Before the Arbiter for Financial Services

Case ASF 345/2025

RW

('the Complainant')

vs

STM Malta Pension Services Limited

(C 51028) ('STM', 'STM Malta' or

'the Service Provider')

Sitting of 30 June 2026

The Arbiter,

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

The Complaint, in essence, relates to the claimed inappropriate transfer and mis-selling of his original overseas pension and the claimed breach of fiduciary duties and regulatory obligations of the Service Provider, where it was claimed that STM allowed funds (constituting over 50% of the Complainant's pension) to be invested in an unsuitable investment, the *Dolphin Capital*. It was claimed that the Dolphin Capital investment was high-risk, not suitable for retail investors, and did not comply with regulatory requirements related to diversification and liquidity.

The Complainant argued that, upon becoming the new trustee and RSA of the Scheme in 2018, STM failed to warn him about the inappropriateness of this investment, thereby preventing him from seeking redress from the former

trustee/RSA of the Scheme, *Harbour Pensions Limited*, and from taking other corrective action. It was also claimed that STM itself took no remedial action to withdraw from the inappropriate investment.

The Complainant additionally raised the claim of excessive fees (high annual fees) applied by the Service Provider and (unnecessarily high commission fees) in respect of his Scheme's structure.

The Complaint[1]

The Complainant claimed the following:

1. That STM acted in breach of its fiduciary duties and responsibilities and failed to exercise its powers and discretions as required and expected in terms of the Scheme's Trust Deed and applicable laws and regulations.

2. That STM failed to act with the required due diligence, prudence and care of a *bonus paterfamilias* and in the best interests of the Complainant by investing or allowing funds to be invested in Dolphin Capital which was not suitable for a retail investor and/or allowing the investments to remain in or form part of the Complainant's portfolio upon STM becoming the trustee and RSA of the Scheme.

3. That STM failed to comply with the diversification and liquidity requirements and MFSA's investment principles and regulatory requirements.

4. That upon becoming trustee and RSA of the Scheme, STM failed to realise the inappropriateness, nature of and risks associated with the investment in Dolphin Capital and to conduct a review and warn or notify the Complainant of the breaches of trust and regulatory provisions and thereby preventing the Complainant the opportunity of seeking redress from the former trustee and/or consider any other remedies to rectify the said breaches.

5. That STM failed to take any remedial action upon becoming trustee and RSA to withdraw from the ongoing investment in Dolphin Capital.

[1] Complaint Form on P. 1 - 7 with extensive supporting documentation on P. 8 - 138

6. That STM failed to consider that having accepted instructions from an unregulated introducer and unregulated independent financial adviser (IFA), the Complainant was at a significant risk of mis-selling and was neither an experienced or sophisticated investor or high net worth individual who would be familiar or understand the risks associated with the investment which should have only been offered to a professional or corporate investor.

With reference to prescription, it was pointed out that the Complainant seeks to rely on Article 1124F of Chapter 16 of the Laws of Malta (Civil Code) which, it was noted, states that the cause of action shall not be barred by prescription notwithstanding the lapse of time in respect of cases involving fraud or dishonesty.

Further background regarding the Complaint was provided in a note attached to the Complaint Form, titled *'Brief Summary of Complainant's Grievances which are set out in full in the Complainant's letter of Complaint to STM dated 12/11/2025'*. In the said note, the following aspects were highlighted and elaborated further on:[2]

A) That *Harbour Pensions Ltd* ('Harbour') should not have accepted the instructions to transfer the Complainant's pension from *Portia Financial Ltd*;

B) That Harbour and STM Malta's fees are excessive;

C) That the pension funds were invested into an inappropriate asset (*Dolphin Capital Loan Note*);

D) That Harbour failed to comply with MFSA's diversification and liquidity requirements;

E) That STM Malta failed to notify the Complainant of the fiduciary and regulatory breaches committed by *Harbour Pension Ltd*;

F) That both Harbour and STM Malta failed to conduct due diligence into the Dolphin/German Property Group and its officers.

[2] P. 8 - 12

The following submissions were also raised with respect to prescription in the said note:

i) That the discovery of fraudulent activity in the investment fund in June 2025 into which the majority of his pension had been invested should mean that the usual rules in relation to prescription, that is, that he has two years to bring a claim should not apply.

ii) That the fact that STM Malta seeks to argue that the suspension notification dated 21/08/2020 and their email dated 13/07/2021 attaching the 2020 valuation constitutes notice of the loss is disingenuous. It was pointed out that STM's emails are silent as to what rights the Complainant has in this situation. The Complainant submitted that he is a retail investor and is naive and inexperienced in investment matters.

   The notification in 2020 suggests the Complainant should either contact STM Malta or Servatus Ltd. It was argued that, at this point, STM Malta had done nothing for two years since their purchase of Harbour in 2018 to appraise the Complainant of his potential right to bring a claim against Harbour.

   The suggestion that the Complainant should contact Servatus Ltd, the unregulated IFA which prepared the bogus Pension Review Report is also derisory and misleading. The Complainant submitted that he did not have any direct contact with Servatus in the application process and only dealt with *Portia Ltd* when transferring his pension to the QROPS in Malta.
   Furthermore, it was argued that STM Malta should have also appreciated that the Complainant was the likely victim of mis-selling in respect of the initial advice given by Servatus. By suggesting he should seek advice from the very organisation which provided negligent advice in the first place only compounded the situation.

Remedy requested

The Complainant sought compensation for the losses incurred arising out of the transfer of his UK pension with *Phoenix Life Pension Scheme* to *Harbour Retirement Scheme* on 16 December 2014.

The Complainant noted that he wished to be put back in the position he would have been had the transfer not occurred. It was pointed out that, for the avoidance of doubt, his case relates to the Complainant being deceived by unregulated introducers and unregulated independent financial advisers in transferring his pension from a safe UK-based pension scheme to a wholly inappropriate investment vehicle for his pension savings.

The Complainant reiterated that he was misled into believing the transfer was in his best interests when it was clearly not. He pointed out that if the onboarding processes of the original trustee and RSA had conducted reasonable due diligence and/or complied with relevant regulations at the time, he would not have transferred his pension at all to the QROPS Scheme in Malta.

The Complainant sought GBP120,000 less the residual value and payments made to him during the lifetime of his policy.

The following calculations were provided:

- Amount Claimed: £120,000

  (Transfer value £49,020.85 x 8% interest per annum from the date of transfer in 2014 to the date of his Complaint, calculated as = £120,000 – payments. The Dolphin Loan Note claimed that annual gains of 10% per annum would be achieved).

  Therefore:

  Amount Claimed: £120,000
  Less Current Policy Valuation: £0.00

  Payments made to Complainant: £10,871.93

  Net Amount Claimed: - £109,128.07

The Complainant also sought the difference between the administrative charges he would have had to pay if his pension had remained in the UK and the unnecessary commission fees claimed by the unregulated parties immediately following the transfer, apart from the exceedingly high annual fees claimed by the trustee and investment managers commencing from the date of transfer.

Having considered in its entirety the Service Provider's reply, including attachments,[3]

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

1. *Objection on the Grounds of Time-Barring*

(A) That the Complaint is inadmissible in terms of article 21(1)(c) of the Arbiter for Financial Services Act (Cap. 555 of the Laws of Malta) ('the Act').

It noted that the Complaint was filed before the Arbiter on the 29th of December 2025 following a formal complaint submitted to STM on the 12th of November 2025 (pages 013 – 023 of the Complaint), to which STM issued its final reply on the 24th of November 2025 (pages 024 - 033 of the Complaint).

It further noted that documentary evidence shows that the Complainant received a valuation as at 31st December 2020 sent by STM Malta, via email dated the 13th of July of 2021 (Annex 1A to its reply),[4] confirming a loss of -£28,348.60 on the Dolphin investment (Annex 1B to its reply).[5]

In addition, the Complainant was notified on the 21st of August of 2020 that the Dolphin Loan Note had been suspended and had entered into liquidation proceedings (Annex 2 to its reply).[6] Accordingly, it submitted that he had knowledge of: (a) the suspension and liquidation of the investment by August 2020; and (b) the crystallised loss by July 2021.

STM noted that, despite this, the Complainant submitted a formal complaint to it only in November of 2025 and subsequently lodged the

[3] Reply of the 13th of January 2026, on P. 143 – 149 with attachments on p. 150 - 200
[4] P. 150
[5] P. 152
[6] P. 155

Complaint before the Arbiter in December of 2025, more than four (4) and five (5) years later respectively.

The Service Provider further submitted that in terms of article 21(1)(c) of Cap. 555, the Arbiter lacks competence to hear a complaint filed more than two (2) years after the Complainant first had, or ought to have had, knowledge of the matters complained of. It argued that the Complaint is therefore time-barred and inadmissible.

(B) STM also respectfully referred the Arbiter to the reasoning adopted in the following cases:

(a) ASF 065/2023 - ZJ vs STM Malta Pension Services Limited:

"Considering the particular circumstances of this case, the Arbiter accordingly decides that there is validity to the Service Provider's claim that the Complainant '… had knowledge of the matter complained of more than two years from the date of his written complaint dated 21st July 2022'.

The Arbiter is thus accepting STM Malta's plea and determines that he has no competence to hear this complaint in terms of Article 21(1)(c) of the Act and will not proceed to consider the other remaining plea raised nor the merits of the case."

(b) ASF 030/2024 - ZH vs STM Malta:

"… 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."

(c) ASF 245/2024 - TS vs STM Malta:

"The Arbiter thus concludes that more than two years have lapsed since the Complainant first had knowledge of the matters complained of (2016/2017) and the formal complaint registered in writing with STM (in 2023).

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 aspects of the complaint in terms of Article 21(1)(c) of the Act;" and

"… For the reasons explained, the Arbiter upholds the plea of prescription raised by the Service Provider in its first submissions on the basis of Article 21(1)(b) and Article 21(1)(c) of Chapter 555 of the Laws of Malta as explained above and accordingly dismisses this complaint."

(d) ASF 183/2025 TQ vs STM Malta:

"... 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."

STM submitted that as stated above, the Complainant received loss-related information and was in possession of a valuation confirming the loss of -£28,348.60 on the Dolphin investment in July of 2021. Nevertheless, he only filed a formal complaint to STM in November of 2025 and proceeded to file his Complaint before the Arbiter in December of 2025. It thus submitted that this delay clearly exceeds the statutory timeframe set out in article 21(1)(c) of Cap. 555.

It noted that furthermore, all the four cases cited above were ultimately declared inadmissible by the Arbiter on grounds of prescription under article 21(1)(c) of Cap. 555. The factual chronology and legal substance of the Complaint align closely with these cases, particularly as regards the

date on which knowledge of the matters complained of was acquired, the timing of the alleged conduct, and the delay in filing the formal complaint.

The Service Provider submitted that, in accordance with the provisions of article 30 of Cap. 555, which empowers the Arbiter to treat intrinsically similar complaints together, the Complaint falls squarely within the same category of complaints already determined by the Arbiter. Consistency, legal certainty, and equality before the law, therefore, require that the same conclusion be reached in the present case, namely that the Complaint is prescribed and inadmissible, and should accordingly be dismissed *in limine*.

2. *Successor Trustee - No Liability for Pre-Appointment Events*

STM Malta acknowledged the statutory duties set out under articles 21 and 30 of the Trusts and Trustees Act (Cap. 331), and submitted that these provisions must be interpreted in the light of the Company's legal position as successor trustee, and not as the original trustee, Harbour Pensions Ltd.

It explained that STM Malta assumed trusteeship on the 31st of August 2018, at which time the Complainant's investment in the Dolphin Capital Loan Note had already been established by the former trustee. The investment was subject to a five-year fixed-term contractual lock-in, which legally prohibited redemption, divestment, restructuring or liquidation prior to its maturity. Accordingly, as at August 2018, STM Malta had no legal or contractual authority to intervene in respect of the said investment.

It further pointed out that Article 30(3) of the Trusts and Trustees Act provides that:

> *"A trustee shall not be liable for a breach of trust committed prior to his appointment, if such breach of trust was committed by some other person. It shall, however, be the duty of the trustee, on becoming aware of it, to take all reasonable steps to have such breach remedied."*

STM submitted that for liability to arise under article 30(3) of the Act, both of the following conditions must exist at the time of succession:

(a) knowledge (actual or constructive) of a breach of trust; and

(b) a legal and practical ability to remedy such breach.

It claimed that, in this case, neither condition was satisfied at the time it assumed trusteeship in August 2018, because:

(a) no regulator, insolvency administrator, court, or competent authority had, at that time, identified the Dolphin Capital Loan Note as fraudulent, insolvent or non-compliant;

(b) no breach of trust was known, or could reasonably have been known by STM Malta at the point of takeover; and

(c) the investment remained subject to a contractual lock-in, leaving STM Malta with no legal capacity to redeem, divest or reallocate the holding.

The Service Provider submitted that accordingly, it cannot be held liable for any alleged failure to take remedial steps under article 30(3) of the said Act, as such steps were neither legally permissible nor factually feasible following its trustee appointment.

It argued that furthermore, article 30(8) of the same Act, permits a trustee to be excused from liability where it has acted honestly and reasonably in the circumstances. STM Malta claimed that it respected the contractual restrictions applicable at the time of takeover, acted in good faith, and performed its role strictly within the legal and regulatory limits of its appointment. It therefore fulfilled its obligations as successor trustee and cannot inherit liability arising from any pre-appointment conduct.

STM emphasised that all onboarding, investment recommendations, adviser involvement, and execution of the transfer into the Dolphin Capital Loan Note occurred in 2014, well before STM Malta became trustee.

In line with article 30(3) of the Trusts and Trustees Act it further noted that:

"A trustee shall not be liable for a breach of trust committed prior to his appointment ...".

STM argued that accordingly, it cannot be held liable for any acts or omissions that occurred prior to the 31st of August 2018, nor for an investment that was

already in place and contractually non-redeemable at the time of its appointment.

3. *Post-Appointment Oversight (Without Assumption of Advisory or Investment Responsibility)*

That without prejudice to the above, and without assuming any advisory, discretionary or investment selection role, STM Malta confirms that following its appointment, as Trustee and Retirement Scheme Administrator in August of 2018, it exercised oversight within the limits of its legal and contractual authority.

Once information became available indicating that the Dolphin Capital structure was experiencing financial distress and had entered insolvency proceedings, STM Malta monitored developments as a non-advisory, administrative trustee, noting that the investment was already in place and subject to contractual restrictions which precluded divestment or remedial action.

In this context, and following its appointment, STM:

(a) conducted a review of the scheme's assets in line with its administrative and fiduciary obligations;

(b) monitored developments relating to the Dolphin Capital insolvency through engagement with the GPG Creditors Association and by following the progress of the ongoing insolvency proceedings in Germany;

(c) participated, where appropriate, in creditor and legal discussions relevant to the Scheme's interest; and

(d) kept members, including the Complainant, informed by issuing periodical and formal updates.

4. *STM non-advisory role*

STM Malta pointed out that it was, and remains, not authorised, licensed, or appointed to provide any financial, investment, or suitability advice, nor does it hold discretionary portfolio management permissions under any applicable

law, including regulations issued by the Malta Financial Services Authority or the governing Scheme documentation.

Its regulatory role is strictly limited to trust administration, record-keeping, the execution of member and adviser instructions, and ensuring ongoing compliance with MFSA requirements and Scheme provisions. STM submitted that, accordingly, it did not recommend any investment options, approve fund selection, or determine the suitability of any investments made within the Complainant's Scheme.

It was further noted that any advisory responsibilities in 2014 rested exclusively with the Complainant's appointed advisers, Portia Financial Ltd and Servatus Wealth Management. The investment recommendation was provided by Servatus' representative, Mr Geoff Whelan. It noted that on the 15th of January 2015, the Complainant executed an Asset Management Bond Application Form (as per Annex 3 to its reply),[7] expressly acknowledging the risks associated with the proposed investment. STM Malta pointed out that it had no involvement whatsoever in the adviser appointment, suitability assessment, transfer recommendation, or investment decision.

It further noted that the Pension Review Report (Annex 4 to its reply),[8] dated and signed by the Complainant on the 17th of April 2014, expressly identifies Mr Whelan as the adviser responsible for providing investment advice in relation to the proposed pension structure and the underlying investments. STM submitted that the Report clearly demonstrates that STM had no involvement in the design, recommendation, or approval of the investment portfolio which included the Dolphin Capital investment. The investment was made in 2014, prior to the Company's appointment in 2018 as trustee and Retirement Scheme Administrator.

STM reiterated that it is not authorised to provide investment or financial advice and cannot be held responsible for the acts or advice of independent, regulated third-party advisers. This position is expressly set out in the governing Trust Deed: clause 5.4 of the 2013 Trust Deed and clause 5.5 of the 2016 Trust Deed which both provide that:

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[7] P. 157

[8] P. 168

"Further and for the avoidance of doubt, the Retirement Scheme Administrator shall not provide investment advice."

It noted that, accordingly, it had no discretion or legal authority to challenge, assess, or override the investment recommendations made by the Complainant's financial adviser and was entitled to rely, properly and lawfully, on the professional advice provided by Mr Whelan, which was formally accepted by the Complainant through the execution of the Pension Review Report on the 17th of April 2014 (as per Annex 4 to its reply).[9]

5. *Loss Quantification – Claim is Unsupported and Inflated*

STM noted that the Complainant seeks compensation in the sum of £120,000, a figure which is neither evidenced nor supported by the Scheme records, valuation statements, or transfer documentation. It submitted that the amount appears to be derived from hypothetical projections, rather than from any demonstrable or crystallised financial loss.

Based on the documentation available to STM Malta, and the valuation evidence on file, it submitted that the factual position is as follows:

Total contributions/premium invested in April 2014: £46,060.75

Recorded loss on Dolphin Loan Note as per valuation (Annex 1B to its reply):[10] -£28,348.60

PCLS (payments made to the Complainant on 09/05/2018 and 13/06/2018): £10,871.93

STM submitted that the compensation sought is accordingly grossly inflated, speculative in nature, and unsupported by any actuarial, valuation, or transactional evidence.

STM Malta did not admit liability, disputed both causation and legal responsibility, and expressly reserved all rights at law.

[9] *Ibid.*

[10] P. 152

6. *Reservation of Rights*

STM expressly reserved the right to: (a) submit further documentation or oral evidence as may be required; and (b) respond on the merits should the Arbiter determine that the Complaint is admissible despite the time-bar.

7. *Concluding remarks by STM*

STM respectfully submitted that:

(a) the complaint be declared inadmissible under article 21(1)(c) of Cap. 555 of the Laws of Malta, and that in terms of article 30 of the same Act, the Arbiter apply a consistent legal interpretation and treatment to those cases cited in section 1(B) above, given the intrinsic similarity of the complaints;

(b) the complaint be dismissed in its entirety, without entering into its merits; and

(c) all demands made by the Complainant be rejected, with costs borne by the Complainant.

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

Further Considers:

Preliminary

Plea relating to Article 21(1)(c) of Cap.555

By a decree dated the 4th of March 2026, the Arbiter requested the parties to provide their respective submissions regarding the preliminary pleas raised by the Service Provider in its reply.[11]

In the said decree, the Arbiter referred to the preliminary plea raised by the Service Provider in its reply of the 13th of January 2026, the reasons provided as a basis for its plea and other submissions about prescription made in the Service Provider's response of the 24th of November 2025 to the Complainant's formal complaint.

[11] P. 202 - 203

The Arbiter further noted that the Complainant already made certain submissions with respect to prescription relating to Article 21(1)(c) of the Act - as outlined in the attachments to his Complaint Form, Section (G) titled *'Prescription'* in the *'Brief Summary of Complainant's Grievances'*,[12] and Section 10 titled '*Prescription/Limitation'* in the formal letter of complaint dated the 12th of November 2025.[13] The Complainant was provided with the opportunity to make any further submissions on the preliminary plea raised by STM regarding the competence of the Arbiter.

Subsequently, the Complainant filed additional extensive submissions through his lawyer.[14]

The Arbiter is not reproducing here in full the exhaustive further submissions provided by the Complainant.[15] The following is, however, a summary of the key submissions made on the Complainant's part:

1. *Claim that email dated 13 July 2021 did not create knowledge of the loss*

The reasons for this, namely, being in summary that:

- The contents of the email of 13 July 2021 were too brief (just a three-liner), only suggesting the Complainant liaise with his financial adviser;
- The Complainant was a retail client who had no knowledge of investment matters and no experience;
- The Complainant did not have a financial advisor appointed at the time in respect of his pension scheme;
- Furthermore, the Complainant had no direct contact with Servatus Limited (the independent financial adviser), nor the unregulated introducer which were involved in the transfer of his UK pension into the Maltese QROPS;
- The implications of the email of July 2021 and policy valuation statement of 31 December 2020 could have only been understood by professional or corporate investors;

[12] P.11
[13] P. 22 - 23
[14] P. 204 & 206 – 220 with attachments P. 221 - 241
[15] P. 206 - 220

- The Service Provider did not ensure and verify that the Complainant had actually understood the email of July 2021 and policy valuation statement of December 2020;
- The SEB Policy Valuation statement was not sufficiently clear to the Complainant to understand what had happened to his pension;
- There was an ongoing failure to provide further information;
- With reference to case ASF 099/2021 and ASF 065/2023, the Service Provider was providing contradictory advice in 2021/2022 to its other members exposed to the Dolphin Loan Note about the residual value of the investment and that accordingly it was too early to know if a loss had been incurred and whether the investment had failed;
- Only when criminal proceedings were instituted in late 2024 and a criminal trial listed in mid-2025 the situation became clear and the likelihood of asset recovery was abandoned as it was only at that point that the Complainant had knowledge that there was no longer any chance of recovery;
- Had the Complainant raised a complaint in July 2021 or thereafter, the Service Provider would have defended the claim that a complaint was being brought too early as it was not known in July 2021 whether a loss if at all was incurred on the investment;
- It was not possible for the Complainant to state with any certainty that he had suffered a loss in July 2021 by applying the same reasoning to that adopted by the Service Provider in the afore-mentioned cases.

2. *Claim that the email of 21st August 2020 relating to the notification of suspension and liquidation of the investment did not create knowledge of the loss either*

This was namely in view that:

- The notifications in 2020 were addressed to the investors, that is, the investment platform/trustee and the Complainant was not a direct investor;

- The Complainant never received any communication from the German Property Group ('GPG') Group[16] or German liquidator and he did not receive this letter from the Service Provider either;
- The Service Provider did not provide any evidence that it had forwarded the said notification to the Complainant.

3. *Claim that reliance should be made on Article 1124F of Cap. 16, the Civil Code*

This was namely in view that:

- This article provides an absolute bar to prescription in cases involving actions against a fiduciary where fraud is alleged;
- The conviction of the former CEO of GPG in June 2025 and the realisation and/or discovery of fraudulent activity only at the time should be taken into account in the assessment of prescription or otherwise this would go against the principles of dealing with the Complaint in a fair, equitable and reasonable manner;
- The discovery of the extent of fraudulent activity in the GPG changed the perception of STM's role and led to a new understanding of STM's failings and possible breaches of duty;
- There are similarities between Malta and the UK and that under UK law, the Complainant could rely on s32 Limitation Act 1980, which provides that *'the period of limitation shall not begin to run until the plaintiff has discovered fraud, concealment or mistake…or could with reasonable diligence have discovered it';*
- The said conviction in June 2025 should ensure that the period of calculating prescription commences from June 2025 and not July 2021;
- It would have been difficult for the Complainant to demonstrate that STM breached its obligations during August 2020 and May 2025 without the evidence which flowed from the said conviction in June 2025. Reference was

[16] 'German Property Group (formerly Dolphin Trust)' – P. 155

made to the attitude of the Service Provider as reflected in its submissions of case ASF 108/2021;

- The Complainant's allegations about STM's failures carry more weight and standing after the conviction of the former CEO of GPG in June 2025 and the knowledge emerging that he had already served a custodial sentence for dishonesty/fraud from 2000 to 2003. The Arbiter's attention was also drawn to various articles in the news relating to GPG and its former CEO;

- The disclosure emerging (during the sentencing of the former CEO) of his previous conviction is pivotal to the Complainant's argument that it was only after the discovery of fraudulent activity that it became apparent to the Complainant that there was a cause of action against STM;

- That in light of certain statements made by Servatus in its Pension Review Report with reference to Harbour Pensions Limited,[17] it was claimed that the introducer, the financial adviser and the Service Provider were all in sync in their attempts to secure the transfer of the Complainant's pension;

- The facts of this case are complex and not straightforward, and it was important for consideration of such to be made when considering the aspect of date of knowledge of the loss;

- The claim of knowledge on a three-line email lies in stark contrast to the difficulties faced by the insolvency administrator in trying to establish the value of GPG's remaining assets. It was *inter alia* noted that the insolvency administrator took a number of years to disentangle the web of lies and deceit of the former CEO with certain funds still remaining unaccounted for.

- Certain facts (such as the failure to file statements from 2015 onwards in breach of the German authorities' requirements) only became apparent as a result of the subsequent investigations of the insolvency administrator with such facts not being known at the time of notice in July 2021.

- STM's culpability was fundamentally changed by the disclosure of the previous conviction and the conviction of the former CEO in June 2025.

[17] P. 216

- The email of July 2021 merely forwarded a policy valuation which also included no explanation of the Complainant's rights or options. No further communication was made with the Complainant to enable him to understand the consequences of GPG's fall into administration.

- The Complainant also cannot recall ever having received the email of July 2021. It was further claimed that he had an *'information vacuum'* as he did not receive any direct communication from the insolvency administrator.

- The conviction in June 2025 and the emerging knowledge that the former CEO had already been convicted and served a sentence for dishonesty in 2000-2003, changes the legal landscape and materially affects the Complainant's prospects of his complaint against STM.

4. *Claim about Article 2156(f) of Cap. 16, the Civil Code*

This was particularly in view that:

- The 5-year period under this Article should not commence until debt has either been paid or the date the Complainant was advised the debt would not be repaid.

- The said 5-year period could also not be taken to commence from the date of purchase of the loan nor from the date of notice about the loss (July 2021), but instead the applicable date is from when the Complainant was made aware that the Loan Note will not be repaid.

5. *Claim that the actions involve a continuous act in terms of Article 21(1)(d) of Cap. 555*

This was namely in view that STM engaged in a series of acts or omissions which were continuing in nature as:

- STM failed to disclose the breaches of duty of care and/or regulatory and fiduciary breaches committed by the original trustee, Harbour Pensions;

  The Complainant claims that only until the conviction and subsequent disclosure during the sentencing of the former CEO of GPG in June 2025 did he reasonably become aware that the original trustee acted in breach of its duties

- The valuation of £0.00 GBP of the Loan Note in the statement attached to the email of 13 July 2021 was only a precautionary measure and not an actual valuation.

  The Complainant submitted that the liquidator was still investigating and attempting to recover the assets of the GPG at the time, and it was only later that the liquidator confirmed there would be no recovery of any assets from the sale of the GPG's assets. Hence, the crystallisation of the loss was argued to have occurred much later than July 2021.

  It was further submitted that STM did not provide evidence of other statements or policy valuations forwarded to the Complainant after July 2021 which confirmed the ongoing status and valuation of the Loan Note after July 2021.

Arbiter's considerations

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*'.

The matters complained of involve the loss and lack of potential return on the Complainant's pension, related to the failure of the material underlying investment into the Dolphin Loan Note that was allowed to be made in his Retirement Scheme.

In his Complaint Form to the OAFS, the Complainant indicated the date of the 30th of June 2025, as to when he first had knowledge of the matters he was

complaining of.[18] This reflects the date when the former CEO of the German Property Group (GPG)/ Dolphin Capital was convicted, as explained in detail in his additional submissions.

It is noted that the Complainant, a Sales Consultant who was 54 years of age at the time of the disputed investment, applied to become a member of the *Harbour Retirement Scheme* in April 2014.[19]

The transfer value into the Retirement Scheme was GBP 49,020.85.[20] According to the Pension Review Report dated April 2014, prepared by the Complainant's independent financial adviser, Servatus Limited, an 80% of the pension was to be allocated to the Dolphin Capital with the remaining 20% to be allocated equally between two funds.[21] In February 2015, the Harbour Retirement Scheme acquired, an underlying policy, the *Asset Management Bond*, issued by *SEB Life International* ('the SEB Policy') through which the underlying portfolio of investments were held.[22]

As outlined above, the formal complaint with STM was filed by the Complainant on the 12th of November 2025.[23] In order to avoid prescription, the Complainant had to have first knowledge of the matter complained of on the 12th of November 2023 or later.

The following aspects are particularly relevant:

a) In his Complaint, the Complainant argued that he relies on Article 1124F of Cap. 16 of the Laws of Malta with respect to prescription, given he argued that this *'states that the cause of action shall not be barred by prescription, notwithstanding the lapse of time in respect of cases involving fraud or dishonesty'*.[24]

   The Arbiter, however, does not consider this argument relevant for the purposes of Article 21(1) of the Act and for the case in question, given that aspects involving fraud are not considered by the Arbiter in the first place

[18] P. 2
[19] P. 71 & 86
[20] P. 49
[21] P. 118
[22] P. 88 & 100
[23] P. 13 - 23
[24] P. 3

but should be channelled through the relevant court and reported to the appropriate authority. The claim of fraud or dishonesty is also seemingly directed to a third party not to the Service Provider, and STM could not reasonably have had knowledge of such fraud or dishonesty at the point of transfer of his UK pension and acquisition of the disputed investment in 2015, as it was not the original trustee at the time. Furthermore, the Complainant's formal complaint with STM[25] does not include claims of any fraud or dishonesty or knowledge thereof on STM's part.

b) It is noted that in his additional submissions, the Complainant has cast doubt on whether certain key documentation was actually sent to or received by him. Such aspects were, however, not raised in his Complaint Form. In the additional submissions filed by his lawyer, it was claimed that the Complainant did not recall receiving STM's email of the 13th of July 2021 which included the SEB's Policy Valuation Statement as at 31 December 2020, nor that he received the notifications of August and July 2020 relating to the insolvency. It was submitted that:

'For the avoidance of doubt, the Complainant has confirmed that he cannot recall ever having received this email [of July 2021]'.[26]

'… The Complainant never received any communication from the German Property Group or from the German liquidator, BBL following the GPG's fall into administration from July 2020 onwards. The Complainant submits that he did not receive this communication (letter from SEB to STM Malta or the GPG document) and the Service Provider has not offered evidence to the contrary. This letter was sent to the Service Provider by SEB and the Service Provider has not provided any evidence that this was in turn forwarded to the Complainant'.[27]

The Service Provider produced a copy of an email dated the 13th of July 2021 sent to the email address featuring the Complainant's name at *'….@btinternet.com'*.[28]

[25] P. 13 - 23
[26] P. 218
[27] P. 211 - 212
[28] P. 150

The Complainant did not dispute that this was not his email address, nor that he did not actually receive it; he only vaguely mentioned that he does not recall receiving it.

Furthermore, it is noted that the Complainant himself provided a copy of the *'STM Notification of Liquidation'* (letters dated the 21st of August 2020 and the 30th of July 2020) which were included as Appendix *'J-11'* to his Complaint Form.[29]

In his submissions, the Complainant is also arguing that on the one hand, he was not provided by STM with communications *'which would have enabled him to understand the consequences of the GPG's fall into administration and the effect it would have on his pension saving'*, whilst on the other, arguing that he only became aware of the real impact of the administration and that he will experience the complete loss on the disputed investment with the conviction in June 2025. Such statements in themselves implicitly acknowledge the Complainant's awareness that GPG had fallen into administration.

In the circumstances, the Arbiter cannot give too much weight to the Complainant's submissions on this point. No sufficient comfort emerges that the Complainant was not aware of the bankruptcy/insolvency proceedings related to GPG, and that he was not in receipt of, or was not aware that his SEB statements indicated the Dolphin Loan Note at zero value.

c) With respect to the claim that STM's email of the 13th of July 2021 was too brief, the Arbiter agrees that it would have been reasonable and appropriate for STM to highlight more prominently the matter in its notification. However, it is considered that this, on its own, is not a sufficient basis to claim lack of knowledge about the loss.

This is also when the Policy Valuation Statement of 31 December 2020 clearly provides that the *'Policy Value at 31/12/20'* (at the top of the statement) and *'Total Value at 31/12/20'* (at the bottom) was just *'128.42 GBP'*, that the *'Value History'* of the SEB policy had reduced from close to

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[29] P. 7 & 102 - 104

GBP 30,000 to just *‘240.13’* in *‘30/09/20’*, and that the *‘Summary of Investments’* were just *‘Cash Holdings’* of *‘128.42 GBP’*.[30]

In addition, the Policy Valuation Statement indicated that the Dolphin Loan Note was in administration - *‘Dolphin Capital Loan Note Fixed Interest 10.2% (Average) 2019, GBP (In Administration 24.07.2020)’*. The said statement also indicated its *‘Price’* and *‘Asset Value’* being *‘0.00’* and the investment having a *‘Gain/Loss’* of *‘-28,348.60 GBP’* with a *‘Gain/Loss %’* of *‘-100.00%’* and *‘Value in Policy Currency’* of *‘0.00 GBP’*.[31]

A retail investor required no experience to understand the clear figures provided. The statement evidently indicated a substantial loss, a hundred per cent reduction in value on the Dolphin Loan Note, where its value was indicated as zero, with this resulting in the indicated substantial drop in value of the policy.

In addition, no proof was provided by the Complainant that there were some positive assurances provided to him which led him to believe that he would not experience a significant loss on the investment. The references to the submissions made by STM in other cases with respect to the residual value are, in themselves, not proof that any such communication was made to the Complainant or of assurances that no significant loss would be experienced.

d) It is considered that whilst the conviction in June 2025 raised new concerns, it merely provided clarity on the reason why the investment had failed but it did not in any way have any direct effect of the losses from the investment. The losses were largely already evident and crystallised at the insolvency proceedings coupled with the zero valuation already provided tangible indicators of the material losses, if not the complete write-off arising on the disputed investment.

e) The fact that the Complainant did not have an investment adviser appointed in respect of his pension does not justify either the notion that the Complainant could not have knowledge of the loss at the time. Apart from the matters already raised above, the Complainant was not precluded

[30] P. 152
[31] *Ibid.*

from discussing and seeking advice from any other investment adviser. The Complainant was also ultimately not precluded from filing a formal complaint with the Service Provider, irrespective of what STM's reply the Complainant thought that he would have received.

The fact remains that the formal complaint relating to the disputed investment was filed in November 2025, which is considered later than two years from the day (before November 2023) on which the Complainant first had knowledge of the matters complained of.

Other claims raised in the Complaint to the Office of the Arbiter, relating to, for example, the transfer of his UK pension, the lack of action about the disputed investment at the time of STM's appointment, and claim of excessive fees, are likewise prescribed in terms of Article 21(1)(c) of the Act given that the date when the Complainant first had knowledge is similarly considered to be before November 2023.

Whilst understanding and sympathising with the Complainant's situation, the Arbiter points out that the law permits him to have competence to hear only those complaints pursued within the time allowed and prescribed by law, as outlined in terms of Articles 21 and 19(3)(e) of the Act.

The Arbiter makes reference to various previous decisions where the plea of prescription, as similarly applicable to the case of the Complainant, was indeed upheld as it was justified in terms of law.[32]

Decision

For the reasons explained, the Arbiter upholds the plea of prescription raised by the Service Provider with reference to Article 21(1)(c) of Chapter 555 of the Laws of Malta and is accordingly dismissing this Complaint.

In view of the above, the Arbiter 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.

[32] Example: ASF 030/2024, ASF 245/2024 and ASF 283/2025 - https://www.financialarbiter.org.mt/

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

Recommendation

The Arbiter wishes to recommend, (in a non-binding manner and without prejudice and obligation), that the Service Provider considers, on its own will, to act and give an appropriate redress in those cases whose complaint cannot be heard by the Arbiter for reason of prescription, but which have similar features to those cases previously decided by the Arbiter which were confirmed by the Court of Appeal (Inferior Jurisdiction).[33]

It is commendable to note the trend in other countries, such as in the UK, where once an arbiter/ombudsman decides various cases in favour of consumers which involve a recurring or systemic issue, then the industry is encouraged to take measures for appropriate redress even in the absence of a direct complaint from a consumer who has suffered detriment or was disadvantaged from such issues.

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.

[33] Such as in Case ASF 080/2021 and Case 099/2021.

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.