

Before the Arbiter for Financial Services

Case ASF 001/2022

AP

(‘the Complainant’)

vs

STM Malta Pension Services Limited

(C 51028) (‘STM Malta’ or ‘the Service Provider’)

Sitting of 16 June 2023

The Arbiter,

Having seen **the Complaint** relating to The STM Malta Retirement Plan (‘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 Trustee and Retirement Scheme Administrator.

The Complaint, in essence, relates to the alleged failure of STM Malta to act in his best interest as a Scheme Member and to undertake its fiduciary responsibility as trustee given that the Complainant claimed that:

- (i) the Scheme’s Application Form issued by STM Malta did not disclose the 1% marketing fee that was eventually charged on his underlying policy despite his being totally unaware of such fee;
- (ii) STM Malta failed to notify him of any proposed changes in fees in advance as per the Declaration section included in the Scheme’s Application Form;

(iii) STM Malta failed to support him in challenging the appearance of the Marketing Fee.

The Complaint

The Complainant explained that in December 2013 he applied to transfer his UK pension to the QROPS retirement plan offered by STM Malta and the policy of *Providence Life*. He subsequently became a member of the Scheme and acquired the *Providence Life* policy, with policy number PLL200897.

In early 2021, he transferred his pension structure to STM Gibraltar. He further explained that following the said transfer he requested, in September 2021, a Surrender Quote from STM Gibraltar. When reviewing the said quote he found a 1% Marketing Fee that had been charged for the total amount of GBP 18,874.06.

The Complainant noted that in his application of 2013, the fee structure was clearly stated in Section 7 of the form. He submitted that this section did not state however that there would be a 1% Marketing Fee.

He also noted that in paragraph 9 of Section 8, titled '*Declaration*' of the application form, STM Malta indicated that it would notify him of any changes in fees in advance of the changes becoming binding.

The Complainant claimed that he never received any such notification and that he was totally unaware of the 1% Marketing Fee as it was not in his application.

He explained that he raised the discrepancy directly with STM Malta on 10 September 2021 as he had acquired his policy through STM Malta. The Complainant further noted that STM Malta, however, chose not to reply directly but instead passed his query onto STM Gibraltar which in turn notified him, on 13 September 2021, that the 1% Marketing Fee had '*nothing to do with STM*'.¹

The Complainant explained that, subsequently, he disputed the assertion that STM had no responsibility and, on 15 September 2021, *Providence Life* sent him an email notifying him that it was reviewing his query internally and would soon send him a reply.

¹ Page (P.) 3

He explained that on 21 September 2021, STM Gibraltar however forwarded him an email from *Providence Life* which simply stated that a marketing fee exists and that the fees can be reviewed on their website. The Complainant submitted that the said reply failed to address the matter regarding the appearance of a new charge on the Surrender Quote that was not specified in his application.

On 22 September 2021, his financial advisor John Shirreffs challenged STM Malta's ongoing inclusion of the marketing fee in the Surrender Quote.

Following another query he sent, the Service Provider informed him, on 23 November 2021, that the problem involved an internal accounting fault at *Providence Life* and had nothing to do with STM Malta. He was provided with documents issued from *Providence Life* and a summary FAQ document regarding the accounting error. The Complainant claimed that he was also provided with a Policy Document of March 2014 which he had never seen before.

The Complainant explained that he sent a formal complaint to STM Malta on 26 November 2021. Despite being promised a reply within 15 working days he received no further communication.

The Complainant further submitted that he was challenging STM's assertion that the Marketing Fee had nothing to do with it also because he considered that:

- a) STM Malta as the pension trustee and administrator failed to support him in his challenge of the appearance of the Marketing Fee charge.
- b) STM are clients of *Providence Life* which provided the Surrender Quote. STM had entered into a joint venture with *Providence Life* to provide the QROPS offer that he had joined.
- c) As a member of the Service Provider's Scheme, he was just told to simply accept the undisclosed and undocumented Marketing Fee charge that was indicated in the *Providence Life* FAQ explanation.
- d) Within its various responses STM at times mentioned something known as the *Providence Life Horizon Bond*. The Complainant claimed that this however did not appear in his QROPS application of 2013 and has no relevance to his policy.

He further submitted that STM Malta never notified him of the *Providence Life Horizon Bond* nor its impact on his policy and in particular the changes to the fees.

He further considered the sharing by STM Malta of a policy document that included changes in fees more than 7 years after its alleged inception as being in clear violation of the terms of his application.

The Complainant claimed that through the said actions, STM Malta failed as a trustee to act in his best interests and to undertake its fiduciary responsibility.

Remedy requested

The Complainant requested the Marketing Fee to be '*completely removed from the Surrender Quote on the value of [his] policy now and going forward*'.²

In its reply, STM Malta essentially submitted the following:³

Summary of complaint and compensation claimed

STM Malta noted that the Complainant had requested via his trustee, *STM Fidecs Pension Trustees Limited*, a Surrender Quote in relation to the Life Insurance Policy which is the investment within his QROPS plan.

The Surrender Quote includes reference to a Marketing Fee, which the Complainant advises he was unaware of at the inception of the investment. The Complainant also disputes that there is any right to apply any such marketing fee so many years after the inception of the policy.

The Service Provider noted that the Complainant is now demanding that any marketing fee should be removed from any surrender quote in relation to the policy.

Background information provided by the Service Provider

STM Malta noted that the Complainant, born on 11 September 1967 had accumulated a pension pot with his UK employer before he moved to take up employment in the United Arab Emirates. Whilst there, in 2013, the Complainant

² P. 4

³ P. 105 – 107

took advice from John Shirreffs of *DeVere Group* and decided to transfer his UK Pension to the STM Malta Retirement Plan administered by STM Malta.

On 10 December 2013, the Complainant signed an application form to join the Scheme. At the same time, the Complainant submitted an application to STM Malta in respect of an insurance policy with *Providence Life Limited*. The application was signed by both the Complainant and John Shirreffs.

STM Malta assumes that John Shirreffs had explained all fees in relation to the investment to the Complainant and observes that it was normal practice of *PIC/DeVere* at the time to obtain a written confirmation from such members. It noted that it was not usual practice of *PIC/DeVere* in 2013 to share such confirmations with product providers.

The Service Provider noted that a transfer was received from the transferring scheme on 3 March 2014. STM Malta then remitted GBP 124,711.07 to *Providence Life Limited* on 4 March 2014 in respect of the policy.

STM Malta noted that in December 2020, the Complainant requested the termination of his pension arrangement with STM Malta and the transfer of the value of his benefits to a scheme managed by *STM Fidecs Pension Trustees* in Gibraltar.

His policy was subsequently reassigned to the said trustee and the transfer was completed by 21 January 2021. STM Malta submitted that since then it has had no legal rights attributed to the owner of the policy.

The Service Provider noted that the Complainant claims that he has requested a surrender quote from his new trustee and has presented the surrender quote as part of his evidence. It further noted that whilst not doubting the veracity of the claim, it observes that it is not a party to the request or the information provided in response.

Submissions of the Service Provider

STM Malta noted that in support of his claims, the Complainant referred to his lengthy correspondence with his current trustee, *STM Fidecs Pension Trustees Limited*.

It submitted that STM Malta is however not a party to any such correspondence, and whilst the contents may provide background to the attitude of *Providence Life Limited*, they cannot be used to represent the views and opinions of STM Malta.

STM Malta noted that the Complainant completed separate application forms for the QROPS and the Insurance Policy. It submitted that given the signature of John Shirreffs on the application form, there can be no doubt that the Complainant had been advised that there were two separate products and that each had clearly its own charging structure.

It noted that each application describes itself as '*for use with*'.⁴ STM Malta submitted that this cannot be interpreted as meaning that one product was embedded in the other. It further submitted that, on the contrary, by having separate application forms it is clear that there are two distinct products.

STM Malta noted that it certainly cannot be said that there was a joint venture of any sort, as is alleged by the Complainant. No such agreement between the two entities ever existed. It submitted that the only thing that can be understood is that the terms and conditions expressed in the application relate to circumstances when one product is used with the other. Other application forms would indeed be available in respect of alternative instances.

STM Malta submitted that it is *Providence Life Limited* that has issued the Surrender Quote. The Complainant transferred his pension and thus legal ownership to another trustee which is out of the control of STM Malta. It submitted that it is therefore clear that STM Malta has no control of the matter complained of.

The Service Provider further submitted that whether or not *Providence Life Limited* has the authority to charge the fee is a matter between the current policyholder and *Providence Life Limited*.

STM Malta observed that from its own research, it has identified that *Providence Life Limited* has a complaints process which the current policyholder could

⁴ P. 106

pursue, and that if an acceptable agreement cannot be reached, there is an Ombudsman service in Mauritius that could adjudicate the matter.

It submitted that since it is not the legal owner of the policy, STM Malta has no formal power to seek to compel *Providence Life Limited* to remove any fee. It further submitted that accordingly, it cannot support him, as the Complainant suggests, in the challenge against the fee and that such a matter must be the role of the current trustee.

STM Malta noted that, despite its lack of authority to act, it has made informal requests to *Providence Life Limited*, and it understands that *Providence Life* has reached out to the Complainant to seek to resolve the matter with him directly. STM Malta understands that at the time of writing the Complainant has not responded to *Providence Life*.

The Service Provider submitted that given its limited powers in the matter, it cannot, however, be said that STM Malta has failed to support him. On the contrary, it has opened a channel of communication.

STM Malta pointed out that the remedy requested is for no Marketing Fee to be reflected in the Surrender Quote. It respectfully pointed out that the Surrender Quote is issued by *Providence Life Limited*. It claimed that accordingly, it cannot comply with such an order and that any such order must be made in Mauritius through the appropriate forum.

In conclusion, STM Malta respectfully submitted that there is a forum through which the Complaint may be properly resolved. This can be properly achieved by the Complainant engaging with his current pension provider to raise the complaint with *Providence Life Limited*. STM Malta further submitted that the Complainant may also take the opportunity to take *Providence Life Limited* up on their offer to discuss the matter directly.

It claimed that STM Malta has, in any event, no capacity to offer the Complainant the redress requested.

Preliminary

Nature of the remedy requested

The Arbiter notes that, as a remedy, the Complainant asked for the *'undisclosed and undocumented Marketing Fee'* to be *'completely removed from the Surrender Quote on the value of [his] policy now and going forward'*.⁵

It is further noted that the Service Provider literally interpreted this as meaning that the Complainant's request is for the Surrender Quote of *Providence Life* to be issued without featuring the Marketing Fee.

The Service Provider indeed submitted in its reply that *'the remedy requested is that there be no Marketing Fee reflected in the Surrender Quote'*, which STM Malta *'could not comply with'* given that *'the Surrender Quote is issued by Providence Life Limited'*.⁶ STM Malta reiterated in its reply that *'it has no capacity to offer the Complainant the redress requested'*.⁷

In its final submissions, the Service Provider again submitted *inter alia* that the remedy requested is *'a remedy which cannot be granted by STM Malta as the fees being complained of are that of a third party'*.⁸

Whilst the Complainant's request could have been presented in a more articulate manner, the Arbiter however outrightly dismisses the Service Provider's frivolous attempt for the Complaint to be rejected on the basis of its interpretation and its alleged premise that the remedy requested is something which cannot be granted for the purpose of this Complaint.

The Arbiter would like to highlight that this is a Complaint filed by a retail consumer of financial services within the structure of Chapter 555 of the Laws of Malta and should be treated in such context.

Cognisance indeed is taken of the Complainant's background which does not involve or relate to financial services. The Complainant himself testified during

⁵ P. 4

⁶ P. 107

⁷ *Ibid.*

⁸ P. 243

the hearing of 10 May 2022, that: *'Asked what my profession is, I say that I am not working at the minute. Previously, I was a Petroleum Engineer'*.⁹

Furthermore, **it is rather clear that the Complainant is, in essence, disputing the requested payment of the Marketing Fee. His interest and the scope of the Complaint is, understandably, for him not to ultimately pay the disputed Marketing Fee.**

As outlined by the Complainant during the hearing of 10 May 2022, *'The fundamental aspect of my complaint is that a charge is being levied against my account'*,¹⁰ and that *'In essence, they wanted to remove a sum of cash from the value of my account'*.¹¹

Furthermore, **in his final submissions, the Complainant clearly and categorically states that *'He requests STM pay back the amount taken from his retirement plan for backdated marketing fee charges as per the above'***.¹²

Whilst the underlying policy and/or issuer of such policy do not fall within the competency of the Arbiter in terms of Chapter 555 of the Laws of Malta ('the Act'), the Arbiter, however, has the power to direct a service provider *'to pay an amount of compensation for any loss of capital or income or damages suffered by the complainant as a result of the conduct complained of ...'*, in the case where *'the complaint is found to be wholly or in part substantiated'* as provided for under Article 26(3)(c)(iv) of the Act.

Accordingly, whilst the Arbiter cannot issue any direction in respect of the policy and/or its issuer, the Arbiter has the competency to consider the merits of this case with respect to the Service Provider's conduct complained of by the Complainant.

It would also not be fair, equitable nor reasonable, and thus contrary to the provisions outlined under Article 19(3)(b) of the Act, if the Arbiter had to, in the circumstances, somehow accept the submissions made by the Service Provider on the nature of the remedy requested.

⁹ P. 140

¹⁰ P. 138

¹¹ P. 139

¹² P. 238

For the reasons amply mentioned, the Arbiter is therefore rejecting the Service Provider's submissions and shall continue to consider this Complaint.

STM Malta no longer provides services to the Complainant

In its reply, the Service Provider highlighted that it was no longer the trustee and RSA of the Scheme given that a transfer out from the Scheme occurred in 2021. It noted that the Complainant's pension and underlying policy were transferred to a different retirement scheme in Gibraltar, administered by *STM Fidecs Pension Trustees Limited* ('STM Gibraltar').

STM Malta *inter alia* submitted in this regard that it cannot support the Complainant in challenging the Marketing Fee with *Providence Life* as this '*must be the role of the current Trustee*'.¹³

The Service Provider inferred, in its reply, that it was accordingly not the correct or legitimate defendant in respect of this Complaint.

In its final submissions, the Service Provider indeed stated that:

'... STM Malta submits that the current trustees are STM Gibraltar (which is a completely separate and independent entity to STM Malta with a different licence, regulator and jurisdiction) and therefore the complaint [by the Complainant] about the PLL Marketing Fee should be addressed to STM Gibraltar and not STM Malta'.¹⁴

The Arbiter however notes that whilst it is true that STM Malta is no longer the trustee and the RSA of the Retirement Scheme and that it is now '*not the legal owner of the policy*'¹⁵ as submitted, however, **the Complaint deals also with key alleged failures on the part of STM Malta at the time it occupied its functions in respect of the Scheme and underlying policy.**

Consideration thus needs to be made of the alleged failures of STM Malta at the time it occupied the role of trustee and RSA of the Scheme and was acting as the policyholder of the underlying *Providence Life* policy.

¹³ P. 107

¹⁴ P. 245

¹⁵ P. 107

This is particularly so with respect to the Complainant's claims that STM Malta:

- (i) failed to disclose in its Scheme Application Form the 1% marketing fee that was charged on his underlying policy; and**
- (ii) failed to notify him of any proposed changes in fees in advance as per the Declaration section included in the Scheme's Application Form.**

The Arbiter further notes that whilst the disputed marketing fee is being only now reflected in the valuation statements by *Providence Life* as a charge on the underlying policy, the said charge has been however applied retrospectively. Accordingly, the disputed fee covers the period of time when STM Malta occupied the said roles.

For the reasons mentioned, the Arbiter refutes any claim that STM Malta is not the correct or legitimate defendant in respect of the matters raised and shall hence proceed to consider the merits of the case next.

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.¹⁶

Facts of the Case

The Complainant

The Complainant, a British national, born in 1967 and resident in the United Arab Emirates at the time, applied to become a member of The STM Malta Retirement Plan by way of his '*Client Application Form For Use With The Providence Life Bond*' ('Application Form for Membership'),¹⁷ signed and dated 10 December 2013.¹⁸

¹⁶ Cap. 555, Art 19(3)(b)

¹⁷ P. 111

¹⁸ P. 117

Membership of the Scheme and acquisition of the underlying policy

The Complainant and STM Malta entered into an *'Instrument of Adherence'* in respect of the membership of the Retirement Scheme on 22 January [2014].¹⁹

An application titled *'Providence Life QROPS Bond Application'* in respect of the Providence Life policy²⁰ was signed by the Complainant (and his financial adviser) in December 2013 as well as by the trustee.²¹

The *'Providence Life Assurance Bond'* (*'PLL WOL 1112'*) ('the policy') that was acquired by the Scheme for the Complainant *'is a life assurance policy'* issued by *Providence Life Limited*, PCC based in Mauritius.²²

According to the *'Policy Document Whole of Life Policy'*, bearing *'Policy No: PLL200897'*, the *'Issue Date'* of the policy is *'31st March 2014'*.²³

The same document and policy schedule indicate the *'Policyholder'* as *'STM Malta Trust & Company Management Ltd'* with the Complainant being listed as the *'Principal Life Assured'*.²⁴

The *'Total premium at inception'* paid into the policy amounted to *'£124,711.07'* as indicated in the same document.²⁵

In the Key Features Document provided, the policy was also referred to as the *'Providence Life Portfolio Bond'*.²⁶

It is further noted that during the proceedings of the case, reference was also made to the *'Horizon Portfolio Bond'* or *'Horizon Bond'*. Whilst no evidence was produced regarding a change in name of the policy, it is however sufficiently clear that this refers to the same underlying policy. Indeed, in the *'Estimated Surrender Quote'* dated 1 September 2021 issued by *Providence Life*, it is noted that the *'Product Name'* of the policy (bearing the same policy number PLL200897) is

¹⁹ P. 184

²⁰ P. 119-135

²¹ P. 126

²² P. 211

²³ P. 188

²⁴ P. 198-208

²⁵ P. 198

²⁶ P. 209

indicated as '*Horizon Portfolio Bond*'.²⁷ Hence, the same policy must have eventually changed its name to '*Horizon Portfolio Bond*'.

Investment advisor

The Complainant's appointed Financial Adviser, as indicated in the Application Form for Membership, was '*PIC Devere*' based in '*UAE*'.²⁸

Transfer out from the Scheme and assignment of the underlying policy

The Complainant applied, in November 2020, for a transfer out of the Retirement Scheme into '*The STM G.I.B. Pension Transfer Plan*', whose trustee was indicated as '*STM Fidecs Pension Trustees Limited*' ('STM Gibraltar').²⁹

The underlying *Providence Life* policy was eventually also assigned to the new Gibraltar plan as per the documents presented during the proceedings of the case.³⁰ In its reply, the Service Provider confirmed that the process '*was completed by 21 January 2021*'.³¹

Hence, STM Malta ceased to occupy its roles of trustee, RSA of the Scheme and policyholder of the **Providence Life** policy accordingly.

System error in the Providence Life policy valuations

It is noted that in a detailed letter dated September 2021, *Providence Life* explained to STM Malta that it identified '*a system error ... which has affected the reflection of policy charges on Horizon Portfolio Bond valuations*'.³² In the said letter, *Providence Life* explained *inter alia* that:

'This means that the Marketing Fees have been deducted from the Policy but not reflected on the policy valuations. As stated in the Horizon Portfolio Bond Terms and Conditions, the Marketing Fee is taken at policy inception as initial units and is used to fund the costs of distributing the policy through the Independent Financial Advisor and Broker channel. The Marketing Fee should be reflected on

²⁷ P. 57

²⁸ P. 113

²⁹ P. 150 - 151

³⁰ P. 152

³¹ P. 106

³² P. 154

policy valuations, via unit cancellations at a rate of 1% per year for the first 8 years, but this has not happened.

*To rectify this error, policies which remain in force will reflect the cancellation of the initial units to correct the error and the appropriate fee will be shown on the annual policy valuation generated each January ...*³³

Further details on the matter were provided in a frequently asked question document issued by *Providence Life* titled '*Horizon Portfolio Bond System Error FAQ*'.³⁴ The said document explained *inter alia* that:

'A system error has been identified which has affected the reflection of policy charges on Horizon Portfolio Bond valuations. This means that the Marketing Fees have been deducted from the Policy but not reflected on the policy valuations.'

'... The system error was discovered in April 2021 ...'

'... To rectify this error, the balance of any non-reflected Marketing Fees will be taken from the policy as an encashment charge together with any accrued fees and charges (all fees and charges are clearly stated in the Horizon Portfolio Bond Terms and Conditions). The company can confirm that no policies will be adversely affected by these actions, the charge shown merely reflects the true position of each policy'.

'... The Horizon Portfolio Bond Terms and Conditions clearly state the fees and charges ... Your appointed Financial Adviser as part of the application stage should have explained the terms and conditions to you together with the applicable fees and charges'.

'...The Marketing Fee should have been reflected on policy valuations, via unit cancellations at a rate of 1% per annum for 8 years. This has not been reflected correctly on policy valuations in the past. As these initial units have been reflected on the policy valuation incorrectly in the past, any growth that these units may have attracted has been allocated incorrectly to the policy as well. In short, this growth did not exist and must be removed to reflect the correct current policy valuation.'

³³ *Ibid.*

³⁴ P. 156

'... We are obliged to treat all Policyholders fairly and equally, in accordance with our regulatory guidelines and this means applying any accrued fees and charges due for each policy ... these adjustments are legal and compliant and are covered under our non-waiver of rights provision contained in the Horizon Portfolio Bond Terms and Conditions'.³⁵

The next section shall consider the charges as disclosed to the Complainant in respect of the underlying policy.

Disclosure of the Providence Life policy charges

(A) Application Form for Scheme Membership (signed in December 2013) - The Application Form for Membership into the Retirement Scheme, titled *'The STM Malta Retirement Plan, Client Application Form For Use With The Providence Life Bond'*, signed by the Complainant on *'10 December 2013'* included a section detailing the *'Charging Structure'*.³⁶

The said section (*'Section 7, Charging Structure'*), outlined the following fees in respect of the Scheme and the underlying policy (the portfolio bond).³⁷

(i) An *'Annual Management Charge'* which *'covers the costs associated with administering the pension scheme and portfolio bond'*, based on the trust value. The Annual Management Charge for a QROPS trust value of *'Between GBP 40,000 and GBP 199,999'* – this being the value applicable for the Complainant - was *'1.75% per annum'*.³⁸

(The Annual Management Charge was specified as 1.40% in case of a lower QROPS trust value of *'Between GBP 200,000 and GBP 499,999'* or 1.25% in case of a higher QROPS trust value of *'Greater than GBP 500,000'*).³⁹ The said charges also included *'two pension transfers'* with additional transfers *'charged at £100 each'*.

³⁵ P. 156-158

³⁶ P. 111-118

³⁷ P. 116

³⁸ *Ibid.*

³⁹ *Ibid.*

- (ii) A *‘Providence Life Bond – fund dealing charge’* which consisted of a *‘2.75% subscription fee’* applicable upon the first purchase of funds or switch of funds or additional purchases.
- (iii) An administration charge of GBP500 that *‘will be deducted during the first year of operation of the bond’*.⁴⁰
- (B) *Providence Life Policy Key Features Document* - The *‘Providence Life Portfolio Bond Key Features’* document presented by both parties during the proceedings of this case⁴¹ specified the following policy charges in the section titled *‘Providence Life Portfolio Bond Charging Structure’*:
- *Annual management charge of 1%*
 - *Discounted subscription fee of 2.75% on Providence Life Fund Platform*
 - *Early encashment charge of 8% in year 1, decreasing to zero by the end of year 8’*.⁴²
- (C) *The Providence Life Policy Application Form of December 2013* - One of the documents presented during the proceedings of the case was titled the *‘Providence Life QROPS Bond Application’*, this being the application form for the underlying *Providence Life* policy (*‘the Policy Application’*).⁴³

The said document was signed by both the *‘Life Assured’* (that is, the Complainant), and the *‘Trustee Applicant’* (that is, STM Malta), under the *‘Client Declaration’* section.⁴⁴ It also included the advisor’s signature (under *‘Financial adviser details’*).⁴⁵

The Policy Application form included *‘Terms & Conditions’* which constituted and formed an integral part of the said application form.

⁴⁰ *Ibid.*

⁴¹ P. 84 & 160

⁴² P. 85 & 161

⁴³ P. 119-135

⁴⁴ P. 124-126

⁴⁵ P. 126

The *'Terms & Conditions'* indeed formed part of the said Policy Application form as also reflected in the use of the same footer (reading *'Providence Life Bond Application'*) and in the continuation of the page numbering throughout the whole document.⁴⁶

'Section 6, Policy Charges' of the mentioned Terms & Conditions detailed the applicable charges.⁴⁷ The said charges as reflected in the Terms & Conditions forming part of the Policy Application form signed in 2013 shall be considered in further detail in part (E) below.

(D) The Policy Document issued in March 2014 - The *'Policy Document Whole of Life Policy'* issued by *Providence Life*, bearing Policy No. PLL200897 and issue date of 31 March 2014,⁴⁸ included a section dealing with the *'Policy Charges'*. The said section, (section 3.11), specified that:⁴⁹

'Policy charges could include:

- *Annual management charge*
- *Dealing charge*
- *Any other costs and or expenses incurred in managing the unitised Funds*
- *Any stock broking fees incurred on behalf of the policyholder*
- *Any marketing expenses incurred in the marketing of either the unitised portfolio or the policy*

Any taxes and/or regulatory charges and/or similar costs incurred, but not taken into account, elsewhere.'

The specific details of the charges were then included in a Terms & Conditions document⁵⁰ issued with the policy of March 2014 which shall be considered in the next section.

⁴⁶ P. 127-134

⁴⁷ P. 132

⁴⁸ P. 188-197

⁴⁹ P. 195

⁵⁰ P. 211-220

(E) Comparison between the Terms & Conditions forming part of the Policy Application Form and the Terms & Conditions issued with the actual Policy

The Office of the Arbiter for Financial Services ('OAFS') compared the Policy Charges section as featured in:

- the Terms & Conditions document forming part of the Policy Application form of December 2013,⁵¹ and
- the Terms & Conditions document issued in respect of the *Providence Life* policy of March 2014 (as issued to the Complainant).⁵²

Further to the said comparison, the following were particularly noted:

- (i) With respect to the exit fee, the Terms & Conditions of the Policy issued in March 2014 state, under section 5 titled '*Policy Charges*' that:

*'If the Policyholder requests to cash-in any policy during the initial period or additional initial period(s), PLL will pay the Policyholder the cash sum, less any early encashment charges which may apply.'*⁵³

This same clause about the exit fee is not reflected in the same '*Policy Charges*' section, (section 6), of the Terms & Conditions forming part of the Policy Application of December 2013.

- (ii) **The Terms & Conditions issued with the Policy in March 2014 include a new material provision stipulating that:**

'PLL charges an annual marketing establishment fee of 1% each year for the first 8 years of the policy to cover the costs of distributing the policy.'⁵⁴

No such charge is mentioned in the Terms & Conditions forming part of the Policy Application form of December 2013.

⁵¹ P. 127-134

⁵² P. 211-220

⁵³ P. 216

⁵⁴ *Ibid.*

The disputed Marketing Fee is indeed a key difference emerging between the mentioned two Terms & Conditions documents as outlined above.

It has furthermore transpired that the disputed Marketing Fee is not mentioned either in the Scheme's Application Form for Membership nor in the *Providence Life* two-page Key Features document as outlined above.

Obligations of the Service Provider

Trustee and Fiduciary obligations

The Trusts and Trustees Act ('TTA'), Chapter 331 of the Laws of Malta is particularly relevant for STM Malta considering its role as Trustee of the Scheme.

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***.

The said article provides 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'.

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 its role as Trustee, STM Malta was accordingly duty bound to administer the Scheme and its assets to high standards of diligence and accountability.

The trustee, having acquired the property of the Scheme in ownership under trust, had to deal with such property '*as a fiduciary acting exclusively in the interest of the beneficiaries, with honesty, diligence and impartiality*'.⁵⁵

⁵⁵Editor Max Ganado, '*An Introduction to Maltese Financial Services Law*', Allied Publications 2009, p. 174

As has been authoritatively 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'.⁵⁶

The fiduciary and trustee obligations were also highlighted by MFSA in one of its publications where it was stated that:

'In carrying out his functions, a RSA [retirement scheme administrator] of a Personal Retirement Scheme has a fiduciary duty to protect the interests of members and beneficiaries. It is to be noted that by virtue of Article 1124A of the Civil Code (Chapter 16 of the Laws of Malta), the RSA has certain fiduciary obligations to members or beneficiaries, which arise in virtue of law, contract, quasi-contract or trusts. In particular, the RSA shall act honestly, carry out his obligations with utmost good faith, as well as exercise the diligence of a bonus paterfamilias in the performance of his obligations'.⁵⁷

Although this Consultation Document was published in 2017, MFSA was basically outlining principles established both in the TTA and the Civil Code which had already been in force prior to 2017.

The above are considered to be crucial aspects that should have guided STM Malta in its actions as trustee.

Obligations as a Retirement Scheme Administrator

One key duty, which emerges from the primary legislation itself, applicable to STM Malta as the Retirement Scheme Administrator, is the duty to *'act in the best interests of the scheme'*.

This is outlined in Article 19(2) of the Special Funds (Regulation) Act, 2022 ('SFA') - which was the first legislative framework that applied to the Scheme and the

⁵⁶ *Op. Cit.*, p. 178

⁵⁷ Page 9 – 'Consultation Document on Amendments to the Pension Rules issued under the Retirement Pensions Act' [MFSA Ref: 09-2017], dated 6 December 2017.

Service Provider until this framework was repealed and replaced by the Retirement Pensions Act (Chapter 514 of the Laws of Malta) ('RPA') which eventually came into force on the 1 January 2015. The duty to act in the best interests of the scheme is also outlined in Article 13(1) of the RPA.

Apart from the main legislation itself, there are various principles and conditions outlined in the general conduct of business rules/standard licence conditions issued by the Malta Financial Services Authority ('MFSA') under the SFA/RPA regime respectively applicable to the Service Provider in its role as Retirement Scheme Administrator.

With respect to this case, it is pertinent to particularly note the following rules:⁵⁸

- a) Rules 2.6.2 and 2.6.3 of Part B.2.6 titled '*General Conduct of Business Rules applicable to the Scheme Administrator*' of the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act, 2002*' ('the Directives'), which applied to STM Malta as a Scheme Administrator under the SFA, provided that:

'2.6.2 The Scheme Administrator shall act with due skill, care and diligence in the best interests of the Beneficiaries. Such action shall include:

...

- b) *ensuring that contributors and prospective contributors are provided with adequate information on the Scheme to enable them to take an informed decision ...'*

'2.6.3 The Scheme Administrator shall ensure the adequate disclosure of relevant material information to prospective and actual contributors in a way which is fair, clear and nor misleading ...'

The same principles continued to apply, in essence, under the rules issued under the RPA.

Rules 4.1.4 and 4.1.5, Part B.4.1 titled '*Conduct of Business Rules*' of the Pension Rules for Service Providers issued in terms of the Retirement Pensions Act, 2011 dated 1 January 2015 issued in terms of the RPA, and

⁵⁸ Emphasis added by the Arbitrator.

which applied to STM Malta as a Scheme Administrator under the RPA, provided that:

'4.1.4 The Service Provider shall act with due skill, care and diligence ...'

'4.1.5 The Service Provider shall ensure the adequate disclosure of relevant material information in a way which is fair, clear and not misleading ...'

Final Observations and Conclusion

Implications of the disputed Marketing Fee

The damage alleged from the contested marketing fee is clear and quantifiable, as emerging from the 'Estimated Surrender Quote' issued by Providence Life dated 1 September 2021.⁵⁹

The said quote indicates the application of 'Marketing Fees' for the amount of GBP 18,874.06. This is equivalent to 8.63% of the 'Current Estimated Policy Value' (of GBP 218,729.85) that was listed in the same quote.

It is further noted that during the hearing of 14 June 2022, the Complainant testified that '*... on the 31 December 2021, the Marketing Fee has been deduct[ed] from my policy to the tune of £18,968.50. That money is now gone*'.⁶⁰ No official evidence was however provided in respect of such payment.

The alleged failures

The Arbiter shall consider next the key alleged failures raised by the Complainant against STM Malta as follows:

- a) ***The allegation that STM Malta failed to disclose in its Scheme Application Form the 1% marketing fee that was charged on his underlying policy***

As outlined above, it has clearly emerged that the Scheme's Application Form did not include a reference to and/or details of such marketing fee

⁵⁹ P. 57

⁶⁰ P. 224

despite that the said form covered the fees of the Scheme and the underlying policy.

In the circumstances and having considered the other documentation referred to above, the Arbiter accepts the Complainant's claim and considers that STM Malta has indeed failed to ensure that the charging structure of the *Providence Life* policy was clearly and adequately disclosed to the Complainant in its own form (together with the other fees of the *Providence Life* policy that it itself stipulated in the said form).

The following aspects and other factors highlighted later in this decision are also being taken into consideration on this aspect:

- i. *Context of the Application Documents; Material Divergences in respect of the policy charging structure emerging in key documentation; and Lack of Disclosure of such divergences*

The Arbiter notes that **the Service Provider itself listed the charging structure in respect of the Scheme and the underlying *Providence Life* policy in its own Application Form for Scheme Membership** (signed by the Complainant in December 2013).⁶¹

Whilst the **Retirement Scheme and the underlying policy are two separate and distinct products issued by separate providers** - where the Scheme issued by STM Malta acquired the underlying policy issued by *Providence Life* - the Arbiter observes that **the Complainant was however offered a package for the whole structure in question.**

It is evident that the main parties **STM Malta** (as trustee and RSA of the Scheme) and ***Providence Life*** (the issuer of the underlying policy), **had come together to offer a packaged structure. This clearly emerges from the way the Scheme and Policy application forms had been drafted.**

STM Malta's own application for membership into the Retirement Scheme was indeed one specifically tailored for use with the policy. The

⁶¹ P. 48-55

cover page of the Scheme Application Form specifically stated and highlighted that the form was *'For use with the Providence Life Bond'*.⁶²

Furthermore, the charging structure outlined in the Scheme's Application Form included the fees of the pension scheme and underlying policy.

Similarly, the *Providence Life Policy Application Form* already featured details of STM Malta as trustee of the QROPS, as well as details of the Retirement Scheme, in Section 2 of the said form under *'Trust Details'*.⁶³

It is also noted that the Complainant and STM Malta (the latter in its capacity of Scheme trustee), together signed the application for the purchase of the *Providence Life* policy.

The said policy application was signed on the basis of the Policy Terms & Conditions that formed an integral part of the policy application form.⁶⁴

During the proceedings of this case, it has clearly emerged that the Complainant was however issued, in March 2014, with a *Providence Life* policy which had different Policy Terms & Conditions to those contained in the Policy Application Form.

The Terms & Conditions issued with the Policy (in March 2014) contained the disputed Marketing Fee which clearly and categorically did not feature in the charging structure of the policy detailed in the Scheme's Application Form for Membership nor in the Policy Application Form signed in December 2013.

Indeed, the Terms and Conditions issued with the Policy in 2014 included provisions with respect to the fee structure which were materially different to those included in the Scheme and Policy Application Forms.

During the hearing of 10 May 2022, the Complainant testified that:

⁶² P. 48

⁶³ P. 120

⁶⁴ P. 119-135

'... I filled up the application work and there was one for STM Malta in which all the fees were declared, and nowhere in that fee structure was a 1% marketing charge declared. I also had to fill up another document that related to PLL ... That document also does not have anything about a 1% marketing fee'.⁶⁵

The Arbiter further notes that **the Service Provider itself acknowledged the divergences emerging between the documentation that it signed together with the Complainant and the actual policy documentation eventually issued by *Providence Life***. In the sworn declaration submitted by the Managing Director of STM Malta it was *inter alia* stated that:

*'We should also make it clear that **[the Complainant] and STM Malta signed an application form for a PLL insurance contract which contained explicit terms and conditions which are different to the terms and conditions that were issued with the policy document**. At the time the application was signed, STM's understanding of PLL's fees was as set out in the STM Application form, which is consistent with the fees set out in the terms and conditions of the PLL application form'.⁶⁶*

It is acknowledged that **the Scheme Application Form issued by STM Malta signed by the Complainant in December 2013 included fees congruent with the fees detailed in the Policy Application Form of *Providence Life* that was signed in or around the same period.**

The Service Provider did not however provide comfort to the Arbiter that the information contained in the signed Application Forms were actually correct and accurate at the time when these were signed. STM Malta did not indicate at what point the Marketing Fee had been introduced in the Terms & Conditions of the policy issued by *Providence Life*.

The Arbiter is however aware, from the information contained in another case opened against the Service Provider (Case no. ASF

⁶⁵ P. 138

⁶⁶ P. 149 - Emphasis added by the Arbiter

005/2022),^{67, 68} that *Providence Life* had already issued, on 31 July 2013, the same underlying policy with terms and conditions which featured the Marketing Fee.⁶⁹

Hence, by 31 July 2013 the Marketing Fee already featured in the policy Terms & Conditions but such fee (and/or updated terms & conditions) were not reflected in the respective application forms accepted by the respective providers.

There is accordingly ample evidence validating the Complainant's claim.

Apart from the discrepancies emerging in the documentation provided to the Complainant, the Arbiter notes that no evidence emerged that the Complainant was adequately notified about, and properly made aware of, the material discrepancies and divergences emerging from the fee structure stipulated in the respective documents which had a material bearing on his interests.

The fact that it has not emerged that the Complainant was not alerted to, and adequately informed about, the revised charging structure and the material differences to the terms and conditions he was somehow made subject to (which were materially different from those he originally signed for), is evidently a further material shortfall on the part of STM Malta as the trustee/RSA of the Scheme and the actual policyholder of the *Providence Life* policy.

As outlined in detail in the section titled '*Obligations of the Service Provider*' above, STM Malta ultimately had clear obligations, which the Arbiter considers it has failed, when it did not ensure that the documentation (particularly its own form) was current and up to date and when it did not promptly notify and bring to the attention and consideration of the Complainant the said material divergences.

⁶⁷ Case ASF 005/2022 filed by Robin Sangster vs. STM Malta Pensions Services Ltd

⁶⁸ Case ASF 005/2022 is a separate and distinct case with its own particular circumstances but involves a similar matter relating to the marketing fee to the case under consideration.

⁶⁹ [P.280 of Case ASF 005/2022, Robin Sangster vs. STM Malta Pensions Services Ltd]

- ii. *Inconsistent information* – It is noted that the Complainant was furthermore provided with a *Providence Life Key Features* document which did not include a reference to the Marketing Fee.

The said Key Features document of the *Providence Life Portfolio Bond*,⁷⁰ included information not entirely reflective of, and inconsistent with, the Policy Terms & Conditions forming part of the Policy Application Form⁷¹ and, also, the Policy Terms & Conditions issued to the Complainant in March 2014.⁷²

Indeed, the said '*Key Features*' document did not include any reference to the Marketing Fee but only details of the policy charges as outlined in part (B) of the section titled '*Disclosure of the Providence Life Policy Charges*' above.

- b) ***The allegation that STM Malta failed to notify him of any proposed changes in fees in advance as per the Declaration section included in the Scheme's Application Form***

It is clear that STM Malta had a certain level of business interaction with *Providence Life* (and possibly even terms of business) in order to enable it to include details of the *Providence Life* policy in its own forms.

As mentioned above, STM Malta clearly had a duty to ensure that any fees communicated to the member, even more so in its own forms, were current and up to date.

The Arbitrator considers that the retrospective application of the Marketing Fee where such policy charge was not reflected, due to a system error, in policy valuations issued over an eight-year period had material implications which negatively affected the interests of the Complainant.

As outlined by *Providence Life* in its FAQ document, the '*Marketing Fee should be reflected on policy valuations, via unit cancellations at a rate of 1% per year for the first 8 years, but this has not happened*'.⁷³

⁷⁰ P. 209-210

⁷¹ Such as with respect to the encashment charge

⁷² Such as with respect to the Marketing Fee.

⁷³ P. 156

The non-reflection of the disputed Marketing Fee in policy valuations implies that, in practice, the Complainant has been rather provided, and issued with, incorrect policy valuation statements not reflective of the true position of the policy. His policy was thus seemingly over-valued (up to the amount of any due fees not deducted) in each year, during an eight-year-long period.

Although the policy valuations were issued by *Providence Life*, STM Malta should have however been aware of the fees applicable on the underlying policy. Such awareness should have arisen in its role of trustee and RSA of the Scheme and itself being the policyholder of the underlying policy.

Whilst the Complaint in question does not involve *'any proposed fee changes'* and hence there is no alleged failure with reference to the Declaration section quoted by the Complainant (as this captures a different context), it is considered that there is however a failure on the part of STM Malta to act in the Complainant's best interests in the circumstances.

This particularly arises in respect of STM Malta's failure to ensure clear and complete disclosure of the fee structure in its own form and in bringing to the Complainant's attention and consideration the discrepancies arising in the documentation used as outlined above.

Such discrepancies and non-disclosure ultimately had a material negative bearing on the Complainant.

c) *The allegation that STM Malta failed to support him in challenging the appearance of the Marketing Fee*

The Arbiter acknowledges the Service Provider's submission that *'Since it is not the legal owner of the policy ... it has no formal power to seek to compel Providence Life Limited to remove any fee'*.⁷⁴ In this regard, one would reasonably expect the Complainant to be provided with support to challenge the fee primarily by the current trustee which has authority over the *Providence Life* policy.

⁷⁴ P. 107

However, nothing precludes STM Malta and STM Gibraltar, (one in its capacity as the previous trustee and RSA of the Scheme and policyholder of the *Providence Life* policy and the other as the current entity occupying such roles), to discuss between them and, also, with *Providence Life* the particular unfortunate situation which has prevailed.

This is even more so when the disputed fee is to be applied retrospectively by *Providence Life*, which would thus cover the period when STM Malta was the trustee and RSA of the Scheme and policyholder.

Furthermore, the collaboration and liaison between the two entities is clearly facilitated and easier given that both entities are part of the same Group. In the circumstances, one would thus reasonably expect the two entities to effectively coordinate and assist accordingly.

Other observations – Key important roles

The Service Provider cannot minimise its key functions and roles. Apart from acting as the trustee/RSA of the Scheme at the time of the alleged failures, STM Malta was also the Policyholder of the *Providence Life* policy.⁷⁵

Hence, it itself had to be duly aware and conscious of any material divergences in the features of the policy it itself outlined in its own form as well as arising from the Policy Terms & Conditions it had itself applied and signed for and those issued with the actual policy. In addition, there were certain divergences in the Key features document as emerging and outlined above.

Any such divergences should have not emerged in the first place and should have also eventually been reasonably discovered and highlighted accordingly for consideration by the relevant parties.

Whilst it is true that the disputed Marketing Fee is not a fee imposed or applied by STM Malta, as it is a fee applied by *Providence Life* on the underlying policy, this however does not exonerate STM Malta from the obligations it had as trustee and RSA of the Scheme and Policyholder of the underlying policy.

⁷⁵ P. 74-83

It is further noted that the purpose of the Marketing Fee was *‘to cover the costs of distributing the policy’*.⁷⁶ Such marketing fee could have accordingly covered any commissions, benefits or costs paid/given to distributors of such policy. A conflict of interest in respect of such fee could have arisen in the case where the trustee/RSA of the scheme was involved (direct or indirectly) in the distribution of the policy as part of the scheme’s structure.

In any case, it is noted that the importance of the Policyholder's role in reviewing or analysing the policy was even highlighted in the Policy Application form which included a disclaimer in bold as follows:

‘IMPORTANT NOTICE: The Policyholder must analyse the policy to ensure that the cover meets his/her requirements and this policy and all its accompanying documentation should be kept in a safe and secure place, as duplicate copies cannot be provided’.⁷⁷

STM Malta was ultimately itself in control of the policy and it had a duty to ensure, in the first place, that there were no material divergences from what was applied for and accepted by the Complainant in the respective application forms.

Other observations - Reference to an alleged similar decision

The Arbiter notes that in its final submissions, the Service Provider referred to a decision bearing case number 039/2018 where it claimed that *‘the same issue of fees arose’*.^{78, 79}

The Arbiter however refutes the Service Provider’s claims given that the quoted case and the case under consideration deal with completely dissimilar and unrelated issues and involve entirely different contexts.

The particular circumstances, the matters raised and context of the complaints in the two distinct cases are indeed totally dissimilar for a number of reasons including the following:

⁷⁶ P. 216

⁷⁷ P. 126

⁷⁸ P. 247

⁷⁹ <https://financiarbiter.org.mt/sites/default/files/oafs-decisions/ASF%20039-2018.pdf>

- Case 039/2018 involves not only different parties and products, but the subject matter dealt with is completely different and unrelated to the case under consideration.

The former case actually involved the alleged excessive charges imposed by the investment advisor.

- The particular context in Case 039/2018 is also different in that there are no new or different fee structures emerging in the documentation provided to the complainant as has happened in the case under consideration.

Neither does Case 039/2018 deal with, or involve, the lack of disclosure of fees in valuation statements issued by the policy provider (and which are to be reflected after eight years of non-disclosure), as emerging in the case under consideration.

Hence, the matters considered in the mentioned cases in no way involve the same or similar circumstances.

Decision & Concluding remarks

In its capacity as trustee and RSA of the Scheme and policyholder of the *Providence Life* policy, STM Malta ultimately had the duty to ensure that the policy issued was subject to the same or no less favourable terms and conditions to those it applied for together with the Complainant.

It also had the duty and obligation in such roles to properly inform the Complainant of any material change in the terms and conditions of the product actually acquired and seek the relevant consent and direction from the Complainant in the circumstances.

STM Malta ignored or overlooked the material change in the terms and conditions of the *Providence Life* policy which were different to those it applied for. It accepted the *Providence Life* policy with the new terms and conditions, and it did not highlight and raise this material aspect at the proper time with the Complainant.

It also ignored or overlooked the discrepancies arising in the various documentation used (application forms, policy issue document and key features document) as outlined in detail above.

The failure to take appropriate action at the time of the acquisition of the policy had a material adverse implication on the Retirement Scheme.

Furthermore, the Complainant appears to have received policy valuation reports which did not reflect the true value of the policy. After the discovery of the system error by *Providence Life* he was unexpectedly charged a material fee equivalent to around 8.6% of the estimated policy value, which fee did not even feature in any of the documentation used to apply for the structure in question as explained above.

The Complainant relied on STM Malta as the Trustee of the Scheme to act with the diligence and attention of a *bonus paterfamilias*, to account to him and provide him with information and highlight material aspects in relation to his Scheme, protect his interests and safeguard his property from loss or damage.

STM Malta had also to act with due skill, care and diligence and ensure disclosure of relevant material information in a clear and not misleading way as required in terms of the MFSA's Conduct of Business rules applicable to Retirement Scheme Administrators outlined above. STM Malta was furthermore ultimately the Policyholder of the *Providence Life* policy and was thus itself in full control of this policy.

For the reasons amply explained, it is considered that there was a clear lack of diligence by the Service Provider in the administration of the Scheme in respect of the Complainant and in carrying out its duties as Trustee and RSA of the Scheme and policyholder of the *Providence Life* policy.

It is also considered that the Service Provider failed to act with the prudence, diligence and attention of a *bonus paterfamilias* to safeguard the Complainant's interests, including from being applied different and less favourable terms and conditions to those which formed the basis of the original policy application made by the Complainant and the trustee.

The Arbiter considers that the Service Provider did not meet the *'reasonable and legitimate expectations'*⁸⁰ of the Complainant who had placed his trust in the Service Provider, believing in its professionalism and its duty of care and diligence.

Conclusion

For the above-stated reasons, the Arbiter considers the complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case⁸¹ and is accepting it in so far as it is compatible with this decision.

Cognisance needs to be taken of the responsibilities of other parties involved with the Scheme and its underlying policy. Hence, having carefully considered the case in question, the Arbiter considers that the Service Provider is to be partially held responsible for the damages incurred.

The claims of the Complainant are, for example, not being met in full to reflect the failure by his financial advisor (whom he had appointed), to note and raise the divergences emerging in the charging structure.⁸²

Compensation

Being mindful of the key role of STM Malta Pension Services Limited as Trustee and Retirement Scheme Administrator of The STM Malta Retirement Plan and Policyholder of the *Providence Life* policy, the Arbiter concludes that the Complainant should be compensated by STM Malta for damages suffered as a result of the lack of protection it afforded to safeguard his property and protect his interests.

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders STM Malta Pension Services Limited to pay the Complainant the amount of 70% (seventy percent) of the amount of the Marketing Fee charged and paid on his underlying policy.

⁸⁰ Cap. 555, Article 19(3)(c)

⁸¹ Cap. 555, Article 19(3)(b)

⁸² The financial advisor should have reasonable have held a copy of the Policy Issue document.

With legal interest from the date of this decision 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**