Before the Arbiter for Financial Services

Case ASF 035/2025

RL

('the Complainant')

vs

STM Malta Pension Services Limited

(C 51028)

('STM' or 'the Service Provider')

Sitting of 12 September 2025

The Arbiter,

Having seen the **Complaint** made against *STM Malta Pension Services Limited* ('STM' or 'the Service Provider') relating to his Retirement Scheme, the *STM Malta Pension Contract Plan* ('the Scheme'), a personal retirement scheme established in the form of a trust and licensed by the *Malta Financial Services Authority* ('MFSA'). STM is the trustee and Retirement Scheme Administrator ('RSA') of the Scheme.

The Complaint relates to the Early Redemption Fee that was applied by the investment platform used in respect of the Complainant's Retirement Scheme. The Complainant essentially claimed that this charge was not in line with the pension contract he had signed, and that he was not fully aware of this fee when he had signed the contract with STM and his financial advisor.

The Complaint[1]

The Complainant explained that the fundamental issue of his Complaint is that he did not accept the withholding of the Redemption Credit Account ('RCA') of about GBP 12,000 that was applied when he transferred out of his QROPS.

He claimed that there was no mention of an early redemption penalty in the agreements/contract entered into with his independent financial advisor or STM, except for the full flexi access and exit fees detailed in Annex 1, *'Applicable Charges'* - that is, year three GBP 2,000 and an exit fee GBP 1,000, which he accepted and paid.

The Complainant explained that the manner in which STM obtained his signature on the *Capital International Group ('CIG') Application Form PAF3 Dealing Services*[2] (in respect of the investment platform) was done in a manner to hide the RCA and to surreptitiously obtain his approval for the said fees. He explained that CIG (the investment managers based in the Isle of Man) clearly stated that he only had a contractual relationship with STM and his financial advisor. He submitted that, accordingly, there was in effect no requirement for him to sign any application for dealing services with CIG.

The Complainant noted that a letter from CIG to STM dated 4 July 2022, makes it very clear that the agreement is between STM and CIG and that he had no involvement in that relationship, except to have access to view but not to instruct or transact.

He further noted that STM claimed that he was *'fully aware'* of all the charges, including the RCS, but he submitted that the exchange of emails, letters and associated forms showed that this was not the case.[3]

The Complainant explained that around GBP 12,000 was retained from his QROPS contract. He claimed that this was neither in accordance with the pension contract nor the agreement entered into with his advisor. He further claimed that his financial advisor tried everything to get him not to close the

[1] Complaint Form on Page (P.) 1 - 6 with extensive supporting documentation on P. 7 - 63
[2] This being the Application Form for the investment platform of Capital International.
[3] P. 3

contract early despite that this was his clear intention from the beginning as, he claimed, was clearly documented.

The Complainant submitted that STM, as pension provider and trustee, also did not adequately monitor and question the investments and charges made by his financial adviser. He alleged that STM failed in their legal obligations, causing other possible financial losses in addition to the GBP 12,000 withheld as early redemption fee.

He further claimed that the investments proposed by his financial adviser were not in accordance with STM's rules nor reflective of what should have been proposed to him, considering his age and investment risk profile.

Remedy requested

The Complainant requested to be paid back the GBP 12,000 redemption fee, possible loss on investments, as well as compensation determined appropriate by the Arbiter for the stress and inconvenience caused.[4]

In his final submissions, the Complainant updated his requested remedy as follows:

> *'I respectfully request that the Arbiter finds that:*
>
> 1. *The amount of £12,275.18 calculated on 9 July 2024 by CIG as surrender penalty was unlawfully withheld;*
> 2. *STM Malta should refund me the amount in full, as well as compensation for the loss incurred by me since September 2024 when the pension transfer was made, due to the change in GBP/Euro exchange rate (mid-market rates about GBP/Euro 1.202 on 30 September 2024, 1.154 on 14 July 2025); and*
> 3. *Any associated interest and costs should be awarded in my favour'.*[5]

[4] P. 3
[5] P. 177

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

Where the Service Provider explained and submitted the following:

1. That the Complaint is unfounded and ought to be rejected because of the following reasons:

   (i) That preliminarily, the Complaint is time-barred based on Article 21 (1)(c) of Chapter 555 of the Laws of Malta.

   (ii) That, without prejudice to the above, the Complainant appointed an Independent Financial Adviser (IFA), Daniel Butcher of *DTB Wealth Management*, for the provision of advice. This is clear from the STM application form which specifically requests the details of the Complainant's IFA ('Financial Adviser Details' and 'Investment Adviser Details' sections found on page 4 of Annex A to its reply),[7] as well as section 7 entitled *'Intermediary Details'*, of the *Capital International Group* ('CIG') Application form found on page 5 of Annex B and Section 9 of the CIG Application form, page 6 of Annex B to its reply.[8] It noted that the application with STM and the application with CIG were signed by the client on 3 May 2022.

   (iii) That the Complaint on the redemption penalty is unfounded since the documentation the Complainant signed and acknowledged at the time of investment, where he agreed to the outlined terms, showed otherwise. STM submitted that the CIG application form clearly specifies the fee structure, including the early redemption penalty.

   It further submitted that the Complainant was provided with the Tariff Schedule as found on page 8 of the CIG application form entitled *'Dealing Services (CIG – 3.5) Tariff Schedule – May 2018*', which clearly outlines - as the fourth charge of section 1 *'Commission and Administration Fees'* - a Redemption Penalty charged at *'5% reducing at 0.19% per quarter (based on portfolio value)'*.

[6] P. 70 - 73 with attachments on P. 74 - 99
[7] P. 74 - 88
[8] P. 89 - 99

The Service Provider noted that one can see the Complainant's signature at the bottom of the tariff schedule (page 8 of Annex B).[9]

(iv) That the Complainant appointed Daniel Butcher as his IFA to review his UK pension and advise on a suitable retirement strategy. The suitability report provided by his IFA clearly highlighted the tax advantages in France related to long-term savings and retirement planning. As a French tax resident, the Complainant was advised to transfer his UK pension to STM's QROPS, with the intention of investing in an underlying bond with *Capital International Group* ('CIG'). His adviser's recommended strategy was structured for a five-year investment period, after which the capital could be transferred into a French-based **'Assurance Vie'** for tax efficiency purposes. STM submitted that the Complainant yet later decided to exit prematurely due to a change in his personal circumstances.

(v) That the IFA appointed by the Complainant provided the Suitability Report and Advice letter and, as part of the process, explained the tariffs to the Complainant. It noted that besides having signed the Tariff Schedule clearly indicating the redemption penalty and, therefore, being fully aware of the existence of such penalty, the Complainant was once again reminded of the existence of such penalty before he liquidated his pension in September 2024.

STM submitted that the Complainant was aware of this redemption penalty as can be evidenced from his email of 11 July 2024, where he mentions the redemption penalty. It noted that the Complainant had the opportunity to decide whether to proceed with the liquidation, or otherwise, bearing in mind the applicability of the early redemption penalty. In addition, the IFA also proposed that the Complainant can opt for a partial redemption.

It noted that the Complainant, however, decided to go ahead and fully liquidate his pension in September 2024.

[9] P. 93

(vi) That STM strongly rejects any allegations of fraud, and should the Complainant wish to pursue this further, the Arbiter does not have competence to deal with such matters.

(vii) That without prejudice to the above, the Complaint about the investments selected should be directed to the Complainant's appointed financial advisor, Daniel Butcher of *DTB Wealth Management*, and not to STM who is the custodian of the asset. It pointed out that STM is not licensed by the MFSA to provide investment advice or investment management. STM submitted that it could therefore not enter into the merits of whether the investment was appropriate for the particular member or otherwise, as this could have been construed as investment advice. It further submitted that it relied on the professional capacity and expertise of the Financial Advisor in this regard.

(viii) That also, without prejudice to the above, the IFA was appointed by the Complainant, and it was the IFA, which in terms of the Suitability Letter, explained the investment to the Complainant and further to whose advice, the Complainant took an informed decision to invest in this investment. STM submitted that the Complainant also declared on the STM application form that he acknowledged that the services provided by the Company did not extend to financial, legal, tax or investment advice which had been obtained separately by the Complainant and that the Complainant received independent advice on his preferred investments and their suitability and appropriateness for the Plan. Reference was made to clauses 1, 7 and 13 of Section 9 of Annex A to its reply.[10]

STM also noted that, according to the IFA appointed by the Complainant, the investments were in line with his risk profile, bearing in mind that the Complainant was determined to have a risk rating of 4 out of 10 (Lowest Medium), as per the risk profile in the Suitability Letter. The Service Provider also noted that the Complainant stated that he was willing to accept a level of risk in his Risk Profile.

[10] P. 80

Any dealing instructions in terms of investments sent to CIG, were sent after discussions between the IFA and the Complainant and after obtaining approval from the Complainant and his countersignature.

2. That without prejudice to the foregoing, should the Arbiter decide that the Complainant ought to be compensated for any alleged losses made, then the fact that other service providers were involved, such as the financial advisor (IFA), should be taken into consideration.

3. That without prejudice to the foregoing, should the Arbiter decide that the Complainant ought to be compensated, the compensation claim by the Complainant is excessive. STM submitted that the Arbiter should also keep in mind that the Complainant received the funds due to him upon liquidation of his pension (as at 30 September 2024) of GBP 312,925.10.

4. That all allegations made by the Complainant in his Complaint are unfounded in fact and at law and the Service Provider has acted with prudence and diligence.

5. That STM reserved the right to produce further oral and documentary proof and to make additional submissions to substantiate its position.

6. That for the reasons indicated, all of the Complainant's demands are to be rejected with costs to be borne by the Complainant.

Preliminary

Nature and Key Aspect of the Complaint

During the hearing of 28 April 2025, the Arbiter asked the Complainant to clarify his Complaint, particularly with respect to his claims regarding the appropriateness of the investment. This was also in light of the lack of loss apparent from his investment portfolio.[11]

The Complainant confirmed that the main issue of his complaint with the Arbiter relates to the fee of GBP 12,000 that was applied within his Scheme's structure.[12] He stated that the Complaint should accordingly stick to this issue.

[11] P. 101
[12] *Ibid.*

With respect to the inference to the possible fraudulent use of his signature featured on the application form detailing the contested fee,[13] the Complainant clarified that he was not raising allegations of fraud in his Complaint before the Arbiter. Accordingly, allegations of possible fraud do not form part of this Complaint.[14]

It is noted that in his formal complaint to the Service Provider of 11 July 2024, the Complainant had indeed emphasised the following:

> ***'The fundamental issue is that I do not accept the withholding of the redemption credit account (RCA) funds of about £12k from my STM Malta Pension Plan Contract QROPS, because there was no mention of an early redemption penalty in the agreement between STM Malta and me, except for the full flexi access and exit fees detailed in Annex 1, 'Applicable Charges', i.e. (year 3, £2000 & exit fee £1000)'***.[15]

Furthermore, during the hearing of 16 June 2025, it was noted that:

> *'… the Arbiter understood from the last hearing, that it was established that the complaint has been narrowed to the termination fee of [£]12,000 which was deducted from the policy on which the parties have different opinions.*
>
> *The complainant states that this fee was deducted erroneously and without his authority while the service provider states that it was deducted according to what was agreed initially.*
>
> *Solemn Declaration of [the Complainant]:*
>
> *I agree with what the Arbiter has just said.'*[16]

The key aspect of the Complaint before the Arbiter, which shall be considered in this decision, is accordingly limited to the application of the redemption penalty.

[13] E.g. - P. 7 & 59
[14] P. 103
[15] P. 120
[16] P. 141

The following claims were, in essence, made in this regard as per the Complaint Form filed with the Office of the Arbiter for Financial Services:[17]

i. The claim that the Complainant was not fully aware of all the charges, as he claimed no mention of the Early Redemption Fee was made in the contract he had with his IFA or STM;

ii. The claim that the Complainant should not have been charged the disputed fee as he has no contractual relationship with CIG and was not a party to such agreement. The Complainant claimed that his relationship was only with STM and his financial adviser.[18]

iii. The claim that the retention of the sum of GBP 12,000, as an early redemption penalty was not in accordance with the pension contract.

Competence of the Arbiter

During the hearing of 28 April 2025, the Arbiter referred to the preliminary plea raised by the Service Provider in its reply with respect to his competence. STM was asked to explain the basis on which it claimed that the Complaint is prescribed under Article 21(1)(c) of Chapter 555 of the Laws of Malta ('the Act').[19]

In its subsequent reply of 12 May 2025, STM submitted that the Complaint is time-barred pursuant to the said Article, given that:

> *'The Complainant was provided with the Tariff Schedule as found on page 8 of the CIG application form which is titled 'Dealing Services (CIG – 3.5) Tariff Schedule – May 2018) which clearly outlines as the fourth charge of section 1 'Commission and Administration Fees' a Redemption Penalty which is to be charged at '5% reducing at 0.19% per quarter (based on portfolio value)'. One can see the Complainant's signature at the bottom of the Tariff Schedule page itself (Vide page 8 of the CIG Application form – Annex A … The Docusign code on the application form and the Docusign*

[17] P. 3
[18] P. 3 & 17
[19] P. 101

code on the tariff schedule are identicial meaning that all documentation was signed by [the Complainant] on the 2nd May 2022.

This shows that the Complainant, was aware of the early redemption penalty and thus had first knowledge of the matters complained of on the 2nd May 2022.

[The Complainant's] complaint was made to STM on 11th of July 2024 (Refer to Annex B) and therefore STM considers this complaint to be time barred as more than 2 years have passed …'.[20]

On his part, the Complainant submitted that his Complaint was within the two-year time limit. The Complainant referred to Article 21(1)(d) of the Act relating to the continuing nature of the complaint, and stated that the matter he was complaining about:

'… only became apparent in September 2024, when the final pension payment of only £311,780 was made by STM to my bank account, <u>after</u> their final offer letter dated 9 September 2024 (annex A) which clearly stated: 'Estimated amounted to be received from Investment House as at 6th September 2024: £326,776.30.

The actual funds received from the investment house, Capital International Group (CIG), amounted to only £314,953.46.

Prior to September 2024, any financial loss remained hypothetical, as I had complained about and had been in discussions from August 2023 with both my Independent Financial Adviser (IFA) and STM regarding the contractual validity of a surrender charge.

The final offer letter was issued after a series of email exchanges starting in early July 2024 and continuing through to September 2024. I had rejected two earlier offers dated 3 July and 18 July 2024, which mentioned a 'Capital International Surrender Charge', first stated as 'to be calculated' and later as 'estimated £12,275.18 as at 9th July'.

In particular, my email of 9 September 2024 (annex D) clearly states what would be acceptable to me. The final offer letter did not contain any

[20] P. 107, 108, 116 & 120

mention of a surrender charge and indicated that the amount invested in the CIG portfolio would [be] paid in full, except for the agreed amounts (custody fees and annual charges) previously debited on a regular basis, in accordance with the Pension Contract.

Therefore, the last series of acts or omissions by STM occurred in September 2024, which brings the complaint well within the legal limit …'.[21]

It is noted that in his Complaint Form to the OAFS, the Complainant indicated the date of *'01/07/2024'* as to when he first had knowledge of the matters complained of.[22] In his subsequent submissions outlined above, the Complainant then indicated September 2024.

It is further noted that in his final submissions, the Complainant then indicated another date where he stated that *'… the first time I had knowledge and understanding of the early redemption penalty was after the email from … Investment Operations Director of CIG dated 7 August 2023 (folio 053/054) stating that I had no contractual relationship with them'*.[23]

The Arbiter points out that the matter complained of is the redemption fee charged on the CIG investment platform.

It is considered that the date on which the Complainant first had knowledge of the matters complained of is a different one to those indicated by both parties to the Complaint. This is for the following reasons:

a) The date of signature of the CIG application form (which form included an annex containing details of the disputed fee), does not provide sufficient comfort and evidence of knowledge (for the purposes of Article 21(1)(c) of the Act), by the Complainant of the disputed fee in the particular circumstances of this case. Consideration is made in this regard of the following:

   - Whilst the Tariff Schedule annexed to the CIG platform Application Form *inter alia* outlined a *'Redemption Penalty'* of *'5% reducing at 0.19% per*

[21] P. 123 - 124
[22] P. 2
[23] P. 176

quarter (based on portfolio value)',[24] the said fee was, however, not reflected in the Retirement Scheme's Plan Schedule, which summarised and listed not just STM fees but also other fees, including of CIG.

It is noted that the Scheme's Plan Schedule included a section dealing with *'Fees and Charges that you will incur, or which are paid by STM Malta from its fees'*.[25] In the said section, STM listed its own *'Termination fee payable to STM'*. Despite outlining other fees payable to CIG, like the *'Ongoing Service Fee: 1% p.a. for 5 years'*, it somehow did not list the material exit fee of CIG.[26]

- Consideration is also taken of the Complainant's final submissions, where he *inter alia* stated that *'it was my belief and understanding that the Tariff Schedule was something applicable only to my financial advisor'*.[27] Whilst such a statement may be questionable, however, in the circumstances of the case, the Arbiter cannot place much comfort on the date of the CIG application form for the purposes of Article 21(1)(c) of the Act when also taking into account the lack of disclosure of the disputed CIG fee in the Scheme's Plan Schedule as outlined above.

b) The Arbiter considers that the first clear and adequate evidence of the Complainant's awareness of the disputed redemption fee rather emerges from the email of 2 August 2023. In the said email that the Complainant sent to CIG, the Complainant *inter alia* stated:

'… the purpose of the credit redemption account <u>has only become evident to me this week</u>, accidentally, during a Google search'.[28]

It is also noted that the exchanges the Complainant eventually had with his investment advisor - namely, the email of 28 February 2024 as well as the email of 17 May 2024 - further corroborate the Complainant's awareness and knowledge of the matters complained of at the time. The email of 28 February 2024, sent to him by his advisor, referred to the surrender penalty and provided a calculation and details of the effect of the charge on the

[24] P. 95
[25] P. 42
[26] *Ibid.*
[27] P. 175
[28] P. 56 – Emphasis added by the Arbiter; P. 53-60 also refer.

surrender value.[29] In the spreadsheet attached to his email of 17 May 2024, the Complainant himself reflected a charge of *'GBP 12,680'* as *'Cash Redemption Credit'* in his calculations of the available surrender value.[30] Hence, whilst the Complainant may have misunderstood the applicable fees at the time of the signing of the respective application forms and receipt of the schedules, it is clear that during 2023 the Complainant had awareness of the matters complained of.

Given that the formal complaint made with STM regarding the application of the redemption fee was filed in July 2024,[31] the Arbiter considers that two years had not elapsed from the day on which the Complainant first had knowledge of the matters complained of.

For the reasons mentioned, the Arbiter refutes the Service Provider's claim that the Complaint is time-barred pursuant to Article 21(1)(c) and shall proceed to consider the merits of the case next.

The Merits of the Case

The Arbiter will decide the Complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.[32]

The Arbiter is considering all pleas raised relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555[33] which stipulates that he should deal with complaints in '*an economical and expeditious manner'.*

Background about the structure

The Complainant, a British national born in XXX, based in XXX, and a self-employed XXX, applied to become a member of the Retirement Scheme through an application form dated 3 May 2022.[34]

[29] P. 158
[30] P. 163
[31] P. 7
[32] Cap. 555, Art. 19(3)(b)
[33] Art. 19(3)(d)
[34] P. 74 - 88

He was accepted by STM as a member of the Retirement Scheme on 15 June 2022, with a transfer value of GBP 331,367.29.[35] The Scheme's assets were invested into a portfolio of investments.

The execution, administration and custody of the Scheme's investments were undertaken through an investment platform offered by the *Capital International Group* ('CIG').[36] The platform, presumably chosen on the advice of the Complainant's investment advisor *DTB Wealth Management*, was to provide the investment dealing services as per the platform's Product Application Form.[37] The platform services involved *'Full Nominee, Execution Only services'* as also outlined in the letter dated 4 July 2022 issued by CIG to STM as trustee in respect of the Complainant's Retirement Scheme.[38]

The CIG platform Application Form dated May 2022 is signed by STM, in its capacity as trustee, and also bears the *'Docusign'* signature of the Complainant.[39] It also bears the signature of the Complainant's investment advisor.[40]

Surrender and related exchange of communications

The Complainant requested STM, during 2024, to exit his Retirement Scheme as he needed money to finance his *'main residence property purchase in France'*.[41]

It is noted that in its letter dated 3 July 2024 relating to the Complainant's *'request for the Capital International policy to be encashed'*,[42] STM stated *'Capital International Surrender Charge To be Calculated'*.[43]

A subsequent letter dated 18 July 2024, on the same subject matter STM specified *'Capital International Surrender Charge £12,275.18 As at 9th July Estimate'*.[44]

[35] P. 37, 42 & 134
[36] https://www.capital-iom.com/platform
[37] P. 89 - 96
[38] P. 133
[39] P. 93
[40] P. 92
[41] P. 8
[42] The product offered by *Capital International* was an investment platform and not a policy as described earlier in this decision.
[43] P. 129
[44] P. 130

During July 2024, a series of email exchanges occurred between the Complainant and STM. The following are particularly noted:

- Email dated 11 July 2024 where the Complainant raised his formal complaint with STM relating to the surrender charge;[45]
- Email dated 19 July 2024, from STM to the Complainant, where STM indicated that they *'are still in active communication with Mr Daniel Butcher concerning the matter'*, referring also the Complainant to the CIG application form he had signed in May 2022.[46]
- Email dated 22 July 2024 by the Complainant to STM, where the Complainant raised various issues apart from again disputing the CIG redemption fee;[47]
- Email from STM to the Complainant dated 24 July 2024 where STM *inter alia* noted: '*as we have previously informed you, you signed for a 5% redemption penalty, as evidenced in the … application form dated 3rd May 2022 … the terms were clearly communicated and agreed upon, there is nothing further we can do in this matter …'*;[48]
- Email dated 26 July 2024 sent by the Complainant to STM further contesting the CIG's surrender charge.[49]

It is noted that in a later letter dated 9 September 2024, relating to *the 'request for flexible access to [the Complainant's] pension'*, STM omitted reference to the *Capital International Surrender Charge* and just stated the following:

> *'We have received your request for flexible access to your pension. Please be advised of the additional costs associated with the transfer.*
>
> *STM Malta Exit charge £ 2000*
>
> *Estimated amount to be received from Investment House as at 6th September 2024 £326,776.30*

[45] P. 7
[46] P. 21 - 22
[47] P. 19 - 21
[48] P. 18 - 19
[49] P. 13 - 18

The above charges are not limited, and any outstanding fees we are due are deducted before the payment.

Additional third-party charges, including bank charges, may apply' [50]

The above letter of 9 September 2024 seems to have followed an email bearing the same date sent by the Complainant to STM, where the *Complainant inter alia* requested:

'A revised full flexi access letter, stating the amounts as follow[s];

STM Malta Exit charge - £2,000.

Portfolio Cash of £326,776.30 as at 6 September 2024.

There should not be a 'Capital International Surrender charge' as there is no contractual relationship between myself and Capital International Group (CIG), as indicated in the letter from CIG to STM Malta of 4 July 2022, and confirmed by Mr Neil Campbell, Investment Operations Director in his email of 7 August 2023 (attached for reference). There is no legal basis for STM Malta to withhold any other exit charges from the payment to me.

According to the details of my portfolio on the CIG portal, the cash value stands at £326,776.30 as at 6 September 2024.

Please arrange to process this without further delay.'[51]

In an email to STM dated 3 October 2024, the Complainant complained that *'… the full amount as stated on the transfer form has not been transferred, an amount of approximately £11,864 has been retained. I presume this to be from the disputed Redemption Credit Account (RCA)'*.[52]

Background regarding the signature on the CIG Application Form

It is noted that in an email of 2 August 2023 sent to the customer service of CIG, the Complainant *inter alia* pointed out that:

[50] P. 28
[51] P. 138
[52] P. 132

'I completed an application form and signed it via DocuSign, along with various other documents sent to me by my IFA, on 3 May 2022. I attached that original application form and DocuSign certificate.

You will note that the version of the application form that you uploaded today on my CIG portal is different. That version purports to be with the DocuSign Envelope ID ending EBFE of 3 May 2022, but is in fact a photocopy of that original with:

…

(c) the copy on the CIG portal does not contain the full application form that was signed by me via Docusign on 3 May 2022 – the 'Dealing Services (CIG – 3.5) Tariff Schedule – May 2018' was not included, nor was the Dealing Instructions form with the selection of four funds and 5% cash included'.[53]

In a later email dated 3 August 2023, sent to CIG, the Complainant noted:

'[CIG's] response seems to imply that I have no 'terms of business' relationship with Capital International Group, but I dispute this given that:

(a) I signed an application form PAF3 for Dealing Services on 3 May 2022 as 'first applicant', and James has uploaded a copy of that on my CIG portal account'

(b) I have access to my QROPS portfolio via the CIG Portal …'.[54]

During the cross-examination held at the hearing of 16 June 2025, the Complainant *inter alia* stated:

'Asked to confirm that I had signed the Tariff Schedule on 3 May 2022 together with the CIG application form which provide clearly for an early redemption penalty, I say that I confirm that my signature was applied to that document as an annex to the whole of the application form.

Asked to confirm that I even signed the Tariff Schedule with the exit penalty which bears my electronic signature, I say that there is my electronic

[53] P. 55
[54] P. 54

signature at the bottom of that document which was appended to several pages afterwards to the main application'.[55]

The following is also particularly noted from the notes of the same hearing relating to the disputed CIG's redemption fee and his signature on the CIG's application form:

'The Arbiter would like to know whether [the Complainant] knew about it and his signature is there with his full authority or whether his signature was added without his authority.

The Arbiter asks [the Complainant] what his position is on this issue.

[The Complainant] replies:

My position is that my signature on this schedule, was a signature which was on an appendix to the contract which had also been signed by my financial advisor, and was subsequently signed after I digitally signed it by STM Malta. But I would point out that the page which has my digital signature on, unlike all the other sections of the form, does not have a clear declaration as to what it was that I was actually signing for.

If you look at the previous sections on the form, section 9, there are very clear statements listed as to what is I am signing for.

But that schedule of charges from CIG were simply added after two blank pages.

On the last page of the application form of CIG (page 93 of the process), PAF 3 Dealing Services, Section 9 – Declaration & Signatures, where there are the signatures of all applicants at the bottom and there is a list of items, 'I/We understand', etc.

The Arbiter states that the most important document in this issue is the Tariff Schedule. The Arbiter asks again whether the signature was there with prior knowledge of [the Complainant] or it was added as he explained in the complaint that it was added there without his knowledge.

[55] P. 143

> *[The Complainant] replies:*
>
> *I accept that my signature is on that document but what I said in my latest submission that in any case, in the letter of 9 September 2024, whether or not I knew about those charges, I had sought to have those removed from my final …*
>
> *I am not disputing that the signature on this document is mine and like the other signatures on other documents. What I am saying is that there was no clear statement, a declaration assigned to the signature'.*[56]

The signature featured on the CIG form is thus not being disputed by the Complainant, who rather questioned the format and validity of CIG's application form.

Revisions to the basis of the Complaint

It is noted that during the hearing of 16 June 2025, the Complainant shifted the basis of his complaint.

He explained that he deemed STM Malta's letter of 9 September 2024 outlined above (which omitted reference to the CIG surrender charge previously included), as *'the final offer for my pension'*.[57] The Complainant considered the revised letter of 9 September 2024 as being *'in accordance with the pension contract'* and was *'not disputing'* the said letter.[58]

During his testimony, he submitted that STM's letter of 9th September 2024, was:

> *'… the final basis on which I signed the liquidation as a pension and that was the amount that I was expecting to receive. But the amount that I finally received was over £12,000 less than that'*.[59]

The Complainant further added the following during the said hearing:

> *'STM Malta are arguing that I knew about [the disputed fee] back in 2022 or 2023 and in my last submission, I have given a lot of detail about that but*

[56] P. 145
[57] P. 142
[58] *Ibid.*
[59] *Ibid.*

I would argue that, for the sake of simplicity, whether or not I knew about that is irrelevant in terms of the 9 September document because that was to me the result of negotiations both with my financial advisor and STM Malta, and as a result of a formal complaint that I had already made to STM Malta in July, so that was a document on which I signed the liquidation of the pension. And that clearly stated the amount and that was obviously revised as a result of the various emails that have been exchanged between early July and 9 September'.[60]

Conclusion

The Complainant is requesting that the charge applied by CIG on its investment platform be reimbursed to him by STM, as the trustee and retirement scheme administrator of his Retirement Scheme. For such a request to be accepted, the Arbiter has to find STM responsible, in part or in full, for the damages that the Complainant has suffered (in this case, the platform's disputed redemption fee).

The Arbiter understands and sympathises with the Complainant in view of the hefty redemption penalty that was applied on the chosen investment platform within a relatively short period of time following the change in his personal circumstances, where he wanted to redeem his pension plan to finance his house purchase.

However, **the Arbiter finds no adequate and justifiable basis on which STM can be held responsible, fully or partially, for the fees incurred on the investment platform in the particular circumstances of this case**. This is primarily for the following reasons:

(i) Claim that the Complainant was not fully aware of all the charges, as no mention was made of the disputed fee in the contract with his financial advisor or STM

This is not considered a valid basis for the claimed compensation, given that the details of CIG's redemption fee were ultimately reflected in the duly completed CIG's Application Form of May 2022, which reflected the Complainant's signature.

[60] *Ibid.*

The Complainant's awareness of the existence of the CIG's Application Form and the Tariff Schedule further emerges from the testimony provided by the Complainant during his hearing of 16 June 2025, as outlined earlier in this decision.

STM was reasonably justified to rely on a valid signature of the Complainant as evidence of his awareness and acceptance of the CIG's Application Form and the applicable Tariff Schedule.[61] This is also in the context where the CIG platform was completed and additionally signed by the Complainant's financial adviser, who had confirmed to *'have discussed the risks and suitability of this investment with my client within their overall investment portfolio'*.[62]

Once the form had the relevant signatures, STM's obligation - as part of its trustee's monitoring and *bonus pater familia*'s function with respect to fees - was limited to ensuring that the charged fee was in line with the signed contract of the investment platform.

Whilst STM failed to outline the CGI's redemption fee in its Plan Schedule,[63] however, the Arbiter is not convinced that such omission was the cause of the Complainant's claim. The fact that the Complainant claimed he misunderstood or had a different belief and understanding of the Tariff Schedule cannot be reasonably attributed to the trustee, considering the particular circumstances of this case.

It is noted that during the hearing of 1 July 2025, the Complainant's investment adviser testified about the Complainant's awareness of the CIG redemption fee.[64]

During the adviser's testimony, reference was also made to the discussions held between the adviser and the Complainant in February 2024 regarding the redemption of the Complainant's pension.

[61] P. 93 & 95
[62] P. 92
[63] P. 42
[64] P. 147 - 152

The adviser testified that at the time, *'a further detailed breakdown of what the full redemption would cost was put up front, and didn't seem to cause any problem at that stage …'*.[65]

During the same sitting, the adviser also confirmed receipt of a document that was done and sent by the Complainant later in May 2024, reflecting the Complainant's own calculations of the redemption amount, inclusive of the disputed early redemption penalty.[66] A copy of the Complainant's email dated 17 May 2024, including the attachment, was later produced during the proceedings of the case.[67] It is noted that the said email clearly highlights the Complainant's awareness and understanding of the CIG's exit fee. No concerns or objections with respect to the redemption fee were raised by the Complainant at the time in his email of 17 May.

It is further noted that during the said sitting of 1 July 2025, the Complainant chose not to cross-examine his financial adviser, instead shifting the basis of his complaint to the contents of STM's letter dated 9 September 2024. The minutes of the sitting state that:

> *'[The Complainant] does not wish to ask any questions of Mr Butcher because, as far as he is concerned, all these things happened before the 9th of September'.*[68]

The Complainant accordingly did not pursue further the claim raised regarding his lack of awareness of the fees.

The matters raised with respect to STM's letter of September 2024 shall be considered in detail further on in this decision.

(ii) Claim he should not have been charged as he has no contractual relationship with CIG

This claim is not justified in light of the duly completed and signed CIG Application Form, signed by the relevant parties.[69]

[65] P. 149
[66] P. 151 & 152
[67] P. 163 - 165
[68] P. 152
[69] P. 92, 93 & 95

It is noted that even the Complainant had at one point himself acknowledged his relationship with CIG, where in his email of 3 August 2023 he stated:

> *'James' response seems to imply that I have no 'terms of business' relationship with Capital International Group. But I dispute this given that;*
>
> *(a) I signed an application form PAF3 for Dealing Services on 3 May 2022 as 'first applicant', and James has uploaded a copy of that on my CIG portal account'.*[70]

The fact that CIG had contracted with STM in its capacity as trustee on behalf of the Complainant's Retirement Scheme,[71] does not invalidate the application of the disputed fee. In view of the Retirement Scheme involving a trust structure, the contract in respect of the investment platform had to be entered into with the trustee and not directly with the Complainant. There is accordingly no legal basis on which the Complainant can claim that he should not be charged as he was not a party to such an agreement.

(iii) Claim that the retention of the redemption penalty was not in line with the pension contract

The correct calculation of the CIG redemption penalty is not in dispute. The said penalty was applied and charged by CIG (and not STM) in line with CIG's Terms of Business. The Tariff Schedule formed part of the said Terms of Business as provided for in the disclaimer section of the same Schedule.[72]

It is furthermore noted that during the proceedings of the case, the Complainant adjusted and shifted the basis of his Complaint by claiming that he should be paid the requested redemption penalty, of over GBP 12,000, given that this was not reflected in STM's *'final offer'* of 9 September 2024.

In his final submissions, he *inter alia* stated that:

[70] P. 54
[71] P. 90
[72] P. 95

> *'My understanding and intention was that STM would pay me the £326,773.30 less the £2,000 STM Malta exit charge, a few minor bank charges, interest payments and the relevant monthly CIG charges.*
>
> *STM Malta has made **two earlier offers** that explicitly included a surrender charge, either as an amount to be calculated or as an estimated amount. The **final version** of STM Malta's offer to cash in my pension **omitted any reference** to a surrender charge.*
>
> *I relied on this final version of 9 September 2024 in good faith, understanding that the surrender charge had been withdrawn, as its omission was significant given that it had been included in previous drafts. Under Articles 966-981 of the Civil Code of Malta (on interpretation of contracts), the final agreed wording between the parties prevails, and my email forms part of that wording, STM not having objected to it'.*[73]

It is noted that during the hearing of 1 July 2025, under cross-examination, the Service Provider explained that:

> *'Asked why there was a Capital International Surrender Charge estimate included in the letter of the 18th of July, and why was that same figure, which was an estimate, not included in the final letter of the 9th of September, I say that it was not included in the letter of the 9th of September because it was constantly changing, so the figures were not relevant, they were not good enough. That's why on the same letter it specifically says that 'Additional third-party charges, including bank charges, may apply'.*[74]

The Arbiter considers that the reason provided by the Service Provider for first including a reference to the CIG surrender charge in its letters of 3 July 2024 and 18 July 2024,[75] only for this to be completely excluded (without any qualification) in its letter of 9 September 2024, is not really justifiable.

[73] P. 177 – Emphasis added by the Complainant.
[74] P. 155
[75] P. 129 & 130

The Service Provider's actions in this regard (in omitting reference to the surrender charge and remaining silent), were not proper and did not reflect the transparency expected from the trustee. STM as trustee and RSA of the Scheme should have clearly qualified its communication of 9 September 2024 that the indicated *'estimated amount'* was gross of any redemption fee to be applied by CIG.[76]

This is also when considering the materiality of the CIG's exit fee, the various exchanges which had already taken place between the parties regarding the same matter as outlined above, and also in light of the Complainant's email of 9 September 2024.[77]

However, the Arbiter notes that, at the time of the said September communication, the Complainant was clearly aware of the application of CIG's exit fee. The mere exclusion of a specific reference to such a fee in STM's letter of 9 September 2024, did not and could not provide legal certainty and reasonable assurance that the disputed CIG fee would be waived or refunded.

The Arbiter notes that the said letter:

- explained that the amount indicated was *'estimated'*.
- stated that *'any fees we are due are deducted before the payment'*. It is reasonable to assume that such fees would include the redemption charge deducted by CIG.
- included reference to third-party charges that may apply.

In light of the communications exchanged previously in July 2024 where STM had already outlined its position on such fee, it is considered that the mere fact that STM remained silent on the matter, without specifically confirming the deduction of the disputed fee, does not justify or form a valid basis for the claimed compensation. Given previous correspondence, it is logical to expect that any waiver or refund of such fee would be subject to a direct and specific confirmation.

[76] P. 126
[77] P. 138

STM's actions, at most, can be attributed to poor communication and a certain lack of professionalism but, in the circumstances, cannot be considered as being the causal or contributory factor of the Complainant's claimed damages of the redemption fee charged by CIG.

The Arbiter is convinced, taking into consideration all evidence provided, that even if the letter of 9 September 2024 included the fee deduction, the Complainant, determined to cash out to finance his other commitments would have proceeded nonetheless, so much so, that he disregarded advice for partial redemption which would have avoided redemption fees.[78]

Decision

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

Given that the Arbiter has dismissed the Service Provider's preliminary plea and certain deficiencies as outlined above, 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

[78] P. 149

article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

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