

Before the Arbiter for Financial Services

Case ASF 043/2025

CO

(‘the Complainant’)

vs

Atom Trustees Limited

(C 67911) (‘ATL’ or ‘the Service Provider’)

Sitting of 21 November 2025

The Arbiter,

Having seen the **Complaint** made against *Atom Trustees Limited* (‘ATL’ or ‘the Service Provider’) relating to the *Atom International Trust* (‘the Trust’), for which ATL acted as trustee.

The Complaint, in essence, relates to the Complainant’s claim that he should not be liable for fees charged upon the termination of his Trust for him to, at least, recoup his original investment. This was in view that the termination of the Trust resulted from material changes proposed by ATL to his trust structure, which the Complainant did not accept.

The changes involved the *Atom Digital Platform* originally used by the trust, which was no longer to be offered by ATL. New terms and conditions with *Providence Life* were proposed by ATL instead of its platform. The Complainant claimed that the new terms with *Providence Life* included the payment of a monthly contribution previously not applicable on the ATL platform and a longer investment term.

The Complainant noted that the value of his trust was, at the time, higher than his original investment, but it fell below the original value due to the fees charged upon encashment.

Preliminary

The Office of the Arbiter for Financial Services ('OAFS') received the Complaint against the Service Provider from both (the Complainant) and his wife, who were both listed as complainants in the Complaint Form.¹ In its reply to the Complaint filed with the OAFS, the Service Provider clarified that the trust arrangement was not joint with the spouse but was only in the name of (the Complainant) as the sole settlor of the Trust.²

During the sitting of 23 September 2025, the Arbiter referred to this fact and noted that whilst the Complainant's spouse can assist her husband with his Complaint, she was, however, not a party to this case.³ The records of the case were corrected and updated accordingly.

The Complaint⁴

The Complainant explained that he had invested GBP 130,000 in *Atom Trust* in June 2022 as advised by *PCC Wealth*. He was a cautious investor and intended to leave the retirement plan around 2027 at the age of sixty-two.

The Complainant noted that on 9 October 2024, he received an email notifying him that ATL planned to move his investments to *Providence Life*. He claimed that no details were given of the new terms except that a monthly fee/contribution of GBP 200 was now required for the new service provider. The Complainant pointed out that *Atom Trust* did not require a monthly payment.

The transfer to *Providence Life* required his consent by 21 October 2024, where an absence of reply was to be taken as consent for the transfer. On 10 October 2024, he questioned the transfer with his adviser, *PCC Wealth*, to which he received no reply as his adviser (who was notified five days earlier than him) was on vacation.

¹ Page (P.) 1 & 7

² P. 209

³ P. 285

⁴ Complaint Form on Page (P.) 1-7 with supporting documentation on P. 8 - 200

He explained that his adviser replied on 17 October 2024, notifying him that the deadline for consent was delayed after a scheduled meeting with the Complainant set for 24 October 2024.

The Complainant further explained that on 17 October 2024, he notified ATL by email that he did not consent to the transfer. He noted that he received a reply from ATL indicating an encashment value of GBP 126,976 on his retirement plan. The difference (loss) in value on his initial investment was due to the fees accrued during the term of his investment, with him being directed to the Scheme's terms and conditions.

He submitted that on 18 October 2024, his Retirement Scheme showed a value of GBP 132,330.

The Complainant referred to the Scheme's brochure, namely. the sections dealing with the Establishment Fee and Annual Servicing Fee relating to the fees for the establishment and administration of the trust. He indicated the following excerpt:

'Establishment Fee

Traditionally trusts establishment fees are paid upfront, however ATOM Trustees Ltd are able to spread the cost of your establishment fee over a longer period of time. This is charged at 1.25% per annum of your lump sum for 5 years on trust anniversary and then 0% thereafter.

Annual Servicing Fee

This is 1% per annum and charged on a monthly pro rata basis, for the lifetime of the trust.

...

10.1 Establishment Fee

Traditionally trusts establishment fees are paid upfront, however ATOM Trustees Ltd are able to spread the cost of your establishment fee over a longer period of time: 2.1% pa on all contributions due reducing to 1% pa after 5 years and reducing to 0.5% pa after 9 years. This charge will reduce

to zero after term completion. The establishment fee will be deducted on each trust anniversary until completion of payment contribution term.

...

10.3 Annual Servicing Fee

This is 1% per annum and deducted monthly @ 0.083334% of the value of accumulated units up to that point in time.'

The Complainant submitted that he was not in agreement with the *Providence Life's* plan terms and conditions as this demanded monthly fees and a longer term commitment as compared to his plan with ATL of at least six years. He further submitted that there was no provision in ATL's terms and conditions of the Scheme for selling this to a third party. He argued that he should therefore not be liable for any fees.

The Complainant reiterated that he would not have agreed to invest in the *Providence Life* plan had *PCC Wealth* presented it to him. He again submitted that the terms and conditions he agreed with ATL did not include any provision in case ATL ceased trading and transferred his investment to a third party. He therefore claimed that his was not an early redemption.

He again pointed out that he received no details of the sale of his investment to *Providence Life* or any conditions that *Providence Life* made to ATL regarding the transfer.

He stated that a total of GBP 128,072.65 was paid into his bank account on 21 November 2024, which was GBP 1,927.35 short of his initial investment.

The Complainant explained that during a ZOOM meeting held with *PCC Wealth* on 24 October 2024, his adviser confirmed to him and his wife that *PCC Wealth* would do everything in their power to make good for the GBP 130,000 but no elaboration was given.

He noted that ATL has since confirmed that they will not refund the difference to make good for his original GBP 130,000 investment.

The Complainant claimed that ATL sold his investment with no consultation or agreement from his side. He submitted that the terms of sale are unknown and reiterated that this was a business decision by ATL which was not covered in the terms he had agreed to.

Remedy requested

As a remedy, the Complainant requested ATL to repay GBP 1,927.35 to make good for his original GBP 130,000 investment.⁵

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

Where the Service Provider referred to the complaint filed in relation to the trust arrangement administered by ATL and explained and submitted the following to clarify the facts and address the issues raised by the Complainant:

Background

1. That ATL provides a range of trust and fiduciary services, including the establishment of trusts for various purposes. In addition to traditional services, ATL specifically offered a bespoke service for establishing trusts for investment purposes through a digital platform ('the Atom Digital Platform'), which was a very unique way of providing trust services to clients.

It explained that this digital service was designed to provide clients with a transparent and structured approach to managing their investments over the long term, with the aim of aligning with each individual client's specific needs and goals. The trusts were set up under clearly defined terms and conditions which outlined the applicable fees, charges and the method of fee amortisation. It noted that, furthermore, clients were free to engage a third-party discretionary investment manager to manage their portfolio. In such cases, ATL did not exercise control over the investment decisions, as the management of the portfolio was delegated to the third party in line with the settlor's instructions. ATL explained that this approach ensured

⁵ P. 5

⁶ P. 207 - 214, with attachments from P. 215 - 284

that clients fully understood how their investments were going to be managed from the outset, with a focus on providing flexibility while maintaining a clear and consistent fee structure. It noted that this bespoke service was, however, only possible through a digital solution provided by a third-party company, which was not within ARL's control. It explained that when the third-party provider retired from the market, ATL had no option but to retire the service and transition its clients to a new platform.

ATL's Preliminary clarifications

2. That the Complaint contains a number of material inaccuracies and misrepresentations which require correction.

It noted that, firstly, the Complainant asserts in Section 4 of the Complaint Form that no final reply was received from ATL. It submitted that this was demonstrably false. ATL explained that it provided a final, conclusive response, clearly setting out its position on the matter, including the calculation of the termination value, the rationale for any applicable fees, and confirmation of a voluntary ex-gratia payment of GBP 1,286.22, which was made in good faith (as per Doc 1 to its reply).⁷

It noted that the Complainant not only acknowledged receipt of this response but attached to it his own complaint submissions – thereby contradicting his claim that no final reply was ever received.

It, secondly, noted that it must correct a further significant inaccuracy in section 3 of the Complaint Form. ATL pointed out that the Complainant states that the Company is '*formerly Jatco Insurance Brokers PCC Limited*'.⁸ It submitted that this was entirely untrue as ATL was never known as *Jatco Insurance Brokers PCC Ltd*. ATL explained that the two have always been distinct legal entities with no affiliation or corporate succession. There is no legal, operational or regulatory continuity between them. It submitted that this erroneous statement risks creating a false narrative of confusion or mismanagement which has no basis in fact.

⁷ P. 215

⁸ P. 208

ATL further noted that it is incorrectly implied that it has surrendered its licence. It confirms unequivocally that it has not surrendered its licence and remains fully operational. ATL explained that whilst it did notify clients in October 2024 (as per Doc 2 to its reply)⁹ of its decision to retire the Atom Digital Platform, this was a commercial and technological change – not a cessation of regulated activity. ATL noted that it continues to be duly licensed and regulated and carries out its fiduciary responsibilities in accordance with all applicable legal and regulatory obligations.

The Service Provider stated that of further relevance is the fact that no formal complaint was ever lodged with ATL by the Complainant prior to his submission to the Office of the Arbiter for Financial Services. It submitted that it maintained open and continuous communication with the Complainant throughout the process, responding in good faith to his concerns, offering a voluntary ex-gratia payment, and engaging extensively with PCC Wealth in an effort to negotiate a fair resolution. This included a joint understanding between ATL and PCC Wealth whereby ATL would contribute 40% and PCC Wealth would contribute 60% of the shortfall to restore the Complainant's original investment (as per Doc 4 to its reply).¹⁰ That whilst ATL honoured its share and proceeded with the agreed disbursement, PCC Wealth ultimately reneged on its commitment, which the Complainant himself acknowledged in his subsequent email correspondence dated 28 January 2025 (Doc 1 to its reply).¹¹

That the same correspondence also makes it evident that the Complainant had realised he was unable to file a formal complaint against PCC Wealth due to jurisdictional limitations, as PCC Wealth does not fall under Maltese regulatory oversight. In the absence of recourse against PCC Wealth in Malta, and in an attempt at forum shopping, it was apparent that the Complainant has sought to shift responsibility onto ATL, despite ATL having fulfilled its duties and acted beyond its obligations in an effort to resolve the matter amicably.

⁹ P. 229

¹⁰ P. 279 - 280

¹¹ P. 215

That in light of the above, ATL submits that the Arbiter should treat the Complainant's assertions with caution, particularly where they are inconsistent with documented correspondence and the actions taken in good faith by ATL throughout the engagement.

Establishment of the Trust

3. That the Complainant established a Lump Sum Trust ('the Trust') with ATL on 22 May 2022 ('Doc 3' to its reply).¹² The Trust was created in his sole name, and this was clearly evidenced in the executed Trust documentation which identifies the Complainant as the sole settlor. The Trust was not a joint arrangement with his spouse, and no documentation supports any such characterisation.
4. ATL explained that the Complainant invested GBP 130,000 into the Trust in June 2022 following advice from PCC Wealth. The Complainant had also engaged Linear Investments Ltd, as a discretionary investment manager to manage the portfolio of the Trust as per Doc 3 to its reply. ATL pointed out that it acted solely as the trustee, with no involvement in the day-to-day management of the portfolio.

It noted that the application process was formalised through full execution of the trust agreement and associated onboarding documentation which included clear disclosure of applicable establishment and servicing fees. All of these details are contained in Doc. 3.

ATL explained that no fees were deducted upfront at the inception of the Trust. The fees were structured as a 1.25% per annum charge on the initial investment, spread over the first five years from the date of establishment. This charge was amortised and applied progressively via pro-rata cancellation of initial units at each anniversary during the establishment charge period. The total amount of the establishment fee was capped at 5% of the invested amount and includes any commission payable to the introducer/investment advisor, such as PCC Wealth, as well as ATL's own consideration for setting up and administering the Trust. Importantly, the

¹² P. 231

Complainant made no direct payment to any party; all costs were embedded within the trust structure and transparently accounted for.

It further explained that the purpose of this structure was to allow the Trust to grow over time without the immediate impact of fee deductions, ensuring that the full amount of the Complainant's initial investment remained intact, and any accumulation on top of that would be preserved. As the Trust matured, fees would be reflected gradually, not as an upfront deduction, in line with the Trust's structure. This approach was designed to support portfolio growth before the deduction of any fees.

ATL noted that in the event of Trust termination, fees were deducted based on the accumulated value, resulting in a slight difference between the fund's valuation at GBP 132,330 and the encashment amount of GBP 126,976. It submitted that this difference is consistent with the expected impact of accrued and amortised fees, which were always disclosed and accounted for in the Trust's terms and conditions. It explained that this was not the result of any penalty or unexpected charge but rather the natural consequence of the fee structure as originally agreed.

ATL submitted that it operated transparently and in full accordance with the agreed-upon terms. It claimed that all relevant details were communicated to the Complainant at the time of onboarding, and he proceeded to establish the Trust with full knowledge of the fee structure and its long-term application. No fees were charged at the outset, and all charges were managed in accordance with the clearly defined terms laid out in the Trust documentation.

Retirement of Technology Platform and Proposal of Alternative

5. That on 9 October 2024, ATL issued a general communication to all clients who had established trusts via the unique digital service offered by it. This service, operated in a way that was closest to a life insurance product, offering transparency, structured fee amortisation, and flexibility. The company behind the digital platform, however, had retired from the market leaving ATL with no choice but to find an alternative provider that could offer the same service.

6. ATL explained that given the nature of the original service, which closely resembled a life insurance product in terms of its structured and long-term approach, ATL sought to transition clients to the closest available alternative: Providence Life Limited PCC ('Providence'), an insurance company based in Mauritius. Providence's platform, although slightly different in its operational structure, offered the closest match to the services provided through the original service.
7. That the key change with the Providence platform was the introduction of a minimum monthly contribution of GBP 200, which replaced the previous lump-sum payment structure. This was in line with the more traditional insurance model, where regular contributions are expected over time. ATL explained that although this adjustment marked a shift in the structure, it was the closest available alternative to the digital service previously provided by ATL. Since the Atom Digital Platform was no longer available and no equivalent structure existed in the market, settlors, including the Complainant were given the option to transition to Providence, or if unwilling to adopt a different structure, to terminate their trust altogether.

Complainant's response and termination request

8. That the communication to settlor, including the Complainant, clearly explained the need for their consent to the proposed transfer to Providence. A deadline of 21 October 2024 was set for settlors to respond, with non-response being treated as implied consent. This message was sent to settlors on 9 October and was also sent to the introducers/ investment advisors (PCC Wealth) five days earlier, allowing them time to engage with their clients and provide guidance on the situation.
9. ATL noted that on 10 October, upon receiving the communication from ATL, the Complainant contacted his personal adviser, PCC Wealth, to seek advice regarding the proposed changes. Unfortunately, the personal adviser was unavailable due to being on leave and the Complainant did not receive an immediate reply. It was only on 17 October that PCC Wealth reached out to the Complainant, acknowledging ATL's communication and

informing him that the consent deadline would be deferred until after their scheduled meeting on 24 October.

That after receiving this clarification, the Complainant emailed ATL on 17 October 2024 to express that he did not consent to the transfer (Doc 1 to its reply).¹³ ATL responded promptly on 18 October 2024 providing the encashment value of his investment, which stood at GBP 126,072.65. At that time, the value of the Complainant's fund was GBP 132,330. ATL submitted that contrary to the Complainant's allegations in Doc. 1, that the difference was due to '*Exit Fees*', the difference between the encashment amount and the trust value was due to the accrued and amortised fees, which were explicitly outlined in the Trust's terms and conditions. The Service Provider pointed out that these fees had been applied gradually in line with the agreed-upon structure, and reflected the expected cost of maintaining the Trust.

ATL further explained that, subsequently, on 18 November 2024, the Complainant formalised his decision to terminate the Trust by submitting a signed letter to ATL. In this communication, he reiterated his instruction for the Trust to be encashed and provided the necessary bank account details to facilitate the transfer of proceeds. The letter acknowledged the total encashment amount of GBP 126,784.43, as previously calculated by ATL in line with the terms and conditions of the Trust and, also, recognised the addition of an ex-gratia top-up of GBP 1,286.22. ATL noted that this brought the final amount to GBP 128,072.65, which the Complainant accepted in full settlement of his trust termination (as per Doc 5 to its reply).¹⁴

Goodwill measures and collaborative remediation

10. That following the Complainant's decision not to proceed with the proposed transfer to Providence, it became clear that he expected to receive the full value of his original investment - GBP 130,000 – upon encashment.

¹³ P. 226

¹⁴ P. 283

ATL noted that, as previously explained, the encashment value reflected deductions for establishment and servicing fees that had been contractually agreed at the outset and applied in accordance with the Trust documentation. These fees had not been charged upfront in order to allow the investment to grow but were accrued over the life of the Trust and deducted upon termination. ATL noted that whilst the trust valuation as at 18 October 2024 stood at GBP 132,330 the net encashment value – after applying these deductions – was initially GBP 126,072.65, later revised to GBP 126,784.43 due to market fluctuations.

That in response to the Complainant's expectation to recover the full GBP 130,000, ATL engaged in discussions with the introducers/investment advisors, PCC Wealth, with the shared objective of preserving the client/settlor relationship and addressing the perceived shortfall. Under the Trust documentation, 80% of all ongoing fees were due to PCC Wealth and 20% to ATL. It explained that, nonetheless, ATL voluntarily agreed to contribute 40% of the top-up amount – double its contractual share – in order to ease the financial burden on PCC Wealth and avoid conflict, despite the fact that it had not earned, and was never entitled to this portion of the amount. This contribution, which effectively places ATL at a financial loss, was made purely in the spirit of cooperation and to reinforce its ongoing commitment to both the settlor and the introducers/investment advisors. ATL noted that PCC Wealth agreed to contribute the remaining 60%.

ATL explained that to formalise the arrangement, it made a voluntary ex-gratia payment of GBP1,286.22 – an amount exceeding its contractual entitlement. This contribution brought the Complainant's final payout to GBP 128,072.65, as confirmed in his encashment instruction of 18 November 2024 (Doc 5 to its reply).¹⁵ It noted that PCC Wealth agreed to settle their portion of the top-up directly with the Complainant from their own accounts.

ATL reiterated that the difference between this final amount and earlier figures was solely attributable to market fluctuations in the underlying fund. It submitted that throughout the process, ATL maintained full

¹⁵ *Ibid.*

transparency, ensuring that the valuation reflected the precise value as at the actual date of encashment, rather than relying on indicative or previously quoted figures that could not have been realised at redemption.

Completion of Termination

11. That the settlor confirmed his acceptance of the arrangement and submitted his formal trust termination request on 18 November 2024, as evidenced by his signed instruction (Doc 5 to its reply).¹⁶ ATL explained that it proceeded with the execution of the termination and disbursed the agreed value accordingly. The Trust was officially closed on 21 November 2024, as documented in the formal termination confirmation (Doc 6 to its reply),¹⁷ thereby concluding the matter in a manner that reflected transparency, cooperation, and a commitment to preserving Settlor trust and professional relationships.

Later Developments

12. That on 28 January 2025, the Complainant informed ATL that PCC Wealth had failed to fulfil their portion of the agreed top-up payment. In the same correspondence (Doc.1 to its reply),¹⁸ he acknowledged that ATL had acted properly, had made a voluntary ex-gratia payment, and had executed the encashment and trust termination in accordance with the agreed terms. Nevertheless, despite recognising that PCC Wealth was the party that had defaulted, the Complainant expressed his intention to lodge a formal complaint against ATL.
13. It noted that the Complainant's reasoning was based on the fact that PCC Wealth, being a non-Maltese entity, fell outside the jurisdiction of the Arbiter. It submitted that, being unable to bring a claim against PCC Wealth through this channel, the Complainant instead redirected his complaint to ATL – an entity fully regulated in Malta and subject to the Arbiter's authority, including a free arbitration process – thereby engaging in forum shopping by targeting a party solely on the basis of procedural convenience rather than substantive responsibility. ATL further submitted that, in effect,

¹⁶ *Ibid.*

¹⁷ P. 284

¹⁸ P. 215

rather than pursuing the party that had failed to pay him, the Complainant chose to bring a claim against the one party that had fully met its obligations.

14. ATL explained that it responded on 29 January 2025, firmly reiterating that it had discharged all of its responsibilities transparently and in good faith. It confirmed that payment had been made on 21 November 2024, including the ex-gratia top-up, and that the Complainant had accepted this in full and final settlement as documented in his signed Trust termination instruction. ATL noted that it clarified that any subsequent failure by PCC Wealth to honour its separate financial undertaking lay entirely outside ATL's remit and did not give rise to any legitimate claim against it.

ATL's summary and position

15. The Service Provider submitted that throughout the entirety of this matter, it acted with professionalism, transparency and integrity, consistently upholding both the letter and spirit of its obligations. It further submitted that its conduct can be summarised as follows:
 - Transparent and Contractual Conduct: That it administered the Trust in accordance with its original terms. All fees deducted were those contractually agreed at inception and applied in line with the Trust documentation. It noted that importantly, fees were not taken up front, as this approach was intended to maximise potential investment growth. Instead, they were applied upon termination, which was explicitly communicated.
 - Clear communication and client autonomy: That it provided timely and clear updates regarding proposed changes to the administration platform and investment structure. When the Complainant chose to terminate the Trust, ATL respected this decision and calculated the encashment value based on the actual valuation date and applicable deductions, ensuring that no artificial or outdated figures were used.
 - Goodwill Beyond Legal Duty: That although not contractually required and entitled to retain only 20% of the servicing fees under the Trust documents, ATL agreed to contribute 40% of the agreed restitution

amount in order to assist in bridging the perceived shortfall. It noted, that in doing so, ATL not only forfeited any financial gain but effectively committed to a payment well beyond what it has ever earned – paying to work, rather than being paid to work. ATL submitted that this action was a clear demonstration of its commitment to supporting the Settlor relationship and maintaining constructive relations with PCC Wealth. ATL made an additional ex-gratia payment of GBP 1,286.22 to further reduce the burden on PCC Wealth and expedite resolution.

- Fulfilment of the Agreement: That once terms were agreed, ATL acted promptly and in good faith, paying the full amount – including the ex-gratia top-up – on 21 November 2024 and executing the official termination of the Trust as documents (Doc 6 to its reply).¹⁹

ATL noted that it is important to stress that the arrangement with PCC Wealth required the introducer/investment advisor to make a direct payment to the Complainant. ATL's role in the joint resolution was fulfilled entirely and punctually. It submitted that any subsequent issue – namely, PCC Wealth's alleged failure to deliver their share of the agreed amount – falls wholly outside the remit or control of ATL. The Service Provider stated that it cannot reasonably be held responsible for the private conduct or non-performance of a third party.

ATL pointed out that the Complainant has acknowledged that ATL met its obligations and yet has chosen to pursue a complaint against the only party over which he can exert pressure via a local dispute resolution mechanism, namely, the Arbiter. It noted that whilst it recognises the Settlor's frustration, it is evident that this Complaint arises not from any wrongdoing on ATL's part, but from the regrettable failure of PCC Wealth to uphold their share of the agreement – something ATL neither authorised nor could prevent.

With respect to the remedy requested by the Complainant, ATL noted that a reimbursement of GBP 1,927.35 is being sought, this being the difference between the initial investment of GBP 130,000 and the final amount received. ATL submitted that the amount received by the Settlor, which includes a significant ex-gratia payment, reflects the Trust value in accordance with the

¹⁹ P. 284

contractually agreed fee structure which the Settlor accepted in 2022. The ex-gratia payment, which was made voluntarily by ATL, further demonstrates its goodwill and commitment to ensuring settlor satisfaction. ATL emphasised that it has already paid out double the amount it was entitled to earn, going far beyond its contractual obligations. It submitted that it cannot reasonably be expected to cover the remaining GBP 1,927.35 as it never earned that amount.

ATL accordingly is of the view that it has no further liability in this matter.

Preliminary – Competence of the Arbiter

The Arbiter notes that in its reply to the Complaint filed with the OAFS (registered 3 March 2025), the Service Provider claimed that *‘no formal complaint was ever lodged with the Company by the Complainant prior to this submission to the Office of the Arbiter for Financial Services’*.²⁰

Article 21(2)(b) of the Arbiter for Financial Services Act (Cap. 555 of the Laws of Malta) (‘the Act’) provides that *‘An Arbiter shall decline to exercise his powers under this Act where: ... (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...’*.

The Arbiter referred to this matter during the sitting of 23 September 2025, where he dismissed the Service Provider’s claim relating to the lack of a formal complaint.²¹ This is in view that the Arbiter considers the Complainant had effectively communicated the substance of his Complaint when considering the nature and content of the various communications exchanged between the parties in 2024 and also early 2025, particularly:

- the Complainant’s emails of 18 October 2024 addressed to and received by ATL;²²
- the email sent to ATL dated 28 January 2025;²³

²⁰ P. 208

²¹ P. 285 & 286

²² P. 12 & 223 - 225

²³ P. 215

- the email of 29 January 2025, also sent by the Complainant to ATL.²⁴

The communications mentioned above are considered to outline and stipulate the essence of the complaint, which is the subject matter of the case filed before the Arbiter.

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.²⁵

Additional Background

It is noted that during the hearing of 23 September 2025, the Complainant noted that his complaint was *'... more about the process of which my policy was handled ...'*.²⁶

In his subsequent final submissions, he noted that *'...although my complaint is for financial reparation, the key issue for me is one of process and whether Atom managed the transition consistent with their Fiduciary duties'*.²⁷

He claimed that *'ATOM's actions may have breached both the terms of our trust agreement and their fiduciary obligations'*, with their actions still resulting in a shortfall of GBP 1,927.35 on his original investment despite the ex-gratia payment received from ATL.²⁸

In his final submissions, he then listed six *'critical areas of concern'*, providing further background on each, namely: *'1. Consent was not validly obtained'; '2. Fee Crystallisation Was Improper and Unfair'; '3. Replacement Product was Fundamentally Different'; '4. Fiduciary Duties were not Upheld'; '5. Communications were Inadequate and Non-transparent'; and '6. Commercial Gain or Conflict of Interest Must be Disclosed'*.²⁹

In his final submissions, he requested the Arbiter to:

²⁴ P. 181

²⁵ Cap. 555, Art .19(3)(d)

²⁶ P. 286

²⁷ P. 289

²⁸ *Ibid.*

²⁹ P. 289 - 290

- ‘ Investigate ATOM’s basis for disinvesting and charging fees despite my objection;*
- Examine the legality of the product substitution*
- Demand transparency regarding commercial arrangements*
- Determine whether ATOM’s conduct complies with trust law and EU consumer protection*
- Support [his] request for restitution (at a minimum) of the full investment value’.*³⁰

The Arbiter notes the extensive final submissions made by the Service Provider,³¹ and clarifies that consideration will be limited to the key aspects and basis of the Complaint as formulated by the Complainant in the Complaint Form (as the Complainant cannot raise new matters in the final submissions).

Timeline

The following is a timeline and summary of some communications relating to the main aspects of the Complaint as emerging from the evidence produced during the proceedings of the case which provides further context to this Complaint:

- a) 9 Oct 2024 – Notification by ATL regarding important updates and changes to the Atom Trust.³²
- b) 10 Oct 2024 – Email sent by the Complainant to PCC Wealth asking *‘... should I be concerned about this?’*³³
- c) 17 Oct 2024 – The Complainant notified ATL that *‘You do not have my consent to carry out the transition from Atom to Providence’.*³⁴
- d) 17 Oct 2024 – ATL sent email to the Complainant stating that *‘Your request to terminate has been noted. Please provide your bank account details for us to remit the encashment amount, which is currently GBP 126,976.10, the*

³⁰ P. 290

³¹ P. 294

³² P. 226 - 228

³³ P. 11

³⁴ *Ibid.*

*actual amount will be confirmed once the portfolio has been divested and returned to us’.*³⁵

- e) 18 Oct 2024 – Complainant sent email to ATL and PCC Wealth where he stated that *‘The value of the fund is £132k. The settlement value is 130k. The £126k is £3000 less than my original investment. I do not agree to switching to a pension fund which requires a monthly contribution of 300. This is not what I agreed to ... I will be taking this to the financial ombudsman. You need to get in to this right away ...’.*³⁶
- f) 18 Oct 2024 – In an email sent to ATL and PCC Wealth, the Complainant summarised the minutes of the meeting he had earlier with PCC Wealth and shared his perspective which was to form the basis of his complaint. In one of the bullet points listed by the Complainant he noted: *‘Peter [PCC Wealth] confirmed that the 126,976GBP includes an early redemption fee of 5000GBP from Atom’.*³⁷ The Complainant further outlined his position:

*‘My position is that I never agreed to enter a full life term plan with Provident which carries a monthly fee. At no point was I informed of the possibility anything of this sort could happen. I have not agreed – would never have agreed – to invest in a fund which could run the risk of abruptly ending, with my invested money being arbitrarily transferred into an alternative plan of a different style, risk, etc. (none of which has been explained to me) whilst still being liable to an early redemption fee. I will therefore lodge a complaint with MFSA stating my position and seeking their impartial professional advice. An acceptable outcome is for Atom to return my original investment including the 1% growth (as of 18 October). The termination fee should also be waived.’*³⁸

- g) 21 Oct 2024 – ATL replied to the Complainant explaining its position, including that the proposed transfer was due to reasons beyond their control, as the provider offering the technology had decided to retire from the market.³⁹

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ P. 12

³⁸ *Ibid.*

³⁹ *Ibid.*

- h) 22 Oct 2024 - Complainant asked ATL: *'Have I been charged 'an early exit fee' because I have not consented to the change to Provident?'*⁴⁰
- i) 22 Oct 2024 - ATL replied to the Complainant explaining that *'No exit fees were charged or will ever be charged. I repeat, the units reserved to pay ATOM and PCC for their services will be crystallized ... so now with ATOM or later with Providence ...'*⁴¹
- j) 22 Oct 2024 - The Complainant then asked ATL: *'how much will be deducted for services'*, to which ATL replied, *'The value is GBP 5,385'*.⁴²
- k) 24 Oct 2024 - Email from PCC Wealth to ATL asking *'if any penalty or fee deduction can be significantly reduced or dismissed'* to avoid a complaint.⁴³
- l) 25 Oct 2024 - Email from ATL to PCC Wealth confirming ATL's willingness to pay 40% of the difference, suggesting PCC Wealth pays the rest.⁴⁴
- m) 28 Oct 2024 - Email from PCC Wealth to ATL outlining its understanding of the reimbursement and of *'PCC picking up the balance of the shortfall'*.⁴⁵
- n) 29 Oct 2024 - Email from PCC Wealth to the Complainant, where PCC Wealth noted: *'As for the fees, we are liaising with him to seek compensation and reduce/eliminate any potential loss. Unfortunately, this is something that I won't have the final details for until disinvestment is complete'*.⁴⁶
- o) 31 Oct 2024 - Valuation of the Retirement Scheme as at 31 October 2024, was of GBP 132,304.85.⁴⁷
- p) 5 Nov 2024 - Email from Complainant to PCC Wealth stating *'I have prepared the MFSA complaint form, nevertheless I won't send until you confirm how much will be returned to me'*.⁴⁸
- q) 18 Nov 2024 - Complainant signed a declaration to ATL *inter alia* stating:

⁴⁰ P. 129

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ P. 280

⁴⁴ P. 280

⁴⁵ P. 279

⁴⁶ P. 17

⁴⁷ P. 167

⁴⁸ P. 82

*'As per my instruction, I understand that Atom Trustees shall terminate my trust. The encashment value shall be that of GBP 126,784.43 plus an ex-gratia GBP 1,286.22 top up which brings the final amount to GBP 128,072.65.'*⁴⁹

ATL paid the mentioned ex gratia payment.

- r) 19 Nov 2024 - Email from Complainant to PCC Wealth where the Complainant highlighted that the returned value from his trust *'is almost 2000 GBP short of my original 130,000 GBP investment'*, referring to PCC's offer to help in getting back his original investment and requesting details *'when the remaining 1,927.35 GBP (the shortfall from the initial money invested ...'* will be received.⁵⁰

- s) 25 Nov 2024 - Email from Complainant to PCC Wealth where he stated the following:

*'I have now received the money from Atom, minus the fees. As a result I am now approx. £2000 short of my original investment. **I would appreciate your feedback regarding PCC Wealth offer to make up the difference.** I consider returning some money from your £8000 fee to be a reasonable gesture of good will ...'*⁵¹

- t) 29 Nov 2024 - Email from PCC Wealth to the Complainant noting *inter alia* that:

*'... Whilst I don't quite understand the calculation regarding a fee of 8,000 ... review your request and assess what might be possible ...'*⁵²

- u) 5 Dec 2024 - Email from Complaint to PCC Wealth wherein the Complainant stated:

'... Atom sent to me a breakdown of fees paid from my investment. The setup fee was £8,125 of which 80% went to PCC and the remaining 20% to Atom ... You made a clear commitment during our meeting that

⁴⁹ P. 283

⁵⁰ P. 76

⁵¹ P. 75 – Emphasis added

⁵² P. 93

you would follow up internally to look for a solution. We believe your team at PCC has had sufficient time ...'.⁵³

v) 28 Jan 2025 - In his email to ATL, the Complainant stated:

'... My request is for 1,928 GBP to make up the difference from the 128,072.65 GBP returned to me. I have since lodged a formal complaint with the MFA, however I now understand that PCC Wealth is not under their jurisdiction, so it is with Atom that I need to make the formal complaint against'.⁵⁴

w) 29 Jan 2025 – In another email sent by the Complainant to ATL, he further stated:

'I recognise the ex-gratia payment you referred to. At the end of the day I am looking to recover the full £130k. The only recourse I have is via the Maltese Financial Arbiter'.⁵⁵

Observations and Conclusions

The Arbiter sympathises with the Complainant who was let down following the material changes proposed to the Trust after a mere two and a half years⁵⁶ of operation, and from the ensuing encashment value which was short of his original investment.

However, in the particular circumstances of this case, the Arbiter considers that there is no sufficient and justifiable basis on which the Service Provider can be ordered to reimburse the remaining shortfall of GBP 1,927.35 requested by the Complainant. This is when taking various aspects into account, particularly the following:

- (i) *Failure to obtain the expected payout from PCC Wealth* – Firstly, this Complaint seems to be somewhat motivated by the Complainant's failed attempt to get the expected payout of the remaining shortfall from PCC

⁵³ P. 112

⁵⁴ P. 215

⁵⁵ P. 181

⁵⁶ From the establishment date 27 June 2022 (P. 167) to termination on 21 November 2024 (P. 284).

Wealth rather than truly the claimed shortfalls allegedly committed by the Service Provider.

The Complainant has shifted his complaint from being first directed to *PCC Wealth* towards ATL upon his discovering that *PCC Wealth* did not fall under the Arbiter's jurisdiction. This aspect clearly emerges from his emails of 28 and 29 January 2025 referred to in the Timeline above.

This motivation is further supported by a draft complaint form dated 3 January 2025 (included as part of the attachments), where he first demanded the same compensation from PCC Wealth - for '*PCC wealth to repay the GBP 1927.35*'.⁵⁷ In his revised complaint form registered on 3 March 2025, the Complainant then requested the said sum to be repaid by ATL. The basis of his Complaint was also not entirely consistent either throughout the proceedings of the case, as outlined below.

- (ii) *Lack of consistency* – In his Complaint Form to the OAFS, the Complainant based his request for reimbursement on the assertion that he should not be liable for fees paid upon the termination of his Trust, claiming, *inter alia*, that '*I should not therefore be liable to any fees*', due to changes to the terms of the Trust which he did not agree to.⁵⁸

In his final submissions, new elements not previously reflected in his original complaint were raised such as questions related to the commercial gain/conflict of interest.

- (iii) *Settlement declaration* – Apart from the above-mentioned context, it is noted that as outlined in the Timeline above, the Complainant had ultimately signed a declaration to ATL, on 18 November 2024, regarding the termination of the trust, acknowledging the encashment value as well as the ex gratia payment of ATL and the 'final amount' being received from ATL.⁵⁹

Whilst this declaration did not specifically include the words '*in full and final settlement*' - and no other agreement was entered into using such

⁵⁷ P. 135

⁵⁸ P. 5

⁵⁹ P. 160 – Emphasis added

terms as confirmed during the hearing of 23 September 2025⁶⁰ - the declaration signed by the Complainant is considered to bring finality to the matter with respect to the agreed-upon payout from ATL's part. The determination of the finality of the matter is also seen in the context of the nature of the exchanges entered into before, and even after, the date of the said declaration as reflected in the Timeline above.

ATL ultimately offered an ex gratia payment which the Complainant clearly accepted from ATL's part. The failure of another third party to make good for the remaining shortfall is not a valid reason for an additional claim demanded from ATL on the same matter.

- (iv) *No exit fees were charged/No claim of incorrect calculation of the fees*— The Complainant would have been justified in demanding any exit fees to be waived given that the termination of the trust within just two years was brought by material changes to the trust arrangement offered by ATL. However, it has not been proven nor emerged that the fees charged involved the application of an exit fee.

This aspect was confirmed by ATL in various communications (such as the email of 22 October 2024 and its reply of 6 May 2025)⁶¹ and ultimately not contested by the Complainant. As again summarised by the Service Provider in its final submissions:

'... The difference between the portfolio valuation and the encashment figure was not an unexplained 'exit fee' as the Complainant is alleging, but the result of accrued and amortised establishment and servicing charges that were contractually disclosed in the Trust documentation at inception'.⁶²

It has not been either demonstrated nor established that the fees charged upon termination were not in line with the terms of the Trust as per the Application Fee Schedule forming part of the Trust Application Form.⁶³

⁶⁰ P. 286 & 287

⁶¹ P. 13, 211

⁶² P. 296

⁶³ P. 237

The correctness of the fee calculations was indeed not disputed throughout the proceedings of the case.

- (v) *No apparent breach of the Terms of the Trust* – No specific breach of the trust's terms was specifically claimed or identified during the case. It is also noted that the trust instrument included various provisions which covered the termination of the trust. Reference is made to section 17 of the Trust Instrument dealing with the '*Termination of Trust*', particularly clause 17.1 and 17.4, which provide as follows:

'17.1 The Trustee may by instrument in writing declare that a day earlier than the day mentioned in the definition of the Trust Period but not earlier than the date of this Trust Instrument, shall be the date of expiration of the Trust Period, unilaterally, without the need of any further formality and without requiring the consent of any person.

...

*17.4 The Trustee shall immediately inform the Settlor in writing of its decision to terminate the provisions hereof.'*⁶⁴

Reference is also made to section 11 of the Atom Trust Terms and Conditions which *inter alia* provides the following:

'11.1) General

In the event that the Trust is terminated for any reason whatsoever, the Trustee will use its best endeavours to ensure that all distributions (if any) from the Trust are effected within 15 Business Days of the date of termination of the Trust in accordance with the provisions of the Trust Instrument and as further supplemented by virtue of these Terms and Conditions.

Prior to effecting any such distribution, the Trustee shall be entitled to take and receive all outstanding accrued fees, charges and expenses due to the Trustee, and to recover all out-of-pocket expenses properly incurred by the Trustee in connection with the termination of the Trust,

⁶⁴ P. 250

and by an appropriation from the remaining property of the Trust Fund

...⁶⁵

- (vi) *Other observations* - The Arbiter, agrees with the Complainant that the period provided by ATL in its notification of 9 October 2024, within which he had to revert (just one and a half week by 21 October 2024), was indeed too short and inadequate for one to make such a material decision, which needed to be adequately discussed with the investment adviser.

The Arbiter also considers that ATL should have ideally and reasonably offered other alternatives apart from switching to *Providence Life* for those who were not satisfied with such an option.

However, such aspects are not considered to be sufficiently valid reasons for demanding additional compensation on top of the ex gratia payment already made by ATL. **As already indicated above, the Arbiter considers the settlement made on 18 November 2024⁶⁶, including acceptance of an ex gratia payment of GBP £1286.22, as a final settlement of all outstanding issues between the Complainant and the Service Provider. Attempts to re-open such an agreement due to failure of a party not forming part of such agreement are not justified.**

- (vii) It is also noted that Clause 10 dealing with the '*Liability of Retiring Trustee*' of the Trust Instrument provides that:

'10.1 If a Trustee ceases to be a Trustee hereof, whether by being removed as Trustee or otherwise, such Trustee shall be released from liability to the Settlor, any Beneficiary, new Trustee or other person interested under this Trust Instrument for any act or omission in relation to the Trust Fund arising out of his duties as Trustee pursuant to this Trust Instrument except:

- (i) any liability in respect of any breach of Trust arising from fraud, wilful misconduct or gross negligence on the part of such Trustee,*

⁶⁵ p. 269

⁶⁶ p. 160

and in the case of a Corporate Trustee, any of its officers or employees; ...'.⁶⁷

No wilful misconduct or gross negligence has been substantiated during the proceedings of this case.

Conclusion and Decision

The Arbiter is dismissing the Complainant's claim for compensation for the reasons mentioned.

Given that the Arbiter has dismissed the Service Provider's preliminary plea regarding his competence, 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

⁶⁷ P. 249

party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.