Before the Arbiter for Financial Services

Case ASF 083/2026

XJ

('the Complainant')

vs

STM Malta Pension Services Limited

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

Sitting of 17 July 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 mis-selling of the Retirement Scheme and inappropriate transfer of her UK pension, and the alleged breach of fiduciary, contractual and regulatory duties of the trustees of her Scheme. The Complainant claimed that *Harbour Pensions Limited* (the original trustee) should have recognised mis-selling and not accepted the transfer.

She claimed that both *Harbour Pensions Limited* ('HPL') and STM (the subsequent trustee) failed to act with the required due diligence, prudence and care of a *bonus paterfamilias* and in the Complainant's best interests as her pension was then allowed to be invested in an unsuitable investment, the *Dolphin Capital Loan Note*. The Complainant claimed that both HPL and STM failed to comply with MFSA's regulatory requirements related to diversification and liquidity with respect to the Dolphin Capital.

It was further argued that, upon becoming the new trustee and RSA of the Scheme in 2018, STM failed to notify the Complainant about the breaches of the former trustee and allowed the investment to continue, thereby denying her the opportunity to seek redress from the former trustee and RSA of the Scheme. It was also claimed that STM failed to conduct proper due diligence on the Dolphin Capital and its CEO, who was previously convicted.

The Complainant additionally raised the claim of excessive fees (annual and commission fees) that were allegedly applied within her Scheme's structure.

The Complaint[1]

The Complainant claimed the following:

1. That, in its capacity as trustee and RSA of the Scheme, STM acted in breach of the fiduciary, contractual and regulatory duties owed to the Complainant.

2. That with respect to the transfer of her UK Royal Mail DB pension to the Harbour Retirement Scheme on 28 November 2014, *Harbour Pensions Ltd* ('HPL') should have recognised that the Complainant was a victim of mis-selling and should not have accepted the instructions to transfer from an unregulated introducer.

3. That HPL and STM acted in breach of their fiduciary, contractual and regulatory duties by failing to conduct the required due diligence and act with the prudence and care of a *bonus paterfamilias* and in the best interests of the Complainant by allowing her pension to be invested in an inappropriate investment, the *Dolphin Capital Loan Note*, which subsequently failed.

4. That both HPL and STM failed to comply with MFSA's diversification and liquidity requirements.

[1] Complaint Form on P. 1 - 7 with extensive supporting documentation on P. 8 - 185

5. That upon becoming trustee and RSA of the Scheme, STM failed to notify the Complainant of the breaches committed by the former trustee, HPL, denying her the opportunity to seek redress from the original trustee. It was also noted that STM failed to seek an indemnity from HPL when it became the trustee and RSA.

6. That HPL and STM both failed to conduct appropriate due diligence into the Dolphin Capital/German Property Group ('GPG'), and its officers, in particular its CEO.

7. That excessive commission and annual fees were applied to her Scheme.

The Complainant submitted that she seeks to rely on the discovery of fraud in June 2025, following the criminal conviction of the GPG's CEO, to prevent the usual prescription rules from applying. Reference was made to Article 1124F of Chapter 16 of the Laws of Malta (Civil Code).

Further background regarding the Complaint was provided in a note attached to the Complaint Form, described as a *'Brief Summary of Complainant's Grievances'*. In the said note, the following aspects were highlighted and elaborated further on:[2]

A) That HPL should have recognised the signs of potential mis-selling and not accepted the instructions to transfer the Complainant's pension from an unregulated introducer;

B) That both HPL and STM acted in breach of their fiduciary, regulatory and contractual duties and both failed to act with the prudence, diligence and attention of a *bonus paterfamilias* by failing to conduct appropriate due diligence and allowed the pension fund to be invested into an inappropriate asset (the *Dolphin Capital Loan Note*) which subsequently failed;

C) That both HPL and STM failed to comply with MFSA's diversification and liquidity requirements;

D) That STM failed to notify the Complainant of the contractual, fiduciary and regulatory breaches committed by HPL;

[2] P. 169 - 179

E) That both HPL and STM failed to conduct appropriate due diligence into the Dolphin Loan Note/German Property Group and its officers;

F) That the Complainant was exposed to unnecessarily high commission fees (paid to the introducer and investment adviser) which appear to have been the motive for arranging the transfer. That, in addition, the transfer resulted in exceedingly high annual fees charged by HPL/STM and the investment manager.

The following submissions were also raised in the said note with respect to prescription:[3]

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

ii) That it was the discovery that one of the main investment funds into which her pension had been invested was the subject matter of fraud and criminal investigations which led the Complainant to question that the losses suffered were not merely attributable to the ups and downs of the financial markets.

iii) That the fact that STM Malta seeks to argue that the email dated 08 July 2021 and suspension notification dated 21 August 2020, constitutes notice of the loss, is disingenuous and unreasonable. It was submitted that STM's email is silent as to what rights the Complainant had in this situation. The Complainant further submitted that she is a retail investor and is both naive and inexperienced in investment matters.

   It was remarked that the email of 8 July 2021 merely suggests the Complainant to contact her financial adviser, *Portia Financial Ltd*, which at that point was no longer trading and had gone into liquidation. The Complainant submitted that she was never a client of *Servatus Ltd* and never had any type of contact with *Servatus Ltd* since the pension review report of 2014. It was noted that it was the unregulated introducer, *Portia Financial Ltd* which had engaged the services of *Servatus Ltd*.

[3] P. 176 - 177

iv) That the other email to which STM refers in its rejection of the complaint is an email which SEB sent to STM on or around 21 August 2020. STM has not provided a copy of an email of any other type of evidence to suggest that the Complainant actually received a copy of this email from SEB.

v) That, as at the date of the email of 8 July 2021, STM had done nothing for almost three years since their purchase of HPL (in August 2018) to appraise the Complainant of her potential right to bring a claim against HPL. The Complainant claimed that STM remained silent in relation to the breaches of fiduciary, regulatory and/or contract duties committed prior to STM's appointment as the trustee and RSA.

The suggestion that the Complainant should contact Servatus Ltd, the independent financial adviser which prepared the bogus pension review report is also derisory and misleading. It was claimed that the Complainant did not have any direct contact with *Servatus Ltd* in the application process and only ever dealt with *Portia Financial Ltd* when transferring her 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 Ltd* which was clearly not independent. By suggesting she should seek advice from the very organisation which provided negligent advice in the first place, only compounds the situation and would enable STM to benefit from its own failures to protect the Complainant in its capacity as trustee and RSA.

Remedy requested

The Complainant sought compensation for the losses incurred arising out of the transfer of her UK-based pension to HPL/ STM. She requested compensation of GBP280,947.37, less the residual value of the policy and payments made to her during the lifetime of her policy. The following calculations were provided in this regard:[4]

- Amount Claimed: £280,947.37

[4] P. 4 & 178 - 179

(Transfer value £120,578.27 x 8% interest per annum from the date of transfer on 28 November 2014 to the date of her Complaint, calculated as = £280,947.37 – NB. It was pointed out that the *Dolphin Loan Note* claimed that annual gains of 10% per annum would be achieved).

Therefore:
Amount Claimed: £280,947.37
Less Current Policy Valuation: £60,442.55
Payments made to Complainant: £0.00
Net Amount Claimed: £220,504.82

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

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 5 of March 2026 following a formal complaint submitted to STM on 14 of November 2025 (pages 8-19 of the Complaint), to which STM issued its final reply on 25 of November 2025 (pages 20-29 of the Complaint).

It further noted that documentary evidence shows that the Complainant received a valuation as at 31 December 2020 sent by STM Malta, via email dated 8 July of 2021 (Annex 1A to its reply),[6] confirming a loss of -£46,442.55 on the Dolphin investment (Annex 1B and 1C to its reply).[7] In addition, the Complainant was notified on 21 August of 2020 that the *Dolphin Loan Note* had been suspended and had entered into liquidation proceedings (Annex 2 to its reply).[8]

[5] Reply of 10th March 2026, on P. 191 – 198 with attachments on p. 199 - 263
[6] P. 199
[7] P. 201 & 205
[8] P. 208

Accordingly, it submitted that she 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 Complaint before the Arbiter in March of 2026, more than five (5) and four (4) years later, respectively.

The Service Provider 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. It further noted that the issue of admissibility is determinative and should be addressed prior to any consideration of the merits.

(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 her written complaint dated 21st July 2022'.

The Arbiter is thus accepting STM Malta's plea and determines that she 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 she 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 she 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 she 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 -£46,442.55 on the Dolphin investment in July of 2021. Nevertheless, she only filed a formal complaint to STM in November of 2025 and proceeded to file her Complaint before the Arbiter in March of 2026. 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, and in light of the reasoning adopted in the above-cited decisions, the same legal principles and interpretative approach ought to be applied in the present case.

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 <u>successor</u> trustee, and not as the <u>original</u> trustee, Harbour Pensions Ltd.

It explained that STM Malta assumed trusteeship on 31 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 her 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, <u>both</u> 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, nor had any regulatory findings, enforcement notices, or adverse public determination been issued at that time; 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 31 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 Ltd*. The investment recommendation was provided by Servatus' representative, Mr Geoff Whelan. It noted that on 23 October 2014, the Complainant signed the SEB Asset Management Bond Application Form, also countersigned by her IFA, Mr Whelan on 4 September of 2014 (as per Annex 3 to its reply),[9] thereby expressly acknowledging the nature of and the risks associated with the proposed investment.

STM Malta pointed out that it had no involvement whatsoever in the appointment of the advisers, the provision of financial advice, the suitability assessment, the recommendation to transfer the pension or any subsequent investment decisions.

It further noted that the Pension Review Report (Annex 4 to its reply),[10] dated and signed by the Complainant on 23 October 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.

[9] P. 210
[10] P. 226

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:

> *"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 on the existence of independent professional advice provided to the Complainant by Mr Whelan, which was formally accepted by the Complainant through the execution of the Pension Review Report in 2014 (as per Annex 4 to its reply).[11]

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

STM noted that the Complainant seeks compensation in the sum of £220,504.82, a figure which is neither evidenced nor supported by the Scheme records, valuation statements, transfer documentation or any actuarial assessment. It submitted that the amount appears to be derived from hypothetical projections of what the Complainant believes her pension might have been worth had it remained invested elsewhere, rather than from any demonstrable or legally attributable 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 December 2014: £116,106.37
>
> *Recorded loss on Dolphin Loan Note* as per valuation (Annex 1B to its reply):[12] -£46,442.55

[11] *Ibid.*
[12] P. 201

Policy Value as at 27 February 2026 (Annex 5 to its reply):[13] £62,036.40

STM submitted that the above figures demonstrate that the alleged loss advanced by the Complainant is substantially overstated and unsupported by objective valuation evidence.

It furthermore submitted that the current fund value reflects market performance and insolvency-related write-downs arising from the failure of the Dolphin Capital structure, and not any act, omission, breach of duty, or negligent conduct attributable to STM. The diminution in value is linked to the performance and subsequent insolvency of the underlying investment vehicle, which was selected and implemented in 2014 prior to the Company's appointment as trustee.

STM submitted that accordingly, the compensation sought is speculative in nature, inflated beyond the actual documented reduction in value, and unsupported by any actuarial, valuation or transactional evidence demonstrating causation attributable to it.

The Service Provider did not admit liability, disputed both causation and legal responsibility in their entirety, and expressly reserved all rights at law.

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 applies a consistent legal interpretation and treatment to those cases cited above, given the intrinsic similarity of the complaints;

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

[13] P. 261

(c) all demands made by the Complainant be rejected, with such order as to costs as the Arbiter may deem appropriate.

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 18th March 2026, the Arbiter requested any further submissions regarding the preliminary pleas raised by STM Malta.[14]

In the said decree, the Arbiter referred to the preliminary plea raised by the Service Provider in its reply of 10 March 2026, the reasons provided as a basis for its plea and other submissions about prescription made in the Service Provider's response of 25 November 2025 to the Complainant's formal complaint.

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 her Complaint Form, Section (F) titled *'Prescription'* in the *'Brief Summary of Complainant's Grievances'*,[15] and Section 10 titled '*Prescription/Limitation'* in the formal letter of complaint dated 14 November 2025.[16]

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 her lawyer.[17]

The Arbiter is not reproducing here in full the exhaustive additional submissions provided by the Complainant.[18]

[14] P. 264 - 265
[15] P. 176 - 177
[16] P. 17 - 18
[17] P. 266 & 268 - 283 with attachments P. 284 - 304
[18] P. 268 - 283

The following is, however, a summary of the key submissions made on her part:

1. *Claim that email dated 08 July 2021 did not create knowledge of loss*

The reasons for this claim made by the Complainant are namely that:

- The contents of the email of 8 July 2021 were too brief (just a three-liner), only suggesting the Complainant liaise with her financial adviser. This is when the Complainant had lost a significant portion of her pension, which will have an enormous impact on her ability to fund her retirement;

- The Complainant was a retail client who had no knowledge of investment matters and no experience;

- The Complainant did not have a financial advisor to whom she could turn for advice;

- 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 her UK pension into the Maltese QROPS;

- The implications of the email of 8 July 2021 and policy valuation statement of 31 December 2020, could have only been understood by professional or corporate investors;

- 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 her 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 she 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 21 August 2020 relating to the notification of suspension and liquidation of the investment did not create knowledge of the loss*

This was namely in view that:

- The notifications in 2020 (of 21 August 2020 and 30 July 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[19] or German liquidator and she did not receive this letter from the Service Provider either;

- The Service Provider did not provide any evidence that it had forwarded the said notifications 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

[19] 'German Property Group (formerly Dolphin Trust)' – P. 76

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 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, 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 the 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.

- The reference to *WH Ireland Limited* within the policy valuation of December 2020 complicates matters and it was not easy for an inexperienced retail client to understand what the statement actually meant in relation to her investments.

- 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.

- The email of July 2021 merely forwarded a policy valuation which also included no explanation of the Complainant's rights or options. No further communications were made with the Complainant to enable her 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 she had an *'information vacuum'* as she did not receive any direct communication from the insolvency administrator.[20]

- 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 her complaint against STM.

[20] P. 280 - 281

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. The Complainant submitted that in such a scenario, the prescription does not run out until 2026.

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, HPL;

  The Complainant claims that only until the conviction and subsequent disclosure during the sentencing of the former CEO of GPG in June 2025 did she reasonably became 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 8th 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 noted that in its reply to the Office of the Arbiter, STM included an SEB Policy Valuation as at 27/02/2026 which values the Complainant's fund at £62,036.40.[21]

It was also pointed out that the Dolphin Capital Loan Note is still listed as a direct holding on the valuation report and that accordingly, it would be unfair to allege that she knew in July 2021 of the losses suffered when the Dolphin Loan Note still forms part of the Complainant's fund in February 2026.

It was also pointed out that the statement refers to Cash Holdings in the sum of -£0.01 and does not make any reference to the *WH Ireland Limited* investment fund which appeared in the earlier statement dated 31 December 2020.

As a result, it is not clear what has occurred between the date of the two statements dated 31 December 2020 and 27 February 2026 respectively. It was submitted that this further reinforces previous points made regarding the Service Provider's failure to give a clear and precise explanation as to what has occurred.

Arbiter's considerations

Article 21(1)(c) stipulates that:

> *'An Arbiter shall also have the competence to hear complaints in terms of her 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*'.

[21] P. 261

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 her Retirement Scheme.

In her Complaint Form to the OAFS, the Complainant indicated the date of 30 June 2025, as to when she first had knowledge of the matters she was complaining about.[22] This reflects the date when the former CEO of the German Property Group (GPG)/Dolphin Capital was convicted, as explained in detail in her additional submissions.

The Complainant was 49 years of age at the time of her application for membership of the *Harbour Retirement Scheme* in October 2014.[23] An application to purchase the disputed investment was filed in 2014.[24]

The transfer value into the Retirement Scheme was of GBP 120,578.27.[25] According to the Pension Review Report of October 2014, prepared by the Complainant's independent financial adviser, *Servatus Limited*, 40% of the pension was to be allocated to the *Dolphin Capital* with the remaining 60% to be allocated between two funds.[26]

In December 2014, 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.[27] The premium invested into the SEB Policy was of GBP 116,106.37.[28]

As outlined above, the formal complaint with STM was filed by the Complainant on 14 November 2025.[29] In order to avoid prescription related to the Arbiter's competence to hear this case, the Complainant had to have first knowledge of the matter complained of on 14 November 2023 or later.

[22] P. 2
[23] P. 116 & 130
[24] P. 160
[25] P. 46
[26] 40% in SEB Balanced and 20% in SEB Secure - P. 250
[27] P. 49
[28] *Ibid.*
[29] P. 8 - 18

The following aspects are particularly relevant:

a) In her Complaint, the Complainant *'seeks to rely on the discovery of fraud in June 2025…to prevent the usual rules on prescription'*.[30] Reference was made to Article 1124F of Cap. 16 of the Laws of Malta in this regard.

The Arbiter does not consider this argument relevant for the purposes of Article 21(1) of the Act and the case in question, given that aspects involving fraud are not considered by the Arbiter in the first place 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 her 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[31] does not include claims of any fraud or dishonesty or knowledge thereof on STM's part.

b) It is noted that in her additional submissions, the Complainant has cast doubt on whether certain key documentation was actually sent to or received by her. Such aspects were, however, not raised in her Complaint Form.

In the additional submissions filed by her lawyer, it was claimed that the Complainant did not recall receiving STM's email of 8 July 2021, which included the SEB's Policy Valuation Statement as at 31 December 2020, nor that she 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 she cannot recall ever having received this email [of July 2021]'* [32]

[30] P. 3
[31] P. 8 - 19
[32] P. 280

> *'…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 she 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.'*[33]

The Service Provider produced a copy of an email dated 8 July 2021 sent to the email address featuring the Complainant's name at *'….@gmail.com'*.[34]

It is noted that this is the same email address that was listed in the Application Form for Membership into the Harbour Retirement Scheme signed by the Complainant in 2014.[35]

Furthermore, the Complainant did not dispute that this was not her email address, nor that she did not actually receive it; she only vaguely mentioned that she does not recall receiving it.

It is also noted that the Complainant herself attached, to her Complaint Form, a copy of the letters dated 21 August 2020 and 30 July 2020, relating to the bankruptcy of the GPG.[36]

In her submissions, the Complainant is moreover arguing that on the one hand she was not provided by STM with communications *'which would have enabled her to understand the consequences German Property Group's fall into administration and the effect it would have on her pension savings'*,[37] whilst on the other is arguing that she only became aware of the real impact of the administration, and that she will experience the complete loss on the disputed investment, with the conviction in June 2025.

[33] P. 274
[34] P. 199
[35] P. 116 & 126
[36] P. 76 - 77
[37] P. 280 - 281

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 weighting 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 she was not in receipt of, or was not aware that her SEB statements indicated the Dolphin Loan Note at zero value.

c) With respect to the claim that STM's email of 8 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 31st December 2020 clearly provides that the *'Policy Value at 31/12/20'* had reduced substantially to *'65,233.45 GBP'*, from its value of *'114,347.87'* a year earlier as at *'31/12/19'*.[38]

The only remaining value in her policy was in respect of the investment *WH Ireland Limited Investment Account* for the amount of GBP 65,568.19. The statement further indicated a negative 'Cash Holdings' of *'-334.72 GBP'*.[39] This made her SEB *'Policy Value at 31/12/20'* displayed as *'65,233.45 GBP'*.[40]

In addition, the Policy Valuation Statement indicated that the Dolphin Loan Note was in administration as per the note reading *'Dolphin Capital Loan Note Fixed Interest 10.2% (Average) 2019, GBP (In Administration 24.07.2020)'*.[41] The said statement also indicated its *'Price'* and *'Asset Value'* being *'0.00'* and the investment having experienced a *'Gain/Loss'* of *'-46,442.55 GBP'* with a *'Gain/Loss %'* of *'-100.00%'* and *'Value in Policy Currency'* of *'0.00 GBP'*.[42]

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[38] P. 201
[39] *Ibid*.
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*

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 substantial drop in value of the SEB policy.

In addition, no proof was provided by the Complainant that there were some positive assurances provided to her which led her to believe that she 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, which all provided tangible indicators of the material losses, if not the complete write-off arising on the disputed investment.

e) The claim that the Complainant did not have an investment adviser appointed in respect of her pension or that she had no direct contact or further communication with *Servatus Ltd* does not justify either the notion that the Complainant could not have had knowledge of the loss at the time.

Apart from the matters already raised above, the Complainant was not precluded 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 reply the Complainant thought she would have received from STM.

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 her 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.[43]

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 her case.

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

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

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).[44]

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.

[44] 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.