

Before the Arbiter for Financial Services

Case ASF 245/2024

TS

(‘the Complainant’)

vs

STM Malta Pension Services Limited

(C 51028)

(‘STM’ or ‘the Service Provider’)

Sitting of 30 September 2025

The Arbiter,

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

In summary, the Complaint relates to the losses she claimed to have suffered on her Retirement Scheme due to STM’s failure to protect her, act in her best interests and carry out its duty of care as trustee of the Scheme. The Complainant, in essence, claimed:¹

1. *Unauthorised high-risk unsuitable investments* were allowed by STM without her being aware and without her signing the dealing instructions. She claimed that the investments were unsuitable because they were high-

¹ Page (P.) 3 - 4 & 8 - 10

risk, outside her risk tolerance, had high entry costs and involved derivatives related to emerging markets.

2. *Underperformance of unsuitable investments*, as she claimed all investments seriously underperformed.
3. *High fees were incurred and income was lost following the untimely exit of the unauthorised investments*. The Complainant claimed she ended up delaying making investments and had to sell investments she did not want, incurring high entry fees and losing income for several years in the process.
4. *High-cost structure and lack of transparency of fees* also applied for the underlying investment platform, as her Scheme had acquired an underlying *Old Mutual International* ('OMI') wrapper, which had an inappropriate high-cost fee structure that was not explained and communicated to her. She claimed STM did not ensure she was aware of the said fee structure.
5. *Overcharged annual fees*, given that an applicable lower couple's fee rate was not applied in respect of her Scheme. She claimed that STM only rectified the fee from 2017 onwards (when the mistake was discovered), and not from the date the fees were charged (November 2014).²

Preliminary

A typographical error was made in the Complainant's surname in the Complaint Form filed with the Office of the Arbiter for Financial Services ('OAFS').³ The error was replicated in the case records. The Arbiter is accordingly updating the records of the case to reflect the correct surname of the Complainant.

*The Complaint*⁴

The Complainant submitted that as their client, STM had a duty of care towards her and should have protected her.

² P. 28

³ P. 1 & 6

⁴ Complaint Form on P. 1 - 6 with extensive supporting documentation on P. 7 - 240

She claimed that STM allowed Pic deVere (her original investment adviser) to make investments on her behalf that she was not aware of and that were outside of her risk tolerance.

The Complainant submitted that whilst on file she was a balanced investor, 50% of her portfolio was invested into a *GAM Growth Fund* and the remaining 50% into *Morgan Stanley Defensive Autocall* and *Morgan Stanley Emerging Market Autocall*, both of which involved derivative structures linked to emerging markets and large entry fees.

The Complainant explained that she lost trust in STM, noting that when she challenged them, STM did not investigate her concerns but just implied that her adviser had discretionary management over her funds.

Investments were delayed, and a loss of income was incurred as she moved away from Pic DeVere. The Complainant explained that she did not want to be invested in emerging market investments and so cashed out of the high-risk funds, losing income for several years. She claimed that if she had been alerted to the nature of the funds, she would have avoided the high entry fees and sought the moderate rate stated in her risk tolerance statement.

The Complainant also explained that she was invested into an open-ended OMI wrapper which had an inappropriate fee structure that was not sufficiently explained or communicated to her. She noted that in order to reduce these fees, she had to open a new OMI structure, which added many years of fees onto her plan. It was also pointed out that despite having no involvement whatsoever with OMI, she still paid thousands in fees to them.

The Complainant further claimed that she was overcharged annual fees as STM should have charged the lower married couple's fee rates. Whilst STM has rectified some of this loss, STM claimed that it was her financial adviser's responsibility to alert it to the fee structure which should have been charged.

The Complainant also submitted that her investments, furthermore, seriously underperformed over the period since 2013.

As to the reasons why her financial services provider let her down, the Complainant explained the following:

- 1) She believes that STM had a duty of care to ensure her investments were within her stated risk tolerance.
- 2) That STM should have investigated her claims when she alerted them to their faulty process that allowed them to accept trades from DeVere which were outside her risk tolerance.
- 3) That STM should have taken her seriously when she raised concerns about the relationship with DeVere and, also, when agreeing with DeVere that she could only receive the married couple rates if she invested her final pension tranche through DeVere.
- 4) She believes that STM gave her wrong information when she tried to find a way to avoid her final pension tranche from entering the OMI wrapper.
- 5) That this caused her to reinvest in a new OMI wrapper rather than move to a lower fee structure.
- 6) That STM did not have a process or method to ensure she was being charged the correct STM fee structure.
- 7) That STM should have had a process to ensure she was aware of the Skandia/OMI fee structure being charged.

In her Complaint Form to the OAFS, the Complainant further attached a covering letter providing additional details on her complaint. In the said covering letter, she *inter alia* explained that her complaint involved STM's inconsistency and lack of care offered to her as trustee since the inception of her scheme in 2013.⁵ She listed the key areas of concern as involving the following, elaborating on each aspect:

- Suitability of advice/conflicts of interest;
- Lack of due diligence on investments;
- Approval of multiple high-cost investment platforms;
- High and inconsistent trustee fees and inconsistent administration.

⁵ P. 8 - 11

Remedy requested

The Complainant asked STM to pay compensation for the total loss she calculated as amounting to GBP 91,390 made up of: ⁶

- a) GBP 11,640 in entry fees for the GBP 229,000 invested into unauthorised high-risk investments, at the rate of 5%;
- b) GBP 24,750 for the lack of returns and loss of income related to the unauthorised emerging market investments. She noted that the untimely exit of such investments caused zero return for the period, the loss of GBP 15,000 on one investment as well as the loss of returns at the rate of 4.5% for five years.
- c) GBP 13,500 for the late investment of her funds from the *Lehman* pension which, given the complete loss of faith in DeVere/STM relationship, were left uninvested for a year (GBP 290,000 at 4.5%).
- d) GBP 4,000 in new entry fees for new funds relating to the move to the new provider.
- e) GBP 37,500 related to the move out of OMI to reduce fees. She indicated that she had to pay an additional five years of OMI (GBP 600,000 x 1.25% p.a. for a further five years).

Having considered in its entirety the Service Provider's reply, including attachments,⁷

Where, in essence, 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 pursuant to Article 21(1)(b) and Article 21 (1)(c) of Chapter 555 of the Laws of Malta and also pursuant to article 2156 (f) of Cap. 16 of the Laws of Malta (5-year prescription).

⁶ P. 4

⁷ Reply of 11 February 2025, on P. 251 – 253 with attachments on p. 254 - 261

- (ii) That preliminary, should the Arbiter take into consideration this action as directed towards it as trustee, then the filing of the Complaint is also time-barred by virtue of Article 41 of Chapter 331 of the Laws of Malta since more than 3 years have elapsed.
- (iii) That without prejudice to the above, the Complainant appointed an Independent Financial Advisor (IFA) by the name of *Pic Devere* (DeVere) between 09.08.2013 until 2017. This is clear from the *STM Malta Retirement Plan* Application Form (hereinafter referred to as the Application Form) which specifically requests the details of the Complainant's IFA (section 5).⁸
- (iv) That without prejudice to the above, the Complainant did not explain clearly why the investments are outside her risk tolerance.
- (v) That without prejudice to the above, the Complainant also declared, as per clauses 10 and 11 of Section 8 of the Application Form, that she received independent financial, legal and tax advice on the suitability of the Plan for herself and her individual circumstances. Furthermore, the Complainant as per clause 1 of Section 8 of the Application Form, confirmed that *'STM Malta cannot provide any such advice (i.e. financial, legal and tax advice) and cannot be held responsible for any such advice obtained or advice not sought by myself or any related persons party to the affairs of the Plan'*. As per Clause 11 of Section 8 of the Application Form, the Complainant also confirmed that she received independent advice on her preferred investments with regard to the suitability and appropriateness for the Plan. The Complainant signed the Application Form on 4 March 2013.⁹
- (vi) That as part of the advice process and in line with the responsibility of Pic De Vere, they reviewed and reported on the Complainant's risk appetite. The report also clearly disclosed any risks with investments. The IFA was appointed by the Complainant, and it was the IFA which, in terms of the Suitability Advice Reports explained and advised on

⁸ P. 60

⁹ P. 62

the investment to the Complainant and further to whose advice, the Complainant took an informed decision to invest in these investments.¹⁰

- (vii) That without prejudice to the above, by signing the suitability report, the Complainant accepted the investments and accepted any risks warnings, risk statements and risk objectives stated therein. The Complainant agreed with the content and conclusions of the Suitability Report by signing the suitability report on 14 May 2014¹¹ and 11 January 2016.¹²
- (viii) That without prejudice to the above, the allegations made by the Complainant concern, and therefore should be addressed to, her financial advisor Pic DeVere and not the Company who is the administrator of the pension scheme. STM submitted that it is not licensed by the MFSA to provide investment advice.
- (ix) That, therefore, STM cannot enter into the merits of whether the investment was appropriate for the particular member or otherwise as this could have been construed as investment advice. STM submitted that it had to rely on the professional capacity and expertise of Pic DeVere in this regard as it was solely the latter's duty to ensure that the investments were suitable and appropriate bearing in mind the client's risk profile and investment objectives.
- (x) That contrary to what is stated in the Complaint, the Complainant was aware of and approved all investments made including the investments made in the *Morgan Stanley Defensive Autocall* and *Morgan Stanley Emerging Market Autocall* (as per the Dealing Instructions attached in Annex A and B to its reply).¹³
- (xi) That contrary to what is stated in the Complaint, the Complainant was fully aware of the fees being charged in respect of the investments and signed off on such fees. As per Clause 8 of Section

¹⁰ P. 167 – 174 & P. 187 - 199

¹¹ P. 174

¹² P. 199 & 216

¹³ P. 254 - 261

8 of the STM Application Form, the Complainant also confirmed that she had been provided with and agreed with written information of all fees, expenses and running costs of her account.

- (xii) That with respect to the married fee rate not being charged by STM, this was the shortcoming of the IFA who should have informed the Complainant and advised her to fill in the form requesting to be shifted to a married rate when this came into force in November 2014. This was brought to STM's and the Complainant's attention for the first time in 2017. STM reimbursed the difference between the STM married fee rate and STM single rate to the Complainant for the period from 2017 to 2023.
- (xiii) That without prejudice to the foregoing, in terms of performance of the investments, the Company and *Royal Skandia* (later named *Old Mutual International*) sent regular valuations to the Complainant (e.g. Annex I to the Complaint) showing the performance of the investments. It submitted that the Company surely cannot be held responsible for the performance of the investments the Complainant decided to invest in.
- (xiv) That without prejudice to the foregoing, the Complainant in the meantime disposed of the investments she mentions in her Complaint in 2017.
- (xv) That without prejudice to the foregoing, in terms of Clause 16 of Section 8 of the Application Form, the Complainant also agreed that STM Malta will not incur any liability in connection with the Plan's investments except where this arises as a result of the Administrator's fraud, wilful misconduct or gross negligence.
- (xvi) That without prejudice to the foregoing, should the Arbiter decide that the Complainant ought to be compensated for any alleged losses made, then the fact that other service providers were involved such as Pic De Vere should be taken into consideration.
- (xvii) That without prejudice to the foregoing, should the Arbiter decide that the Complainant ought to be compensated, the compensation

claimed by the Complainant is excessive. Furthermore, STM has already reimbursed the difference between the STM married fee rate and the single rate to the Complainant for the period 2017 to 2023.

(xviii) That all allegations made by the Complainant in the Complaint are unfounded in fact and at law and that STM acted with prudence and diligence.

The Service Provider reserved the right to produce further oral and documentary proof and make additional submissions to substantiate its position. It further submitted that, for the foregoing reasons, all of the Complainant's demands are to be rejected, with costs to be borne by the Complainant.

**Having heard the parties and seen all the documents and submissions made,
Further Considers:**

Preliminary Pleas

In its reply of February 2025, the Service Provider raised the preliminary plea that the Arbiter has no competence to hear this Complaint based **on Article 21(1)(b) and Article 21(1)(c) of Chapter 555 of the Laws of Malta** ('the Act'), as well as pursuant to **Article 2156(f) of Chapter 16 of the Laws of Malta** (Civil Code) and **Article 41 of Chapter 331 of the Laws of Malta** ('the Trusts and Trustees Act' ('TTA')).

The Service Provider further submitted that it is not the legitimate defendant in this Complaint as the allegations made by the Complainant relate and should be addressed to her previous investment advisor, *Pic De Vere*.¹⁴

During the hearing of 27 August 2025, the Arbiter referred to the pleas raised by the Service Provider regarding his competence and requested the Service Provider to first explain and elaborate on its submissions as to why it considered the complaint to be time-barred and for the Complainant to then provide her

¹⁴ P. 252

submissions on the pleas raised by STM for these to be considered first before the merits of the case.¹⁵

The Arbiter shall next consider first the plea made about his competence under the provisions - Article 21(1)(b) and Article 21(1)(c) - of the Arbiter for Financial Services Act (Cap. 555) ('the Act').

Plea relating to Article 21(1)(b) of Chapter 555 of the Laws of Malta

In its submissions of 4 September 2025, the Service Provider referred to the dates of purchase of the investments complained about noting that the three disputed investments (*GAM Wealth Builder Multi Asset Growth Fund*, the *Morgan Stanley 5 year 3 Indices* and the *Morgan Stanley 5y Defensive Ac*) were purchased during September and October 2014.¹⁶

It also *inter alia* submitted that the Complainant had signed the OMI tariff schedule in March 2013.

With respect to the married rate fee, STM submitted that the conduct complained of occurred in 2014, as such fee came into force in November 2014.

STM pointed out that the Complaint was filed with the OAFS in December 2024, well past 18 April 2018, the deadline that applied in terms of Article 21(1)(b) of the Act.

On its part, the Complainant first generally submitted that:

'[-] That STM's reliance on a broad and indiscriminate citation of multiple prescriptive provisions (article 21(1)(b) and 21(1)(c) of Cap. 555, article 41(2) of Cap. 331 and article 2156(f) of Cap. 16) demonstrates the lack of a specific legal foundation for its pleas;

[-] Each of these provisions establishes distinct prescriptive regimes. By listing them without identifying the precise provision applicable to the facts at hand, STM has left its plea vague and ambiguous, thereby depriving the Complainant of the clarity necessary to address it;

¹⁵ P. 264

¹⁶ P. 267

[-] It is therefore evident that STM is invoking every possible statutory basis without demonstrating the direct applicability of these provisions;

[-] The burden of proof lies squarely on the Service Provider to establish prescription. Its generic references, unsupported by proper legal reasoning, render the plea procedurally defective and unfounded in fact and at law'.¹⁷

With reference to the plea raised under Article 21(1)(b) of the Act, the Complainant submitted that STM's reliance on such article '*is misconceived and unfounded*' given that the conduct complained of '*is continuing in nature and is not reducible to a single occurrence*'.¹⁸ STM quoted the provisions of Article 21(1)(d) in this regard, *inter alia*, pointing out that STM continued to act as trustee and retirement scheme administrator in respect of the Complainant's Retirement Scheme well beyond the date the article came into force (18 April 2016).

The Complainant thus submitted that Article 21(1)(b) of the Act was inapplicable in her case in view of '*STM's ongoing acts and omissions, including inadequate responses to the Complainant's repeated concerns and the continuing presence of the disputed investments in her portfolio*'.¹⁹

She also submitted that the indicated dates when the investments and fee schedules were signed for were irrelevant, given the Service Provider's continuing acts and omissions. The Complainant reiterated that the Complaint '*clearly concerns conduct extending beyond the coming into force of article 21(1)(b) of Cap. 555*' and for such reasons the quoted article was '*not applicable to the present case*'.²⁰

The Arbiter observes the following:

Article 21(1)(b) stipulates that:

¹⁷ P. 275

¹⁸ P. 276

¹⁹ *Ibid.*

²⁰ *Ibid.*

‘An Arbiter 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 which occurred on or after the first of May 2004:

Provided that a complaint about conduct which occurred before the entry into force of this Act shall be made by not later than two years from the date when this paragraph comes into force.’

This article thus provides that a complaint related to the ‘conduct’ of the financial service provider which occurred before the entry into force of the Act, **shall be made not later than two years** from the date when the said paragraph came into force. **This paragraph came into force on 18 April 2016.**

The Complaint with the OAFS was received on 30 December 2024.²¹

The key aspects and subject of this Complaint involve the Service Provider’s conduct with respect to (i) the OMI wrapper (ii) the underlying investments held within the OMI wrapper and (iii) the overcharging of annual fees.

The claimed inappropriate fee structure of the OMI policy, which the Complainant alleged was not explained and communicated to her, is a specific aspect and alleged failure occurring at the time of application and top-ups made for the OMI policy in 2013,²² and January 2016.²³ This specific aspect is therefore considered to be now prescribed by virtue of Article 21(1)(b) of the Act.

The conduct complained of, however, involves other key aspects, particularly relating to the unsuitable investments held within the Complainant’s Retirement Scheme, which still featured within the Complainant’s Scheme when Article 21(1)(b) came into force. Indeed, as confirmed by the Service Provider, the three underlying investments within the OMI policy were sold in 2017.²⁴

The Arbiter accepts the submissions made by the Complainant that the conduct complained of with respect to the said investments was continuing in nature (as provided for under article 21(1)(d) of the Act). Accordingly, this aspect of the

²¹ P. 1

²² P. 175

²³ P. 214

²⁴ The GAM Wealth Builder Multi Asset Growth Fund, the Morgan Stanley 5 year 3 Indices (EN Auto call) and the Morgan Stanley 5y Defensive Ac – P. 270

Complaint is not considered to be prescribed in terms of article 21(1)(b), which is regarded as not to apply in this regard.

Similarly, the part of the Complaint involving the claimed overcharging of annual fees goes beyond April 2016, and for this reason is not considered either to be prescribed in terms of article 21(1)(b) of the Act.

The conduct complained of with respect to STM's actions or lack thereof with respect to the disputed three underlying investments and the overcharging of annual fees is clearly about conduct which continued to occur after the entry into force of this Act.

The Arbiter considers that Article 21(1)(b) is only applicable to the claimed lack of sufficient explanation and communication of the OMI's fee structure but is not applicable to the remaining aspects raised by the Complainant in her Complaint as outlined above.

The Arbiter is accordingly only partially accepting the plea of time barring with reference to Article 21(1)(b) whilst dismissing such plea on the remaining aspects of the Complaint. The Arbiter shall next proceed to consider the other plea raised by STM under Cap. 555 of the Act.

Plea relating to Article 21(1)(c) of Chapter 555 of the Laws of Malta

In its submissions of 4 September 2025, the Service Provider also pointed out that the Complainant indicated '07/10/2016' as the date when she claimed she first had knowledge of the matters complained of. STM reiterated that the investments complained of were made in 2014, that the fee structure was signed in 2013 and that the Complainant knew about the married fee rate *'from around 7 October 2016 as she indicated in the complaint form'*.²⁵

STM further noted that the formal complaint was made by the Complainant in October 2023,²⁶ and that accordingly the Complaint *'is time-barred as more than 2 years have passed from when the Complainant first had knowledge of the matters complained about'*.²⁷

²⁵ P. 268

²⁶ P. 13

²⁷ P. 268

In its submissions, the Service Provider pointed out that the three investments were sold in January and March 2017 and that *'Therefore these investments have not formed part of the Complainant's portfolio for over the past 8 years'*.²⁸

In her subsequent submissions to the Arbiter, the Complainant *inter alia* counter-argued that *'the dates on which the investments and fee structure were signed are irrelevant'* with reference to article 21(1)(c) of the Act which refers to the deadline of *'not later than two years from the day on which the complainant first had knowledge of the matters complained of'*.²⁹

The Complainant *inter alia* further submitted:

*'... that she first became aware of the conduct complained of on the 7th of October 2016. From that point onwards, throughout 2016 and 2017, the Complainant raised her concerns with STM on multiple occasions and requested that her matter be given priority through the appropriate internal channels. Numerous emails were addressed to various employees of STM and DeVere, as well as the general STM contact address. While members of STM staff acknowledged receipt of these communications, the Complainant was never directed to any dedicated complaints channel. Nevertheless, the Complainant consistently voiced her concerns and frustrations which eventually culminated in the filing of the present proceedings, and this as can be confirmed through the above-mentioned communications attached with the Complaint marked as 'Dok 123' – 'Dok 164'.*³⁰

The Complainant then listed various examples of such communications and referred in particular to the communications of 9 September 2016, 7 October 2016, 10 October 2016, 18 October 2016, 29 November 2016 and January 2017, as well as that of 23 October 2017.³¹

²⁸ P. 270

²⁹ P. 277

³⁰ *Ibid.*

³¹ P. 277 & 278

The Complainant also submitted that she *‘did not remain passive upon discovering STM’s lack of care and diligence’* but *‘persistently sought information and lodged repeated complaints regarding her situation’*.³² It was claimed that:

‘STM, however, failed to direct her to the appropriate formal complaints procedure, instead referring her from one employee to another. This conduct highlights STM’s failure to maintain adequate processes to (i) ensure that they were fully aware of the investments wherein their clients were being placed by their financial advisors and (ii) provide clients with clear access to a proper complaints channel to secure timely resolution of issues’.³³

The Complainant accordingly refuted that her complaint was time-barred, *‘since she first became aware of the matters complained of in October 2016, and she complained in writing shortly thereafter. Those complaints remained unresolved despite continuous communications’*.³⁴ She reiterated that there was *‘an ongoing failure to handle client concerns appropriately’*, with the obligations of the Service Provider being continuous in nature with reference to Article 21(1)(d) of the Act.³⁵

The Arbiter observes the following:

Article 21(1)(c) 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.’

Therefore, the Complainant had two years to complain to the Service Provider *‘from the day on which the complainant first had knowledge of the matters complained of’*.

³² P. 278

³³ P. 278/ 279

³⁴ P. 279

³⁵ *Ibid.*

In her Complaint Form to the OAFS, the Complainant indicated '07/10/2016' as the date when she first had knowledge of the matters she was complaining about.³⁶ The information and documentation emerging during the case amply confirm this position. This date was also undisputed and further confirmed in her final submissions, wherein it was noted:

'The Complainant expressly stated, in her complaint to the Arbiter for Financial Services, that she first became aware of the conduct complained of on the 7th of October 2016. From that point onwards, throughout 2016 and 2017, the Complainant raised her concerns with STM on multiple occasions ...'.³⁷

Whilst the communications referred to by the Complainant in 2016/2017 indicate certain queries and options which she was making and considering at the time, the Arbiter finds no adequate evidence that communications sent by the Complainant at the time could reasonably be deemed as being a formal complaint to the Service Provider for the purposes of the Act.

This is also when considering the nature of the communications exchanged at the time and their content. Indeed, no communication could be identified that reflects the same allegations that the Complainant is now making in her Complaint filed with the OAFS, other than the formal complaint to the Service Provider dated 23 October 2023 (sent on 24 October 2023).³⁸

The evidence emerging throughout the proceedings of this case indicates that the Complainant had knowledge of the matters complained of in the years 2016 and 2017 on the different aspects raised in her Complaint. The Arbiter also takes into consideration the following in reaching such conclusion:

a) *Claim of unauthorised high-risk unsuitable investments –*

It is noted that as per the timeline of events presented, the Complainant explained that in June 2016, she sought '*... alternative investment advice*

³⁶ p. 2

³⁷ p. 277

³⁸ p. 13 - 15

*from GWM ... I am told by GWM that I am in emerging markets & a derivative structure’.*³⁹

Apart from at that point being aware about the risky and particular nature of the disputed investments, the Complainant also became aware that her signature was not on the dealing instructions in October 2016. The explanations and details provided for 7 October 2016 in the timeline presented by the Complainant particularly refer. In the said explanations of October 2016, the Complainant noted:

*‘My signature is not on any of the dealing forms that they send me. I ask them many questions and express my concerns ... I meet Simon Pitkin and ask why I am in emerging markets’.*⁴⁰

It is furthermore noted that other communications produced such as those of 6 October 2016,⁴¹ 11 October 2016,⁴² 21 December 2016,⁴³ and 15 January 2017,⁴⁴ all confirm the Complainant’s awareness of the claimed unauthorised high-risk investments at the time.

- b) *Claim of high fees incurred on underlying investments* – The disputed investments were sold in early 2017, as indicated by the Service Provider and undisputed by the Complainant.⁴⁵

It is also noted that the new *Quilter’s International* policy (no. 600016489) start date is ‘28 February 2017’.⁴⁶ This was eventually entered into and separately from OMI’s policy (no. 21060045)⁴⁷ that was applied for in 2013.⁴⁸

Awareness of the incurred fees had thus clearly occurred by 2017.

³⁹ P. 11

⁴⁰ *Ibid.*

⁴¹ P. 155

⁴² P. 145

⁴³ P. 151

⁴⁴ P. 149

⁴⁵ P. 97, 119 & 270

⁴⁶ P. 75

⁴⁷ P. 107

⁴⁸ P. 175

- c) *Underperformance of the unsuitable investments* - Awareness of the investments' underperformance also emerges as having occurred during 2016 and 2017. In its notes for June 2016, the Complainant noted that:

'I finally received a valuation and see that investments are badly down by £30k. I seek alternative investment advice from GWM ...

... I see the vast fees on the EM structures and their poor performance...

I am told by GWM that I am in emerging markets & a derivative structure that is badly under water'.⁴⁹

As outlined above, the investments were sold in 2017 at which point in time their exact performance was fully determined.

- d) *Claim of lack of transparency of fees* – Awareness relating to the lack of transparency of fees has also clearly emerged to have occurred by 2016. In her Complaint Form to the OAFS, the Complainant *inter alia* described that: *'I only realised that it was 1.1% for the life of the product when it was pointed out to me by GWM in 2016'.⁵⁰*

In an email communication dated 7 July 2024, the Complainant also noted that: *'However in 2016 I found out that my agreement with OMI committed me to 1.25% for the life of the investment'.⁵¹*

- e) *Claim of overcharging of annual fees* – The Complainant was aware of the mistake in the fee rate charged since 2016 / 2017. In her timeline of events the Complainant indicated that in June 2016, *'I investigate fees. I see that STM fees are lower on their website than I am paying'.⁵²*

In her formal complaint to STM, the Complainant stated:

'In 2016 I was advised during a conversation with ... that the Trustee fees should be reduced on the basis that my husband and I ... also had a Malta QROPS with STM. ... Regarding the Trustee fees, the agreement was that the fees would be reduced due to the married couple discount. Despite

⁴⁹ P. 11

⁵⁰ P. 9

⁵¹ P. 33 – Emphasis added by the Arbiter

⁵² P. 11

*this being confirmed in writing, the fees continued to be charged at the higher rate of £1,250 per annum for both my husband and I. The fees as per the latest statement provided at the end of 2022 are being charged at £1,275 per annum, this is not only significantly higher than the promised married members discounted fee (£500 pa) but it is also higher than the annual Malta Trustee Fees as per your own website of £887 pa’.*⁵³

It is further noted that a request for the reduction of the fees was made by the Complainant in 2017. In an email dated 12 March 2024, STM stated:

*‘... we can only reduce the relative fees upon being requested to do so, and this took place in 2017’.*⁵⁴

It is also noted that in an email dated 30 April 2024 sent to the Complainant, STM stated the following about the married couple fee rates:

*‘Your concern was brought to our and your attention in 2017, which is when we became aware of it as well. Consequently, we have agreed to reimburse you for the married fees incurred since 2017’.*⁵⁵

In an email dated 16 July 2024, sent by STM to De Vere, it was also noted that:

*‘... we already have refunded the fees for the period 2017 – 2023, because it seems they [Mr and Mrs ...] notified a STM employee in 2017 that they both were clients of STM and therefore both eligible for a married rate discount’.*⁵⁶

The Arbiter thus concludes that more than two years have lapsed since the Complainant first had knowledge of the matters complained of (2016/2017) and the formal complaint registered in writing with STM (in 2023).

⁵³ P. 14 - 15

⁵⁴ P. 21

⁵⁵ P. 26

⁵⁶ P. 41

For the reasons mentioned, the Arbiter is accepting the plea raised by the Service Provider that he does not have competence to hear the remaining aspects of the Complaint in terms of Article 21(1)(c) of the Act.

Given that the Arbiter considers that he has no competence to hear this Complaint, there is no scope to enter into the remaining pleas raised in terms of Article 2156(f) of the Civil Code and Article 41 of Chapter 331 of the TTA and other aspects.

Decision and Compensation

For the reasons explained, the Arbiter upholds the plea of prescription raised by the Service Provider in its first submissions on the basis of Article 21(1)(b) and Article 21(1)(c) of Chapter 555 of the Laws of Malta as explained above and accordingly dismisses this Complaint.

In view of the above, the Arbiter is not considering the merits of the case.

The Arbiter's decision is without prejudice to any right the Complainant may have to seek redress before another court or tribunal competent to hear her case.

As the case is being decided on a preliminary plea, 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.

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.