

Before the Arbiter for Financial Services

Case ASF 013/2022

KE ('the Complainant')

Vs

Momentum Pensions Malta Limited

(C52627) ('MPM' or 'the Service Provider')

Sitting of 12 December 2023

The Arbiter,

Having seen the **Complaint** made against Momentum Pensions Malta Limited ('MPM' or 'the Service Provider') relating to the Momentum Malta Retirement Trust ('the Retirement Scheme' or '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 MPM as its Trustee and Retirement Scheme Administrator ('RSA').

The Complaint, in essence, relates to the Complainant's claims of various alleged failures on the part of MPM in the administration of his Retirement Scheme which he claimed had negatively affected the growth of his Scheme and led him to lose trust and confidence in MPM's services.

As a result, he closed his Scheme and claimed he suffered losses and penalties that he ended up paying on the surrender of his Scheme.

*The Complaint*¹

The Complainant claimed that MPM failed him on many occasions and made mistakes which affected any possible growth in his pension fund. He alleged that:

1. Initially, MPM failed to advise him of a rule change in regard to the tax-free allowance which had to be taken within a year of the first withdrawal.

He explained that MPM advised his adviser, but the adviser then failed to advise him about such change. The Complainant questioned why MPM did not advise him at the same time they advised his adviser. He claimed that on other occasions, MPM had advised him (together with his adviser) directly of other changes but did not do so this time round. He noted that MPM did not answer why it had, this time, not advised him of such development.

He submitted that MPM should have highlighted to him the change in rule regarding the PCLS² and ensure that he had clear information on such a specific and significant change to his pension (and not include it in some huge document). He thus submitted that MPM should have ensured that he had the information and should have allowed him to take his tax-free benefit.

He claimed that MPM never replied to the question as to why he was not informed of the rule change at the same time of his adviser and, also, never contacted his adviser, Abbey Wealth, on the matter.

He noted that because he kept raising the subject, MPM eventually said that they could not discuss this matter with Abbey Wealth as he had then changed his adviser. The Complainant submitted that this should have however not made a difference.

¹ Page (P.) 1 - 149

² Pension Commencement Lump Sum (PCLS) typically referred to as a 'tax free lump sum' - <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063210>

2. MPM changed their investment policy³ without informing him or his adviser, which resulted in Dealing Instructions from his adviser not being processed. This left underperforming funds to continue underperforming.

He noted that MPM never explained why the changes were made and why he was not informed.

3. MPM recommended an adviser when it was not allowed to do so.

He noted that MPM later denied recommending him his adviser, but he however had proof by email that MPM did so.

4. MPM failed to advise him of a change to the name of his pension company when *Old Mutual* changed its name to *Quilter*.

He noted that he only found out about this when he tried to access his online account and was denied access. He then discovered about the change from a website and contacted *Quilter* himself to grant him the new access codes in order to be able to access his account.

MPM did not explain why it did not contact him about the name change.

5. MPM mixed up his address in South Korea with Slovakia and asked him to confirm his address when he had been living in South Korea since 2007.

He claimed that the request to confirm his address only resulted from MPM's incompetence.

6. MPM promised him a full independent, in-depth investigation into his complaints but the investigation was however carried out by MPM's employees themselves.⁴ The Complainant accordingly questioned how MPM's investigations could be considered as independent.

The Complainant explained that although MPM gave him at least two official responses to his complaints, they had still not answered his specific questions.

³ The reference made by the Complainant to MPM's investment policy is rather a reference to the investment guidelines (i.e., general investment parameters and diversification rules) stipulated by the trustee/RSA in respect of the Retirement Scheme in accordance with the local regulatory requirements issued by the Malta Financial Services Authority applicable to the Scheme.

⁴ P. 5

It was further alleged that MPM *'take forever'* to respond to his requests and on many occasions MPM had to be prompted to answer, only to never respond.⁵

The Complainant noted that he had lost all faith in MPM as it told him lies. He submitted that he had no choice but to close his account at huge expenses in view of the penalties which applied.

He also claimed that his investments performed poorly as a result of high charges, but he could not change his investments as MPM refused all dealing instructions from his adviser. The Complainant explained that MPM had a meeting with his adviser to sort out this matter but his adviser, *APWM Alex Stojkovic*, informed him that:

'The issue at the time was that Momentum changed their investment policy, however, did not tell anyone what was acceptable and not acceptable. Therefore, it became a guessing game to establish what would pass their investment committee and what would not'.⁶

The Complainant also alleged that MPM *'took forever'* to allow him to withdraw funds from his account.⁷ He claimed that the six weeks taken to get his funds caused him to lose the house he had agreed to purchase and that due to the excessive time delay, the purchase fell through.

Remedy requested

The Complainant requested compensation for the losses arising due to him having to close his account and pay the penalties. He claimed that this was no fault of his but was only due to the incompetent service received from MPM and his advisers.

He explained that the penalties amounted to around GBP 16,000. The Complainant submitted that if these had to be split 50/50 between MPM and his advisers, the compensation expected from MPM amounts to in the region of GBP 8,000.⁸

⁵ P. 4

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

Having considered, in its entirety, the Service Provider's reply, including attachments,⁹

Where, in essence, the Service Provider explained and submitted that:

1. MPM is licensed by the MFSA to act as the RSA and Trustee of the Scheme. The Scheme is licensed as a Personal Retirement Scheme.
2. The Complainant became a member of the Scheme on 17 August 2016.

Competence and prescription

3. In 2016 and 2017, MPM updated all advisers (appointed by members), on upcoming income tax changes including the *Pension Commencement Lump Sum* ('PCLS') matters.

The Complainant had taken a PCLS on 19 April 2017 of less than 30% (this being the maximum percentage PCLS allowed at that time).

On 9 July 2018, the Complainant notified MPM of his intention to withdraw his remaining PCLS (this being the remaining percentage, up to 30% maximum, of which he had not taken the year before ('Remaining PCLS')). On 10 July 2018, MPM informed him of the maximum PCLS allowable and of the applicable 12-month timeframe in which it had to be taken – as per the email attached to its reply.¹⁰

MPM explained that nothing further happened for the rest of 2018 regarding the PCLS once MPM had informed the Complainant he was outside the 12-month timeframe to take the Remaining PCLS.

4. MPM noted that it was not until June 2019, that the Complainant raised again with MPM the aspect of the Remaining PCLS. The Complainant then submitted a complaint to MPM on 9 July 2019, regarding his issues with his PCLS payment. MPM responded to the said complaint with its final response provided on 5 August 2019.

⁹ P. 156 - 191

¹⁰ P. 161 - 164

5. MPM submitted that, with reference to article 21(1)(c) of Chapter 555 of the Laws of Malta, more than two years had elapsed since the conduct complained of took place and the Complainant had knowledge of the matters complained of to the Office of the Arbiter, as evidenced in its submissions and in his complaint to MPM on 9 July 2029.

MPM submitted that pursuant to article 21(1)(c) of Chapter 555 of the Laws of Malta, the Complaint could, therefore, not be entertained.¹¹

Reply to the Complainant's complaints

6. MPM stated that throughout his Complaint, the Complainant has not substantiated explicitly what duties he alleges MPM had failed to uphold; how he believed MPM failed to uphold such duties and how such failures caused him a loss. MPM further replied that it had answered his queries on multiple occasions.
7. With reference to the PCLS time limit, MPM submitted that it does not provide investment, financial, tax or legal advice to Members as it is not licensed or authorised to do so.

MPM replied that the subject of tax and retirement benefits is a complex subject specific to the member's jurisdiction of tax residency and one which requires specific and tailored financial advice.

It noted that in 2016, the Malta Income Tax Act Recognised Pension Communication (Exemption) Rule, 2016 (hereinafter referred to as L.N. 262) came into force. At the time, the Complainant had a regulated Advisory Firm appointed to provide him with the necessary financial and investment advice required in relation to his pension and investments.

When L.N. 262 came into form, it provided for a maximum period in respect of when the PCLS from a Recognised Overseas Pension Scheme can be paid in tranches, which was limited to 12 months from the date of initial payment. The MFSA had, however, in October 2016, confirmed that the said legal notice did not apply and there would be a period of consultation,

¹¹ Due to prescription issues which would challenge the competence of the Arbiter to hear and adjudge the Complaint.

which occurred during 2017. MPM updated all advisers (on 26 July and 27 October 2016) of the said developments.

MPM made reference to Appendix 1 and 2 of its reply as to the chain of events related to the PCLS.¹²

8. MPM explained that the Complainant requested his initial partial PCLS benefit payment of GBP 80,000 in March 2017. The payment was made to the Complainant's bank account in April 2017. On 9 July 2018, the Complainant confirmed by email that he wanted to withdraw the remaining PCLS balance.

On 10 July 2018, MPM informed the Complainant that, in terms of L.N. 262, a Maltese QROPS pension scheme can provide a maximum PCLS of 30% of the total fund value and within twelve (12) months of commencing benefits. Considering that the Complainant had already withdrew a PCLS more than 12 months prior, he was not eligible to take the remaining PCLS balance as the 12-month period allowed by L.N. 262 had elapsed. MPM also notified him that it had updated his adviser and provided him with a copy of the communication issued to the adviser.

MPM noted that the Member subsequently submitted the required retirement forms to take the original requested amount as income. Following the required clarification on his tax residency to ensure the Double Tax Treaty ('DTA') was applied appropriately, the payment was made to the Complainant on 14 September 2018.

MPM highlighted that it is important to note that the Payment was paid Gross (i.e., without Malta Tax Deduction in line with the DTA), and hence the Complainant received the full amount originally requested as PCLS with the Complainant suffering no loss. MPM noted that subsequently, in 2019, the Complainant complained regarding the said matter.

9. MPM noted that in its response to the Complainant's formal complaint of 5 August 2019, it had explained that the Complainant's advisory firms were

¹² P. 157, 161 - 172 (Appendix 1), 173 - 176 (Appendix 2)

informed about the changes implemented through L.N. 262 on 26 July 2016 – a copy of which was also provided to the Complainant.

It submitted that it is the role of the Complainant's appointed financial adviser who should have notified the Complainant about the changes in the regulation and the impact this would have on the Complainant's PCLS balance.

MPM noted that the Complainant has confirmed, through an email dated 27 June 2019, that his financial adviser failed to pass such material information to him. It explained that following the Complainant's email of 9 July 2019, they communicated directly with the advisory firm.

MPM obtained confirmation from the advisory firm dated 24 July 2019, that the adviser had indeed not communicated this information to the Complainant, with this also being the basis of a complaint which was submitted to them by the Complainant. MPM was also informed by the advisory firm that a settlement agreement was reached between the Complainant and the advisory firm on 30 October 2018, whereby the advisory firm agreed to pay the sum of GBP 100. It was also agreed by the Complainant and his advisory firm that the required payment will be taken as an income payment.

Following the said confirmation, MPM re-assessed the position again and the payment of GBP 58,490 was made to the Complainant in 2019. MPM confirmed this to the Complainant and attached a prepopulated retirement options form to assist him with the payment. This sum was paid on 4 November 2019 as part of a further income payment subsequently requested by the Complainant.

The above payments to the Complainant were also paid gross, in line with the double tax treaty (DTA) between Malta and Korea.

10. As to the change of advisor, MPM explained that the Complainant elected to remove *Abbey Wealth* as his adviser following the above-mentioned matters.

MPM explained that the Complainant wished to appoint a Hong Kong based advisory firm instead but unfortunately, MPM did not have terms of business with this firm and as such MPM was unable to accept this firm.

It was noted that the Complainant alleges that MPM recommended *Alexander Peter Wealth Management* ('APW') and in this regard provided an email dated 23 July 2018 from MPM's previous employee. MPM submitted that upon inspection of this email it is however very clear that no such recommendation was made. It submitted that the email simply contains a list of regulated advisers MPM had terms of business in place within his location. It accordingly submitted that there was no such recommendation to appoint APW.

MPM submitted that the appointment of an adviser is entirely the Complainant's decision and MPM disputes the Complainant's assertion that it had recommended APW. It reiterated that this was not the case and that the email did not support his allegation.

MPM noted that, furthermore, on 19 April 2019, the Complainant had confirmed in a communication to MPM that:

'He decided on Alexander Peter (AP) since my previous adviser Warren Stean transferred to them from Abbey. I had issues with Abbey after Warren left and had no option but to move advisers'.¹³

11. With regards to the aspect of the dealing instructions not being processed and the change in the Investment Guidelines, MPM submitted that it can only assume that the Complainant is referring to the dealing instructions, in or around April 2019, that MPM could not process because they did not include the Fee and Commission trade fee disclosure information which must be affirmed by the Complainant's adviser and signed by the Complainant. MPM submitted that this was a legal requirement in Malta, in accordance with the Retirement Pensions Act.

MPM noted that in terms of changes, MPM assumes that the Complainant is referring to the changes to MPM's investment guidelines. A

¹³ P. 158

communication was issued to all members and any change to MPM's Investment Guidelines was also issued to the Complainant.

12. MPM made reference to Appendix 3 of its reply,¹⁴ with respect to the change in name from *Old Mutual International Isle of Man Ltd* to *Quilter International Isle of Man Limited* ('Quilter International').

It explained that this was a change in trading name which took place in February 2020. The legal entity remained the same and Quilter International's email exchange in April confirmed this. Quilter confirmed that the change in their name did not impact the Complainant's access to his account and was not the reason for any access issues that the Complainant may have had. MPM noted that the alleged IT issues were not brought to their attention at the time either.

13. With respect to the country of residence, MPM confirmed that the Slovakian country code appeared briefly in their internal records and there was an email in which they did mention the Complainant's residential address being in Slovakia rather than South Korea.

MPM noted that this was however rectified, and it apologised to the Complainant on numerous occasions for any confusion caused. It submitted that, ultimately, however, it could not see how this related to any loss alleged by the Complainant as such matter did not impact his pension scheme or benefits in any way.

MPM also replied that it did ask the Complainant for address clarification after receiving an email from the Complainant's then-adviser, in December 2020, informing them that they could no longer advise the Complainant as he had moved to the UK.

It noted that as a result of this, MPM contacted the Complainant and asked him to provide it with his current address and a Change of Address Form, to assist him accordingly. MPM noted that they did repeat such request on a few occasions and did inform the Complainant that it was his responsibility to keep it up to date with any change of address.

¹⁴ P. 177 - 180

14. With reference to the aspect raised about the investment loss, MPM made reference to Appendix 4¹⁵ and Appendix 5¹⁶ to its reply.

MPM further explained that following the Complainant's request for his retirement options to be explained to him, MPM issued to the Complainant a detailed email confirming the options in order to assist him accordingly. It had also reiterated the legal requirement to appoint an adviser.

It submitted that the cost and charges, as confirmed to MPM by Quilter, were clearly outlined to the Complainant both in its communication and also in the policy document initially issued to him on 22 September 2016. The Complainant elected to take his benefits and surrender his policy.

MPM further submitted that there was no loss from the Complainant's investments or the PCLS payment as detailed above, and that any cost incurred related to fees payable to Quilter. The Service Provider emphasised that the Complainant did not suffer an investment loss.

A copy of the Client Statement showing all scheme payments and receipt was attached to MPM's reply.¹⁷

MPM also submitted that the Complainant provided no evidence, details or calculations of his alleged GBP 8,000 loss sustained by MPM's failings.

15. In conclusion, MPM replied that it was not reasonable for the Complainant to claim the payment of any amount from MPM.

It submitted that it had replied in-depth, on numerous occasions, to the Complainant, but the questions were nevertheless repeatedly raised.

MPM noted that the Complainant must show that it was MPM's actions or omissions which caused the loss that he was alleging. It submitted that MPM otherwise, cannot be found responsible for the claims made by him.

¹⁵ P. 181 - 189

¹⁶ P. 190 - 191

¹⁷ *Ibid.*

For the reasons mentioned, MPM accordingly requested the Arbiter to reject the Complainant's claims.

Preliminary

Preliminary Plea regarding the competence of the Arbiter

In its reply to the Office of the Arbiter for Financial Services ('OAFS'), the Service Provider raised the plea of prescription '*pursuant to articles 21(1)(c) of Chapter 555 of the Laws of Malta*' where it submitted that more '*than two years have lapsed since the conduct complained of took place, and ... the complainant had knowledge of the matters complained of to the Office of the Arbiter*'.¹⁸

When raising its plea of prescription, the Service Provider pointed out that the Complainant had filed a complaint with the financial services provider regarding the PCLS matter on 9 July 2019 which was replied to by MPM on 5 August 2019.¹⁹

Article 21(1)(c) of the Act stipulates that:

'An Arbiter shall also have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider occurring after the coming into force of this Act, if a complaint is registered in writing with the financial services provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.'

The Arbiter would like to first note that the said article refers to the date when '*a complaint is registered in writing with the financial services provider*' and not to the date when a complaint is made to the OAFS.

Furthermore, as emerging from MPM's letter of 5 August 2019, the relevant sequence of events relating to the PCLS is, in summary, as follows:

- MPM had informed '*all [its] advisors about the changes in the legislation*', that is, the Income Tax Act Recognised Pension Commutation (Exemption)

¹⁸ P. 156

¹⁹ P. 156 & 204

Rule, 2016 ('L.N. 262'), and also provided a copy of the said rule '*on 26th July 2016*';²⁰

- The Complainant first took a portion of the PCLS '*... on 19th April 2017 of less than 30%*';²¹
- MPM was notified of the Complainant's intention to withdraw the remaining PCLS on 9 July 2018 (that is, more than a year after the first partial withdrawal of 19 April 2017);
- A day later, on 10 July 2018, MPM notified the Complainant that according to L.N. 262, he was '*not eligible to take the remaining balance of PCLS as the 12-month period had elapsed*';²²
- A Full and Final settlement agreement was reached on 30 October 2018 between the Complainant and the Complainant's advisor, Abbey Wealth,²³ given that the latter had not communicated to the Complainant the information about the changes in the legislation relating to the PCLS.

From the above, it clearly emerges that the Complainant first had knowledge of the matters complained of involving the PCLS (which gave rise to his complaint to MPM of 9 July 2019), a year earlier on 10 July 2018. This is accordingly within the two-year period stipulated in article 21(1)(c) of the Act.

The Arbiter is therefore dismissing the plea raised by the Service Provider in terms of article 21(1)(c) of the Act and shall 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.²⁴

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ P. 199 & 204

²⁴ Cap. 555, Art .19(3)(b)

Observations and Conclusions

As outlined at the start of this decision, the Complaint, in essence, involves the claim that due to various mistakes undertaken by MPM in relation to his Retirement Scheme, the Complainant had to take the decision to surrender the Scheme prematurely and, in the process, ended up incurring material penalties. The Complainant felt that he should not bear the brunt of the penalties he ended up paying himself.

Surrender of the Scheme and reason for the Complainant's 'premature' exit

The Complainant surrendered his Scheme in 2021. In a letter dated 26 October 2021, MPM informed the Complainant that further to the payment of a retirement benefit from the Scheme,

'This payment has now fully exhausted your funds and as The Momentum Malta Retirement Trust no longer holds any benefits on your behalf, your Membership within the Scheme will now cease and you no longer have any entitlement to take benefits from this scheme'.²⁵

As detailed by the Complainant in the attachment to his complaint,

'The reason for closing my account is because of the lack of due care by Momentum and my loss of trust I initially had with them but after some years was completely lost regardless of my attempts to improve the situation'.²⁶

Indeed, it is noted that this key and main aspect was indeed outlined by the Complainant himself in an email he sent to MPM on 15 September 2021, where he *inter alia* stated that:

'... Momentum has not had to pay a penny for their numerous mistakes and errors which have been well highlighted throughout the numerous discussions. I am the only loser due to mistakes by others, namely Momentum and Abbey but neither will accept responsibility'.²⁷

²⁵ P. 71

²⁶ P. 74

²⁷ P. 23

In his Complaint to the Office of the Arbiter for Financial Services ('OAFS'), the Complainant claimed that the penalties amount to *'around £16,000 GBP'* and requested that MPM should pay half of these fees, that is *'in the region of £8,000'*.²⁸

It is noted that in a letter dated 31 August 2021, regarding the Estimated Surrender Value of the Complainant's Retirement Scheme the following fees (in total of GBP 17,661.31) were indicated:²⁹

- An *'Early Surrender Penalty & fees payable to – Quilter International Isle of Man'* of GBP 15,766.31;
- An *'Outstanding Scheme Trustee Fee – 2020'* for GBP 895;
- A *'Scheme Termination Fee'* of GBP 1,000.

Timeline of certain events

The Arbiter notes the copy of a huge number of emails exchanged (particularly over a three-year period from 2019 to 2021) between the Complainant and MPM that were presented during the proceedings of the case.

It is further noted that the Complainant's lack of confidence in MPM goes particularly even back to the year 2019, when the Complainant continued to withdraw substantial amounts from his Retirement Scheme. In his email of 16 September 2019 to MPM, the Complainant noted that:

'Are you aware there is currently a withdrawal process by my advisers ongoing where Momentum have advised Alexander Peter Wealth Management a sum of around £170,000.00 can be withdrawn without incurring any penalties or charges, I had requested the maximum to be taken out my pension without incurring any charges due to my lack of confidence in both my advisers and pension trustees'.³⁰

Indeed, it is noted that as emerging also from the *'Member Bank Account Statement'*, the Complainant had been consistently drawing large amounts over the years from his initial investment in 2016 of GBP 456,047.32 into the Old

²⁸ P. 4

²⁹ P. 76

³⁰ P. 134

Mutual policy held by the Retirement Scheme.³¹ According to the said statement, the Complainant had withdrawn a PCLS of GBP 79,997 in April 2017; GBP 58,453 in September 2018; GBP 99,999 in June 2019; GBP 106,510 and a PCLS of GBP 58,489 in November 2019.³² A further income drawdown of GBP 14,523.33 was done in September 2021 following which the Scheme was surrendered as indicated above.

The Complainant had filed multiple complaints to MPM – particularly in 2019 (as already considered above in relation to the PCLS)³³ and in 2021 (in relation to other matters including the penalties he was going to be charged on the exit of his Scheme).³⁴

A summary of the timeline of key exchanges made just in 2021 (after the issue of the reply by MPM’s Compliance team to the Complainant’s complaints) is included below:

- a) 18 February 2021 – Reply sent to the Complainant by MPM’s Director and Group Head of Compliance in relation to exchanges that the Complainant had with an MPM employee.³⁵
- b) 23 April 2021 – MPM’s Head of Compliance issued a final response to the Complainant’s complaints sent by email to Steward Davies and Susan Brooks.³⁶
- c) 26 April 2021 – Formal complaint sent by the Complainant to MPM.
- d) 3 May 2021 – MPM’s letter dated 3 May 2021 in reply to the Complainant’s complaint of 26 April 2021.³⁷
- e) 3 May 2021 – The Managing Director of MPM explained that MPM had written to the Complainant in relation to the points he raised ‘*over the past two years now*’ and had provided him ‘*with an in-depth response in relation to the issues and complaints raised*’. MPM noted that it ‘*cannot add*

³¹ P. 72 & 186

³² P. 72 - 73

³³ P. 173 & 175

³⁴ P. 94 - 96

³⁵ P. 173

³⁶ P. 94 - 96

³⁷ *Ibid.*

anything further'; and for the Complainant to take its reply of 23 April 2021 and the attached correspondence as their last and final response.³⁸

- f) 4 May 2021 – The Complainant claimed that MPM did not address his main complaint; that MPM's failure to inform him of the rule change had as at that time ended up losing him GBP 15,000; that MPM failed to investigate his advisers (which he claimed, one of whom was recommended to him by MPM itself); MPM did not advise him of the change from Old Mutual to Quilter. He further claimed that the human errors done by MPM ended up costing him a lot of money.³⁹
- g) 6 May 2021 – MPM replied to the Complainant explaining that he had not proven that he suffered a financial loss due to the rule change noting also that the Complainant had access to his funds and he had *'in fact withdrew 90% of your funds between 2017 and 2019'*.⁴⁰ MPM further explained that the renaming of the issuer of the underlying policy did not affect his access; reiterated that in line with the Malta rules, the Complainant had to appoint an investment adviser to remain a member of the Scheme or if not had the option to transfer to another scheme or alternatively draw his remaining benefits.
- h) 10 May 2021 – The Complainant claimed that MPM failed to answer many of the questions he had raised. He referred to the many different individuals who got involved with his issues and how many times he had to repeat himself on the same matters. He included questions that were made around February 2021 to the previous managing director which he said were never answered.⁴¹
- i) 17 May 2021 – Reminder sent by the Complainant to MPM that he was still awaiting answers to the points raised in his email of 10 May 2021.
- j) 19 May 2021 – The Complainant requested MPM to provide him with answers to his complaint and the status of his remaining funds in light of previous communications.⁴²

³⁸ P. 68

³⁹ P. 67

⁴⁰ P. 66

⁴¹ P. 63 - 66

⁴² P. 62

- k) 19 May 2021 – MPM claimed that it had already provided its final detailed response. As to the appointment of an investment manager, MPM confirmed that *'... we didn't progress with the appointment of TAM Asset Management (TAM), to allow you time to firstly address your concern that the PCLS wasn't paid and your additional issues raised'*.⁴³

MPM reiterated that, in terms of the Malta rules, the Complainant had to appoint an adviser or investment manager. MPM noted that it had presented the option to appoint TAM as the new discretionary investment manager, or alternatively, the Complainant could have elected to appoint a new adviser in terms of the said rules.

MPM also indicated the options available to the Complainant, in case he wishes to take his remaining benefits, which options were either surrendering his policy held with Quilter or assigning the said policy into his own name (as an in-specie transfer) with him no longer remaining a member of the Scheme.

MPM asked the Complainant to indicate the action that he wished to take.

- l) 21 May 2021 – The Complainant sent an email to MPM noting that on 11 March 2021, he was informed by MPM that if he did not reply by 12 April 2021 then he would be deemed to have opted for an investment manager default option. He questioned why this did not happen and why he was not informed that MPM had halted this process given that he saw no reason why his previous concerns should have halted the process and he had not raised concerns to halt the said process. He indicated this as another instance where MPM did not inform him about changes.

The Complainant explained that he was let down badly by his two previous advisers, Abbey Wealth and APW, and was *'therefore very reluctant to take on another adviser who meets Momentum's requirements as these requirements have not benefited me one little bit in fact has put me in the position I am now'*.⁴⁴

- m) 21 May 2021 – MPM sent an email recommending to the Complainant to take advice with respect to his pension as they cannot provide him with

⁴³ P. 61

⁴⁴ P. 60

advise themselves. MPM reiterated the need to appoint an adviser or discretionary investment manager and indicated that the remaining options would then be for the Complainant to take his retirement benefits or transfer to another scheme.⁴⁵

- n) 25 May 2021 – In an email sent to MPM, the Complainant stated *inter alia* that ‘*I cannot appoint an adviser because I am now resident in the UK, that is the reason APW advised he was no longer my adviser*’.⁴⁶ He claimed that APW was recommended to him by a representative of MPM and questioned that ‘*If I can’t appoint a Momentum approved adviser because I am resident in the UK and my present adviser in Hong Kong is not approved by Momentum where can I go?*’⁴⁷

The Complainant explained to the Service Provider that he wanted to get rid of MPM and MPM’s approved advisers and did not see a reason ‘*why I have to pay excessive penalties and fees and other costs in excess of £19K for a situation I am forced into because Momentum and their advisers messed up*’.⁴⁸

- o) 28/30 May 2021 – Reminder from the Complainant.⁴⁹ MPM suggested a phone call to discuss the issues. The Complainant explained that whilst it was a good idea to discuss over a phone call, unfortunately, he was not able to hold a call due to health reasons and indicated that email communication was the only option at the time.⁵⁰
- p) 3 June 2021 – The Complainant claimed that there are misunderstandings in regard to his complaints given that too many individuals within MPM had been involved. He attached a list of the main issues that needed to be addressed and answered.⁵¹
- q) 3 June 2021 – The Managing Director of MPM informed the Complainant that they had previously replied and provided a final response on all the points raised.⁵²

⁴⁵ P. 58 & 59

⁴⁶ P. 58

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ P. 57

⁵⁰ P. 56

⁵¹ *Ibid.*

⁵² P. 54 - 55

- r) 3 June 2021 – The Complainant argued that a response was not the same thing as an answer to his complaints and requested MPM to provide him with answers. As to the adviser, he noted that he already had an adviser in Hong Kong and stated that *‘I see no need for me to have another as I am now resident in the UK’*.⁵³
- s) 3 June 2021 – MPM explained to the Complainant that in terms of the Malta Rules they could not recognise an unregulated adviser in Hong Kong; that they will provide him with details of the Quilter fees and charges in case he is to take the benefits or transferring to another scheme; recommended the Complainant appoints an adviser to advise him on the options available to him to minimise costs; noted a change in residential address and provided him with a copy of a form that needed to be completed in this regard.⁵⁴
- t) 3 June 2021 – A number of email exchanges ensued on the residential address.⁵⁵ The Complainant also wanted *‘to know what options I have to get out at minimal cost and for them to be explained in simple terms’*, stating also that he saw *‘no reason why I need to appoint an adviser to close an account’*.⁵⁶
- u) 4 June 2021 – MPM sent an email to the Complainant regarding some form filling (change of address form) and also informed him that they were awaiting certain requested details from Quilter.⁵⁷
- v) 7 June 2021 – The Complainant sent an email to MPM providing it with a change of address form and other documents. He requested answers to the questions sent on 3 June 2021.⁵⁸
- w) 8 June 2021 – Following an email of 8 June sent by MPM (regarding a change of address form, the application of surrender charges *‘in relation to closing your account prior to 8 years from the date of establishment’*, and summary of options),⁵⁹ the Complainant requested answers to his

⁵³ P. 54

⁵⁴ P. 53

⁵⁵ P. 51-52

⁵⁶ P. 53

⁵⁷ P. 50

⁵⁸ *Ibid.*

⁵⁹ P. 49

comments of 3 June claiming that these kept being ignored by MPM. He further claimed that MPM's final response did not answer the issues. The Complainant also requested a summary of the options he had available stating that:

'I have no wish to remain with Momentum in any way if at all possible, I do not want to take on another adviser after previous poor experience with Momentum approved advisers'.⁶⁰

He also requested *'...compensation from Momentum for their mistakes which are causing the hefty penalties and fees and other costs ...'.⁶¹*

- x) 8 June 2021 – MPM sent an email to the Complainant where - whilst reiterating that MPM cannot provide advice and that the information provided was not to be construed as such - it outlined a number of options in reply to the Complainant's request for the choices he had and how to minimise his costs.⁶²

Details for the following three options were provided: (a) *'Surrender the Policy now and take your retirement benefits as a cash income payment'* (b) *'Surrender the policy on or after the 27th August 2021 and take your benefits as a cash income payment'* (c) *'Exit the Scheme and take your retirement benefits by transferring the Quilter Policy into your name'.⁶³* MPM strongly suggested the Complainant to take advice and asked him to confirm whether he wishes to appoint an investment adviser/investment manager or elect to exit the Scheme.

- y) 9 June 2021 – The Complainant confirmed that his preferred option was to surrender his policy and take a cash income payment on or after the 27 August 2021 (option 2). He however requested MPM to *'offer some compensation' to help him 'offset the £19,169.26 costs due to Momentum's errors'.⁶⁴*

⁶⁰ P. 48

⁶¹ *Ibid.*

⁶² P. 44 - 46

⁶³ P. 44 & 45

⁶⁴ P. 44

- z) 11 June 2021 – The Complainant asked for an acknowledgement of his email of 9 June and replies to his questions of 3 June.⁶⁵ On 11 June, MPM sent an email noting the Complainant’s decision of his preferred option to cash in his Scheme and provided details of the documentation that needed to be provided in this regard. MPM strongly suggested that he takes advice before proceeding with the surrender.⁶⁶
- aa) 14 June 2021 – Email sent by the Complainant to MPM regarding the information requested in respect of the surrender of his Scheme. In the said email the Complainant also requested answers to the questions raised on 3 June which he considered were never answered. He also stated that:
- ‘... as mention[ed] previously I am looking for compensation to offset some of the almost £20,000 fees and charges which are due to no fault of my own ...’.*⁶⁷
- bb) 16 June 2021 – Reminder sent by the Complainant asking for a response to his email of 14 June.⁶⁸
- cc) 18 June 2021 – In reply to an email dated 18 June 2021 sent by the Complainant requesting answers to his questions, MPM sent an email on 18 June 2021 informing him that MPM considered that *‘We have answered all your questions numerous times and have issued our final response’.*⁶⁹
- dd) 21 June 2021 – Further email sent by the Complainant claiming that MPM keeps ignoring his emails and that MPM has not answered his questions.⁷⁰
- ee) 22 June 2021 – The Managing Director of MPM sent an email where it was *inter alia* stated to the Complainant that *‘you are repeatedly asking the same questions to which we have already replied to in full in our prior responses ...’.*⁷¹ It was further stated by MPM that *‘I confirm I cannot add anything further and this is our last and final response on the matter’.*⁷²

⁶⁵ P. 43

⁶⁶ P. 42

⁶⁷ P. 41

⁶⁸ P. 40

⁶⁹ P. 39

⁷⁰ P. 37

⁷¹ P. 36

⁷² *Ibid.*

- ff) 22, 24 and 30 June 2021 - Reminders sent by the Complainant.⁷³
- gg) 2, 12 and 19 July 2021 – Further reminders sent by the Complainant.⁷⁴
- hh) 20 July 2021 - Email from the Managing Director of MPM informing the Complainant that MPM considered that they had already answered *‘the same questions a few times’* for the Complainant.⁷⁵
- ii) July/August 2021 – Following MPM’s reply of 20 July 2021, the Complainant subsequently still sent various reminders requesting replies to the questions that the Complainant considered unanswered – reminders were sent by the Complainant through his emails of 26 July 2021 and the 6, 11, 15, 17 and 23 August 2021;⁷⁶
- jj) 31 August 2021 - Email sent by MPM to the Complainant where MPM *‘collated [their] responses under each of [the Complainant’s] questions’*;⁷⁷
- kk) 15 September 2021 - The Complainant replied with his comments;⁷⁸
- ll) 21 October 2021 - MPM provided a further final response to the Complainant’s emails.

It is noted that in the said final response, the Managing Director of MPM provided her explanations to the key questions raised by the Complainant and also stated the following at the end of her response:

*‘Mr KE, we have now provided a full and in-depth response and answered your queries at length on numerous occasions over a significant period of time. We wish to confirm again that we can add nothing further and whilst you may not agree with this position, this is our final position. For avoidance of doubt, by not replying to any future replies received from you, we are not ignoring your emails but are hereby confirming this is our final response and will be issuing no further replies’.*⁷⁹

⁷³ P. 33 - 35

⁷⁴ P. 30 - 32

⁷⁵ P. 29

⁷⁶ P. 24-27

⁷⁷ P. 18

⁷⁸ *Ibid.*

⁷⁹ P. 17 – Emphasis added by the Arbitrator

The Arbiter further notes that even after receiving the Service Provider's response of 21 October 2021, the Complainant still kept hounding the Service Provider by sending various incessant reminders to MPM demanding answers.

- The Complainant kept sending emails and chasers to the Managing Director as per his emails of 1, 8, 15, 18 and 26 November 2021;⁸⁰ 2, 9, 15 and 20 December 2021;⁸¹ and 5 and 14 January 2022;⁸² prior to filing a Complaint with the Office of the Arbiter for Financial Services (signed and dated 17 January 2022) on 3 February 2022.⁸³

Claimed Losses

As to the alleged losses, it is noted that in his email of 11 August 2021, the Complainant stated *inter alia* that:

*'... losses caused by negligence by my advisers and/or trustees cannot be accepted. These losses are the penalties, charges, fees etc associated with attempting to close my account and amount to around £20,000. I cannot live with leaving my pension in the hands of advisers and trustees who fail to keep me informed of any changes regarding my pension, could anybody? Why should I pay for the mistakes my advisers and trustees made, I can pay for my own mistakes but paying for mistakes by others and through no fault of my own is not acceptable ...'.*⁸⁴

It is also noted that in an email sent by the Complainant to MPM on 15 September 2021, the Complainant stated *inter alia* that:

'The financial loss mentioned at this time was due to a delay in receiving the money and losing out on a property I was purchasing. The main financial loss is the huge sum I have to pay in penalties, I knew about the penalties but had to accept them and hoped Momentum and Abbey would have

⁸⁰ P. 12 - 14

⁸¹ P. 11 - 12

⁸² P. 9 - 10

⁸³ P. 1 & 7

⁸⁴ P. 26 - 27

considered compensating me with these costs since they were both to blame for me eventually having to close my account’⁸⁵

...

My issue with the PCLS payments were the time taken by Momentum before the money became available, the delay caused me to miss out on the property I was purchasing’.⁸⁶

It is further noted that during the hearing of 3 October 2022, the Complainant testified *inter alia* that:⁸⁷

‘I say that I made losses because I could not change my investments. I cannot say how much. My complaint has nothing to do with investments; my complaint is about how my pension was operating, how I was not given information and mistakes have been made. That is my problem.

The losses on surrendering my policy were nothing major ...

... Asked if I suffered any actual loss, I say that I suffered no losses. But, as I mentioned earlier, I suffered penalties because I closed my pension, because I had no trust in Momentum. I suffered losses there - £22,000.

Asked how I calculated this amount, I say that those were the penalties involved for closing the pension early and also fees by Momentum and whatever other charges there were. These were sent by Momentum in an email.’

As to the penalties incurred by the Complainant these have already been covered earlier in this decision under the section titled ‘Surrender of the Scheme and reason for the Complainant’s ‘premature’ exit’ above.

Final Observations

It is clear that an inordinate amount of communication was exchanged on the same issues by the parties. The Complainant was not satisfied with the replies provided by MPM and kept incessantly chasing the Service Provider for replies he considered were left unanswered. The Complainant claimed he no longer

⁸⁵ P. 19

⁸⁶ P. 23

⁸⁷ P. 194 - 195

trusted his Service Provider and wanted to exit from his Scheme refusing also to seek advice as recommended by the Service Provider and, also, proceeding with the surrender of his Scheme despite the hefty penalties that applied which he was clearly aware of.

As to the alleged failures claimed by the Complainant on the part of the Service Provider, the Arbiter has the following brief observations and comments to make:

1. *Alleged Failure to notify the Complainant of the Rule Change about the PCLS* – Whilst it has clearly emerged that MPM had only notified the Complainant's adviser and did not notify the Complainant as it should have done in the first place, this matter was, in essence, nevertheless eventually resolved as confirmed by both parties - in the sense that the Complainant still ended up receiving 'the remaining amount of [his] PCLS as a Malta tax exempt lump sum' as would have been similarly the case if he had been notified on time.⁸⁸

As testified during the hearing of 3 October 2022:

'It is being said that in this case there was no investment loss, the PCLS was paid gross so no tax loss. The only loss was the penalty and that occurred because I chose to divest the funds instead of transferring. Asked if that is correct, I say, yes, it was my choice. It was the only choice I had'.⁸⁹

Whilst this matter had created inconvenience to the Complainant, however, there was ultimately recognition by MPM of the failure that the Complainant had not been notified (by MPM and/or the adviser) of the rule change and the matter was in practice resolved as the negative financial impact of such non-notification had been eventually addressed as indicated above.

However, the Complainant expected MPM to keep investigating and probe this matter further and he kept referring and raising this issue even at later stages.

⁸⁸ P. 134

⁸⁹ P. 197

2. *Alleged failure to process dealing instructions and failure to notify him of changes to MPM's investment policy* – It is noted that the changes to the regulatory framework applicable to the Retirement Scheme under the Retirement Pensions Act, 2011 (which took effect in 2019),⁹⁰ *inter alia* required the appointed investment adviser (in the case of member-directed personal schemes) to satisfy certain criteria and include certain confirmations signed by the member with respect to trades.⁹¹

It has not been demonstrated nor emerged, in the particular circumstances of this case, that MPM failed to process any dealing instructions through its own negligence and/or that such failure or delay to process such trades resulted in a specific loss either.⁹² MPM had to ultimately comply with the updates in the regulatory regime which required different criteria to be satisfied for investment advisers and ensure that dealing instructions are provided by advisors in satisfaction of the applicable criteria and in line with relevant disclosure.

It is also deemed that it has not been satisfactorily proven either that changes to MPM's investment policy resulted in dealing instructions not being processed. The explanations provided by the adviser APWM, that MPM '*did not tell anyone what was acceptable and not acceptable*'⁹³ does not appear plausible to the Arbiter given also that the investment policies involve a set of stipulated general investment conditions as would have been specified in the Scheme's formal documentation (such as the Application Form for Membership and the Scheme Document), and as reflected/required in the applicable rules to which the Retirement Scheme was subject to.

⁹⁰ P. 291 - 292 & 295

⁹¹ P. 224 & 293

⁹² Whilst the Arbiter notes that, as per the email of 24 April 2019 (P. 223), the Complainant indicated that according to his adviser a dealing instruction was passed on to MPM by the adviser on 11 March 2019, there is on file only an email of 24 April 2019 issued by MPM where MPM highlighted that it was unable to process this trade as it did not have '*the completed Fee Disclosure Form signed by the Member*' in line with the '*communication issued on the 14th February 2019*' (P. 224). It is however further noted that in his email of 24 April 2019 regarding the dealing instruction, the Complainant himself instructed MPM to put the instruction on hold when he stated that his adviser '*... will call me on Friday regarding some issues regarding regulation changes. Depending on what the implications are in regard to these changed regulation I suggest if you have received the instruction then it is ignored until after I talk with Alex Stojkovic from Alexander Peter*' (P. 223).

⁹³ P. 4

3. *Alleged failure in that MPM recommended an adviser when it should have not* – Whilst MPM may have indicated an adviser, which was already known to it, in order to speed up the approval process and/or assist the Complainant accordingly, this however cannot be really seen, in effect, as a recommendation on the choice of the adviser to be appointed or some form of endorsement of his services. The choice of the adviser, ultimately, was always in the hands of the Complainant who could have chosen any other party (subject to satisfaction of any applicable requirements in terms of the pension rules to which the Scheme was subject to).

Whilst the Complainant may have rightly perceived this as a recommendation by MPM on the use of the services of a particular party, the Complainant's disappointment with the services provided by such adviser cannot, however, at the end of the day, reasonably be attributed to MPM - even more so when the adviser involved has not proven to be someone involved or affiliated with MPM (through, for example, common shareholding/directorship).

4. *Alleged failure to inform him of the change in name of the issuer of his underlying policy* – It has not emerged that the alleged failure to notify the Complainant of a change in the name of the issuer of the policy from Old Mutual to Quilter International, has affected him adversely in any way. The issues of the online access of his Quilter account does not appear to have been related to the said alleged failure, and the Complainant was still eventually granted access. It has not transpired either that any partial delay in the Complainant's lack of access to his online account had created any financial impact with respect to his policy.
5. *Alleged failure of a mix-up in his address* – The request by MPM for the Complainant to confirm his address cannot be either seriously or reasonably taken as some sort of a material aspect. This appears as a genuine request which in any case had not resulted in any adverse consequence either on the Complainant.
6. *Alleged failure to undertake a full independent in-depth investigation of his formal complaint* – The Arbiter notes that the 'independent' investigation was in the sense that this was to be undertaken by different senior personnel/department not involved directly with the matters which gave rise to the Complainant's complaint.

It should have been obvious that the investigation that was to be undertaken by MPM was one to be undertaken in-house, as is customarily done in such circumstances. The Arbiter indeed sees, in this regard, no unusual or irregular approach by MPM in the process of the investigation of his complaints.

Furthermore, this is an aspect which cannot be seen to have created or resulted in an adverse financial consequence to the Complainant either.

Whilst acknowledging that some of the matters indicated above may have created certain inconveniences to the Complainant, which he possibly considered in his eyes as material aspects and contributed to him building a certain perception on the quality of MPM's services, the Arbiter, however, cannot fairly and reasonably consider the said aspects as sufficient grounds to justify the stance taken and demands made by the Complainant.

This is when taking into consideration the various aspects as raised above including the nature of the alleged failures; the subsequent measures/actions taken to address the impact; as well as other matters such as the following:

- a) It is to be noted that if the Complainant was so unsatisfied of MPM's services, the reasonable option that he had was to change MPM's services by transferring out of the Scheme – that is, transferring his underlying Quilter policy *in specie* to another retirement scheme administered by another party or even in his own name directly as was indicated by MPM.⁹⁴ In that way, he would have only incurred the exit fee applicable on the Scheme of GBP1,000 whilst no longer availing of the services he complained of or was not satisfied about. The exit fee of GBP 1,000 applicable on the Retirement Scheme was the only fee which, in fairness, could have been reasonably claimed by the Complainant in the circumstances.⁹⁵

It is noted that during the hearing of 3 October 2022, the Complainant testified that:

⁹⁴ For example, in the email dated 19 May 2021 where it was *inter alia* stated that '*... the options available to you are ... or assigning the Policy into your own name (referred to as in-specie transfer). This means that the Bond will remain in place but you would directly own the Bond and would no longer be a Member of the Scheme and Momentum Trust Fees will no longer apply*' (P. 61)

⁹⁵ P. 73

'Asked why did I not change to another pension provider if I was not happy with Momentum, I say that I did not want anything to do with the way advisers were acting, and I was not happy with Momentum so I said I would not be dealing with these people anymore and that is why I chose this option'.⁹⁶

By transferring his underlying Quilter policy, the Complainant would however have been able to change the services of MPM and, also, appoint other advisers of his choice as permissible. **It is deemed that accordingly there is, in the first place, no valid justification for MPM to be held responsible for the material penalties applicable on the underlying Quilter policy which the Complainant himself chose to also redeem.**

This also taking into consideration that the Complainant was fully aware of the application of all surrender fees prior to the redemption of his policy (which fees should have been based on those outlined in the policy documents signed at the time of the acquisition of the policy). In his email of 8 June 2021, the Complainant stated *inter alia* that:

*'I am very well aware of the surrender fees and as I have mentioned to you before my intention was for a pension investment period of 10 years however due to Momentum's failures and their approved advisers mistake I could not possibly keep my pension with Momentum hence I am in the situation of being heavily penalised for Momentum's failures none of which I can be responsible for, is that fair?'*⁹⁷

As also testified during the hearing of 3 October 2022:

'Asked if it is true that I was warned by Momentum that there would be a penalty if I divest from the policy, I say that I already knew of the penalty. I was fully aware of the charges'.⁹⁸

- b) As to a possible compensation of MPM's own surrender fee, the Arbiter however considers that even when considering all the mentioned MPM's

⁹⁶ P. 196

⁹⁷ P. 48

⁹⁸ P. 195

failures indicated by the Complainant individually or on a collective basis, the Arbiter still finds no sufficient justification for the Complainant's claim of compensation from MPM.

Whilst the Arbiter can understand the Complainant's frustration and possible mistrust that may have developed as a consequence of the previous incidents indicated by the Complainant, however, the Arbiter does not consider that the events in question reasonably necessitated the material action taken by the Complainant himself to surrender the whole structure altogether, and this even without seeking professional advice despite the Service Provider's recommendation to do so on multiple times. It is noted for example that in its email of 31 August 2021, MPM suggested that:

*'In relation to your benefit payment, our retirement team will be in contact with you shortly to confirm the surrender value payment, which discloses the final fees charged by Quilter and our Trustee Fees. **Again I reiterate the importance of taking Advice before proceedings but note you have taken the decision of your own accord not to do so and wish to proceed on this basis**'.*⁹⁹

The Complainant however refused to follow such advice, in turn replying to MPM that *'Your advice is neither requested nor wanted'*.¹⁰⁰

It appears that the Complainant no longer saw the Retirement Scheme structure as an attractive investment choice and wanted to quickly exit the overall structure (that is both from the Scheme and on the underlying policy) even at the cost of incurring the hefty penalties (on the policy) in order to opt for an alternative investment altogether. As outlined in his final submissions,

'Buying a house was a much more acceptable proposition to me at that time because I could rent it out until the time I left Korea and would be financially better off than leaving it in a pension losing value and being reliant on others to do their jobs and not to make further errors'.¹⁰¹

⁹⁹ P. 23

¹⁰⁰ *Ibid.*

¹⁰¹ P. 307 - 308

The indicated failures by the Complainant seem, in the circumstances, more of a frivolous attempt to try and minimise the hefty exit fees that he ended up incurring out of his own free will.

The decision to surrender the Retirement Scheme early was ultimately the Complainant's own decision, which also followed from the multiple substantial withdrawals undertaken over the years. The Arbiter finds no fair, just and reasonable basis on which he can, in the circumstances, order MPM to pay the compensation (or any part thereof), requested by the Complainant.

Conclusion and Decision

The Arbiter is accordingly dismissing this case for the reasons amply explained.

Given the particular circumstances of this case and also considering that the Arbiter has dismissed the preliminary plea raised by the Service Provider, each party is to bear its own costs of these proceedings.

**Alfred Mifsud
Arbiter for Financial Services**