

Before the Arbiter for Financial Services

Case ASF 163/2021

AW

(‘the Complainant’)

vs

STM Malta Pension Services Limited

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

Sitting of 17 May 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 by STM Malta:

- (i) to adequately disclose the charging structure relating to the underlying life assurance policy issued by *Providence Life* and held by the Scheme;
- (ii) to act in his interest by failing to contest the actions of *Providence Life* when the latter decided to retrospectively apply a *Marketing Fee* on his policy value after *Providence Life* discovered that, due to a system error, this fee was, for over an eight-year period, not reflected in the valuation reports issued by *Providence Life*;

(iii) to notify him about incorrect fees by failing to highlight, during the said eight-year period, that the amounts deducted from his underlying policy were not correct.

The Complaint

The Complainant explained that in August 2013 he applied with the Service Provider to transfer his UK final salary pension to the Scheme.

He submitted that the documents signed at that time specified the charging structure which, according to Section 7 of the form, constituted three parts:

- (i) an Annual Management fee of 1.4% pa of the initial asset value
- (ii) a *Providence Life* dealing charge of 2.75% subscription fee on initial and subsequent purchases/switches, and
- (iii) a USD 500 initial administration charge.

He claimed that he made his application on the basis of such understanding.

The Complainant noted that the documents subsequently provided in December 2013 (after the funds were transferred in October 2013), included the Terms & Conditions of the *Providence Life Whole of Life Assurance Bond* ('the underlying policy') in which his funds were invested.

The Complainant claimed that Section 5 of the said policy document (which was unsigned by him), detailed policy charges that were different to those outlined in his application. Such document namely reflected:

- an Annual Management charge of 1.0% p.a.¹
- an Annual Marketing Establishment fee of 1.0% p.a. for the first 8 years; and
- the same dealing charge of 2.75%

He noted that such a document was issued after the policy had commenced.

¹ An additional annual management charge of 0.4% pa was allocated to the Service Provider as detailed further on in this decision.

The Complainant explained that having seen that the 1.4% Annual Management charge was taken as set out in his STM Application, he did not fully review these documents, as in hindsight he should have.

In August 2021, he was notified that a *Providence Life Marketing Establishment fee* was to be deducted from his policy at a rate of more than 8% of the current value of his policy.

He strongly believed this was not fair and reasonable and an alternative solution needed to be agreed to.

The Complainant submitted that STM Malta did not provide an accurate application document with regard to the charging structure of the policy.

He further submitted that the charging structure was not sufficiently highlighted in the document that was issued after the transfer of his funds.

The Complainant noted that the charging structure set out in his application reflected the amounts deducted from his policy but STM Malta failed, for a period of close to eight years, to highlight that this was incorrect.

He further submitted that, as trustee of his pension, STM Malta failed to act in his interest by simply offering the position of *Providence Life* as a *fait accompli* without any apparent dissent.

Remedy requested

The Complainant hoped that the Arbiter can review the documents and provide an opinion on the charging structure.

The Complainant strongly believes that any further charge should be applied to the initial investment value rather than the policy's current value.

He further noted that he did not have the opportunity to manage his cash balance throughout this time.

The Complainant explained that he wishes to transfer the value of his policy to his SIPP in the UK but such transfer is, however, being hampered by this matter. He is concerned that any transfer would see the charge of more than 8% of his policy value deducted without a chance for it to be later resolved in his favour.

The Complainant further noted that an Annual Management Charge is due at the start of January. He does not believe that this amount should be deducted.

In its reply, STM Malta essentially submitted the following:²

Summary of complaint and compensation claimed

STM Malta noted that, in brief, the Complainant considers that the charges for administering the insurance bond, the investment platform within his pension as indicated in his application, are different from those disclosed to him in the policy. It noted that the Complainant considers the charge imposed by *Providence Life* as not being fair nor reasonable.

The Service Provider remarked that the Complainant requested the Arbiter to provide an opinion in relation to the charging structure. This infers that the Complainant is also seeking a resolution in which the Marketing Fee is not applied or is applied in a different way.

Response of the Service Provider

STM Malta pointed out that the charge referred to is a charge by *Providence Life Limited*, an investment platform selected by the Complainant after being advised by his adviser. The Complainant completed a separate application for the *Providence Life Bond* and was aware that it was a separate product with its own charging structure.

STM Malta further submitted that it is for *Providence Life* to justify its fees and disclosure. The Service Provider had provided the Complainant with the responses received from *Providence Life Limited*.

In light of the responses received, STM Malta made further representations to *Providence Life* on behalf of the Complainant and sought a resolution.

STM Malta observed that *Providence Life Limited* has a complaints process that has not yet been exhausted. It submitted that in the event that the outcome of the complaints process is not acceptable, the complaint concerning a Mauritius service provider may be escalated to the ombudsman service in Mauritius.

² Page (P.) 81 - 82

It thus submitted that the correct course of action at this point was for the Complainant to collaborate with his pension trustee to pursue the matter informally; formally, through the *Providence Life* complaints process and if necessary, through the Mauritius Financial Ombudsman service.

STM Malta considers that only once these initiatives have been exhausted should the Complainant bring a form of complaint against STM Malta.

In conclusion, STM Malta submitted that it is equitable for it to be allowed to pursue the matter with *Providence Life Limited*. It reserved the right to make further submissions in the event that the Arbiter disagrees.

The Service Provider lastly referred to the Complainant's wish to transfer his pension to a UK provider and to his statement that he is not doing so until the matter is resolved. It submitted that whilst it does not act in an advisory capacity, it does not see any objection to the processing of the transfer to another provider whilst pursuing the complaint against *Providence Life Limited* at the same time.

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.³

Facts of the Case

The Complainant

The Complainant, a British national, born in 1968 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 QROPS Application Form ('Application Form for Membership'), signed and dated 25 August 2013.⁴

Membership of the Scheme and acquisition of the underlying policy

STM Malta provided the Complainant with the Scheme's Plan Schedule as part of the welcome letter dated 9 December 2013. The said schedule indicated the

³ Cap. 555, Art 19(3)(b)

⁴ P. 101-108

'Commencement date' of the Retirement Scheme being the '25th August 2013' with a 'Transfer value' into the Scheme of '£207,680'.⁵

The Schedule also listed an 'Investment option' into a 'Whole of life' policy issued by 'Providence Life' dated '25th October 2013'.⁶

The 'Providence Life Assurance Bond' (also indicated as 'Providence Life Whole of 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.⁷

According to the 'Policy Document Whole of Life Policy', bearing 'Policy No: PLL200771', the 'Issue Date' of the policy is '31st October 2013'.⁸

The same document and policy schedules indicate the 'Policyholder' as 'STM Malta Trust & Company Management Ltd' with the Complainant being listed as the 'Principal Life Assured'.⁹

The 'Total premium at inception' paid into the policy amounted to '£207,645' as indicated in the same documents.¹⁰

In the Key Features Document provided, the policy was also referred to as the 'Providence Life Portfolio Bond'.¹¹

It is further noted that during the proceedings of the case, the respective parties referred to the policy as the 'Horizon Portfolio Bond'. Whilst no evidence was produced regarding the change in name of the policy, it is noted that in the *Estimated Surrender Quote* issued by Providence Life, the 'Product Name' of the policy (with number PLL200771) is indeed indicated as 'Horizon Portfolio Bond'.¹² Hence, it appears that the same policy eventually changed its name to 'Horizon Portfolio Bond'.

⁵ P. 26

⁶ *Ibid.*

⁷ P. 55

⁸ P. 32

⁹ P. 32, 42-52

¹⁰ P. 42

¹¹ P. 53

¹² P. 73

Investment advisor

The Complainant's appointed Financial Adviser, as indicated in the Application Form for Membership, was *PIC Devere* based in Abu Dhabi.¹³

System error in the Providence Life policy valuations

According to copies of email communications exchanged between the Complainant and STM Malta, the Complainant was notified by STM Malta '*regarding some error in the deduction of Marketing Fees by Providence Life*' in an email sent to him on 17 August 2021.¹⁴

It is further 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*'.¹⁵ 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 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...'*¹⁶

Further details on the matter were provided in a frequently asked question document issued by *Providence Life* titled '*Horizon Portfolio Bond System Error FAQ*'.¹⁷

In the said FAQ document, *Providence Life* explained *inter alia* that:¹⁸

¹³ P. 102 & 104

¹⁴ P. 21

¹⁵ P. 71

¹⁶ *Ibid.*

¹⁷ P. 67

¹⁸ P. 67-68

'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.'

'...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'

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 August 2013) - The Application Form for Membership into the Retirement Scheme (version

'V.1//May 2012'), titled '*STM Malta Retirement Plan, QROPS – Application Form & Fee Schedule, For use with the Providence Life Bond*', signed by the Complainant on '25/08/13' included a section detailing the '*Charging Structure*'.¹⁹

The said section ('*Section 7, Charging Structure*'), outlined the following fees in respect of the Scheme and the underlying policy (the portfolio bond):²⁰

- (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 200,000 and GBP 499,999*' - which was the value applicable for the Complainant - was '*1.40% per annum*'.²¹

(The Annual Management Charge was specified as 1.75% in case of a lower QROPS trust value of '*Between GBP 50,000 and GBP 199,999*' or 1.25% in case of a higher QROPS trust value of '*Greater than GBP 500,000*').²²

- (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*'.²³

It is noted that, (as clarified in an email sent by STM Malta dated 9 September 2021, in reply to the Complainant's enquiry of 8 September 2021),²⁴ the Annual Management Charge of 1.40%, referred to above, is made up as follows:

'the 1% is payable to Providence Life, whereas the 0.40% is payable to STM Malta as the annual trustee fee'.²⁵

¹⁹ P. 101-108

²⁰ P. 105

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ P. 19

²⁵ P. 18

(B) Providence Life Policy Key Features Document - As part of the documents submitted with his Complaint Form to the Office of the Arbiter for Financial Services ('OAFS'), the Complainant presented a two-page '*Providence Life Portfolio Bond Key Features*' document.²⁶

This same document was also produced by STM Malta²⁷ - in the attachment marked '*DOC STM 4*' to the note it filed during the proceedings of the case²⁸ - as part of the welcome pack letter of 9 December 2013.²⁹

The said Policy Key Features document specified the following policy charges in the section titled '*Providence Life Portfolio Bond Charging Structure*':³⁰

- *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'.*

(C) The Providence Life Policy Application Form of August 2013 - One of the documents presented by the Service Provider (as '*DOC STM 3*') to its note of submissions was described by STM Malta as the '*STM Providence Life QROPS Bond Application signed by the Complainant's financial advisor*'.³¹

The document in question, titled the '*Providence Life QROPS Bond Application*'³² ('the Policy Application'), was signed by both the '*Life Assured*' (that is, the Complainant), and the '*Trustee Applicant*' (that is, STM Malta), on 25 August 2013.³³ It also included the advisor's signature (under '*Financial adviser details*').³⁴

²⁶ P. 53-54

²⁷ P. 159-160

²⁸ P. 96

²⁹ P. 130-171

³⁰ P. 54

³¹ P. 96

³² P. 111-118

³³ P. 118

³⁴ *Ibid.*

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

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.³⁵

'Section 6, Policy Charges' of the mentioned Terms & Conditions detailed the applicable charges.³⁶ The said charges as reflected in the Terms & Conditions forming part of the Policy Application form signed in August 2013 shall be considered in further detail in part (E) below.

- (D) The Policy Document issued in October 2013 - The *'Policy Document Whole of Life Policy'* issued by *Providence Life*, bearing Policy No. PLL200771 and issue date of 31st October 2013,³⁷ included a section dealing with the *'Policy Charges'*.³⁸

The said section, (section 3.11), specified that:

'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 document issued with the policy of October 2013 which shall be considered in the next section.

³⁵ P. 119-127

³⁶ P. 124

³⁷ P. 32 - 41

³⁸ P. 39

(E) Differences in the Policy Charges as emerging between the Terms & Conditions forming part of the Policy Application Form and the Terms & Conditions issued at a later date with the Policy -

A comparison is made below between the Policy Charges as featuring in:

- the Terms & Conditions document forming part of the Policy Application form of August 2013 and
- the Terms & Conditions document that the Complainant described were *'issued in Dec-2013 after funds transferred'*.³⁹

The latter Terms & Conditions (sent to the Complainant in December 2013 in respect of the *Providence Life* policy issued on 31 October 2013) were also produced by STM Malta as part of its note of submissions.⁴⁰

Apart from a change in section numbering, the following key differences emerge between the two documents with respect to the respective section titled *'Policy Charges'*:

- (i) The Terms & Conditions forming part of the Policy Application form of August 2013 stipulate *'an annual management charge of 1.75% per annum'*.^{41,42} The Terms & Conditions sent to the Complainant in December 2013 stipulate *'an annual management charge of 1% per annum'*.⁴³
- (ii) The wording relating to the dealing charges between the respective Terms & Conditions documents is slightly different. The Terms & Conditions forming part of the Policy Application of August 2013 stated in this regard that:

'PLL will deduct a dealing charge each time you instruct PLL to purchase a fund on your behalf. The charge is 2.75% for unitised funds.'

³⁹ P. 7

⁴⁰ *'Doc STM 4', 'Communication letter dated 9th December 2013 from STM Malta...'* - P. 96 & P.161-170

⁴¹ P. 124

⁴² As indicated in part A, *'Disclosure of the Providence Life policy charges'* in this decision, the annual management charge of *Providence Life* that applied to the Complainant was actually of 1% in view of the QROPS trust value as reflected in the Scheme's Application Form of August 2013.

⁴³ P. 60

*Structured Notes, individual stocks and other derivatives may have higher charges’.*⁴⁴

The Terms & Conditions sent to the Complainant in December 2013 use a slightly different wording as follows:

*‘PLL will deduct a dealing charge each time you request PLL to effectuate the purchase of any underlying assets. The charge is 2.75% per transaction’.*⁴⁵

- (iii) Whilst the Terms & Conditions forming part of the Policy Application of August 2013 stipulates that *‘A one-time charge of GBP 500.00 will be deducted from the policy when it is established’*,⁴⁶ no such statement was included in the same section (titled *‘Policy Charges’*) of the Terms & Conditions sent to the Complainant in December 2013.
- (iv) The Terms & Conditions sent to the Complainant in December 2013 state 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’*.⁴⁷

This is not reflected in the same section of the Terms & Conditions forming part of the Policy Application of August 2013.

- (v) **The Terms & Conditions sent to the Complainant in December 2013 includes 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’.⁴⁸

⁴⁴ P. 124

⁴⁵ P. 60

⁴⁶ P. 124

⁴⁷ P. 60

⁴⁸ *Ibid.*

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

The disputed Marketing Fee is indeed a key difference emerging between the mentioned two Terms & Conditions documents 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*'.⁴⁹

As has been authoritatively stated:

⁴⁹Editor Max Ganado, '*An Introduction to Maltese Financial Services Law*', Allied Publications 2009, p. 174

'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'.⁵⁰

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'.⁵¹

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 which 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 Service Provider until this framework was repealed and replaced by the Retirement Pensions Act (Chapter 514 of the Laws of Malta) ('RPA') which

⁵⁰ *Op. Cit.*, p. 178

⁵¹ Page 9 – *'Consultation Document on Amendments to the Pension Rules issued under the Retirement Pensions Act'* [MFSA Ref: 09-2017], dated 6 December 2017.

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:⁵²

- 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

⁵² 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

The question of whether the Complaint may be premature

The Arbiter notes that, in its reply, the Service Provider inferred that the Complaint is premature at this point in time given that the *'correct course of action'* was *'for the Complainant to collaborate with his pension trustee'* to pursue certain initiatives first - like collaborating with STM Malta to raise the matter informally/formally with *Providence Life* and possibly also through the Mauritius Financial Ombudsman.^{53, 54}

The Service Provider submitted that *'only once these initiatives have been exhausted should the Complaint bring a form of complaint against [STM Malta]'*.⁵⁵

Having considered the particular circumstances of this case, the Arbiter however does not share the Service Provider's views and does not consider the Complaint to be premature at this point in time. This is for the various reasons outlined below:

- a) **The Complainant has been already in correspondence with STM Malta on the matter involving the Marketing Fee way back since 22 August 2021,**⁵⁶ as evidenced in the multiple communications exchanged with STM Malta attached to his Complaint Form.⁵⁷

In his detailed email to STM Malta of 30 September 2021, the Complainant clearly indicated to STM Malta that he had *'significant concerns over this*

⁵³ P. 82

⁵⁴ Providence Life Limited as the issuer of the underlying policy, is based in Mauritius and hence the reference to the financial services ombudsman in Mauritius.

⁵⁵ P. 82

⁵⁶ P. 8

⁵⁷ P. 13-21

issue...'.⁵⁸ In the said email he also made certain requests related to the matter in question.

The Arbiter further notes that STM Malta had, at the time, also already forwarded the Complainant's concerns and queries to *Providence Life* '*for their feedback on this matter urgently*', as confirmed in STM Malta's email to the Complainant of 4 October 2021.⁵⁹

A reminder for feedback from *Providence Life* was further sent by the Complainant on 27 October 2021, to which STM Malta replied that it was '*still waiting for their feedback*' and that it had sent another urgent chaser to *Providence Life*.⁶⁰

Due to '*the lack of progress*', the Complainant eventually filed a formal complaint with the Service Provider through its letter dated 12 November 2021.⁶¹ STM Malta replied to the said formal complaint on 1 December 2021.⁶²

The Complaint with the OAFS was filed by the Complainant subsequently thereafter, on 22 December 2021.⁶³ This is after nearly three months from the initial communications and concerns that the Complainant had communicated to STM Malta regarding the matter.

It is also clear that the Complaint with the OAFS was filed after the lack of satisfactory resolution of/progress on the matter following the communications that the Complainant had with STM Malta and the communications that already occurred between the Service Provider and *Providence Life* as emerging above.

In the circumstances, the Arbiter considers that **the Complainant did not fail to communicate the substance of his complaint to the Service Provider and the financial service provider had a reasonable opportunity to deal with**

⁵⁸ P. 16

⁵⁹ P. 14

⁶⁰ P. 13-14

⁶¹ P. 13 & 8

⁶² P. 8 & 10

⁶³ P. 1

the complaint for the purposes of Article 21(2)(b) of the Arbitration for Financial Services Act, Cap. 555 of the Laws of Malta ('the Act').

- b) **The Complaint filed with the OAFS deals with the alleged failures of STM Malta in its roles as trustee and RSA of the Retirement Scheme.**

Albeit the Complaint is linked or related to the *Marketing fee* charged by *Providence Life* on the underlying policy, (which policy and/or issuer of the policy do not fall within the competency of the Arbitration in terms of the Act), **the Complaint however deals with the actions and/or inactions of STM Malta as trustee and retirement scheme administrator of the Scheme.**

The Arbitration shall, in this Complaint, indeed solely focus on this particular aspect, that is, the alleged failures addressed in respect of STM Malta, which aspect clearly falls within his jurisdiction.

The case in question ultimately deals with a complaint filed by an eligible customer in respect of the conduct of a service provider as defined in Article 2 of the Act.

The Arbitration accordingly sees nothing which precludes, or makes it unreasonable, for the Complainant to file his complaint against STM Malta in terms of the Act at this stage.

- c) **The damage alleged from the contested fee and the claimed failures, are also clear and indeed quantifiable** at this stage, as emerging from the '*Estimated Surrender Quote*' issued by *Providence Life* dated 31 August 2021.⁶⁴

The said quote indicated the application of a '*Marketing Fee*' for the amount of GBP 27,029.70. This is equivalent to 8.6057% of the '*Current Estimated Policy Value*' of GBP 314,091.84 that was listed in the same quote.

The Complainant has furthermore clearly indicated that he wishes to transfer out from the Scheme, but he is concerned that the disputed fee will be deducted and such matter was thus hampering his transfer.⁶⁵

⁶⁴ p. 73

⁶⁵ p. 4

In the circumstances, and also taking into consideration the aspects outlined above, the Arbiter considers that there is no basis whatsoever on which one can reasonably and justifiably conclude that the Complaint is premature. STM Malta's plea in this regard is accordingly being dismissed.

The alleged failures

The Arbiter shall not comment upon or consider the matter regarding the appropriateness, or otherwise, of the Marketing Fee applied by *Providence Life* on the Scheme's underlying policy given that he has no jurisdiction on the policy nor on *Providence Life* for the reasons already outlined.

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

a) *The allegation that STM Malta failed to adequately disclose the charging structure relating to the Providence Life underlying policy*

The Complainant claimed that STM Malta did not provide an accurate application document with regard to the charging structure of the policy. He also claimed that the charging structure was not sufficiently highlighted in the document issued after his funds were transferred.⁶⁶

Having considered the pertinent matters of this case, **the Arbiter considers that STM Malta indeed failed to ensure that the charging structure of the *Providence Life* policy was clearly and adequately disclosed to the Complainant. This is for the reasons outlined hereunder and other factors highlighted later in this decision:**

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***

⁶⁶ p. 3

policy in its own Application Form for Scheme Membership (signed by the Complainant in August 2013).⁶⁷

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 three main parties **STM Malta** (as trustee and RSA of the Scheme), ***Providence Life*** (the issuer of the underlying policy) and **deVere Group** (the group of the Complainant's financial adviser), **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 cover page of the **Scheme Application Form specifically stated and highlighted that the form was 'For use with the Providence Life Bond'**.⁶⁸

The Scheme's Application Form even included the logo of 'deVere Group' on the cover page.⁶⁹

Furthermore, the charging structure outlined in the Scheme's Application Form included the fees of the pension scheme and underlying policy. Indeed, the fees of the annual management charge disclosed in the Scheme's Application Form were split between Providence Life and STM Malta as outlined in part A of the section titled '*Disclosure of the Providence Life policy charges*' above.

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*'.⁷⁰

⁶⁷ P. 105

⁶⁸ P. 101

⁶⁹ *Ibid.*

⁷⁰ P. 112

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** (in August 2013).

The said policy application was signed on the basis of the Policy Terms & Conditions that formed an integral part of the policy application form.⁷¹

During the proceedings of this case, **it has clearly emerged that the Complainant was however issued, in October 2013, with a *Providence Life* policy which had different Policy Terms & Conditions to those contained in the Policy Application Form.**

The Terms & Conditions of the *Providence Life* Policy issued in October 2013 were provided to the Complainant as part of the welcome pack documentation sent by STM Malta in December 2013.

The said Policy Terms & Conditions (of October 2013) 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 August 2013.

During the hearing of 25 April 2022, the Complainant testified that:

*'Being referred to page 53-55 of the documents I submitted, and asked to confirm that they are documents of Providence Life and not STM, I say that I am not disputing the fact that it is a Providence Life document. It does show a 1% Management charge and a 1% Market establishment charge. I do not disagree with that. **What I am saying is that the application I signed when I first raised this QROPS, did not have that fee in it but it had Providence Life charges in it.** I fully admit that when that document was given to me in December, after I first made the first deposit, I did not check through for further additional charges believing there weren't any. Now I know that I was naïve not to do that.*

⁷¹ P. 111-127

... My point is that the document I signed before the transfer was made included a 1.4% p.a. for STM and a Providence Life dealing charge. So why would I look for further charges?’⁷²

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 **AW 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’.⁷³*

With respect to the Complainant’s claim that the Scheme's application form issued by STM Malta contained inaccurate information, the Arbiter notes that **the Scheme Application Form issued by STM Malta and signed by the Complainant in August 2013 included fees congruent with the fees detailed in the Policy Application Form of Providence Life that was signed by the Complainant and the trustee in August 2013.**

The Service Provider however did not provide comfort to the Arbiter that the information contained in the signed Application Forms was actually correct and accurate at the time when these were signed. STM Malta did not indicate since when 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

⁷² P. 92 – Emphasis added by the Arbiter

⁷³ P. 175 - Emphasis added by the Arbiter

005/2022),^{74,75} that Providence Life had already issued, on 31 July 2013, the same underlying policy with terms and conditions featuring the Marketing Fee.⁷⁶

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 validity to the Complainant's claim that the Scheme's application form issued by STM Malta contained inaccurate information.

Furthermore, the *Providence Life* policy issued in October 2013 included terms and conditions with respect to the fee structure which were materially different to those included in the Policy Application Form.

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 changes and differences transpiring in the revised Policy Terms & Conditions which had a material bearing on his interests.

It is noted that the Complainant was only provided with a copy of new Policy Terms & Conditions, as part of the welcome pack in December 2013.

The fact 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.

⁷⁴ Case ASF 005/2022 filed by Robin Sangster vs. STM Malta Pensions Services Ltd

⁷⁵ 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.

⁷⁶ [P.280 of Case ASF 005/2022, Robin Sangster vs. STM Malta Pensions Services Ltd]

The mere provision, as part of the welcome pack sent by STM Malta to the Complainant in December 2013, of a revised Policy Terms & Conditions (which contained material divergences to those signed in the respective application forms), cannot in any way be reasonably considered as some form of adequate notification, nor of proper action reflective of the duties of STM Malta as trustee/RSA of the Scheme.

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 material divergences arising between the actual policy documentation and the documents used and considered by the Complainant at the time of application.**

Financial services practitioners are aware that even in case of changes to existing terms and conditions of a product held by consumer certain procedures are typically followed (involving for example prior advance notification and the possibility of an opt-out).⁷⁷

The Service Provider was accordingly duty-bound to take the right actions on such sensitive and material aspects.

- ii. **Inconsistent information as part of the welcome pack – As part of the welcome pack provided by STM Malta through its letter dated 9 December 2013,⁷⁸ the Complainant was furthermore provided with a *Providence Life* Key Features document which did not include reference to the Marketing Fee.**

In its final submissions, the Service Provider noted that:⁷⁹

⁷⁷ For example, before a material change is done to the terms and conditions of a financial product, the consumer is normally first duly formally informed beforehand and provided with relevant details prior to the changes being implemented. A consumer is, in such circumstances, also typically provided with a period of time to consider the changes and opt out of the product should s/he so desires prior to the changes taking effect.

⁷⁸ In the attachment marked '*DOC STM 4*' as part of STM Malta's note of submissions – P. 96

⁷⁹ P. 186-187

'...the investment documentation was sent to the Complainant by STM Malta and such documentation was received by the Complainant. The key features document was included in such pack of documentation: this document outlined the main characteristics of the PLL investment and the product features and policy charges in a plain language to facilitate comprehensibility'.

The said Key Features document of the *Providence Life Portfolio Bond*,⁸⁰ however, included information not reflective of, and inconsistent with, the Policy Terms & Conditions included with the same welcome pack.

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 act in his interest by failing to contest the actions of Providence Life when the issuer of the underlying policy decided to retrospectively apply the Marketing Fee*

It is noted that in his sworn declaration a senior official of the Service Provider stated *inter alia* that:

*'STM disclosed, in its application the fees that PLL had advised to it, and also sent the terms and conditions issued by PLL to AW once the policy was ...'.*⁸¹

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 mere provision of an updated Policy Terms & Conditions without any communication that such Policy Terms & Conditions differed materially with respect to the Marketing Fee is by no**

⁸⁰ P. 159-160

⁸¹ P. 175

means considered appropriate, professional nor meeting the legitimate expectations of a consumer of financial services.

The Arbiter considers that moreover, 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'.⁸²

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.

Hence, it is considered that, in the case in question, there were sufficient reasons and basis which reasonably justified the trustee's own active intervention in the circumstances.

The Arbiter notes that STM Malta however just merely acted as a post-box between the Complainant and Providence Life merely forwarding the Complainant's grievances and any communication from Providence Life, rather than itself actively intervening in the first place to ensure that the interests of the Complainant are protected, and the trust property safeguarded from loss or damage.

In the particular case in question, no sufficient comfort has been provided that the Service Provider truly satisfied its obligations in this regard.

For the reasons mentioned and also other factors considered later in this decision, the Arbiter accordingly considers that there is validity to the allegation that STM Malta failed to act in the Complainant's interests.

⁸² P. 67

- c) ***The allegation that STM Malta failed to highlight over eight years that the amounts deducted from his underlying policy were incorrect***

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.

It is considered that, **in the particular circumstances, there is accordingly also certain validity to the Complainant's claim that STM Malta has failed to highlight the incorrect policy valuations issued by *Providence Life*.**

Other factors

- i. **Lack of intervention and acting in the best interests of the Complainant - The Service Provider did not offer valid explanations why, and on what basis, the issuer of the policy has accepted the Policy Application Form of August 2013 and then issued a policy with materially different terms and conditions to those included in the Policy Application Form that was accepted at the time.**

However, this is clearly an aspect which STM Malta should have reasonably followed and carefully considered with *Providence Life*, in order to ensure the best interests of the Complainant prevail and to safeguard his assets.

Such lack of action and intervention on the Service Provider's part not only occurred at the time of the issue of the policy and delivery of the welcome pack documentation to the Complainant, but even at the time when *Providence Life* approached STM Malta about the system error it discovered involving the Marketing Fee.

- ii. **Lack of consent sought from the member to proceed with revised terms and conditions and the lack of opportunity provided to him to decline the revised terms** – The Arbiter considers that, as trustee and RSA of the Scheme (and being also the co-signatory to the policy application form), **STM Malta**

should have reasonably sought the member's consent as to whether to proceed with the revised Terms & Conditions.

The Complainant should indeed have been given the opportunity to change his mind and decline to proceed with the revised fee structure and terms and conditions. He could have also availed of the cooling-off period applicable with the purchase of the underlying policy.

No evidence has emerged however, that the Complainant was adequately informed of the change in the Terms & Conditions, let alone that his consent was sought and/or opportunity provided to decline to proceed with the purchase of the policy.

- iii. STM Malta being the trustee of the Scheme and Policyholder – The Service Provider cannot minimise its key functions and roles. Apart from being the trustee/RSA of the Scheme, STM Malta was also the Policyholder of the *Providence Life* policy.⁸³

Hence, it itself had to be duly aware and conscious of any material divergences arising from the Policy Terms & Conditions it had itself applied and signed for in August 2013 and those issued with the actual policy. As mentioned above, any such divergences had to be adequately considered 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.

The Arbiter also points out that the case in question is not a case of a failure 'to disclose something that is plainly disclosed in documents which have been sent to the member/investor', as STM Malta tries to argue in its submissions.⁸⁴

⁸³ P. 43

⁸⁴ P. 187

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'.⁸⁵

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.

- v. *Other* – It is noted that in its submissions, the Service Provider argued that the Complainant had an obligation to read the documentation sent to him.⁸⁶

STM Malta was however clearly itself in a position to identify beforehand the discrepancies emerging in the documentation used and the actual Policy Terms & Conditions issued to the Complainant – not only through its business relationship with *Providence Life* but also given that it had to ultimately update its own forms with the new revised fees.

In its submissions, STM Malta also claimed that *'the financial advisor who also had a copy of the policy documentation also had an obligation to read through the document and inform the member of the fees which are clearly listed in the said document'.⁸⁷*

The Arbiter notes that in its FAQ document on the Marketing Fee, *Providence Life* further stated *inter alia* that:

*'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'.⁸⁸*

⁸⁵ P. 118

⁸⁶ P. 174 & 186

⁸⁷ P. 174

⁸⁸ P. 68 – Emphasis added by the Arbiter

The terms and conditions that were considered by the Complainant and his advisor, at application stage (as part of the Policy Application Form) however, did not feature the disputed Marketing Fees in respect of the *Providence Life Policy*. This is an aspect that should have been taken into consideration by all the parties in question.

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'*.^{89, 90}

STM Malta quoted parts of this decision and noted that in such case the Arbiter had decided not to uphold the compensation requested in respect of the charges paid. The Service Provider claimed that *'This is precisely the same case here'*.⁹¹

The Arbiter however refutes the Service Provider's claims and considers that the quoted case and the case under consideration deal with completely dissimilar and unrelated issues and entirely involve 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:

- 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 is no new or different fee structures emerging in the documentation provided to the complainant as has happened in the case under consideration.

⁸⁹ P. 186

⁹⁰ <https://financiarbiter.org.mt/sites/default/files/oafs-decisions/ASF%20039-2018.pdf>

⁹¹ P. 186

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 let alone *'precisely the same'* as claimed by the Service Provider.⁹² For the reasons mentioned, the Arbiter rejects the submissions made by the Service Provider on this point.

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 lesser 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 that there was a 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.

Not only did it not itself raise any issues at the time of the receipt of the policy documentation but it even did not take any action to safeguard the interests of the Complainant at the time when *Providence Life* decided to retrospectively apply a marketing fee for over an eight-year period, which marketing fee was not reflected in the Scheme Application Form and nor even in the Policy Application Form accepted by *Providence Life*.

⁹² P. 186

The failure to take appropriate action at the time of the acquisition of the policy and at later stages as outlined above 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. STM Malta was also 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 accordingly 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*'⁹³ of the Complainant who had placed his trust in the Service Provider, believing in its professionalism and its duty of care and diligence.

⁹³ Cap. 555, Article 19(3)(c)

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 case⁹⁴ 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 not being met in full to reflect the failure by his financial advisor to note, for example, the difference in Policy terms at issue from those in the application forms.

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 afforded by it to safeguard his property and protect his interests.

Whilst the Arbiter does not uphold the Complainant's request for compensation in respect of the annual management charge applicable subsequent to his Complaint given that the Scheme was still in force at the time and was being administered by the Service Provider, the Arbiter considers that the Complainant should, however, be compensated for the damages incurred as a result of any Marketing Fee applied on his underlying policy.

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

⁹⁴ Cap. 555, Article 19(3)(b)

Marketing Fee being the subject of this Complaint that may be charged and paid on his underlying policy.

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**