Before the Arbiter for Financial Services

Case ASF 041/2022

FC

("the Complainant")

vs

ITC International Pensions Limited

(Reg. C72355)

("ITC" or "the Service Provider")

Sitting of the 25 August 2023

The Arbiter,

The Complaint

Having seen **the Complaint** filed on 8 April 2022,[1] stating that:

"ITC have been unable to facilitate the investment of my pension funds I held with them. My financial advisor, Philip Teague of Cross Border Financial Planning requested ITC invest my money with an investment platform and after several months of information requests by ITC, they declined to invest my money stating the effort was not worth their time.

On the 29th June 2020, ITC were sent due-diligence and copy of the advice I had received from my financial adviser for the investment of my money onto the 7iM investment platform.

On the 9th December 2020, ITC said they would not allow the investment as it was a lot of work for them. They asked my financial adviser if he would be submitting

[1] P. 1 – 9

more 7iM cases through them and if not they would not allow my investment to take place.

ITC has let me down as they commenced a lengthy due-diligence process when they already knew they would not be allowing my request as it was not 'worth their effort' in their own words. They would have already known that they had no other client accounts with 7iM therefore they should have stated this before due diligence was requested."[2]

As a remedy, the Complainant asked for compensation of €7,783,[3] calculated as the return the investment would have made from 01 September 2020 till 09 December 2020, the former being the date when the Complainant would have expected the Service Provider to conclude its due diligence and invest the funds, and the latter being the date when ITC officially informed Complainant they would not be proceeding with the investment on the requested platform.

The Reply from the Service Provider

Reply re Preliminary plea

In its reply of 28 April 2022,[4] the Service Provider raised a preliminary plea claiming that Complainant had not made a formal complaint with them prior to filing his Complaint with the Office of the Arbiter for Financial Services (OAFS); and that the emails attached to the Complaint were all exchanges between the Service Provider and the Investment Adviser with the Complainant never in copy.

Therefore, his answering *"Yes"* to the question *"Has a complaint been lodged with the provider"* is not true.

And his *"Yes, I have received a final reply"* to the question *"have you received a final reply from your provider after allowing 15 working days"* was also not true.

[2] P. 4
[3] *Ibid*.
[4] P. 15 - 40

If the preliminary plea were to be accepted, then, the Arbiter would have no competence to continue hearing the merits of this case as in terms of Article 21(2)(b), the Arbiter shall decline to exercise his powers under this Act where:

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

The Arbiter is obliged to determine and adjudicate a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.[5]

Decision re preliminary plea

Consequently, the Arbiter is hereby refuting the preliminary plea and will proceed with adjudicating this complaint on its merits.

The Arbiter feels that substantively it was evident that the Investment Advisor was representing and had the authority of the Complainant and, therefore, the emails exchanged by the Advisor with the Service Provider, as attached to the complaint, had full authority of the Complainant and may be considered as having been made by the Complainant.

Email by the Service Provider dated 02 February 2021 is considered as the reply to the Complaint by the Service Provider where they correctly pointed out that the Complaint could be escalated to the OAFS.

They did not state that the Complainant had first to lodge a direct complaint with them as they do not consider that made by the Advisor as sufficient.

Reply re merits

ITC argue that they were only provided with contact details of 7iM (Investment Platform) on 07 July 2020.

They started due diligence on the Investment Platform on 04 August 2020 explaining the delay on the need to have documents properly signed by the

[5] Article 19(3)(b) of Chapter 555

Advisor and Complainant, and on the need to get upper management approval to start the onboarding procedures of 7iM.

Following various exchanges with Advisor and 7iM,[6] it was only on 20 November that ITC management felt they had completed their due diligence sufficiently to recommend onboarding of 7iM platform to their Investment Committee.

Then, on 09 December 2020, ITC formally advised Complainant that:

"*just 1 case was proposed to use the 7iM platform, this fell out of ITCPL Business Risk Appetite, as a full due diligence process would have to be taken on to approve 7iM as a new platform, along with ongoing compliance monitoring amongst further administrative and accounting work."*[7]

ITC proposed use of three platforms they had already onboarded, but these suggestions were not acceptable to the Complainant.

Service Provider further stated:

"*It must be emphasized that it took several months of 'drip feeding' of information from Investment Platform to provide us with just our onboarding questionnaire and preliminary due diligence, to which we received incomplete and incorrect information, sometimes leaving over 1.5 months between communications, notwithstanding the fact that they did not want to provide us with some of the documents requested as they didn't feel the need to provide them, something which raises our concerns, being a regulated entity.*

Had ITCIPL opted to approve the Investment Platform as a platform and deciding to perform full due diligence process would have taken several more months of work. Apart from our concerns from a Due diligence and Risk Management perspective, we also had to consider whether we would receive accurate and timely information from the Investment Platform for the client's benefit. Our experience in the due diligence process suggested we would not."[8]

[6] P. 39 - 40 with timeline of exchanges
[7] P. 40 item 49
[8] P. 16 -17

The Hearings

During the first hearing of 04 October 2022, the main point was the evidence of Philip Teague, as the Investment Advisor, where he stated that:

"***Regarding the complaint that was made, I say that the process that was followed was one where the result ended with an answer that was based on a quantitative result where ITC told Mr FC and myself that they were unwilling to onboard the investment platform and we have already provided written evidence that ITC said that it was 'not worth their while'. Those were the actual words they used in written correspondence. So, it does not matter what they asked in terms of due diligence. What matters is how long it took them to get to that point.***

I first notified them in June that we were to use 7iM; and so, I think it would be fair and reasonable to suggest that ITC would have known if it would be 'worth their while' – using their own words – to allow Mr FC to use 7iM within (to be reasonable), two months, for example, of the start of this process.

The answer was very much a quantitative one and the lengthy process that was followed for the due diligence requested, should have resulted in a qualitative answer, but that was not the case."[9]

A second hearing was held on 21 November 2022, where the Service Provider defended their case stating:

"***On 20 November 2020, ITC had all the documents, three and a half months after we reached out to 7IM; and they finally sent us the full pack that we had initially requested at the beginning of August.***

On 9 December 2020, The investment committee did not approve of the provider due to the lack of transparency, and lack of communication provided by 7IM. ITC did not feel that 7IM are capable to provide the RSA and ultimately the member the level of service we deemed necessary.

Having gone through this timeline, might I add, Crossborder did say that in their complaint summary, they deemed two months were more than enough for ITC to onboard an investment provider. We do agree with this timeline, in

[9] P. 42

fact, we came up with the decision within two and a half weeks of the provider sending us all required due diligence."[10]

The Service Provider admitted that as written, their reply of 09 December 2020, gives the impression that their refusal to onboard 7iM platform was only because it was not worth their while given that they had no other clients on such platform.

However, they wanted to clarify that:

"***It was Compliance and the Investment Committee who took the decision based on the quality of the due diligence. I apologised before on behalf of Tiziana's email because it was not a very well written email. However, our decision was not based on the quantity but on the quality.***"[11]

Analysis and Considerations

In this case, the Arbiter will consider these merits in deciding whether or not to meet the Complainant's request for compensation:

1. Was the refusal by the Service Provider to invest client funds on 7iM platform truly based on a quality compliance related issue or on commercial considerations related to the number of clients using such platform?

2. If it is considered that the refusal was based on commercial rather than compliance considerations, then, is the expectation of compensation by the Complainant covering the period from 01 September 2020 till 09 December 2020 justified?

Merits

Was the refusal by the Service Provider to invest client funds on 7iM platform truly based on a quality compliance related issue or on commercial considerations on the number of clients using such platform?

The Service provider made a weak case arguing that their decision was based on compliance quality considerations and not on commercial quantitative issues.

[10] P. 52
[11] P. 54

They admitted that the decision of 09 December 2020 was wrongly worded and that it could be understood that the decision was based on commercial considerations. They argued that their email of 29 January 2021 corrected any wrong impression that may have given by the email of 09 December 2020.

The Arbiter sees no such clarification when it is stated in the email of 29 January 2021 that:

"On 8th December 2020, the Investment team decided that due to the amount of work that needs to be done to onboard a platform for just 1 client, this will be declined."[12]

Furthermore, on the timeline, page 40, item 48, it is clearly stated that

"Investment Committee reverted with various queries, such as level of business, how many proposed members will be introduced on this platform through this IFA. It was noted that only 1 prospective member was introduced to date …"

Furthermore, it stated that on 20 November *"management proposed 7iM approval to the Investment Committee"* which shows scant support to the quality refusal argument.

The Arbiter concludes that the refusal was related to commercial considerations which could have been reached at an earlier stage than 09 December 2020.

If it is considered that the refusal was based on commercial rather than compliance considerations, then is the expectation of compensation by the Complainant covering the period from 01 September 2020 till 09 December 2020 justified?

The argument by the Complainant that having signed the intermediary agreement on 26 June 2020, two months should have been enough time to conclude the compliance procedures on 7iM needs questioning.

The amount of time compliance procedures take does not depend only on the Service Provider but also on the level of co-operation it gets from the subject of the due diligence. It is quite clear that 7iM took their time in attending to the requirements of ITC for the compliance due diligence.

[12] P. 8

According to timeline item number 45, it was only on 16 November 2020 that they provided the bank details; and on 20 November 2020, ITC management proposed approval of 7iM platform to the Investment Committee who then declined it on evident commercial considerations.

Consequently, the compensation cannot be calculated taking as a starting base point 01 September 2020 as pretended by Complainant.

Decision

In view of the above analysis and as provided for in Article 26(3) of Chapter 555 of the Laws of Malta, the Arbiter finds the Complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case and is partially accepting it in so far as it is compatible with this decision.

The Arbiter feels that the period from 16 July 2020, when ITC were provided with contact details of 7iM, and 04 August 2020, when they first contacted 7iM, was a waste of at least two weeks in the onboarding procedures.

Furthermore, the period from 16 November 2020 when, finally, 7iM provided all the information for due diligence till 09 December 2020, when the decline decision was communicated to Complainant, also carries at least two weeks of wasted time to the detriment of the Complainant's return on his investments.

Consequently, the Arbiter awards a one-month period for calculating the compensation due. As the Arbiter has no access to the market pricing of the investments in question, the Arbiter orders that the compensation (if any, and only if positive for the Complainant) should be calculated by the Service Provider and Complainant jointly taking as a starting point for the valuation calculation the 09 November 2020 until the 09 December 2020.

A note of such calculation is to be filed with the OAFS by both parties.

The cost of these proceedings shall be for account of the Service Provider.

Alfred Mifsud
Arbiter for Financial Services