Before the Arbiter for Financial Services

Case ASF 183/2025

TQ

('the Complainant')

vs

STM Malta Pension Services Limited

(C 51028) ('STM' or 'the Service Provider')

Sitting of 31 December 2025

The Arbiter,

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

In summary, the Complaint relates to the alleged failures in STM's duty of care and regulatory obligations as trustee and RSA of the Scheme, given the transfer that was allowed of his previous pensions into the Retirement Scheme and the investments that were subsequently permitted to be undertaken within the Retirement Scheme, which, he claimed, were not in his best interests and were unsuitable for him.

As to the underlying investments undertaken within his Retirement Scheme, the Complainant particularly mentioned the investment in the *Dolphin Loan Note*, into which circa half of his pension was allowed to be invested. He claimed that this investment was an unregulated, high-risk, illiquid complex fund that was not reflective of his attitude to risk (of low to medium) and his investor profile (an

inexperienced and unsophisticated retail investor with no real capacity for loss, having no other assets to rely on for retirement). He also claimed that this investment was not in line with the diversification, prudence and liquidity requirements specified in the pension regulations.

The Complaint[1]

The Complainant accused STM of: (a) failing to perform due diligence (b) permitting high-risk, illiquid investments unsuitable for his profile (c) not acting in his best interests (d) neglecting fiduciary and regulatory duties.

He explained that he had a Defined Benefit pension with *Pearson Group* valued at GBP 90,656 on 6 August 2014, and with *Merlin Entertainment Group* valued at GBP 79,722 on 1 September 2014, when these were transferred to STM.

The Complainant noted that his funds were subsequently invested in various investments, some of which have now failed, resulting in a loss of the invested money. He held STM responsible for these losses and claimed that STM:

a) Failed to operate to the standards expected of a regulated SIPP provider and a professional trustee, with such failure directly leading to his losses;

b) Failed to conduct its business with due skill and care.

c) Failed to pay regard to his best interests and to treat him fairly.

He further claimed that STM failed to assess his investment knowledge and attitude to risk properly.

The Complainant submitted that he had a modest income and no real assets other than the family home. The transferred pensions were defined benefit schemes. He explained that these were very valuable, providing a guaranteed index-linked income for life in retirement, including a spousal benefit. He further alleged that had STM complied with its duties and made attempts to assess his personal circumstances, it would have realised that he was not suitable to make this investment.

[1] Complaint Form on P. 1 - 8 with extensive supporting documentation on P. 9 - 95

The Complainant further submitted that no adequate due diligence was undertaken, otherwise STM would not have allowed the transfer of funds into the investments. He submitted that in the case where due diligence was undertaken, STM failed to act on it with due skill and care and continued to allow the investments to take place, despite its total unsuitability.

The Complainant submitted that he was neither an experienced investor nor a high-net-worth investor and that STM should have realised the investments were high risk and refused to allow them or at least obtain appropriate clarification before proceedings. He claimed that there is no evidence that this was carried out, and he believed that this resulted in the loss of his pension.

He submitted that, furthermore, STM knew that there was a significant risk that the investment would be illiquid and should also have taken into consideration what was fair, reasonable and good industry practice. He claimed that throughout the transaction, STM did not consider his best interests and failed to meet its regulatory obligations.

The Complainant claimed that STM failed to undertake due diligence on investments and act according to the standards expected of a regulated SIPP operator given that SIPP providers have the discretion to refuse to carry out instructions should they consider an investment is generally not suitable to be held in a SIPP. He claimed that the promotion of this type of fund was banned by the FCA or former authority in 2013, effective from January 2014.

The Complainant referenced cases (ASF 108/2021 and ASF 139/2021) filed before the Arbiter as a precedent for STM's failure to perform due diligence; permitting high-risk illiquid investments unsuitable for risk profiles; not acting in the best interest of the client and neglecting fiduciary and regulatory duties.

As to the reasons why his financial services provider let him down, he explained that in 2014, he received a cold call from *Portia Financial* (a trading name of *Hudson Clark*). The nature of the call was to offer a free pension review. He noted that he was caught off guard but was at a point in his life when he had started considering his retirement planning and therefore engaged in a free review. He now understands that *Hudson Clark* is in administration. The Complainant explained that the initial meeting was with a *Portia* representative, who claimed to be a financial adviser. This adviser was promoting the *Dolphin*

Loan investment and subsequently recommended transferring his pensions into a Qualifying Recognised Overseas Pension Scheme (QROPS) with *Harbour Pensions Malta*. He was led to believe this would be to his advantage and that, essentially, it was something that many people were doing. The recommended action was to split his investment between a *JP Morgan* and *Jupiter* investment fund, as well as a real estate investment based in Germany with *Dolphin Capital GmbH*. These investments were to be held with *SEB Life International*. The Complainant pointed out that the mention of *JP Morgan* gave him confidence that this was a credible investment.

The Complainant also explained that he was told that he would receive 10.2% per annum guaranteed and that his money would be invested in a 5-year bond, with the potential to roll the investment into another similar bond thereafter.

He highlighted the importance of his lack of investment experience and that the pensions he transferred were his entire retirement plans, with no other assets to call upon besides his family home, which still has a mortgage.

The Complainant noted that the paperwork and advice letter name the adviser as *Geoff Whelan*. He claimed that he never met him despite that the paperwork and suitability letter clearly show his name and his company, *Servatus*, as the advice provider. The Complainant explained that the adviser was based in Ireland and regulated by the Central Bank of Ireland. He noted that the adviser subsequently ceased trading and closed his business.

He reiterated that the pensions which were transferred to *Harbour Pensions* were both final salary schemes. Since transferring these pensions, he had no review of the investments or contact of any form. He was alarmed to find out that the pensions he transferred were defined-benefit, final-salary-type schemes. The Complainant claimed that the advice provided to him was that the old pensions were *'frozen and not working for me'*, so he should move them somewhere more productive. He has now come to realise that these plans would have been hugely valuable to him, providing him with a guaranteed index-linked income for life in retirement, together with a spousal benefit for his wife.

The Complainant noted that he now also understands that he is in an overseas pension that carries significant investment risk and is not protected by the Financial Services Compensation Scheme. He pointed out that the fact-find that

was carried in his regard illustrates no further assets for him to rely upon in retirement.

The Complainant noted that following further investigation, it became apparent that 50% of his pension scheme was placed into *Dolphin Capital GmbH*. At the time he was advised that this was a *'very good investment'*. He explained that, having no previous investment experience, he was happy to be guided and trusted that his best interests were at the heart of these plans.

The Complainant claimed he was told the property bond would deliver 10.2% per annum guaranteed. He submitted that it has now come to light that the Dolphin investment is an unregulated fund that has not paid any of the interest payments and is now illiquid and in administration with him losing half of his valuable pension savings.

He submitted that he cannot understand how someone with no investment experience or any real capacity for loss could have been recommended to invest in an unregulated fund. The Complainant claimed that this was clearly a high-risk investment and far outside to his attitude to risk.

The Complainant further submitted that the fact that these investments do not meet his requirements clearly shows that *Harbour Pensions* failed to act in his best interests or that it completed thorough due diligence on the proposed *Dolphin* investment. He claimed that he was moved from pensions that were safe and guaranteed into something high-risk, and that these were his life savings.

Reference was also made to his formal complaint to the Service Provider for further details.[2] In his concluding part of his formal complaint, he attested the following:

> *'I attest:*
>
> ***Duty of Care Upon Appointment:*** *While STM Malta was not the original trustee, under Article 30(3) of the Trusts and Trustees Act, it had a duty to identify and remedy any prior breaches of trust once aware of them.*

[2] P. 6 & 10 - 16

Unsuitability of Investments: *The Dolphin Capital investment, which comprised circa 50% of the portfolio, was illiquid, high-risk and subsequently defaulted was unsuitable for a retail investor like me.*

Regulatory Failures: *STM Malta failed to ensure diversification, prudence and liquidity as required by both pre- and post- 2015 pension regulations. It also failed to reassess or intervene on the questionable legacy investments.*

Investor Profile Misalignment: I had limited investment knowledge and was not a qualifying investor for such complex, risky products'.[3]

Remedy requested

The Complainant requested STM to pay compensation of GBP 82,820 with interest at 8% since 6 August 2014, together with compensation of GBP 1,000 for the stress and aggravation caused, apart from professional fees incurred in respect of his Complaint.[4]

Having considered in its entirety the Service Provider's reply, including attachments,[5]

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

Objection on the Grounds of Time-Barring

1. *That the Complaint is inadmissible pursuant to articles 21(1)(b) and 21(1)(c) of Cap. 555 of the Laws of Malta.*

   STM submitted that the Complaint was filed with the Arbiter on 14 August 2025, following a formal complaint made with STM on 10 June 2025, to which STM replied on the 18 June 2025.[6]

   It noted that documentary evidence, however, shows that the Complainant was already aware of the losses giving rise to the Complaint as early as 13 July 2021, when a 2020 valuation, reflecting a 'nil' balance for the *Dolphin Capital Investment*, was sent to his email address (as per Annex 1A, 1B and

[3] P. 15 - 16
[4] P. 6
[5] Reply of 29 August 2025, on P. 101 - 105 with attachments on p. 107 - 182
[6] P. 10 & 17-19

1C to its reply).[7] STM submitted that despite this, the Complainant failed to raise any concerns or submit a formal complaint until nearly four (4) years later.

It further noted that on page 2 of his Complaint, the Complainant stated that he first became aware of the matter giving rise to the Complaint on 1 April 2020.

(i) *STM claimed that the Complaint is time-barred in terms of article 21(1)(b) of Cap. 555.*

STM submitted that the law clearly stipulates that where a complaint concerns the conduct of a financial services provider occurring before the entry into force of the Act, it must have been lodged no later than two years from the date the law came into force – that is, by 18 April 2018.

It submitted that the Complainant's own documentation confirms that the events giving rise to key allegations occurred well before this cut-off date:

- The application to become a member of the Retirement Scheme was signed on 25 April 2014 (as per Annex 2 to its reply);[8] and moreover
- The investment into the Dolphin Loan Note (in the amount of GBP 82,820) was executed on 25 April 2014 (as per Annex 3 to its reply).[9]

The Service Provider claimed that the allegations being raised clearly refer to the initial onboarding and investment process, both of which fall within 2014. It pointed out that the Complaint was not filed with the Arbiter until 14 August 2025.

STM therefore submits that the Arbiter must uphold its plea that these elements of the Complaint are time-barred and decline jurisdiction over those aspects in line with article 21(1)(b) of Cap. 555.

[7] P. 107 - 117
[8] P. 118
[9] P. 134 - 135

(ii) *STM claimed that in terms of article 21(1)(c) of Cap. 555, this statutory timeframe was clearly exceeded in the present case.'*

STM referred to the Arbiter's reasoning in ASF 030/2024 where the Arbiter held:

> *"… In the particular circumstances of this case and for the reasons mentioned, the Arbiter accordingly concludes that the complaint was registered in writing with the financial services provider later than two years from the day on which the Complainant first had knowledge of the matters complained of:*
>
> *The Arbiter is accordingly accepting the Service Provider's plea made in terms of article 21(1)(c) of the Act, that he has no competence to hear this Complaint."*

STM submitted that as noted above, the Complainant did receive loss-related information and was in possession of a 'nil' valuation for the Dolphin investment in July 2021. Nevertheless, he only made a formal complaint to STM in June 2025 and proceeded to file with the Arbiter in August 2025. STM submitted that this delay clearly exceeds the statutory timeframe set out in article 21(1)(c) of Cap. 555.

It further submitted that the Complaint mirrors that of case ASF 030/2024 in both factual chronology and legal substance. STM accordingly deems that the same legal interpretation should be applied, and the Complaint is declared inadmissible.

2. *Background and Appointment of STM*

STM explained that the Complainant's investment into the Dolphin Capital Loan notes was executed in 2014, based on investment advice provided by Geoff Whelan of *Servatus Wealth Management*, a firm regulated by the Central Bank of Ireland. It was pointed out that the Retirement Scheme Administrator ('RSA') and trustee at the time was *Harbour Pensions Limited*.

The Service Provider submitted that it was in no way ever involved in the execution, structuring or recommendation of this investment. STM was

formally appointed as trustee and RSA on 31 August 2018 by virtue of a deed of retirement and appointment. It noted that by the time it assumed its role, the Dolphin Capital investment had already been in place for several years.

3. *Role of the Financial Advisor and non-advisory status of STM*

STM noted that on page 5 of his Complaint, the Complainant states that he never met Mr Whelan, who acted as his appointed financial adviser. It noted that nevertheless, the Pension Review Report (Annex 4 to its reply),[10] dated and signed by the Complainant on 25 April 2014, clearly identifies Mr Whelan as the adviser responsible for providing investment advice in relation to the proposed pension arrangement structure and underlying investments.

STM submitted that the above-mentioned report, clearly demonstrates that it had no involvement in the design, recommendation or approval of the portfolio, which included the Dolphin Capital Investment. It again noted that the investment was made in 2014, prior to STM's appointment in 2018, as trustee and RSA.

It highlighted that it is equally important to reiterate that it is not authorised to provide investment or financial advice and cannot be held responsible for the actions or advice of independent, regulated third-party advisers. STM noted that this position is expressly stated in the governing Trust Deed, where clause 5.4 of the Trust Deed (2013) and clause 5.5 (2016) provide:

> *"Further and for the avoidance of doubt, the Retirement Scheme Administrator shall not provide investment advice"*.[11]

STM submitted that it accordingly had no discretion or legal authority to challenge, assess or override the investment recommendations made by the Complainant's financial adviser. The Service Provider noted that it relied, entirely appropriately, and as required, on the professional advice and expertise provided by Mr Whelan, whose recommendation was

[10] P. 145
[11] P. 103

formally accepted by the Complainant through the signing of the Pension Review Report on 25 April 2014 (as per Annex 4 to its reply).[12]

4. *Oversight since its appointment*

STM submitted that upon its appointment as trustee and RSA in 2018, it:

(i) conducted a review of the Scheme's assets;

(ii) monitored the situation surrounding the Dolphin Capital insolvency; through the *GPG Creditors Association* and monitored the progress of the ongoing insolvency proceedings in Germany;

(iii) participated in creditor and legal discussions; and

(iv) kept members, including the Complainant, informed by issuing formal updates.

STM noted that it also issued a communication dated 30 July 2020 (as per Annex 5 to its reply),[13] advising members of the Dolphin Capital liquidation. Since then, STM ceased applying fees to the illiquid asset. It submitted that no discretionary actions or decisions taken by STM have contributed in any way to the Complainant's loss.

STM further noted that the Complainant acknowledges that *Harbour Pensions Limited* previously acted as trustee of the Scheme prior to STM's appointment. It submitted that since assuming the role of trustee and RSA, it has at all times acted with prudence, diligence and in good faith, in line with its fiduciary obligations under the Trusts and Trustees Act (Cap. 331 of the Laws of Malta), particularly article 21(1).

The Service Provider also noted that in terms of article 30(3) of the same Act, a trustee shall not be liable for breaches of trust committed prior to its appointment. It claimed that STM cannot be held responsible for any acts or omissions that occurred during the tenure of the previous trustee. STM further explained that upon becoming aware of the issues surrounding the

[12] P. 145
[13] P. 182

Dolphin investment, it took all reasonable steps within its remit to monitor developments, notify members and engage with relevant stakeholders.

5. *Relevance of the Arbiter's decision in ASF 030/2024*

STM brought to the Arbiter's attention, his recently decided case of ASF 030/2024 which it argued shares materially identical circumstances to the present Complaint.

It noted that in this case, the Arbiter also held that:

> *"… the complaint was registered in writing with the financial services provider later than two years from the day on which the Complainant first had knowledge of the matters complained of.*
>
> *The Arbiter is accordingly accepting the Service Provider's plea made in terms of Article 21(1)(c) of the Act, that he has no competence to hear this Complaint."*

STM remarked that in the present case, the Complainant received loss-related updates as early as July 2021, confirming a 'nil' value for the Dolphin investment. It submitted that despite this, no formal complaint was filed until June 2025, with a subsequent referral to the Arbiter made in August 2025. STM noted that the delay, spanning nearly four years from the date the Complainant first became aware of the loss, clearly exceeds the timeframe stipulated under article 21(1)(c) of Cap. 555.

In line with the Arbiter's reasoning in ASF 030/2024, STM submits that the present Complaint should be dismissed on the same legal grounds.

In addition, it remarked that article 30 of Cap. 555, empowers the Arbiter to consider complaints together where they are based on materially similar facts and circumstances.

The Service Provider accordingly submitted that given the Complaint mirrors the case mentioned above in terms of legal arguments, factual chronology and investment context, it respectfully invites the Arbiter to apply a consistent interpretation of the law and to resolve this matter in the same manner and on the same legal basis as ASF 030/2024.

6. *Reservation of Rights*

STM reserved the right to:

(i) Submit further documentation or oral evidence as may be required; and

(ii) Respond on the merits should the Arbiter determine that the Complaint is admissible despite the time-bar.

7. *STM's Concluding remarks in its reply*

STM accordingly respectfully requested that:

(i) The Complaint be declared inadmissible under articles 21(1)(b) and 21(1)(c) of Cap. 555 of the Laws of Malta, and that in terms of article 30 of the same Act, the Arbiter applies a consistent legal interpretation and treatment to that adopted in ASF 030/2024, given the intrinsic similarity of the complaints;

(ii) The Complaint be dismissed in its entirety, without entering into its merits; and

(iii) All demands made by the Complainant be rejected, with costs borne by the Complainant.

STM noted that it remains at the Arbiter's disposal should any further clarification or documentation be required.

Having heard the parties and seen all the documents and submissions made,

Further Considers:

Preliminary Pleas

In its reply of August 2025, the Service Provider raised the preliminary plea that the Arbiter has no competence to hear this Complaint based on Article 21(1)(b) and Article 21(1)(c) of Chapter 555 of the Laws of Malta ('the Act').

In its decree of 6 November 2025, the Arbiter referred to the pleas raised by the Service Provider regarding his competence and requested the Complainant to provide his written submissions specifically to these preliminary pleas for these to be considered first.[14]

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

In its submissions, the Service Provider referred to the date of the Complainant's application for membership into the Retirement Scheme of 25 April 2014 and the date of purchase, 25 April 2014, of the disputed investment (the Dolphin Capital Loan Note).[15]

In essence, STM submitted that the allegations raised by the Complainant relate to the initial onboarding and the Scheme's investment process, both occurring in 2014. It argued that the Complaint was only filed with the OAFS in August 2025, and thus well past 18 April 2018 deadline applicable in terms of Article 21(1)(b) of the Act.

On his part, the Complainant first generally submitted that he was disappointed by the Service Provider's *'… technical defence, particularly given the unique and complex jurisdictional nature of this case'*.[16]

He requested the Arbiter to consider his *'… detailed perspective, which demonstrates that [his] attempts to seek recourse have been continuous and that [his] 'knowledge' of the full extent of the loss and the correct jurisdiction falls well within the spirit of the time limitations, consistent with previous AFS rulings based on fairness and delayed discovery'*.[17]

With respect to STM's plea relating to Article 21(1)(b), he acknowledged that the investment was executed in 2014 but submitted that his complaint *'… relates to the Trustee's continuing conduct and fiduciary duty in the years following the investment, particularly after the takeover in 2018'*.[18]

The Complainant submitted that:

[14] P. 183 - 184
[15] p. 102
[16] P. 186
[17] *Ibid.*
[18] *Ibid.*

'● *The AFS has held in cases like ASF 074/2020 (E.P. v. Momentum) and ASF 026/2020 (O.T. v. Momentum) that where the disputed trustee conduct (retirement scheme administration) continued after 18 April 2016, the pre-Act bar could not apply.*

● *The Company states it was appointed in 2018 and immediately began monitoring the Dolphin Capital insolvency and communicating with members. This post-2018 conduct, relating to the administration and supervision of the illiquid asset, is within the scope of the Act, and my complaint encompasses a failure in their subsequent fiduciary duties and warnings as well'.*[19]

In addition, the Complainant also provided further explanation regarding the alleged failure of the Service Provider in its fiduciary duties since its appointment.[20]

The Arbiter observes the following:

Article 21(1)(b) stipulates that:

> '*An Arbiter shall have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider which occurred on or after the first of May 2004:*
>
> *Provided that a complaint about conduct which occurred before the entry into force of this Act shall be made by not later than two years from the date when this paragraph comes into force.*'

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

The key aspects and subject of this Complaint involve the Service Provider's conduct with respect to (i) the transfer of his previous pensions into the Retirement Scheme and (ii) a significant underlying investment (the Dolphin Capital Loan Note) permitted within the Scheme.

[19] P. 187
[20] P. 188 – Section 3 titled 'Provider's Role and Fiduciary Duty Since Appointment'

The Complaint with the OAFS was registered on 30 July 2025.[21]

The transfer from the Complainant's previous pension plans into the Retirement Scheme was done in 2014, clearly at a time before the coming into force of the Act.[22] This specific aspect is therefore considered to be now prescribed by virtue of Article 21(1)(b) of the Act.

The conduct complained of, however, involves another key aspect, namely the claimed unsuitable investment in the Dolphin Capital Loan Note.

As outlined in the Complainant's submissions quoted above, the Complaint involves STM's conduct with respect to this investment after taking over as the new trustee and RSA of the Scheme. It is noted that, as indicated in STM's reply to the Complainant's formal complaint of 10 June 2025, '*STM Malta were formally appointed as trustee and scheme administrator on 31 August 2018, following Harbour's retirement*'.[23]

Although the disputed investment was made in 2014, it still featured within the Complainant's Scheme when Article 21(1)(b) came into force. The Dolphin Capital Loan Note was, furthermore, placed *'in Administration 24.07.2020'* and thus after the coming into force of the Act. It also still featured in various STM's Yearly Statements, such as those as at 31 December 2023 and as at 31 December 2024, and thus post 2016.[24]

The Arbiter accordingly accepts the submissions made by the Complainant that the conduct complained of with respect to the said investment was continuing in nature as provided for under article 21(1)(d) of the Act. This aspect of the Complaint is therefore not considered to be prescribed in terms of article 21(1)(b), which is regarded as not to apply in this regard.

The Arbiter is only partially accepting the plea of time barring with reference to Article 21(1)(b), namely, in respect of the transfer of the Complainant's pensions into the Scheme, whilst dismissing such plea on the remaining aspect relating to the claimed unsuitability of the Dolphin Capital Loan Note.

[21] P. 1
[22] Statement from Harbour Pension dated 12/12/2014 indicating a transfer in of GBP 90,656.49 from Pearson Group Pension and of GBP 79,722.36 from Merlin in 2014 - P. 82
[23] P. 17
[24] P. 90-91 & 94-95

The Arbiter shall next proceed to consider the other plea raised by STM under Cap. 555 of the Act.

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

In its submissions of 29 August 2025, STM noted that the Complainant indicated the 1 April 2020 as the date when he first became aware of the matter giving rise to his Complaint. The Service Provider further pointed out that the Complainant had a valuation indicating a *'nil'* value in July 2021.[25] It noted that STM had also issued a communication dated 30 July 2020 notifying members about the liquidation proceedings relating to the Dolphin Capital.[26]

STM also referred to the Arbiter's decision in Case ASF 030/2024. It submitted that the same position should be adopted and the Complaint deemed to exceed the statutory timeframe set out in Article 21(1)(c), given that the complaint to STM was made in June 2025.

In his submissions, the Complainant *inter alia* explained that he *'… spent over five years navigating a complex international landscape, demonstrating that [his] delay in approaching the AFS was due to a lack of knowledge of the correct forum, not a lack of diligence'*.[27] He provided a timeline of the *'continuous due diligence and jurisdictional delay'*, submitting that the *'continuous pursuit of redress should be taken into account when assessing the fairness of applying the time-bar'*.[28]

In his timeline, the Complainant noted that in 2020 and 2021, he was pursuing a complaint against his adviser. At the time, he had contacted the Ombudsman in the UK and Ireland, with the Irish Financial Services Ombudsman only dismissing his case in January 2025. He also pointed out that whilst he did receive a valuation showing a *'nil'* value for the Dolphin Capital investment in July 2021, however, he had *'received contradictory information from STM Malta regarding potential future maturity'* and accordingly *'The true finality of loss was still unclear'*.[29]

[25] P. 268
[26] P. 182
[27] P. 187
[28] *Ibid.*
[29] *Ibid.*

In his submissions, the Complainant thus refuted that the July 2021 date indicated by STM was when he *'acquired full knowledge of the matter complained of'* for the following *'two key reasons'*:

> *'1. Contradictory Information from STM Malta: The Company's own representative created continuing uncertainty regarding the finality of the loss. In 2021, when I enquired about transferring the remaining sum, their reply stated they would retain five years' worth of fees (£5,455) because they* ***had 'no timeframe of when this will mature, if it will mature'****. This statement demonstrates that, even in 2021, the provider was uncertain whether the loss was total and final, which reasonably deferred my own conclusion that a complaint against the Trustee was both necessary and final. I submit that the two-year window should start from the finalization of the administration, not from an interim valuation that was contradicted by the possibility of future maturity.*
>
> *2. ASF 081/2021 Precedent (A.C. v STM Malta): The Arbiter has previously rejected a time-bar plea from STM Malta where an earlier statement was deemed insufficient to mark the date of full knowledge of the loss. Similarly, a 'nil' valuation for one asset in 2021, coupled with the provider's own hedging of maturity, did* ***not put me on notice*** *of the full, permanent issue or the need to immediately complain against the Trustee, given the ongoing jurisdictional confusion'*.[30]

In his submissions about the preliminary plea, the Complainant reiterated that:

> *'In view of the evidence demonstrating my ongoing efforts to seek resolution, the complex jurisdictional hurdles that repeatedly delayed my access to the correct forum, the specific evidence of continuing uncertainty of loss provided by the Company itself in 2021, and the established precedent for waiving prescription where fairness and delayed discovery demand it, I strongly urge the Arbiter to reject the provider's plea and allow my complaint to proceed on its full merits'*.[31]

[30] P. 186 - Emphasis made by the Complainant
[31] P. 188 - 189

The Arbiter observes the following:

Article 21(1)(c) stipulates that:

> *'An Arbiter shall also have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider occurring after the coming into force of this Act, if a complaint is registered in writing with the financial services provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.'*

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

In his Complaint Form to the OAFS, the Complainant indicated *'01/04/2020'* as the date when he first had knowledge of the matters he was complaining of.[32] It is noted that this reflects the date of *'March 2020'* indicated by the Complainant as to when he filed a complaint with his investment adviser.[33]

The matters complained of, for the purpose of this Complaint, is ultimately the loss experienced on the Dolphin Capital Loan Note. As compensation, the Complainant indeed requested the payment of *'GBP 82,820 with interest at 8% since 6 August 2014'*.[34] The figure of GBP 82,820 is the *'initial value'* invested in 2014 into the Dolphin Capital Loan Note (which roughly equates to 50% of his pension with this amount reflecting the advice received from Servatus at the time).[35]

In light of the submissions made by both parties, the Arbiter must decide when the Complainant first had knowledge of the loss of this investment. The information and documentation emerging in this particular case strongly support this having occurred by 2021 latest, given the following:

[32] P. 2
[33] P. 187
[34] P. 6
[35] P. 14; 66 – Transfer in his pension was of GBP 90,656.49 + GBP 79,722.36 = GBP 170,378.85 (P. 82), 50% of which equates to around GBP 85,000. It is noted that, as reflected in one of the SEB's Valuation Statement, the Complainant acquired 82,820.50 units in the Dolphin Capital Loan Note (P. 109).

- Apart from the fact that, as outlined earlier above, the year 2020 was indicated by the Complainant himself in his Complaint Form as to when he had knowledge, this time period also reflects the time when the disputed investment was placed into administration. The letter dated 30 July 2020 relating to such developments[36] as well as various statements which stipulated the investment being *'in Administration 24.07.2020'* refer.[37]

- Whilst the Complainant noted, *'I cannot locate the missing statements between 2018 and 2022'*,[38] he did not dispute receiving these statements. Both the statements as at end 2020, issued by SEB (the issuer of the policy underlying the Retirement Scheme) and STM's statement clearly indicated a zero value for this investment at the time.

  SEB's Policy Valuation dated 31 December 2020, indicates an *'Asset Value'* for the Dolphin Capital Loan Note of *'0.00 GBP'* with a Loss of *'-82,820.50 GBP'*, that is a *'-100.00%'* Loss, and having a *'Value in Policy Currency'* of *'0.00GBP'*.[39]

  The statement issued by STM as at 31 December 2020, similarly lists the Dolphin Capital Loan Note with an *'Asset Value in GBP'* of *'0.00'*.[40]

- It is further noted that evidence of awareness of the substantive loss on the Dolphin Capital Loan Note also emerges in communications sent by the Complainant's consultant/adviser to STM in 2021, to which the Complainant was in copy.

  In the email of 29 November 2021, it was noted that ***'Although it is unlikely a significant recovery will be made with the German Property fund**, I don't think giving up any rights to the illiquid assets is a good idea'*.[41]

[36] P. 182
[37] P. 91, 95 & 109
[38] P. 93
[39] P. 109
[40] P. 116
[41] P. 25 – Emphasis added by the Arbiter

In another email of 10 December 2021, it was also noted that '*If the client moves liquid assets away, **and all they have left is a suspended fund with a £0 balance**, they would still need to pay annual fees of £1,091 for the privilege? I don't see what value a client would get for that'*.[42]

- The Complainant raised questions about the finality of loss arguing that STM created uncertainty about this matter.[43] He particularly referred to a statement, made by STM in an email dated 9 December 2021, wherein STM stated *'… we have no timeframe of when this will mature, if it will mature'*.[44]

  Such statement on its own, however, cannot reasonably be considered as raising doubts about the extent of significant losses. This is even more so in the context of the email communications referred to earlier and the statements issued at the end of the year, which show a zero value for the disputed investment.

With respect to the quoted case ASF 081/2021, the Arbiter considers that the circumstances of this case are quite different to those of the Complainant. The specific reasons why the preliminary plea was rejected in the aforementioned case cannot be really applied to the particular circumstances of the Complainant's case.

As to the arguments raised about the jurisdictional delay, the Arbiter does not consider that delays in the outcome of a complaint pursued in other jurisdictions against the adviser have a bearing, in the way suggested by the Complainant, on the day when he is deemed to first had knowledge of the loss. The investment loss on the disputed investment was evidently known by 2021. The actions taken elsewhere in 2021 only affected the extent of any compensation from external redress mechanisms against a different party. This is considered to be a distinct matter which did not affect the possibility of raising a simultaneous complaint against the Service Provider, even more so given the distinct and different obligations and roles of STM and the adviser.

[42] P. 22 – Emphasis added by the Arbiter
[43] P. 186
[44] P. 24

The Arbiter is ultimately bound to follow the provisions of Article 21(1) of the Act with respect to his competence to hear the case and cannot himself extend the prescribed timeframes depending on the proceedings with other parties.

Whilst the Arbiter sympathises with the Complainant and understands his position, the Arbiter in the circumstances considers that there are no sufficient and justifiable grounds on which the Complainant's submissions, for the rejection of the Service Provider's plea about time-barring under Article 21(1)(c) of the Act, can be accepted.

The Arbiter accordingly concludes that more than two years have lapsed since the Complainant first had knowledge of the matters complained of (by 2021), and the formal complaint registered in writing with STM (in 2025). For the reasons mentioned, the Arbiter is accepting the plea raised by the Service Provider that he does not have competence to hear the remaining aspect of the Complaint in terms of Article 21(1)(c) of the Act.

Decision and Compensation

For the reasons explained, the Arbiter upholds the plea of prescription raised by the Service Provider in its first submissions with reference to the quoted articles of Chapter 555 of the Laws of Malta as explained above. The Arbiter accordingly dismisses this Complaint and is not considering the merits of the case.

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

As the case is being decided on a preliminary plea, each party is to bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

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

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