

Before the Arbiter for Financial Services

Case ASF 159/2024

SJ

(‘the Complainant’)

vs

TMF International Pensions Limited

(C 76483)

(‘TMF’ or ‘the Service Provider’)

Sitting of 14 March 2025

The Arbiter,

Having seen the **Complaint** made against *TMF International Pensions Limited* (‘TMF’ or ‘the Service Provider’) relating to the investment concerning *Capital Bridging Finance Solutions Limited* (‘CBFS’) that was allowed to be made within his Retirement Scheme, the *Melita International Retirement Scheme* (‘the Scheme’). TMF is the trustee and Retirement Scheme Administrator (‘RSA’) of the Scheme, the latter being a personal retirement scheme established in the form of a trust and licensed by the *Malta Financial Services Authority* (‘MFSA’).

The Complaint, in essence, involves the claim that, as trustee of his Retirement Scheme, TMF failed in its duty to protect his pension by not undertaking adequate due diligence on the disputed investment and by failing to inform him of material issues involving the investment.

*The Complaint*¹

¹ Complaint Form on Page (P.) 1 - 6 with extensive supporting documentation on P. 7 - 41

In his Complaint to the *Office of the Arbiter for Financial Services* ('OAFS'), the Complainant claimed that, in their capacity as trustees, TMF failed to do the correct due diligence on the investment, CBFS.

He explained that his pension scheme lent money to CBFS which in turn did an onward loan to the *Bury Football Club* ('BFC') and '*took a first legal charge on Gigg Lane, the football ground of BFC*'.²

The Complainant claimed in this regard that:

- (1) The valuation (of land involving the BFC) was not addressed to TMF and TMF therefore, ended up in a position where it had no redress against the valuer as it had no right to take legal action against the valuer;
- (2) The valuation assumed the legal title was clean but TMF / TMF's solicitor did not inform him that 252 leases had been sold on the car park, with this resulting in a considerable devaluation of the land;
- (3) No investigation was carried out into the guarantor's (Stewart Day) financial position.

The Complainant submitted that TMF thus failed to manage his investment competently. He claimed that the interest that was to be paid monthly on his investment furthermore never materialised. The Complainant alleged that TMF failed to inform him about this and instead allowed further investments in the same investment product.

It was claimed that TMF thus failed in their legal and fiduciary duties to perform reasonable due diligence, communicate clearly and manage the investment correctly. Additional explanations about the disputed investment and alleged shortfalls were included in a letter dated 11 May 2023, attached to his Complaint Form.³

² P. 8

³ P. 8 - 10

Remedy requested

The Complainant noted that he had invested a total of GBP 518,000 into CBFS. Together with fees of GBP 23,257 and after deducting the amount realised of GBP 146,493, he claimed this resulted in a loss on investment of -GBP 394,764. He accordingly sought compensation for the full amount of loss plus interest.⁴

Having considered, in its entirety, the Service Provider's reply,⁵

Where the Service Provider explained and submitted the following:

1. That the Complaint is unfounded and ought to be rejected because of the following reasons:
 - (i) That preliminarily, the Complaint is time-barred based on Article 21(1)(c) of Chapter 555 of the Laws of Malta. It submitted that from the documents filed by the Complainant, it was amply clear that the Complainant was first made aware of loss suffered and that interest (i) was not being paid out annually and (ii) would not be recovered on the **9th of November 2020** (p. 25) of the Complaint.⁶

TMF pointed out that the fact that the Complaint refers to the 12th of December 2022 as the date in which the Complainant first had knowledge of the matters being complained of is incorrect and inconsistent with the documentation submitted.

It explained that in 2020, the Complainant was made aware of the fact that the *“value of the property is circa £1m against the original valuation of £4.85m at the time of investment, a deficit of some £3.85m (79%). The investment you made was secured against Gigg Lane on the basis of a Loan to Value (LTV) of 60% of the original valuation, therefore reducing the impact to circa 66% of your capital. Obviously, any accrued interest since investment will not be recovered.”⁷*

⁴ P. 4

⁵ P. 47 - 51 with attachments on P. 52 - 53

⁶ Emphasis added by TMF

⁷ P. 47 – Emphasis added by TMF

This email was acknowledged and replied to by the Complainant on the 28th of January 2021 (p. 25 of the Complaint) by means of which he confirmed that he has understood the *“impact on the capital invested”*.

On the 12th of August 2021, the Service Provider sent updated valuations from FRP (the High Court appointed administrators of CBFS) stating that *“investors would see a considerable write down in anticipated returns”* (email attached and marked as DOC TMF 1). TMF noted that, in fact, the Complainant accepted payment of the proceeds on the 8th of December 2021 and the account was subsequently closed (as per the email dated 11th March 2022 on page 29 of the Complaint).

TMF noted that in accordance with Article 21(1)(c) of Chapter 555, the Arbitrator *“shall 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 complaint first had knowledge of the matters complained of”*.

The Service Provider submitted that it formally received a written complaint by the Complainant on the **30th of May 2024** (page 33 of the Complaint), and therefore the two-year time bar from the date when the Complainant became aware that the 5-Year Commercial Loan to *Bury Football Club* (“Bury FC”) had defaulted, had lapsed.⁸

TMF submitted that, for the avoidance of doubt, even though the complaint letter (p. 36) was dated 11th of May 2023, the letter was sent to the wrong address, and no follow-up email or letter was ever received from the Complainant.

The Service Provider referred to Case law: **Case ASF 055/2023 RI vs Momentum Pensions Malta Ltd** which, it noted, was decided as follows:

⁸ Emphasis added by TMF

“Consequently, for the Arbiter to have competence to proceed with hearing the merits of this case, it must firstly be determined what was the date when without doubt the Complainant had full knowledge of the matters being the subject of this Complaint, and whether the Complaint was registered with the Service Provider within two years from such date. Other issues, no matter how relevant to the merits of the case, will not be relevant to the issue of determining the Arbiter’s competence.

The date when the Complainant had first knowledge of the matter complained of has been set as the 24 July 2019.

The Arbiter hereby decides that the date when the complaint was registered in writing with the Service Provider is 29 January 2022, notwithstanding the expectations of the Complainant that the first complaint was so registered with the Service Provider on 20 September 2019. The Arbiter bases his decision on these facts:

1. Arbiter has first-hand view that the email of 20 September 2019 sending the complaint to the Service Provider was incorrectly addressed and could never have reached the Service Provider.

2. Article 21(1)(c) speaks clearly of the date when “the complaint is registered in writing with the financial services provider”. One cannot in any way accept that an incorrectly addressed email which never reached its addressee can be equivalent to the quoted provision of the cited Article.

3. The Complainant had ample time to check back with the Service Provider to see, firstly, that they did receive his complaint, and why they had not even acknowledged it, let alone sent him a reply. There is no evidence that the Complainant did anything of this sort before January 2022. In fact, he only followed up with the OAFS on 25 January 2022 when he was informed that he has no case or file open with the OAFS.

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For these reasons, the Arbiter determines that in terms of Article 21(1)(c) of CAP. 555, he has no competence to continue hearing the merits of this case and hereby dismisses it.”⁹

TMF also made reference to other decisions where it claimed the plea of prescription, as similarly applied to this case, was upheld and justified in terms of law. It referred to the following cases:

ASF 010/2023- HJ vs Momentum Pensions Malta Limited, ASF 040/2022 – GP vs Momentum Pensions Malta Limited; Case ASF 065/2022 – OL vs Momentum Pensions Malta Limited; Case ASF 149/2022 – ZJ vs Momentum Pensions Malta Limited; Case 084/2022 – CH vs Momentum Pensions Malta Limited; Case ASF 110/2021 – UN vs Dominion Fiduciary Services (Malta) Limited and Case ASF 091/2021 - SI & II vs Dominion Fiduciary Services (Malta) Limited.¹⁰

- (ii) Without prejudice to the above, the Service Provider further submitted that the Arbiter does not have the competence to decide the merits of the Complaint as the remedy demanded is in excess of Eur 250,000 which is the maximum sum which the Arbiter may award in terms of monetary compensation together with interest due and other costs and this in terms of Article 21(3)(a) of the Financial Services Arbiter Act.

(Reference was made to **Case No 436/2016 TB vs Hollingsworth International Financial Services Limited – 15.09.2020**: *“The losses suffered by the Complainant well exceed the sum of €250,000. However, in terms of Article 21(3)(a) of the Arbiter for Financial Services Act (Cap. 555 of the Laws of Malta), the Arbiter ‘may not award monetary compensation in excess of two hundred and fifty thousand euros (€250,000), together with any additional sum for interest due and other costs, to each claimant for claims arising from the same conduct’.*¹¹

⁹ P. 48 - 49

¹⁰ Emphasis added by TMF

¹¹ P. 49 – Emphasis added by TMF

- (iii) Without prejudice to the two preliminary pleas above, TMF further stated that the Complainant is also to first confirm whether he has filed other proceedings with regards to the same merits of this Complaint in order to ensure that the Complainant is not seeking a double remedy from two separate proceedings as this goes against the principle of unjustified enrichment in accordance with Maltese law and would classify as 'double-dipping' which is contrary to law.
- (iv) On the merits, TMF submitted that the Complainant was introduced to the Service Provider through an FCA regulated advisory firm with the name of *Serenus Consulting Limited*.
- (v) TMF noted that in the Investment Policy Statement (which formed part of the document pack on the onboarding of new members), the Complainant declared that his objectives were "*aggressive capital growth*", that his Risk Tolerance was "*High – very comfortable with risk – willing to accept greater volatility in order to achieve greater returns*", with a long-term average return of "*8 to 10%*".

TMF submitted that it shall amply prove that the Complainant was an experienced investor who had previously held securities which had matured and the proceeds of which he wanted to re-invest in the 5-year Commercial Loan to BFC. This was similar to the investment risk profile of the securities he held before, namely loans to GBT and property developments at Hockney Court, Walton Beck Road, Maryport, Stoke on Trent & Bolton.

- (vi) The Complainant together with his chosen regulated financial advisor, instructed TMF (acting as retirement scheme administrator) to invest specifically in BFC.

TMF submitted that acting with prudence and in the best interest of the Complainant, it requested that an investment report is issued noting the Complainant's risk profile who was classified (by his financial advisor) as an Elective Professional Client (in terms of FCA rule COBS 3.5.3).

- (vii) That, also in their commitment towards acting in the member's best interest, TMF instructed leading UK law firm *Mischon de Raya LLP* to review the loan notes with *Gigg Lane*, to analyse the legal documentation with CBFS and to undergo a due diligence process to ensure that BFC was a viable investment. Reliance was made on the solicitor's professional capabilities and experience in confirming that the documentation was in order.
- (viii) TMF further submitted that the Complainant fails to mention that according to the applicable rules, the Complainant was considered to be an investor who was experienced and who had previously held significant amounts in unlisted securities, *ex admittes* declared that his Risk Tolerance was High, and was active in all communications leading to the transaction in question. Importantly, the Complainant was legally represented by *EAD Solicitors* who monitored and had sight of TMF's actions and communications with the Complainant.

At no point did the Complainant raise any questions as to suitability or classification throughout the Complainant's investment journey with TMF (which started in 2013 following submission of an application back duly countersigned by his FCA regulated advisor through to 2019 when TMF filed proceedings against CBFS as it failed to honour its contracts).

- (ix) TMF asked the Arbiter to humbly take note of the fact that the allegations made by the Complainant are mainly addressed to his financial advisor (as these mainly concern suitability and investment objectives) and not to TMF who, it submitted, is mainly the custodian of the assets and not licensed to give financial advice.
- (x) TMF further submitted that if the Arbiter is to dismiss the preliminary pleas raised and consider that the Complainant ought to be compensated for the alleged loss, then it asked that withdrawals made by the Complainant are to be taken into consideration which withdrawals amount to £110,000.

- (xi) The Service Provider submitted that all allegations are unfounded in fact and at law and that it has acted in the best interest of the Complainant as custodian with prudence, diligence and utmost good faith and has adhered to its statutory obligations according to law. It claimed that, in full conformity with its fiduciary obligations, TMF proceeded with taking legal action against defaulting contracting parties in order to pursue those involved and prevent the assets being sold off cheaply. TMF further claimed that this is amply evidenced as shall be submitted throughout the course of the proceedings.
2. TMF reserved the right to produce further submissions on the merits of the case both oral and, also, in writing (should the Arbiter determine that the preliminary pleas are to be dismissed) to further expand on the investment transactions and the allegations made by the Complainant.
3. For the above reasons, TMF submitted that all Complainants' demands are to be rejected with costs to be borne by the Complainant.

Preliminary

Competence of the Arbiter

During the hearing of 27 January 2025, the Arbiter referred to the preliminary pleas raised by the Service Provider in its reply.

The plea raised by TMF that the Arbiter does not have the competence to decide the merits of the Complaint on the basis that the remedy requested exceeds the maximum sum of EUR 250,000 that may be awarded in terms of Article 21(3)(a) of Cap. 555,¹² was outrightly dismissed by the Arbiter during the said hearing.

The Arbiter pointed out that although he has no competence to give compensation in excess of the maximum amount, however, Article 21(3)(a) does not preclude him from hearing the merits of the case.¹³

¹² Article 21(3)(a) of Cap. 555 of the Laws of Malta provides that *"An Arbiter may not award monetary compensation in excess of two hundred and fifty thousand euro (€250,000), together with any additional sum for interest due and other costs, to each claimant for claims arising from the same conduct."*

¹³ P. 54

It is further to be noted that Article 21(3)(b) of Cap. 555 indeed provides for those situations where a larger compensation than the maximum amount of EUR 250,000 is deemed fair by the Arbiter.¹⁴

Determination of what constitutes fair compensation is arrived at following consideration of the merits of the respective case. Hence, the fact that one may request a higher compensation than the maximum monetary compensation that the Arbiter can provide in terms of Article 21(3), does not limit the Arbiter's competence to hear the merits of the respective case. The plea raised by the Service Provider was thus rejected.

As to the other preliminary plea raised concerning the claim that the Complaint is time-barred based on Article 21(1)(c) of Chapter 555, the Arbiter requested the parties to provide certain clarifications and respective submissions so that he can consider this matter first.¹⁵

During the hearing of 27 January 2025, the Arbiter requested the Service Provider to *inter alia* explain:

- a) The reasoning why TMF considered the date indicated by the Complainant of 12 December 2022 as to when he first had knowledge, as being incorrect;
- b) The reasons why an email dated 25 September 2023 sent by the Complainant, or on his behalf, addressed to contact@tmf-group.com did not constitute a registration of a complaint for the purposes of Cap. 555;
- c) Whether TMF was aware of the evaluation report prepared by *Lawsons Equity* which referred to a guarantee being taken as part of the loan package involving the disputed investment.

Extensive submissions were subsequently filed by the Service Provider with attachments.¹⁶

¹⁴ Article 21(3)(b) provides that "An Arbiter may, if he considers that fair compensation requires payment for a larger compensation than that stipulated in paragraph (a), recommend that the financial service provider pay the complainant the balance, but such recommendation shall not be binding on the service provider."

¹⁵ P. 55 - 56

¹⁶ P. 59 - 65 with attachment on p. 67 - 81

In essence, the following clarifications and submissions were made by TMF:

- As to the date when the Complainant first had knowledge of the matters complained of, TMF referred to the timeline of events and particular documentation. TMF *inter alia* submitted that:
 - (i) The Complainant would have been aware of the media coverage and formal media announcement released by BFC in August 2019 of BFC being expelled from the English Football League due to its financial collapse. TMF claimed that the Complainant acknowledged his awareness of financial problems of BFC in 2019 in his formal complaint to TMF (p. 8);
 - (ii) The Complainant was informed on 14 January 2020 that following the appointment of joint administrators for CBFS, discussions were held about the possibility to unwind the debt, with the prognosis however remaining a negative one. Further updates about the status of the investment subsequently followed;
 - (iii) It had sent a communication to the Complainant on 9 November 2020 (p. 25) where it had highlighted the finite position that the impact was to *'circa 66% of your capital'*.¹⁷

TMF submitted that the said communication made the losses to the Complainant clearer and more evident and enabled the Complainant to determine the total realised losses from the disputed investment. It noted that the Complainant had acknowledged this and the impact on the capital invested on 28 January 2021.
 - (iv) The Complainant had, in addition, been also informed by TMF on 12 August 2021 that *'in all reasonable expectations, investors would see a considerable write down in anticipated returns'*.¹⁸
 - (v) The Complainant eventually sent instructions to withdraw and process payment on 21 February 2022.

¹⁷ P. 60

¹⁸ P. 61

TMF accordingly claimed that the said timeline shows that the Complainant first learned about the loss sustained on BFC as early as 9 November 2020.

The Service Provider also claimed that there was no clear basis as to why the Complainant indicated the date of '12.12.2022' in his Complaint Form to the OAFS as to when he had first knowledge of the matters complained of.

Reference was also made to another case decided by the Arbiter [ASF 130/2024, ZN vs Optimus Fiduciaries (Malta) Ltd] where the Arbiter concluded that certain communication sent to the complainant constituted sufficient evidence of the complainant's awareness about the significant losses complained of.

TMF reiterated that based on the evidence produced, the Complainant was undeniably aware of the impact on his investment in the year 2020, given he was also in direct contact with FRP and CBFS (p. 18) and was also made aware by TMF in the correspondence exchanged. Reference was also made to the case *'Test Claimants in the Franked Investment Income Group Litigation v Commissioners for Her Majesty's Revenue and Customs [202] UKSC 47*, where it was argued by TMF that this judgement aligns with the understanding that time starts to run when the claimant knows enough to pursue a claim.¹⁹

- As to the date of the receipt of the formal complaint, TMF submitted that the formal complaint was only received on 30 May 2024. TMF *inter alia* submitted in this regard that:
 - (i) The mailing address used in the letter dated 11 May 2023 (p. 8) in Kalkara has not been in use since 2019 (for 4 years earlier than the date of the said letter) and the Complainant was aware of TMF's correct address having earlier (in 2022) himself sent correspondence to the correct address of TMF in Marsa.

¹⁹ P. 62 – Footnote 1

TMF submitted that even a quick Google search would have shown the correct address. It submitted that the letter was, however, posted to the wrong mail address and not received by it.

- (ii) The Complainant attests that an email has been sent on 25 September 2023 to contact@tmf-group.com enclosing the complaint letter dated 11 May 2023. TMF submitted that the Complainant had been previously communicating directly with TMF using other contact details and had never used such email in prior correspondence. It submitted that it was also implausible how the Complainant's legal team and the Complainant who had access to legitimate contact details suddenly chose to send a critical complaint demanding a substantial remedy to an unverified email address.

TMF submitted that the email address in question does not exist within the relevant communication systems of the TMF Pensions Group. It noted that the Complainant himself had used TMF's general email address as his correspondence email on various other occasions (such as p. 18 to 20, 22 to 23, 25, 29 and 31 to 32).

- (iii) The official Complaints Guide found on the TMF Group website, or a simple Google enquiry clearly outlines the proper contact details for lodging complaints, and nowhere is the email contact@tmf-group.com referenced.

TMF submitted that the fact that the Complainant claims to have sent a complaint to an address which was never used, despite clear guidance on the proper process undermines the credibility of the Complainant's claim.

- (iv) TMF referred to another case, *ASF 055/2023 RI vs Momentum Pensions Malta Ltd*, where the Arbiter had rejected the complaint on the basis that he has no competence in view of Article 21(1)(c) and the complaint being incorrectly addressed. TMF pointed out that there is no evidence either that the Complainant checked and verified whether TMF had received his complaint.

- (v) It reiterated that the Complainant did not follow up or request an acknowledgement to his complaint for almost a year up until a Complaint was filed with the OAFS and an email sent to TMF on 20 May 2024.

TMF contends that the email dated 25 September 2023 was not received as the address contact@tmf-group.com is unknown to TMF and consequently cannot be deemed to fulfil the requisite of Cap. 555.

- As to the Complainant's assumption of a guarantor in the loan package, TMF submitted *inter alia* the following:
 - (i) That trustees cannot negotiate or advise on the terms of a contract. It noted that the trustees did not have any personal guarantee issued in their favour nor was TMF aware of any personal guarantee made available at the time of the transaction.

It submitted that '*Considering the consequence of events it is amply clear that if a personal guarantee by Steward Day was indeed provided to CBFS or the Complainant, it would be up to FRP to pursue and it would probably be valueless as, from openly available media sources, Mr Day was declared bankrupt a year after the 2019 press announcement*'.²⁰

TMF confirmed that it had no contractual relationship with Lawsons Equity and that Lawsons Equity did not receive any commissions or fees from TMF. It noted that Lawsons Equity was accepted as the member's advisor in terms of the rules.

- (i) TMP further pointed out that the Complainant was made aware of the fact that there is no personal guarantee through an email on 20 October 2021 (p. 19). It emphasised that the Complainant was explicitly informed by TMF that '*the loan documents (legal contract) which were entered into, do not appear to include any personal guarantee from Stewart Day. The draft Heads of Terms and the*

²⁰ P. 64

*actual Loan Agreements made no mention of such a personal guarantee’.*²¹

TMF submitted that this was re-confirmed to the Complainant through an email dated 1 November 2021.

- (ii) That, as of October 2021, the Complainant was informed that no personal guarantee was included in the final loan documentation. It argued that in case the Arbiter considers October 2021 as the date of first awareness, then a complaint should have been filed by October 2023.

TMF submitted that the action for compensation was thus time-barred as the formal complaint was only received in May 2024. It reiterated that the Complainant was aware of the impact on his investment in 2020.

On his part, the Complainant, in essence, submitted the following in his reply:

- a) With respect to the date when he had first knowledge of the matters complained of, he submitted that:
- i. Prior to 20 October 2021, he believed that the value of his pension fund investment held with TMF was protected by a personal guarantee provided by Stewart Day, who was known to be a wealthy and successful property investor.
 - ii. This guarantee was referred to in two investment reports written by the advisor, Lawsons Equity, in connection with the proposed investment. It was pointed out that the reports referred to the financial standing of Stewart Day and that the guarantee will kick in in case where the funds cannot be recovered via the first charge on the property.
 - iii. TMF must have been aware of these reports having itself requested the compilation of the reports in question.

²¹ P. 65

- iv. TMF's statement that Stewart Day was declared bankrupt in 2020 is false as Stewart Day was declared bankrupt in October 2022, although that information did not become publicly available until December 2022 as per the attachment to his submissions.²²
 - v. The Complainant originally believed that his day of knowledge was in December 2022 when the bankruptcy of Stewart Day became public knowledge, but he now accepts that in an email dated 20 October 2021, he was informed by TMF that there was no personal guarantee. Failure to ensure that the guarantee was put in place formed part of the Complainant's claim against TMF.
 - vi. His complaint relates to the loss of money on his pension and his first date of knowledge of this fact was 20 October 2021, when he was informed there was no personal guarantee.
- b) With respect to the date of the formal complaint to the Service Provider, he submitted that:
- i. He first lodged his complaint with TMF on 11 May 2023 by writing to an address at Smart City, Malta. An email from Chase Monro Claims to the Complainant provides evidence that this letter was sent.
 - ii. The Complainant considered that it was reasonable to have written to this address as he was previously aware of this being the address for TMF.
 - iii. It was untrue that the Complainant had previously sent documents to TMF's address at OYIA Business Centre. The Complainant submitted that any documents he had ever sent to TMF by post were sent by him to the TMF Client Relationship Manager in London. The Complainant denied ever sending any documents or paperwork by post to OYIA Business Centre and noted that these may perhaps have been forwarded by the London office to Malta.

²² P. 84, 101 - <https://www.burytimes.co.uk/news/23171014.former-bury-fc-chairmen-stewart-day-steve-dale-declared-bankrupt/>

- iv. The complaint was also sent by email on 25 September 2023 to contact@tmf-group. The Complainant claimed that his email address was published on TMF's own website as recently as 19 February 2025 as per the exhibit to his submissions.²³ The Complainant submitted that it was reasonable for him to submit a complaint to an email address published on TMF's website.
- v. The Complainant pointed out that Chase Monro did not receive any message to say that the email was 'undelivered', which he submitted would have happened if the email address did not exist.
- vi. He noted that TMF submitted that he ought to have used a different email address. The Complainant submitted that it may well have been more convenient for TMF had he used a different email address, but that did not mean that the Complainant could not have used the contact@tmf-group to lodge his formal complaint.
- vii. TMF argued that he should have followed a specific process to lodge his complaint. The Complainant submitted that he was not aware of this process back in 2023 and there was no evidence that the process was published on TMF's website in 2023.

He further submitted that, in any event, the existence or otherwise of this process did not invalidate the fact that his complaint was lodged with TMF by other suitable means.

The Complainant accordingly submitted that his date of knowledge was 20 October 2021 and that his complaint was lodged on either 11 May 2023 or 25 September 2023, which are both within the two-year deadline and thus subject to the Arbiter's competence.

Competence of the Arbiter

Having considered the submissions and evidence produced during the case, the Arbiter accepts that the date when the Complainant is deemed to have first knowledge of the matters complained of is the revised date indicated by the

²³ P. 102

Complainant himself of 20 October 2021. This position is also consistent with a previous decision relating to the date of awareness of the losses that the Arbiter had taken in another case, ASF 140/2024, initiated by the same Complainant against Lawsons Equity Limited involving the same investment products.

The next key aspect that needs to be considered in the case under review is the date when the Complainant's formal complaint is deemed to have been registered in writing with the Service Provider for the scope of Article 21(1)(c) of Cap. 555. This is in view that, in terms of Article 21(1)(c), the Arbiter has the competence to hear the complaint only:

'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'.

Accordingly, for the Arbiter to have the competence to hear and consider the merits of this case, the formal complaint made by the Complainant with TMF had to be made no later than 20 October 2023.

The Arbiter notes there is disagreement between the parties as to the date when the complaint is considered to have been registered with TMF. This aspect has material implications in the case in question. Whilst the Service Provider contends that the Complainant's formal complaint can only be deemed to have been registered on 30 May 2024, and thus beyond the two-year timeframe of Article 21(1)(c), the Complainant claims that his formal complaint with TMF was first lodged in May/September 2023 and thus within the required two-year period.

Having considered the extensive submissions made by both parties, **the Arbiter decides that there is no sufficient basis on which he can deem the complaint to have been registered in writing with the financial services provider in May/September 2023, as claimed by the Complainant.** This is when considering various factors, particularly the following:

- a) No adequate evidence has emerged that TMF was indeed aware of the complainant's complaint in May/September 2023.

Apart from the fact that there is no formal acknowledgement of receipt of the said complaint, most importantly, no adequate evidence has emerged that the complaint dated 11 May 2023 was actually received by TMF (either by mail or electronically) in 2023, or that TMF was somehow aware of the complaint made against it at the time.

- b) It is noted that the complaint dated 11 May 2023 was in reality sent to an incorrect postal address of TMF in Smart City Kalkara - an address which TMF pointed out had not been in use for four years since 2019²⁴ - instead of the correct address in Marsa.

Previous communications and documentation clearly featured the correct postal address. For example, the material communication of 18 February 2022, involving the Scheme's *'Payment of Benefits and transfer out form'*, which was earlier completed and signed by the Complainant himself, undoubtedly featured the correct address of TMF in Marsa.²⁵ Other communication previously sent by TMF to the Complainant also clearly indicated the address in Marsa.²⁶

The letter dated 11 May 2023 was also sent on 25 September 2023 to an incorrect email address not used by TMF in its communications with members of the Scheme. The multiple email communications exchanged previously between the Complainant and TMF in 2021 and 2022, all feature different email addresses²⁷ than the one erroneously used (contact@tmf-group.com)²⁸ for sending the letter in 2023.

- c) Following a general internet search for the email "contact@tmf-group.com," it is noted that this email only appears in certain marketing documentation used within TMF Group, wherein it is stated, "This is a

²⁴ P. 13 & 62

²⁵ P. 72

²⁶ For example – Communication of 12 August 2021, (P. 52-53); Scheme's Withdrawal From signed February 2022 (P. 70 – 72).

²⁷ Example: XXX@tmf-group.com (P.18 – 20; 22 – 24; 25 – 26, 27, 32); internationalpensions@tmf-group.com (P. 27); XXX.XXX@tmf-group.com (P. 29 - 32); XXX.XXXn@tmf-group.com (P.32); or XXX.XXX@tmf-group.com (P. 52)

²⁸ P. 33

publication of TMF Group B.V., P.O. Box 23393, 1100 DW Amsterdam, the Netherlands (contact@tmf-group.com).”²⁹

The said email was thus clearly not the proper one to correspond with the Service Provider and cannot reasonably be deemed as correspondence registered with the Service Provider. This is even more so when TMF Netherlands never featured as a party to, or in correspondence, involving the Retirement Scheme.

- d) Rather than sending the letter dated 11 May 2023 to any of the parties with whom the Complainant had previously extensively corresponded with, and/or from whom he had received material communications in the preceding years,³⁰ the letter was instead sent to an incorrect postal/electronic addresses not used by TMF. The addresses used (both postal and electronically) ultimately did not lead TMF to come in receipt of, or create awareness of, the Complainant’s complaint at the time.
- e) The fact that no follow-up was made to the letter posted to the wrong address of 11 May 2023 (other than the email of 25 September 2023 sent to the wrong email address),³¹ further weakens the Complainant’s position and claims that the complaint should be deemed as having been lodged at the time.

Despite not receiving any acknowledgement or feedback to the serious issues raised in the letter of 11 May 2023 and email dated 25 September 2023, the only other contact (this time with the correct email details) emerging to have been made by the Complainant with TMF is that of 30 May 2024, (a year later from the date of the original letter). A reply to the communication of 30 May 2024, was then shortly issued by the Service Provider on 16 July 2024.³²

²⁹ https://www.tmf-group.com/globalassets/pdfs/articles/tmf-group_flyer_sustainable-international-business-bvi_1119.pdf

³⁰ For example – During 2022 various communications with Nick Newton, Client Relationship Manager, TMF International Pensions, London address (P. 29 - 32/P. 73 - 74); Communication of 12 August 2021, from Tatyana Brincat, Pension Scheme Administration Manager, TMF International Pensions Ltd, Marsa address (P. 52 – 53).

³¹ P. 33

³² P. 13

The only adequate evidence emerging of communication of the Complainant's formal complaint with TMF, which can reasonably be deemed as a registration of the complaint in writing with the Service Provider, is in the particular circumstances of this Complaint only that of 2024.³³

For the reasons mentioned, the Arbiter is accepting the Service Provider's preliminary plea that he has no competence to hear this case in terms of Article 21(1)(c) of the Act given that the Complainant's formal complaint with TMF was registered with the Service Provider later than two years from the day on which the Complainant first had knowledge of the matters complained of.

Decision

The Arbiter is accordingly dismissing this case for the reasons amply explained.

Given that the case was dismissed on a preliminary plea, the Arbiter decides that each party is to bear its own costs of these proceedings.

The Arbiter's decision is without prejudice to any redress or other action that the Complainant may have in terms of law before another court or tribunal competent to hear his case.

**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

³³ TMF's letter dated 16 July 2024 (P. 13) & Chase Monro's email dated 30 May 2024 (P. 33)

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.