuereb contacted our office on 17 November 2023 to obtain a breakdown of the surrender charges, the system did not take into account that the surrender charges had already been deducted. Therefore, as the current policy value was the net value after all outstanding charges, the system calculated a new surrender value. However, I would add that the charges provided within the breakdown were correct as of that date. You then contacted us directly to query the charges, and we provided the correct surrender valuation on the same date’.*<sup>134</sup>

ppp) 8 Dec 2023 – Email from Complainant to Utmost and SPS where he *inter alia* submitted that *‘The only reason the surrender has been delayed since mid-November, is because Utmost provided an incorrect surrender statement to Sovereign which would have meant I was £18k out of*

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<sup>131</sup> P. 26 - 27

<sup>132</sup> P. 25 - 26

<sup>133</sup> P. 26

<sup>134</sup> P. 281 - 282

*pocket. Naturally, I queried this and stopped the surrender, until this was resolved ...*'.<sup>135</sup> The Complainant further argued that he was provided with incorrect information and that SPS had not double-checked the information before releasing it.

As to the advisor's fees, the Complainant explained that he *'had relied on Blacktower advising Sovereign and Utmost that they were no longer my advisor and therefore not entitled to any further fees'*.<sup>136</sup> He noted that Blacktower *'have now agreed to refund fees since August'*.<sup>137</sup>

The Complainant considered that his policy was going to be surrendered *'with an incorrect amount'* and considered that he should be compensated accordingly.<sup>138</sup>

- qqq) 11 Dec 2023 – SPS signed a letter addressed to Utmost instructing it *'to initiate the clawback of advisory fees paid to Blacktower Financial Management (International) Limited, totalling £760.18'*.<sup>139</sup>
- rrr) 12 Dec 2023 – SPS notified the Complainant that they instructed Utmost to claw back the fees. It noted that *'the full surrender cannot be requested until the clawback of fees has been completed'*.<sup>140</sup>
- sss) 12 Dec 2023 – In his email to Utmost, the Complainant submitted that the surrender process has been delayed by a month and cost him more than GBP100. He calculated the lost interest at 5% over a month period to equate to GBP 1,350 and asked Utmost to reconsider the extent of compensation.<sup>141</sup>
- ttt) 13 Dec 2023 – Utmost sent a further explanation to the Complainant regarding the incorrect statement issued which reflected a discrepancy in the surrender charge. Whilst apologising for the incorrect valuation Utmost, however, noted that the statement was not an actual

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<sup>135</sup> p. 280

<sup>136</sup> *ibid.*

<sup>137</sup> p. 281

<sup>138</sup> *ibid.*

<sup>139</sup> p. 255

<sup>140</sup> p. 254

<sup>141</sup> p. 278

transaction, and it did not affect the active surrender that was going to occur on the 15th of November 2023, which, it submitted, had correct figures. Utmost, therefore, did not agree with his comment *‘that if this payment was executed the surrender of [the Complainant’s] policy would have been incorrect’*.<sup>142</sup>

With reference to the advisor’s fees, Utmost submitted that they were not at fault on this matter as they *‘did not receive any notification from Blacktower or yourself, via Sovereign Group’* (that Blacktower was no longer appointed).<sup>143</sup> Utmost further confirmed that they were ready to credit the clawback amount of the advisor before the funds reaches them if Blacktower sends them confirmation that they sent the refund.

Utmost refuted that they delayed the surrender and did not consider making any error with regard to his actual funds. However, Utmost acknowledged the distress and inconvenience caused to the Complainant and offered him GBP 100.

## Observations and Conclusions

The Arbiter has the following observations to make with respect to the main key aspects of the Complaint:

(i) *Alleged excessive and unreasonable time to deal with the transfer out*

It is noted that following the initial delays on the part of Blacktower in the liaison with SPS for the transfer out to Sovereign UK SIPP, the Complainant became a member of the UK SIPP by end April 2023. By this time, only membership had occurred with the transfer out still to be finalised.

Whilst it has not emerged what exactly contributed to the time from when the process commenced in late 2022 with SPS to when the Complainant became a member in April 2023, the Arbiter, however, notes the important key developments that occurred following the Complainant’s notifications of 29<sup>th</sup> April 2023 and 13<sup>th</sup> May 2023 (as per the timeline of events

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<sup>142</sup> P. 279

<sup>143</sup> *Ibid.*

above).<sup>144</sup> These developments involved first, the indication of the intended transfer of funds from Sovereign UK SIPP to New Zealand and, then, the consideration of having the Malta Scheme transferring directly to New Zealand.

These developments brought material new implications which justifiably needed to be duly considered – the emails of Sovereign Malta/UK of 13<sup>th</sup> and 16<sup>th</sup> May 2023 particularly refer.

The major changes to the proposal understandably triggered new considerations and requirements. The changes involved not only a change in the receiving scheme (initially from a Sovereign related scheme that is, Sovereign UK SIPP) to a new external receiving scheme in New Zealand, but also eventually a material change in the manner of the transfer. Whereas the initial proposal in late 2022/early 2023 involved an *in specie* transfer the revised proposal in mid-2023 onwards involved a cash transfer which required a complete redemption of the investment portfolio.

The cash transfer on its own understandably involved a lengthier process. Apart from raising new requirements with respect to the required documentation for the processing of this request, it also raised new material aspects - particularly the application of the early withdrawal (surrender) fees on the underlying policy. The application of the surrender fees was indeed a new issue which was referred to, and disputed extensively, by the Complainant and his new adviser/investment providers (NZFM) in various subsequent communications exchanged with SPS from May 2023 onwards as emerging in the timeline above.

Apart from this, it is noted that there were new requests (triggered by both the Complainant and the new receiving scheme in New Zealand respectively), which involved a divergence from SPS's standard procedures and forms which accordingly reasonably needed to be considered internally by SPS. This contributed to the further lengthening of the new transfer process.

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<sup>144</sup> It is noted that in his Complaint to the OAFS, the Complainant particularly contested the process and alleged delays from mid-May 2023 onwards as outlined in the remedy requested.

Further stumbling blocks which needed to be sorted out, were eventually encountered which contributed to the further prolongation of the transfer process. These involved the matter arising about the fees paid to Blacktower which needed to be clawed back as well as the mistake in the surrender estimate made by Utmost, which it was felt needed to be clarified prior to the finalisation of the transfer.

Whilst the mistake in the surrender estimate was identified in mid-November 2023 and clarified in early and mid-December 2023, it is noted that the clawback of the overpaid advisory fees was still ongoing in December 2023 as indicated in the section titled 'Timeline' above.

The Arbiter finds no solid basis and grounds on which SPS can be held responsible for reasonable time taken to sort out the new matters.

It is further noted that in the absence of SPS receiving notification about the termination of service of Blacktower, SPS cannot be either held responsible for the delays related to the overpayment of fees to Blacktower and recoument of such fees. (It is noted that as confirmed in a communication of 13<sup>th</sup> December 2023, neither Utmost had received notice that Blacktower was no longer appointed and hence had to stop the fees payable to such party).

Whilst the Arbiter can understand the Complainant's frustration, the Arbiter however, does not find adequate and sufficient basis on which he can reasonably and justifiably deem SPS itself responsible for the alleged excessive delays and unreasonable delays claimed by the Complainant.

This is when taking into consideration the particular circumstances of the case, particularly the timeline of events and matters raised as summarised above.

(ii) *Alleged failures in the manner the transfer out process was handled by SPS*

A review of the communications exchanged between the parties as outlined in the section titled 'Timeline' above does not support the claims made by the Complainant either.

(iii) *SPS's alleged failure regarding his complaint with IOM Ombudsman*

Without entering into the merits of the alleged failures on the part of Utmost, the Arbiter shall next consider whether fault can be attributed to SPS's actions in its capacity as trustee in refusing to join the Complainant in his complaint against Utmost with the IOM Ombudsman.

It is noted that SPS refuted to join the Complainant in his complaint against Utmost as it did not endorse the said complaint, actually considering it as being frivolous. Such position was reached after consideration of the formal complaint and requests made by the Complainant directly with Utmost and consideration of Utmost's replies and position on the claims made.

The Arbiter further notes that, in addition, there is a certain overlap between the nature of the claims made by the Complainant against SPS (which SPS had refuted) and those made against Utmost.

An awkward position understandably ensued to both parties – where on one side the Complainant could not proceed with his complaint with the IOM Ombudsman without the trustee's support, whilst on the other SPS was asked to support and join a complaint which it did not agree with, and which created a conflicting situation for SPS.

The Arbiter considers that both parties had thus their own reasons and justifications for their respective positions. Whilst SPS could not be reasonable forced to join such complaint and had its own reasons and basis for not doing so, however, this understandably precluded the Complainant from pursuing his complaint against Utmost with the IOM Ombudsman, in the process removing the possibility for the Complainant to pursue his complaint through such venue.

Hence, it is considered that there is certain responsibility that SPS took on its shoulders once it decided not to support and participate in the complaint with the IOM Ombudsman.

In allocating any responsibility in this regard, the Arbiter considers that an important aspect that needs to be taken into account in this regard relates to the nature of the complaint that the Complainant wanted to raise against Utmost.

The key aspect of his complaint involves the foregone interest that could have been earned had the mistake in the surrender estimate not been done and the transfer executed earlier. This is an aspect considered further on in this decision.

The other aspects raised, namely, the Complainant's claim that he should not have been charged by Utmost ongoing account fees during the time his funds were kept in cash is an aspect that ultimately was not substantiated with reference to the terms and conditions applicable on the respective products (either the policy and/or the Retirement Scheme).

It has indeed not been demonstrated, nor has it emerged, that in case where the underlying assets within the policy are kept in cash, and hence, during the time when no investment portfolio existed, the regular policy and/or Scheme fees were to be waived in full or partially in terms of any provision of the product documentation and contractual arrangement entered into.

The above consideration also similarly applies with respect to the claimed calculation of the surrender costs.

In the circumstances, it is considered that there is no basis on which the Arbiter can uphold the demands made by the Complainant on this aspect.

*(iv) Interest expected on his uninvested cash*

It is noted that the Complainant expected to receive interest on his uninvested cash until the time his funds were transferred. In his email of 25<sup>th</sup> November 2023 to SPSL he enclosed a document from another pension provider, IFGL pensions, which he received in November 2023,



and which made reference to how IFGL *'will treat and pay interest on your uninvested funds'*.<sup>145</sup>

During the proceedings of the case, it has, however, not emerged how Utmost, the policy provider, was to treat uninvested cash as per any relevant terms and conditions of the policy. The treatment of uninvested cash would vary from each platform provider and is subject to the respective provider's approach which may differ from one provider to the other.<sup>146</sup>

The fact that other providers, such as IFGL, as referred to by the Complainant, may have offered interest on one's uninvested funds did not mean that there was an obligation on the part of Utmost and/or SPS to offer interest on the uninvested portion, particularly in the absence of any such specific feature and/or term provided in the product documentation of the underlying policy and/or Retirement Scheme.

Moreover, apart that it has not emerged nor been proven that Utmost offered interest on the uninvested cash, the Arbitrator also takes into consideration the context of such uninvested cash. That is, the uninvested cash came about as the result of proceeds from the sale of investments instructed by the Complainant prior to and for the purposes of the transfer out. Such uninvested cash was thus parked and awaiting to be transferred to the new New Zealand scheme.

As a member-directed retirement scheme, SPS furthermore had no discretion to itself transfer the uninvested cash held in the Retirement Scheme's underlying policy to an interest-bearing account. Such direction had to be given by the Complainant and/or his adviser and considered/agreed to between the parties.

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<sup>145</sup> P. 32

<sup>146</sup> Recent article on treatment of uninvested cash by different providers for example refers - <https://www.investorchronicle.co.uk/news/2024/04/02/how-your-isa-and-pension-provider-treats-your-cash/>

Whilst the Arbiter sympathises with the Complainant regarding this situation, in the circumstances, the Arbiter cannot find SPS to be at fault and held responsible for the requested payment of the foregone interest.

### **Concluding remarks**

The transfer process has taken substantial time and effort on all parties, as amply evidenced in the timeline of events above.

As clearly emerging from the case and the details included in the section titled 'Timeline' above, the Complainant felt aggrieved and was unhappy with the extent of the high level of fees he was being charged on the Retirement Scheme's overall structure which were deemed as excessive and unreasonable. The extent of fees was indeed an aspect which triggered his request to transfer out from the Scheme and surrender his underlying policy.

The Complainant expected certain fees to be waived, and the perceived unreasonable delays and issues that cropped up along the transfer process were then raised in an attempt to reduce or recover part of the fees charged on his Scheme and underlying policy.

Whilst understanding the Complainant's views and mindset, the Arbiter does not, however, find sufficient basis on which he can accept the Complainant's request for the waiving of the requested fees when these were part of the contractual terms he had entered into with the Scheme and underlying policy.

Except in the particular case further elaborated upon in the next paragraph, there is no sufficiently satisfactory basis on which the Arbiter can order compensation on the foregone interests for the reasons mentioned. The Complainant's requests cannot either be considered as legitimate expectations having considered the particular circumstances of the case.

The only case where there is reasonable doubt about loss of interest for which the Service Provider may be considered as partly responsible is the delay of one month in transfer of funds caused by Utmost's error in charging the surrender fee twice.

Whilst the payment was delayed by the Complainant's initiative until the error was explained and corrected, and whilst it is claimed that had the Complainant not done so the actual transfer would have been made for the correct amount (presenting the impossibility of proving of counter-factual) the Arbiter sees reasonable justification in the Complainant's action, and also considers that there is some responsibility on the part of the Service Provider in not spotting, querying and sorting this error in the first place.

In terms of the Complainant's reply to Utmost's explanation of 12<sup>th</sup> December 2023,<sup>147</sup> this caused the Complainant a loss of interest amounting to GBP 1350. The argument made was that the funds could not have been transferred irrespective of this one-month delay given that the adviser's clawback of fees amounting to GBP 760.18 was still awaited.

All considered, the Arbiter feels that there were other factors contributing to this loss of interest, but the Service Provider should carry 50% of it amounting to GBP 675.

Finally, the Arbiter sees there is no case for and refutes any claim for moral damages.

### **Decision**

**For the stated reasons, and in terms of Article 26(3)(c)(iv), the Arbiter partially upholds this Complaint and orders the Service Provider to pay the Complainant GBP £675 or the equivalent thereof in New Zealand Dollars.**

**Due to the nature of this case, each party is to bear its own costs of these proceedings.**

**Alfred Mifsud**  
**Arbiter for Financial Services**

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<sup>147</sup> P. 278

## **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.