

Before the ARBITER FOR FINANCIAL SERVICES

Case ASF 006/2022

FD ('the Complainant')

vs

Sovereign Pension Services Limited
(C56627) ('SPSL' or 'the Service
Provider')

Sitting of the 18 August 2023

The Arbitrator,

Having seen **the Complaint** relating to the *Elmo International Retirement Plan* ('the Retirement Scheme' or 'Scheme'), this being a retirement scheme previously administered by *Elmo Pensions Limited* ('EPL' or 'Elmo Pensions') which also acted as the Scheme's trustee.¹

The Scheme was acquired in 2021 by *Sovereign Pension Services Limited* ('SPSL' or 'the Service Provider') and SPSL accordingly became the new trustee and retirement scheme administrator of the Scheme.^{2, 3}

The Complaint, in essence, relates to the alleged lack of adequate service provided by the Service Provider in relation to his Retirement Scheme account, where it was claimed that the Service Provider delayed and failed to reply to his requests for information and to undertake his requested transfer out of the Scheme.

The Complainant explained that he asked to transfer his holding with the Scheme due to the poor service he received and the amateurish approach to managing his money.

¹ Page (P.) 39

² P. 22

³ <https://www.mfsa.mt/publication/scheme-transfer-by-elmo-pensions-limited/>

He alleged that the Service Provider ignored seven communications sent by him. The Complainant noted that whilst he was promised that he would be contacted, he was, however, repeatedly let down.

The Complainant wants his money to be moved out of the Retirement Scheme and back to the UK, to a professional and competent provider.

Remedy requested

He requested immediate action to be taken to transfer his pension on a non-advisory basis. The Complainant also requested compensation for any market movement against him as well as redress for stress and inconvenience.⁴

Having considered SPSL's reply where it was essentially submitted the following:⁵

1. That SPSL acquired the *Elmo International Retirement Plan* from *Elmo Pensions Limited* ('EPL') on 1 June 2021.

Several Scheme members, including the Complainant, held funds that were managed by *Bishop and Associates Inc* ('Bishop') in the United States of America.

Based on the information that became known to EPL in 2018, it appears that a complex illegal structure was set up by various third parties, including Bishop, whereby an arrangement was made to serve as a vehicle to enable a loan transaction with the principal aim of liberating the members' pension prior to retirement age. This constituted a breach of regulation and legislation and was done without the knowledge or involvement of EPL.

2. That, in light of the said developments, EPL sent a letter to the Complainant ('the Member') on 9 February 2018 (as per Appendix 1 to its reply).⁶ In the said letter it provided a detailed explanation of the issue and informed him of EPL's decision to instruct Bishop to transfer all the assets under management back to *Gravitas Finance LLC* ('Gravitas'), which was the investment platform.

⁴ Page (P.) 2

⁵ P. 22-24

⁶ P. 26

SPSL noted that the letter further stated that if the Member did not agree with EPL's decision and preferred to transfer to another pension provider, he was to submit a signed transfer out application to EPL within five working days from the date of the letter.

EPL did not receive a response or completed transfer request form from the Member, and it therefore proceeded with instructing Bishop to transfer the assets back to Gravitas.

SPSL further noted that, unfortunately, Bishop refused to action EPL's instructions to transfer the funds back to Gravitas. As a result, EPL was forced to report Bishop to its regulator, the *US Securities and Exchange Commission* ('SEC') in July 2018.

3. The Service Provider explained that, in addition, a full report about the suspected illegal pension liberation structure in which the Member is involved was provided by EPL to the MFSA in March 2018. The Member was specifically listed among the members reported to the MFSA.

It further explained that, subsequently, the MFSA carried out an investigation into this matter and no further action was taken by the Authority.

4. SPSL noted that it received an email from the Member on the 7 July 2021, where he notified that he would like to transfer out of the Scheme. A current valuation was also requested in the said email.

The Service Provider replied to the Member on the 8 July 2021, informing him that since a current valuation cannot be obtained from Gravitas or Bishop, it was not possible to process the transfer out request or provide the current valuation requested by the Member.

On the 9 July 2021, the Member enquired as to how long SPSL had been attempting to obtain the valuation and requested the contact information of Bishop so that he may try to obtain the valuation himself.

A reply was sent to the member on the same day. It noted that in the said reply, SPSL informed him that the Scheme was taken over on 1 June 2021 and suggested that he contact his appointed advisers, Gravitas. The

Member requested the contact details for Gravitass (as per Appendix 2 to its reply).⁷

5. SPSL explained that, further to the Member's request, on 12 July 2021, SPSL sent an email to EPL to ask for the contact details of the Member's appointed adviser at Gravitass.

EPL replied on 13 July 2021, confirming that the Bishop fund situation is quite complex and that the members are already fully aware of where all the respective parties stand, that is, EPL, Gravitass and Bishop.

SPSL noted that it was explained that there is no particular adviser at Gravitass who gave specific investment advice to these members. The structure was set up by *EvoConcept Ltd* and an introducer in the UK ('the Introducer'), who promised loans to members.

Since the Introducer was not licensed to provide investment advice, Gravitass were appointed as investment advisers. The client investment profiling was carried out remotely by Gravitass by means of a questionnaire and all members were assigned a specific Bishop portfolio based on their investment risk profile.

EPL advised that if the member contacts Gravitass, then Gravitass will simply refer them back to EPL/ SPSL.

SPSL was also informed that when EPL received similar requests from members over the past year and a half, they referred the members back to the original letter of warning dated 9 February 2018, that is, when the matter first emerged.

In their response to members, EPL also advised that several requests for benefits and/or transfers out were already being received, but when requesting a valuation or transfer of assets from Bishop, these requests were not being honoured, or responded to, by Bishop.

⁷ P. 27

6. That on 15 July 2021, SPSL requested a copy of the correspondence sent to members from EPL, which was received on 30 July 2021 together with a proposed draft response to send to the Member.

EPL requested that SPSL forward any queries received from the members involved in this structure to them, so that EPL can respond to these members themselves.

It explained that meanwhile, an email was received from the Member on 28 July 2021 in which he expressed his dissatisfaction towards the lack of attention given to his communications.

On 4 August 2021, SPSL forwarded the Member's email to EPL for them to respond requesting also that SPSL be kept in copy. It noted that the members' files related to the Bishop structure remained with EPL to deal with any queries and correspondence until the investigation is completed by the relevant authorities.

7. That on 15 September 2021, the Member sent an email to SPSL in which he complained about the lack of contact. During this time, SPSL was liaising with EPL and their legal advisers and awaiting responses from them before issuing an email reply to all affected members who requested either a transfer out or to withdraw their full fund by way of pension benefit payments.
8. On 2 November 2021, SPSL sent an email to the Member with all the details that were covered in the letter which EPL issued on the 9 February 2018. The Member replied on the same day saying that this was the first time that he has been made aware of the issue and claimed that he never received the letter which EPL had sent in 2018.
9. On 25 November 2021, the Member sent another email to SPSL regarding his request to transfer out. SPSL covered all the details of the matter in their email dated 2 November 2021 and, therefore, a response was not issued (as per Appendix 3 to its reply).⁸

⁸ P. 32

10. SPSL accordingly refutes the Member's claim that his communications have been ignored. Due to the complex nature and history of this case, including the fact that this case was inherited from EPL, where SPSL had to be in constant communication with EPL, an immediate response to the Member was not always possible.

It submitted that, nevertheless, SPSL and EPL have always strived to assist the Member's queries to the best of their abilities, despite the circumstances.

11. SPSL further submitted that a transfer out of the Member's pension is currently not possible and this for the reasons mentioned. The Member has been kept abreast of the developments since February 2018 as per the appendices attached to its reply. SPSL therefore, refuted any responsibility.

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

Considers:

The Merits of the Case

The Arbiter will decide the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.⁹

Scheme's Structure

It is noted that according to the explanations provided by the Service Provider: (i) the Scheme used an investment platform of *Gravitas Finance LLC*, within which to effect investments and (ii) the appointed Investment Manager was/is *Bishop and Associates Inc* based in the USA.¹⁰

Timeline

The following is a summary of the timeline involving the key messages, emails and letters exchanged as produced by the parties to this Complaint:

⁹ Cap. 555, Art. 19(3)(b)

¹⁰ P. 13 & 22

- 7 July 2021 – The Complainant sent an email to SPSL requesting a transfer out of the Scheme noting *inter alia* that:

‘My circumstances have changed somewhat and I require access to this pension and I’m gonna need to transfer it out. What I need from you is to know whether or not I need ... advice in order for this to happen whether it can happen on an execution/customer instruction-only basis’.¹¹

He further requested the relevant paperwork ***‘in order to facilitate this movement’*** as well as ***‘an up-to-date valuation of the current holding’***.¹²

- 8 July 2021 – Email sent by SPSL to the Complainant informing him that in order ***‘to initiate a transfer to another provider, we will require a current valuation of your investment account, which to date we have not been able to obtain from the underlying investment manager’***.¹³

SPSL further noted that ***‘until this is received, we will not be able to process a transfer out request for your plan’***.¹⁴

- 9 July 2021 – The Complainant sent an email to SPSL asking it to clarify the following: ***‘When you say you have been unable to obtain how long have you been trying and who is the underlying investment manager – if you give me the contact details I will ask myself’***.¹⁵
- 9 July 2021 – Email sent by SPSL to the Complainant noting that SPSL has taken over the administration of the Scheme on 1 June 2021, that the Investment Manager is Bishop, and that the Complainant needs to get in touch with his appointed investment adviser at Gravitas.¹⁶
- 9 July 2021 – The Complainant informed SPSL that he does not have ***‘an appointed person at Gravitas’*** and he had no ***‘contact details for them’*** requesting also SPSL to provide the relevant contact details.¹⁷

¹¹ P. 29

¹² *Ibid.*

¹³ P. 14

¹⁴ *Ibid.*

¹⁵ P. 28

¹⁶ P. 13

¹⁷ P. 15

- 12 July 2021 – The Complainant sent an email asking for contact details.¹⁸
- 16 July 2021 – SPSL was asked again by the Complainant to provide contact details of Gravitas.¹⁹
- 20 July 2021 – The Complainant asked again for him to be supplied contact details of Gravitas.²⁰
- 28 July (2021) – Urgent reminder sent by the Complainant that he was still waiting for details of the process for the transfer of his Scheme where he also highlighted his dissatisfaction with the lack of response and requested relevant contact details at Gravitas, Elmo Pensions and SPSL.²¹
- 18 September (2021) – SPSL thanked the Complainant for the additional information which has helped to identify his Scheme.²²
- 22 September (2021) – Reminder sent by the Complainant regarding the lack of response. A reply was subsequently issued by SPSL on the same day that the exchange of emails has been escalated internally within SPSL.²³
- 7 October 2021 – Further reminder from the Complainant that he has not yet heard anything from SPSL.²⁴
- 2 November 2021 – SPSL sent a detailed email to the Complainant where it *inter alia* referred to recent communications regarding the replacement of Elmo Pensions as trustee of the Scheme, explaining that it was agreed between SPSL and EPL that Elmo Pensions ***‘will continue liaising with members of the EIRP whose pension accounts are invested with Bishop & Associates Inc’***; that as communicated in 2018, Elmo Pensions ***‘had significant difficulties in accessing your, and other members’ pension funds currently invested with Bishop & Associates Inc in the USA’***; highlighting the ***‘complex illegal structure’*** that was apparently ***‘set up by***

¹⁸ *Ibid.*

¹⁹ P. 16

²⁰ *Ibid.*

²¹ P. 10

²² P. 7

²³ P. 8

²⁴ P. 9

various third parties with the principal aim of pension liberation and that Elmo Pensions ***'had reported their strong suspicions of the illegality of this structure'*** to the Complainant ***'in their letter dated 9 February 2018'*** which was again attached; that ***'Despite numerous requests submitted by EPL, Bishop & Associates refused to transfer the members' pensions funds back to EPL and never responded to any of EPL's requests'***, with the matter then reported to various authorities.²⁵

SPSL further concluded its reply by stating that:

'There have been instances in the past two years where EPL has requested to withdraw funds for members who wished to transfer out, however, Bishop & Associates refused to action these requests. It is therefore assumed that similar issues will be encountered with Bishop & Associates should you request that your pension is transferred out.'²⁶

- 2 November 2021 – The Complainant subsequently sent a reply to SPSL indicating *inter alia* that this was the first time that he had heard about the issues raised in SPSL's email, highlighting *inter alia* his disappointment and claiming ***'incompetence at best, Serious Fraud if not!!!'***²⁷

The Complainant further requested his pension to be transferred out and claimed, in the said email, that SPSL ***'knew all this' and 'didn't bother telling [him]'***.²⁸

- 25 November 2021 – Email sent by the Complainant to SPSL highlighting his disappointment with the lack of progress regarding his transfer out request.²⁹

Observations and Conclusions

Having considered the case in question, the Arbiter decides that there is no sufficient grounds on which he can reasonably accept the Complainant's

²⁵ P. 33-34

²⁶ P. 34

²⁷ P. 33

²⁸ *Ibid.*

²⁹ P. 32-33

request to order the Service Provider to undertake a transfer out of his Scheme and/or to provide any monetary compensation as requested in his Complaint.

This is when taking various aspects into consideration including:

- (i) *Lack of evidence produced or emerging substantiating the claims made by the Complainant*

The Complainant only indicated in his Complaint that the reason for his request to transfer out was *'the poor service'* provided by SPSL and the *'plain amateur approach to managing my money'* by the Service Provider.³⁰

He did not explain the reasons for the poor service other than indicating that communications were being ignored, or that he was *'promised contact'* but was *'repeatedly let down'*.³¹

The Complainant also did not indicate or explain why the Service Provider was delaying or holding onto the transfer of his pension, nor did he indicate any other reasons justifying his claims.

It is noted that the Complainant has not even quantified in the first place, *'any loss of capital or income or damages suffered'* by him *'as a result of the conduct complained of'*, for the purposes of adjudication in terms of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta.

Furthermore, the remedy requested of *'immediate action to transfer pension on a non-advised basis'* is not within the competence of the Arbiter to enforce unless it is reasonably demonstrated and proven that such a transfer is being precluded from being done in breach of the applicable procedures, terms and conditions of the Scheme, regulatory requirements or provisions of law.

A request to transfer out is also dependent on the cooperation of parties other than the Service Provider, and difficulties or delays understandably arise where such cooperation is not forthcoming and/or investigations by relevant authorities are involved.

³⁰ P. 2

³¹ *Ibid.*

(ii) *Lack of information and participation in the proceedings of the case*

It is noted that, apart from the short and scarce submissions made in his Complaint,³² which only included a copy of a few exchanges he had with SPSL,³³ the Complainant only participated in one hearing, that of 14 June 2022. No further participation in the subsequent hearings of 19 September 2022 and 11 October 2022 occurred. Nor did the Complainant file any other submissions, notwithstanding the opportunity provided during the proceedings of this case.³⁴

(iii) *Inconsistencies and conflicting statements*

Throughout the proceedings of the case, the Arbiter noted certain inconsistencies and conflicting statements arising from both parties to this Complaint.

In its reply, the Service Provider stated that:

'EPL did not receive a response or completed transfer request form from the Member, therefore proceeded with instructing Bishop to transfer the assets back to Gravitax'.³⁵

Such a statement was also made in the email of 2 November 2021 sent by SPSL to the Complainant, where SPSL indicated ***that 'EPL did not hear from you in response to their letter of 9 February 2018'.***³⁶

This however conflicts with the submissions filed in later stages of the proceedings. In a note filed by SPSL, the Service Provider attached, *inter alia*, the

'Member's reply to EPL's letter via transfer out application form dated 13 February 2018 signed by the Complainant' ('Doc SP 2' to the said 'Note of documents').^{37, 38}

³² P. 2

³³ P. 6 - 16

³⁴ P.53, 54 & 56

³⁵ P. 22 – Emphasis added by the Arbiter

³⁶ P. 34

³⁷ P. 45 – Emphasis made by the Arbiter

³⁸ P. 47-49

Indeed, the said attachment features a '*Pension Transfer Form*' dated '*13/2/2018*' and signed by the Complainant.³⁹

Hence, whilst in its reply the Service Provider indicated that Elmo Pensions had received no response from the Complainant to its letter of 9 February 2018, it then proceeded to provide a document (a pension transfer form) which actually indicated the contrary.

As to the Complainant, the Arbiter notes that, in his reply to the Service Provider's email of 2 November 2021 (in which SPSL referred to EPL's letter of 9 February 2018), the Complainant from his part stated that:

*'I've read your letter and I am speechless. This is the first time I've heard of any issues at all! ... This letter I've now only just seen for the first time ...'*⁴⁰

This was again declared by the Complainant during the hearing of 14 June 2022, where he testified that:

'It is being said that now I am aware that in February 2018, Elmo Pensions informed me that there were serious problems with Bishop in particular, I say that I saw the letter six months ago and not in 2018. I did not know that there were issues with Bishop until six months ago when the letter came'.⁴¹

As mentioned above, however, the Complainant had signed a '*Pension Transfer Form*' dated 13 February 2018 (just after Elmo Pension's letter of 9 February 2018, in which Elmo had requested the members to submit a Transfer Out Form within five working days of their letter if they were not in agreement with their decision).⁴²

The submission of the said form was further confirmed by the Complainant in his email of 21 February 2018 to Elmo Pensions.⁴³

³⁹ P. 48. It is to be noted that the Pension Transfer Form indicated another '*Receiving Scheme*', the '*Synergy International Pension Plan*' whose Retirement Scheme Administrator was indicated as '*ITC International Pensions Limited*'. It is apparent that the transfer to the '*Synergy International Pension Plan*' was not done, and SPSL instead eventually took over from Elmo Pensions as the new trustee and RSA of the *Elmo International Retirement Plan*.

⁴⁰ P. 33

⁴¹ P. 41

⁴² P. 46

⁴³ P. 50

Accordingly, and in the absence of any clarifications provided, the Complainant must have been aware of the said letter of 9 February 2018, in order to have signed the said '*Pension Transfer Form*' – which thus contradicts his declaration made in his email of 2 November 2021 and hearing of 14 June 2022 as outlined above.

The Arbiter ultimately notes that apart from mobile, email communications and/or letters exchanged between the parties, no formal documentation (such as formal agreements, official transaction statements or forms other than a '*Pension Transfer Form*') was submitted by the parties during this Complaint, in order to substantiate the Scheme's structure, its investment arrangement/ underlying portfolio and the claims and submissions made.

Given the lack of evidence produced and/or emerging during this case required to substantiate the Complainant's claims in respect of the remedy requested, the Arbiter finds no sufficient and adequate basis on which he can accept the Complainant's requests.

In view of the statement made by the Complainant in his email of 2 November 2021,⁴⁴ the Arbiter would like to point out that any allegations of criminal fraud are not handled by the Office of the Arbiter for Financial Services. Such types of allegations are a matter for the police to handle.

Any allegations of criminal fraud should accordingly be reported to the police and relevant authorities. For the avoidance of any doubt, the Arbiter has, in this Complaint, accordingly, only focused and considered those matters which fall within his powers under the Arbiter for Financial Services Act (Cap. 555).

Decision

The Arbiter is not upholding the Complaint for the reasons amply mentioned.

The Arbiter nevertheless understands the Complainant's frustration and disappointment about the status of his pension. A trustee and RSA of a Retirement Scheme has key important functions and obligations in terms of

⁴⁴ P. 33

the applicable regulatory framework as exhaustively dealt with in various previous decisions issued by the Arbiter involving such schemes. The Retirement Scheme's trustee and administrator needs to *inter alia* actively pursue the interests of the member, safeguard and keep control of the trust property and to account accordingly to the members and provide them with information.⁴⁵

Given the particular circumstances of this case, and without prejudice to this decision, the Arbiter is recommending that the Service Provider provides, in a timely manner, the Complainant with a further detailed update on the current status of affairs in respect of his Scheme and underlying investments and his request to transfer out including, as applicable:

- (i) a full historical transaction statement in respect of his Scheme and underlying investments since his membership;
- (ii) a copy of the last official valuation statement issued and the most recent available valuation in respect of his underlying assets;
- (iii) the current status of any pending investigations (and, if possible, an indication when these are planned to be finalised, if so, communicated and permitted to be disclosed by the relevant authorities);
- (iv) any legal remedies that the trustee and RSA of the Scheme sought, and/or intends to seek, with respect to the impasse it has with *Bishop and Associates Inc.*, if this situation is still prevalent.

The above decision is without prejudice to any other action, in terms of law, that the Complainant may be entitled to take with respect to his Scheme and underlying investments.

Given the novelty of this case and the matters emerging as outlined in this decision, each party is to bear its own costs of these proceedings.

⁴⁵ Reference to the provisions of Article 21(1) and Article 21(2)(a) of the Trusts and Trustees Act, Chapter 331 of the Laws of Malta as well the Conduct of Business Rules and Pension Rules issued by the Authority, (including Rule 8.8 of Part B.8 titled '*Supplementary Conditions in the case of entirely Member Directed Schemes*' of the Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act, 2011.

A copy of this decision shall be sent to the Malta Financial Services Authority, for any further appropriate action, if any, according to law.

**Alfred Mifsud
Arbiter for Financial Services**