

## Before the Arbiter for Financial Services

**Case ASF 084/2021**

**OK ('the Complainant')**

**vs**

**Momentum Pensions Malta Limited**

**(C52627) ('MPM' or 'the Service Provider')**

### **Sitting of 27 July 2023**

#### **The Arbiter,**

Having seen the **Complaint** made against Momentum Pensions Malta Limited ('MPM' or 'the Service Provider') relating to the Momentum Malta Retirement Trust ('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 MPM as its Trustee and Retirement Scheme Administrator ('RSA').

The Complaint, in essence, relates to the Complainant's claims of significant losses suffered due to delays in the processing of his trade instructions. His instructions were allegedly not promptly executed due to the alleged administrative failures of MPM and the failings of other parties, like his investment adviser.

#### *The Complaint*

The Complainant explained that in March 2020, MPM held up trades submitted by him via his adviser *Inter-UK*. He submitted that MPM conceded that there was a delay in the processing of the trades which could have been avoided but concluded that the delay in the first trade of the sequence resulted in a profit when it was finally processed. MPM however did not address the effect the said

delay had on the trades which followed, which he claimed resulted in a significant loss to him.

He further explained that a complaint was also raised against the UK advisor, *Inter-UK*.

The Complainant noted that both MPM and *Inter-UK* blame each other for the issues that occurred. He further noted that the matter was investigated by the UK Ombudsman who, he claimed, ruled that *Inter-UK* and MPM each shared 50% responsibility for the sequence of delays in the processing of the trades in question. A copy of the UK Ombudsman's decision, which also includes a summary of what happened, was attached to his Complaint Form.<sup>1</sup>

As for the reasons as to why the Complainant felt his service provider let him down, he referred to the following statement included in the decision of the UK Ombudsman:

*'... the reason for part of the delay was error by the pension provider. However, the interaction between the request for information they already had, and Inter's failure to point this out, means both contributed to the delay. I thought it was reasonable to assume the parties were equally responsible and to direct that Inter pay half of the actual loss.'*<sup>2</sup>

The Complainant submitted that, accordingly, given that *Inter-UK* was held nominally 50% responsible for the delays causing the loss, MPM was responsible in equal measure (50%) for their part in the delays.

He further submitted that MPM does admit responsibility in its final response, without however making the link of the said error to the delays and the subsequent considerable losses that followed.

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<sup>1</sup> Page (P.) 12 - 17

<sup>2</sup> P. 3

### *Remedy requested*

The Complainant noted that the UK Ombudsman made the following calculation with regard to *Inter-UK's* 50% responsibility:<sup>3</sup>

1. GBP 27,586.15; and
2. Such amount as would be required to purchase 241.76 units of *ETF Vanguard FTSE All World (VWRL)*
3. GBP 200 for distress and inconvenience.

The Complainant submitted that if there is agreement from the Arbiter with the UK Ombudsman's decision that MPM does share 50% of the fault and accordingly 50% of the responsibility, then he requested for a ruling to be issued by the Arbiter for an equal compensation in order to restore his balance to the level it would have been had no errors been made by both MPM and *Inter-UK*.

**Having considered, in its entirety, the Service Provider's reply, including attachments,**<sup>4</sup>

Where the Service Provider explained and submitted the following:

### *Introduction*

1. That MPM is licensed by the Malta Financial Services Authority to act as the Retirement Scheme Administrator ('RSA') and Trustee of the Momentum Malta Retirement Trust ('the Scheme'). The Scheme is licensed as a Personal Retirement Scheme.
2. That the Complainant became a member of the Scheme on 14 September 2015.

### *Reply to his complaints*

3. That the Complainant's appointed investment adviser that was in place during the time period involving his complaint was *Inter-UK Financial Services Ltd* ('Inter-UK'), a UK firm regulated by the Financial Conduct Authority ('FCA').

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<sup>3</sup> *Ibid.*

<sup>4</sup> P. 56 -111

The Complainant had already submitted a complaint to the UK Financial Ombudsman Service against *Inter-UK* only. The complaint to the UK Ombudsman was submitted on the basis that he believed that he had ‘lost out due to delays in processing his investment instructions for his pension’ by *Inter-UK*.<sup>5</sup> The UK Ombudsman has issued a ruling partially against *Inter-UK* in the Complainant’s favour.

MPM submitted that the complaint filed with the UK Ombudsman was however only against *Inter-UK*. MPM was not named as a party in this complaint and as such the UK Ombudsman had no right to apportion any responsibility to MPM, who were not part of the complaint proceedings. Furthermore, at no point did the UK Ombudsman ask MPM to respond or reply to any matters concerning the complaint. MPM, therefore, believed that the ruling by the UK Ombudsman cannot be assessed on its merits against MPM.

MPM also highlighted that the Complainant has also lodged a complaint with another Ombudsman in another jurisdiction against another investment provider, *SEB Life International* (‘SEB’), as detailed further on in its submissions.

4. With respect to the allegation that MPM held up trades submitted via *Inter-UK*, MPM explained that between 9 and 18 March 2020 there were 3 trades submitted on behalf of the Complainant. One trade was submitted by *Knight Hayes* (a previous adviser of the Complainant) and two trades were submitted by *Inter-UK*. For the purposes of its reply, MPM will primarily focus on the two trades submitted by *Inter-UK* (the ‘First Trade’ and ‘Second Trade’). For context, it was however important to mention the other trade submitted by *Knight Hayes*.

MPM replied that as an RSA, its role is to review the dealing instruction when received, ensuring they are instructed by the member through their appointed investment adviser, that the instruction is in line with the investment guidelines, the member’s attitude to risk and also do not

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<sup>5</sup> P. 56

breach the Malta Rules. If all is in order, MPM will then remit the trade to the member's chosen investment company.

### The First Trade

A trade was initially received on 9 March 2020 from the Complainant's previous investment adviser, Knight Hayes, and signed by the Complainant. MPM immediately rejected this trade (as per Appendix 1 of its reply),<sup>6</sup> as it was not submitted by the investment adviser listed on MPM's records.

Later that day (9 March 2020), the same trade was sent to MPM by *Inter-UK* and signed again by the Complainant (as per Appendix 2 to its reply).<sup>7</sup> This trade was rejected by MPM as the investment advisory firm did not match the firm listed on MPM's record (the trade was received from *Inter-UK*, however at the time MPM's records showed *IUK Global Sarl* in Switzerland, a firm connected to *Inter-UK*, as the appointed investment adviser for the Complainant).

MPM requested a 'Change of Adviser' form ('the Form') requesting that *Inter-UK* were appointed as the Complainant's investment adviser in place of the Swiss firm. At that point MPM thought that legally, this appointment was required before this trade could be accepted by MPM.

MPM corresponded with *Inter-UK* on both the 11 and 12 March 2020 (as per Appendix 3),<sup>8</sup> for the Form and received no response until 13 March 2020, when *Inter-UK* submitted the completed and signed Form appointing them as the Complainant's financial and investment adviser. The said Form was also signed by the Complainant on 12 March 2020 (as per Appendix 4 of its reply).<sup>9</sup>

Whilst MPM concedes that upon a review of its records, a Change of Adviser Form was received back in 2018, previously appointing *Inter-UK*, an administrative error had meant that the *IUK Global* in Switzerland had been recorded on our internal records. MPM confirmed that *Inter-UK* was

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<sup>6</sup> P. 60

<sup>7</sup> P. 68

<sup>8</sup> P. 73

<sup>9</sup> P. 79

however correctly recorded on the *SEB policy* providing *Inter-UK* with full visibility of the Complainant's investment portfolio.

MPM highlighted that at no time did *Inter-UK* confirm to MPM that their records indicated that the Complainant was their client, as an FCA regulated firm has an ongoing duty to act in their client's best interests and they should have known the Complainant was their client and, therefore, they should have confirmed immediately they were the appointed advisory firm.

Furthermore, in order to advise the member on the trade, it was MPM's view that logically a review by *Inter-UK* of the member's existing investments and cash position would have been necessitated as part of the advice. As *Inter-UK* was correctly appointed as the adviser on the *SEB policy*, this meant they would have been able to access the *SEB Policy* to review the member's portfolio as the appointed investment adviser, when providing the advice. Only appointed investment advisers can access a member's investment portfolio via the investment company portal.

MPM therefore asserts that *Inter-UK* should have noticed immediately from their internal client records and/or from their ability to access the *SEB policy* that they were already appointed and as such *Inter-UK* could have alerted MPM to this fact much earlier than when *Inter-UK* submitted the Form on 13 March 2020.

Hence, whilst MPM rejected the trade and requested a change of agency to *Inter-UK*, this was done in the Complainant's best interest. Instead, *Inter-UK* submitted a new '*Change of Adviser Form*' on 13 March 2020.

MPM submitted that *Inter-UK's* first trade resulted in an overall gain for the Complainant when it was sent to the investment provider on 18 March 2020.

The unit price for the selected fund was lower when purchased on the 18 March than the unit prices published by the fund manager over the period from 9 to 13 March 2020 inclusive (as per Appendix 5 to its reply).<sup>10</sup>

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<sup>10</sup> P. 84

This meant the Complainant invested at a lower cost and hence there was no financial loss suffered by him on this trade.

It further submitted that overall, this fund returned a profit for the Complainant of over GBP 4,000 and therefore, no loss was suffered by the Complainant on this trade. It noted that this '*positive differential*' was referenced by the Complainant in his email of 9 April 2020 (attached as Appendix 6 to its reply).<sup>11</sup>

### The Second Trade

The Complainant instructed *Inter-UK*, as his investment adviser, regarding a second trade instruction on 12 March 2020. This is the date the Complainant signed the trade instruction (attached as Appendix 7 to its reply),<sup>12</sup> and also importantly, the same date the Complainant also signed the Form appointing *Inter-UK* as his investment advisor.

MPM submitted that it, however, did not receive instruction on the second trade from *Inter-UK* until 18 March 2020 (as per Appendix 8 to its reply).<sup>13</sup>

It explained that, on receipt of the instruction, MPM processed this second trade and submitted it to the investment provider, SEB, on the day it was received (18 March 2020). MPM replied that any delay in placing the second trade was not a delay caused by MPM, as it was not in receipt of the instruction by *Inter-UK* before 18 March 2020.

MPM also pointed out that the Complainant, in his email of 9 April 2020 expresses his dissatisfaction with *Inter-UK* blaming them for the underlying issues in processing this second trade. In his email of 9 April 2020, he stated that:<sup>14</sup>

*'there were underlying issues with the way Inter-UK processed the 2<sup>nd</sup> dealing sheet where:*

*The trade second dealing sheet Momentum processed on 18/3 was actually conceived and submitted to my advisor and Inter-UK on 13/3, and along*

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<sup>11</sup> P. 86

<sup>12</sup> P. 88

<sup>13</sup> P. 90

<sup>14</sup> P. 86

*with the new change of advisor form I believed this dealing sheet had been processed by Momentum along with the 9/3 dealing sheet at that time (13/3). I was not made aware of any ongoing issue with processing of these two trades until I asked my advisor for an update [on] 17/3. It transpires that Inter-UK did not submit the 2<sup>nd</sup> dealing sheet to you until 18/3. For this failure to submit the sheet and the failure to advise me of any issue processing this and the 9/3 dealing sheet, I have submitted a formal complaint against Inter-UK and will follow up with the Financial Ombudsman in the UK if needs be.'*

MPM noted that the Complainant then goes on to express his dissatisfaction with how SEB handled this trade.

As to the effect the delay with the first trade had on the second trade, MPM reiterated that it did not receive the second trade until 18 March 2020 and that it had sent this on 18 March 2020. It submitted that there was hence no delay on its part on this trade, and the delay resulted as the second trade sat with *Inter-UK* from 12 March till 18 March 2020 (despite the Complainant signing instruction on the trade and signing for their appointment as his adviser on 12 March 2020).

MPM further reiterated that the Form appointing *Inter-UK* as the Complainant's investment adviser was submitted by *Inter-UK* on the 13 March, but the trade instruction was not, and hence there was no reason for a 5-day delay in submitting the instruction to them on 18 March. This is again notwithstanding *Inter-UK* records should have already shown the Complainant as their client.

5. MPM noted that the Complainant's complaint regarding these two trades has been lodged with another Ombudsman in another jurisdiction.

In addition to the complaint to the UK Ombudsman, the Complainant has also lodged a complaint with another Ombudsman in another jurisdiction against SEB in relation to the processing of these two trades sent via *Inter-UK* (as per Appendix 9 to its reply).<sup>15</sup>

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<sup>15</sup> P. 95



During the period from November 2020 until May 2021, MPM assisted the Complainant (as MPM is the Policyholder of the *SEB bond*), in submitting a complaint about delays with the processing these same two *Inter-UK* trades. This complaint was submitted with the *Irish Financial Services and Pensions Ombudsman* against the investment provider SEB. The Service Provider is no longer involved with this matter as the Complainant was to engage independent legal representation for this complaint. MPM was aware, in May 2021 (as per Appendix 10 to its reply),<sup>16</sup> that this complaint was still ongoing with the *Irish Financial Services and Pensions Ombudsman*.

6. MPM submitted that it is accordingly not responsible for the payment of any amount claimed by the Complainant.
7. It further submitted that the Complainant must show that it was MPM's actions or omissions which caused the loss he is alleging. MPM replied that in the absence of the Complainant proving this link, MPM cannot be found responsible for the Complainant's claims.

## **Preliminary**

### *Competence of the Arbiter – Complaints filed with other Financial Services Ombudsman*

The Arbiter notes that, in its reply, the Service Provider highlighted that apart from the complaint filed with the *UK Financial Ombudsman* against the investment adviser, *Inter-UK*, (which complaint had been concluded by the time of the Complaint filed with the Office of the Arbiter for Financial Services),<sup>17</sup> the Complainant had also lodged a complaint with the *Irish Financial Services and Pensions Ombudsman* against *SEB Life International* in respect of the mentioned trades.

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<sup>16</sup> P. 96

<sup>17</sup> The complaint filed with the UK Financial Ombudsman against *Inter-UK* was concluded and decided upon on 11 June 2021 as per the documentation presented by the Complainant with his Complaint (P. 12-18). The Complaint with the Office of the Arbiter for Financial Services was subsequently registered thereafter on 12 July 2021 (P. 1).

Whilst the Service Provider has not actually raised or questioned, in its reply, the competence of the Arbiter in terms of law, this aspect is being considered hereunder given that Article 21(2)(a) of Cap. 555 of the Laws of Malta ('the Act'), stipulates 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: ...'*

Whilst a copy of the said complaint with the *Irish Financial Services and Pensions Ombudsman* was not presented, it is noted that this complaint mainly involves the alleged delays on SEB Life's part to handle his second trade order (that is, the sale of two Vanguard funds and subsequent purchase of another Vanguard fund).<sup>18</sup> In his email of 9 April 2020 to MPM, the Complainant indeed highlighted *inter alia* his dissatisfaction with how *SEB Life* handled the said trade orders.

The Complainant noted that:

*'... once the problems cleared and both dealing sheets left Momentum I am less than impressed with the manner they were handled by SEB. After receipt on the afternoon of 18/3 they failed to process in a timely manner missing cut off on 19/3 and only made the NAV price on 20/3 for the two sales as part of the 13/3 dated sheet. This marginal price differential itself was not too much of an issue apart from the 24 hours lost and the subsequent impact on the timing of the placing of the final trade in that sequence after settlement ...'*<sup>19</sup>

It is further noted that in its email to the Complainant of 15 April 2021, MPM noted, *'in relation to the complaint raised against SEB International'*, that:

*'While we understand that you expected the trade of 24<sup>th</sup> March 2020 to take less than 4 hours and 53 minutes to be completed, SEB International feel that this timeframe was not excessive ...'*<sup>20</sup>

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<sup>18</sup> P. 102

<sup>19</sup> P. 86

<sup>20</sup> P. 97

In his email of 16 April 2021 to MPM, the Complainant further noted the following with respect to his complaint against *SEB Life International*:

*'... In none of SEB's defensive statements shared by the ombudsman, do they mention or try and justify the 4 hrs 53 mins taken to make the final trade from a single divisional calculation of size of investment divided by price of units equals number of units. This is the crux of my complaint, and as they are still responsible for acting on my behalf for future trades, I'm interested to understand how they can regard and explain this timeframe as acceptable. I'm concerned about similar risks for future trades ...'*<sup>21</sup>

Having considered the relevant aspects as emerging during the case, the Arbiter is satisfied that the conduct complained of in respect of the Complaint filed with the OAFS strictly relates to MPM's conduct and its obligations as resulting from its roles as RSA and Trustee of the Scheme.

The other complaints filed with the other financial services ombudsman in other jurisdictions are indeed separate and distinct and specifically relate to the conduct of other unrelated parties. Each party featured within the Scheme's structure had its own respective obligations and responsibilities according to their corresponding and separate roles.

Despite the respective and distinct complaints filed by the Complainant in separate jurisdictions involve the alleged delays and alleged inadequate processing of his trade executions, however, they relate to the particular conduct of each respective party and their distinct roles and responsibilities at the different stages when handing the orders.

Hence, in the circumstances, the Arbiter does not consider the respective complaints to involve the same conduct complained of for the reasons mentioned.

**The Arbiter accordingly considers that he has the competence to deal with this Complaint and shall proceed to consider the merits of the case next strictly where it concerns the Service Provider.**

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<sup>21</sup> P. 97

**However, should in the merits of the case damages be awarded to the Complainant, those damages will be calculated only for the delay in placing the order with SEB Life (on 18 March 2020) and will not cover any losses caused by any delays from SEB Life in processing such an order.**

### **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.<sup>22</sup>**

### **Background and Particularities of the Case**

The Complainant was accepted as a member of the *Momentum Malta Retirement Trust* ('the Scheme), on 14 September 2015.<sup>23</sup> As outlined above, the Scheme is a personal retirement scheme domiciled in Malta and authorised by the MFSA.<sup>24</sup> A member-directed account was, in essence, operated in respect of the Complainant's Scheme.

A life policy issued by *SEB Life International Ltd*, was acquired (on the Complainant's/his adviser's instructions) by the Scheme as an underlying policy. Investments into different investment products were then undertaken within the said policy and held as underlying investments within the Scheme's structure.

Given that multiple parties are involved and/or were mentioned during the proceedings of the Complaint, the following table lists the indicated parties and provides a summary of their respective roles/involvement for clarity's sake:

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<sup>22</sup> Cap. 555, Art .19(3)(b)

<sup>23</sup> P. 10

<sup>24</sup> <https://www.mfsa.mt/financial-services-register/>

Table A

<i>Party</i>	<i>Role</i>
<i>Momentum Pensions Malta Ltd ('MPM')</i>	Trustee and Administrator of the Retirement Scheme
<i>SEB Life International Ltd ('SEB Life')</i>	Issuer of the SEB Life Policy (held within the Scheme)
<i>KH Holdings Ltd ('Knight Hayes')</i>	This was described by MPM as the Complainant's ' <i>previous Investment Adviser</i> '. <sup>25</sup>
<i>Inter-UK Financial Services Ltd ('Inter-UK')</i>	The current Investment Adviser appointed by the Complainant in respect of his underlying investment portfolio.
<i>IUK Global Sarl in Switzerland ('IUK Global')</i>	Described as ' <i>a firm connected to Inter-UK</i> ' which firm, due to an administrative error (by MPM), was at one point reflected in MPM's records as the Complainant's investment adviser (instead of <i>Inter UK</i> ). <sup>26</sup>

The trades in question subject to this Complaint are the following:

- (i) The First Trade Order – A request for the purchase/investment of GBP 55,000 into the '*Vanguard FTSE All-World UCITS ETF*' ('the First Trade'), as per the *SEB Life International Dealing Form* signed by the Complainant on 09 March 2020.<sup>27</sup>
- (ii) The Second Trade Order – The redemption of all the units the Complainant held into the '*Vanguard LifeStrategy 60% Equity A Acc*' and the '*Vanguard LifeStrategy 80% Equity A Acc*' and the subsequent purchase/ investment of GBP 860,000 into the '*Vanguard FTSE All-World UCITS ETF*' ('the Second

<sup>25</sup> MPM's letter dated 9 April 2020 – P. 8

<sup>26</sup> P. 57

<sup>27</sup> P. 62 - 63

Trade'), as per the *SEB Life International Dealing Form* signed by the Complainant on 12 March 2020.<sup>28</sup>

The First Trade and Second Trades were eventually forwarded by MPM for execution on 18 March 2020 as per the timeline of events considered in the next section.<sup>29</sup>

### **Facts of the Case - Timeline of events**

Given the alleged discrepancies in the timeline of events as claimed by the Service Provider,<sup>30</sup> the following is a summary (prepared by the Arbitrator), of the sequence of events with respect to the trades in question according to the documents and information presented during the proceedings of the case:

- a) Monday, 9 March 2020 (9.09) - The Complainant signed the First Trade order referred to above and sent it to (Michael Foster-Dalporto) the Managing Partner of *KH Holdings Ltd* ('*Knight Hayes*'). In his email to *Knight Hayes*, the Complainant noted that:

*'... With the chaos in the equity markets a number of pre-planned asset allocation actions I have are now being triggered. First deal attached so can you please process the attached to Momentum/SEB at the first opportunity. More to follow and thanks in advance ...'<sup>31</sup>*

- b) 9 March 2020 (10.06) - The First Trade order was, on the same day, forwarded by *KH Holdings Ltd* to MPM.<sup>32</sup>
- c) 9 March 2020 (11.37) – MPM informed *Knight Hayes* that they could not accept the dealing instruction as *Knight Hayes* was no longer the appointed adviser of the Complainant.<sup>33</sup>
- d) 9 March 2020 (12.55) – MPM subsequently received the same trade order (for the investment of GBP 55,000 into the *Vanguard FTSE All-World UCITS*

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<sup>28</sup> P. 88 - 89

<sup>29</sup> P. 84 & 99

<sup>30</sup> Such as in point 1 of its submissions – P. 136; and as alleged by MPM during the hearing of 18 January 2022 (P. 114)

<sup>31</sup> P. 67 – Emphasis added by the Arbitrator.

<sup>32</sup> P. 57 & 60

<sup>33</sup> P. 66

*ETF*<sup>34</sup> by email from (Craig Johnston) the Director of *Inter-UK Financial Services Ltd* ('Inter-UK'). The email originated from '@iuk-global.com' and the email's signature detailed the address of *Inter-UK* in London and its regulatory status with the UK's Financial Conduct Authority.<sup>35</sup>

- e) 9 and 11 March 2020 – Internal communications between MPM's officials in respect of the trade order received from *Inter-UK* of the 9 March 2020. One MPM's official questioned MPM's Compliance team (on 9 March 2020) whether they could accept instructions from this investment adviser ('IFA') as *'The instruction was sent by the current adviser who is based in Switzerland'*.<sup>36</sup>

MPM's compliance replied (on 11 March 2020) that

*'... it seems like the IFA is Inter-UK, for which IUK Global UK is also a trading name. In order to proceed with the dealing instruction we will require a change of adviser form ...'*<sup>37</sup>

In a further internal communication of 11 March 2020, an MPM official noted to his colleagues that

*'We received a dealing instruction from IUK Global Switzerland ... As per email from compliance ... the firm is not authorized to submit trades and needs to submit a change of adviser form for their IUK Global UK trading name'*.<sup>38</sup>

- f) Wednesday, 11 March 2020 (17.14) – MPM sent email to *Inter-UK* stating that:

*'...we still have not received the 'Change of Adviser' form for this client, in order to appoint an appropriately licensed entity as the Investment Adviser.*

*As you are aware, due to Malta Pension Rules, we are unable to accept instructions from Swiss entities.*

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<sup>34</sup> P. 68 - 72

<sup>35</sup> P. 68 & 144

<sup>36</sup> P. 77

<sup>37</sup> P. 76

<sup>38</sup> P. 75 - 76

*Therefore, kindly send us the signed Change of Advisor form, in order for us to proceed with the trade.*<sup>39</sup>

- g) Thursday, 12 March 2020 – The Complainant signed the Second Trade Order to his adviser.<sup>40</sup>
- h) 12 March 2020 (12.14) – MPM sent another email to *Inter-UK* (copying *Inter-UK* with its internal communications referred to above of 11 March 2020 and requesting the completion of the Change of Adviser Form.<sup>41</sup>
- i) 12 March 2020 – Email from the Managing Partner of *KH Holdings Ltd* (*Knight Hayes*), notifying the Complainant of issues with placing his trades with MPM and requesting him to complete the form required by MPM (as soon as possible), with originals to be sent to the UK office address.<sup>42</sup>

*Knight Hayes* further confirmed that the dealing sheets had not been issued (meaning that *‘neither trades had been approved by Momentum’* as indicated in the email dated 17 March 2020 sent by the Complainant to MPM).<sup>43</sup>

- j) Friday, 13 March 2020 – A *‘Change of Adviser Form’*, confirming the appointment of *Inter-UK Financial Services Ltd* (based in London) completed and signed by the Complainant on 12 March 2020, was signed by *Inter-UK* on 13 March 2020.<sup>44</sup>

*Inter-UK* then sent the completed *‘Change of Adviser Form’* to MPM on 13 March 2020 (10.27hrs).<sup>45</sup>

- k) Monday, 16 March 2020 – MPM confirmed to *Inter-UK* that the *‘Change of Adviser Form’* has been forwarded to the Compliance Department for approval.<sup>46</sup>

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<sup>39</sup> P. 73 & 146 – Emphasis added by the Arbitrator

<sup>40</sup> P. 88 - 89

<sup>41</sup> P. 75 & 147

<sup>42</sup> P. 27

<sup>43</sup> P. 28

<sup>44</sup> P. 81, 83 & P. 150, 152

<sup>45</sup> P. 153

<sup>46</sup> P. 154



- l) Tuesday, 17 March 2020 – Two emails sent by the Complainant to the Managing Partner of *KH Holdings Ltd* (Knight Hayes).

In an email (sent 01.29 hrs), the Complainant asked *Knight Hayes* for the status of his trades with MPM to be checked (as soon as possible) as no activity was showing on the SEB account.

In another email (sent 11.03 hrs), the Complainant noted to *Knight Hayes* that the matter (relating to the change in advisor) had already been taken care of on 14 May 2018, having then traded with the new advisor (*Inter-UK*) on 27 September 2018. The Complainant highlighted that he was '*completely blind on the two trades already submitted*'.<sup>47</sup>

- m) 17 March 2020 (05:01 hrs) – MPM informed *Inter-UK*, with reference to '*the dealing instruction from IUK Global Switzerland*', that such firm was '*not authorized to submit trades*'.<sup>48</sup>
- n) 17 March 2020 (11.38 hrs) – *Inter-UK* informed MPM '*that the client may have already been moved to Inter-UK in 2018*' and asked MPM's Compliance Team to confirm this. Craig Johnston of *Inter-UK* also clarified that any instruction coming from him '*relates to Inter-UK Financial Services Ltd clients*'.<sup>49</sup>
- o) 17 March 2020 (16.23hrs) – The Complainant made a formal complaint with MPM about the processing of the trade orders.<sup>50</sup>
- p) Wednesday, 18 March 2020 (10.51 hrs) – A reminder was sent by the Complainant to MPM asking for the status of his trade requests of 9 and 12 March 2020.<sup>51</sup>

MPM replied to the Complainant (10.58 hrs) confirming '*that the instruction will be sent soon*'.<sup>52</sup>

Another email was later sent by the Complainant to MPM (12.45 hrs) acknowledging the processing of the dealing instruction of the First Trade

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<sup>47</sup> P. 27

<sup>48</sup> P. 156

<sup>49</sup> P. 157

<sup>50</sup> P. 27-28

<sup>51</sup> P. 28 & 159

<sup>52</sup> P. 28 & 158

but requesting an answer on the trade instructions (the Second Trade Order) of 12 March 2020.<sup>53</sup>

- q) 18 March 2020 – In an email sent to the Complainant/*Inter-UK*, MPM noted that the only dealing instruction received was that of 9 March 2020 (i.e., the First Trade).<sup>54</sup>
- r) 18 March 2020 – The Complainant enquired with the Managing Partner of *KH Holdings Ltd* (Knight Hayes) as to whether the dealing instruction of 12 March had arrived at MPM as he noted that MPM was denying having received the said second order.<sup>55</sup>

Various emails on the same day were exchanged between the Complainant, the Managing Partner of *KH Holdings Ltd* (Knight Hayes) and the Director of *Inter-UK* regarding the Second Trade Order of 12 March 2020. In one of the emails, the official from *Inter-UK* noted that ‘*I had to re-send the 12/3 trade today*’ (to MPM).<sup>56</sup>

- s) 18 March 2020 – *Inter-UK* sent an email to MPM asking it to ‘***ensure that both dealing sheets sent are provided to SEB today***’.<sup>57</sup>
- t) 18 March 2020 – MPM forwarded the Second Trade Order for processing to *SEB Life International* later in the day on the 18 March 2020. As detailed in an email dated 1 April 2021 sent by MPM to the Complainant, ‘*SEB explained that the dealing instruction to sell the Vanguard LifeStrategy 60% Equity Fund A ACC (GBP) and the Vanguard Life Strategy 80% Equity Fund A Acc (GBP) was received on 18<sup>th</sup> March 2020*’.<sup>58</sup>
- u) *SEB Life International* ‘*started processing these dealing instructions [i.e., the sale of the two Vanguard funds] on the 19<sup>th</sup> March 2020 ...*’ with the deals going then through ‘*on 20<sup>th</sup> March 2020*’, as also detailed in an email dated 1 April 2021 sent by MPM to the Complainant.<sup>59</sup>

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<sup>53</sup> P. 165

<sup>54</sup> P. 28 – 29 & 162, 164

<sup>55</sup> P. 29

<sup>56</sup> P. 32

<sup>57</sup> P. 163

<sup>58</sup> P. 99

<sup>59</sup> *Ibid.*

v) *'The proceeds of the sale' of the two Vanguard funds 'were received on the 24<sup>th</sup> March 2020' and the trade to purchase the additional units into the Vanguard FTSE All-World UCITS ETF (as part of the Second Trade Order) was placed by SEB Life International on the same day, the 24 March 2020.*<sup>60</sup>

w) 30 March 2020 – Further to the email exchanges sent by the Complainant with *Knight Hayes* and *Inter-UK* on 27 March and 30 March 2020, the Complainant highlighted that MPM was saying that it only received the Second Trade Order on 18 March 2023. *Inter-UK* eventually clarified that:

*'The second dealing request was sent on the 18<sup>th</sup> when Momentum confirmed that they would accept dealing instructions from us, it didn't seem that there was any point in sending anything else before then as they would have rejected it as they did with the first one. Had it been sent any earlier, it still would have been actioned on the 18<sup>th</sup>.'*<sup>61</sup>

x) 31 March 2020 – The Complainant made a formal complaint to *Inter-UK* with respect to the trades sent to them on 9 and 12 March 2023, *'on the basis that:*

*'- The 12/3 dealing request was not processed by your office until 18/3.*

*- I was not informed of issues processing the first trade (9/3) until 12/3 when I'd completed the dealing sheet for the 2<sup>nd</sup> trade (12/3). And after completing the change in advisor form as requested by your office (12/3), I believed everything was in place for both trades and was not made aware of any further delays until I contacted you to check status of both trades on 17/3.'*<sup>62</sup>

### **Facts of the Case - Losses due to delays in execution**

The execution of the First Trade on 18 March 2020, did not result in a loss (given that the price applicable on the day of actual execution favoured the

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<sup>60</sup> *Ibid.*

<sup>61</sup> p. 33

<sup>62</sup> p. 34

Complainant). This was acknowledged by the Complainant himself who, during the hearing of 18 January 2022, testified that

*'... the fact that the first trade was delayed incidentally resulted in a small profit'*.<sup>63</sup>

It is thus undisputed that the delays by MPM in the execution of the First Order (that MPM had received on the 9 March 2020), have resulted in a small profit on the First Trade but that material losses ensued on the Second Trade Order (dated 12 March 2020). The Complainant referred to the losses on the Second Trade Order as calculated in the decision of the UK Financial Ombudsman.<sup>64</sup>

## **Final Observations and Other Considerations**

### *The ruling by the UK Financial Ombudsman*

The decision by the UK Financial Ombudsman dealt with, and covered only, the actions of the UK adviser, *Inter-UK*, which adviser was the party falling within the remit of the Ombudsman.

The Arbiter accepts the Service Provider's submissions on this point that MPM was not a party to the said ruling issued by the Ombudsman and that MPM did not present its version of events and defence to the UK Financial Ombudsman. Hence, the decision of the UK Financial Ombudsman deals specifically with the actions of *Inter-UK* and is not binding on, nor should be interpreted, as a decision on MPM.

**Whilst taking cognisance of the decision of the UK Financial Ombudsman against *Inter-UK*, the Arbiter will however consider the particular circumstances of this Complaint and the submissions presented by the Complainant and MPM as the parties subject to the Complaint raised before the Arbiter.**

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<sup>63</sup> p. 115

<sup>64</sup> The excel spreadsheet attached to the decision of the UK Financial Ombudsman particularly refers (P. 18).

The Arbiter will not be influenced by any implication contained in the UK Financial Ombudsman's decision that MPM should shoulder responsibility for the 50% not charged to *Inter-UK* in his ruling.

As outlined above, the Arbiter will determine and adjudge this Complaint 'by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case', as per Article 19(3)(b) of the Act.

*The shortfalls on MPM's part*

Having carefully considered the pertinent matters and sequence of events, the Arbiter considers that there is no doubt that material shortfalls on the part of MPM has emerged in the case in question. In this regard, it is clear that there are the following two material failures:

a) *Failure to identify Inter-UK and distinguish it from IUK Global Switzerland –*

MPM failed to accept the legitimate and valid First Trade Order sent by email on 9 March 2020 by *Inter-UK*. Despite that the email originated from an email address '*@iuk-global.com*' which MPM seemingly linked to *IUK Global* (in Switzerland), the said order was however clearly sent by *Inter-UK* (which is not a Swiss entity), this being an entity based in London and regulated by the UK FCA as evidenced in the same email's signature as outlined above.<sup>65</sup> MPM should have, at that stage, realised that the dealing instruction was received from *Inter-UK* and not '*from IUK Global Switzerland*'<sup>66</sup> and that *Inter-UK* was thus not a Swiss entity.

b) *Failure to maintain proper records on the Complainant's appointed/ approved investment adviser –*

MPM also clearly failed in maintaining the correct records of the exact entity which was approved to act as the Complainant's investment adviser. This was conceded by MPM itself, where, in its reply, it acknowledged that it had made an administrative error where instead of appointing *Inter-UK*

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<sup>65</sup> P. 68

<sup>66</sup> P. 76

way back in 2018 as the new adviser of the Complainant, it somehow recorded *IUK Global in Switzerland* instead as adviser.

MPM also failed to realise that it had previously allowed and processed instructions (from *Inter-UK* rather than *IUK Global Switzerland*) in September 2018.

Notwithstanding the above, however, the Arbiter is convinced that it would not be fair, reasonable or just to attribute the claimed losses, or any part thereof, on the Second Trade Order to MPM. This is when taking into consideration the particular circumstances of the case, including, the following pertinent aspects:

(i) *The materiality of the Second Trade Order –*

The Arbiter firstly notes that the Second Trade Order involved very substantial trades – the two sales orders in respect of the *Vanguard Lifestrategy 60% equity* and *Vanguard Lifestrategy 80% equity*, themselves involved a sale value of over GBP 1 million.<sup>67</sup>

Likewise, the amount to be invested into the *Vanguard FTSE All World ETF*, forming part of the Second Trade Order of 12 March 2020, also involved a substantial amount of over GBP 850,000.

The material amounts involving the said transactions cannot be discounted as they highlight, even more, the responsibility falling on *Inter-UK* (and even, the Complainant himself), who should have ensured that such orders have arrived with, and been promptly acknowledged by MPM, in the first place.

The Arbiter noted that the First Trade Order (an investment of over GBP 50,000) is, by no means comparable to the extent and amount involved in the Second Trade Order as outlined above and such matter has to be kept into context.

**The extent of the transactions involved in the Second Trade Order indeed merited that the trustee and RSA of the Scheme be immediately made aware of such orders irrespective of any issue with the execution of the**

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<sup>67</sup> P. 18

**First Order. If anything, this would have highlighted and raised the urgency and need to quickly sort any issue stalling the execution of the orders.**

However, this has unfortunately not happened, and it was only on the 18 March 2020 that *Inter-UK* actually provided details to MPM of the Second Trade Order.

Indeed, the Arbiter attributes importance to this particular aspect given also that, as testified during the hearing of 22 February 2022 by MPM's official:

*'... Given the size of the dealing instruction, they sat on a dealing instruction that was over a €1,000,000 from the 12 March until the 18 March; and if they are now saying that they took the decision to hold it for those days, then, they took that decision not us.*

***Had we received it on the 12 March, even if that was a trade of over a €1,000,000, one of the biggest trades we would have received; we do not receive trades for €1,000,000 – very rarely – there is a process within Momentum that when we receive a trade that is that size of a trade, it gets escalated'***.<sup>68</sup>

(ii) *The timing of the Second Trade Order –*

MPM considered the Second Trade Order and forwarded this to *SEB Life International* for processing on the same day it received the order instruction from *Inter-UK*, this being on the 18 March 2020, as outlined in the timeline of events above.

Hence, there was factually no delay on MPM's part in handling the Second Trade Order as this was forwarded to SEB Life for execution on the same day MPM had actually received it from the Complainant's adviser.

The adviser, *Inter-UK*, seemingly assumed that the Second Trade Order will not be processed given that the First Trade Order was stalled. The adviser claimed that this was the reason why they had not forwarded to MPM the

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<sup>68</sup> P. 194 – Emphasis added by the Arbiter

Second Trade Order at the time it was completed by the Complainant on 12 March 2020.

**However, it is considered that the consequences of such a material assumption cannot reasonably and justifiably be attributed to another party, in this case, MPM, on the basis of a hypothetical situation assumed by the adviser.**

(iii) *Other material lack of actions by the adviser and/or the Complainant –*

**Apart from MPM not being made aware of the significant Second Trade orders of 12 March 2020, the adviser, and even the Complainant, actually went along MPM's requests for the '*Change of Adviser Form*' and themselves signed (the Complainant on the 12 March and *Inter-UK* on the 13 March 2020),<sup>69</sup> the said form rather than reasonably challenge MPM's requests.**

**Both *Inter-UK* and the Complainant should have at that stage known that *Inter-UK* was the appointed investment adviser and should have reasonably promptly refuted and challenged MPM's unnecessary request.**

**The compliance by both *Inter-UK* and the Complainant with MPM's wrongful request at the time ended up validating MPM's own wrong approach.**

**Furthermore, it is also unclear why the investment adviser, *Inter-UK*, had not promptly followed the matter on the Change of Adviser Form with MPM between Friday 13 March 2020 to Tuesday, 17 March 2020.**

**It is also noted that despite his Second Trade Order and subsequent signed '*Change of Adviser Form*' of Thursday 12 March 2020, the Complainant also himself approached MPM on the trades late only on Tuesday 17 March 2020, and not before.**

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<sup>69</sup> P. 79 - 83



**This happened despite the significance of the trades and the implications of the ‘*chaos in the equity markets*’ which both the Complainant and his adviser were duly aware of at the time.<sup>70</sup>**

**The Arbiter further notes that the previous ‘*Annual Member Statement for the year ending December 2018*’ issued by MPM to the Complainant - (which the adviser should have also had sight or been aware of) - wrongfully referred to ‘*IUK Global Sarl Switzerland - Switzerland*’ as the appointed ‘*Professional/Investment adviser*’. Despite this, neither the Complainant nor his adviser, *Inter-UK*, had highlighted such material discrepancy and raised such aspect to MPM.<sup>71</sup>**

(iv) *Profile of the Complainant –*

Whilst it is noted that the Complainant is a retail client, however, the Complainant is considered to be a highly knowledgeable, educated and articulate person as emerging from the various exchanges of communications he had with the parties involved and the proceedings of the case in question.<sup>72</sup>

The Complainant was issuing the investment instructions to his adviser and was well-versed in, and himself closely following the financial markets at the time of his transactions, as emerges from the copy of the email communications presented during the case. In his email of 9 March 2020 to *Knight Hayes* he indeed noted that:

*‘With the chaos in the equity markets a number of pre-planned asset allocation actions I have are now being triggered. First deal attached ... More to follow ...’<sup>73</sup>*

In his email of the 17 March 2020 to MPM, the Complainant further noted *inter alia* that:

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<sup>70</sup> P. 67

<sup>71</sup> P. 181

<sup>72</sup> The Complainant held a directorship position (‘*Manufacturing Strategy and Optimization*’- P.30) of a large ‘*plastic, chemical and refining company*’ –

<https://www.bloomberg.com/profile/company/0764182D:NA#xj4y7vzkg>

<sup>73</sup> P. 67

*'... I now expect to lose money on the expected trades compared to the original identified projection, and have no view on when processing will take place which, in the current market, is causing much anxiety'.<sup>74</sup>*

(v) *Complainant himself acknowledged MPM's lack of responsibility –*

**It is noted that in an email sent by the Complainant to Knight Hayes, the Complainant noted that:**

*'I did everything right and have a loss. If Inter have an email stating that Momentum would not accept the trade because of the reasons you mentioned, then I need to see it. Otherwise, **if the 12/3 dealing sheet was held, or not actioned by Inter, including any admin mistake, then Inter have the liability and the responsibility to make it right**'.<sup>75</sup>*

**The Arbiter, furthermore, notes that, ultimately, in his complaint to Inter-UK, the Complainant clearly himself stated that:**

*'... I pushed for the email confirmation from Inter-UK that the trade 12/3 had been submitted to Momentum on 12/3, they eventually conceded that it had not been sent on the day that I raised it as there was "no point" ... **This effectively in my view absolved Momentum for all responsibility of wrongly delaying the trade dated 12/3**'.<sup>76</sup>*

**The Arbiter ultimately considers that there is no sufficient comfort and sound basis on which one could confidently conclude that MPM would have also delayed the Second Trade Order (as argued by the adviser/Complainant) had this been actually submitted on the 12 March 2020. One should not take the counter-factual as a proven reality. Given that the materiality of the transaction would have highlighted and prompted the urgency of the matter, and, also, had the adviser and/or Complainant promptly highlighted to MPM that there was no reason for it to hold the trades (as Inter-UK was already the appointed adviser, something the Complainant and/or his adviser should have**

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<sup>74</sup> P. 28

<sup>75</sup> P. 36 – Emphasis added by the Arbiter

<sup>76</sup> P. 23 – Emphasis added by the Arbiter

**reasonably and expectedly done), the outcome was more likely to have been different than that hypothesised by the Complainant and his advisor.**

Indeed, it is noted that when the Complainant actually intervened himself late on 17 March 2020 (through his email to MPM sent at '16.23hrs'),<sup>77</sup> and subsequently other emails on 18 March 2020, MPM immediately handled both the First Order and later on the same day on 18 March 2020, the Second Trade Order.

This further corroborates the matter raised above and seriously weakens the claim that MPM would not have processed the dealing instruction of 12 March 2020 if this had been submitted at the time.

**The Complainant's request for any compensation from the Service Provider in respect of the Second Trade Order cannot thus be accepted in the circumstances.**

### **Conclusion and Decision**

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

**Given certain shortfalls on both parties as explained above and considering the circumstances of the case, each party is to bear its own costs of these proceedings.**

**Alfred Mifsud  
Arbiter for Financial Services**

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<sup>77</sup> P. 27