

Before the Arbiter for Financial Services

Case ASF 084/2022

CH ('the Complainant')

vs

Momentum Pensions Malta Limited

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

Sitting of 24 November 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 significant losses suffered due to the alleged failures of the Service Provider as trustee and RSA of his Retirement Scheme, where it was mainly claimed:

- That the advisers, *Premier Pension Solutions SL* ('PPS') and *Continental Wealth Management* ('CWM') involved respectively with his transfer to, and investment of, his Retirement Scheme lacked and/or held inadequate licences;
- That the investment into the Scheme's underlying insurance policy issued by *Skandia International* should have not been allowed given that his

- pension pot was below the minimum initial investment requirement applicable on the said policy;
- That MPM allowed, without question or challenge, unsuitable investments that were recommended by CWM when this was not properly licensed to provide such advice and when such high-risk and expensive investments were totally inappropriate for him as a low-risk, retail investor;
 - That MPM, as custodian of his pension, did not take any action to inform him about the issues with his investments and did not prevent the wrongdoing by his adviser;
 - That his Retirement Scheme was completely invested into structured notes which went against MPM's own investment guidelines - as they were *inter alia* only suitable for professional (non-retail) investors; were of high risk; did not provide a suitable level of diversification; did not reflect prudence nor made in his best interests;
 - That he received no annual member statement in 2015 from MPM. The annual member statement issued by MPM for 2017, which showed nearly an 80% drop in value of his pension, furthermore, included inaccurate statements about the drop in value involving paper losses. He also claimed that the annual statements issued to him lacked information on the underlying investments;
 - That there was lack of clarity regarding the responsibility for the investment advice being provided in respect of the disputed investments.

*The Complaint*¹

The Complainant explained that whilst living in Spain in 2014, he was approached by CWM who advised him to transfer his pensions from the UK to a Malta Qualifying Recognised Overseas Pension Scheme ('QROPS').²

¹ Complaint Form on Page (P.) 1 - 13 with extensive supporting documentation on P. 14 - 126.

² The Complainant here makes reference to the 'CWM Fact Find' attached to the Complaint and found at P. 57 *et seq.*

At the time he made the new arrangements to his pension, he assumed that CWM was a *bona fide* financial advisory firm which was legally licensed to provide the advice required to make the initial pension changes.

He says that CWM was, at the time, a tied agent of *Inter-Alliance Worldnet* ('Inter-Alliance'), a firm in Cyprus which was regulated by the *Cyprus Insurance Companies Control Service*. The Complainant submitted that Inter-Alliance had an insurance licence, but this was only for Inter-Alliance and could not be passed on to another entity.

He further explained that initially, he was also advised on the merits of the transfer by another Spanish firm, PPS, which purported to be CWM's sister company. He noted that this firm also claimed to be licensed through a tied agency agreement with *AES International Ltd* (based in London and Dubai). The Complainant claimed that it was however concealed from him that PPS's tied agency agreement specifically excluded pension transfers.

The Complainant continues that he subsequently became aware that he was one of around 1,000 victims of a large-scale scam by CWM, involving around £100 million worth of investments, mostly pension-related.

He explained that, in hindsight, he was duped not only by the convincing and plausible lies told by the advisers at CWM, but also by the fact that MPM accepted the unsuitable investment advice provided by CWM without either question or challenge.

The Complainant says that he felt he had every right to assume that MPM would never have accepted the instructions to invest his life savings unless they had been sure the firm was properly licensed to do so legally. He further says that he also felt that as custodians of his pension fund, they would keep a weather eye out to make sure nothing went wrong and that if it did MPM would then take some action and keep him informed accordingly.

The Complainant explains that the same happened for all clients in respect of the pension-related cases where the fund was transferred to a QROPS irrespective of whether it was in the client's interest to do so or not, and irrespective of whether the QROPS fees were disproportionate to the fund

value. He claimed that the investments made were very expensive and high risk, as well as totally inappropriate for low-risk, retail investors such as himself.

He noted that in early 2016, Inter-Alliance folded and was replaced by another firm based in Cyprus called *Trafalgar International* ('Trafalgar') which was regulated in Germany. He further noted that this firm was originally regulated for both insurance and investment advice under the German licence, but he submitted that this regulation could not be passed onto another separate legal entity. Therefore, CWM continued to be an entirely unlicensed corporate entity.

The Complainant explains that MPM, as Trustee and RSA, invested GBP 48,466.56 into a *Skandia European Investment Bond* ('the Policy').³ He submitted that this investment should have not been allowed given that, according to the '*Skandia Executive Investment at a glance*' document⁴ issued by *Skandia Life International Limited's* ('Skandia') the minimum investment allowed into the Policy was of GBP 50,000 and not less. The Complainant claimed that his fund was just less than GBP 48,500.

He claimed that in 2015, he received no annual member statement and that this went against MPM's Scheme Particulars which provided that:

'The Trustees will keep and maintain accounts, and prepare and arrange audited annual accounts for each Scheme Year'.⁵

The Complainant claimed that according to the 2017 annual member statement sent by MPM, his fund had dropped by almost 80%. However, he was told that this was possibly just a paper loss. He adds that, at the bottom of the statement, MPM stated that:

'Certain underlying assets within the Investment, may show a value that reflects an early encashment value, or potentially zero value, prior to the maturity date. This will not reflect the true current performance of such underlying assets'.⁶

He maintains that this was clearly inaccurate.

³ The Complainant here makes reference to documents attached to the Complaint and found at P. 27 - 28 and P. 42 - 56.

⁴ P. 64 - 66.

⁵ P. 3

⁶ *Ibid.*

The Complainant explained that he then received news that MPM was no longer in business with CWM, but no reasons were given, and no alert was made by Stewart Davies of MPM about any potential problems with the investments.

The Complainant quoted emails sent by Mr Davies where it was stated that:

'For the avoidance of any doubt, the Pension Fund remains under the control of Momentum', and that

'In addition, as already advised, Trafalgar International GmbH, remain the default adviser, as CWM's original principal, CWM being their authorised representative in Spain and France'.⁷

The Complainant explains that, at the time, he believed that MPM had his best interests at heart but no longer feels this to be the case. He adds that he recently found that, initially, all of his pension was invested in structured notes, against MPM's own investment guidelines. He claimed that these notes had a risk disclaimer stating that they are designed for professional investors and not for the retail market.

He attached copies of the fact sheets of structured note similar to those his pension was invested in. He claims that he has only received one detailed sheet from CWM for *RBC Online large caps note*, which he attached.⁸ Having read a previous ruling by the Arbiter, he adds that he believes the Arbiter may have relevant fact sheets. He submitted that the Scheme Particulars set out that:

'The Administrator will ensure that the Scheme Assets are invested in the best interests of the Member and are properly diversified, in line with the prevailing rules'.⁹

The Complainant claimed that at the start of the year 2022, his pension had fallen to just over GBP 5,000 and he removed what little was left. He believes MPM failed to act as Trustee by their own standards and by the standards set out by the Maltese authorities.

⁷ P. 74

⁸ P. 111

⁹ P. 4

A valuation summary from March 2022, just after he had left the Scheme, was attached.¹⁰

The Complainant listed a number of reasons for which MPM, as his financial services provider, let him down, as follows:

1. *The appointment of CWM as adviser*

The Complainant submitted that MPM accepted and explicitly approved business by an unlicensed adviser, CWM. He submitted that he should have been notified and that extra care should have been taken by MPM when acting on CWM's instructions. He noted that it was MPM which allowed and/or accepted CWM to provide investment advice to him.

He maintained that MPM's statement in their response to his formal complaint,¹¹ that Dean Stogsdill was '*regulated and licensed to provide advice under Trafalgar's licensing*' was clearly false as Trafalgar was unable to licence anyone. He submitted that Dean Stogsdill was, however, accepted, at MPM's sole discretion, to act as an investment adviser within the Scheme's structure.

The Complainant claimed that it was only in the best interests of the Scheme members for MPM to ensure that he and others had correct and adequate key information about the investment adviser.

He held that there is no evidence of any authorisation in respect of CWM in its own name or as an agent of a licensed institution and that there is no evidence of CWM featuring in the tied agency register of any European Union ('EU') jurisdiction.

The Complainant explained that MPM also allowed confusion to arise with respect to the relationship between the various investment advisers; namely, in relation to the entity actually taking responsibility for the investment advice given to him, since more than one entity was at times being mentioned with respect to investment advice on annual members statements.

¹⁰ P. 113 - 121

¹¹ The formal complaint is at P. 14 and the formal reply at P. 15 - 18, both attached to the Complaint.

This was also the case regarding the relationships between CWM and *Inter-Alliance/GlobalNet/Trafalgar*, which the Complainant submits have never been fully understood by him.

The Complainant notes that MPM's Scheme Particulars stated that:

'The Member may choose an appropriate investment strategy in association with their professional adviser, who once authorised, will be duly appointed to manage the underlying investments'.¹²

The Complainant chose CWM as his adviser but noted that it has been shown that MPM authorised CWM to offer suggestions of investments. He submitted that MPM as Trustee was responsible for investments as the Scheme Particulars point out that:

'The Trustee will retain ultimate power and discretion with regards to investment decisions'.¹³

2. The pension fund composition

The Complainant explains that, from the first day that MPM approved investments by CWM, 100% of his pension was invested into structured notes which eventually lost 90% of their opening value.

He cites MPM's Scheme Particulars as stating that:

'The Trustee and Administrator needs to ensure that the member's funds are invested in a prudent manner and in the best interests of the beneficiaries. The key principle is to ensure that there is a suitable level of diversification relevant to the investment portfolio'.¹⁴

He further noted that these required that the Scheme:

'Is predominantly invested in regulated markets. No more than 10 per cent of the Scheme assets can be invested in securities which are not traded on a regulated

¹² P. 5

¹³ *Ibid.*

¹⁴ *Ibid.*

market' ... 'has a maximum of 40% invested in assets with expected liquidity of greater than 6 months'.¹⁵

He also cited that the Scheme Particulars stated that:

'Where products with underlying guarantees are chosen, no more than one third of the overall portfolio should be subject to the same issuer default risk. In addition, further consideration needs to be given to the following factors: Overall size of fund; Credit risk of underlying investment; Liquidity of fund'.¹⁶

He submitted that from day one, MPM did not follow its own rules regarding the investments and that MPM allowed an unsuitable portfolio of underlying investments to be created which comprised high-risk structured products of a non-retail nature which was not in line with his risk profile.

He adds that MPM's Scheme Particulars state that:

'Momentum Pensions Malta Limited will consider the Members investment preferences and ensure that each Member's fund is managed in line with the relevant regulatory requirements of the MFSA'.¹⁷

He claimed that this was however not done.

The Complainant noted that various fact sheets of the mentioned structured notes (attached to the Complaint as aforementioned) highlighted risk warnings about the notes not being capital protected, warning that the investor could possibly receive less than the original amount invested, or potentially even losing all of the investment.

A particular frequent feature emerging of the type of structured notes invested into involved the application of capital buffers and barriers. In this regard, he maintains, various fact sheets of different structured products described and included warnings that the invested capital was at risk in case of a particular event occurring.

Such event typically comprised a fall, observed on a specific date of more than a percentage specified in the respective fact sheet, in the value of any underlying

¹⁵ *Ibid.*

¹⁶ P. 5 & 6

¹⁷ P. 6

asset to which the structured note was linked. The fall in value would typically be observed on maturity/final valuation of the note.

The Complainant highlighted that it is particularly revealing to note the statements made by Trafalgar itself in its email communication dated 17 September 2017 to CWM, wherein MPM was in copy, and which communication was presented in Case Number 185/2018 against MPM. The email sent by Trafalgar's official is quoted as *inter alia* stating the following:

'Structured Notes – It is my opinion we need to get as far away from these vehicles as possible. They have no place in an uneducated investor's portfolio and when they breach their barriers untold amounts of damage is done'.¹⁸

He noted that the quotation was taken from the same Arbitrator's ruling.

The Complainant underlines that these companies knew that these investments were disastrous but did not inform members at any point, even after the removal of CWM. He claimed that as an RSA, MPM's first duty was to the Members of the Scheme:

'The Administrator will ensure that the Scheme Assets are invested in the best interests of the Member and are properly diversified, in line with the prevailing rules'.¹⁹

This, he submitted, clearly did not happen.

The Complainant further claimed that his portfolio was not reflective of the MFSA's rules - for example, the requirement to *'be invested in a prudent manner and in the best interest of beneficiaries'.²⁰*

He claimed that just the fact that such high exposure to risk was allowed in the first place indicates the lack of prudence and excessive exposure to risks that were allowed to be taken on a general level. One-third of the policy was supposed to be the maximum level of risk to these types of investments.

¹⁸ P. 6

¹⁹ *Ibid.*

²⁰ *Ibid.*

He argued that there is clearly no apparent reason, from a prudence point of view, justifying such high investments into structured products.

He continued that these products are not appropriate and suitable for a retail client and not reflective of the principle of acting with '*due skill, care and diligence*' and '*in the best interests of*' the members.

He claimed his portfolio was not diversified.

The Complainant claimed that MPM did not demonstrate the features and risks attached to the investments.

He asked why MPM allowed the composition of his pension portfolio to structured products where there was no proper diversification and not '*invested in order to ensure the security quality, liquidity and profitability of the portfolio as a whole*'.²¹

He notes that MPM blame everyone else for losses but that they had the final say on investments and went ahead no matter of previous losses. He explains that what was left of his pension after 2017 appears to have been invested in more traditional pension investments. He asked for the reason behind this.

It was submitted that if MPM had stepped up in 2014, his pension would potentially be worth upward of GBP 80,000 by using more traditional investments, even of medium risk. As an example, he noted that GBP 2000 invested for him by MPM in 2016 in traditional investments (OMI and Invesco) turned into GBP 3,500 in 2022, an increase of 75%.

He asked whether MPM bosses had been unaware of the type of investments that were destroying his pension (which would be a failure as Trustee/RSA who signed them off) or whether they knew the investments were dangerous but decided not to get involved (which would be a similar failure as Trustee/RSA).

He noted that MPM now no longer allow structured notes as investments.

²¹ p. 7

3. Inadequate provision of information

The Complainant submits that MPM provided inadequate information to members on annual statements. He attaches documents providing more information from 2019 members onwards.²²

He claimed that, in its capacity as Trustee and RSA, MPM had full details of the investment transactions undertaken and the composition of the portfolio, but annual members statements only showed the Policy, and included no details of the underlying investments such as the structured notes comprising the portfolio investments.

He claimed that MPM failed to inform him and act when losses, which they knew about, were massive.

He noted that MPM even stated, on the annual statements, that losses were potentially only on paper. This meant he was not properly provided with the relevant information.

The Complainant submitted that the information in the statements provided was completely inadequate and the statements should have provided much more detail of actual investments and profit/loss reports. He claimed that this highlighted the apparent lack of adequate controls and administrative procedures implemented by MPM which reasonably put into question MPM's adherence with the requirements to have adequate operational, administrative and controls in place.

The Complainant noted that, at the time of cessation of business with CWM, no reasons were ever given by MPM as the emails sent by Stewart Davies were vague in the extreme. He realised that he should have pushed for more information at the time and noted that it was impossible now not to believe that reasons were hidden from him that would have shown MPM had failed in their duties as Trustee and RSA.

The Complainant believes that there is sufficient and convincing evidence of deficiencies on the part of MPM in the undertaking of its obligations and duties as Trustee and RSA of the Scheme.

²² P. 22 *et seq.*

He claimed that the law requires that:

'The Scheme Administrator shall act with due skill, care and diligence in the best interests of the Beneficiaries. Such action shall include that contributors and prospective contributors are provided with adequate information on the Scheme to enable them to take an informed decision, reporting fully, accurately and promptly to contributors the details of transactions entered into by the Scheme'.²³

The Complainant considered that MPM had failed to report pertinent facts to Members.

Remedy requested

The Complainant submitted that, having seen the figures in the annual statement dated 19 April 2022, he believes that MPM played a massive part in losing up to almost GBP 38,000 of the sum of GBP 48,000 invested with them.

He is aware that other persons in his situation have been awarded 70% of their losses by the Arbiter due to MPM's failings as Trustee/RSA and, accordingly, asked to receive the same.

The Complainant acknowledged that the Arbiter will rule on the final award and attached his profit-loss figures.²⁴

Having considered, in its entirety, the Service Provider's reply, including attachments,²⁵

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

Introduction and background

1. That MPM is licensed by the MFSA to act as the RSA and Trustee of the Momentum Malta Retirement Trust ('the Scheme'). The Scheme is licensed

²³ P. 8

²⁴ P. 123

²⁵ P. 132 - 203

as a Personal Retirement Scheme and MPM is not licensed to provide investment advice.

2. The Complainant completed the MPM application form, dated 17 July 2014, together with his advisor Dean Stogsdill, who is named on the application form. The attitude to risk selected by the Complainant on the application form is medium to high risk.
3. By letter dated 8 August 2014, MPM sent a new bond application to *Skandia Life Ireland Limited*. Dean Stogsdill is once again named as advisor on this form. By letter dated 22 August 2014 and received by MPM on the 9 September 2014, Skandia informed MPM that the policy was accepted.
4. By email dated 10 September 2014, MPM informed the Complainant that funds were invested in accordance with the instructions from his professional adviser. Copies of the Client Account Statement and the policy document were attached.
5. Annual member statements were sent to the Complainant for the years 2014 to 2020.
6. The Complainant exited the Scheme at the end of March 2022 after taking all remaining benefits and an income payment on the 30 March 2022.
7. By letter dated 5 April 2022, Complainant subsequently made a complaint in writing to MPM. MPM replied by letter dated 11 May 2022.
8. With respect to the amount of the alleged loss, the net realised loss is GBP 34,370 after allowing for fees payable and interest and sales proceeds received.

Competence and prescription

9. MPM submitted that the Complaint is prescribed pursuant to article 21(1)(b) and article 21(1)(c) of Chapter 555 of the Laws of Malta. MPM submitted that the Complaint should therefore be rejected by the Arbitrator.

Reply to allegations raised by the Complainant

10. MPM submitted that it cannot reply with respect to the statements made in the Complaint relating to the approach by CWM to the Complainant; nor

to the advice he received from PPS. MPM replied that, in any event, this claim is prescribed pursuant to article 21(1)(b) of Chapter 555 of the Laws of Malta.

Without prejudice, MPM attached a copy of the Fee Schedule signed by the Complainant dated 17 July 2014, whereby it is confirmed that the Complainant agreed to pay PPS a fee of 5% of the transfer value. As clearly outlined in the Fee Schedule, the Complainant was provided with a letter of advice dated 17 April 2014 by PPS and the fee was for the provision of this service to him. MPM is not answerable or responsible for the relationship of the Complainant with either of the aforementioned.

11. MPM noted that the Complainant states that MPM accepted the unsuitable advice provided by CWM without question or challenge, and that he assumed that MPM would not have accepted instructions to invest his life savings unless MPM was sure the firm was licensed to do so legally.

The Complainant also goes on to state that after InterAlliance folded in 2016, it was replaced by Trafalgar which was regulated in Germany, but this regulation could not be passed on to another legal entity and that therefore CWM continued to be unregulated. MPM replied that this was however not factual.

12. It noted that the Complainant alleges that for pension related cases, it was always the '*same formula*' that was used for all clients, and that the fund was always transferred to a QROPS irrespective of whether it was in the client's interests and irrespective of fees. MPM replied that this (blanket) statement is untrue, and if the Complainant wishes to stand by it then he must prove his allegation.

Furthermore, it was the Complainant himself who obtained financial advice from PPS in 2014 to transfer his benefits to a QROPS and, having received a letter of advice, elected to transfer his benefits to MPM.

13. The Complainant also stated that the investment into the policy should have not been allowed since the minimum amount was GBP 50,000. In the first place, MPM replied that this claim is prescribed pursuant to article 21(1)(b) of Chapter 555 of the Laws of Malta.

The application form for the product was completed by CWM and the Complainant before its submission to *Skandia/Old Mutual international* ('OMI'). Details were issued to the Complainant on the 10 September 2014. Before filing the present complaint before the Arbiter, the Complainant had never raised any issues on the policy's criteria.

14. It submitted that, furthermore, with respect to the acceptance of the policy based on an initial premium of GBP 48,467 in place of GBP 50,000 (and hence just GBP 1,500 below the Skandia/OMI acceptance criteria), this was a matter for Skandia/OMI to decide upon. MPM noted that it did not make any special request for Skandia/OMI to accept the product.
15. It was noted that the Complainant claims he did not receive an annual member statement in 2015. MPM replied that this member statement was however sent to the Complainant's email address, which is the same active email address the Complainant was still using.
16. With respect to the disclaimer included in the 2017 annual member statement, in the covering letter to the Member, MPM submitted that it was clearly stated that:

'Should you require a more detailed analysis of the investment portfolio to ensure your portfolio and risk profile remain aligned to your retirement goals or have any queries in relation to this statement, please contact your appointed Investment Adviser in the first instance'.²⁶

MPM submitted that if anything was unclear to the Complainant upon seeing the valuation, he could have queried this with CWM or MPM, but he chose not to do so.

17. MPM further submitted that the annual statement provided to the Complainant from 2019 onwards was in line with the amended rules and the valuation and the underlying investments held were clearly shown on the statement and the Complainant once again did not query the valuation with MPM.

²⁶ P. 134

It further noted that in the 2018 annual statement, the Complainant was informed that online access to his investment company portal was available, which would allow him online access to his portfolio at any stage for him to review all holdings and investments.

It also noted that in 2019, no structured notes were shown on the Complainant's annual statement because structured notes no longer formed part of his portfolio, as they had expired by 2017.

18. The Complainant alleged that he recently found out that initially all his pension was invested into structured notes against MPM's own investment guidelines. MPM replied that this was not correct.
19. MPM noted that, in the Complaint, the Complainant then listed three main reasons as to why MPM has allegedly let him down. The first reason listed was in respect of '*The appointment of Continental Wealth Management as adviser*'.²⁷ It noted that the main complaints cited by the Complainant in this respect were that:
 - a. Momentum accepted business by an unlicensed adviser;
 - b. The Complainant should have been notified of this and extra care should have been taken when acting on CWM's instructions;
 - c. MPM allowed/accepted CWM to provide investment advice to the Complainant;
 - d. MPM's statement that Dean Stogsdill was '*regulated and licensed*' to provide investment advice was false;
 - e. The Complainant should have had correct and adequate key information about the adviser;
 - f. That there is no evidence of any authorisation held by CWM;
 - g. That CWM does not feature in a tied agents register;
 - h. MPM allowed confusion to arise with respect to the various advisers; namely, who was taking responsibility for the advice.

²⁷ *Ibid.*

20. MPM submitted that it was the Complainant who appointed Dean Stogsdill as his adviser who advised him to invest in the products in his portfolio. MPM submitted that Dean Stogsdill is accordingly the proper respondent to this claim.
21. From 2015, CWM advisers including Dean Stogsdill were individual employees of Trafalgar (referred to as 'members' by Trafalgar, but Trafalgar had confirmed to MPM they were employees). As employees of Trafalgar, they were operating under *Trafalgar International GmbH* licenses. CWM was not a tied agent of Trafalgar as alleged by the Complainant. Trafalgar's license confirms that *Trafalgar International GmbH* is authorised and regulated in Germany by the Deutsche Industrie Handelskammer (IHK) Insurance Mediation licence 34D Broker licence number: D-FE9C-BELBQ-24. MPM submitted that this will be amply proven throughout the proceedings, including by communications sent by Trafalgar themselves.
22. MPM claimed that CWM was not an '*unlicensed investment advisor*'.²⁸ The Complainant's adviser was an employee of Trafalgar (as confirmed by Trafalgar themselves) and was indeed regulated under Trafalgar's authorisation within the regulatory environment in Germany and hence licenced to provide insurance mediation activities. Hence, from any investment trades placed for and on behalf of the Complainant by his adviser from 2015 onwards, this involved advise by an employee of Trafalgar and regulated by Trafalgar, therefore reviewed and strictly controlled via Trafalgar's Head office in Germany. MPM noted that this was confirmed by Trafalgar itself.

MPM submitted that, furthermore, Trafalgar were also responsible for regulated advice on the Complainant's existing portfolio from this point onwards as well.

23. It argued that the Complainant's allegation that MPM made a false statement when they said that Dean Stogsdill was '*regulated and licensed*' to provide investment advice was, therefore, unfounded and his statement regarding CWM being a tied agent of Trafalgar was incorrect.

²⁸ P. 135

24. Trafalgar made various confirmations to MPM in writing, attached to the reply,²⁹ including *inter alia* that: (i) Trafalgar provides regulation and compliance for transactions that fall under the remit of their licence; and, (ii) the list of advisors are employees of Trafalgar and members of GlobalNet (Trafalgar's administration company).
25. MPM highlighted that from the confirmation provided by Trafalgar, it emerges that any investment trades placed for and on behalf of the members by advisers employed and regulated by Trafalgar from 2015 onwards, were therefore reviewed and strictly controlled via their Head office in Germany, a regulated entity, and that Trafalgar not only rated the risk but they go further as part of their duty of care to their clients, (that is, the MPM members they were advising).
26. Trafalgar provided MPM with a copy of their Trafalgar Members Agreement entered into with the individual advisers for MPM's satisfaction.³⁰ This agreement sets out in detail the practices which the adviser was to carry out, including that the adviser had to ensure that all clients received the documentation referred to in the agreement.
27. MPM submitted that at the time that the Complainant became a member of the Scheme, there was no law or rule requiring MPM to carry out any due diligence or ensure that CWM/Trafalgar was licensed. MPM reiterated that it has fulfilled all obligations incumbent upon it from time to time. In particular, MPM replied that there was no obligation for it to verify whether CWM or the advisor appointed by Complainant was regulated or whether it was authorised to provide advice.
28. MPM refuted the Complainant's allegation that it allowed confusion to arise with respect to the '*various advisers*'. It submitted that there was only one adviser - the one appointed by the Complainant himself. Accordingly, the Complainant's allegation that he should have had correct and adequate key information about the adviser cannot be attributed towards MPM. When the Complainant appointed the adviser, it was his responsibility to ensure that he obtained information about the adviser he himself chose to

²⁹ P. 196 *et seq.*

³⁰ The relevant sections of which were attached to the reply at P. 199 *et seq.*

appoint. If anything was not clear to the Complainant, he could have asked his adviser or MPM, but never did do.

29. Furthermore, the member agreement signed by the advisers, as provided by Trafalgar, also clearly stated that the member (adviser) will ensure that all clients receive the following documentation: *Terms of Business; Copy illustration; Key Features Document; Trafalgar Key Fact Documents; Client Confirmation Form; Illustration; Business Card.*
30. MPM pointed out that it was pertinent to note that the MPM Terms of Business provided to all members at application stage and terms accepted by members on signing the contractual declaration to join the Scheme, explicitly and clearly described how MPM provided its services. The Terms of Business included a specific section on investments and the role and responsibilities of the member and the adviser.
31. This was borne out by SOC Part B2.6.2, which provided examples of what it signifies for a scheme administrator to act in the best interests of members - namely by '*a) executing instructions and decisions in a prompt and timely fashion; and d) acting in accordance with the terms of the scheme document and any other document describing how its services are to be provided*'.³¹
32. MPM noted that the Complainant also stated that CWM does not feature in a tied agents register for Trafalgar. It replied that CWM was however not a tied agent for Trafalgar.
33. MPM further noted that the Complainant then went on to cite the pension fund composition as the second reason why MPM allegedly let him down. The Complainant stated *inter alia* that:
 - a. 100% of his funds were invested into structured notes which lost 90% of their opening value;

³¹ P. 136

- b. From day one MPM did not follow their own rules regarding the investments;
- c. MPM allowed investments comprising of high-risk structured products of a non-retail nature which was not in line with his risk profile;
- d. Various fact sheets highlighted risk warning about notes not being capital protected; the application of capital buffers and barriers; that the invested capital was at risk in case of a particular event occurring;
- e. The fact that high exposure to risk was allowed indicates a lack of prudence;
- f. One third of the policy was supposed to be the maximum level of risk to *'these types of investments'*;
- g. Structured products are not suitable for a retail client;
- h. The portfolio was not diversified;
- i. MPM did not demonstrate the features and risks attached to the investments.

MPM replied that, at the relevant time, it acted in a prudent manner and what, in good faith, it believed to be in the member's best interest.

It highlighted that the Complainant's attitude to risk was 'Medium to High'. It submitted that this was a crucial point as the Complainant selected this rating and this attitude to risk cannot simply be ignored, and clearly provided for the increased possibility of the investment value declining. The Complainant was not a low-risk investor.

MPM submitted that the investments were in line with his attitude to risk and the Complainant has provided no evidence to the contrary.

34. MPM submitted that risk warnings such as *'your capital is at risk'* are not specifically highlighted as risk warnings only for Structured notes. Such risk warnings can be seen across KIID documents provided by fund managers

for a range of well diversified funds, especially where a risk rating of medium to high is selected.

The Complainant also alleges the notes are suitable for high-risk professional investors but appears to be basing this conclusion on a statement which refers to the promotional material.

35. MPM explained that, at the relevant point in time, its decisions were based on the information available to it at the time the decision was made. MPM did not have the benefit of hindsight. Those decisions were based on *inter alia* the following rationale:

- a. The structured notes were offered by very large and reputable fully regulated investment banks and not by small investment houses. In 2014, RBC for example (based on market capitalisation) was in the top fifteen largest banks globally.
- b. The notes paid interest per quarter, which was aligned to a member's need for an income.
- c. The interest rates were higher as the members did not benefit from capital growth if the underlying equities increased in value and the rates offered therefore were higher as the return was in the form of income in place of the upside of capital growth.
- d. The underlying investments composing the structured notes were checked and verified at the point in time that an instruction was placed to ensure they were listed on the major stock exchanges in the world including the NYSE, Nasdaq, London Stock exchange – this provided further comfort that these instruments had been through a rigorous diligence exercise as an entry requirement to be admitted to such stock markets.
- e. The shares were not penny shares.
- f. The structured notes had short maturities typically 1-3 years and hence, at the time, it was considered that there was minimal risk of barrier events occurring and falls of 50%-60% in share value

occurring for companies quoted on major stock exchanges, and the investment was viewed as prudent based on the information available to MPM.

- g. Barrier events were tested at maturity or at stated observation dates not daily.

36. With reference to the risk to the capital being based on the worst performing underlying, MPM submits that capital protection meant that even if all underlying shares or equities dropped in share price by up to 50%-60%, the Complainant would not suffer any loss as his capital was protected. By way of example, in the case of a structured note with 3 underlying equities, having a 60% barrier over a two-year term: if all 3 equities fall by 55% during the 2 years, the member's capital was protected, and he loses none of the capital.

In comparison, if a member was invested in 3 equities individually and they each fell 55%, member automatically loses 55% and has to wait for all three to recover to regain full capital. Whereas in a structured note, the worst performing has to recover by either end of the 2 year or the barrier period to return all capital.

Once again, it is also pertinent to restate that the Complainant selected his attitude to risk as 4 out of 5, with 5 being willingness to accept high risk.

37. With respect to the allegation that MPM breached its own guidelines, MPM replied that the initial dealing instructions received on behalf of the Complainant and signed by the Complainant provided for the following investments in 2014:
- a. £15,000 invested in *RBC ONLINE Large Caps LARGE CAPS - 2 Year Term*
 - b. £17,000 investment in *Nomura US Diversified Income Notes - 1 Year Term*
 - c. £15,000 in *LEONTEQ Multi Barrier Reverse Convertible - 1.5 Year Term.*

The First Note where the capital of £17,000 was returned was the Leonteq Multi Barrier Note which realised at a profit in April 2015. Following this, MPM received two signed trades instructions, instructing the purchase of the following Structured Notes: *EFG Red April 5 2015* and *EFG Red April 6 2015*.

MPM submitted that there was no breach of its own guidelines, and the investments were in line with the applicable MPM guidelines at the time.

38. It was further submitted that the MPM guidelines in 2014 did not provide for 33% to be invested with one issuer and in any event the portfolio was invested across three structured notes with three very large investment banks and for short term; and thereafter (when the first note expired) in two additional structured notes.

MPM submitted that accordingly the Guidelines were not breached. At no point in time was there a liquidity issue as alleged by the Complainant, with reference to investing a maximum of 40% in assets with expected liquidity of greater than 6 months. This guideline was not breached - the expected liquidity of the above investment was never less than 6 months.

39. The Complainant alleged that MPM also breached the guidelines that no more than 10% of the Scheme assets can be invested in securities which are not traded or dealt on a regulated market. MPM replied that, in the first place, this applied at Scheme level, as clearly stated in the Guidelines and the Regulations applicable at the time.

Additionally, the structured notes were provided by heavily regulated investment banks and the underlying investments were all traded on large, regulated stock markets.

40. MPM noted that during 2013-2016, the applicable Maltese Regulations did not provide a definition of the operative term "regulated market" under the Special Funds (Regulation) Act ('SFA') and, no such definition existed during the period in question. That definition was only introduced at a later stage when the Retirement Pensions Act ('RPA') came into force and was introduced then not in the context of investment restrictions.

41. MPM submitted that the definition applied was its decision in determining, for its investment guidelines, what it deemed to meet this requirement. Any definition which is sought to now being applied by the Complainant retrospectively to allege a breach of MPM guidelines or applicable regulations, could not have applied since the Complainant is utilising his own assumed version of the term as the term was not defined in the regulations; could have not set the standard at the relevant time as it was unknown to MPM; and furthermore MPM could not be in breach of its own guideline or any investment restriction which failed to define the term regulated market or any standard being utilized now by the Complainant or any party and apply it retrospectively.
42. MPM submitted that the Complainant's statement that his pension could potentially be worth upward of GBP 80,000 was unfounded and speculative.
43. It was noted that the Complainant's third complaint related to the alleged lack of information provided. The Complainant alleged that MPM had all information relating to investment transactions, but the statements only showed the insurance policy.

MPM replied that, in the first place, the Complainant had signed off on all dealing instructions and therefore should have known about all the investments taking place within his portfolio.

Additionally, in terms of rule B.5.1.4 of the Pension Rules for Personal Retirement Schemes (applicable to MPM from 1 January 2016 until 31 December 2018), MPM sent annual statements. MPM did this even before the 1 January 2016 and submitted that in so far as reporting requirements to its members, it fulfilled all its obligations and was not in breach of any rule.

44. MPM highlighted that SOC 9.3(e) of Part B.9 of the Pension Rules for Personal Retirement Schemes of 1 January 2015 came into effect in 2019. At that point in time, MPM updated the information provided to members.

The Complainant stated that annual member statements from 2019 onwards provided more information than the previous ones - the reason for this is that, as stated, the rules required more information to be provided and MPM adhered to that rule as and when it came into effect.

MPM reiterated that no structured notes were shown on the 2019 statement as the structured notes had all matured at this point in time. In the 2018 annual statement and thereafter, the Complainant was informed that online access to his investment company portal was available, which would allow him access to his portfolio at any time and review all his holdings and investments as well as the history of transactions.

Momentum does not provide investment advice

45. MPM replied that it has, at all times, fulfilled its obligations with respect to the Complainant and observed all laws, rules, and guidelines, including investment guidelines.
46. It highlighted that it is not licensed to and does not provide investment advice and, furthermore, did not provide investment advice to the Complainant. MPM submitted this was clear from the application form, which specifically requests the details of the Complainant's professional adviser. Attention was brought to the fact that the Complainant also declared that he acknowledged that the services provided by MPM did not extend to financial, legal, tax, or investment advice.
47. To further reinforce the point that MPM does not provide investment advice, an entire section of the terms and conditions of business (attached to the application form) was solely dedicated to this point.

Conclusion

48. MPM concluded that it is not responsible for the payment of any amount claimed by the Complainant and that it has, at all times, fulfilled its obligations with respect to the Complainant. It submitted that it has not acted negligently, nor has it breached any of its obligations in any way.
49. Consequently, MPM respectfully requested the Arbiter to reject the Complainant's claims with expenses.

Preliminary

Competence of the Arbiter

In Section B of its reply, the Service Provider raised the preliminary plea that the Arbiter has no competence to hear this Complaint based **on Article 21(1)(b) and Article 21(1)(c) of Chapter 555 of the Laws of Malta** (the 'Act').

The Arbiter shall first consider the plea based on Article 21(1)(c) of the Act.

Article 21(1)(c) 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.'

Therefore, the Complainant had two years to complain to the Service Provider *'from the day on which the complainant first had knowledge of the matters complained of'*.

The matters complained of involves the substantial losses experienced by the Complainant on his Retirement Scheme. In the section of his Complaint Form dealing with the remedy requested, the Complainant stated *inter alia* that:

*'... I believe Momentum have played a massive part in losing up to almost 38,000 UK pounds of my 48,000 invested with them ...'*³²

In his Complaint Form filed with the Office of the Arbiter for Financial Services, the Complainant indicated that the first time he had knowledge of the matters complained of was on *'05/02/2022'*.³³

This was contested by the Service Provider, which held that the Complainant was aware of the matters complained of far earlier. It is particularly noted that in its final submissions, MPM argues that:

³² p. 9

³³ p. 2

'All of the assets purchased had been sold/matured by the 13/09/2017 (save for one asset, a fund, which was sold on the 16/07/2019 and resulted in a profit). In particular, it must be noted that the main losses resulted from the maturity/sale of assets on 1/10/2015 and the 8/5/2017. As stated in Susan Brooks' solemn declaration, the only investment held from 2017 onwards was a fund (para. 41 of the solemn declaration) and hence all losses were realised by May 2017'.³⁴

In order to determine whether the Complainant was truly aware of the matters complained of on the 5 February 2022 as claimed by him, or earlier as claimed by MPM, it is useful to consider the timeline of events as arising from the case file and other pertinent matters.

The Arbiter notes that, during the sitting of 28 November 2022, the Complainant testified *inter alia* that:

'I have suffered huge losses in my funds. After almost two years, I think, I lost nearly 80% of my funds. Momentum sent me letters stating that could be paper loss. It could have been a paper loss at that time, but, three months later, it came to be a real loss.

At the time, in 2017, Momentum then stopped working with Continental Wealth Management. We got letters from Momentum saying that it stopped working with CWM, but no reasons were given for why this happened. There was nothing stated in writing as to what actually occurred to stop this procedure.

*Basically, I have three things. **The first one is that Momentum have failed in the role as trustees to act as trustees.***

They invested in structured notes. They allowed investments to be made in structured notes when they should not have.

*And, thirdly – a smaller one – **they never actually reported where the investments were going until 2019.**'³⁵*

³⁴ P. 313

³⁵ P. 204-205 (Arbiter's emphasis in bold).

As to the timeline of events, it is noted that the Complainant was accepted as a member of the Scheme on 4 August 2014.³⁶

On 21 August 2014, the *European Executive Investment Bond* issued by *Skandia International* ('the Policy') was acquired as an underlying policy of the Scheme.³⁷

A total premium of GBP 48,466.56 was allocated to the said Policy.³⁸ The said premium was used to purchase the underlying investments - particularly, the structured notes disputed by the Complainant as abovementioned.

As to the disputed investment portfolio, the following investment transactions emerge according to the account statements (in Euro and GBP) produced by the Complainant as part of the attachments to his Complaint Form to the OAFS.³⁹

- a) Purchase of *EFG Red April 5* of EUR 11,000 on 05 May 2015 which matured on 08 May 2017 for EUR 1,458.36. The total interest received on this investment was of EUR 2,200 (eight payments of EUR 275). A realised loss of -EUR 7,341.64 thus resulted on this investment;
- b) Purchase of *EFG Red April 6* of EUR 12,000 on 06 May 2015 which matured on 08 May 2017 for EUR 445.27 thus resulting in a realised loss of -EUR 11,554.73;
- c) Purchase of *RBC Online Large Caps Income NT* of GBP 15,000 on 04 September 2014 which was sold on 05 September 2016 for GBP 7,275. The total interest received on this investment was of GBP 2,625 (seven payments of GBP 375). A realised loss of -GBP 5,100 thus resulted;
- d) Purchase of *Leonteq 1.5Y Multi Barrier* of GBP 15,000 on 22 September 2014 which was sold on 20 April 2015 for GBP 14,700. The total interest received on this investment was of GBP 675 (two payments of GBP 337.50). A realised profit of +GBP 375 thus resulted on this investment;
- e) Purchase of *Nomura Inc NT US Diversified* of GBP 17,000 on 30 September 2014 which matured on 21 October 2015 for GBP 282.27. The total interest

³⁶ P. 21

³⁷ P. 177 - 190

³⁸ P. 177

³⁹ P. 82 - 105

received on this investment was of GBP 1,700 (four payments of GBP 425). A realised loss of -GBP 15,017.73 thus resulted on this investment;

- f) Purchase of *OMI IE GBP Invesco Perpetual UK Smaller Companies* of GBP 2,000 on 10 May 2016 which was sold on 16 July 2019 for GBP 2,867.87 thus resulting in a realised profit of +GBP 867.87;
- g) Purchase of *RBC GBP Notes Linked* of GBP 7,275 on 12 September 2016 which matured on 13 September 2017 for GBP 4,498.89 thus resulting in a realised loss of -GBP 2,776.11;
- h) Purchase of *Invesco-UK Smaller CIES* of GBP 2,867.87 on 16 July 2019 which was sold on 22 March 2022 for GBP 3,536.11 thus resulting in a realised profit of + GBP 668.24.

The investment portfolio indicated above resulted in a realised loss of over GBP 35,000 which reflects the massive losses of '*almost 38,000 UK pounds*' claimed by the Complainant in his Complaint.⁴⁰

The above in essence, also reflects and agrees with the breakdown of the performance of the disputed investment portfolio provided by both parties to the Complaint.⁴¹

It is clear from the above that the material realised losses on the Complainant's investment portfolio were realised and crystallised over the years 2015 to 2017. The last two remaining investments which were relatively quite small (of only GBP 2,000 on the *OMI IE GBP Invesco Perpetual* and GBP 2,868 on the *Invesco-UK Smaller*) furthermore, both yielded a realised profit as indicated above.

The performance of the said investments could have thus not materially affected the significant losses which the Complainant had already experienced by the end of the year 2017.

⁴⁰ p. 9

⁴¹ The schedule presented by the Complainant (P. 123) - which indicated an overall realised total loss (inclusive of income received) on the investment portfolio of GBP 37,706.01 - and the table presented by the Service Provider where MPM calculated an overall total loss (inclusive of income received) on the investment portfolio of GBP 34,370.07 (P. 203).

The Complainant stated in his Complaint that *'According to the 2017 annual member statement sent by Momentum, my fund had dropped by almost 80% but I was told this was possibly just a paper loss'*.⁴²

The annual member statement of 2017, which the Complainant confirmed he had received, could however have not indicated paper losses (which could only apply for open investment positions). By that time, the substantial losses had actually realised as the contested investments had been sold and matured by the year 2017 as emerging from the breakdown provided above.

The Complainant made a formal complaint with MPM only on 5 April 2022.⁴³ More than two years had clearly passed from the time that the loss complained of had materialised and crystallised and the time when the Complainant made his complaint with the Service Provider.

The Arbiter furthermore notes that, during the hearing of 28 November 2022, the Complainant argued, with reference to the yearly statements of 2017 and 2018, that *'the details given were minimal'*.⁴⁴

Even if the Arbiter had to accept the argument that the Complainant may have not been aware from the statements issued by MPM that the losses were actually realised losses by 2017, given that MPM's statements were general in nature, it is noted, however that, in its reply, MPM stated that:

'In the 2018 annual statement and thereafter, the Complainant was informed that online access to his investment company portal was available, which would allow him access to his portfolio at any time and review all his holdings and investments as well as a history of transactions'.⁴⁵

This was not disputed by the Complainant during the proceedings of the case. Moreover, it is further noted that, as confirmed by the Complainant during the hearing of 28 November 2022, MPM *'... never actually reported where the investments were going until 2019'*.⁴⁶

⁴² P. 3

⁴³ P. 14 & 15

⁴⁴ P. 205

⁴⁵ P. 140

⁴⁶ P. 205

Hence, by 2018 or even by 2019, the Complainant should have reasonably been in a position to be aware of the crystallised losses that occurred on his Retirement Scheme. He however registered his complaint in writing with the Service Provider on 5 April 2022, this being later than the two years stipulated in Article 21(1)(c) of the Act.

The Arbiter cannot, in the particular circumstances of this case, reasonably and justifiably consider the date indicated by the Complainant of '05/02/2022'⁴⁷ as the date when he first had knowledge of the matters complained of.

It is noted that the date of 05/02/2022, is close to the period when the Complainant had actually surrendered his Retirement Scheme. As indicated by the Service Provider in its reply, the Complainant exited his Scheme on the 30 March 2022.⁴⁸

The time period close to the actual exit from his Retirement Scheme, cannot in this case be however reasonably considered as the time when the Complainant first had knowledge of the matters complained of in the case in question.

As indicated above, the claimed losses had been realised much earlier and the Complainant should have been reasonably aware of such losses much earlier than the time he decided to surrender his Scheme for the reasons indicated.

It is further noted that the Complainant stated in his complaint that:

'I am aware that other people in exactly this situation have been awarded 70% if their losses by the Maltese arbiter due to failings as Trustee/Administrator by momentum and I would ask to receive the same'.⁴⁹

The Arbiter's decision involving MPM, referred to by the Complainant, was first issued in July 2020⁵⁰ and confirmed by the Court of Appeal (Inferior Jurisdiction) in December 2021.⁵¹

The said Arbiter's and the Court of Appeal's decisions, however, did not add fresh knowledge to the matters complained of, this being the extensive losses

⁴⁷ P. 2

⁴⁸ P. 132

⁴⁹ P. 9

⁵⁰ <https://financiarbiter.org.mt/sites/default/files/oafs-decisions/ASF%20028-2018%20et.pdf>

⁵¹ E.g., civil court cases 37/2021 LM and 38/2021 LM - <https://ecourts.gov.mt/onlineservices/Judgements>

suffered, but decided that the conduct of the Service Provider was indeed a contributing factor to the losses incurred by the **complainants who had made and brought their case in a timely manner.**

In the particular circumstances of this case and for the reasons amply mentioned, the Arbiter accordingly concludes that the complaint was registered in writing with the financial services provider later than two years from the day on which the Complainant first had knowledge of the matters complained of.

The Arbiter is accordingly accepting the Service Provider's plea made in terms of Article 21(1)(c) of the Act, that he has no competence to hear this Complaint.

Whilst understanding and sympathising with the Complainant's situation, the Arbiter points out that the law permits him to have competence to hear only those complaints pursued within the time allowed and prescribed by law, as outlined in terms of Articles 21 and 19(3)(e) of the Act explained above.

The Arbiter makes reference to various previous decisions where the plea of prescription, as similarly applicable to the case of the Complainant, was indeed upheld as it was justified in terms of law.⁵²

Decision

For the reasons explained, the Arbiter upholds the plea of prescription raised by the Service Provider in its first submissions on the basis of Article 21(1)(c) of Chapter 555 of the Laws of Malta and accordingly dismisses this Complaint.

In view of the above, the Arbiter is not considering further the preliminary plea of prescription based on Article 21(1)(b) of the Act and will not be deciding on the merits of the case. This is without prejudice to any right the Complainant may have to seek justice before another court or tribunal competent to hear his case.

As the case is being decided on a preliminary plea, each party is to bear its own costs of these proceedings.

⁵² Examples: Case ASF 010/2023; Case ASF 040/2022; Case ASF 065/2022; Case ASF 149/2022; Case ASF 110/2021 and Case ASF 091/2021 – <https://www.financialarbiter.org.mt/oafs/decisions?page=1>

Recommendation

The Arbiter however wishes to recommend, (in a non-binding manner and without prejudice and obligation), that the Service Provider considers, on its own will, to act and give an appropriate redress in those cases⁵³ whose complaints cannot be heard by the Arbiter for reason of prescription, but which have similar features to those cases previously decided by the Arbiter and confirmed by the Court of Appeal.

It is commendable to note the trend in other countries, such as in the UK, where once an Arbiter/Ombudsman decides various cases in favour of consumers which involve a recurring or systemic issue, then the industry is encouraged to take measures for appropriate redress even in the absence of a direct complaint from a consumer who has suffered detriment or was disadvantaged from such issues.⁵⁴

Alfred Mifsud Arbiter for Financial Services

⁵³ Such as the one of the Complainant

⁵⁴ The UK Financial Conduct Authority (FCA) Complaints Handling Rules DISP 1.3.6 requires the firm to consider whether, following the identification of such recurring or systemic problems, *“it ought to act with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those customers are given appropriate redress or a proper opportunity to obtain it.”* - <https://www.handbook.fca.org.uk/handbook/DISP/1/3.html>