Before the Arbiter for Financial Services

Case ASF 140/2024

VS

('the Complainant')

vs

Lawsons Equity Limited

(C 49564) renamed as

Aventis Financial Planning Limited

('the Service Provider' or 'the Company')

Sitting of 30 January 2026

The Arbiter,

Preliminary

As confirmed during one of the sittings,[1] *Lawsons Equity Limited* changed its name to *Aventis Financial Planning Limited* ('the Service Provider'). The change in name is verifiable with the records filed with the Malta Business Registry, which indicate the change in name effective from 21 May 2025.[2]

For all intents and purposes, the records of the case were updated to reflect the change in the name of the Service Provider.

[1] Hearing of 25 June 2025 – Page (P. 288)

[2] https://register.mbr.mt/app/query/get_company_details?auto_load=true&uuid=40c63f13-1ca2-58a1-a533-f4abe6039168

The Case in question

The Complaint relates to the investment services provided by the Company. The Complainant, in essence, claimed that in its investment reports, the Company wrongly classified him as a Professional Investor when he should have been classified as a retail investor. The case involves an investment made within the Complainant's Malta-based Retirement Scheme[3] of GBP 518,000 into a loan arrangement granted to the *'Bury Football Club'* on which he claimed to have suffered a substantial loss.

The Complainant claimed that the Company failed its legal and fiduciary duties to protect him from the high-risk investment when it advised him to invest in the disputed investment and mistakenly classified him as a Professional Investor.

The Complaint[4]

In the Complaint Form to the Office of the Arbiter for Financial Services ('OAFS'), the Complainant explained that the Service Provider had advised him to invest in a loan to *'Bury Football Club',* which resulted in losses of GBP 394,764.

The Complainant claimed that the due diligence of the investment was mis-managed by the trustee given he claimed that:

1. The valuation was not addressed to the trustee;
2. The valuation assumed a clean title. However, 252 leases of the car park had been sold, considerably devaluing the land. The Complainant claimed that this was not pointed out to him;
3. There was no investigation into the financial position of the guarantor of the loan;
4. Interest payments were missed that he was never told about and a further GBP 300,000 was subsequently invested.

[3] The Melita International Retirement Scheme ('the Retirement Scheme'), whose trustee is TMF International Pensions ('TMF') (through which the disputed investment was made).
[4] Complaint Form on Page (P.) 1 - 6 with extensive supporting documentation on P. 7 - 87

He claimed that the Service Provider failed in their legal and fiduciary duties to protect him from the high-risk investment.

The Complainant asserted that he was mistakenly classified as a Professional Investor. He pointed out that in their Final Response to his complaint, the Service Provider referred to his discussions with Gregory Garrett. He submitted that, however, Garrett was not a financial adviser. Furthermore, the Complainant did not see any relevance of the previous investments that were referred to in the Company's reply.

Remedy requested

The Complainant noted that he had invested a total of GBP 518,000, which, together with fees of GBP 23,257, less the amount realised of GBP 146,493, yielded him a loss of GBP 394,764.

The Complainant sought compensation of the full amount of losses plus interest.[5]

Having considered, in its entirety, the Service Provider's reply,[6]

Where the Service Provider explained and submitted the following:

A. Preliminary Pleas

Competence of the Arbiter due to the time for lodging of complaint

The Service Provider noted that the Complainant claims that he was first made aware that *Bury Football Club* had defaulted on 12 December 2022. It emphasised that this was incorrect as evidenced in:

- Correspondence sent by TMF to the Complainant in January 2021, where it was noted that interest was not being paid out annually and would not be recovered in January 2021 (as per Appendix E to its reply).[7] It noted that this is the date which should be taken into account for the purpose of assessing whether the Complaint was lodged in a timely manner.

[5] P. 4
[6] P. 92 – 96 with extensive supporting documentation on P. 98 - 126
[7] P. 92 & 118

- Correspondence sent by TMF to the Complainant on 8 December 2021 (as per Appendix F to its reply);[8]

- The fact that the Complainant closed the account and accepted the payment on 11 March 2022 (as per Appendix C to its reply).[9]

It further highlighted that additionally, documentation found at pages 73 to 86 of the acts of the Complaint indicates clearly that the Complainant was made aware of the default of *Bury Football Club* way before 12 December 2022.

The Service Provider referred to Article 21(1)(c) of the Arbiter for Financial Services Act ('the Act') and emphasised that the Complainant only lodged his complaint with the Company on 11 May 2023, and therefore later than two years from the date when he became aware that *Bury Football Club* had defaulted.

The Company accordingly submitted that the Complaint should be discarded as time-barred.

Competence of the Arbiter in view of the amount of compensation sought

The Service Provider noted that the Complainant was seeking compensation for the amount of GBP 394,764. Without prejudice to the plea raised in relation to the applicable prescriptive period, it referred to Article 21(3)(a) of the Act and submitted that even if the Arbiter had to consider the Complainant's Complaint as founded and justified, any eventual award cannot exceed the mandatory compensation of EUR 250,000.

B. Pleas in relation to the merits of the Complaint

Without prejudice to the preliminary pleas raised, the Service Provider submitted the following in relation to the merits of the Complaint:

[8] P. 92 & 119
[9] P. 92 & 104

Claims that the Company advised the Complainant to invest in a loan to *Bury Football Club* which resulted in losses of GBP 394,764

The Service Provider explained the scope of its appointment where it pointed out the following:

- That the Complainant, then already an experienced investor, had previously held securities amounting to GBP 855,000, which had matured and the proceeds of which, he wanted to re-invest in a *5 Year Commercial Loan to Bury Football Club* – a security with similar investment risk profile to the securities he held before;

- That the Complainant had approached *TMF International Pensions Limited*, acting as retirement scheme administrator for *Melita International Retirement Scheme Trust*, with instructions to make such investment on his behalf. Given that the security was offered by *Capital Bridging Finance Solutions Limited* only to Certified High Net Worth Individuals, Sophisticated Investors or Business Owners, an investment report noting the Complainant's risk profile was required;

- That the Service Provider was approached by TMF with a brief to issue an investment report noting the Complainant's risk profile. The Company highlighted that it issued the report only in order to enable the execution of the Complainant's investment preferences and not as investment advice. It submitted that warnings were clearly made to the Complainant to this effect and in the investment reports issued by the Service Provider on 13 September 2017 and 30 November 2017, respectively, wherein it was stated that:

  'Lawsons Equity are not qualified to comment on the financial aspects of this commercial loan. We are not legal nor financial experts in real estate, football clubs nor property rentals, and our recommendation not be seen as an opinion of the likelihood of success or failure in the proposed transaction';[10]

[10] P. 94

- That the Complainant accepted and acknowledged all the terms and conditions of the investment reports issued by the Service Provider by signing all the pages, including the declaration to the effect that he had been classified as a Professional Investor (Sophisticated Investor in terms of the FCA rules applicable at the time). The Service Provider further noted that at the time when the Investment Report was issued, the MFSA Rules did not provide for guidance or a definition for the classification of clients and the concept of sophisticated investor arose from the FCA COBS 4.12.8 (as per Appendix I to its reply),[11] which the Company based its assessment on;

- That the Service Provider's engagement was limited solely to the issue of these two reports and in fact, the Company only received two one-time payments of GBP 1,500 and GBP 750 respectively, specifically for the issue of the two reports noting the Complainant's risk profile. It emphasised that the Company was never appointed to issue ongoing investment advice/portfolio management to the Complainant.

In view of the above, the Service Provider submitted that the Complainant's claim should be repudiated as unfounded in fact and at law since it never provided advice in relation to the investment which the Complainant himself had directed TMF to invest in.

<u>Complainant's claims that the Service Provider failed in their legal and fiduciary duties to protect him from a high-risk investment</u>

The Service Provider noted that the Complainant claims that it failed to protect him from a high-risk investment because it mistakenly classified him as a professional investor.

The Company submitted that such claim is totally unfounded since such assessment was made on the basis of the FCA's COBS 4.12.8 applicable at the time (as per Appendix I to its reply),[12] which it claimed provided that an investor is considered as 'Sophisticated', if at least one of the following conditions applied:

[11] P. 94 & 126
[12] P. 95 & 126

a. The investor is a member of a network or syndicate of business angels and has been so for at least the last six months prior to the date of the assessment;

b. The investor has made more than one investment in an unlisted company in the two years prior to the assessment;

c. The investor has worked in the two years prior to the assessment, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;

d. The investor has in the two years prior to the date of the assessment, been a director of a company with an annual turnover of at least GBP 1 million.

The Service Provider submitted that from its assessment, it transpired that the Complainant qualified as a Sophisticated Investor since:

- The Complainant was an experienced investor who had previously held significant amounts in unlisted securities;

- The Complainant was a Director of his own construction company with an annual income of GBP 70,000;

- The Complainant acknowledged and accepted the classification of an *'Adventurous Client'*, meaning: *'I am seeking a high level of growth from my funds, and I therefore want my portfolio to be predominantly invested in equity-based funds. I am comfortable with the higher exposure to equities at this risk level'* (as per Appendix D to its reply);[13]

- The Complainant acknowledged the investment reports dated 13 September 2017 and 30 November 2017 (as per Appendix A and B to its reply), which note the Complainant's risk profile as *'Speculative'*;[14]

- The investment reports issued by the Company clearly provided the required warnings, to the effect that:

[13] P. 95 & 105 - 117
[14] P. 95, 98 & 101

> *'It's important to note that this position will not allow the same protection normally given to a Retail Client and as such will have no capacity to make a complaint against Lawsons Equity Ltd including any formal complaint to our Professional Indemnity Insurer'*

and

> *'It's important to note that the member has actual experience of the proposed investment below due to the fact he has already transferred previous funds from this particular pension into the investment. Therefore, the mechanics, risks, features and terms of the investment are known to the member in full'.*[15]

- *Capital Bridging Finance Solutions* introduced these investments to High Net Worth/Sophisticated Investor or Business Owner at that time. The Service Provider submitted that the Complainant demonstrated his sophistication by having already invested in five similar property schemes and by being a director in a construction company, thus giving him an understanding of real estate and housing.

The Service Provider, therefore, submitted that the Complainant's claim that he was wrongly classified is unfounded in fact and at law.

Preliminary

Competence of the Arbiter

The preliminary plea raised with respect to the Arbiter's competence in terms of Article 21(1)(c) of the Arbiter for Financial Services Act (Cap. 555) ('the Act') and the subsequent submissions made on this point following the hearing of 10 September 2024,[16] were comprehensively considered by the Arbiter in his decree of 7 November 2024.[17]

In the said decree, which is being reproduced in full below, the Arbiter rejected the Service Provider's preliminary plea of prescription:

[15] P. 96
[16] P. 127 - 129; 130 - 134; 135 - 150
[17] P. 151 - 162

Decree of 7th November 2024

'Preliminary plea regarding the competence of the Arbiter

In its reply to the Complaint made with the Office of the Arbiter for Financial Services, the Service Provider raised the preliminary plea that the Arbiter does not have the competence to hear this Complaint in terms of Article 21(1)(c) of Chapter 555 of the Laws of Malta ('the Act').

The Service Provider claimed that this was in view that the Complainant lodged his complaint with Lawsons Equity later than two years from the date when he became aware that his investment had defaulted.[18]

Lawsons Equity submitted that the Complainant was aware the investment had defaulted way before the date he indicated of 12th December 2022. It particularly referred to the correspondence sent to the Complainant in January 2021 which it claimed should be taken into account for the purposes of Article 21(1)(c) of the Act. The Service Provider also indicated other correspondence received by the Complainant on 9th December 2021 and the closure of the account by the Complainant on 11th March 2022 to support its claim.

During the sitting of 10th September 2024, the Arbiter referred to the preliminary plea raised by the Service Provider in its reply regarding his competence and invited the parties to make their submissions first on the said plea.[19]

In its subsequent submissions of 5th October 2024,[20] the Service Provider highlighted that a correspondence sent to the Complainant on 9th November 2020 confirmed that the Complainant knew well that he had suffered losses. It further pointed out that *'correspondence proves that on the 28th January 2021, he knew and had also requested confirmation that there would be a guarantee in the case of a shortfall'*.[21] The Service Provider also emphasised that:

[18] P. 93
[19] P. 129
[20] P. 132 - 134
[21] P. 132

> *'… it is clear and unequivocal that the Complainant had access to/ received information/ documentation and was aware of the losses on the 9th November 2020. This is corroborated by the fact that the Complainant himself on the 28th January 2021 corresponded with TMF International Pensions Ltd with reference to the losses sustained'* [22]

The Complainant then made his submissions on 30th October 2024.[23] In his submissions, the Complainant first corrected the date as to when he first had knowledge of the matters complained of, revising this from the one originally indicated (12th December 2022) to 20th October 2021. The Complainant claimed that he actually first became aware of the loss on the investment on 20th October 2021, as this was the date when he was informed that there was no personal guarantee backing the investment.[24] The Complainant explained that:

> *'At all material times prior to that date, I believed that my investment was fully protected by a personal guarantee from Mr Stewart Day, whom I believed to be a wealthy and successful property investor'* [25]

The Complainant emphasised the personal guarantee that had been provided by Stewart Day, which he claimed was described in two reports produced by Lawsons Equity in September and November 2017. He noted that the said reports stated the following:

> *'Personal Guarantee provided by Stewart Day, the chairman of the football. He is a property developer with significant assets (mainly large student developments) in Huddersfield, Cardiff and Glasgow to name a few. He trades under the corporate name 'Mederco' and has a large number of companies that utilise this brand. This guarantee will only kick in if the funds cannot be recovered via the first charge on the property'.* [26]

[22] P. 133
[23] P. 135 - 137
[24] P. 135 & 136
[25] P. 136
[26] P. 136

The Complainant further explained that in January 2021, he queried about the personal guarantee and then *'received a reply on 29 January 2021 which informed me that the Administrators would pursue Stewart Day for the personal guarantee after the disposal of the assets'*.[27] He further claimed that:

> *'I was comforted by this email exchange, and I believed that the value of my pension investment was fully protected by the personal guarantee.*
>
> *On 20 October 2021 at 10.10 I sent an email to TMF International Pensions to enquire about the recovery of the funds from Stewart Day. At the time I sent this email I believed that the personal guarantee from Stewart Day would cover any investment shortfall. At the time I sent this email, I did not know that my TMF pension fund would suffer a loss…*
>
> *I did not become aware that I had lost any value from my pension fund until I received an email from TMF on 20 October 2021…informing me that there was no personal guarantee…After reading this email I became concerned that I could have lost money'*.[28]

As to the date of submission of his formal complaint to the Service Provider, the Complainant submitted that he had *'sent a letter of complaint to Lawsons Equity in May 2023'* and that he was '*informed by Chase Monro Claims by email on 23 May 2023 that the letter had been sent'*.[29] He attached copies of the exchanges he had with Chase Monro Claims Ltd (his claims management company in UK)[30] in this regard.[31]

The Complainant accordingly submitted that he had sent his formal complaint to Lawsons Equity within the two-year timeframe.

[27] P. 137
[28] *Ibid.*
[29] P. 137
[30] https://register.fca.org.uk/s/firm?id=0010X00004Lc7UZQAZ
[31] P. 149 - 150

Decision on the preliminary plea

Article 21(1)(c) of the Act stipulates that:

> *'An Arbiter shall also have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider occurring after the coming into force of this Act, if a complaint is registered in writing with the financial services provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.'*

As to the date when the Complaint is considered to have been registered in writing with the Service Provider, the Arbiter notes that there is certain disagreement between the parties.

On the one hand, the Complainant submitted that he sent the letter to Lawsons Equity in May 2023, as confirmed by his UK claims management company,[32] whilst the Service Provider claims that this was received in September 2023 (as confirmed by the testimony of an official of the Service Provider during the hearing of 10th September 2024, [33] in its note of submissions of 5th October 2024,[34] and also in the reply dated 11th October 2023 that the Service Provider sent to the Complainant to his formal complaint where it was noted that:

> *'We are writing to you in response to your Complaint letter submitted on behalf of Mr VS, which was dated 11th May 2023, however, received by us via email on the 25th of September 2023'.*[35]

In order for the plea raised in terms of Article 21(1)(c) of the Act to be valid, the Service Provider needs to prove that the Complainant first had knowledge of the matters complained of either before May 2021 or before September 2021 - that is, more than two years earlier than May or September 2023, depending on which date is taken as to when the

[32] The email of Chase Monro Claims Ltd confirming to the Complainant that his complaint letter was sent is actually dated 26 May 2023 rather than 23 May 2023 as indicated by the Complainant – P. 149
[33] P. 128
[34] P. 133 & 134
[35] P. 11

Complainant's formal complaint was registered with the financial service provider.

Given the submission that *'Whether this complaint was received by Lawsons in May 2023 or September 2023 is not relevant as both of those dates were within two years of 20 October 2021'*,[36] the Arbiter shall first focus on determining the date when the Complainant is considered to have had first knowledge of the matters complained of. This is given that the determining factor for the purposes of Article 21(1)(c) of the Act, in this case, is whether the Complainant is deemed to have had first knowledge on 20 October 2021 (as claimed by the Complainant) or whether this was in January 2021 or even earlier in November 2020 (as claimed by the Service Provider). The dispute about the dates as to when the complaint was registered in writing with the Service Provider (either on May 2023 or September 2023), is indeed superfluous in this case, irrespective of which advocated position is accepted.

The Arbiter notes that the matters complained of involve the claimed significant loss on the Complainant's investment, which the Service Provider describes as a *'5 Year Commercial Loan to Bury Football Club'*, being an investment security *'offered by Capital Bridging Finance Solutions Limited'* [37] ('the BFC investment'). The Complainant, in essence, claimed that Lawsons Equity advised him to invest in the disputed investment but failed in its legal and fiduciary duties to protect him from the high-risk investment, mistakingly classifying him as a Professional Investor.[38]

Having considered the submissions made and evidence provided, the Arbiter also lists the following factors as relevant to the determination of the day on which the Complainant first had knowledge of the matters complained of for the purposes of Article 21(1)(c) of the Act:

a) <u>Background on the Disputed Investment</u> - It is noted that as described by the Complainant in his formal complaint to the Service

[36] P. 135
[37] P. 94
[38] P. 4

Provider, *'Capital Bridging Finance Solutions Ltd ('CBFS') … lent the money to Bury Football Club ('BFC') … As security, CBFS held a first charge over the stadium of BFC, Gigg Lane. Gigg Lane was valued at £4.85m by Lambert Smith Hampton. A personal guarantee was also provided by the owner of BFC, Stewart Day, who was described as a 'property developer with significant assets' by Lawsons Equity'*. [39]

Lawsons Equity issued two reports, one dated 13th September 2017 (in respect of a proposed investment of GBP 218,000 into BFC)[40] and another dated 30th November 2017 (in respect of another proposed investment of GBP 300,000 into BFC),[41] wherein the disputed investment was in each report described as follows:

'Proposed Investment

7.5% % Year Commercial Loan to Bury FC

Terms of the loan. Facility up to £2.5 million (51% loan to value), 5 years, Interest 7.5% per annum, payable monthly

Security – first charge on Bury Football Club's ground. This is valued at £4.875 million by Lambton Smith Hampton, who specialise in valuing football stadiums and have 40 years' experience in this market. The market rent for the ground itself is £465,000 per annum and there is also commercial space let to Bury FC Community Trust at £40,000 per annum. The replacement cost to rebuild the stadium is £25 million.

Personal guarantee provided by Stewart Day, the chairman of the football club. He is a property developer with significant assets (mainly large student developments) in Huddersfield, Cardiff and Glasgow to name a few. He trades under the corporate name 'Mederco' and has a large number of companies that utilise this

[39] P. 7
[40] P. 36 - 38
[41] P. 40 - 42

brand. This guarantee will only kick in if the funds cannot be recovered via the first charge on the property.

Future plans – Bury FC are in detailed talks with the local council to acquire a large out of town site ('Pyramid Park'). They intend to build a football village there with a new stadium, hotel, retail outlets, apartments, care and educational facilities.

Existing site. The site covers an area of 6.75 acres and there are plans to build an extensive residential development split into 2 phases:

Phase 1 – a planning application is being submitted for 51 apartments. This covers an area outside the main stadium and building can commence before the move to the new ground.

Phase 2 – The borrower intends to submit a planning application for approximately 200 houses to be built on the main part of the site. They intend to submit the application by the end of the year (alongside the planning application for the new stadium).' [42]

b) Key Communications – The Service Provider highlighted the communications of 9th November 2020 and January 2021 as creating the knowledge to the Complainant about the losses on the disputed investment. A summary of the said communications as well as subsequent relevant communications, is outlined below:

- *Email by TMF of 9th November 2020* - The email of 9th November 2020 sent by TMF International Pensions ('TMF'),[43] referred to the Progress Report sent on 23rd October [2020] from the Administrators ('FRP') of the BFC investment, where FRP *'had commissioned a valuation report on Gigg Lane'*.[44] TMF noted that it was awaiting a final report but did not expect any material changes. In the said email, also TMF explained that according to the two

[42] P. 37 & 41

[43] The Retirement Scheme Administrator and trustee of the Complainant's Retirement Scheme, the *Melita International Retirement Scheme Trust*, through which Retirement Scheme the disputed investment was made and held - P. 94, 98 & 101

[44] P. 73

valuation reports, *'the value of the property is circa £1m against the original valuation of £4.85m at the time of investment'* which thus gave rise to *'a deficit of some £3.85m (79%)'*.[45] TMF further explained that the Complainant's investment *'was secured against Gigg Lane'* and that *'on the basis of a Loan to Value (LTV) of 60% of the original valuation'* this reduced *'the impact to circa 66% of your capital'*.[46] It was further indicated in the said communication that the disputed investment:

> *'… remains under the control of professional administrators, who continue to fulfil their statutory duty to act in the best interests of its creditors. We are in regular contact with the Administrators and will* ***keep you informed of any further action that they take to recover as much of your investment as possible*** *…'* [47]

- *Complainant's Email of 28th January 2021* – The Complainant thanked TMF for the email of 9th November 2020 and the report provided. He then referred to (and quoted) paragraph 2 of the financial reports sent by Lawsons Equity, namely the personal guarantee which he noted mentioned *'the impact on the capital invested'*.[48] The Complainant further stated that:

> *'Please note in the financial report prior to my acceptance of the investment it does mention [paragraph 2] if the event of a short fall on the investment. Please confirm that this is also being actioned'*[49]

- *Email by TMF of 29th January 2021* – TMF thanked the Complainant for his email of 28th January and noted that ***'… yes, as far as we are aware FRP will pursue Stewart Day for any shortfall post recovery from disposal of assets****. However, to manage expectations,* ***any recoverability will be down to FRP and them being able to seize any liquid assets held by Mr Day'***.[50]

[45] *Ibid.*
[46] *Ibid.*
[47] P. 73 – 74 – Emphasis added by the Arbiter
[48] P. 73
[49] *Ibid.*
[50] *Ibid.* – Emphasis added by the Arbiter

- *Email by TMF of 29th March 2021* – In its email about the *'CBFS in Administration REPORT'*, TMF attached a report issued by *'the Court appointed Administrators FRP'*.[51] It also pointed out to the Complainant that:

  *'Sadly **this does not bring to an end the repayment of loans, nor confirm how much might be claimed back**.*

  As we explained at outset, this is likely to be a prolonged exercise and something out of control of the trustees.

  ***The Trustees now await the outcome of the liquidation** and will update you as and when they receive further information'* [52]

- *Complainant's email of 14th October 2021 to TMF* – In the Complainant's subsequent email on the same subject matter (i.e. the 'CBFS in Administration REPORT'), he requested from TMF *'an update on the current progress and the plan going forward'*.[53]

- *Email by TMF of 19th October 2021* – In its subsequent reply of 19th October, TMF noted that:

  *'**The Liquidators are still in the process of selling Giggs Lane**, but as you might imagine, with no football club playing and large renovation bills, in addition to Mr Dalton parcelling up individual care parking spaces and selling them off, we are not expecting more than 25-20p in the £.*

  ***Hopefully, we will have some formal news by end of the month**.*

  HockneyCourt Tennyson Property Investments Ltd is being liquidated by Mazars. Sadly, again the property was left fall into disrepair. The Ground Rents sold off and then not paid, no agent engaged to keep occupancy rates up, etc.

[51] P. 82
[52] P. 82 – 83 – Emphasis added by the Arbiter
[53] P. 82

*I am sorry not to be the bearer of better news, but **when we have some final figures we will be in touch**'* [54]

- *Complainant's email of 20th October 2021 to TMF* – Complainant thanked TMF for the update and asked the following: *'When the final recovery is completed, who will then follow up with the recovery of the outstanding amounts from Stewart Day, will this still be FRP?'* [55]

- *Email by TMF of 20th October 2021* – In its email to the Complainant of 20th October 2021, TMF stated the following:

  'The loan documents (legal contract) which were entered into, do not appear to include any personal guarantees from Stewart Day.

  The draft Heads of Terms and the actual Loan Agreements make no mention of such a personal guarantee.

  We will ask FRP to have another look at their paperwork to see if anything can be done.' [56]

Having considered the various submissions made and the evidence produced, the Arbiter decides that the Service Provider has not provided adequate and sufficient proof that the Complainant first had knowledge of the matters complained of in November 2020 or January 2021 as alleged.

It is sufficiently clear that whilst the Complainant was aware from the communication of 9th November 2020 that the disputed investment was under Administration and was thus in difficulty, the extent of the loss that he would actually bear on the investment was, however, not clear and determinable at the time.

The extent of the loss on the investment was yet to be determined and affected by various material factors. As pointed out by TMF in its email of 9th November 2020, TMF was to inform the Complainant of any further

[54] P. 81 – 82 – Emphasis added by the Arbiter
[55] P. 81
[56] *Ibid.*

action the Administrators were to take to recover as much of his investment as possible. The lack of determination of the extent of loss, furthermore, transpires from TMF's communications of 29th January 2021 and 29th March 2021. It is particularly noted that in its email of 29th January 2021, TMF outlined that ***'… yes, as far as we are aware FRP will pursue Stewart Day for any shortfall post recovery from disposal of assets…'***.[57] **In its later email of 29th March 2021, TMF furthermore explained that a report issued by FRP (attached to its email) did not bring *'to an end the repayment of loans, nor confirm how much might be claimed back'* and the trustees were also to *'await the outcome of the liquidation'*** as outlined further above.[58] It is also noted that **by early October 2021, the liquidators were even *'still in the process of selling Giggs Lane'*** as outlined in TMF's email of 19th October 2021. As confirmed in the same email, **TMF was also to be in touch *'when we have some final figures'***.[59]

In addition, it is sufficiently clear that, as emerging from his emails of 28th January 2021, 14th October 2021 and 20th October 2021, the Complainant was still placing certain emphasis and expectations on the personal guarantee. It can be reasonably concluded that, at the time, he was waiting to see the result and impact of this *'personal guarantee'* which was to *'kick in if the funds cannot be recovered via the first charge on the property'*.[60]

Indeed, as emerging from his email of 14th October 2021, the Complainant requested *'an update on the current progress and the plan going forward'* whilst in his subsequent email of 20th October 2021, he requested clarifications as to *'who will then follow up with the recovery of the outstanding amounts from Stewart Day'* following the completion of the *'final recovery'* by the Administrators.[61]

[57] *Ibid.*
[58] P. 82 - 83
[59] P. 81
[60] P. 73
[61] P. 82 & 81

> It is thus sufficiently clear that the Complainant was still expecting and hoping for the recovery of the investment from the *'personal guarantee'* at that stage. This was until TMF confirmed to him that there were no personal guarantees from Stewart Day, with such confirmation occurring only on 20th October 2021 as outlined in the summary of key communications above.
>
> For the reasons stated, it is considered that, it cannot accordingly reasonably and adequately be determined, that the Complainant had knowledge of the claimed significant loss on his investment before 20th October 2021. The Arbiter accordingly does not consider that his Complaint was filed later than two years from the date on which the Complainant is considered to have had first knowledge of the matters complained of. **In the circumstances, the Arbiter dismisses the preliminary plea on prescription raised by Lawsons Equity regarding Article 21(1)(c) of the Act.**
>
> **Having rejected the preliminary plea on prescription, the Arbiter shall proceed with considering this Complaint and the parties shall be contacted for the next hearing.**

The Arbiter notes that, in its final submissions of 19 January 2026, the Service Provider reiterated its plea that the Complaint is time-barred.[62] This, despite the Arbiter's earlier decree, which already comprehensively covered the preliminary plea. The Service Provider's lengthy final submissions on this aspect are not considered to raise any new elements which merit a revision to the position outlined in the Arbiter's decree of 7 November 2024.

It is, furthermore, to be noted that the Arbiter's decision of Case ASF 159/2024, which was referred to by the Company in its final submissions, is not inconsistent with the afore-mentioned decree. This is so much so that Case ASF 159/2024 indeed specifically acknowledges and conforms with the Arbiter's decision in this Complaint (ASF 140/2024), with respect to the determination of the date of the Complainant's awareness of the losses (that is, 20 October 2021).

[62] P. 332 - 336

It is also worth noting that in Case ASF 159/2024, the formal complaint with the service provider was not deemed registered in May/September 2023, which is a key difference from the case in question, where the formal complaint was undisputedly registered by September 2023 at the latest.

The Service Provider's plea of prescription in terms of Article 21(1)(c) of the Act is accordingly being dismissed by the Arbiter for the reasons amply mentioned.

Competence of the Arbiter – Amount of compensation sought

In its reply, the Company stated the Complainant was seeking compensation for GBP 394,764, which is higher than the mandatory compensation of EUR 250,000 that the Arbiter can provide in terms of Article 21(3)(a) of the Act.[63]

In his final submissions, the Complainant acknowledged and confirmed that *'he is aware that the maximum award allowed from the Arbiter is £250,000.00 and he submits that he should be awarded this sum plus interest at 8% per annum'*.[64]

The amount requested does not preclude the Arbiter from hearing a complaint. If a complaint is found to be wholly or in part substantiated, the Arbiter may direct payment of compensation within the provisions and limits under the Act.

The Arbiter shall accordingly proceed to consider the merits of the case next.

The Merits of the Case

The Arbiter will decide the Complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.[65]

Background

In his decree of 7 January 2025, the Arbiter requested the parties to submit certain information and clarifications considered relevant to the case,[66] namely,

[63] P. 93
[64] P. 330
[65] Cap. 555, Art.19(3)(b)
[66] P. 164

1. Clarification of the roles of *whatgood.co.uk* and *gregorygarrett.co.uk* and *Paul Dalton (Capitalbfs)* had in these cases.

2. Clarification as to whether the Complainant has engaged the above-mentioned for rendering any service to him, and if so, what were the terms of their engagement.

3. Whether the Service Provider received any brief and/or details (which were considered in the Investment Report) from the above-mentioned, and if so, what were the terms of engagement.

4. The Service Provider referred to a brief from TMF to issue the Investment Report noting the Complainant's risk profile.[67] A copy of this brief is to be presented together with any other exchanges relevant to this matter.

5. Clarification whether the Complainant and Service Provider entered into any Terms of Appointment/Client Agreement. If in the affirmative, a copy thereof and any related exchanges are to be submitted.

6. Information from the Service Provider of any evidence that the Complainant agreed that he should not be regarded as a retail investor.

7. Evidence from the Service Provider about the investments amounting to GBP 855,000 which influenced their consideration of the Complainant as *'an experienced investor'.*[68]

The Complainant filed the requested documentation and other submissions on 30 January 2025 and 14 April 2025,[69] whereas the Service Provider filed its note and documentation on 3 February 2025.[70] A number of hearings were subsequently held on 16 April 2025,[71] 25 June 2025,[72] and 24 November 2025.[73]

[67] Page (p.) 94
[68] Ibid.
[69] P. 165 - 198 & P. 262 - 279
[70] P. 199 - 261
[71] P. 280 - 285
[72] P. 288 - 292
[73] P. 317 - 325

Involvement of third parties

As part of its documents attached to the Complaint Form, the Complainant presented various communications exchanged with *whatgood.co.uk* and *Gregory Garrett UK*, in respect of the disputed investment.[74]

In his submissions of 30 January 2025, the Complainant explained *inter alia* the following:

> *'It is [the Complainant's] understanding that Gregory Garret/ gregorygarrett.co.uk was acting on his own behalf and/or on behalf of Capital Bridging Finance Solutions (CBFS) Ltd. Mr Garrett was an unregulated individual who was introducing investment to CBFS and to TMF International Pensions. Although nothing was disclosed to him at the time, with the benefit of hindsight [the Complainant] now believes that it was likely that Mr Garrett was being paid fees or commissions by CBFS and perhaps also by TMF.*
>
> *It is [the Complainant's] understanding that Paul Dalton was the director of CBFS which was a bridging finance company. Paul Dalton was acting on behalf of CBFS.'* [75]

On its part, the Service Provider clarified that:

> *'● whatgood.co.uk were introducers to the respondent*
>
> *● gregorygarrett.co.uk was the previous proposer of other investments to the complainant;*
>
> *● Paul Dalton was the Product Provider (CBFS)'.* [76]

Confidential Client Fact Find ('CCF')

The Complainant, born in 1963 and residing in the UK, is classified as a 'Professional Client' (from the option between 'Retail Client' and 'Professional Client') in the CCF document.[77]

[74] E.g.: Email dated 9 November 2017, P. 25; email dated 13 November 2017, P. 33; emails dated 6 December 2017, P.17 - 18 & 30; email dated 11 December 2017, P. 27; email dated 12 December 2017, P. 31.
[75] P. 165
[76] P. 201
[77] P. 105

The CCF document indicates that the Complainant only *'Invested occasionally'*, his level of education was *'Diploma/College'* and the area of study in *'Electronics/Project Management'* with his employment being as a self-employed director of a consulting company.[78] No details were included in the CCF document about his *'Investment Portfolio'*.

As to the investment knowledge, the CCF further indicates that he *'Invested Occasionally'*. His risk profile was listed as *'Adventurous'* (out of the selection *'Cautious', 'Defensive', 'Balanced', 'Adventurous' and 'Speculative'*).

The Investment Reports issued by the Company

The Service Provider issued two Investment Reports to the Complainant involving his Retirement Scheme and the proposed investment in the *'7.5% 5 Year Commercial Loan to Bury FC'*. The two reports were issued within approximately a space of two months:

- One dated 13 September 2017, for an investment amount of GBP 218,000; [79]
- One dated 30 November 2017, for an investment amount of another GBP 300,000.[80]

In the said reports, the Complainant's Investment Profile was indicated as being *'Speculative'*, described as *'seeking a high level of growth from my funds and I therefore I want my portfolio to be predominantly invested in equity based funds'*.[81]

Observations & Conclusion

(A) ***Key matters – Nature of the service provided***

It is noted that the parties took different positions regarding the Service Provider's role with respect to the disputed investment. Whilst the Complainant referred to the Company as being his investment adviser given that *'Lawsons Equity advised [him] to invest in a loan to Bury Football Club'*,[82] the Service

[78] P. 106 & 108
[79] P. 36
[80] P. 40
[81] P. 36 & 40
[82] P. 4

Provider disputed this and submitted that its role was just limited to verifying whether the Complainant satisfied the eligibility criteria for investment as a Professional Investor.

In its reply to the Complaint made with the OAFS, the Service Provider refuted that the service offered constituted investment advice. It emphasised that:

> *'… **It is to be noted that the report was issued by Lawsons Equity only in order to enable the execution of complainant's investment preferences and not as an investment advice.***
>
> *'Lawsons Equity's engagement was limited **solely** to the issue of these two reports and in fact, Lawsons Equity only received two one-time payments of GBP 1500.00 and GBP750.00 respectively, **specifically** for the issue of the two reports noting complainant's risk profile. **Lawsons were never appointed to issue ongoing investment advice/ portfolio management to complainant.'***
>
> *'… Lawsons Equity never provided advice in relation to the investment which complainant himself had directed TMF to invest in'*.[83]

During the hearing of 24 November 2025, the Service Provider furthermore, testified that:

> *'I knew [the Complainant] through somebody who was an introducer for Serenus and they contacted me asking me if I could write an investor profile for [the Complainant].*
>
> *They said he wanted to make an investment, and he needed somebody to say that he was a professional investor. So, that was really what we were doing, looking at whether he was a professional investor or not.*
>
> *I say that we had zero involvement in the investment … I was not involved in providing advice. And, in fact, in the investment investor profile, I made it clear that we did not have the expertise or knowledge to be able to advise*

[83] P. 94 - 95

on investment in this kind of property and in the football club. And so, I just said that we could not give any advice on that.' [84]

The Arbiter considers that the scope of the Investment Reports is, in the first place, not clearly outlined in the said reports. The contents and structure of the reports justifiably raise pertinent questions as to whether the reports were just limited to an assessment of the client's satisfaction of the classification of a *'Professional Investor'* as claimed by the Company, or whether they construed an investment recommendation (advice) in respect of the disputed investment. The Arbiter notes the following particular factors in this regard:

(i) The Investment Reports issued by the Company did not outline the limited scope being now alleged by the Service Provider. Nor were the reports structured in a way to make it clear that the scope was only to assess 'Eligibility' as is now being claimed.

The assessment of 'Eligibility' for an investment is a different aspect and distinct from an investment recommendation which involves an assessment of 'Suitability' (as required for the provision of investment advice in terms of the investment services rules issued by the MFSA applicable at the time) [85] - an extract of which is included in Annex A to this decision for ease of reference.

The reports did not specifically mention that they were only intended to consider the client's eligibility as opposed to the investment's suitability - a material aspect that had to be clearly outlined and specified accordingly.

No disclaimers were either included stating that the Investment Reports should not be construed as investment advice but limited to assess eligibility as is now being claimed.

To the contrary, the reports confusingly included terms associated with investment advice.

[84] P. 317 – 318 – Serenus being the previous investment adviser

[85] Part BI, Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as MiFID Firms, Section Client Profile Requirements – Assessment of Suitability and Appropriateness (SLCs 2.13 – 2.26) of the Investment Services Rules for Investment Services Licence Holders issued by the Malta Financial Services Authority in November 2007 (version updated 21 October 2015).

It is noted that the nature of the service provided by the Company was ultimately nowhere clearly and outrightly disclosed in any of the documents presented.

(ii) The Company referred to the following disclaimer included in its reports:

> *'Lawsons Equity Ltd are not qualified to comment on the financial aspects of this commercial loan. We are nor legal nor should financial experts in real estate, football clubs nor property rentals, and our recommendation not be seen as an opinion of the likelihood of success or failure in the proposed transaction'.*

The above disclaimer is considered to relate to a waiver of liability about the viability or success of the investment/project and not a waiver or indication that the investment reports should not be treated or construed as investment advice. The said disclaimer, by contrast, refers to the Company providing a *'recommendation'*.

(iii) The *'Investment Report'* specifically included a concluding section titled *'Suitability of the Proposed Investment'* whilst in the previous section titled *'Proposed Investment',* refer to *'our recommendation'*.

The said terminologies and aspects are more linked to, and associated with, investment advisory services.

(iv) The reports detail aspects beyond the issue of 'Eligibility'. For example, the reports specifically outline the various features of the proposed investment and consider the client's risk attitude and extent of investment.

Any needed confirmation for the classification of a *'Professional Investor'* and/or *'Sophisticated investor'* in terms of UK FCA rules or otherwise under MiFID (as shall be considered further on in this decision) could have been tackled more generally and without reference to aspects associated with a suitability assessment.

(v) It is more likely that the trustee of the retirement scheme required comfort about the suitability of the material investment to be made within the pension scheme rather than just a confirmation of the Complainant's eligibility to make the investment.

(vi) Despite that the Confidential Client Fact Find ('CCF') used by the Company[86] has certain incomplete parts (like for example, on the type of service provided where the section titled *'Recommendations by Financial Adviser'* was left blank),[87] as well as other omissions,[88] the structure and contents of the CCF used by the Company reflect more closely that of the *'Specimen Confidential Client Fact-Find for the Suitability Test'* that was issued by MFSA and which applied in case of investment advice – as per Appendix IV of the *'Guidance Notes to the Investment Services Rules for Investment Services Providers'* issued by MFSA in November 2007 ('the Guidance Notes') – an extract of which is included as Annex B to this decision for ease of reference.[89]

Indeed, the Service Provider did not use the *'Specimen Confidential Client Fact-Find for the Appropriateness Test'* issued by the MFSA.[90] The latter applied where the service offered by the Licence Holder did not constitute the provision of investment advice and where the conditions specified in section B.2. [iv] of the Guidance Notes were not satisfied in full.[91, 92]

Hence, the Company was required to undertake an appropriateness test, but the investment reports rather included a section about the *'Suitability of the Proposed Investment'*.[93]

[86] P. 105 - 117
[87] P. 116
[88] The CCF document used by the Service Provider omitted a specific table about the 'Assessment of Suitability'
[89] Issued 1 November 2007 (version updated 23 November 2007)
[90] Appendix V of the *'Guidance Notes to the Investment Services Rules for Investment Services Providers'* issued by MFSA in November 2007.
[91] Ibid. & Section 2 [B.2] [iii] of the section titled *'Assessment of Appropriateness'* of the said Guidance Notes issued by MFSA.
[92] Section B.2. [iv] of the MFSA's Guidance Notes provided that:
'A Licence Holder is not required to assess the appropriateness of an investment service or product for a client if the following conditions are satisfied:
(a) the service is being provided in relation to non-complex instruments as defined in SLC 2.25 (a) and 2.26 of the Rules;
(b) the service is provided at the initiative of the client or potential client i.e. execution only services; and
(c) the client or potential client has been clearly informed that in the provision of the service, the Licence Holder is not required to assess the suitability of the instrument or service provided or offered and that therefore, he/ she does not benefit from the corresponding protection of the relevant conduct of business rules. The warning may be provided in standardised format.
(d) the Licence Holder complies with its obligations in relation to the management of conflicts of interest as set out in SLC 2.94 to 2.100.'
[93] P. 38 & 42

(vii) The Confidential Client Fact-Find issued by the Service Provider and signed by the Complainant on *'07/09/2017'*,[94] included confirmations by the client associated with investment advisory services:

> *'… I confirm that I [am] subscribing to your investment services and confirm that I have read, understood and agree to the Client Agreement provided.*
>
> *…*
>
> *I understand that the information provided here may be used for the purpose of making investment recommendations in the future …*
>
> *…*
>
> *I confirm that I had time to read (or had explained to me) the Product Brochures, Key Features, Product Fact and Term Scheets etc. Also, further to the explanation provided by the investment advisor, following the suitability assessment and completion of this document, I have understood that risks and features of the investment product …'*.[95]

(viii) It is further noted that in a letter sent dated 16 July 2024, TMF stated that:

> *'… the Trustees acted in accordance with the legislation laid down by the Regulator in Malta and insisted upon professional regulated intermediaries (Serenus Consulting & Lawson's Equity) to put forward investment recommendations in close consultation with [the Complainant]'*.[96]

The poorly worded and badly structured Investment Reports raise serious questions and regulatory implications.[97] Not only do they lack clarity about their scope, limitations and conformity with the Company's licensed investment services activities, but they are ultimately incomplete, given that the basis on which the Complainant is classified as a *'Professional Client'* is not

[94] P. 117
[95] P. 116 – emphasis added
[96] P. 314
[97] The Company was licensed to provide the investment service of 'reception and transmission of orders' and 'investment advice' to retail clients and professional clients only in relation to 'Transferable Securities' and 'Units in collective investment schemes' (P. 184- 185).

even explained with reference to the applicable criteria for such classification as considered in detail below.

The peculiar circumstances giving rise to the two Investment Reports issued by the Company shall also be considered further in this decision, given that this is an important context that needs to be taken into account.

(B) Key matters – Eligibility to be classified as a Professional Investor/ Sophisticated Investor

In its Investment Reports, the Company classified the Complainant as a Professional Investor, outlining that:

> *'You have been classified in the UK under FCA rules as a Professional Investor. The member is a Director of his own construction company with an annual income of £70,000.00'.* [98]

The Complainant, however, did not satisfy the definition of a *'Professional Client'* applicable in terms of the MiFID Directive (and reflected in the UK rules at the time). The Arbiter points out the following in this regard:

(i) Applicable Regulatory Requirements - In its reply, the Service Provider stated that:

> *'It is to be noted that at the time when the Investment Report was issued, the MFSA Rules did not provide for guidance or a definition for the classification of clients and the concept of sophisticated investor arose from the FCA COBS 4.12.8, which Lawsons Equity based its assessment on'.* [99]

This is, however, not the case, given that the MFSA Rules applicable in 2017 (and even much earlier) distinguished between *'Professional Client'*, *'Retail Client'* and *'Eligible Counterparty'*.

Whilst the local rules did not refer to *'sophisticated investors'*, the concept of 'Professional Client' was applicable way back through the MiFID I Directive of 2004 (Directive 2004/39/EC) which applied at the time. There

[98] P. 38 & 42
[99] P. 94

were indeed specific criteria applicable for professional clients that needed to be satisfied for one to be treated as such (as per Annex II of the said Directive) – an extract of which is included as an attachment, Annex C, to this decision for ease of reference.

(ii) Distinction between *'Sophisticated Investor'* and *'Professional Investor'* – It is noted that whilst the Investment Reports both confirm that *'You have been classified in the UK under FCA rules as a Professional Investor'*,[100] the certification referred to by the Company in its reply is to a *'Self-Certified Sophisticated Investor'* in terms of UK, FCA Rules (*'FCA COBS 4.12.8'*).[101]

It is also noted that during the hearing of 24 November 2025, the Service Provider even referred to an earlier classification of the Complainant as an *'elective professional client'* in terms of the FCA rules *'COBS 3.5.3'* stating that

'*In fact, TMF said that [the Complainant] became a member of the pension scheme on the 19th of May 2014, following submission of an application and [the Complainant] was classified under FCA rule COBS 3.5.3 as an elective professional client as at the instruction of [the Complainant] dated the 9th of May 2014'.* [102]

The terms *'Professional Investor'* (in terms of MiFID) and *'Sophisticated Investor'* (under the UK FCA Rules) are different terms and involve different criteria/implications.

The Arbiter further notes that, at the time, the UK FCA had a definition of a *'Professional Client'* similar to the one in MiFID as provided under the FCA's Conduct of Business Rules, COB 3.5.1.[103]

In its reply, the Company quoted *'FCA COBS 4.12.8'* which deals with a different and distinct classification involving *'Sophisticated Investors'*.[104]

[100] P. 38 & 42
[101] Appendix I to its reply – P. 94 & 126
[102] P. 318
[103] https://handbook.fca.org.uk/handbook/cobs3?timeline=true&date=26-01-2017
[104] https://handbook.fca.org.uk/handbook/cobs4?timeline=true&date=13-09-2017

The Company did not distinguish between the two different classifications, which served different purposes,[105] instead confusingly co-mingling and using the terms interchangeably.

(iii) Satisfaction of definition of *'Professional Investor'/'Sophisticated Investor'*
In its reply, the Company referred to a *'Self-Certified Sophisticated Investor Statement'*.[106] No Self-Certified Sophisticated Investor Statement declaration signed by the Complainant was, however, presented by the Company.

The indicated criteria of a self-certified sophisticated investor were as follows:

> *'2. I am a self-certified sophisticated investor because at least one of the following applies:*
>
> *a. I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;*
>
> *b. I have made more than one investment in an unlisted company in the two years prior to the date below;*
>
> *c. I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;*
>
> *d. I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million'.*[107]

The basis for the Complainant's classification as a sophisticated investor and/or professional investor was not clearly documented in either the Investment Reports and/or the CCF document.

In the Investment Report, the Service Provider only indicated that *'The member is a Director of his own construction company with an annual*

[105] The concept of 'sophisticated investor' in UK was associated with the type of access to promotional material one could receive as per the definition outlined in the FCA's COBS 4.12.7 applicable at the time.
[106] P. 126
[107] *Ibid.*

income of £70,000.00'.[108] This does not reflect any of the criteria indicated above for sophisticated investor.

During his testimony of 16 April 2025, the Complainant clarified that he only owned his consulting company *'… which is a project management company which is just me basically. And my turnover is certainly not as stipulated in that sophisticated investors report with a turnover of £1,000,000; as it says on the form, it was about £70,000'*.[109]

In the hearing of 25 June 2025, the Complainant further clarified *'I work as a project manager in the construction industry, but I do not own the construction company'*.[110]

In its reply to the formal complaint sent to it by the Complainant, the Service Provider had *inter alia* explained that:

> *'Our findings evidence that, [the Complainant] was classed as a professional client since he already held property investments with Gregory Garrett including Hockney Court, Grasslot Maryport, Stoke-on-Trent and Walton Brech amounting to over £800k which shows he is an experienced investor with a portfolio of non-standard assets'*.[111]

In its reply to the OAFS, the Service Provider again highlighted that the *'Complainant, then already an experienced investor, had previously held securities amount to GBP 855,000 ….'*.[112]

Whilst these aspects were not reflected nor mentioned in the CCF document or the two Investment Reports, it is noted that prior to the disputed investments, the Complainant had indeed already undertaken material investments involving CBFS. This emerges from the following:

- Email dated 2 October 2023, from TMF where it was stated:

[108] P. 42 & 48
[109] P. 285
[110] P. 291
[111] P. 11
[112] P. 94

'I can confirm that when Lawsons took over the account, [the Complainant] (through Pure Wealth Management) was already invested in the following:

a. GBP 18,782.05 held within the MIRS GBP Client account

b. GBP 855,000.00 investments in Pure Wealth Management Ltd, constituting the below:

i. GBP 80,000.00 investment in Hockney Court, Bradford

ii. GBP 350,000.00 investment in Grasslot, Maryport

iii. GBP 225,000.00 investment in Stoke-on-Trent

iv. GBP 200,000.00 investment in Walton Breck Road, Liverpool'.[113]

- A letter dated 16 July 2024, where TMF *inter alia* stated:

'Between 9th November 2015 and 8th January 2016 further investments were made into three further property loan notes through CBFS as recommended by [the Complainant] and his advisers totalling £1,360,500.
…Investments made in November 2015 and January 2016 were returned with interest in March and May 2016 …'.[114]

- The hearing of 25 June 2025, where the Complainant testified *inter alia* that:

'Asked how many investments I had with Gregory Garrett, I say, four. The amount of these investments is circa £800,000. Asked whether this excludes the investment which I am now complaining of, I say that was before this investment'. [115]

Whilst such details could have been relevant to the criteria of a Sophisticated Investor, they did not satisfy the Quantitative Test

[113] P. 204
[114] P. 313
[115] P. 290

applicable for a Professional Client, that is, a minimum of two of the three criteria outlined in MiFID Directive applicable for *'Clients who may be treated as professional on request'*, also reflected in the CCF.[116]

In the section of the CCF titled *'Clients who May be Treated as Professionals on Request'*, it is evident that **the client only satisfied just one criterion when it needed to satisfy at least two of the applicable criteria to be treated as a Professional Client**.[117]

No satisfactory evidence emerged that the client satisfied the definition of a Professional Client outlined in MiFID or the UK FCA's COBS 3.5.3 for *'Elective professional clients'*.

(iv) Other – It is noted that in its final submissions, the Service Provider pointed out that *'the Complainant's continued reliance on FCA and MiFID retail client provisions is misplaced. The Respondent Company is not subject to FCA regulation, and the investment was a loan note, not a MiFID financial instrument'*.[118]

Whilst this is a new aspect made in the Company's final submissions, such a statement begs the question as to why the Company then felt it appropriate in the first place to issue two investment reports in its capacity as a MiFID firm[119] specifically commenting on the *'Suitability of the Proposed Investment'* and confirming to the Complainant *'You have been classified in the UK under FCA rules as a Professional Investor'*,[120] which were evidently in the context of MiFID requirements.[121]

Without entering into the merits of whether the disputed investment qualified as a MiFID investment instrument or not, it is considered that the Service Provider's latest submissions, if any, further corroborate

[116] P. 113
[117] P. 113
[118] P. 341
[119] An investment service provider *'Licensed by the Malta Financial Services Authority … to provide Investment Services under the Investment Services Act, 1994'* (P. 103)
[120] P. 48 & 51
[121] The definition of the FCA Rules of either 'Per se Professional Clients' (COBS 3.5.2) or 'Elective professional clients' (COBS 3.5.3) both cross-refer to Annex II to MiFID - https://handbook.fca.org.uk/handbook/cobs3?timeline=true&date=26-01-2017

the inadequacy of the investment reports, which were also neither duly qualified with reference to the nature of the investment product (as a MiFID instrument or otherwise), nor as to the applicable regulatory requirements.

(C) ***Key matters – The particular circumstances under which the Investment Reports were issued and the Causal Factor of the losses***

Despite the material shortcomings outlined in the preceding sections, the Arbiter cannot ignore the particular context and circumstances of this case, to which much weighting is being attributed for the purpose of this decision. The Arbiter outlines the following particular aspects which he considers have a material bearing on the outcome of his decision:

(i) *Investor Profile and strong aptitude for high return/risk* – The Complainant, who was listed with a *'Speculative'* investor profile in the Investment Reports and an *'Adventurous'* profile in the CCF document, which he had all signed, was clearly inclined for high-risk investments. He was also clearly aware of his risk profile classification and of being classified as a '*Professional Client'* in the Investment Reports.

The Investment Reports included a warning *inter alia* noting that *'It's important to note that this position will not allow the same protection normally given to a Retail Client …'*.[122]

The Arbiter has no reason to doubt that the Complainant was not aware or did not understand such classifications and their meanings.

Whilst the Complainant did not dispute such classifications at the time, it was only when the disputed investment failed that the Complainant raised issues about his classification of a *'Professional Client*'.

(ii) *Previous historical transactions* – It is noted that the Complainant had already a history in dealing with CBFS before approaching the Company for the necessary documentation to be completed to enable his intended investment to proceed.

[122] P. 46 & 49

As outlined in its letter dated 16 July 2024, TMF stated *inter alia* the following:

> *'Between 9th November 2015 and 8th January 2016 further investments were made into three further property loan notes through CBFS as recommended by [the Complainant] and his advisers totalling £1,360,500.*
>
> *… Investments made in November 2015 and January 2016 were returned with interest in March and May 2016 …'.*[123]

During the hearing of 25 June 2025, the Complainant himself testified that:

> *'I say, no, this was not the first investment with Gregory Garrett. I think there were three or four investments with Gregory Garrett.*
>
> *... Asked how many investments I had with Gregory Garrett, I say, four. The amount of these investments is circa £800,000'*.[124]

(iii) *Close relationship and active engagement by the Complainant* - TMF's letter of 16 July 2024, also highlighted the particular and close arrangement the Complainant had with the promoters of the disputed investment, wherein it stated that:

> *'There was without doubt a close relationship between CBFS (P Dalton), G Garrett and G Quillan as when liquidity was required funds were returned from CBFS quickly to allow settlement of the PSO.*
>
> *… [The Complainant] was in active and continuous communications with Paul Dalton and his advisers all the way through the process. In fact, Mr Dalton personally contacted [the Complainant] prior to the financial issues of Bury Football Club were known to the Trustees …*
>
> *… the Trustees only took requests from Regulated Intermediaries and have paperwork to show [the Complainant] was actively involved in all investments.'*[125]

[123] P. 313
[124] P. 289 & 290
[125] P. 313

(iv) *Focal reason for Company's involvement* – The Arbiter notes that this is not a case where a client sought advice on where to invest and was recommended an unsuitable investment chosen by the advisor. This is rather a case where the Complainant approached and used the Company primarily to have documentation in place, with the aim of enabling him to undertake the particular investment he had himself chosen (with other third parties) and which he insisted he wanted to undertake.

During the proceedings of this case, it transpired that the Complainant had himself selected this investment before approaching the Company and intentionally wanted to continue with it, as had been done with previous investments involving Gregory Garrett.

During the hearing of 16 April 2025, the Complainant testified that *'Regarding why I was characterised as a professional investor, I say that it was purely for the investment to happen'*.[126]

It is noted that there were not even any detailed discussions about the investment, as one would expect in an investment advisory context and the material sums invested. This is so much so that the Complainant himself did not even recall any discussions with the Company regarding the disputed investments.

As testified during the hearing of 16 April 2025, the Complainant stated:

> *'It has been alleged that I had a telephone call with Mr Hardy in 2017. I say that I cannot recall that; I can't recall any minutes. I can't recall the telephone conversation'*.[127]

During the hearing of 25 June 2025, the Complainant further testified that:

> *'Asked how and when I came to know about Lawsons Equity, I say that I was introduced to Lawsons Equity by TMF, I believe, and Gregory Garrett …*

[126] P. 281
[127] P. 285

Asked whom I spoke to at Lawsons at that time, I say that I didn't really speak to anyone; it was all settled by email through Tracey at WhatGood. The emails came via Cath at Gregory Garrett … I believe I did not receive anything from Lawsons Equity directly. It all came via third party.'[128]

(v) *Other* – It is noted that the Complainant had already been classified as a professional investor previously by another investment advisor. During the hearing of 24 November 2025, the Service Provider *inter alia* testified:

'With regard to the classification of [the Complainant], I went to Serenus to find out what they had done in the past. And I found that they had actually classified him as a professional investor according to the FCA regulations, and they explained why, and they also showed the reasons for that. And, also, TMF confirmed that. In fact, TMF said that [the Complainant] became a member of the pension scheme on the 19th of May 2014, following submission of an application and [the Complainant] was classified under FCA rules COBS 3.5.3 as an elective professional client as at the instruction of [the Complainant] dated the 9th of May 2014'.[129]

The above was not contested by the Complainant.

It is further noted that the Company ultimately admitted and was aware of issues with the Complainant's classification as a professional investor. In its testimony during the same hearing, the Service Provider stated:

'…I did call [the Complainant] to say, 'Look, the rules are normally this. And so, we probably can't say that you are a professional'. He said that this was ridiculous. And he got quite angry about it. And that's when we found out about these other investments. He said, 'Look, yes, I'm the director of a construction company. I do this all the time.'

[128] P. 288 & 289
[129] P. 318

I say that this was in a phone call with [the Complainant], which he now, or in the last hearing, conveniently forgot or couldn't recollect that meeting …'.[130]

It is noted that the Service Provider further testified the following during the same hearing that:

'… [the Complainant] had almost a million that were invested in much bigger projects. And they weren't normal investments. They were property type deals with loans. So, they did not really meet the MiFID regulations anyway. And so, when he said, 'Look, you know, this is ridiculous', it made sense to say, Okay, then go ahead, but we cannot advise on this investment'.[131]

'… Asked whether [the Complainant] elected to be treated as a sophisticated investor, I say this is why I asked for that report and that is why he got angry and said, 'That is ridiculous. You know you should sign this off because I've already done all these things, so I know what I'm doing. And, you know, even though you're not advising on this product, I've been classed as a professional before and nothing's changed'.[132]

It is clear that the Company acted inappropriately and rather unwisely when issuing two improper Investment Reports just to accommodate the Complainant's wish and enable the investments to proceed.

Whilst it is considered that the Investment Reports were not properly undertaken and included various serious shortcomings, the Arbiter is not, however, morally convinced and cannot fairly, equitably and reasonably conclude that such shortcomings, albeit material, are the causal factor of the losses suffered and/or that they merit full, or even partial compensation, of the investment loss suffered on the disputed investments.

This is when considering the particular and quite peculiar circumstances of this case and the factors amply outlined above. Had such Investment Reports been undertaken in a different context, they would have led to a much different

[130] P. 318 – 319 – Emphasis added by the Arbiter
[131] P. 321
[132] P. 322

outcome regarding the extent of liability attributed to the investment advisor, but in the circumstances of this case, the Arbiter cannot fairly attribute the losses suffered to the actions of the Company.

The Arbiter is also bearing in mind that the only reason why he had dismissed the claim of his non-competence due to prescription was because the Complainant finally became aware of the crystallised loss when it resulted that a personal guarantee which was included in the outline of the investment proposal was actually not taken at the execution stage. However, in no way has there been any responsibility on the part of the Service Provider for the non-provision of such personal guarantee as the Service Provider played no role at all in the actual execution of the investment. Accordingly, had the personal guarantee been taken as proposed, the prescription claim would have been upheld.

The Arbiter considers that it would be only fair, equitable and reasonable for the Company to repay the fees it charged for the compilation of the inadequate Investment Reports in the circumstances.

<u>Conclusion and Decision</u>

For the reasons amply stated in this decision, the Arbiter is only partially and limitedly accepting the Complaint insofar as it is compatible with this decision.

Given the identified shortcomings outlined earlier, the Arbiter concludes that it is fair, equitable and reasonable, in the particular circumstances and substantive merits of the case, to:

- **refute the Complainant's request for compensation for the material investment loss suffered on the disputed investments;**
- **limit compensation only to a refund of the total sum charged by the Service Provider in respect of the indicated two inadequate Investment Reports, namely, of GBP 2,250.[133]**

[133] GBP 1,500 + GBP 750 – P. 94 as also corroborated during the hearing of 25 June 2025 (P. 289).

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Aventis Financial Planning Limited to pay the amount of GBP 2,250 (two thousand, two hundred and fifty pounds Sterling) to the Complainant for the reasons stated in this decision.

With interest at the rate of 3.75% p.a.[134] from the date of this decision till the date of payment.[135]

Given that the Arbiter is refusing the compensation requested for the investment loss and is accepting only a very limited refund of fees, recognising that both parties are at fault, the Arbiter further considers that each party is to bear its own costs of these proceedings.

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.

[134] Equivalent to the current Bank of England Bank Rate.
[135] It is to be noted that in case this decision is appealed, should this decision be confirmed on appeal, the interest is to be calculated from the date of this decision.

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. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.