

## Before the Arbiter for Financial Services

Case ASF 037/2022

CR ('the Complainant')

vs

MC Trustees (Malta) Limited

(Reg. C48412)

('MCT' or 'the Service Provider')

Sitting of the 18 August 2023

The Arbiter,

### PRELIMINARY

The Complaint was filed against both *MC Trustees (Malta) Ltd* and *The MCT Malta Private Retirement Scheme* ('the Scheme').<sup>1</sup> By means of an email of 18 April 2022,<sup>2</sup> MCT informed that the Scheme *per se* was established as a master trust in 2010 and has 170 members.

MCT further pointed out that the Scheme is not an entity that can respond in its own right. That responsibility rests on the Scheme's Retirement Scheme Administrator (RSA), which is MCT.

The Service Provider is, therefore, considered the party against which the Complaint is being made and which is responsible for the matters raised in

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<sup>1</sup> Page (P.) 1

<sup>2</sup> P. 247

relation to the Scheme for the purpose of the Complaint filed in terms of Chapter 555 of the Laws of Malta ('the Act').

### **The Complaint**

Having seen **the Complaint** filed on 23 March 2022,<sup>3</sup> in which the Complainant stated that:

***“My retirement fund was ‘suspended’ in December 2019 and subject to liquidation but nothing has happened since then despite repeated requests for information updates and help. Nothing has happened for over 2 years since the suspension of the retirement fund.***

***... the last email ... received from MCT trustees regarding my pension fund in which they state:***

***‘I have been informed by Cornhill Luxembourg that the LUO836480318 WSP Old Broad Street Investments Balanced B GBP (\*in liquidation) security is still in the liquidation process and they do not have a timeframe. They had stated the court appointed liquidator is still proving difficult to contact in getting a response. They have given me the e-mail address which I have been trying to obtain stating we can try and contact them directly, which I have, asking for the latest update information along with an estimated timeline’.***

***The relationship I have is that MCT Trustees are managing the relationship with Cornhill pension fund which is currently in Liquidation. Unfortunately, I do not fully understand the technical aspects of the relationship.***

***I had circa £154,000 in the fund and was receiving £10,000 a year as a drawdown. This money is now in Liquidation and has been for over 3 years. I want my pension fund monies returned so I can re-invest”.***<sup>4</sup>

As a remedy, the Complainant asked for the return of his GBP £154,000 so that he can reinvest the said sum.<sup>5</sup>

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<sup>3</sup> P. 1 - 91

<sup>4</sup> P. 2 - 3

<sup>5</sup> P. 3

### **The Reply from the Service Provider**

In its reply of 11 April 2022,<sup>6</sup> the Service Provider essentially raised the point that the Complaint, as filed, was against the Luxembourg Judicial Liquidation Process in respect of the investment product where the pension money was invested. The Service Provider further submitted that it is unable to influence the process or the timeframe for the liquidation process.

Accordingly, the Service Provider stressed that the Complainant has not raised a complaint against it noting that:

***“The documentation [the Complainant] has submitted to [the Office of the Arbiter for Financial Services] does not include a formal complaint against MCT(ML) nor does it include a formal response from MCT(ML) as it does not exist. [The Complainant] has bypassed our complaints procedure and submitted the complaint directly to the Arbiter before submitting a formal written complaint to MCT(ML). From the complaint form we acknowledge [the Complainant] has answered ‘Yes’ (in response to the question) ‘Has a Complaint been lodged with the provider[?]’. This is not true. He answers ‘Yes, I have received a final reply’ to [the] question ‘Have you received a final reply from your provider after allowing 15 working days’. Again, this is not true or he would have submitted a copy of his complaint and our response with the complaint to the Arbiter”.***<sup>7</sup>

The Service Provider also contested the Complainant’s claim that the last email he received was back in 2020 and sent a list and copies of 47 emails<sup>8</sup> showing that communication with the Complainant was frequent and recent.

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<sup>6</sup> P. 103 - 104

<sup>7</sup> P. 103

<sup>8</sup> P. 105 - 246

## **The Hearings**

The first hearing was held on 18 October 2022.<sup>9</sup> The Complainant basically repeated his complaint stating *inter alia* that:

***“My issue is that I had a pension fund that I started with a company many years ago, probably 30 years ago, with my first job and it has been carried on to other employers. It was transferred when I was in Dubai to a QROPS scheme managed by MCT.***

***In December 2019, I was told that the fund was suspended. My main issue is, apart from the fact that it is suspended and nothing has happened since, that every year that goes on – it has been suspended in 2019; in November 2020 I was told that it should be resolved by Q1 in 2021, and in 2021, I heard nothing about any resolution – and about two/three months ago, I was told that it should be resolved by the end of summer.***

***We are now in October, and my complaint is that I have no money and I am getting nowhere. I do not have my fund, and the only person I could speak to is MCT. I cannot speak to anybody else. So that is why I am complaining to MCT because I do not have my fund. I cannot go anywhere else. So, what do I do?***

***I am here without my £131,000 and I have no one to speak to except these three people on the screen.***

***Asked by the Arbiter what did MCT do wrong, I say that I do not know. I do not know enough about this. I am not an investor as such; that is why I have MCT do this for me. I do not know where to go with this. What do I do? Because I have spoken to MCT many times and they always reply; they have never done anything wrong as far as replying to me, but I am not getting anywhere. So, what do I do?***

***My financial advisor told me about MCT ten years ago.***

***The only person I have spoken to was my financial adviser, Alwyn Owens. The scheme he suggested was a QROPS scheme. Then I signed the papers because everything looked above board and, from then on, I assume his company,***

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<sup>9</sup> P. 250

***which is called Holburn Assets, then identified the best person to be the trustee, is that how it works?***<sup>10</sup>

The second hearing was held on 21 November 2022,<sup>11</sup> where the Service Provider defended their case, declaring as follows:

***“... this should be a complaint against Cornhill Insurance.***

***[The Complainant] joined MCT Malta Private Retirement Scheme in September 2012. Resident in Dubai since the start and he appointed Holborn Assets as his regulated investment advisor also based in Dubai and this relationship still continues.***

***In 2012, MCT received instruction from [the Complainant] and his advisor to invest in the Flexmax product which was managed by Cornhill Management. At the time Cornhill was a very popular for pensions, personal investments and continued for years to be one of the top favourite investment providers in the pension industry.***

***It was not really a bad investment at the time; it was until recent years.***

***In 2013, the advisor sent a dealing instruction to switch to the WSP fund, the one which is currently in suspension, where the funds remained invested until recently.***

***We have sent Annual Statements every year showing performance of investment and value.***

***[The Complainant] took his 25% pension commencement lump sum back in September 2016, with further instalments in February 2018 and January 2019.***

***Until December 2019, when MCT sent instruction to Cornhill to disinvest from the WSP fund in readiness to pay the next annual instalment. And that was when we found out when Cornhill responded on the same day stating that the funds were inactive, and a redemption was not possible at that time. MCT tried to obtain as much information as possible, but we could not get this information; it was very hush hush at the time but as soon as we got information, we sent it to the client and his advisor, and we were in touch with***

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<sup>10</sup> P. 250 -251 – Emphasis added by the Arbitrator

<sup>11</sup> P. 252

***the liquidators who were constantly getting information. Since we had that information, we would send it to the client and his advisor.***

***We are not in control of the fund, and we did not know that it had become inactive. Even a fund manager is not in control of the fund; they do not know until it becomes inactive. My colleagues ... has been talking with people, like class actions. It is a worldwide thing: it is not just pensions, there is corporate, there are personal investors in this fund.***

***We are not in control of the fund, and we did not know that it had become inactive. Even a fund manager is not in control of the fund; they do not know until it becomes inactive. My colleague has been talking with people, like class actions. It is a worldwide thing: it is not just pensions, there is corporate, there are personal investors in this fund.***

***We have done everything in our power to try to obtain as much information and, hopefully, we can try to get some money back for the clients.***

***... [The] Director of MCT can provide some additional information on some people who are trying to go after Cornhill, to go directly against Cornhill.***

***... [MCT] had a number of interactions with ... colleagues as well as IFAs and different groups of advisers who have been looking at Cornhill products.***

***Cornhill, as a company had a pension product.***

***We are trying our level best to get information, regular communication. There are about 140 separate clients that we are all looking at on behalf of the trustees or the independent financial advisors around the fund to try and get as much information as possible and to run track of the fund.***

***But to reiterate ... it is unfortunately out of our control, and it is a worldwide thing, and it covers all the jurisdictions and pretty much all the different independent advisors and we, as MTC trustees, do not have any control over the mechanisms of how this will unfold out. But there is a forensic team who has been appointed out of South Africa ... ES Financial Services ... have appointed Deloitte as a forensic team to try to unlock the funds and the prices.***

***I did have a call with [the Complainant] on Friday, just to give him an update on what we are doing on the outside and reiterated to him that we will keep***

***in constant communication. And anything that does change, or anything comes to the fore, we will be the first ones to communicate it to our clients.***

***We are obviously doing everything in our power to try and get the money back for our clients; but it is out of our hands.”***

Under cross-examination, asked what the likelihood was of recovering the funds and what was the timeline on finalising whether these funds are recovered or not, MCT’s official declared that:

***“the \$192 million in the fund which is suspended involves a big process that you cannot follow through so, in my experience – and this is my personal opinion – the likelihood is not a great likelihood. However, the forensic team are looking at individual access as well. So, we need to find where the money is. We cannot say that it is a 50/50 or that the suspension is lifted.***

***As for the timeline, I cannot see it happening, just to be honest, it’s going to be six months before we are going to be in any traction, I believe. And possibly anything from a year to three to kind of wrap it up if the fund is going from suspension into liquidation. We are obviously optimistic that maybe there are funds available in the fund and, if that is the case, as soon as the redemption is up, [the Complainant’s] money could be processed immediately.***

***Unfortunately, it is how long as a piece of string at this moment in time”.***<sup>12</sup>

### **Analysis and Considerations**

The hearings did not provide any clarity about what failures the Complainant is accusing the Service Provider of. Indeed, as highlighted above, during the hearing of 18 October 2022, the Complainant himself declared *inter alia* that:

***“Asked by the Arbiter what did MCT do wrong, I say that I do not know. I do not know enough about this ... they have never done anything wrong as far as replying to me, but I am not getting anywhere ...”.***<sup>13</sup>

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<sup>12</sup> P. 252 -254

<sup>13</sup> P. 251

During the same sitting, he indicated that his Complaint is rather about the suspension of his investment, the 'WSP Old Broad Street Investments Balanced Portfolio - B GBP' (with ISIN no. LU0836480318), a 'World Strategy Portfolio' fund issued by Cornhill Management,<sup>14</sup> which suspension, as well as the delay being experienced in respect of such suspension, had started in December 2019.<sup>15</sup>

As is common knowledge, however, once a matter enters liquidation proceedings (as indicated by the parties to the Complaint during the case),<sup>16</sup> the parties have no real control over the liquidation procedures and their speed of process.

It is also noted that during the hearings, the Complainant did not address the defence raised by the Service Provider that he failed to make the Complaint with them first before complaining with the Arbiter and that he had given untrue information in the formal complaint filed with the Arbiter, (regarding such submission of a formal complaint with MCT and the Service Provider's official reply).

The Arbiter's competence to hear this case is defined by Article 21(2)(b) of CAP. 555 of the Laws of Malta which states that:

***"An Arbiter shall decline to exercise his powers under this Act where:***

...

***(b) it results that the customer failed to communicate the substance of the complaint to the financial service provider concerned and has not given that financial service provider a reasonable opportunity to deal with the complaint prior to filing a complaint with the Arbiter."***

Having considered the particular circumstances of this case, the Arbiter accordingly declines to exercise his powers under the Act in terms of the said Article.

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<sup>14</sup> <http://files.vlastnawebstranka.websupport.sk/7c/8f/7c8fb811-9d46-4550-8056-14f69b0f7725.pdf>

<sup>15</sup> P. 250

<sup>16</sup> P. 3 & 103



Without prejudice to such a decision and without entering into the merits of the case, the Arbiter would like to further observe that an alleged unduly lengthy liquidation process is not something which specifically can be taken upon an outside third party to such liquidation process.

### **Decision**

Consequently, the Arbiter decides that he has no competence to adjudge the Complaint as required by Article 19(3)(b), for the reasons mentioned above and is hereby dismissing the Complaint.

This decision is, however, without prejudice to the right of the Complainant to file a fresh complaint, subject to and within the provisions of applicable law, if the Complainant feels he has a case based on alleged failings related to the conduct of the Service Provider with respect to the said Cornhill investment.

Given the particular circumstances of the case, the Arbiter decides that each party is to bear its own costs of these proceedings.

**Alfred Mifsud**  
**Arbiter for Financial Services**