Before the Arbiter for Financial Services

Case ASF 212/2024 & ASF 213/2024

JF ('the Complainant')

vs

Sovereign Pension Services Limited (C 56627) ('SPS', 'Sovereign' or 'the Service Provider')

Sitting of 8 May 2026

The Arbiter,

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

The Complaint, in essence, relates to the claim that SPS failed to fulfil its duties as trustee of the Retirement Scheme given the unsuitable underlying investments, namely the '*Escher Marwick*' and the '*Lombard 82*' investments (referred to hereon as 'the disputed investments'), that were allowed within the Complainant's Scheme. The Complainant claimed that the said investments did not match his profile of a retail investor, given that they were for professional/ institutional investors only. He also claimed that the investments did not match his attitude to risk, nor were they prudent or consistent with a diversified and balanced investment strategy.

Preliminary

The Office of the Arbiter for Financial Services ('OAFS') received two cases against the Service Provider, both related to the same personal pension scheme of which the Complainant was a member (*'The Centaurus RBS No. 2772'*).[1] Case ASF 212/2024 involved the *Escher Warwick* investment allowed within his Retirement Scheme, whilst case ASF 213/2024 involved the *Lombard 82* investment, also allowed within the same Scheme's investment portfolio.

Following consideration of the Service Provider's request for case ASF 213/2023 to be consolidated with case ASF 212/2024 *'as both complaints pertain to the same conduct and involve the same parties'*,[2] the Arbiter concluded that the captioned cases are intrinsically similar and acceded to the request. The Arbiter notes that: the separate cases filed deal with the same licensed product (that is, the Retirement Scheme); the same licensed services and conduct (that is, the role of the RSA and trustee); and involve the permitted underlying investments in the investment portfolio featured within the Scheme's structure.

Other than possibly for reasons of an administrative nature, differences in the date of knowledge of the matters complained of in respect of the disputed investments and/or possibly an attempt to bypass the maximum monetary compensation of Eur250,000 that the Arbiter may award to a claimant in terms of Article 21 (3)(a) of Chapter 555 of the Laws of Malta, the Arbiter sees no tangible reason as to why the Complainant has filed a separate case for each of the disputed investment.

As outlined above, the two disputed investments form part of the investment portfolio underlying the same Retirement Scheme, which is the subject of the complaint filed by the Complainant. In the particular circumstances of this case, the maximum monetary compensation that the Arbiter may award in terms of the Act is considered to apply at the Retirement Scheme level as they relate to the same conduct and not on each individual investment forming part of the same Scheme's investment portfolio.

Furthermore, no material implications arise either to this Complaint with respect to the date of knowledge of the matters complained of as shall be considered in detail further on in this decision.

[1] P. 21 of Case ASF 212/2024 & P. 50 of Case ASF 213/2024

[2] Reply of 10 December 2024 in Case ASF 212/2024 – P. 80

Consequently, the Arbiter deemed it fit to treat the two cases together in terms of Article 30 of Cap. 555 which provides that:

> '*The Arbiter may, if he thinks fit, treat individual complaints made with the Office together, provided that such complaints are intrinsically similar in nature*.'

The purpose behind this provision is to avoid repetition and to offer an opportunity to the Arbiter to decide intrinsically similar cases expediently in the best interests of the parties involved. Furthermore, the law urges the Arbiter to conclude cases '*in an economical and expeditious manner*'.[3]

As indicated in the Arbiter's decree of 5 June 2025, the two complaints were merged and considered as a single Complaint on which one adjudicating decision is being issued.[4]

The Complaint[5]

The Complainant explained that in November 2017, he opened a Qualifying Recognised Overseas Pension Scheme ('QROPS') with Sovereign and that, in January 2018, he then signed dealing instructions for an investment of GBP 196,000 into *Escher Marwick plc* and GBP 246,000 in *Lombard 82* as part of underlying investments of the Scheme.

In October 2020, the Complainant was informed that there would be a moratorium on the coupon payments in respect of the *Escher Marwick* investment due to the impact of COVID. He was also informed that payments would, however, be added to the capital invested.

In November 2020, the Complainant transferred his Retirement Scheme from Sovereign Malta to Sovereign Gibraltar, with the existing investments transferred *in specie*.

In October 2021, Sovereign Gibraltar notified the Complainant that *Lombard 82* had defaulted on the interest payment due. The Complainant pointed out that in November 2021, he was, however, provided with another notice that the

[3] Cap. 555, Art. 19(3)(d).
[4] P. 176 - 177
[5] Complaint Form on Page (P.) 1 - 5 with extensive supporting documentation on P. 6-74 for ASF 212/2024 and on P. 6 - 97 for ASF 213/2024

investor capital on this investment was not at risk. He also received a notice on 30 November 2021, that he would be able to redeem his capital investment on *Lombard 82* in June 2023. The Complainant further explained that he submitted his redemption request on this investment in December 2021 and was informed that the execution thereof would be held until June 2023.

In February 2022, he received an update on the *Escher Marwick* investment, where he was notified that the coupons would commence in May 2023. The Complainant submitted that no coupons had been paid, and the bond remained illiquid with no possibility of selling. He noted that at the time of his complaint, the said investment was valued at GBP 127,449.

In July 2022, he received an update on the *Lombard 82* redemptions, where he was informed that redemptions would not commence until the *International Investment Platform* settles debts. In October 2022, he then received a further notice advising him that the *Lombard 82* investment had been written down from GBP 246,000 to GBP 3,690.

He explained that in June 2024 he wrote to Sovereign Gibraltar to raise a complaint about the role of the trustee in fulfilling their duties when investing his funds into the disputed investments, and he was instructed to direct his complaint to SPS.

The Complainant claimed that during his investigations he discovered that the disputed investments were recommended for institutional or professional investors only and should have not been sold to retail investors like him. He further claimed that the disputed investments did not match his risk profile and the amount invested into these two investments was not prudent or consistent with a diversified and balanced investment strategy.

Remedy requested

The Complainant sought a refund of the sum invested into the *Escher Marwick* and *Lombard 82* of GBP 196,000 and GBP 246,000 respectively.

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

[6] P. 80 - 83, with attachments from P. 88 - 104 for case ASF 212/2024 and P. 103 - 107, with attachments from P. 112 - 144 for case ASF 213/2024.

Where the Service Provider, in essence, explained and submitted the following:[7]

(1) That the complaint bearing reference number 213/2024 be consolidated with case 212/2024, as both complaints pertain to the same conduct and involve the same parties.

(2) That the Complaint should be dismissed as it is unfounded in law and fact for the following reasons:

(A) PRELIMINARY PLEAS:

(3) **Time Bar** – SPS submitted that the Complaint is time-barred based on Article 21(1)(c) of Cap. 555. It pointed out the following timeline of events:

(i) The Complainant sent a formal written complaint in accordance with the Service Provider's complaint procedure (that is, the Service Provider's internal complaints handling procedure – attached to its reply as Appendix I)[8] on 6 November 2024. The Service Provider is bound to follow such procedures that it is subject to for responding to a complaint in accordance with, and as referenced, in Article 21(a)(1) of the Act. The same internal procedure as well as the Act allow for 15 working days within which the Service Provider is to reply to a registered formal complaint (Complaint Letter dated 6 November attached to its reply as Appendix II).[9]

(ii) The Complainant proceeded to file a Complaint with the OAFS on the same day 6 November 2024, without giving the Service Provider any opportunity to reply to the Complaint as is required by law and in accordance with the Complaint procedure pertaining to the Service Provider. Therefore, the Service Provider was not given any time to adequately address the subject matter of the Complaint in accordance with Article 21(2) of the Act and submit a formal reply.

In its reply for Case ASF 213/2024, SPS further submitted that it was not provided with adequate time to ensure that it thoroughly understood the

[7] The main aspects raised by the Service Provider are hereby consolidated from the reply submitted by SPS in case ASF 212/2024 and ASF 213/2024, respectively. Unless otherwise indicated, the main aspects summarised in this decision were essentially raised in both replies.
[8] P. 88 of Case ASF 212/2024 & P. 112 of Case ASF 213/2024
[9] P. 89 of Case ASF 212/2024 & P. 113 of Case ASF 213/2024

concerns raised, collect any relevant information and/or consult with relevant parties. It claimed that this ought to be considered as an unfair practice.

(iii) The Service Provider contends that the Complainant had access to the Service Provider's complaint procedure and was also made aware of this process by his current trustees in Gibraltar. He was fully aware of the fact that any formal complaint had to follow its internal process.

(iv) The Service Provider further contends that the Complainant *'first had knowledge of the matters complained of'* as early as October 2020 regarding the investments. It also referred to the date of 31 October 2022, indicated by the Complainant in respect of the Lombard 82 investment. SPS submitted that it received a formal complaint on 6 November 2024.

It pointed out that in accordance with Article 21(1)(c), the Complainant ought to have registered a complaint in writing not later than two years from the day on which he first had knowledge of the matters complained of. SPS argued that the two-year statutory time period to file the Complaint had elapsed, and on this basis, the Arbiter does not have the competence to hear the case.

The Service Provider further noted that the Scheme was transferred to another pension scheme provider in August 2020. The assignment of the pension portfolio was executed through a deed in August 2020, which was finalised and communicated to the Complainant in October 2020, as confirmed in the letter enclosed as Appendix III to its reply.[10]

SPS emphasised that the valuation as at the date of transfer indicates that the investment *Escher Marwick Series 2016-4 TRG* ('Escher Marwick') and the *Lombard 82* investment held value at the time of transfer (valuation as at Transfer Out attached to its reply as Appendix IV).[11]

With reference to the Lombard 82 investment, SPS further noted that:

[10] P. 91 of Case ASF 212/2024 & P. 115 of Case ASF 213/2024
[11] P. 92 of Case ASF 212/2024 & P. 116 of Case ASF 213/2024

- The letter dated 30 November 2021,[12] (which letter was sent by the Complainant's new service provider), gave an indication of the 'pessimistic income scenario' as the Complainant was made aware that:

  'In terms of interest, LSIF's analysis indicates that the results from underlying assets are likely to preclude interest payments until 2024. I am aware that this will be extremely disappointing. However, the below plans have the potential to significantly improve on this position'.[13]

  SPS also noted that the Arbiter is to keep in mind that the Complainant is a highly educated individual and this letter ought to have given insight to an initial indication of a downward turn of events.

- The information letter issued on 29 July 2022,[14] which was also sent by the Complainant's new service provider, indicates a number of problematic circumstances which Lombard 82 was facing at the time and clearly stated that:

  'Subject to liquidity, redemptions can't be processed by the Fund's administrators until non-conformities in IIP's instructions are remedied by IIP'.[15]

  The Service Provider submitted that the Complainant was thus aware of the lack of redemptions.

- In the notice issued by *LS International Finance S.A.*[16] acting in its capacity as Management Company of *Lombard 82 Securitisation Fund*, the Complainant was made aware of the fact that:

  'The value of the Underlying Assets that are subject to recovery action for a period of 12 months or more are to be assigned a nil value'.[17]

[12] P. 55 of Case ASF 213/2024
[13] P. 104 of Case ASF 213/2024
[14] P. 58 of Case ASF 213/2024
[15] P. 104 of Case ASF 213/2024
[16] P. 52 of Case ASF 213/2024
[17] P. 104 of Case ASF 213/2024

It further noted that by means of a Deed of Assignment dated 14 August 2020, the Service Provider was no longer the Complainant's Retirement Scheme Administrator.

According to the valuation report dated 14 August 2020, the *Escher Marwick* and *Lombard 82* investments had active market values and were not suspended at the time of transfer.

SPS explained that at the point of transfer, the total value of the investments amounted to £1,174,596.91. Following the assignment, the Service Provider no longer had any control or oversight over the Complainant's pension portfolio.

At this point, the responsibility for the pension scheme, including any subsequent investment decisions or performance, was transferred to the new trustees, and the Complainant's pension was no longer under the management or within the remit of the Service Provider.

As attested to the closing letter of the transfer dated 8 October 2020, the Complainant agreed that *'the transfer value which is the full value of your scheme benefits has now been paid …',* [18] which means that the Complainant was, at the time of transfer, aware of the value of the scheme benefits and agreed to the said value.

Furthermore, by completing the transfer, the Complainant explicitly discharged the Service Provider from all liabilities related to the scheme, as stated: *'You have discharged the Trustees from all liabilities to provide benefits for and in respect of you or your beneficiaries under the Scheme.'*[19] It attached to its reply as Appendix III & V, a copy of the Transfer Out Form and closing letter.[20]

SPS submitted that any questions on the movements in value of the disputed transactions, from 2020 onwards, are to be addressed to the Complainant's current Retirement Scheme Administrator. At the time of transfer, in the year 2020, the investment had not experienced any negative impact and there had been no loss sustained by the

[18] P. 81 of Case ASF 212/2024
[19] *Ibid.*
[20] P. 91 & 93 of Case ASF 212/2024 & P. 119 of Case 213/2024

Complainant. The investment was considered to be an investment within the Scheme's investment guidelines and also within the Complainant's risk profile.

(4) **Sovereign Pensions Gibraltar:** SPS submitted that the Complaint should be addressed to the Complainant's current trustees – *Sovereign Trust International Limited* ('STIL') and that the Complainant cannot be considered as an 'eligible customer' according to law. The losses allegedly occurred after 2020, which is when the transfer to a third-party provider occurred.

As referred to above, the Trustee who administers the Complainant's pension, as of 2020, is STIL. STIL is a completely independent and distinct entity which is licensed by the *Financial Services Commission* of Gibraltar as a pension scheme controller. SPS noted that arguably, the Complainant chose to invest in the disputed investment during the Service Provider's tenure and as detailed below, the profile was balanced and within the Complainant's risk profile. On transfer, the investment was of value, and accordingly, it submitted that any of the attributions of accountability are to be addressed to the Complainant's current trustees.

(5) **Proceedings before a court or tribunal:** In accordance with Article 21(2)(a), the Complainant was asked to confirm that the conduct complained of is not or has not been the subject of a complaint lodged with an ADR entity in any other jurisdiction, initiated by the same Complainant on the same subject matter.

SPS pointed out that this is being said in view of the Complainant's statement:[21] *'it is noted that you have raised a complaint with Howden Insurance Brokers (LLC) who were your appointed adviser at the time, and we understand to be regulated entity. Therefore, please keep us up to date with any progress on this.*'

(B) ON THE MERITS:

(6) **Member-Directed Scheme:** SPS noted that *The Centaurus Retirement Benefit Scheme* (the 'Scheme') is a member-directed scheme – such

[21] P. 16 of Case ASF 213/2024

direction gives the member the flexibility to retain control over their investments while ensuring they appoint their own trusted investment adviser to advise on any investment decisions or alternatively an investment manager to manage the investments on a discretionary basis.

The Service Provider is not licensed or authorised to provide investment advice, and any advice must be provided to the members by their appointed investment advisers.

In its reply of Case ASF 212/2024,[22] it also pointed out that it is clear that the highly educated Complainant attested to the fact that he waived his *'option to obtain an independent pension review relating to the said transfer'* and in continuance agreed to *'indemnify and release the trustee from any potential liability resulting from my decision not to obtain independent review.'*[23] This attestation means that the Complainant waived his rights to sue his Service Provider in the event that the investment sold to him transpired to be unsuitable or inappropriate.

(7) **Professional Investment Advisor:** As indicated on the Complainant's application form, *Howden Insurance Brokers* had provided the Complainant with investment advice. On the 18 December 2017, the Service Provider received a Change of Adviser request to appoint *Capital Associate FZE* ('Capital Associates') as his new advisor (Request for change in advisor attached to its reply as Appendix VI).[24]

It submitted that naturally, scheme members have full autonomy in selecting their advisors and the Service Provider has absolutely no contractual or non-contractual affiliation or arrangement with *Capital Associates*.

SPS explained that the role of an investment advisor is to provide professional guidance and expertise to its customers such as the Complainant regarding their financial and investment decisions. Their primary responsibilities include assessing the client's financial goals, risk tolerance, and investment preferences and then recommending strategies

[22] P. 82 of Case ASF 212/2024
[23] As per p. 82 & 62 of Case ASF 212/2024
[24] P. 97 of Case ASF 212/2024 & P. 121 of Case ASF 213/2024

or financial products that align with these factors. They are expected to monitor performance of investments and provide ongoing advice to ensure that the portfolio remains consistent with the client's objectives.

SPS further submitted that naturally, accountability is a critical aspect of an investment advisor's role. It noted that it must be made clear that the Complainant's investment advisor has an obligation to act in the best interest of the Complainant by providing him with recommendations which were suitable for his circumstances. It noted that in fact, the allegations of appropriateness and suitability are to be directed to the Complainant's financial advisor and not the Service Provider.

(8) **Transfer Details and Fee Disclosure:** SPS explained that in 2017, the amount of £1,232,252.78 was received from the Complainant's previous pension scheme, *Shell Overseas Contribution Pension Fund* as a transfer of pension benefits. After deducting the establishment fee (€800) and the first annual RSA fee (€1,100), the remaining £1,230,516.45 was transferred to *Gravitas Finance LLC* ('Gravitas') for investment as instructed. A member account statement since inception was enclosed as Appendix VII to its reply.[25]

SPS submitted that when joining the Scheme, the Complainant also agreed to the Terms and Conditions defined by the RSA in the Scheme's Application Form, including the declaration which states as follows:

> *'… I understand that my financial adviser may be remunerated by commission and/or trail fees payable by the bond issuer or investment house from charges to be deducted from my pension funds and I confirm that my financial adviser has fully explained to me the extent and nature of his fees'.*[26]

It was pointed out that by signing this declaration, the Service Provider could have made a reliable presumption that the investment advisor appointed at the time had explained the details of transferring his pension overseas and disclosed all the fees to the Complainant and that he agreed

[25] P. 99 of Case ASF 212/2024
[26] P. 106 & Appendix VIII (P. 123) of Case ASF 213/2024

to proceed based on their advice, therefore any instructions received were accepted in good faith on this basis.

SPS further submitted that by signing the declarations included in the Scheme's application form and other accompanying documents, the Complainant confirmed his understanding of the fees and charges associated with his investments. This acknowledgement provided SPS with the assurance that he had received the necessary explanations from his appointed adviser and agreed to proceed with full knowledge of the implications.

It reiterated that the Complainant is a highly qualified individual who presumably read and understood the document prior to signing it. SPS submitted that the Complainant has an obligation to read the investment documentation as any warranties contained therein are contractual obligations which are binding to both parties – especially when taking into consideration the educational level of the Complainant.

(9) **Investment Instructions and Risk Profile:** The Service Provider explained that on the 4 January 2018, it received dealing instructions from the Complainant's financial advisor with instructions to invest into *Escher Marwick* and *Lombard 82*. The dealing instructions were signed by the Complainant and were sent together with a Fund Confirmation/Disclaimer which explicitly confirmed that the Complainant agreed to the proposed investment (Confirmation letter/Dealing Instruction attached to its reply as Appendix VIII[27] and Appendix IX[28]).

SPS submitted that, as shall be evidenced, all dealing instructions sent to the Service Provider were assessed against the Complainant's declared risk profile, classified as *"Medium Risk"*[29]and not *"Low to Medium"* as the Complainant seems to allude.

Instructions were also assessed against the Scheme's Investment Guidelines which were in effect at the time.

[27] P. 100 of Case ASF 212/2024
[28] P. 143 of Case ASF 213/2024
[29] As attested to by the box ticked on page 55 of the Complaint ASF 212/2024 & P. 132 of Case ASF 213/2024

SPS submitted that the Arbiter must also take into consideration the Complainant's curriculum vitae on page 48 of case ASF 212/2024, and as detailed in Appendix IX to its reply,[30] wherein it is evident that the Complainant is a highly qualified individual who has also obtained an MBA from Warwick Business School and has also read for a PhD in Chemistry at the University of Bristol.

The Service Provider reiterated that it acted reasonably in assuming that the investor fully understood the nature and implications of the investment, given the investor's high level of qualifications and education. It noted that as a highly educated individual, the Complainant would presumably possess the capacity to comprehend the details and risks associated with the investment. This assumption is further supported by the expectation that a person with such expertise and knowledge would seek clarification if any aspect of the investment was unclear.

(9) **Market risk:** SPS submitted that investment markets are subject to inherent risks, and fund performance can fluctuate based on various factors, including market volatility, economic conditions, and the specific investment strategy employed. The Service Provider pointed out that it is important to note that investments always carry a degree of risk and losses can occur. It further added (in one of its replies), that the alleged losses are not connected to any actions undertaken by the Service Provider.

(10) SPS reserved the right to produce further submissions on the merits of the case, both oral and in writing, in order to further expand on the investments in dispute and the allegations made.

(11) SPS humbly submitted that all of the Complainant's demands are to be rejected, with costs to be borne by the Complainant, for the reasons stated.

[30] P. 101 of Case ASF 212/2024

Preliminary – Competence of the Arbiter

Following the Arbiter's decree of 5 May 2025, wherein the Arbiter requested details and submissions in respect of the pleas raised regarding his competence, the parties filed further explanations and submissions on the preliminary pleas.[31] The detailed submissions, including attachments, sent by the Complainant on 19 May 2025 [32] and the subsequent note filed by SPS on 30 May 2025,[33] were duly taken into account by the Arbiter in his consideration of the pleas raised.

In a decree dated 5 June 2025, the Arbiter rejected the preliminary pleas raised by SPS regarding his competence. The reasons for such a position are comprehensively explained below.

The assessment outlined below also takes into account and caters for additional submissions that the Service Provider continued to raise during the proceedings of the case regarding his competence.

Plea that the Complainant is not an 'eligible customer'

SPS argued that the Complainant cannot be considered an *'eligible customer'* on the basis that the alleged losses occurred after, or given that, his investment portfolio was transferred to another scheme and trustee in Gibraltar.

The Arbiter outrightly refutes this plea as the Complaint relates to the actions of SPS and the disputed investments undertaken at the time when the Complainant was a customer of the Service Provider – that is, at a time when the Complainant was a member of the Retirement Scheme for which SPS acted as trustee and Retirement Scheme Administrator ('RSA').

Hence, **the Complainant satisfies the criteria of an eligible customer as defined in Article 2 of Cap. 555.**

[31] P. 105 of Case ASF 212/2024 & P. 145 of Case ASF 213/2024
[32] P. 106 to 128 of Case ASF 212/2024 & P. 146 to 168 of Case ASF 213/2024
[33] P. 130 to 135 of Case ASF 212/2024 & P. 170 to 175 of Case ASF 213/2024

Plea that SPS is not the proper defendant

The Service Provider submitted that the Complaint should be addressed to the Complainant's current trustees, *Sovereign Trust International Limited*, in Gibraltar.

Whilst it is true that SPS is not the trustee and the RSA of the Complainant's current and separate retirement scheme (where the disputed investments are now retained), the Complaint, however, deals with the alleged failures of SPS at the time that it occupied its roles (as trustee and RSA) in respect of the Scheme. The Complainant remained a member of SPS's Retirement Scheme up until the transfer of his benefits from the Scheme to his new pension arrangement.[34]

Consideration must be thus made of the alleged failures of SPS at the time it occupied the role of trustee and RSA of the Scheme. This is particularly so with respect to the claims made by the Complainant that SPS failed to fulfil its duties, namely in view that the disputed investments:

(i) did not match his profile as a retail investor, as they were for professional/ institutional investors only;

(ii) did not match his attitude to risk; and

(iii) were not prudent or consistent with a diversified and balanced investment strategy.

The disputed investments were undertaken at the time of SPS [35] and were still within the investment portfolio of the Retirement Scheme at the time of transfer to another scheme in Gibraltar. **For the reasons mentioned, the Arbiter refutes the claim that SPS is not the correct or legitimate defendant in respect of the matters raised.** Obviously, the Arbiter has no jurisdiction regarding a Gibraltar entity. The Arbiter's decisions are accordingly without prejudice to any rights the Complainant may have against other entities.

The fact that SPS was no longer involved in respect of the Complainant's pension portfolio after the assignment to his new scheme and the fact that the

[34] P. 91 of Case ASF 212/2024

[35] The Complainant applied to become a member of The Centaurus Retirement Benefit Scheme in November 2017 (P. 42 – 57 of Case ASF 212/2024). Dealing instructions for the purchase of the Escher Warwick investment and Lombard 82 notes are dated January 2018 (P. 99 of Case 212/2024 & P. 47 of Case ASF 213/2024).

Complainant did not raise any complaints at the time of transfer do not limit or preclude in any way the Complainant from filing a valid complaint against SPS regarding SPS's conduct at the time of its appointment. Further comments and observations below also refer.

The Arbiter also observes that the new trustee and SPS are related as they form part of the same Sovereign group. **On a general note, the Arbiter is of the view that rather than attempting to skirt responsibility or making it more difficult or time-consuming for a complainant to make a complaint about a contested conduct, group entities should rather come together, coordinate and facilitate a complainant in raising his grievances appropriately rather than shifting and deflecting issues raised. It is disappointing to note that no such effort appears to have been made in this regard.**

Plea in terms of Article 21(1)(c) of Cap. 555

The Service Provider submitted that the Complaint is time-barred in terms of Article 21(1)(c) of the Act, given that it claimed that a formal written complaint was only received by it on 6 November 2024.

SPS contended that this was later than two years from the date when the Complainant first had knowledge of the matters complained of, which it submitted was as early as October 2020 in respect of the investments (this being also the time of confirmation of the finalisation of the transfer of the Complainant's Retirement Scheme to Sovereign Gibraltar).[36] In respect of the Lombard 82 investment, SPS also submitted that the two years had also expired from the date of 31 October 2022, which was indicated by the Complainant himself as to when he had first knowledge.

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'.*

[36] Letter dated 8 October 2020 - P. 115 of Case ASF 213/2024

The Arbiter shall next consider the aspects relevant to determining the date of knowledge for the two disputed investments respectively.

Date of knowledge – Escher Marwick investment

In his complaint form to the OAFS, the Complainant indicated *'30/06/2024'* as to when he first had knowledge of the matters complained of regarding the Escher Marwick investment.[37]

The matters complained of involve the losses claimed to have been suffered by the Complainant on the mentioned investment and the unsuitability thereof in respect of his Retirement Scheme.

It is noted that the indicated date of June 2024 reflects the time when the Complainant sent a complaint to Sovereign Gibraltar. In the said complaint, he *inter alia* highlighted that *'the fund value was destroyed'* as it dropped *'from £800,000 to ca £300,000'* following the problems with the identified investment. He also highlighted the investment's lack of suitability for his pension scheme.[38]

On its part, SPS deemed October 2020 as the date when the Complainant first had knowledge about the issues involving the Escher Marwick.

The Arbiter notes that October 2020 is the date when the Complainant described that he was *'informed by the fund manager that there would be a moratorium on coupon payments due to the impact of Covid*'.[39] The Complaint, however, is not about the lack of coupon payments but relates to the lost value/capital invested in Escher Marwick.

The Complainant is not requesting compensation for the foregone or unpaid coupon payments but sought a refund of the amount invested in this product, that is, £196,000, as outlined in the Complaint Form.

Furthermore, there is no basis on which the Arbiter can consider October 2020 as the date when the Complainant knew of the loss and material issues affecting the capital invested.

[37] P. 2 of Case ASF 212/2024
[38] P. 8, 13 of Case ASF 212/2024
[39] P. 3 of Case ASF 212/2024

This is in view that the investment was still operational with the moratorium on interest payments being the main prevalent issue at the time (as a consequence of the problems faced by the tourism sector in view of COVID).

No tangible information or proof has emerged or been provided, indicating that as of October 2020, the investment had failed or that the Complainant was aware he was going to lose his capital invested in this investment.

As pointed out by the Complainant, he believed that *'the payments would be added to the capital invested'*.[40] The Complainant also referred to a notice issued in February 2022, which he claimed indicated that *'coupons would commence in May 2023'*.[41] As to the current status of this investment, the Complainant, indicated that it *'remains illiquid meaning it is not possible to sell'*, and that (at the time of his Complaint with the OAFS of November 2024), it *'is currently valued at £127,449'* from the original investment sum of £196,000.[42]

The Escher Marwick clearly still had value in October 2020 (this being the time of the moratorium on coupon payments and also the time of the transfer of the portfolio to another scheme), and even thereafter.

An official *'Investor Summary Statement'* as at 14 August 2020, indeed indicates the *'Market Value'* of the Escher Marwick at *'£186,302'* just slightly below the original investment sum of £196,000.[43]

In Portfolio Valuation Statements for the period ending 30 June 2022 and *'09.02.2004'*, the Escher Marwick was also indicated as having a *'Market Value'* of '*£127,449.20*'.[44]

The Arbiter further notes that according to its fact sheet, the Escher Marwick invested *'in a portfolio of Hotel/Resort properties in the Cape Verde Islands'*.[45] The Hotel/Resort properties were *'principally with The Resort Group plc …'*.[46]

[40] Ibid.
[41] *Ibid.*
[42] *Ibid.*
[43] P. 92 & 99 of Case 212/2024
[44] P. 112 & 126 of Case 212/2024
[45] https://theresortgroupplc.com/wp-content/uploads/2017/05/EMFactApril17.pdf
[46] https://theresortgroupplc.com/investment-grade-securities-delivering-double-digit-returns/

A notice produced by the Complainant, dated February 2022, issued by The Resort Group plc *inter alia* indicated or provided hope of a positive resolution, where it stated:

> *'… To date we have been assisted by a legal moratorium in Cape Verde that has suspended all capital and interest payments. This moratorium is expected to end on 31st March 2022 but is under review by the Cape Verdean government. However, even if the moratorium is not extended, each of the Cape Verdean banks and all other European financial and trade creditors* ***have agreed to the principle of a restructuring that would further defer payments until the end of 2022****.* ***This would ensure the Group can fully return to meeting full financing commitments from 2023****.*
>
> ***The very good news is that despite still having these very real challenges, the prospects for tourism in Cape Verde in a new post COVID world are looking very encouraging*** *…'*.[47]

The date of transfer of the Complainant's Retirement Scheme to Sovereign Gibraltar (which SPS submitted was *'finalised and communicated to the Complainant in October 2020'*),[48] cannot either be construed as creating some form of awareness of the matters complained of.

Apart that it is unclear on what basis SPS is making such an assertion, it has not emerged, nor been proven, nor been indicated by SPS that the transfer to Sovereign Gibraltar was in view of any problems with the investments. It emerged that the transfer was rather related to a change in the personal circumstances of the Complainant. In his letter dated 6 November 2024, the Complainant stated:

> *'I was also advised that I could transfer the pension fund from one Sovereign entity to another without any difficulty in case my situation changed as they are sister entities and in November 2020 I did transfer my QROPS from Malta to Gibraltar.* [49]

[47] P. 24 of Case ASF 212/2024 – Emphasis added by the Arbiter
[48] P. 81 of Case ASF 212/2024
[49] P. 89 of Case ASF 212/2024

In his additional submission of 19 May 2025, the Complainant further elaborated that *'In November 2020, I moved the QROPS to Sovereign Gibraltar … due to a change in residency plans'*.[50]

It is also noted that the transfer to Sovereign Gibraltar involved an *'in-specie investment transfer'* and hence no attempts for liquidation of the investments were made either at the time.[51]

There are accordingly no basis or valid reasons on which it can be deemed that a mere transfer of investment had, or should have raised, or was a consequence of awareness of the matters complained of.

The Escher Marwick investment remained illiquid in subsequent years, prompting the Complainant to undertake investigations into the disputed investment. It is noted that as outlined in his letter dated 6 November 2024, the Complainant outlined:

> *'During investigations into the investments held in my QROPS* ***over the past year****, I have discovered that the Lombard 82 and Escher Marwick investments were rated high risk and unsuitable for my QROPS or my risk appetite …'*.[52]

In the circumstances, the Arbiter finds no justifiable basis on which the Complainant can be deemed to have had knowledge of the matters complained of in respect of the Escher Marwick investment in October 2020, as alleged by SPS.

With particular reference to the notice dated February 2022, and the statement made in his letter dated 6 November 2024, the very earliest that the Arbiter can attribute first knowledge of the matters complained of in respect of the Escher Marwick investment is more reasonably likely at a time in 2023.

Given that the Complainant filed a complaint with Sovereign during 2024, further consideration of this matter is superfluous, as two years would in any case have not lapsed in terms of Article 21(1)(c) of the Act.

[50] P. 108 of Case ASF 212/2024
[51] P. 91 of Case ASF 212/2024
[52] P. 89 of Case ASF 212/2024 – Emphasis added by the Arbiter

For the reasons mentioned, the Arbiter accordingly refutes SPS's claim of the complaint being time-barred in terms of the said article of the Act with respect to the Escher Marwick investment.

Date of knowledge – Lombard 82 investment

In his complaint form to the OAFS, the Complainant indicated *'31/10/2022'* as to when he first had knowledge of the matters complained of regarding the Lombard 82 investment.[53]

The claim made by SPS that the Complainant first had knowledge of the matters complained of in respect of this investment as early as October 2020, following the transfer to Sovereign Gibraltar, is outrightly refuted for the same reasons already explained in the preceding section.

It is noted that in its submissions, SPS also referred to communications arising in November 2021 and July 2022, which it claimed have created knowledge of the matters complained of.[54]

Whilst the said communications highlighted certain adverse information, however, '*an initial indication of a downward turn of events'* and an indication *'of problematic circumstances'* that SPS claimed emerged from such communications, are not considered to have effectively given rise to knowledge of the substantial loss claimed on this investment.

This is also when considering that the said communications additionally indicated a possible improvement and/or actions that could lead to a positive impact on the investment.

It is furthermore noted that during the hearing of 10 November 2025, the Service Provider referred to an attempted redemption of GBP100,000 of the Lombard 82 investment, claiming that the dealing instruction was signed by the Complainant on 10 June 2021.[55] The indicated redemption instruction remained unsettled and was reversed – indicated as *'Unsettled Trade Reversal'* on 2022-

[53] P. 2 of Case ASF 213/2024
[54] P. 104 of Case ASF 213/2024
[55] SPS claimed that it obtained confirmation from Sovereign Gibraltar to this effect - P. 363

10-28 in the Investor Summary Statement.[56] During the said sitting, the Service Provider *inter alia* submitted that:

> *'The fact that the trade did not take place, should have firstly alerted [the Complainant] to the issues with the Lombard 82 fund at the time, in 2021. And the fact that the transaction did not take place should have alerted him. It is proof that he was aware of the issues.*
>
> *And we do, in fact, state that, in our view, this complaint should be time-barred because the issues were evident in 2021'*.[57]

In the previous sitting of 15 September 2025, the Complainant claimed that he had never signed a dealing instruction for the redemption of GBP 100,000 in Lombard 82 during 2021. He testified that:

> *'Asked whether I am saying that I did not sign the dealing instruction, or that I don't remember signing, I say that I absolutely did not sign a dealing instruction. Nobody's been able to show me a dealing instruction.*
>
> *It is being said that, obviously, at that date I knew that there was going to be a loss.*
>
> *I say I did not. I didn't discover this until 2023 or 2024, I think, after the notice of default. So, I wasn't even aware that this sale had been attempted'.*[58]

The fact that the dealing instruction was not settled does not reasonably give adequate proof of awareness of the matters complained of, as claimed by the Service Provider. Whilst this trade reversal could have signified certain issues and the illiquidity of, or restrictions on, redemptions of the investment at the time, subsequent official notifications and valuations sent to the Complainant indicated a situation which was still evolving, and the claimed material losses not yet crystallised at the time. The Complainant could accordingly not have sight of, or awareness of the extent of losses (subject of this Complaint) at the time. This is also for the reasons explained below.

[56] P. 193
[57] P. 363
[58] P. 355

A later notice dated 29 October 2021, to the holders of the Lombard 82 investment from Xantis S.A. (the management company of this investment) *inter alia* stated that:

> *'Significant progress has been made in developing a restructuring plan for Lombard 82 that will enable the fund to resume payments and redemptions. This plan will be shared with bondholders by the end of November 2021.*
>
> *…*
>
> *According to information provided by investees (the recipients of capital), the value of the underlying assets of the fund exceeds the value of the fund's liabilities (i.e. capital invested by bondholders) by at least €40 million'*.[59]

In an email dated 22 November 2021, a financial adviser notified the Complainant that he had a call with the new CEO of Lombard 82 where:

> *'He explained the process for redemptions and confirmed that although there was no liquidity available currently, a recovery plan was being worked on. In the meantime, having had it confirmed that future redemptions, once possible, will be at par, I will apply to the administrators … to get you into the redemption queue. He confirmed that the 2021 coupons had been cancelled and that the 2022 position was unsure.*
>
> *…They have commissioned an independent audit of the assets and cashflows which will be sent to noteholders, but was confident that assets exceeded liabilities'*.[60]

The notification of 30 November 2021 from Xantis S.A. addressed to the bondholders of the Lombard 82 investment indeed provided updates on the *'proposed restructuring plan and the underpinning analysis'* further outlining that *'based on a pessimistic income scenario; it should be possible for the Fund to remove some restrictions on early redemptions from April 2022'*.[61]

[59] P. 424
[60] P. 415
[61] P. 55 of Case ASF 213/2024

The letter of November 2021, further stated that *'… the below plans have the potential to significantly improve on this position'*, apart from outlining other measures relating to the restructuring of Lombard 82.[62]

The communication of July 2022 also highlighted various actions that were being taken against parties from whom the settlement of funds was due.[63] Moreover, the lack of possible redemptions indicated in the communication of July 2022 was rather attributed to the *'non-conformities in IIP's [the International Investment Platform] instructions'* that IIP had to remedy, rather than the failure of the investment.[64]

The Arbiter further notes that in the official *'Investor Summary Statement'* as at 14 August 2020, the *'Market Value'* of the Lombard 82 was indicated at *'£226,334.06',* whilst In Portfolio Valuation Statement for the period ending 30 June 2022, it was still indicated as having a *'Market Value'* of '*£146,015.28'*.[65]

In his Complaint to the OAFS, the Complainant is complaining about the drastic loss in value from *'£246,000 to £3,690'*.[66]

SPS also referred to the date of 31 October 2022, indicated by the Complainant himself as to when he first had knowledge.

The Arbiter considers that the indicated date of October 2022 is indeed when the Complainant can be construed to have had first knowledge of the matters complained of in respect of Lombard 82.

This is particularly when considering the nature of the notices sent to the Complainant, especially the revaluation notice of 30 September 2022. The latter was also specifically referred to by SPS (in its note of additional submissions regarding the Arbiter's competence), and which was described by SPS itself as providing *'clear and unambiguous disclosure of the loss suffered by Lombard 82 due to the revaluation of its Underlying Assets'*.[67]

[62] *Ibid.*
[63] P. 58 of Case ASF 213/2024
[64] *Ibid.*
[65] P. 92 & 112 of Case 212/2024
[66] P. 3 of Case ASF 213/2024
[67] P. 172 of Case ASF 213/2024

It was indeed the communication of September 2022 (received by the Complainant *'In October 2022'*),[68] which indicated the value of the investment reduced to *'1 EMTN (GBP series) = £0.015'*, and which also stated that *'The value of Underlying Assets that are subject to recovery action … **are to be assigned a nil value**'*.[69]

The Complainant also himself confirmed that this notice made him aware that *'the Lombard 82 fund had been written down from £246,000 to £3,690'*.[70, 71]

In its reply, SPS claimed that the Complaint is time-barred in terms of Article 21(1)(c) of the Act as two years had passed from 31 October 2022 to the date of receipt of the formal complaint of 6 November 2024. However, there is disagreement as to when the formal complaint is deemed to have been made with SPS.

Given the material implications arising depending on when the complaint is deemed to have been registered, the Arbiter will consider this particular matter in more detail next.

Date of complaint

In his submissions on the preliminary pleas raised by SPS, the Complainant explained that he had sent earlier communications notifying his complaint. He provided a timeline of communications exchanged from 14 June 2024 to 19 September 2024 and from 10 October 2024 to 1 November 2024 about his case.[72]

On its part, the Service Provider also listed a timeline and provided additional submissions in the note it subsequently filed.[73]

The Arbiter notes the following particularly relevant exchanges:

- 3 June 2024 – Email sent by the Complainant to Sovereign Gibraltar regarding the responsibilities of the trustee and his concerns about the lack

[68] P. 3 of Case ASF 213/2024
[69] P. 52 - 53 of Case ASF 213/2024 – Emphasis added by the Arbiter
[70] P. 3 of Case ASF 213/2024
[71] £0.015 x 246,015.284 the units purchased in Lombard 82 (P. 92 of Case ASF 212/2024) = £3,690
[72] P. 147 - 148 of Case ASF 213/2024
[73] P. 171 - 175 of Case ASF 213/2024

of protection of his interests, where he first outlined the main issues with the Lombard 82 and Escher Warwick investments.[74]

This same email was again forwarded by the Complainant to Sovereign Gibraltar on 14 June 2004.[75]

- 5 August 2024 – Complainant sent an email to Sovereign Gibraltar highlighting that a thorough review of his case was required. He reiterated his specific issues, which included *inter alia* the claim of lack of proper execution by the Malta Office of *'ensuring compliance with pension fund rules and regulations, which would include adequate diversification and investment in appropriate funds'*.[76]

- 22 August 2024 – Email from Sovereign Gibraltar to the Complainant, where the Complainant was informed that Sovereign Gibraltar had to refer his email to the Malta office for them to answer some of his queries.[77]

- 2 Sept 2024 – Sovereign Gibraltar sent an email to 'mXXX@sovereigngroup.com' stating *'Can you please look at the below email as this member was with you before coming to us can you help'*.[78]

  The email '*mXXX@sovereigngroup.com*' is the contact email of SPS Malta as listed in the main general website of Sovereign Group.[79]

- 5 Sept 2024 – An email was sent by *mXXX@sovereigngroup.com* to Sovereign Gibraltar with the Complainant in copy, acknowledging receipt of Sovereign Gibraltar's email and stating that *'we will look into this and will get back to you as soon as possible'*.[80]

- 12 Sept 2024 – Sovereign Gibraltar sent an email to *mXXX@sovereigngroup.com* (copying in the Complainant) asking whether there was any update.[81]

[74] P. 35 - 36 of Case ASF 212/2024
[75] P. 39 - 40 of Case 213/2024
[76] P. 17 of Case ASF 213/2024
[77] P. 15 - 16 of Case ASF 213/2024
[78] P. 14 of Case ASF 213/2024
[79] https://www.sovereigngroup.com/offices/malta-office-sovereign-pensions/
[80] P. 12 of Case ASF 213/2024
[81] P. 11 of Case ASF 213/2024

- 12 Sept 2024 – A reply from *'mXXX@sovereigngroup.com'* stated that this was still being looked into.[82]

- 18 Sept 2024 - The Complainant directly sent an email addressed to *mXXX@sovereigngroup.com*, copying in other parties (including the general email of Sovereign Gibraltar), relating to the investigation of his case, stating *inter alia* that this was a *'formal complaint'*.[83] In his email of 18 September 2024, the Complainant highlighted the key points of his complaint which included the following key aspect being the subject matter of the complaint raised before the Arbiter:

  > *'During investigations into the funds, I have discovered that the Lombard 82 and Escher Marwick investments were rated high risk and unsuitable for my QROPS or my risk appetite. In fact both were only recommended for institutional or professional investors… Furthermore, the amounts invested, £246,000 and £196,000 were not prudent or consistent with a diversified and balanced investment strategy. These two investments are currently illiquid and Lombard 82 has failed. The current valuation is £3690 for Lombard and $127,000 for Escher Marwick. However, neither of these have paid any coupons and nor are they sellable'.*[84]

- 19 Sept 2024 – SPS notified the Complainant the following:

  > *'We are currently conducting a thorough review of your specific case to determine the best course of action. We appreciate your patience as we work diligently to address your concerns. …'.* [85]

The Arbiter observes that in its note of additional submissions filed on 30 May 2025, SPS listed and referred to various communications. It emphasised that the communications exchanged in June 2024 were just a query and *'should not be interpreted as submitting a formal complaint'*.[86]

[82] P. 9 of Case ASF 213/2024
[83] P. 7 - 8 of Case ASF 213/2024
[84] P. 8 of Case ASF 213/2024
[85] P. 21 of Case ASF 213/2024
[86] P. 173 of Case ASF 213/2024

With reference to the communications exchanged in August 2024, SPS submitted that *'Once again there is no mention that a formal complaint with Sovereign Malta had been raised'*.[87] It further argued, with reference to the communications of 2nd, 5th and 12th of September 2024, that *'No formal complaint raised by the Complainant despite being in copy and aware of Malta pensions addressee'*.[88]

The Arbiter, however, notes that in its timeline, SPS conveniently omitted to mention the Complainant's communication of 18 September 2024, which, as summarised above, was clearly addressed to SPS and where the Complainant categorically outlined *'that this is a formal complaint …'*.[89]

It is noted that in its note of submissions, SPS also referred to various communications exchanged in October 2024. With reference to the email of 10 October 2024, SPS *inter alia* pointed out that:

> *'the Complainant admits that he 'does not recall it being acknowledged as a formal complaint or any proposed timetable for actions'*.[90]

A lack of formal acknowledgement, recognition or confirmation at the time by SPS of treatment of the Complainant's communication as a *'formal complaint'* does not, however, invalidate the written formal complaint received by it in September 2024.

There is no doubt that, in September 2024, if not earlier, SPS was in receipt of a written complaint covering the substance and essence of the issues raised and complained about in the case raised by the Complainant before the Arbiter.

In addition to the above observations, the Arbiter also makes reference to certain aspects raised in one of his previous decisions - section titled *'Plea relating to Article 21(1)(c) of Chapter 55[5] of the Laws of Malta'* in case ASF 085/2022 - which are relevant in determining when a complaint is deemed registered with a financial services provider for the scope of Article 21(1)(c) of the Act. One of the aspects is that:

[87] P. 174 of Case ASF 213/2024
[88] *Ibid.*
[89] P. 7 of Case ASF 213/2024
[90] P. 174 & 162 of Case ASF 213/2024

> *"The spirit in which Chapter 555 is written clearly indicates that what is important is that the consumer makes the service provider formally aware of the substance of the complaint. The substance of the complaint will vary from case to case, but it can always be deemed to have been communicated to the service provider when the latter is made aware of the reasons for which the consumer is dissatisfied."*[91]

Case ASF 085/2022 was appealed before the Civil Court of Appeal (Inferior Jurisdiction), appeal no. 09/2024 LM, which confirmed *'L-Arbitru sewwa kkunsidra li l-ispirtu tal-liġi jitlob li l-konsumatur b'mod formali javża lill-provditur tas-servizz bil-mertu tal-ilment tiegħu'*.[92]

In the case under review, it is clear that this was done by September 2024.

The argument raised by the Service Provider that it required some other communication to be in line with its internal complaints handling procedure, in the process delaying the case, only for it to then use the excuse of time barring to try to dismiss the hearing of this case, is considered rather a futile and unprofessional act by the Service Provider which the Arbiter does not condone.

For the reasons amply mentioned, the Arbiter is dismissing the plea raised by SPS that the complaint is time-barred with reference to Article 21(1)(c) of the Act.

Plea in terms of Article 21(2)[b] of Cap. 555

SPS raised the plea that it was not given any opportunity to reply to the Complaint. It referred to the provisions of Article 21(2) of the Act in this regard.

Article 21(2)(b) of the Act provides that:

> *'(2) An Arbiter shall decline to exercise his powers under this Act where:*
>
> *…*

[91] https://financialarbiter.org.mt/sites/default/files/oafs/decisions/763/ASF%20085-2022%20-%20CH%20vs%20Momentum%20Pensions%20Malta%20Limited.pdf

[92] https://financialarbiter.org.mt/sites/default/files/oafs/complaint/763/classification/25_09_2024-9_2024-148304.pdf - Para. 11, P.8 of Appeal No. 09/2024 LM.
Unofficial English Translation: *'The Arbiter was right in considering that the spirit of the law requires the consumer to inform in a formal manner the service provider regarding the merits of his complaint'*.

(b) it results that the customer failed to communicate the substance of the complaint to the financial service provider concerned and has not given that financial service provider a reasonable opportunity to deal with the complaint prior to filing a complaint with the Arbiter; or …'.

The Arbiter observes that SPS had ample time to consider and reply to the comprehensive issues already raised by the Complainant earlier in September 2024. The Complainant's additional communication of 6 November 2024 essentially just raised the same or similar issues as those already previously communicated to SPS.

In the circumstances, **the plea raised by SPS in terms of Article 21(2)(b) is considered unjustified and is accordingly dismissed**.

Additional Plea in terms of Article 21(2)(a) of Cap. 555

SPS referred to Article 21(2)(a) of Cap. 555 and asked for the Complainant to confirm that the conduct complained of was not the subject of a complaint lodged with another ADR entity. This was raised given the statement quoted with reference to a complaint with his previously appointed adviser, *Howden Insurance Brokers (LLC)*.

Article 21 (2)(a) of the Act provides that:

'(2) An Arbiter shall decline to exercise his powers under this Act where:

(a) the conduct complained of is or has been the subject of a lawsuit before a court or tribunal or is or has been the subject of a complaint lodged with an ADR entity in any other jurisdiction, initiated by the same complainant on the same subject matter: …'.

Following the Arbiter's decree of 5 May 2025, the Arbiter notes the Complainant's confirmation, who stated that:

'Finally, although I contacted my original IFA, it became clear during discussions with Howden Insurance Brokers that they did not execute the investments in question. Therefore, I confirm that no ADR proceedings have been initiated elsewhere'.[93]

[93] P. 109 of Case ASF 212/2024

The Arbiter concludes that even if the Complainant were to decide to seek redress from his IFA this would be on different grounds from his complaint against SPS and would accordingly not preclude the Arbiter from executing his powers to adjudicate this Complaint.

In his decision, the Arbiter will, however, take into consideration the avoidance of undue enrichment and responsibilities of other parties.

Further to the clarification and confirmation provided by the Complainant and in the absence of any other submissions made by the Service Provider on this point, the Arbiter concludes that there is no basis to consider this matter further and dismisses the issues raised with reference to Article 21(2)(a) of the Act.

Preliminary – Other

SPS submitted that upon the transfer to Sovereign Gibraltar, the Complainant has discharged the Service Provider from all liabilities related to the Scheme. It quoted the statement outlined in the Pension Transfer Confirmation letter of 8 October 2020, which stated that:

> '*… you have discharged the Trustee from all liabilities to provide benefits for and in respect of you or your beneficiaries under the Scheme.'*[94]

The Service Provider further referred to the Transfer Out form signed by the Complainant dated 02/02/2020, wherein it was *inter alia* declared that:

> *'This transfer fully discharges the Trustee of any liability to provide further benefits to me or my nominated beneficiaries. I understand that once my pension has been transferred, I will cease to be a member of the above-mentioned scheme, unless the same shall involve or arise from any fraud, wilful misconduct or gross negligence, on the part of the Trustee'*.[95]

The above waivers are considered to relate namely to the payment of benefits duly arising in the general and normal operation of the retirement scheme. It would be a highly inappropriate practice, to the detriment of consumers and legitimate claims, if such waivers are invoked to discourage and avoid claims for

[94] P. 91 of Case ASF 212/2024
[95] P. 119 of Case 213/2024

compensation and liability involving serious misconduct and failure to carry out one's duties at the time of appointment.

The Arbiter takes cognisance in this regard of the provisions relating to liability as outlined in the law and rules applicable to the Service Provider (as trustee and RSA of the Scheme) at the time of its appointment. Article 30(5) of the Trusts and Trustees Act relating to *'Liability for breach of trust'* provides that:

> *'(5) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from his own fraud, wilful misconduct or gross negligence.'*

It is further noted that rule 1.5.1 of the section titled *'B.1.3 Duties of Retirement Scheme Administrators'* of the MFSA's *Pension Rules for Service Providers issued in terms of the Retirement Pensions Act, 2011*[96] provided *inter alia* that:

> *'1.5.1 The Scheme Administrator shall be liable to the Scheme, its Contributor(s), Members and Beneficiaries for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or on part its obligations...'.*

It is noted that in its reply, the Service Provider pointed out that the Complainant waived his *'option to obtain an independent pension review relating to the said transfer'* and that he agreed to *'indemnify and release the trustee from any potential liability resulting from my decision not to obtain independent review."*[97]

Such waiver, however, relates to the transfer and the suitability or otherwise thereof in the absence of independent advice sought regarding the adequacy of the transfer. It does not relate to the alleged shortcomings raised by the Complainant (relating to the unsuitability of the underlying investments that still featured at the time of transfer), which are the subject of this Complaint.

The above-mentioned disclaimers and declarations cannot accordingly be construed as providing full indemnification to SPS, nor do they cover claims resulting from negligence that emerges after the signing of the said Transfer out forms.

[96] Version dated January 2015
[97] P. 82 of Case ASF 212/2024

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.[98]

The Arbiter is considering all pleas raised relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555[99] which stipulates that he should deal with complaints in '*an economical and expeditious manner'.*

Background

The Product in respect of which the Complaint is being made

The Scheme is a trust domiciled in Malta registered with the Malta Financial Services Authority ('MFSA'), under the Retirement Pensions Act (Chapter 514 of the Laws of Malta) as a member-directed Personal Retirement Plan.[100]

It is noted that the *'Investment Objective'* of the Scheme was outlined as being the following:

> *'The investment objective of The Centaurus Retirement Benefit Scheme is to accumulate a trust fund from which to provide benefits in retirement. Investment restrictions apply (for full details please refer to the Scheme Particulars provided) and under applicable regulations in Malta the trustee must retain ultimate discretion on investment decisions …'.*[101]

As detailed in the Certificate of Membership, the Complainant joined the Scheme on 30 November 2017.[102]

[98] Cap. 555, Art. 19(3)(b)
[99] Art. 19(3)(d)
[100] https://www.mfsa.mt/financial-services-register/
[101] P. 55 of Case ASF 212/2024
[102] P. 21 of Case ASF 212/2024 & P. 50 of Case ASF 213/2024

SPS acts as the Retirement Scheme Administrator and Trustee of the Scheme and is licensed by the MFSA as a Retirement Scheme Administrator.[103]

As a member of the Scheme, the Complainant appointed his investment adviser in relation to his investment options. Justin Allison of *Howden Insurance Brokers* based in Dubai, was the Financial Adviser that was indicated at the time in the Scheme's Application Form for Membership.[104]

Between 2017 and 2018, Howden Insurance Brokers did not remain as the appointed investment advisor.

As testified during the hearing of 15 September 2025, *'… at the end of 2017, beginning of 2018, when the money was invested, Justin formed his own company called Capital Associates … So, when the pension funds were being invested – it was at the beginning of, I think, January 2018 – that the advisor was changed. But only the company, the person was the same'*.[105]

The assets in the Complainant's account with the Retirement Scheme were invested into a portfolio of investment instruments which were held under the *International Investment Platform* ('IIP platform') – a platform offering prime brokerage and custody services by *Gravitas Finance LLC* based in Mauritius.[106] The IIP platform is also referred to as the *'Veri-Platform'*, this being the branded product provided by Gravitas Finance LLC.[107]

The investment portfolio established and held within the IIP is considered in more detail further on in this decision.

The Complainant remained a member of the Scheme for slightly less than three years until he transferred his Scheme to another pension plan in Gibraltar in 2020, as confirmed in the *'Pension Transfer Confirmation*' letter dated 8 October 2020.[108] His investment portfolio within the Scheme was transferred in specie to his new Gibraltar pension plan.

[103] Point 2 of the 'Applicant Declaration' refers - P. 57 of Case ASF 212/2024 & P. 134 of Case ASF 213/2024; https://www.mfsa.mt/financial-services-register/
[104] P. 44 of Case 212/2024 & P. 125 of Case ASF 213/2024
[105] P. 350
[106] P. 60 - 83 of Case ASF 213/2024
[107] https://www.gravitasfinancellc.com/literature/Veri-Group%20-%20Privacy%20Policy.pdf
[108] P. 115 of Case ASF 213/2024

Background about the Complainant and his Risk Profile

The Complainant, born in 1957, is of British Nationality. He was resident in Oman at the time of application for membership into *The Centaurus Retirement Benefit Scheme* ('the Retirement Scheme' or 'Scheme') in 2017.[109]

The Application Form for Membership into the Scheme dated 15 November 2017 ('the Application Form') indicates the Complainant's occupation as an Executive in the Oil & Gas sector.[110]

As per his Curriculum Vitae attached to his Application Form, the Complainant is a highly educated person with a PhD in Chemistry from the University of Bristol, an MBA from Warwick Business School, and a BSc (1st Class Honours) in Chemistry.

He occupied various senior positions over the years (including as Managing Director, General Manager, CEO and production engineer) in various oil and gas companies.[111] These were further confirmed during the hearing of 15 September 2025.[112]

The Application Form indicates that the Scheme was to be funded from a transfer from his previous pension scheme held with *Shell International Limited* for an approximate transfer value of GBP 1,232,252.[113]

His Risk Profile in the said form was indicated as being of *'Medium Risk'* (out of a selection of *'1. Lower Risk'*, *'2. Lower to Medium Risk'*, *'3. Medium Risk'*, *'4. Medium to High Risk'*, and *'5. High Risk'*). This classification was described as follows in the Application Form for Membership:

> *'Members in this category are balanced in their attitude towards risk. They don't seek risky investments but don't avoid them either. They are prepared to accept fluctuations in the value of their investment to try and achieve better long term returns. These portfolios will be subject to frequent and at times significant fluctuations in value'*.[114]

[109] P. 42 - 65 of Case ASF 212/2024 & P.123 – 142 of Case ASF 213/2024
[110] P. 44 of Case ASF 212/2024 & P. 125 of Case ASF 213/2024
[111] P. 48 - 51 of Case ASF 212/2024
[112] P. 347 of Case ASF 212/2024 & Case ASF 213/2024
[113] P. 52 of Case ASF 212/2024 & P. 129 of Case ASF 213/2024
[114] P. 55 of Case ASF 212/2024 & P. 132 of Case ASF 213/2024

His *'Investment Objective'* was furthermore indicated as follows:

> *'I am comfortable with risk and prepared to take a longer term view. This may mean the overall portfolio value fluctuates over the medium term however provides for the potential for growth over the portfolio over the long term'*.[115]

In the risk profile section of the IIP Application Form, the Complainant answered various questions about risk. It is particularly noted that as to the question *'I would be happy investing a large proportion of my income/capital in a high-risk investment'* the Complainant answered *'Disagree'* whilst in his reply to the question *'I would accept potential losses in order to pursue long-term investment growth'*, the Complainant answered *'Agree'*.[116]

With respect to the statement in the said form reading *'Taking financial risks is important to me'*, the Complainant selected *'Neither Agree or Disagree'*, whilst as to the question *'I do not feel comfortable with financial uncertainty'* he answered *'Disagree'*.[117]

The investment portfolio

A total of GBP 1,230,516.45 was received as client monies into the IIP platform on 20 December 2017 (out of which GBP 147,661.98 was held as General Reserves and GBP 24,610.33 into a Cash Fee Account).[118]

The remaining amount of GBP 1,058,244.14 was held mainly for investments. This amount is indeed reflected as the *'GBP Cash Holding'* in the Dealing Instruction Form relating to the initial investments undertaken to constitute the investment portfolio.[119]

Tables A and B below provide an overview of the investment transactions undertaken at the time of SPS and after his transfer to another retirement scheme, according to the Investor Summary Statement provided.

[115] *Ibid.*
[116] P. 87 of Case ASF 213/2024
[117] *Ibid.*
[118] P. 190 of Case ASF 213/2024
[119] P. 264 - 265

Table A – Covers the period at the time of SPS's appointment

Investment transactions as per the 'Investor Summary Statement' from Dec 2017 to Oct 2020 [120]

Type [121]	Name of investment	Date Bought	Purchase Amount GBP	Date Sold/ Matured	Sale Amount GBP	Profit/Loss Excl. Int. GBP	Tot. Interest received GBP	Profit/ Loss Incl. Int GBP
Fd	*GAM Star Growth A Class*	15-Jan-18	46,000	16-Jan-18	46,000			
		16-Jan-18	46,000	08-Oct-18	44,100	-1,900	0	-1,900
Fd	*CGWM Select Income Fund*	15-Jan-18	35,000	18-Jan-18	35,000			
		18-Jan-18	35,000	05-Oct-18	33,968	-1,032	-	-1,032
SN	*Commerzbank 6 Yr Quanto Autocall Phoenix Note (14/10/24)*	09-Oct-18	26,000	23-Oct-18	26,000	-	-	-
		23-Oct-18	24,752	Open position as at Oct 2020				
SN	*Commerzbank 6 Yr Quanto Classic Autocall Note (04/11/24)*	09-Oct-18	26,000	06-Nov-18	26,000			
		06-Nov-18	25,924	23-Jul-19	444			
				08-Nov-19	28,600	3,120	-	3,120
SN	*Commerzbank 7% pa 85/70 Safe Haven Phoenix Note (15.12.23)*	15-Jan-18	67,000	25-Jan-18	67,000			
		25-Jan-18	66,993	16-Dec-19	67,000	7	9,380	9,387
SN	*EFG 7.70% pa 85/70 Safehaven Note (21.11.23)*	15-Jan-18	67,000	05-Feb-18	67,000			
		05-Feb-18	67,000	Open position as at Oct 2020				
SN	*EFG 8.40% pa Defensive Safehaven Note (21.11.23)*	15-Jan-18	200,000	06-Feb-18	200,000			
		06-Feb-18	200,000	Open position as at Oct 2020				
SN	*EFG Safehaven Note 85/70 6.82%*	15-Jan-18	67,000	06-Feb-18	67,000			
		06-Feb-18	67,000	Open position as at Oct 2020				
LN	*Fintas Global Ltd 6% pa Loan Note (31.12.2023)*	14-Nov-18	26,000	07-Dec-18	26,000			
		31-Dec-18	26,000	Open position as at Oct 2020				
Fd	*Marlborough Balanced Cell F GBP*	15-Jan-18	65,000	07-Feb-18	65,000			
		07-Feb-18	65,000	Open position as at Oct 2020				
Fd	*Marlborough Special Situations Cell - Cls F GBP*	15-Jan-18	70,000	07-Feb-18	70,000			
		07-Feb-18	70,000	Open position as at Oct 2020				
TN	***Escher Marwick Series 2016-4 TRG ETP GBP***	12-Jan-18	196,008	Open position as at Oct 2020				
TN	***Intl Invt Platform Securitisation Fund Series 7 GBP (previously named Lombard 82 Series GBP)***	15-Jan-18	246,000	7-Mar-18	246,000			
		07-Mar-18	246,015.29	Open position as at Oct 2020				

[120] P. 190 - 194 of Case ASF 212 & 213/ 2024

[121] Type – Fund ('FD'); Structured Note ('SN'); Loan Note ('LN'); Medium Term Note ('MTN' or 'TN')

Table B – Covers the period beyond SPS's appointment

Investment transactions as per the 'Investor Summary Statement' from Dec 2017 to June 2025 [122]

Type	Name of investment	Date Bought	Purchase Amount GBP	Date Sold/ Matured	Sale Amount GBP	Profit/ Loss Excl. Int. GBP	Tot. Interest received GBP	Profit/ Loss Incl. Int GBP
Fd	*GAM Star Growth A Class*	15-Jan-18	46,000	16-Jan-18	46,000			
		16-Jan-18	46,000	08-Oct-18	44,100	-1,900	909	-992
Fd	*CGWM Select Income Fund*	15-Jan-18	35,000	18-Jan-18	35,000			
		18-Jan-18	35,000	05-Oct-18	33,968	-1,032	-	-1,032
SN	*Commerzbank 6 Yr Quanto Autocall Phoenix Note (14/10/24)*	09-Oct-18	26,000	23-Oct-18	26,000	-	-	-
		23-Oct-18	24,752	07-Dec-20	252			
				21-Apr-21	22,850	-1,650	4,397	2,747
SN	*Commerzbank 6 Yr Quanto Classic Autocall Note (04/11/24)*	09-Oct-18	26,000	06-Nov-18	26,000	-	-	-
		06-Nov-18	25,924	23-Jul-19	444			
				08-Nov-19	28,600	3,120	-	3,120
SN	*Commerzbank 7% pa 85/70 Safe Haven Phoenix Note (15.12.23)*	15-Jan-18	67,000	25-Jan-18	67,000			
		25-Jan-18	66,993	16-Dec-19	67,000	7	9,380	9,387
SN	*EFG 7.70% pa 85/70 Safehaven Note (21.11.23)*	15-Jan-18	67,000	05-Feb-18	67,000			
		05-Feb-18	67,000	21-Apr-21	65,091	-1,910	15,477	13,568
SN	*EFG 8.40% pa Defensive Safehaven Note (21.11.23)*	15-Jan-18	200,000	06-Feb-18	200,000			
		06-Feb-18	200,000	02-Feb-22	267,200	67,200	-	67,200
SN	*EFG Safehaven Note 85/70 6.82%*	15-Jan-18	67,000	06-Feb-18	67,000			
		06-Feb-18	67,000	21-Apr-21	64,072	-2,928	13,708	10,780
LN	*Fintas Global Ltd 6% pa Loan Note (31.12.2023)*	14-Nov-18	26,000	07-Dec-18	26,000			
		31-Dec-18	26,000	23-Jan-24	26,000	0	7,920	7,920
Fd	*Marlborough Balanced Cell F GBP*	15-Jan-18	65,000	07-Feb-18	65,000			
		07-Feb-18	65,000	21-Jul-21	40,620			
				17-Mar-23	34,685	10,305	-	10,305
Fd	*Marlborough Special Sit. Cell - Cls F GBP*	15-Jan-18	70,000	07-Feb-18	70,000			
		07-Feb-18	70,000	13-Jul-21	49,240			
				17-Mar-23	32,720	11,960	-	11,960
TN	***Escher Marwick Series 2016-4 TRG ETP GBP***	12-Jan-18	196,008	Open position				
TN	***Intl Invt Platform Securitisation Fund Series 7 GBP (previously named Lombard 82 Series GBP)***	15-Jan-18	246,000	07-Mar-18	246,000			
		07-Mar-18	246,015.29	Open position			57,506.24 (till June 2025) [123]	

[122] Table B takes into consideration the final position on the investments (additional interest received, maturity or sale of investments as applicable), after the transfer to another pension plan in Oct 2020.

[123] 4,944.19+4,958.13+3,290.66+24,712.67+5,015.35+4,743.62+ 4,920.30+ 4,921.32 =57,506.24 as per Table C.

Dividends/coupons or other income received from Lombard 82 as listed in the Investor Summary Statement covering the period *'2017-12-20 to 2025-06-12'* are summarised in Table C below.[124]

Table C – Dividends/income from Lombard 82 investment

Date	Transaction type	Amount - GBP
2018-05-16	Dividend received	3,290.66
2018-06-18	Reversal	-3,290.66
2018-11-22		4,944.19
2018-11-22		4,958.13
2018-11-22		3,290.66
2020-03-26	Dividend received	24,712.67
	Total at time of SPS [125]	**GBP 37,905.65**
Other income received as emerging from the Investor Summary Statement: [126]		
2021-04-03	Dividend received	5,015.35
2021-12-15	Coupon (9 Mar 2021)	4,743.62
2021-12-15	Coupon (10 Aug 2020)	4,920.30
2021-12-15	Coupon (29 Apr 2020)	4,921.32
	Total overall	**GBP 57,506.24**

It is noted that after his transfer to his new pension plan in Gibraltar, the Complainant made various redemptions and withdrawals from his new plan between 2021 and 2024 from the Veri-Platform as follows:

Table D – Pension plan redemptions/Withdrawals[127]

Date	Client Redemption – PCLS GBP	Date	Capital Withdrawals GBP	Total GBP
11-May-21	290,000.00	26-Jul-21	16,615.67	
20-Jul-21	50,000.00	29-Apr-22	51,518.35	
26-Jul-21	10,464.96	16-Dec-22	232,500.00	
		17-Mar-23	67,404.64	
		18-Apr-24	30,955.00	
		08-May-24	1,050.00	
	350,465.00		**400,043.66**	**750,508.62**

[124] P. 191- P. 194

[125] In its submissions, SPS indicated a total of £41,196.31 (P. 345 & 458). This, however, does not take into account a reversal of £3,290.66 (P. 191) that occurred in June 2018, which would bring the figure to £37,905.65.

[126] P. 193 – The Service Provider did not provide details of the dividend payments ensuing on Lombard 82 post October 2020. During a hearing of 15 September 2025, the Complainant testified that *'Asked to confirm whether I received any dividends post-2020 when I transferred to a separate trustee, I say, not from Lombard, they stopped paying other dividends in 2021, I believe it was. So, there were no further dividends payments from Lombard'* (P. 348). Whilst the said income was not indicated by either party, these payments were however noted from the 'GBP Cash' list of transactions in the Investor Summary Statement presented.

[127] P. 202

As explained by the Complainant, he opened an investment account managed by *Evelyn Partners* in 2022. The investments undertaken with *Evelyn Partners* are not the subject of this Complaint.

The disputed investments

As outlined above, the disputed investments are the following:

- an investment of GBP 196,000 into the *Escher Marwick Series 2016-4 TRG ETP GBP* ('the Escher Marwick')

- an investment of GBP 246,000 into the *Intl Invt Platform Securitisation Fund Series 7 GBP* (previously named *Lombard 82 Series GBP*) ('the Lombard 82').[128]

Both investments were undertaken in early 2018, with the position remaining open on both investments at the time of the transfer to another scheme (in October 2020) and, also, at the time of this Complaint.

The 'Escher Marwick' investment

The Service Provider calculated the Escher Marwick investment of GBP 196,000 (effected in early 2018) as constituting *'15.93% of his portfolio'*.[129]

A copy of the Fact Sheet in respect of this investment, Series 2016-4 (ISIN no. GB00BD4F3X58) was presented during the proceedings of the case.[130, 131]

The Fact Sheet, which was *'prepared solely for professional advisers and for informational purposes only'*[132] described the investment, a *'£500m MTN [Medium-Term Note] Programme'*, as follows:

> *'The Escher Marwick Series 2016-4 secured note programme ETP invests in a portfolio of Hotel/Resort properties principally in the Cape Verde Islands, all of which benefit from a guaranteed revenue agreement with TUI Travel PLC, the World's largest tour operator. The strategy is an absolute return*

[128] During the proceedings of the case, the Complainant explained that the Lombard 82 investment was renamed as *'International Investment Platform Securitisation Fund'* – P. 180 of Case ASF 213/2024
[129] GBP 196,000 of GBP 1,230,516.45, the client monies received into the IIP platform. (P. 263)
[130] The ISIN number in the Fact Sheet matches the one listed on the Dealing Instruction Form dated January 2018 (P. 265) and on the Investor Summary Statement as at end 2018 (P. 181).
[131] https://theresortgroupplc.com/wp-content/uploads/2017/05/EMFactApril17.pdf
[132] P. 299

designed to outperform traditional equity and fixed income based investments in terms of annualised market based risk. This is achieved by investing in a diverse portfolio of real estate assets that benefit from long term contracts with household names in the hotel and leisure sectors, underpinning consistent income for investors. Since launch, the investment strategy has consistently retained very low volatility and near zero correlation to traditional equity and fixed income markets'.[133]

Some of the key features of this investment as emerging from the Fact Sheet were further outlined as follows:

- Investment Grade with a Credit Rating of BBB+
- 8-10% per annum Target Return
- Exchange Traded listed on Irish Stock Exchange/Frankfurt
- Daily dealing with weekly valuation
- Eligibility for investment SIPP (Self-Invested Personal Pension), ISA (Individual Savings Accounts), UCITS
- *'Low volatility and correlation to traditional equity, bond or commodity markets'* with a *'Target annualised downside volatility: Less than 3% p.a.'*.
- An actual Yearly Return (net of all fees) of *'5.8'* for 2016 and *'3.6'* for 2017.

The fact sheet stated that *'Applications should only be made on the basis of the Pricing Supplement and Listing Particulars'*. No such copy of the Pricing Supplement and Listing Particulars was presented during the proceedings of the case.

It is noted that the Complainant pointed out, *'No Private Investment Memorandum was provided; only a fact sheet was made available'*.[134] On its part, SPS did not present any such document either during the proceedings of this case. An internet search sourced a listing particulars relevant to the Sterling Notes (with ISIN no. GB00BD4F3X58) dated July 2016.[135]

It is noted that with respect to investor eligibility, the said Particulars provided *inter alia* that:

[133] P. 298
[134] P. 272
[135] https://ise-prodnr-eu-west-1-data-integration.s3-eu-west-1.amazonaws.com/legacy/ListingParticulars_8808b480-c3e4-4b31-a58e-8dd4bd676472.pdf

> *'The Series 2016-4 Notes may not be a suitable investment for all investors. Each potential investor in the Series 2016-4 Notes must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor may wish to consider, either on its own or with the help of its financial and other professional advisers, whether it: (i) has sufficient knowledge and experience to make a meaningful evaluation of the Series 2016-4 Notes, the merits and risks of investing in the Series 2016-4 Notes and the information contained or incorporated by reference in this Drawdown Listing Particulars or any applicable supplement; (ii) has access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Series 2016-4 Notes and the impact the Series 2016-4 Notes will have on its overall investment portfolio; (iii) has sufficient financial resources and liquidity to bear all of the risks of an investment in the Series 2016-4 Notes, including Series 2016-4 Notes where the currency for principal payments is different from the potential investor's currency; (iv) understands thoroughly the terms of the Series 2016-4 Notes and is familiar with the behaviour of financial markets; and (v) is able to evaluate possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.'*[136]

As to risks, the particulars dated July 2016 highlighted various risks, including about the issuer of this note being a recently incorporated company with no historical trading or financial information, its limited resources and potential issues that may arise and affect its ability to meet its obligations, as well as the risks specific to The Resort Group plc.[137]

'The Lombard 82 – EMTN Bond Series' investment

The investment of GBP 246,000 into Lombard 82 (effected in early 2018) was calculated by the Service Provider as constituting *'19.99% of his portfolio'*.[138]

[136] Page 4 of the Drawdown Listing Particulars.
[137] Risk Factors section (Page 7 – 11) of the particulars dated July 2016 refers - https://ise-prodnr-eu-west-1-data-integration.s3-eu-west-1.amazonaws.com/legacy/ListingParticulars_8808b480-c3e4-4b31-a58e-8dd4bd676472.pdf
[138] GBP 246,000 of GBP 1,230,516.45. (P. 263)

A copy of the Private Investment Memorandum of the Lombard 82 investment (GBP ISIN: LU1075904984)[139] was presented during the proceedings.[140]

The Complainant referred to the assessment made in respect of the Lombard 82 investment in one of the Arbiter's decisions, Case ASF 019/2022.[141] The said case indeed includes comprehensive details about this investment (with reference to the same Private Investment Memorandum mentioned above).

The Arbiter is not replicating here the same analysis, but is adopting the same as relevant and pertinent to the case under review.[142]

Other relevant aspects on Lombard 82

It is worth, however, pointing out certain material differences emerging from Case ASF 019-2022:

- The amount of pension portfolio and amount of investment is substantially different.

  In Case ASF 019-2022, the pension portfolio was only of approx. GBP 88,000 whilst in this Complaint it is over GBP 1.2 million.

  The amount invested in Lombard 82 was over GBP 12,000 in Case ASF 019-2022 whilst in this Complaint it is GBP 246,000. The Private Investment Memorandum of the Lombard 82 provided that:

  > *'The minimum investment by the Bondholder is GBP 125,000, EUR 125,000 or USD 200,000. The Bondholders may only be institutional investors, sophisticated investors, investors investing more than 125,000 GBP, 125,000 EUR or 200,000 USD, or retail investors investing via a Trust, Professional Investor or Discretionary Investment Manager.'*

  Hence, whilst the Complainant satisfied the minimum investment limit as he has invested GBP 246,000 into Lombard 82, in Case ASF 019-2022 the member did not satisfy such limit.

[139] The ISIN number matches the one listed on the Investor Summary Statement as at end 2018 – P. 181
[140] P. 275 - 296. This is also available from a general internet search: https://iiplt.com/download?idx=10367
[141] P. 272 - https://financialarbiter.org.mt/sites/default/files/oafs/decisions/512/ASF%20019-2022%20-%20BY%20vs%20MC%20Trustees%20Malta%20Limited.pdf
[142] Section titled *'The Lombard 82 – EMTN Bond Series'* (Page 28 - 31) of Case ASF 019/2022 refers.

Furthermore, the Complainant qualified on two counts as an eligible investor being an '*investor investing more than 125,000 GBP*' apart from being a '*retail investor investing via a Trust'.*

- The profile of the investor is also different, with the Complainant being a high-net-worth and highly qualified and educated person (albeit in an area not related to finance).

The above factors will be taken into consideration in the assessment and decision taken.

Status of the disputed investments

Escher Marwick

As indicated above, in his Complaint Form to the Arbiter, the Complainant submitted that the *'The bond remains illiquid meaning it is not possible to sell. The bond is currently valued at £127,449'.*[143] It is noted that this is the value reflected in Portfolio Valuation Statements dated 30 June 2022 and as of 09.02.2024.[144]

In a decree of 5 June 2025, the Arbiter requested the Complainant to provide details showing the performance of the disputed investments.[145]

In reply, the Complainant explained that the *'Escher Marwick bond shows an unrealised loss of 26.45%'* and provided a copy of the latest *'Portfolio Valuation'* issued by *Gravitas Finance LLC* dated 9 June 2025, where the Escher Marwick investment was valued at GBP 144,160.49.[146, 147]

It is noted that the valuation of June 2025, reflects an increase in value in this investment (from £127,449 to £144,160.49). In his final submissions of February 2026, the Complainant still, somehow, noted (seemingly erroneously) that *'The*

[143] P. 3 of Case ASF 212/2024
[144] P. 112 & 126 of Case 212/2024
[145] P. 177
[146] P. 205 of Case ASF 212 & 213 of 2024
[147] £144,160.19 is equivalent of a loss of 26.45% on the original investment of £196,000

current recorded value of £127,000 remains significantly below the original investment of £196,000'.[148]

During the hearing of 10 November 2025, the Service Provider testified that *'Regarding Escher Marwick, our understanding is that Escher Marwick started to pay coupons on the fund'*.[149] No evidence was provided about the claimed payment of coupons.

In his final submissions, the Complainant also provided the following update with reference to the latest notice issued about this investment in December 2025:

> *'At the oral hearing of 10 November 2025, SPSL stated that Escher Marwick had resumed coupon payments. The TRG December 2025 update states that 'The funds will now be benefitting from the recommencement of rental yield payments adding renewed liquidity to these funds. TRG have also been supporting these structures with assisting in the resale of Llana Beach Hotel properties. The funds will also benefit from the progress that will now be made on the White Sands Hotel project'. There is no indication of when trading will recommence or at what value.'*[150]

Further to a general internet search regarding the status of this investment, it transpires that liquidators were appointed in December 2025 in respect of *Escher Marwick Limited* (formerly known as Escher Marwick plc as per the Notice of Appointment of Liquidators).[151] Escher Marwick plc was the issuer of the Escher Marwick investment. It is accordingly evident that there are material issues regarding the liquidity of, and access to, this investment which is now further complicated with the order of winding up and appointment of a liquidator.[152]

Nevertheless, it cannot be determined that this investment has been completely written down or is of nil value. This is in light of the apparent positive developments on the underlyings (TRG) as reported by both parties above, and also considering the latest valuation provided of June 2025 (which reflected a

[148] P. 440
[149] P. 363
[150] P. 440
[151] https://www.thegazette.co.uk/notice/5020192
[152] https://find-and-update.company-information.service.gov.uk/company/10112860/filing-history

higher value of GBP 144,160.49 than that referred to by the Complainant of GBP 127,000, which was rather applicable in 2022 and 2024 as explained above).

Furthermore, given that this investment was at issue considered as investment grade and covered by assured revenue streams in the form of committed bookings from an internationally renowned tourist operator, it cannot be argued that it was out of scope for a medium risk investment profile willing to accept fluctuations in the medium term with potential benefits for the long term. There is no doubt, however, that as this investment was in a sector highly impacted by the Covid pandemic, its medium and long-term prospects have to be considered as extended from those perceived at issue.

Hence, in the circumstances, the Arbiter has no tangible evidence that this investment is of nil value, nor of the current realistic value for this investment, with its position still open.

Lombard 82

As outlined above, a communication in 2022 indicated the value of the investment reduced to *'1 EMTN (GBP series) = £0.015'*, and explained that *'The value of Underlying Assets that are subject to recovery action … are to be assigned a nil value'*.[153] In the latest *'Portfolio Valuation'* dated 9 June 2025, the Lombard 82 investment was indeed valued at just GBP 3,690.23.[154]

The material loss arising from this investment is clearly evident.

Additional Considerations

The Scheme Particulars, Applicable Pension Rules and Relevant Context

The Scheme Particulars outlined the Investment Strategy of the Scheme as follows:

> *'The investment objective for the Scheme shall be to accumulate a Trust Fund from which to provide retirement annuities and other benefits. Each member shall be entitled to nominate an investment adviser and the member or their nominated adviser shall be entitled to indicate the*

[153] P. 52 - 53 of Case ASF 213/2024 – Emphasis added by the Arbiter
[154] P. 205 of Case ASF 212/213 of 2024

preferred investment strategy for the member's Scheme. The Trustee may consider any such preference, however the Trustee shall retain ultimate discretion on investments taking into account the investment objective and purpose of the Scheme along with any applicable investment restrictions.

Subject to any condition imposed by law or by the MFSA the Trustee shall ensure that the Trust Fund shall be:-

- *Invested in the best interests of the member;*
- *Invested in such a manner as to ensure the security, liquidity and profitability of the trust fund of the Scheme as a whole; and*
- *Properly diversified in such a way as to avoid accumulations of risk in the trust fund of the Scheme as a whole'.*[155]

It is further noted that the 'Investment Restrictions' section of the Scheme Particulars *inter alia* provided the following:

'The Trust Fund shall be subject to any investment restrictions imposed by licensing conditions stipulated by the MFSA'.[156]

The said section further detailed conditions reflected in the MFSA's *Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act, 2011* ('the MFSA Pension Rules'), as applicable at the time, namely that:[157]

'… In addition:

- *the Scheme shall not engage directly or indirectly in transactions with any of its members or persons connected thereto;*
- *the Scheme shall not grant loans to any of its members or connected persons thereto; and*
- *the Scheme shall not engage directly or indirectly in borrowing in connection with property purchases on behalf of its members or connected persons thereto, other than on fully commercial terms, provided that the Scheme may borrow up to 50% of the amount of property purchased which must be valued by an independent qualified*

[155] P. 335
[156] *Ibid.*
[157] *Ibid.*

valuer and only on a short term basis in relation to the management of its assets snd should not engage in any leverage'.

The above conditions namely reflect Standard Licence Condition 3.2.1 [(iv) and (v)], section B.3.2 titled *'Investment Restrictions of a Personal Retirement Scheme'*, of the MFSA Pension Rules.[158]

It is also noted that the Scheme Particulars provided that:

'The choice of investments of the Scheme may be determined in consultation with the member of the Scheme or the appointed investment adviser. It shall, however, accord with the above investment strategy and restrictions'.[159]

SLC 3.1.2 of the MFSA's Pension Rules stipulated that:

'3.1.2 The Scheme's assets shall be invested in a prudent manner and in the best interest of Members and Beneficiaries and also in accordance with the investment rules laid out in its Scheme Particulars and otherwise in the Constitutional Document and Scheme Document.'

It is further noted that in a version of the MFSA's pension rules updated on 28 December 2018 (which is not applicable to the case in question, as the disputed transactions had been undertaken in early 2018), new requirements were introduced.[160]

Section B.9 of the MFSA Pension Rules titled *'Supplementary Conditions in the case of Member Directed Schemes'*, referred to *inter alia* the investment restrictions stipulated in Part B.3.2 of the rules and the investment policy

[158] Version dated January 2015. These same conditions continued to be reflected in a later version updated 28 December 2018. Both versions stipulated the following in SLC 3.2.1:
'iv. subject to paragraph (vi), a Scheme shall not engage, directly or indirectly, in transactions with, or grant loans to, any of its Members or connected persons thereto;
v. a Scheme shall not engage, directly or indirectly, in borrowing in connection with property purchases on behalf of any of its Members or connected persons thereto, other than on fully commercial terms, provided that the Scheme may borrow up to 50% of the amount of property purchased which must be valued by an Independent Qualified Valuer;

[159] P. 336

[160] These namely relate to a prohibition that *'a Scheme shall not make use of derivative financial instruments for speculative purposes'* and limitations on structured notes that *'where structured notes are included in the Scheme's assets, these will be permitted up to a maximum of 15% of the portfolio's total value, with no more than 10% of the Scheme's assets to be subject to the same issuer default risk'*. SLC 3.2.1 (vii) and (viii) of MFSA's Pension Rules ver. Jan 2015, Last Updated: 28 Dec 2018.

applicable to the Scheme.[161] A new version of the Rules updated in December 2018 (and hence not applicable to this particular case), included additional requirements.[162]

The Arbiter further notes that prior to the introduction of the MFSA Pension Rules under the *Retirement Pensions Act, 2011, (*'RPA') there were other pension rules (or directives) issued under the previous regulatory framework, the Special Funds (Regulation) Act, 2002 ('SFA Regime') which were phased out as per The Retirement Pensions (Transitional Provisions) Regulations, 2015.[163] SOC 2.7.2 of the original directives under the SFA Regime provided a background of what a properly diversified and avoidance of excessive exposure meant.[164]

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[161] SLC 9.2 and SLC 9.3 of Section B.9. of MFSA Pension Rules dated January 2015 stipulated that: *'9.2 The Retirement Scheme Administrator shall retain ultimate responsibility to ensure compliance by the Member or any person acting on his behalf with the objective of the retirement scheme and with any applicable licence conditions and provisions of the law. 9.3* The following conditions shall also apply: … *(d) the investment restrictions (Part B.3.2 of the Pension Rules for Personal Retirement Schemes) and the investment policy applicable to the Scheme are also to be applied at the level of the member account, taking into account the risk profile of the Member;'*

[162] E.g. SLC 9.5 (d) (ii) stipulated that in the case of member-directed schemes, the RSA shall ensure that:
'(aa) where structured notes are included in a Member's account, these will be permitted up to a maximum of 30% of the Member's account total value, with no more than 20% of the Member's account to be subject to the same issuer/guarantor default risk;

(bb) unless a Member requests to be classified as a professional member, a Member may only invest in investments which can be classified as suitable for a retail member: Provided that the responsibility of the Retirement Scheme Administrator in assessing the investments chosen shall be limited to carrying out due diligence on the proposed investment, following which the Retirement Scheme Administrator is satisfied on reasonable grounds that the investment can be classified as suitable for a retail member.'

The updated Rules contained a proviso that *'The said investment restrictions shall apply to the current investments of members in a member directed scheme once any movements occur within the member's pension account or in the case of new investments entered into, as from 1st January 2019.'*

[163] Details about this regulatory framework is covered in various previous decisions issued by the Arbiter (e.g. Section titled 'The Legal Framework'/'Responsibilities of the Service Provider' and background provided under 'Portfolio not reflective of the MFSA rules' in the decision issued on 28 July 2020 for Case 028/2018 and various others – https://financialarbiter.org.mt/sites/default/files/oafs-decisions/ASF%20028-2018%20et.pdf

[164] SOC 2.7.2 (e) and (h) of the MFSA Directives issued under the SFA Regime provided that: *'2.7.2 The Scheme Administrator shall ensure that the assets of a Scheme are: …(e) properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings. In particular, the Scheme assets shall be invested as follows: i. Not more than 10 per cent of assets shall be invested in securities issued by the same body. ii. Not more than 10 per cent of the assets shall be kept on deposit with any one body. This limit may be increased to 30 per cent in respect of money deposited with a bank licensed under the Banking Act of Malta, 1994, or with a bank outside Malta where this is established and regulated in EU/EEA member states. iii. Scheme shall not hold more than 10 per cent of any class of security issued by any single issuer. Provided that the above limits, subject to approval from the MFSA, may not apply to investment in government bonds.*
…

Whilst SOC 2.7.2 was no longer applicable at the time of the disputed transactions, reference to this is made to provide relevant context to the regulatory framework and expectations as they applied and evolved over time.

It is also particularly noted in this regard that, on 6 December 2017, MFSA had issued a comprehensive Consultation Document with local retirement schemes practitioners, relating to *'Consultation on Amendments to the Pension Rules issued under the Retirement Pensions Act'*.[165] In the said document, the MFSA *inter alia* pointed out that:

> *'From on-sites conducted the **MFSA is concerned to note** that, in a number of instances, the **assets of members (who are mostly retail investors) are being placed in investments such as speculative derivatives, structured notes, and units in Professional Investor Funds ("PIFs"), on a regular basis**. These type of investments are more apt and suitable for investors with higher risk appetite, such as professional investors.'*[166]

The MFSA furthermore stipulated the following in the said Consultation Document with reference to *'Clarification of the Role and Responsibilities of the RSA'*:

> *'It is acknowledged that, in so far as the role of the RSA in the context of member-directed Schemes is concerned, the provisions found in Part B.9 of Part B of the Pension Rules need to be enhanced. The aim of the proposed amendments is to clarify the role and responsibilities of the RSA in the context of member-directed Schemes…*
>
> *As specified in SLC 1.3.1 of Part B.1 (Pension Rules for Retirement Scheme Administrators) of the Pension Rules for Service Providers, the RSA, in carrying out his functions, shall act in the best interests of the Scheme members and beneficiaries. Therefore, the MFSA expects the RSA to be*

h) the Scheme may acquire the Units of Retirement Funds or other Collective Investment Schemes adequately regulated subject to the following: … iii. the underlying scheme which is not a Retirement Fund, must be properly diversified and predominantly invested in regulated markets ... v. not more than 20% of the Scheme's assets shall be invested in total in any one collective investment scheme.'

[165] MFSA Ref: 09-2017 - https://www.mfsa.mt/publication/consultation-on-amendments-to-the-pension-rules-issues-under-the-retirement-pensions-act/

[166] Page. 8 of MFSA's Consultation Document (MFSA Ref: 09-2017) – Emphasis added by the Arbiter

diligent and to take into account his fiduciary role towards the members and beneficiaries, at all times …

In carrying out his functions, an RSA of a Personal Retirement Scheme has a fiduciary duty to protect the interests of members and beneficiaries. It is to be noted that by virtue of Article 1124A of the Civil Code (Chapter 16 of the Laws of Malta), the RSA has certain fiduciary obligations to members or beneficiaries, which arise in virtue of law, contract, quasi-contract or trusts. In particular, the RSA shall act honestly, carry out his obligations with utmost good faith, as well as exercise the diligence of a bonus pater familias in the performance of his obligations.

In the case of Schemes established as a trust, even though, in terms of article 43(6)(c) of the Trusts and Trustees Act (Chapter 331 of the Laws of Malta), a person licensed as a RSA in terms of the RPA and acting as a trustee to Retirement Schemes is not required to be authorised in terms of the Trusts and Trustees Act, the Trusts and Trustees Act still 10 applies to such RSA, in terms of article 1(2) of the said Act …

In the case of member-directed Schemes (irrespective of the form in which the Scheme is established), the RSA is expected to have adequate knowledge of the risk profile of the member so as to ensure that the proposed investments are in line with the investment strategy and investment restrictions of the member-directed Scheme and with the risk profile of the member, in order to approve proposed transactions in a member's account. In this respect, the RSA is expected to vet and approve the investment advice provided by the investment manager or the investment advisor, and raise certain queries, when necessary.'[167]

The above are relevant aspects which are taken into account for the case in question.

[167] Page. 9 & 10 of MFSA's Consultation Document (MFSA Ref: 09-2017).

Final Observations and Conclusions

Analysis of portfolio and disputed investments

As outlined in Table A, the Complainant's portfolio was spread across thirteen investments, comprising four funds, six structured notes, a loan note and two medium-term notes (the latter being the disputed investments in this case).

Collectively, the disputed investments comprised 36% of the total assets transferred into the Scheme, as confirmed by the Service Provider.[168]

The targeted rate of return on the investments (as emerging from the name, fact sheets and/or product documentation) is summarised in Table D below:

Table E

Investment	Targeted return	Allocation as % of Total Assets
GAM Star Growth A Class		*3.74%*
CGWM Select Income Fund		*2.84%*
Commerzbank 6 Yr Quanto Autocall Phoenix Note (14/10/24)		*2.11%*
Commerzbank 6 Yr Quanto Classic Autocall Note (04/11/24)		*2.11%*
Commerzbank 7% pa 85/70 Safe Haven Phoenix Note 15.12.23	*7%*	*5.44%*
EFG 7.70% pa 85/70 Safehaven Note (21.11.23)	*7.7%*	*5.44%*
EFG 8.40% pa Defensive Safehaven Note (21.11.23)	*8.4%*	*16.25%*
EFG Safehaven Note 85/70 6.82%	*6.82%*	*5.44%*
Fintas Global Ltd 6% pa Loan Note (31.12.2023)	*6%*	*2.11%*
Marlborough Balanced Cell F GBP		*5.28%*
Marlborough Special Situations Cell - Cls F GBP		*5.69%*
Escher Marwick Series 2016-4 TRG ETP GBP	***8-10%***	***15.93%***
Lombard 82	***8%***	***19.99%***

Over 50% of the portfolio was allocated between three investments with a targeted return of 8% or higher, with 75% of the portfolio comprising of structured notes, loan notes and medium-term notes. The above composition and target rate of return are already indicative, on their own, of a certain level of risks being taken.

[168] 15.93% for the Escher Marwick + 19.99% for the Lombard 82 = 35.92%

With respect to the Escher Marwick Series, whilst this investment was investment grade, the particular and specialised nature of the investment involving material exposure to hotel/resort properties with The Resort Group plc in Cape Verde should not have been ignored or downplayed.[169]

The Complainant submitted that the *'Escher Marwick ETF documentation stated that the product was suitable only for institutional or experienced investors'*.[170]

He also produced an extract from the website of The Resort Group which *inter alia* included a general note about this investment saying '*Available only to professional/institutional investors'*.[171]

As to the investor's eligibility, the Listing Particulars, however, specified a number of criteria as considered above. Taking into account the Complainant's profile and high-net-worth status, it cannot be conclusively determined that the Complainant failed to satisfy the eligibility criteria for this particular investment.

This is also when taking into account the exchange-traded nature and investment-grade rating of the investment.

As to Lombard 82, whilst the Complainant satisfied the minimum entry requirements for this investment, however, this did not mean that this investment reflected the risk profile/tolerance of the Complainant and/or justified the extent of exposure to it, both on its own and particularly in combination with the exposure to Escher Marwick.

The Arbiter does not agree with the statement made by the Service Provider with respect to the Lombard 82 that *'At the time, the memorandum described the note as a non-leveraged, income-producing debt instrument rather than as a speculative investment'*.[172]

The risk section of the Private Investment Memorandum of Lombard 82 clearly and categorically outlined that this:

[169] '*The Escher Marwick PLC (Series 2016-4) MTN programme invests in a portfolio of Hotel/Resort properties principally with The Resort Group PLC, in the Cape Verde Islands.*' - https://theresortgroupplc.com/investment-grade-securities-delivering-double-digit-returns/
[170] P. 434
[171] P. 422
[172] P. 377

'… is considered to be a speculative investment involving a high degree of risk (significant fluctuation of the value of the Underlying Assets) …'.[173]

It is further noted that neither the Escher Marwick nor the Lombard 82 were, additionally, a regulated product, and hence the collective high exposure to such instruments is justifiably questionable within the context of the pension plan whose objective is as *'a trust fund from which to provide benefits in retirement'* and with reference to the Medium Risk profile of the Complainant.

The risk profile indicated by the member of a retirement scheme cannot be viewed in isolation or treated in the same manner or similar to a general investment or managed account held with a financial investment adviser. The risk profile indicated had to be carefully reviewed and properly considered in the context of a pension plan whose aim is to provide benefits in retirement.

As indeed specified in the Scheme's documentation, this is the integral purpose of the Retirement Scheme. This is, accordingly, a prevalent factor that cannot be discounted or dismissed.

Hence, even if the highest category of risk had been selected for the retirement scheme (which was not the case here, as the Complainant was not even classified as *'Medium to High'* or *'High Risk'* but as *'Medium Risk'*), this would not justify or mean that the portfolio selected and extent of risk taken is one which tangibly jeopardises the achievement of the retirement scheme's objective.

Hence, the relevant prudence had to be exercised, and the scope of the retirement scheme kept at the forefront when considering the risk profile, the risks generated from the selected individual investments and overall risk exposure in the portfolio.

In the context where:

- the previous regulatory regime under the SFA, which already indicated certain limitations with reference to proper diversification and avoidance of excessive exposures (by for example, indicating a limit of 10% to a single issuer; 20% to any one regulated product as indicated above);

[173] P. 287

- the MFSA's Consultation Document of December 2017, which had already raised the regulator's concerns about the inadequacy of the allocation of speculative products, structured notes and products aimed for professional investors into retirement schemes for members who are retail (as highlighted above);

the Service Provider's excuse that, at the time of this particular case, *'the MFSA's regulations do not stipulate any specific diversification limits for member-directed schemes'*, as emphasised during the hearing of 10 November 2025 and final submissions, cannot really be accepted.[174]

Even in the case where, at the time in January 2018, the MFSA's Pension Rules may not have been so prescriptive in outlining applicable investment limits (as may have been under the previous set of rules applicable under the SFA or as updated in subsequent versions of the Pension Rules under the RPA regime as outlined above), the Service Provider did not have a free-hand in allowing material exposures to structured products and/or other unregulated products including products aimed for professional investors.

No sufficient comfort about the adequacy of the risk assessment can furthermore be derived from the Deal Instruction Risk Assessments (pre-2018/ post 2019) provided by the Service Provider.[175]

This is also when:

- Lombard 82 was internally allocated a zero-risk score in the pre-2018 assessment;[176]

- the assessment omitted other material investments featured in the portfolio at the time in early 2018 (i.e., the investment of GBP200,000 into the EFG 8.40% pa Defensive Safehaven and the investment of GBP196,000 into the Escher Marwick in Jan 2018);

- the number of single notes at or above 20% was marked as nil when the Lombard 82 (which comprised 19.99%) was practically 'at 20%';

[174] P. 362 & 454
[175] P. 371, 380 - 383
[176] P. 380

- it is also unclear whether the risk score took into account the unregulated nature of the products, the type of product invested into (structured note/loan note/medium-term note) and material exposures to single parties (e.g. The Resort Group plc in case of Escher Marwick and the issuer Xantis S.A. in case of Lombard 82), apart from the cumulative exposure thereto.

Having seen the portfolio allocation and the nature of the disputed investment products, the Arbiter cannot reasonably conclude that the Complainant had a properly diversified portfolio designed to ensure liquidity, security and profitability as claimed by SPS.[177] This is particularly so with the addition of the Lombard 82 investment and, even more so, the material exposure thereto.

There is no doubt that the investment objective of the Retirement Scheme has evidently failed in this case in view of the material losses suffered.

Whilst the Complainant was a high-net-worth retail investor who had a higher ability to sustain or absorb losses and was a highly educated individual (better able than the average retail investor to understand the risks involved),[178] this in itself did not justify the indicated portfolio allocation and the permitted higher risk allocations.

The Complainant's particular profile and status is, however, taken also into account in determining the extent of compensation awarded in this case.[179]

Calculated Loss on the Retirement Scheme for the purpose of this decision

The Arbiter considers that the Escher Marwick investment should be excluded for the purpose of calculating the loss for the scope of this decision. This is when considering the current open status of the Escher Marwick, as well as the nature of the investment and investor eligibility criteria as detailed above.

Taking into account the overall income and the net profit/losses accumulated on the portfolio as a whole (with the exclusion of the Escher Marwick investment) that was constituted at the time of SPS, as emerging from the

[177] P. 454

[178] An aspect which also emerged from the Complainant's personal submissions and replies provided during the proceedings of the case.

[179] With particular reference to his clear understanding of what medium risk profile consists of and the decision to exclude any loss on Escher Marwick from this calculation.

Investor Summary Statement provided, the following calculations are undertaken with reference to Table B above:

- GBP 134,963 as Net Realised Profit/Loss inclusive of interest resulting from investments undertaken within the original portfolio;[180]
- GBP 57,506.24 as total dividends/income received on the Lombard 82 as per Table C above;
- (GBP 246,000) nil value on Lombard 82;
- Loss for the purposes of this decision is calculated to amount to (GBP 53,530.76).[181]

Decision

Being mindful of the key role of Sovereign Pension Services Limited as Trustee and Retirement Scheme Administrator of the *The Centaurus Retirement Benefit Scheme,* and in view of the deficiencies identified in the obligations emanating from such roles as amply explained above, which deficiencies are considered to have prevented the losses from being minimised and in a way contributed in part to the losses experienced on the Complainant's Retirement Scheme, the Arbiter concludes that the Complainant should be compensated by SPS for part of the realised losses experienced on his pension portfolio.

In the particular circumstances of this case, considering that the Service Provider had the last word on the investments and acted in its dual role of Trustee and RSA, and taking into consideration the risk attitude of the Complainant, the Arbiter considers it fair, equitable and reasonable for Sovereign Pension Services Limited to be held responsible for seventy per cent of the sum of the loss calculated within his portfolio of underlying investments constituted at the time of SPS as described above.

In accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter is ordering the Service Provider to pay the Complainant the amount of GBP 37,472 (thirty-seven thousand, four hundred and seventy-two pounds

[180] -£992-£1,032+£2,747+£3,120+£9,387+£13,568+£67,200+£10,780+£7,920+£10,305+£11.960 = £134,963
[181] £134,963+£57,506.24-£246,000 = £53,530.76

sterling) being 70% of the loss calculated for the purposes of this decision.[182] [183]

With interest at the rate of 3.75% p.a.[184] from the date of this decision till the date of payment.[185]

Each party is to bear its own legal 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.

[182] 70% of the Loss of GBP 53,530.76 as determined in this decision.
[183] The Arbiter has decided several cases with intrinsically similar characteristics adopting 70% loss recovery.
[184] Equivalent to the current Bank of England Bank Rate.
[185] 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.

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.