

Before the Arbiter for Financial Services

Case ASF 139/2021

LS ('the Complainant')

vs

STM Malta Pension Services Limited

(C 51028)

('STM Malta' or 'the Service Provider')

Sitting of 22 September 2023

The Arbiter,

Having seen **the Complaint** relating to the STM Harbour Retirement Scheme ('the 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 Malta Pension Services Limited ('STM Malta' or 'the Service Provider'), as its current Trustee and Retirement Scheme Administrator.

The Complaint, in essence, relates to the claim that STM Malta, in its capacity of Trustee and Retirement Scheme Administrator ('RSA') of the Scheme, failed to operate in line with the applicable standards and regulatory obligations by allowing unsuitable high-risk investments which were not reflective of the Complainant's true risk tolerance.

It was claimed in this regard that the Service Provider: (a) failed to undertake due diligence on the investment recommendations provided by her unregulated advisers including on the regulatory status of such advisers (b) failed to act with due skill and care (c) failed to assess the Complainant's personal circumstances

and ensure she had full knowledge of the risks involved and (d) failed to pay regard to her best interests.¹

The Complaint

Through her legal adviser, the Complainant explained that in 2014 her pensions with *Teachers Pensions and Scottish Widows* were valued in the sum of GBP 113,893.77 and GBP 35,327.41, amounting in total to GBP 149,221.18, when they were transferred to the Retirement Scheme of *Harbour Pensions Limited* ('Harbour Pensions'). Harbour Pensions was then taken over by STM Malta.

It was noted that her funds within the Retirement Scheme were invested into the *Blackmore Global PCC Ltd* ('Blackmore'), which has now failed, and she ended up losing the money invested.

The Complainant held STM Malta responsible for her losses. She claimed that STM Malta failed to operate to the standards expected of a regulated pension provider and that these failures directly led to her losses.

The Complainant explained that she was advised by two unregulated financial advisers (*St James International* and *Aspinal Chase*), to make the investment into Blackmore. The total value of the investment was GBP 144,951.18.

She submitted that from the review of the file of papers received from STM Malta, it was apparent that no due diligence was carried out regarding the recommendations made by her advisers and their regulated status.

Furthermore, it was claimed that the Complainant never explicitly instructed Harbour Pensions to make the investment into Blackmore. It was noted that the investment itself was made with Harbour Pensions acting as principal for the Complainant as clearly evidenced in the supporting documentation.

The Complainant, in essence, claimed that:

- a) STM Malta failed to carry out adequate due diligence about her and the failed investments. Alternatively, if STM Malta alleges that it did carry out such due diligence, it failed to act with due skill and care. It was further claimed that despite knowing that the investments were unsuitable, the

¹ Page (P.) 4, 7-9

trustee/administrator continued to allow the investments to be made. The investments were claimed to be of high risk and did not match the Complainant's true risk tolerance. It was further alleged that STM Malta failed to assess the Complainant's personal circumstances and her best interests.

The Complainant submitted that she relied on STM Malta's professional status when making the investments and that she put her trust into STM Malta that her pension funds would be reasonably protected.

- b) STM Malta is liable for the failings of Harbour Pensions given that STM Malta are the current administrators/trustees of her pension scheme. It was submitted that STM Malta acquired Harbour Pensions on 10 November 2017, and as part of the acquisition it acquired responsibility for the failings of Harbour Pensions.
- c) She was misled by the advice of negligent and unregulated parties into making the investment into Blackmore. She claimed that it was the responsibility of the trustees - Harbour Pensions - to make sure the investment advice was suitable for the Complainant and to make sure she had full knowledge of the risks involved in making the investment. It was further noted that this responsibility is pursuant to Article 14, (sub-article) 1 and 2 of the Retirement Pensions Act, Cap. 514, Part IV on Governance which states that:

'In the discharge of its duties, functions and responsibilities, and without prejudice to the liability for damages under any other law, the Retirement Scheme Administrator and any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, including any service provider, shall be liable for any loss or damage suffered as a result of fraud, wilful default or negligence on its part, including the unjustifiable failure to perform in whole or in part its obligations arising under this Act ...'.²

'... The liability of ... the Retirement Scheme Administrator and any person, by whatever name designated, responsible for the operation, administration

² P. 8

*and management of the retirement fund; and, or the service provider shall not be diminished if it has entrusted or delegated to a third party some or all of its duties, functions and responsibilities*³.

The Complainant claimed that the above-mentioned responsibility of Harbour Pensions was not met, and she was made a spectator to the investment, which can now be considered wholly unsuitable for her circumstances and has put the security of her life savings into jeopardy.

- d) STM Malta itself expressed concerns over this investment as detailed in their letter to the Complainant dated 11 August 2020.

It was further claimed that it would constitute a breach of trust if STM Malta fails to take responsibility for the investment as the current trustees of the Complainant's Scheme following the acquisition of Harbour Pensions.

- e) STM Malta acknowledged her complaint of 6 May 2021 and failed to provide a final response until 14 October 2021. This response consisted of two very brief statements denying the failure of the Complainant's investment and their responsibility for the investment.

It was claimed that this was an abhorrent breach of the Complaints Procedures that STM Malta was governed by. The Complainant noted that this was especially the case after the level of concern she had already expressed and the Service Provider's failure to address such concerns.

Remedy requested

The Complainant requested STM Malta to pay her GBP 149,221.18 with interest calculated at 8% since 27 July 2014 or the amount that the sum of GBP 149,221.18 would have been worth had it not been transferred whichever is greater.⁴ The Complainant also requested compensation for the stress and aggravation in the sum of GBP 1,000 and professional fees incurred with bringing this complaint.⁵

Reply filed outside the prescribed time limits

³ *Ibid.*

⁴ P. 4

⁵ *Ibid.*

STM Malta's reply was filed outside the time limits established by law and the Service Provider was therefore contumacious.

During the hearing of 17 January 2022, the Service Provider was informed about its contumacy and the Arbiter gave it the opportunity to justify its contumacy.⁶

Following the submissions made by the Service Provider, the Arbiter considered this matter further by reference to a relevant decision by the Court of Appeal and the principles established by the Courts regarding contumacy as further explained in the decision issued during the proceedings of the case.⁷

STM Malta was still considered to be contumacious, and the Arbiter decided that the Service Provider's reply could accordingly not be admitted. The Arbiter, therefore, ordered his administrative staff to remove STM Malta's reply from the file of the case.⁸

In the said decision, the Arbiter further noted that:

*'Regarding contumacy, our Courts have also established the principle that contumacy is considered to be a contestation and, therefore, the Complainant has to prove his case. The Arbiter will follow this principle and will also allow the Service Provider to file a note of submissions **within the confines of contumacy** at a later stage in these proceedings'.⁹*

The note of submissions of a contumacious party may only refer to the facts of the case as submitted by the Complainant and, accordingly, the Arbiter will only consider such matters as part of the merits of the case.

Preliminary

Delayed reply by STM Malta to the Complainant's formal complaint

⁶ P. 92

⁷ P. 99 - 102

⁸ P. 102

⁹ *Ibid.*

The Arbiter notes that the Complainant claimed that a final response to her formal complaint of 6 May 2021, was only provided by STM Malta in October 2021. The Complainant further submitted that the Service Provider's reply then only included '*two very brief statements*' and claimed that this was '*an abhorrent breach of the Complaints Procedure*' that STM Malta was subject to.¹⁰

The Arbiter notes that the legal advisers of the Complainant filed a formal complaint with STM Malta on 5 May 2021. This was replied to by STM Malta by way of its email dated 6 October 2021.¹¹ STM Malta thus took five months to provide the Complainant with a short reply to her formal complaint. In its email, STM Malta only replied that:

'The complaint is factually incorrect on two counts:

- 1. You state that the Blackmore Global PCC investment has failed, yet you provide no evidence to support this assertion. The investment is for a 10 year fixed period and that period has not expired. At this stage, it is premature to state that the investment has failed.*
- 2. STM Malta Pension Services Limited became trustee of the Harbour retirement scheme on 31st August 2018 by way of a Deed of Retirement and Appointment. It was not party to, and could not have known about investment decisions of Harbour Pensions Limited in 2014.*

Accordingly, there is no basis for you to allege that your client has losses and there is no basis to suggest that STM has failed in any duty in respect of the original selection of investments for your client. The complaint is not upheld.'

The Arbiter observes that no explanations were provided by the Service Provider regarding the reasons for the delay in reverting to the Complainant's formal complaint.

The Arbiter does not see any valid reason why the Service Provider took so long to send its short and scant reply to the Complainant's formal complaint. The Arbiter deems it very unprofessional for a service provider to hinder a complaint and procrastinate in reverting to a complaint filed against it.

¹⁰ P. 9

¹¹ P. 22 & 30

The excessive and unexplainable delays that happened in this case, indeed do not reflect, and are not compliant with, Rule 1.4.4 titled 'Complaints Procedure' of the '*Pension Rules for Service Providers Issued in Terms of the Retirement Pensions Act, 2011*' by the Malta Financial Services Authority ('MFSA'), which requires the '*prompt handling of complaints*'.

As also outlined in the OAFS's website, a response to a formal complaint should be sent by a financial service provider to a complainant not later than fifteen working days from the date when a complaint is registered.¹²

Hence, the Complainant is justified in complaining about the delay and the breach of the Complaints Procedure on the part of the Service Provider. Any unjustifiable lengthy delays and procrastination in replying to a complaint filed by a consumer of financial services is indeed quite inappropriate and reflects badly on the provider.

Other Preliminary - Complaint filed before the FSCS and request for Complaint to be suspended sine die

During the proceedings of the case, the Service Provider filed an application where it *inter alia* submitted that:

- '*STM Malta has recently been informed that the same Complainant has filed a complaint with the Financial Services Compensation Scheme (FSCS)...*';
- that '*the claim before the FSCS is identical to the claim before the Arbiter for Financial Services. The losses and parties are the same...*';
- '*That if the claim is successful, the Complainant will be compensated for some or all of the losses incurred in the investment being complained of in the Complaint. This decision will also impact the level of losses and potentially explicitly ascribe culpability on either party thus the Arbiter will be unable to deal with the Complaint (with regards to liability or quantum of compensation if necessary) unless or until the outcome of the FSCS decision*';

¹² <https://www.financialarbiter.org.mt/content/providers>

- *'That this correspondence is a clear indication that the Complainant has lodged the same complaint, on the same subject matter which is precluded according to Article 21(2)(a) of Chapter 555 of the Laws of Malta and which goes against the principle of unjustified enrichment according to Maltese Law as the Complainant is seeking a double remedy from two separate adjudicating bodies';*
- *'that on several other occasions, complainants withdrew their complaint due to the legal assignment made by the Complainant to FSCS which creates an invalid Complaint as the Complainant, by means of the assignment would have lost his right to seek compensation from the service provider and FSCS would be the plaintiff who would have a direct and legal interest in the case and not the Complainant'.¹³*

STM Malta accordingly requested the Arbiter to:

'either dismisses the Complaint or seeks clarification from the Complainant on whether (s)he intends to proceed with the Complaint before the FSCS' and 'In the event that the Complainant confirms that (s)he shall proceed with the complaint before the FSCS ... the Arbiter orders that the Complaint is suspended sine die until the outcome of the FSCS decision which decision will have an ultimate and substantial impact on the Complaint as filed by the Complainant.'¹⁴

Following a decree of 31 July 2023, the Complainant was provided with the opportunity to provide her comments in respect of the said application filed by STM Malta.¹⁵ No comments or updates were however forthcoming from the Complainant.

The Arbiter first notes that no mention was made of the party against which the case was filed with the FSCS in UK. The Complainant's investment adviser which featured in the Scheme's Application Form, *St James International*, and which was involved in the selection of the disputed investment, the Blackmore Global PCC Ltd ('the Blackmore investment') as shall be considered further on, is not a UK-based entity but based in Czech Republic.¹⁶

¹³ P. 123 - 124

¹⁴ P. 124

¹⁵ P. 131

¹⁶ P. 84

The only UK entity to which reference was made in this case is *'Aspinal Chase who were based in Manchester'*, and who, according to the Complainant, had contacted her several times on her mobile phone where they discussed moving her *'2 individual retirement pensions into 1 better performing scheme'*.¹⁷ During the proceedings of this case, Aspinal Chase did not however feature in any official capacity within the Scheme's structure.

Article 21(2)(a) of CAP.555, which deals with the Competence of Arbiter, provides that:

'(2) An Arbiter shall decline to exercise his powers under this Act where:

(a) the conduct complained of is or has been the subject of a law suit before a court or tribunal or is or has been the subject of a complaint lodged with an ADR entity in any other jurisdiction, initiated by the same complainant on the same subject matter ...'.

Having considered this matter, the Arbiter refutes the Service Provider's claim with respect to Article 21(2)(a) of the Act and decides that he has the competence to consider this Complaint and exercise his powers under the Act.

This is also when taking into consideration that:

- No satisfactory evidence has been presented that the case filed before the FSCS was in respect of the conduct complained of in this Complaint.

The Complaint before the Arbiter deals specifically with the alleged failures in the conduct of STM Malta - and not other parties mentioned in the Scheme's structure let alone the conduct of other parties falling outside and not featuring in the structure of the Scheme. Moreover, each respective party has its own distinct role and responsibilities.

- Neither it is deemed that *'the conduct complained of is or has been the subject of a lawsuit before a court or tribunal or is or has been the subject of a complaint lodged with an ADR entity in any jurisdiction'*.¹⁸

¹⁷ P. 46

¹⁸ As stipulated under Article 21(2)(a) of Cap. 555 of the Laws of Malta.

This is given that the FSCS is not a court, nor tribunal and not even an ADR entity. The FSCS is rather a statutory compensation scheme that deals with particular scenarios. According to its website:

*'FSCS protects customers of financial services firms that have failed. If the company you've been dealing with has gone bust and can't pay claims against it, we can step in to pay compensation.'*¹⁹

- It has furthermore not emerged that the claim to FSCS relates to the same conduct of the Service Provider being addressed in this complaint, as the latter is not licensed in UK and its conduct is therefore out of scope for compensation by FSCS.

Having rejected the request made by the Service Provider in its application and after considering that he has the competence to deal with this case, the Arbiter shall accordingly proceed to consider the merits of the case next.

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.²⁰

The Complainant

The Complainant, born in 1965 and residing in the UK at the time, applied to become a member of the Harbour Retirement Scheme in 2014, as per the Application Form for Membership into the Harbour Retirement Scheme signed by the Complainant on 13 March 2014.²¹

¹⁹ https://www.fscs.org.uk/about-us/?_gl=1*1wsy0th*_up*MQ..&gclid=CjwKCAjw_aemBhBLEiwAT98FMmJwQVypMSFXnRSodetBjD9xq4sABIUvfovwaikkZQMw7ABTQudkzxoCmYIQAvD_BwE

²⁰ Cap. 555, Art. 19(3)(b)

²¹ p. 75

The Complainant's risk profile was indicated, in the said form, as *'Medium risk'* (out of a number of options ranging from *'Lower risk'*, *'Low risk'*, *'Medium risk'*, *'Med/ Enhanced risk'* and *'Enhanced risk'*).²²

The Complainant's Investment Objective was also described as follows in the Application Form for Membership:

'I am willing to accept a small amount of risk to provide for potential growth over the medium to long term'.²³

During the sitting of 8 February 2022, the Complainant described herself as *'a lecturer'*.²⁴

In her final note of submissions, the Complainant also explained that she was *'a single mother of 2 children who both have specific illnesses and disabilities'*, and that she knew *'that as my frail mother aged and my children grew up, they would all require more stability in their life from me'*.²⁵

She further highlighted that *'I sincerely went into this investment with the understanding that it was safe and that I would be able to take 25% at the age of 55 years'*.²⁶

Investment Adviser

The Application Form for Membership indicates *'St James International'* based in the Czech Republic as the professional adviser.²⁷ In the said form, the *'Name of Regulator'* for the adviser was left empty, with the field for *'Licence Number'* filled in as *'27949460'*.²⁸

As part of the attachments included with her Complaint Form, the Complainant presented a copy of the adviser's recommendation issued by *St James International* in respect of her recommended investment into the *Blackmore Global PCC Limited* (*'the Blackmore investment'*).²⁹

²² P. 87

²³ *Ibid.*

²⁴ P. 103

²⁵ P. 110

²⁶ *Ibid.*

²⁷ P. 84

²⁸ *Ibid.*

²⁹ P. 45

The disputed investment

The Application Form for Membership indicated two transfers to be made into the Retirement Scheme - a transfer of GBP 110,531.66 from an existing *Teachers Pension Plan* held by the Complainant, and another transfer of GBP 35,896.20 from a *Scottish Widow Pension Plan*.³⁰

The Annual Statements for the period ending 31 December 2014 and 31 December 2015 issued by Harbour Pensions, both indicate that the total amount transferred into the Scheme (marked as '*Transfer from another scheme*'), was actually of GBP 149,221.18.³¹

It is noted that a Subscription Form of '*Blackmore Global*' for the investment of GBP 144,951.18 into the *Blackmore Global PCC Limited* ('the Blackmore investment' or 'Blackmore') dated 26 June 2014 was signed by the corporate trustee apart from the Complainant's adviser.³²

The bank statement produced by the Complainant in respect of her Scheme's account reflects the said significant investment into Blackmore.³³

The Arbiter indeed notes that after the deduction of certain fees from the amount transferred into the Scheme, the remaining investible amount of GBP 147,626.18 was used to acquire a staggering investment of GBP 144,951.18 into the Blackmore Global PCC Ltd, leaving the Complainant with a remaining balance into her Scheme account of GBP 2,640 (after transactions fees).³⁴

The investment into *Blackmore Global PCC Ltd* thus constituted 98% of the investible amount that the Complainant had into her Scheme.³⁵

It is noted that in a letter dated 11 August 2020, that STM Malta sent to the members of the Scheme in respect of the Blackmore investment, STM Malta first referred to the acquisition of business of Harbour Pensions Limited and noted that:

³⁰ P. 78. In total, the indicated two pension plans amount to GBP 146,427.86 according to the details included in the Application Form for Membership.

³¹ P. 60 & 61

³² P. 10-18

³³ P. 50

³⁴ *Ibid.*

³⁵ GBP 144,951.18 of GBP 147,626.18 = 98.19%

*'Within the client base, we acquired a number of clients, like yourself, who had invested some **or all of their pension fund**, based on the financial advice that they received at that time, by purchasing share(s) in one or more cells of Blackmore Global PCC Limited ...'.³⁶*

In the said letter of 11 August 2020, STM Malta further explained that:

'Blackmore was established as a company in the Isle of Man, and we understand that the monies derived from the share subscriptions in the Company have been pooled within the cell and then invested in other investments ...

*...The investment is for a fixed 10-year term and most of our members are about half-way through the investment period. **It was always the case that the investment would not offer redemptions during the 10-year period, although the directors have from time to time stated that they would seek to permit redemptions where liquidity permitted.** Currently, we are not aware that the directors have any immediate plans to offer early redemption'.³⁷*

STM Malta also highlighted in the same letter that it had certain concerns with the Blackmore investment. It noted *inter alia* that:

'... we have been in contact with the directors of [Blackmore Global PCC Ltd] with requests for detailed information about the value of the shares in the cells, with regard to the underlying assets ... As the trustee of the Scheme, we have some concerns over the information that we have received:

- *The Company has not produced audited accounts ...*
- *We have not received full transparency in relation to the underlying assets owned by the cells, their value and the method of valuation of the assets, the cells and consequently the shares.*
- *We note that other companies managed by Blackmore's directors have themselves been placed into administration and there is some adverse commentary in the public domain surrounding the management of those companies.'³⁸*

³⁶ P. 19 – Emphasis added by the Arbiter

³⁷ *Ibid.* – Emphasis added by the Arbiter

³⁸ *Ibid.*

STM Malta also sought in the said letter feedback from its members on whether they are prepared to provide additional funding to obtain specialist advice and consider the options which *'might include seeking to change the management and control of the Company or appointing liquidators to take control of [Blackmore] and distribute its assets'*.³⁹

The Arbiter points out that his office had already undertaken an extensive review of the *Blackmore Global PCC Ltd* investment as indicated in the decision of OAFS Case ASF 024/2021.⁴⁰

The distinguishing features of the said investment were summarised in the section titled *'The underlying investments - Key Features & relevant observations'* of OAFS Case ASF 024/2021, and the Arbiter is reproducing here, for ease of reference, the part relevant to the case under consideration:

'As emerging from the copy of the Offering Document presented in respect of the BG Fund, this scheme and its cells had the following distinguishing features:

- (i) Incorporated as a **closed-ended** investment company with limited liability on 2 October 2013, and “tailored for long term investment”;*
- (ii) The **Cell Shares** were ‘non-voting, non-redeemable preference shares’;*
- (iii) Investors were “not entitled to have their Cell Shares redeemed or repurchased by, or out of funds provided by the Company” and could not “trade Cell Shares on an investment exchange” either;*
- (iv) The Exit Strategy was very tight and restrictive. The Offering Document stated inter alia that “Shareholders will **not be entitled to redeem their shares at any time**” and that **each cell had “a fixed investment period”** where “At the end of each investment period, it is the intention of the Directors that the assets of the relevant Cell are sold and the proceeds*

³⁹ p.20

⁴⁰ A separate case filed against STM Malta Pension Services Limited which involved the same disputed investment, that is, the Blackmore Global PCC Ltd investment.

<https://financiarbiter.org.mt/sites/default/files/oafs/decisions/84/ASF%20024-2021%20-%2002%20vs%20STM%20Malta%20Pension%20Services%20Limited.pdf>

distributed to the Cell Shareholders by way of an offer to repurchase the Cell Shares, a cash dividend or combination of the two.”

*The Offering Document further provided that “In the event the Directors do not believe the market conditions are beneficial for the sale of any particular investment, **the Directors may extend the lifetime of any individual Cell or Cells at their discretion”**”.*

*Indeed, the Offering Document warned that “The investor should be aware **the investment is viewed for the lifetime of the closed Cell ... A shareholder will not be permitted to assign or transfer its shares ... without prior consent of the Directors ... Shareholders must therefore be prepared to bear the risks of owning Cell Shares for an extended period of time in excess of the lifetime of a particular Cell”**”.*

*As also emerging from the Fact Sheet produced during the case, the **lock-in period for the cells was of 10 years** as also described throughout the proceedings of the Complaint by both parties.*

- (v) That **investments were “not subject to any restriction and may hold any number of investments in any particular Cell”**;*
- (vi) That with respect to borrowing and leverage the Directors of the BG Fund had **“unlimited power to borrow for the account of any Cell”**;*
- (vii) That **“Investors may not recover the full value of their investment either during the life of the Company or on completion of the closed-ended period”**;*
- (viii) That **“Close Ended Investment Companies are regarded as private arrangements and are not subject to regulation. A Close Ended Investment Company is not subject to approval in the Isle of Man and investors in such companies are not protected by any statutory compensation arrangements in the event of the Company’s failure”**”.*⁴¹

⁴¹ Page 39 - 40 of the case posted on the OAFS’s website - <https://financiararbiter.org.mt/sites/default/files/oafs/decisions/84/ASF%20024-2021%20-%20OZ%20vs%20STM%20Malta%20Pension%20Services%20Limited.pdf>

The Arbiter further notes that, as part of the evidence produced by the Complainant in the case under consideration, the Complainant presented a copy of a notice dated 29 April 2021, issued by the *Isle of Man Financial Services Authority* in respect of Blackmore Global PCC Ltd (which, as indicated, was incorporated in Isle of Man).⁴² The said notice still features on the regulator's website.⁴³

The notice issued by the IOM Financial Services Authority details information which is *'of particular relevance to any persons who directly or indirectly hold shares in Blackmore Global PCC Limited ("Blackmore")'*⁴⁴ and stipulates *inter alia* that:

'... Blackmore has been operating as an open-ended investment company and therefore as a collective investment scheme without having been established as such as required under the Collective Investment Schemes Act 2008.

...

The Authority became aware that between March 2015 and May 2019 there had been regular and substantial redemptions made out of Blackmore.

...

*The Authority is considering appropriate next steps in respect of Blackmore appearing to have operated as a collective investment scheme despite not being established as such as required under the Collective Investment Schemes Act 2008.'*⁴⁵

Additional details about the Status of the Disputed Investment & Claimed losses

During the hearing of 8 February 2022, the Complainant *inter alia* testified:

*'... my main concern was the fact that at the age of 55, I hadn't received any funds and then, I was told that the company, Blackmore Global, had gone in some kind of administration or receivership ...'*⁴⁶

⁴² P. 37

⁴³ <https://www.iomfsa.im/fsa-news/2021/apr/blackmore-global-pcc-limited/>

⁴⁴ P. 37

⁴⁵ P. 37 & 38 – Emphasis added by Arbiter

⁴⁶ P. 104

During the testimony by an official of STM Malta (in the hearing of 8 February 2022), it was *inter alia* stated that

*‘... I say that we continue to request updates from the fund manager of Blackmore. They send us fact sheets which we distribute to members and that is it’.*⁴⁷

It is also noted that further to the Arbiter’s decree of 31 July 2023,⁴⁸ for the provision of additional information, the following updates *inter alia* emerged:

- (i) that STM Malta has in the meantime collaborated with other parties ‘to address the challenges posed by Blackmore’ and have ‘taken legal action to pursue insolvency proceedings and STM contributed £70,000 to support such action’;⁴⁹
- (ii) that the said efforts taken by STM Malta ‘culminated in the successful pursuit of insolvency proceedings through the London Courts and secured the appointment of liquidators (Begbies Trainor) to conduct a complex comprehensive investigation into Blackmore’s affairs and facilitate the recovery of assets ... STM Malta together with the collaborating trustees have caused Blackmore to be placed into liquidation with the aim of controlling the assets’;⁵⁰
- (iii) that in a notice dated 6 May 2022 sent by STM Malta to the members of the Scheme with respect to the Blackmore investment, STM Malta informed members *inter alia* that:

‘... action was brought in the Insolvency & Companies Court of London, which has resulted in a winding up order which will lead to the appointment of an insolvency practitioner to take control of the funds, collect assets and distribute proceeds to investors.

...

This step, though, is only the beginning. The insolvency practitioner must now identify and take control of assets. We have low expectations that the managers will co-operate, so that any recoveries may take months or years

⁴⁷ *Ibid.*

⁴⁸ P. 131

⁴⁹ P. 132

⁵⁰ *Ibid.*

to be received. We will obtain periodic update reports from the insolvency practitioners and share these with you.⁵¹

- (iv) that in another notice dated 18 January 2023, sent by STM Malta to the members of the Scheme invested into Blackmore, STM provided an update on the feedback it received in December 2022 from the Joint Liquidators about the progress of their work. In the said notice, reference was made to the complexity of the investigation where it was *inter alia* noted by the Joint Liquidators that *'any comment in respect of likely timeframes and prospects would be inappropriate'*; ⁵²
- (v) that a further notice dated 21 June 2023 was issued by STM Malta with *'the latest update regarding the liquidation of Blackmore Global PCC'*.⁵³ In the said notice, reference was made to the slow progress made, including that *'... the investigation and recovery process is likely to be long and complex ...'* ⁵⁴

The Arbiter notes that according to the latest *'Valuation Statement as at 31 December 2021'* issued by STM Malta in respect of the Complainant's Scheme, the Complainant's only holding within her Scheme is *'Blackmore'* with a *'Security Holding'* of *'126209.99' units* and a price value of *'£142,422.92'*.⁵⁵ The said Valuation Statement included the following note:

'The carrying value of the investment in Blackmore Global PCC Limited has been determined by reference to the latest net asset value issued by the administrator of Blackmore Global PCC Limited on the 31st October 2019. Audited financial statements for Blackmore Global PCC Limited have not been published to date. Based on this, STM Malta Pension Services Ltd is not in a position to determine the fair value of this investment as at 31st December 2021'.⁵⁶

The Arbiter further notes that in reply to the Arbiter's decree of 31 July 2023, requesting it to provide a copy of a recent portfolio valuation statement, STM Malta communicated that the statement as at 31 December 2021, which was in

⁵¹ P. 134

⁵² P. 135

⁵³ P. 137

⁵⁴ *Ibid.*

⁵⁵ P. 139

⁵⁶ *Ibid.* – Emphasis added by the Arbiter

itself already based on old data issued more than two years prior to the said valuation, was *'the only and latest valuation received despite various chasers sent by STM to Blackmore'*.⁵⁷

From the information outlined above and also under the section titled *'The disputed investment'*, it clearly emerges that there are major and significant concerns about this investment, with no realisable value foreseeable in the near future, and with the prospect of significant losses on (if not all of), the original investment likely materialising. The Arbiter shall take into consideration the recent updates provided by the Service Provider on the status of the investment in his decision.

Other aspects

Following the issue of the Arbiter's decree of 31 July 2023, where STM Malta was also requested to provide a copy of the transaction history statement in respect of the Complainant's Scheme and underlying investment portfolio since the inception of her membership to the date of the decree, the Service Provider just provided a statement featuring just one transaction.⁵⁸

The said single transaction involved the Complainant's investment into the following cells forming part of the *Blackmore Global PCC*.⁵⁹

- the (Blackmore) Property GBP ACC (53,136.61 shares)
- the (Blackmore) Lifestyle GBP ACC (6,641.51 shares)
- the (Blackmore) Sustainable GBP ACC (26,557.61 shares)
- the (Blackmore) Private Equity GBP ACC (39,874.26 shares)

The Blackmore investment indeed has featured as the sole investment undertaken within the Complainant's Retirement Scheme, with this investment constituting the majority investment (98% of the investible amount) as outlined earlier above.

Other Observations & Conclusion

⁵⁷ P. 133

⁵⁸ P. 133 [point (g)] & 146

⁵⁹ P. 146

The change in trustees

Given that in its note of final submissions, STM Malta submitted that it should not be held liable for a breach of trust committed by a former trustee, the Arbiter shall consider this aspect in some detail below.

The Arbiter first notes that Harbour Pensions was licensed by the MFSA as a Retirement Scheme Administrator until it voluntarily surrendered its licence with effect from 5 October 2018.⁶⁰ Harbour Pensions is no longer in operation and was subsequently dissolved and struck off from the records held with the Malta Business Registry with effect from 31 January 2020.⁶¹

Before Harbour Pensions ceased to exist, STM Malta was the entity which (as notified to the member in 2018) had '*acquired the business of Harbour Pensions Limited*' as indicated in its letter dated 11 August 2020,⁶² and was thus the entity which subsequently took over as the Trustee and RSA of the Scheme. This was accordingly not merely a replacement of the trustee of the Scheme but an acquisition of business by STM Malta.

The Arbiter has already exhaustively considered, in one of his previous decisions, the liability arising on STM Malta with reference to such acquisition and also the provisions of the Trusts and Trustees Act (Chapter 331 of the Laws of Malta) ('TTA') regarding a breach of trust committed prior to its appointment by some other person. Reference is in this regard made to OAFS Case ASF 024/2021⁶³ which was confirmed by the Court of Appeal (Inferior Jurisdiction) on 15 September 2023.⁶⁴ Given the relevance and applicability of the aspects relating to the liability of STM Malta as raised in OAFS Case ASF 024/2021, such aspects are also being applied and adopted for the purposes of this decision.

⁶⁰ <https://www.mfsa.mt/financial-services-register/>

⁶¹ <https://registry.mbr.mt/ROC/index.jsp#/ROC/companiesReport.do?action=companyDetails&fKey=03231435-d7a8-4874-8ea1-eeecf9cea414>

⁶² p. 19

⁶³ <https://financialarbiter.org.mt/sites/default/files/oafs/decisions/84/ASF%20024-2021%20-%200Z%20vs%20STM%20Malta%20Pension%20Services%20Limited.pdf>

⁶⁴ Court of Appeal (Inferior Jurisdiction) – Appeal no. 140/2022 LM
<https://ecourts.gov.mt/onlineservices/Judgements/Search>

Particular reference is also made to Article 21 of the TTA relating to ‘Duties of trustees’ as well as to Article 30 of the TTA relating to ‘Liability for breach of trust’, which are especially relevant.

Article 21(1) and (2)(a) of the TTA, in particular, provide that:

‘(1) Trustees shall in the execution of their duties and the exercise of their powers and discretions act with the prudence, diligence and attention of a bonus paterfamilias, act in utmost good faith and avoid any conflict of interest’.

*‘(2)(a) Subject to the provisions of this Act, trustees shall carry out and administer the trust according to its terms; and, subject as aforesaid, the trustees shall ensure that the trust property is vested in them or is under their control and shall, so far as reasonable and subject to the terms of the trust, safeguard the trust property from loss or damage ...’.*⁶⁵

Article 30(3) and (8) of the TTA, in particular, also provide that:

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

...

*(8) The court may relieve the trustee either wholly or in part from liability for a breach of trust where it is satisfied that the trustee has acted honestly and reasonably and ought in fairness to be excused in the circumstances.’*⁶⁶

As specified by Article 19(3)(b) of Chapter 555 of the Laws of Malta, the Arbitrator must treat each case on its particular circumstances.

In this case, another **key aspect that needs to be considered** is whether STM Malta - as the new trustee which replaced the original trustee, *Harbour Pensions*

⁶⁵ Emphasis added by the Arbitrator

⁶⁶ Emphasis added by the Arbitrator

Limited - has also acted properly, adequately, and reasonably once it took on its functions as Trustee and Retirement Scheme Administrator in the particular circumstances of the case.

As outlined in Case ASF 024/2021, Article 30(3) of the TTA does not provide some form of blanket waiver of liability for an incoming trustee in respect of breaches of trust committed by another person. Indeed, there is an obligation in terms of the said article on the new trustee to take all reasonable steps for such a breach to be remedied upon the new trustee becoming aware of it.

The Service Provider cannot attempt to exclude its potential liability by hiding after the fact that it was not the original trustee and, in the process, try to exonerate its own specific actions or inactions on the matter as it is trying to do.

Trustees are duty-bound to administer the retirement scheme and its assets to a high standard of diligence and accountability.⁶⁷

As to a breach of trust committed by some other person, the Arbiter considers that if the incoming new trustee ought to, for example, have reasonably identified or been reasonably aware of a breach committed by its predecessor and the new trustee overlooked, ignored and/or remained silent and took no action on its part to raise this matter and have the said breach remedied, then the incoming trustee cannot expect to avoid liability by just stating that it was not the trustee at the time.

Any such inaction on the part of the incoming trustee would undoubtedly further go against the duties of a trustee as per Article 21(1) and (2)(a) of the TTA mentioned above.

It is moreover indisputable that the new trustee is ultimately responsible for its own actions and/or inactions during its own term as trustee.

⁶⁷ The trustee has to deal with property under trust *'as a fiduciary acting exclusively in the interest of the beneficiaries, with honesty, diligence and impartiality'*. As stated, *'Trustees have many duties relating to the property vested in them. These can be summarized as follows: to act diligently, to act honestly and in good faith and with impartiality towards beneficiaries, to account to the beneficiaries and to provide them with information, to safeguard and keep control of the trust property and to apply the trust property in accordance with the terms of the trust'* - Editor Max Ganado, *'An Introduction to Maltese Financial Services Law'*, Allied Publications 2009, p. 174 & 178.

Apart from the implications of the acquisition of business as already pointed out, consideration further is made of STM Malta's own actions and/or inactions as trustee given also that the matters do not just relate, or should be limited, to the time of when the disputed investment was purchased but are rather of a continuous nature.

The disputed investment still existed and remained within the Scheme's structure at the time of the new trustee. STM Malta indeed permitted, accepted and/or allowed, without question, the disputed investment during its tenure - the investment into Blackmore which constituted nearly all (98%) of the investible premium within the Complainant's pension still existed and constituted the Complainant's main and sole investment at the time of STM Malta's appointment.

It is also to be noted that the concerns about Blackmore were raised by STM Malta on 11 August 2020,⁶⁸ this being quite some time after STM Malta was appointed as trustee in 2018.

The Arbiter notes that it has not emerged that STM Malta itself made any reservations or expressed any concerns on the sole material investment held by the Complainant within her Scheme when it took over as the new trustee.

STM Malta indeed was very much conscious of such material exposures, itself stating in its letter of 11 August 2020 to the members of the Scheme that

*'Within the client base, we acquired a number of clients, like yourself, who had invested some or all of their pension fund... in one or more cells of Blackmore Global PCC Limited'.*⁶⁹

The mere suggestion by the Service Provider of outrightly dismissing any possible liability by suggesting that it was not the original trustee at the time the investment was originally made is considered to rather reflect a certain lack of appreciation of its duties as trustee.

The Blackmore Global – a material investment which should have not been allowed to feature within the Complainant's Retirement Scheme

⁶⁸ p. 19

⁶⁹ *Ibid.* – Emphasis added by the Arbiter

Given the features of the Blackmore and the extent of exposure to this single investment, there are clearly concerns regarding the adequacy of such investment and how this fitted and satisfied the scope of the Retirement Scheme, the Complainant's medium risk profile and investment objective (of a small amount of risk), and the applicable investment principles and restrictions.

The fact that:

- **the Blackmore was closed-ended, with no entitlement to redemptions;**
- **the investment was of long term having a fixed lock-in period of 10 years and where the lifetime of the cell could possibly be extended even further solely at the discretion of the directors of such fund;**
- **the shares of this fund were non-voting and hence investors lacked control on the fund;**
- **the fund was relatively new and had no, or very limited, track record of only around a year;**
- **the fund was not subject to any restriction on investment;**
- **the fund was not subject to regulation,**

make it all amply clear that this was not an adequate investment for a retirement scheme and was of high risk.

Moreover, the fact that 98% of the investible premium was solely invested into the cells of Blackmore Global PCC Ltd, makes it even more questionable how such investment could have been allowed, and concerns not raised by (i) Harbour Pensions at the time of investment, and (ii) also by STM Malta at the time of acquisition and, thus, when it took over as trustee and RSA of the Scheme.

It should have clearly and immediately become evident to both Harbour Pensions and STM Malta that there are issues with this investment.

Irrespective of any confirmation letters from the Complainant or from any investment adviser (regulated or otherwise) regarding the alleged suitability of such investment, the Trustee had to undertake its own independent proper assessment.

A trustee cannot just abdicate from its responsibilities by relying on a third party who may have had his own interest and/or merely on some member's confirmation - the Complainant herself an unprofessional retail investor - when STM Malta itself had a key and important duty to ensure the proper administration of, and the Scheme's compliance with, its scope of a retirement scheme, the provisions of the trust deed and applicable regulatory requirements.

Scope of the Scheme and oversight function by the Trustee/RSA

The principal purpose of the Scheme is clearly to provide retirement benefits.

As to the role of the Trustee/RSA with respect to investments, it is noted that as outlined in the Declaration section of the Retirement Scheme's Application Form,

'... the final decision in respect to the acceptance of any assets or investment into the Harbour Retirement Scheme is with the Administrator of the Harbour Retirement Scheme'.⁷⁰

This aspect where the RSA had the final decision in respect of a member-directed scheme, in order to ensure compliance and adherence with the investment restrictions/principles, has also been exhaustively dealt with by the Arbiter previously. Reference is again particularly made to OAFS Case ASF 024/2021, wherein the oversight function of the Trustee/RSA with respect to investments was considered in detail.

The principles and requirements outlined under the sections titled '*Scope of the Scheme and oversight function by the Trustee/RSA*' and '*Investment principles and regulatory requirements*' in OAFS Case ASF 024/2021 are relevant and similarly applied and adopted to the case in question.⁷¹

Whilst it is acknowledged that **the Trustee/RSA was not the appointed investment adviser and was not itself providing or responsible for investment advice, the Trustee/RSA however had a key monitoring function with respect to investments which function formed part of the important safeguards and controls with respect to the Scheme's underlying investments.**

⁷⁰ p. 88

⁷¹ <https://financialarbiter.org.mt/sites/default/files/oafs/decisions/84/ASF%20024-2021%20-%20OZ%20vs%20STM%20Malta%20Pension%20Services%20Limited.pdf>

Despite the applicable regulatory standards, Harbour Pensions allowed the Complainant's investment portfolio to comprise solely the Blackmore investment. STM Malta did not question either, at the time of acquisition and thus when it took over as Trustee/RSA, at which point it itself should have undertaken a review of the Complainant's Scheme, its portfolio composition and its compliance with the Complainant's profile, risk attitude and objective apart from the applicable investment principles and regulatory requirements.⁷²

The MFSA's investment principles and regulatory requirements, which originally applied to the Retirement Scheme, were specified in Standard Operational Condition ('SOC') 2.7.1 and 2.7.2 of the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act, 2002*', ('the Directives'). The said Directives applied from the Scheme's inception until the registration of the Scheme under the RPA.

SOC 2.7.1 of Part B.2.7 of the Directives required *inter alia* that the assets were to '*be invested in a prudent manner and in the best interest of beneficiaries ...*'.

SOC 2.7.2 in turn required that the assets of a scheme are '*invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole*⁷³ and that such assets are '*properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole*'.⁷⁴

SOC 2.7.2 of the Directives also provided other benchmarks including for the portfolio to be '*predominantly invested in regulated markets*';⁷⁵ to be '*properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings*⁷⁶ where the exposure to single issuer was: in the case of investments in securities issued by the same body limited to no more than

⁷² A review of the Complainant's pension scheme at the time when the business was acquired had to reasonably be undertaken in order for STM Malta to be able to comply with its obligations in its roles as Trustee and RSA of the Scheme and act with '*the prudence, diligence and attention of a bonus paterfamilias*', '*act with due skill, care and diligence*' and ensure that the Scheme's assets are '*invested in a prudent manner and in the best interest of Members and Beneficiaries*'.

Such a review should have indeed been done in order to *inter alia* ensure that the Complainant's Scheme was in order and in compliance with the applicable regulatory provisions, the conditions of the Trust Deed and the scope of the Retirement Scheme and ensure that it remained so. Otherwise, proper remedial actions had to be taken as appropriate.

⁷³ SOC 2.7.2 (a)

⁷⁴ SOC 2.7.2 (b)

⁷⁵ SOC 2.7.2 (c)

⁷⁶ SOC 2.7.2 (e)

10% of assets; in the case of deposits with any one licensed credit institution limited to 10%, which limit could be increased to 30% of the assets in case of EU/EEA regulated banks; and where in case of investments in properly diversified collective investment schemes, which themselves had to be predominantly invested in regulated markets, limited to 20% of the scheme's assets for any one collective investment scheme.⁷⁷

The Arbiter also notes that following registration of the Scheme under the Retirement Pensions Act ('RPA'),⁷⁸ the Scheme became subject to the '*Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act 2011*' (Pension Rules'). The investment restrictions for member-directed schemes were outlined in Part B.2 titled '*Investment Restrictions of a Personal Retirement Scheme*' and Part B.9, '*Supplementary Conditions in the case of entirely Member Directed Schemes*' of the Pension Rules.

It is noted that SLC 3.2.1 of the Pension Rules provided *inter alia* that

'the Retirement Scheme Administrator ... shall ensure that the assets of the scheme are sufficiently liquid and/or generate sufficient retirement income to ensure that retirement benefits payments can be met closer to retirement date for commencement of retirement benefits'.⁷⁹

Whilst it is noted that SLC 9.5(d) of the Pension Rules, which also dealt with the conditions in relation to investments, included a footnote stating that

'The said investment restrictions shall apply to the current investments of members in a member directed scheme once any movements occur within the member's pension account or in the case of new investments entered into, as from 1st January 2019',

STM Malta should nevertheless still have promptly raised the matters involving the adequacy of the underlying portfolio – that is the lack of diversification, lack of liquidity and lack of compliance with the principles and requirements

⁷⁷ SOC 2.7.2 (h)(iii) & (v)

⁷⁸ The *Retirement Pensions Act* (Cap.514) eventually replaced the *Special Funds (Regulation) Act, 2002* when it came into force in January 2015. The *Retirement Pensions (Transitional Provisions) Regulations, 2015* provided that retirement schemes or any person registered under the SFA had one year from the coming into force of the RPA to apply for authorisation under the RPA.

⁷⁹ SLC 3.2.1 (iii) of Part B of the Pension Rules.

outlined above, apart from the lack of conformance with the Complainant's profile, risk attitude and objective, for necessary action to be taken.

It has indeed not emerged during the case that STM Malta ever highlighted any compliance issues in respect of the Blackmore investment, nor triggered any attempt to redeem or reduce the material exposure thereto at the time when it took over as trustee in 2018.

The Arbiter further notes that, as emerging in the notice issued by the Isle of Man Financial Services Authority of 29 April 2021 regarding the Blackmore Global PCC Ltd, *'between March 2015 and May 2019 there had been regular and substantial redemptions made out of Blackmore'*.⁸⁰

The high exposure allowed and permitted to the Blackmore investment, whose peculiar features did not even fit with the nature of a pension product as outlined above, not only did not reflect and clearly went against the indicated investment standards and principles but cannot either be in any way construed to reflect the prudence, diligence and attention of a *bonus paterfamilias* required out of the Trustee of the Scheme.

Indeed, Article 21(1) of the TTA which deals with the *'Duties of trustees'*, *inter alia* stipulates that the trustee should act as a *bonus paterfamilias*, where

'Trustees shall in the execution of their duties and the exercise of their powers and discretions act with the prudence, diligence and attention of a bonus paterfamilias, act in utmost good faith and avoid any conflict of interest'. It is also to be noted that Article 21 (2)(a) of the TTA, further specifies that:

'Subject to the provisions of this Act, trustees shall carry out and administer the trust according to its terms; and, subject as aforesaid, the trustees shall ensure that the trust property is vested in them or is under their control and shall, so far as reasonable and subject to the terms of the trust, safeguard the trust property from loss or damage ...'

In their role as Trustee, Harbour Pensions and STM Malta respectively were accordingly duty bound to administer the Scheme and its assets to high standards of diligence and accountability.

⁸⁰ p. 38

Further Considerations

For the reasons amply stated above, the Blackmore investment was not appropriate and suitable for the scope of the Retirement Scheme and in line and reflective of the applicable requirements, let alone in the case where the Complainant's risk profile was actually one of *'Medium Risk'*, where her *'Investment Objective'* was described as *'willing to accept a small amount of risk to provide for potential growth over the medium to long term'*.⁸¹

Hence, one cannot really justify how the investment in the Blackmore investment was allowed and permitted in the first place and how no Trustee and RSA had ever raised any issues about the incompatibility and inadequacy of such investment within the Retirement Scheme, not only with reference to the Complainant's risk profile, but also with reference to the scope of the Scheme as a retirement product and the applicable provisions as outlined above and extent of exposure thereto.

There was ultimately no prudence, no diversification and no adherence with the relevant investment provisions with respect to such investment.

In the case in question, the Arbiter cannot thus conclude that the Trustee/RSA of the Scheme has truly acted in the best interests of the Complainant.

Furthermore, when STM Malta took over as trustee it itself did not promptly raise any concerns or issues in respect of the disputed investment and it did not alert the Complainant on the various issues indicated in this decision.

The Arbiter furthermore considers that it would have only been reasonable, adequate and appropriate for STM Malta to promptly raise its concerns on the Blackmore investment (given its features and incompatibility with the Scheme's scope, applicable regulatory requirements and the Complainant's profile, attitude to risk and investment objective), and bring such matters to the Complainant's attention and seek measures with the aim to remedy the breaches.

As outlined above, in its letter of 11 August 2020,⁸² STM Malta raised, (*nearly two years after taking over as trustee*) only certain issues involving just the

⁸¹ p. 87

⁸² p. 19

value of the investment, by which time the previous trustee and retirement scheme administrator, Harbour Pensions, had already been dissolved and struck off from the Malta Business Registry.

Decision and Compensation

For the reasons amply stated throughout this decision, the Arbiter considers the Complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case,⁸³ and is partially accepting it in so far as it is compatible with this decision.

Being mindful of the key role of STM Malta Pension Services Limited as Trustee and Retirement Scheme Administrator of the STM Harbour Retirement Scheme, the Arbiter concludes that the Complainant should be compensated by STM Malta for the damages suffered by the Complainant as a result of the breaches allowed and committed in relation to her scheme and the lack of protection afforded to her to safeguard her pension as amply outlined in this decision.

The Arbiter considers that apart from the Service Provider, other parties, like the investment adviser, were involved and also carried responsibility.

Therefore, the Arbiter considers that in the particular circumstances of this case, it is fair, equitable and reasonable for STM Malta Pension Services Limited to compensate the Complainant for the amount of 70% of the value invested into *Blackmore Global PCC Limited*. The said compensation thus amounts to GBP 101,465.83.⁸⁴

The Arbiter further considers that given the particular status of the *Blackmore Global PCC Limited* as outlined above, any future proceeds that may be derived from such investment are to be allocated as 30% to the Complainant (or party having rights to the Scheme's assets) with the remaining 70% retained by the Service Provider.

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter is, therefore, ordering STM Malta Pension Services Limited

⁸³ Cap. 555, Article 19(3)(b)

⁸⁴ 70% of GBP 144,951.18, the latter being the total amount invested in the Blackmore invested as per the Subscription Form produced (P. 10) and the Bank's Statement (P. 50).

to pay the sum of GBP 101,465.83 (one hundred and one thousand, four hundred and sixty-five pounds sterling and eighty-three pence), whilst future proceeds (if any) in respect of the Blackmore investment are assigned accordingly as stipulated above. The said payment is however subject to the conditions as outlined further below in light of the complaint filed by the Complainant with the Financial Services Compensation Scheme ('FSCS').

Furthermore, given the Complainant's particular circumstances and that the Blackmore investment is the only remaining investment within the Scheme, the Arbiter is also ordering, as part of the compensation provided in accordance with Article 26(3)(c)(iv) of the Act, that STM Malta fully refunds/waives its own fees charged or applicable to the Retirement Scheme since the period of the Complaint filed with the Office of the Arbiter for Financial Services until the Scheme is closed down. This applies only for those periods in case where no new investments are held within the Retirement Scheme.

Given the absence of communications and lack of updates provided by the Complainant on the status of her complaint with the FSCS, and in order to address the matter raised by the Service Provider about the possibility of unjustified enrichment, the Arbiter is ordering the following:

- (i) That the compensation decided above is only to be settled by STM Malta with the Complainant upon the presentation to STM Malta of adequate evidence that the claim relating to the Scheme filed with the FSCS has been withdrawn, refused or dismissed.
- (ii) That, in the circumstance where the Complainant's claim with the FSCS is upheld, then, given the subrogation or assignment of the Complainant's rights to FSCS that may apply in respect of such a claim, STM Malta shall, in such circumstance, only settle the total amount of compensation indicated above directly with the FSCS up to the amount awarded by the FSCS, with the balance, as applicable, being paid to the Complainant.

The date when settlement becomes due shall accordingly be the date when adequate evidence is provided by the Complainant to STM Malta regarding the status and outcome of her claim with FSCS.

With legal interest applicable from the date when settlement becomes due in terms of the decision as outlined above, till the date of effective payment.

The expenses of this case are to be borne by the Service Provider.

**Alfred Mifsud
Arbiter for Financial Services**