Before the Arbiter for Financial Services

Case No. 009/2019

SP

('the complainant')

vs

Sovereign Pension Services Limited

(C56627)

('SPSL' or 'the service provider' or 'the Retirement Scheme Administrator')

Sitting of the 1 February 2021

The Arbiter,

Having seen **the Complaint** relating to The Centaurus Retirement Benefit Scheme ('the Retirement Scheme' or 'Scheme'), this being a personal retirement scheme established in the form of a trust and administered by Sovereign Pension Services Limited ('SPSL' or 'the service provider'), as its Trustee and Retirement Scheme Administrator.

The complainant submitted that the service provider has allowed Paul Macbeth of Offshore Investor, this being his previous investment adviser, to make deals in structured notes within his pension scheme. It was claimed that his scheme ended up losing around 70% of its value.[1]

The complainant further claimed that he had found out, from people who used to work for Paul Macbeth, that Macbeth did not hold the appropriate license to conduct investment activities. It was noted that the service provider has denied

[1] *A fol.* 4

any fault from its part, but the complainant questioned how the service provider, as trustee of the Retirement Scheme, was doing business with an unlicensed person.

The complainant submitted that his hard-earned pension fund was entrusted to people who just gambled it away without care. He questioned whether the service provider should have at least run checks on Paul Macbeth to confirm that he was who he claimed to be and properly licensed.

The Complainant noted that SPSL state that they will look after the clients' portfolios ensuring good and diversified long term investments. It was submitted that SPSL has however failed miserably to do so in his case as some of the investments were structured notes involving periods of only 18 months and accordingly not exactly long term.

The Complainant explained that it was confirmed to him that the structured notes invested into were not appropriate for pension investments and should have never been allowed. It was submitted that SPSL had accordingly failed again by allowing such investments in the first place. The Complainant noted that he considered this as gross mismanagement and gross negligence as well as total lack of care towards him as a client.

The Complainant explained that dealing instructions were signed by employees at SPSL and noted that he will be producing copies of such instructions in support of his complaint. It was further noted that SPSL refused to divulge the identity of the person who signed the dealing instructions.

The Complainant questioned how SPSL continued to allow structured note investments after losing money on the first such investment.

The Complainant requested compensation for the amounts lost on the structured note investments, where he claimed total losses of GBP72,000. A breakdown of the losses was provided as follows: GBP24,000 in respect of the *Leon Cars* investment of 05/01/2015; GBP24,000 in respect of the *Leon Energy* investment of 05/01/2015; GBP12,000 on the *Leonteq* investment of 21/04/2015; and GBP12,000 on the *Leonteq Euro Comps* of 21/04/2015.[2]

[2] *Ibid.*

In its reply, SPSL essentially submitted the following:[3]

The service provider submitted that the complainant seeks payment for losses to his pension fund ('the Fund') due to investments in structured notes. In response, to this, the service provider stated the following:

1. That the entirety of the Fund was invested with Friends Provident International ('the FPI Bond') this being a Reserve Bond that allows investments from overseas pension plans tailor-made/custom-made by Friends Provident for personal pension schemes. SPSL noted that this is regarded as a retail scheme and is designed as a private pension plan intended for non-professional investors. Friends Provident is itself authorised by the Financial Services Authority in the Isle of Man as a provider of life assurance and investment products.

2. That no part of the Fund was invested directly into structured notes. Certain structured notes were offered by Friends Provident as investment options within the FPI Bond and the complainant and/or his investment adviser selected the structured notes into which part of the Fund was invested. At no time did SPSL provide any investment advice in relation to the structured notes or otherwise. It was also submitted that the notes selected by the complainant and his investment adviser were scored in relation to the overall portfolio and every purchase was well within the complainant's stated risk appetite.

3. That the Complainant is claiming for losses made on Leon Cars and Leon Energy which were both purchased in January 2015. SPSL submitted that both these notes were redeemed in February 2015 and April 2015 at no loss and that one of the notes made a gain of GBP480. The Service Provider noted that the structured notes purchased in April 2015 (Leonteq and Leonteq Euro Comps) were also redeemed at a total redemption price of GBP4,148.16. It was submitted that the claimed losses of GBP72,000 is accordingly incorrect.

   The Service Provider enclosed, as Appendix 1 to its reply, a full transaction history provided by Friends Provident.

[3] *A fol.* 70

4. SPSL explained that The Centaurus Retirement Benefit Scheme ('the SPSL Scheme') was created by trust deed on 13 July 2012. The trust deed entitles each member to nominate an investment adviser and also entitles each member or his nominated adviser to indicate the preferred investment strategy for the member's plan. SPSL submitted that nevertheless, the Fund was expressly subject to the investment rules stipulated in part B.3.2 of the Pension Rules for Personal Retirement Schemes as laid down by the Malta Financial Services Authority ('MFSA').

5. SPSL submitted that it does not provide and is not authorised to provide investment advice and that this was made clear in the application form in respect of the SPSL Scheme. It was further submitted that this notwithstanding and in addition to the MFSA investment restrictions, SPSL devised its own investment restrictions for the SPSL Scheme. It was noted that such restrictions included not more than 66% of funds being invested in structured notes and not more than 33% being invested in structured notes with one issuer. SPSL submitted that the Fund's investments in structured notes under the FPI Bond were within these parameters.

6. SPSL noted that the complainant complains that SPSL allowed Paul Macbeth of Offshore Investor to make deals on behalf of the Fund and noted that the complainant questioned why SPSL was doing business with Mr Macbeth. In response, SPSL stated the following:

    a) That, SPSL has never done business with or had dealings with Mr Macbeth personally.

    b) That, in his application to join the SPSL Scheme, the complainant identified Offshore Investor as his professional adviser and named Mr David Humphreys his personal adviser. SPSL understands that at all material times the Complainant was resident in Saudi Arabia. It was noted that presumably that was one reason why the complainant sought advice from Mr Humphreys and his employer Offshore Investor, a business established in the United Arab Emirates. SPSL carried out its own due diligence on Offshore Investor and collected documentation about the company Offshore Investor and its employees.

c) That, from its own enquiries SPSL established that Mr Humphreys is qualified in financial planning as per the certificate issued by the Chartered Insurance Institute in London on 31 December 1995. The service provider noted that in his complaint the complainant identifies Mr Humphreys, his 'personal friend', as the person assisting him with the complaint. SPSL understands that Mr Humphreys was formerly employed by Offshore Investor and, as such, it is reasonable to assume that Mr Humphreys was in a much better position than SPSL to advise the complainant about the credentials and expertise of Mr Humphrey's employer.

7. SPSL submitted that Mr Macbeth did not have any direct or personal control over the Fund. It was noted that dealings were made under the FPI Bond at the request of Offshore Investor and that those requests came from or appeared to SPSL to come from Offshore Investor. SPSL submitted that all such dealings fell within the parameters of the SPSL Scheme's investment restrictions and the complainant's own risk profile and tolerance to risk as expressed in the complainant's application form.

8. SPSL noted that the complainant complains that some of the investments in structured notes were for periods of only 18 months. In response, SPSL stated the following:

a) On 4 January 2018, a written request was received from Frank Moran, a representative of the complainant's adviser to drawdown the entire pension fund. SPSL acted in accordance with that request.

b) That, it was not until after the complainant had drawn-down the Fund in its entirety that the complainant, assisted by Mr Humphreys, first complained about the performance of the structured notes within his investments under the FPI Bond.

c) That, SPSL has conducted checks on both Offshore Investor and Paul Macbeth and no bad press or negative claims have featured.

9. SPSL noted that the complainant has made much of the fact that dealing instructions were signed by employees of SPSL or its associated company. In response, SPSL stated the following:

That the SPSL Scheme is a trust-based scheme and consequently all contributions by members are invested in the name of SPSL as trustee. It was noted that therefore, it follows that the investment of the Fund into the FPI Bond, the complainant's chosen pension scheme, was made in the name of SPSL. the service provider submitted that it was therefore a legal necessity that all subsequent dealing instructions for investments of the Fund within the FP Scheme were signed by employees or representatives of SPSL.

10. SPSL noted that the chronology of the complainant's complaint and the handling by SPSL of that complaint may be summarised as follows:

    a) That, on the 17 February 2018, Mr Humphreys made a request to have copies of all paperwork in relation to the complainant's transfer. After the information was provided, Mr Humphreys continued to request information on who signed and authorised the dealing instructions submitted by Offshore Investor and questioned the assessment of the dealing instruction in conjunction with the complainant's risk profile. Mr Humphreys argued that the complainant's risk profile was low and sent through a form as evidence of this. This form, an internal Offshore Investor document, had not been previously submitted to SPSL and was at odds with what the complainant had stated in his application to join the SPSL Scheme (page 10 of Appendix 2 enclosed with SPSL's response). SPSL also enclosed correspondence and the form as Appendix 3 and 4 to his response.

    b) That, on the 28 February 2018, Mr Humphreys was provided with further information and clarification that the risk profile according to SPSL's records was 'medium', as stated by the complainant. SPSL explained that Mr Humphreys then claimed that the forms received by SPSL had not been completed by the complainant but by other individuals at Offshore Investor. The service provider enclosed correspondence in this regard, as Appendix 5 to its response.

    c) That, on the 1 March 2018, Mr Humphreys was provided with further responses to his queries. SPSL noted that Mr Humphreys

continued to ask for more information, including the names of the employees who authorised and signed the instructions.

On the 8 March 2018, Eamon Birmingham, a director of SPSL, called Mr Humphreys to explain how the risk score was calculated and this was accepted by Mr Humphreys. The service provider enclosed correspondence in this regard, as Appendix 6 to its response.

d) That, on the 19 March 2018, the complainant submitted a formal complaint, as attached to Appendix 6 to its response. SPSL presented the reply provided to the complainant's complaint, as Appendix 8.

SPSL further noted that on the 12 April 2018, Mr Humphreys requested further information which was given to him. SPSL made reference in this regard to Appendix 9 attached to its response. On the 3 June 2018, the complainant sent another complaint, as per Appendix 10 to SPSL's response. On the 25 June 2018, a further reply was sent to the complainant. SPSL attached a copy of such reply as Appendix 11 to its response.

Having heard the parties and seen all the documents and submissions,

Considers:

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.[4]

[4] Cap. 555, Art. 19(3)(b)

By way of preliminary comment the Arbiter deems it fit to refer to the reply of the service provider,[5] where it states that it was not until after the complainant had drawn down the Fund in its entirety that the complainant, assisted by Mr Humphreys, first complained about the performance of the structured notes within his investments under the FPI Bond.

This is true. However, from the chronology of events, it results that the complainant immediately took this issue with the service provider as soon as he realised that the service provider had allowed in the scheme the structured notes complained of.[6] Furthermore, the service provider did not prove that the draw-down was made in full and final settlement of the complainant's pretences.

Investments in financial services are different from other areas of economic activity because very often the investors, especially small investors and retail clients do not have the expertise to query the conduct of a financial service provider until they realize that they had made a loss or were not getting what they had been promised. Very often this takes place at the time of the sale of the investment or, in the case of pension schemes, when they start receiving the pension or when they fail to receive it because of investment failures. It is at this juncture that small investors normally query the conduct of the service provider.

The case would have been different had the service provider proven that the draw-down had been made by the complainant in full and final settlement of all his claims and pretences. However, the service provider did not prove this, and it did not even file the surrender form during these proceedings.

Unless it is clear that the complainant had specifically renounced to his right of action or his action is barred by prescription or by the lapse of any period of decadence as stipulated in Chapter 555 of the Laws of Malta, a complainant can file a complaint even referring to the past conduct of a service provider.

To be fair, the Arbiter has to state that the service provider raised this issue not because it is alleging that the complainant had no right to file this complaint but raised it to highlight that the complainant did not question the issue of

[5] Paragraph 11 of the reply

[6] Following the request made by the complainant for copies of dealing instructions and a full transaction history on 17 February 2018 - *A fol.* 110.

structured notes during the duration of the investment but after the drawdown. After clarifying this issue, the Arbiter will now deal with the other merits of the case and will analyse the complaint while taking into consideration all the pleas raised by the service provider.

The Product in respect of which the Complaint is being made

The Centaurus Retirement Benefit Scheme ('the Retirement Scheme' or 'Scheme') is a trust domiciled in Malta registered with the Malta Financial Services Authority ('MFSA'), as a Personal Retirement Plan.[7] The Scheme was originally registered under the Special Funds (Regulation) Act 2002 (Chapter 450 of the Laws of Malta).[8]

The Retirement Scheme was established through a trust deed dated 13 July 2014 by SPSL which acts as the Retirement Scheme Administrator and Trustee of the Scheme.[9] SPSL is licensed by the MFSA as a Retirement Scheme Administrator.[10]

The Application Form for membership into the Retirement Scheme specifies *inter alia* that:

'*The investment objective of The Centaurus Retirement Benefit Scheme is to accumulate a trust fund from which to provide benefits in retirement*'.[11]

The Scheme's underlying investment consisted of the *Friends Provident Reserve Bond* ('the FPI Bond'), this being a whole of life policy issued by Friends Provident International. The underlying policy commenced on 23 December 2014.[12] The Application Form indicates that the complainant was to transfer funds into his Scheme from his two previously held pensions, the *BAE Systems* pension scheme and the *Armed Forces Pension Scheme* (which had an approximate value of GBP76,000 and GBP61,000 respectively, together amounting to GBP136,714).[13]

[7] https://www.mfsa.mt/financial-services-register/result/?id=4458
[8] *A fol.* 92
[9] *A fol.* 94
[10] https://www.mfsa.mt/financial-services-register/result/?id=4459
[11] *A fol.* 91
[12] *A fol.* 167
[13] *A fol. 27 &* 88

A copy of an Illustration issued by Friends Provident International dated 17 July 2014 was indeed provided reflecting an initial premium of GBP136,714.[14]

The legal framework

The Retirement Scheme and SPSL are subject to specific financial services legislation and regulations issued in Malta, including conditions or pension rules issued by the MFSA in terms of the regulatory framework applicable for personal retirement schemes.

The Special Funds (Regulation) Act, 2002 ('SFA') was the first legislative framework which applied to the Scheme and the Service Provider. The SFA was repealed and replaced by the Retirement Pensions Act (Chapter 514 of the Laws of Malta). The Retirement Pensions Act ('RPA') was published in August 2011 and came into force on the 1 January 2015.[15]

There were transitional provisions in respect of those persons who, upon the coming into force of the RPA, were registered under the SFA. The Retirement Pensions (Transitional Provisions) Regulations, 2015 provided that retirement schemes or any person registered under the SFA had one year from the coming into force of the RPA to apply for authorisation under the RPA.

In terms of Regulation 3 of the said Transitional Provisions Regulations, such schemes or persons continued to be governed by the provisions of the SFA until such time that these were granted a licence by the MFSA under the RPA.

The Trusts and Trustees Act (Chapter 331 of the Laws of Malta), ('TTA') is also relevant and applicable to the Service Provider, as per Article 1(2) and Article 43(6)(c) of the TTA, given that SPSL is the Trustee of the Retirement Scheme.[16]

Profile of the Complainant

[14] *A fol.* 61

[15] Retirement Pensions Act, Cap. 514/Circular letter issued by the MFSA - https://www.mfsa.com.mt/firms/regulation/pensions/pension-rules-applicable-as-from-1-january-2015/

[16] Article 1(2) of the TTA provides that *'The provisions of this Act, except as otherwise provided in this Act, shall apply to all trustees, whether such trustees are authorised, or are not required to obtain authorisation in terms of article 43 and article 43A'.* Article 43(6)(c) in turn provides that *'A person licensed in terms of the Retirement Pensions Act to act as a Retirement Scheme Administrator acting as a trustee to retirement schemes shall not require further authorisation in terms of this Act provided that such trustee services are limited to retirement schemes …'.*

The complainant, born on XX February XXX, is of XXXXXXXXX, and was resident in XXXXXXXX at the time of application for membership into the Scheme in July 2014.[17] His occupation was indicated as *'Mechanical Supervisor'*[18] in the Scheme's Application Form for Membership. Such form is dated 13 July 2014 and is signed by the complainant.[19]

In the section titled, *'Investment Objectives'* of the Scheme's Application Form for Membership, the complainant indicated that *'I am prepared to take a small amount of risk to provide for the potential for growth over the medium to longer term'*, as his preferred investment strategy.[20]

The complainant's Risk Profile was indicated in the Scheme's Application Form as *'Medium Risk'* (category 3), from a risk classification ranging from *'Lower Risk'* (category 1) to *'High Risk'* (category 5).

During the proceedings of the case, the complainant presented a signed Client Declaration form of Offshore Investor, the investment adviser. In the said form, the complainant's attitude to investment risk and the level of investment knowledge were indicated as both '*Low*'.[21] It is, however, noted that such declaration form is undated,[22] and that the service provider claimed that such form had not been previously submitted to SPSL.[23]

Investment Adviser

The Scheme's Application Form for Membership dated 13 July 2014 indicates David Humphreys of Offshore Investor, as financial adviser.[24]

[17] *A fol.* 23
[18] *Ibid.*
[19] *A fol.* 32
[20] *A fol.* 30
[21] *A fol.* 42
[22] *Ibid.*
[23] *A fol.* 72
[24] *A fol.* 23

The Application Form in respect of the FPI Bond signed by the complainant and dated 13 July 2014, indicates *'David Humphreys'* of *'Offshore Investor, 2304, B1 Falcon Towers, Ajman UAE'* as the *'Investment Adviser'* of the complainant.[25]

Section E of the FPI Bond's Application Form also includes a declaration signed by Paul Macbeth of Offshore Investor whereby he is confirming that the adviser was regulated by the *'Central Bank'* in *'UAE'*.[26]

Underlying investments

The investment transactions undertaken within the FPI Bond emerge from the transaction history of Friends Provident. Such statement, which was provided by the service provider during the proceedings of the case, indicates the following investment transactions:

(i) an investment of GBP48,000 undertaken in January 2015 in *Capita Financial Managers Woodford Eqty* (a collective investment fund)[27] which was sold in January 2018 for GBP56,208 yielding a realised capital gain of GBP8,208;[28]

(ii) an investment of GBP24,000 undertaken in January 2015 into a structured note indicated as *Leonteq 18mnth Trio Perf AC Nt* which was sold shortly after in February 2015 for GBP24,480 yielding a realised capital gain of GBP480;[29]

(iii) an investment of GBP24,000 undertaken in January 2015 into a structured note indicated as *EFG Intl 2.5Y Express Cert on 4 Stks* which was sold a few months after in April 2015 for GBP24,000 yielding no realised capital gains or losses on this investment.[30] This investment yielded dividends of GBP494.4.[31]

(iv) an investment of GBP24,000 undertaken into a structured note indicated as the *Leonteq 18mnth Trio Perf AC Nt on 3 Stk,* in March 2015, which was sold

[25] *A fol.* 56
[26] *A fol.* 58
[27] *A fol.* 167
[28] *A fol.* 75 & 80b
[29] *A fol.* 75
[30] *A fol.* 75 & 76
[31] *A fol.* 76

for GBP24,000 in May 2015 yielding no realised gains or losses on the same investment.[32] This investment yielded a dividend of GBP480.[33]

(v) an investment of GBP12,000 undertaken into a structured note indicated as the *EFG Intl 2.5Y Express Cert* in April 2015, which was sold for GBP3,633 in October 2016 resulting in a realised capital loss of (GBP8,367).[34] This investment yielded a dividend of GBP480.[35]

(vi) an investment of GBP12,000 in another issue of the *EFG Intl 2.5Y Express Cert* undertaken in April 2015 and sold in October 2017 for GBP515, resulting in a realised capital loss of (GBP11,485).[36]

(vii) an investment of GBP12,000 undertaken into a structured note indicated as the *Leonteq 18mnth Trio Perf in* June 2015.[37] No details of the realised value of such investment emerged from the transaction history statement. A Valuation Report printed in July 2016 indicates however that as at 30 June 2016, this investment had a 99.38% drop in value where its market value was just GBP74;[38]

(iv) an investment of GBP12,000 undertaken in June 2015 into a structured note indicated as *Leonteq 2.5Y Multi Barrier* which was sold in December 2017 for GBP4,069 resulting in a realised capital loss of (GBP7,931).[39]

The complainant surrendered his FPI Bond in January 2018, for the amount of GBP57,184.82.[40] The difference between the indicative initial premium that was to be transferred into the FPI Bond as indicated above for the amount of GBP136,714 and the surrender value of GBP57,185 equates to GBP79,529. A total of GBP55,318.15 was paid to the member on 25 January 2018 following deduction of SPSL's termination fees.[41]

[32] *A fol.* 75 & 76
[33] *A fol.* 76
[34] *A fol.* 76 & 79
[35] *A fol.* 78
[36] *A fol.* 76 & 80b
[37] *A fol.* 77
[38] *A fol.* 167 & 168
[39] *A fol.* 77 & 80b
[40] *A fol.* 80b
[41] *A fol.* 112

Responsibilities of the Service Provider

SPSL is subject to the duties, functions and responsibilities applicable as a Retirement Scheme Administrator and Trustee of the Scheme.

Obligations under the SFA, RPA and directives/rules issued thereunder

The obligations of SPSL as a Retirement Scheme Administrator under the SFA are outlined in the Act itself and the applicable conditions that at the time were outlined in the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act*, *2002'* ('the Directives').

Following the repeal of the SFA and eventual registration under the RPA, SPSL became subject to the provisions relating to the services of a retirement scheme administrator under the RPA. As a Retirement Scheme Administrator under the RPA, SPSL became subject to the conditions outlined in the '*Pension Rules for Service Providers issued under the Retirement Pensions Act*' ('the Pension Rules for Service Providers') and the '*Pension Rules for Personal Retirement Schemes issued under the Retirement Pensions Act*' ('the Pension Rules for Personal Retirement Schemes').

One key duty of the Retirement Scheme Administrator emerging from the primary legislation itself is the duty to *'act in the best interests of the scheme'* as outlined in Article 19(2) of the SFA and Article 13(1) of the RPA.

From the various general conduct of business rules/standard licence conditions applicable to SPSL in its role as Retirement Scheme Administrator under the SFA/RPA regime respectively, it is pertinent to note the following general principles:[42]

a) Rule 2.6.2 of Part B.2.6 titled '*General Conduct of Business Rules applicable to the Scheme Administrator*' of the Directives issued under the SFA, which applied to SPSL as a Scheme Administrator under the SFA, provided that

   '*The Scheme Administrator* ***shall act with due skill, care and diligence – in the best interests of the Beneficiaries*** …'.

[42] Emphasis added by the Arbiter.

The same principle continued to apply under the rules issued under the RPA. Rule 4.1.4, Part B.4.1 titled '*Conduct of Business Rules*' of the Pension Rules for Service Providers dated 1 January 2015, issued in terms of the RPA, and which applied to SPSL as a Scheme Administrator under the RPA, provided that:

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

b) Rule 2.7.1 of Part B.2.7 titled '*Conduct of Business Rules related to the Scheme's Assets*', of the Directives issued under the SFA, which applied to SPSL as a Scheme Administrator under the SFA, provided that:

'***The Scheme Administrator shall arrange for the Scheme assets to be invested in a prudent manner and in the best interest of Beneficiaries*** …'.

The same principle continued to apply under the rules issued under the RPA. Standard Condition 3.1.2, of Part B.3 titled '*Conditions relating to the investments of the Scheme*' of the Pension Rules for Personal Retirement Schemes dated 1 January 2015 issued in terms of the RPA, provided that:

'***The Scheme's assets shall be invested in a prudent manner and in the best interest of Members and Beneficiaries*** *and also in accordance with the investment rules laid out in its Scheme Particulars and otherwise in the Constitutional Document and Scheme Document*'.

Trustee and Fiduciary obligations

As highlighted in the section titled '*Regulatory Framework*' above, the Trusts and Trustees Act ('TTA'), Chapter 331 of the Laws of Malta is also relevant for SPSL in view of its capacity as Trustee of the Scheme.

Article 21 (1) of the TTA which deals with the '*Duties of trustees*', stipulates a crucial aspect, that of the ***bonus paterfamilias***, which applies to SPSL.

The said article provides that:

'(1) ***Trustees shall in the execution of their duties and the exercise of their powers and discretions act with the prudence, diligence and attention of a bonus paterfamilias,*** *act in utmost good faith and avoid any conflict of interest'.*

It is also to be noted that Article 21 (2)(a) of the TTA, further specifies that:

'Subject to the provisions of this Act, trustees shall carry out and administer the trust according to its terms; and, subject as aforesaid, the trustees shall ensure that the trust property is vested in them or is under their control and shall, so far as reasonable and subject to the terms of the trust, safeguard the trust property from loss or damage …'.

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

The trustee, having acquired the property of the Scheme in ownership under trust, had to deal with such property '*as a fiduciary acting exclusively in the interest of the beneficiaries, with honesty, diligence and impartiality*'.[43]

As has been authoritatively stated:

'*Trustees have many duties relating to the property vested in them. These can be summarized as follows:* ***to act diligently, to act honestly and in good faith and with impartiality towards beneficiaries, to account to the beneficiaries and to provide them with information, to safeguard and keep control of the trust property and to apply the trust property in accordance with the terms of the trust'***.[44]

The fiduciary and trustee obligations were also highlighted by MFSA in a recent publication where it was stated that:

'In carrying out his functions, a RSA [retirement scheme administrator] of a Personal Retirement Scheme has a fiduciary duty to protect the interests of members and beneficiaries*. It is to be noted that by virtue of Article 1124A of*

the Civil Code (Chapter 16 of the Laws of Malta), the RSA has certain fiduciary obligations to members or beneficiaries, which arise in virtue of law, contract, quasi-contract or trusts.

[43] Editor Dr Max Ganado*, An Introduction to Maltese Financial Services Law'*, (Allied Publications 2009), p. 174
[44] Op.Cit., p. 178

In particular, ***the RSA shall act honestly, carry out his obligations with utmost good faith, as well as exercise the diligence of a bonus paterfamilias in the performance of his obligations****'.*[45]

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

The above are considered to be crucial aspects which should have guided SPSL in its actions and which shall accordingly be considered in this decision.

Other relevant aspects

One other important duty relevant to the case in question relates to **the oversight and monitoring function of the service provider in respect of the Scheme including with respect to investments**.

Whilst SPSL's duties did not involve the provision of investment advice, however, as explained by SPSL itself in its communication of 25 June 2018 with the complainant, it was noted that:

'On behalf of SPSL dealing instructions are reviewed and approved by Sovereign Asset Management Limited ('SAM')...',[46] where *'SAM as SPSL's appointed investment adviser simply reviewed the dealing instructions received from Mr Humphreys and verified that the proposed investment satisfied the Scheme's investment restrictions and was in accordance with your risk profile as specified by you*'.[47]

Observations and Conclusions

In essence, the complainant alleged the following main shortcomings in respect of the service provider:

(i) that SPSL allowed the entity named *Offshore Investor*, who it was claimed did not hold the appropriate license, to act as his investment adviser in respect of the Scheme. The complainant questioned the due

[45] Consultation Document on Amendments to the Pension Rules issued under the Retirement Pensions Act [MFSA Ref: 09-2017], dated 6 December 2017, p. 9
[46] *A fol.* 17
[47] *A fol.* 18

diligence undertaken by SPSL in respect of the investment adviser to ensure that such adviser was properly licensed;

(ii) that SPSL allowed the investment adviser to make deals in structured notes within his pension scheme which investments, it was alleged, were not appropriate for pension schemes and should have not been allowed by SPSL to be undertaken within his Scheme. The Complainant claimed that SPSL did not ensure *'good and diversified long term investments*'.[48]

The complainant claimed losses arising on the structured note investments allowed by SPSL within his Retirement Scheme.

Compensation was requested by the complainant for the *'Total Losses £72,000'* as indicated in his Complaint Form, which losses were indicated as being due to the following structured notes as indicated above:

'(1) 05/01/2015 Leon Cars £24000

(2) 05/01/2015 Leon Energy £24000

(3) 21/04/2015 Leonteq £12000

(4) 21/04/2015 Leonteq Euro Comps £12000' [49]

Alleged loss

Whilst the complainant has not indicated the full and proper name of the structured note investments on which he alleged a loss, the four structured notes mentioned specifically by the complainant can be identified as the following:

[48] *A fol.* 4
[49] *Ibid.*

- GBP24,000 purchase of the *Leonteq 18month Trio Perf AC Nt* [50] (ISIN No. CH0259241435)[51] undertaken in January 2015 referred to by the complainant as *'Leon Cars'*;

- the GBP24,000 purchase of the *EFG Intl 2.5Y Express Cert on 4 Stks* [52] (ISIN No. CH0259241245)[53] undertaken in January 2015 referred to by the complainant as *'Leon Energy'*;

- the GBP12,000 purchase of the *EFG Intl 2.5Y Express Cert on 3 Stks 28/10/16*[54] (ISIN No. CH0273397031)[55] undertaken in April 2015 referred to by the Complainant as *'Leonteq'*; and

- the GBP12,000 purchase of the *EFG Intl 2.5Y Express Cert on 4 Stks 30/10/17*[56] (ISIN No. CH0273396355)[57] undertaken in April 2015 referred to by the complainant as *'Leonteq Euro Comps'*.

In his reply, the service provider submitted that the complainant did not suffer a loss on the *'Leon Cars'* and *'Leon Energy',* pointing out that one of the notes actually made a gain of GBP480. This was not eventually contested by the complainant during the proceedings of the case. The position outlined by the service provider on these two investments is indeed confirmed in the transaction history statement that was attached to SPSL's reply.

The service provider also indicated that in respect of the other two investments identified by the complainant as *'Leonteq'* and the *'Leonteq Euro Comps'*, these investments were redeemed for GBP4,148.16 in total. Indeed, as explained in the section titled *'Underlying investments'* above, these two other investments of GBP12,000 were each sold for GBP3,633 and GBP515 respectively which in total tally to GBP4,148. The realised loss (exclusive of dividends) on these two investments actually amounts to (GBP8,367) and (GBP11,485) respectively as indicated in the section titled *'Underlying investments'* above.

[50] Bullet point (ii) under the section titled *'Underlying investments'* above.
[51] *A fol.* 63 & 75
[52] Bullet point (iii) under the section titled *'Underlying investments'* above.
[53] *Ibid.*
[54] Bullet point (v) under the section titled *'Underlying investments'* above.
[55] *A fol.* 62, 76 & 168
[56] Bullet point (vi) under the section titled *'Underlying investments'* above.
[57] A fol. 62, 76 & 168

In the circumstances, the alleged GBP72,000 loss claimed by the complainant in respect of the four structured notes mentioned by the complainant is not correct.

This notwithstanding, it is nevertheless clear that the complainant did experience a loss overall on his investment portfolio.

The realised loss (exclusive of dividends) on *the four structured notes* identified by the complainant is calculated to actually amount in total to (GBP19,372).[58]

The Arbiter, who is tasked by Chapter 555 of the Laws of Malta to decide and ultimately give compensation by reference to what in his opinion is fair, equitable and reasonable,[59] has also been given the authority to investigate[60] the case under examination to give effect to fairness, equity and reasonableness in his decision.

As has been stated above, the estimate made by the complainant is not correct and it is the Arbiter's role to investigate what is the real loss sustained by the complainant.

From the examination of the acts of the case, the Arbiter has found that the complainant has effectively made a loss as described hereunder.

A net loss has ultimately not only emerged with respect to the four structured notes indicated by the complainant, but also on all structured notes investments altogether undertaken within his portfolio. Apart from this, a loss has also clearly emerged even when taking the overall position within his whole investment portfolio, that is, inclusive of the realised gain made on the collective investment fund.

On the basis of the information resulting from the transaction history statement, the loss *on all the seven purchases of structured notes* undertaken within his FPI

[58] GBP480 [on the *Leonteq 18mnth Trio Perf AC Nt*] +0+(8,367) + (11,485) [on the three respective investments into the *EFG Intl 2.5Y Express Cert*]=GBP19,372.
[59] CAP 555 of the Laws of Malta, Art. 19(3)(b)
[60] For example: The Act's title; Art.19(1), 25(1), 26(1)

Bond is overall calculated to amount to not more than (GBP39,303)[61] in total, (exclusive of total dividends of GBP1,454 received on such products).[62]

More importantly, however, for the purposes of this complaint, the net realised loss on the investment portfolio as a whole, taking into account all capital gains and losses arising on all investments within the portfolio inclusive of dividends, is calculated as not exceeding GBP29,640.60.[63] Such figure is quite lower than the GBP72,000 loss claimed by the complainant in his complaint.

Having determined that the complainant has indeed suffered a loss on his Retirement Scheme overall, and considered his claim and extent of losses first, the Arbiter shall next consider the substance of the shortfalls alleged by the complainant.

In this regard, the Arbiter shall consider whether, on the basis of the facts arising in this case, the loss which has been determined on the complainant's investment portfolio can be linked and attributed, wholly or partly, to any failings of the service provider in its duties as Trustee and Administrator of the Retirement Scheme.

Alleged shortfalls

Regulatory status of Offshore Investor

The complainant claimed that the investment adviser did not hold the appropriate license in respect of its activities and alleged that SPSL was doing business with an unlicensed party.

The investment adviser was indicated in the FPI Bond's Application Form as being regulated, by the Central Bank in UAE, to provide financial advice.[64]

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[61] GBP480 [on the *Leonteq 18mnth Trio Perf AC Nt*] +0+(8,367) + (11,485) [on the three respective investments into the *EFG Intl 2.5Y Express Cert*] = GBP19,372.

[62] GBP480 on one of the *Leonteq 18mnth Trio Perf AC Nt*, and a further GBP494.4+GBP480 on the *EFG Intl 2.5Y Express Cert* investments.

[63] Realised Gains (GBP8,208 + GBP480) = GBP8,688; Total Dividend received = GBP480+494.4+480=GBP1,454.4; Maximum Realised Losses (GBP8,367+GBP11,485+GBP7,931 and possible complete write off of GBP12,000 on the *Leonteq 18mnth Trio Perf AC Nt* bought in June 2015) = GBP39,783; **Total Net Realised Loss calculation:** [Realised Gains of GBP8,688 plus Total dividends received of GBP1,454.4 less Maximum Realised Losses of GBP39,783 = GBP29,640.6].

[64] *A fol.* 58

In its reply, the service provider did not comment on the regulatory status of *Offshore Investor*, but only chose to explain the qualification of David Humphreys where it was submitted that Humphreys held a certificate issued by the Chartered Insurance Institute in London. SPSL further submitted that it carried out its own due diligence on *Offshore Investor*, collected documentation on such entity and also conducted checks which led to no bad press or negative claims.

Despite the material claim made by the complainant that *Offshore Investor* was unlicensed, the service provider did not present, from its part, any proof of the checks it claimed to have made on such entity. Nor did the service provider submit any evidence of the verification it made of the licence that *Offshore Investor* claimed in FPI's Application Form to have. Irrespective that there was *'no requirement in Malta for financial advisers to be licensed'* at the time of the Scheme's Application for Membership,[65] as submitted by the service provider in its communication of 10 April 2018, the Arbiter considers that the status of the adviser should have been reasonably checked and verified by the Trustee as part of its general due diligence, when accepting to deal with parties occupying key roles such as that of investment adviser to the member of the Retirement Scheme, which role and regulatory statements were ultimately reflected in the official forms reviewed by SPSL.

It is noted that the FPI's Application Form was completed at the same date of the Scheme's Application and would have been sighted and considered by SPSL in its role as Trustee of the Scheme. It is indeed only reasonable and justified to expect the trustee, as part of its duties towards the member and the Retirement Scheme, to have verified any claimed licence of the investment adviser and undertaken basic checks in this regard on such a party.

The Arbiter considers that, in its role as Trustee and Retirement Scheme Administrator, SPSL should have tangibly and convincingly substantiated its claims that it had done appropriate due diligence on the investment adviser, which due diligence should have included verification of the licence to provide financial advice as declared by *Offshore Investor* in FPI's Application Form. It is considered that SPSL failed to provide such comfort in the case in question.

[65] *A fol.* 15

Portfolio Composition

Diversification

As part of its duties, the Service Provider was required to ensure that investments undertaken within the Retirement Scheme satisfied the applicable investment and diversification requirements.

SPSL submitted in its reply that *'the Fund was expressly subject to the investment rules stipulated in part B.3.2 of the Pension Rules for Personal Retirement Schemes as laid down by the Malta Financial Services Authority*'.[66]

It is to be noted, however, that prior to becoming registered under the RPA, the Scheme was still subject to the investment rules specified under the SFA regime. No mention or reference was made by the Service Provider in this regard to the SFA regime nor did SPSL indicate when it obtained registration under the RPA during the one-year transition period which commenced in 2015 as described in the section titled *'Regulatory Framework'* above.

The Arbiter shall accordingly consider the investment conditions that applied at the time under both regimes:

a) *SFA* - The regulatory requirements that applied to the Retirement Scheme at the time it was registered under the SFA regime were detailed in the '*Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act, 2002'*, ('the Directives') which applied from the Scheme's inception and continued to apply during the transition period under the SFA in 2015 until the registration of the Scheme under the RPA. Two particular conditions, namely Standard Operational Condition ('SOC') 2.7.1 and 2.7.2 of the Directives, are worth noting.

   SOC 2.7.1 of Part B.2.7 of the Directives required *inter alia* that the assets were to '*be invested in a prudent manner and in the best interest of beneficiaries …*'.

[66] *A fol.* 70/71

SOC 2.7.2 in turn required the Scheme to ensure *inter alia* that, the assets of a scheme are '*invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole*'[67] and that such assets are '*properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole*'.[68]

SOC 2.7.2 of the Directives also provided other benchmarks including for the portfolio to be '*predominantly invested in regulated markets*';[69] to be '*properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings'*[70] where the exposure to single issuer was: in the case of investments in securities issued by the same body limited to no more than 10% of assets; in the case of deposits with any one licensed credit institution limited to 10%, which limit could be increased to 30% of the assets in case of EU/EEA regulated banks; and where in case of investments in properly diversified collective investment schemes, which themselves had to be predominantly invested in regulated markets, limited to 20% of the scheme's assets for any one collective investment scheme.[71]

b) *RPA* - The Service Provider referred to '*part B.3.2 of the Pension Rules for Personal Retirement Schemes'.* Extract of relevant parts of Condition 3.2.1 of section B.3.2 titled *'Investment Restrictions of a Personal Retirement Scheme'* of the original Pension Rules dated 1st January 2015 are included below:

'3.2.1 Personal Retirement Schemes shall comply with the following investment restrictions:

i. the Retirement Scheme Administrator or the Investment Manager, as applicable, shall invest the assets of the Scheme in the best interest of Beneficiaries. In the case of a potential conflict of interest, the Scheme Administrator, or the Investment Manager that may appointed to manage the Scheme's assets

[67] SOC 2.7.2 (a)
[68] SOC 2.7.2 (b)
[69] SOC 2.7.2 (c)
[70] SOC 2.7.2 (e)
[71] SOC 2.7.2 (h)(iii) & (v)

shall ensure that investment activity is carried out in the sole interest of the Beneficiaries;

ii. the Retirement Scheme Administrator or the Investment Manager, as applicable shall ensure that the assets of a Scheme are properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole;

iii. the Retirement Scheme Administrator or the Investment Manager, as applicable, shall ensure that the assets of the scheme are sufficiently liquid and/or generate sufficient retirement income to ensure that retirement benefits payments can be met closer to retirement date for commencement of retirement benefits; ...'

As detailed in the section titled *'Responsibilities of the Service Provider'* above, another relevant important condition stipulated in the Pension Rules for Personal Retirement Schemes of January 2015, is Standard Condition 3.1.2 of Part B.3 which required that:

'*The Scheme's assets shall be invested in a prudent manner and in the best interest of Members and Beneficiaries'*.

In its reply the service provider explained that *'in addition to the MFSA investment restrictions, SPSL devised its own investment restrictions for the SPSL Scheme'*.[72]

The service provider further stated in its reply that:

'Those restrictions included not more than 66% of funds being invested in structured notes and not more than 33% being invested in structured notes with one issuer'.[73]

SPSl also declared that: *'The Fund's investments in structured notes under the FPI Bond were within these paramaters'*.[74]

[72] *A fol.* 71
[73] *Ibid.*
[74] *Ibid.*

The service provider did not provide any evidence of the restrictions referred to in its reply which, is noted, are quite different to those that were actually specified in its own Application Form and the standards reflected in the MFSA's rules under both regulatory regimes as outlined above.

Neither did SPSL provide any indication that at the time of the Scheme's investments undertaken between January 2015 and June 2015, it had different investment restrictions to those specified in the Scheme's Application Form signed a few months earlier in July 2014.

In the circumstances, the Arbiter cannot give much weighting to SPSL's claim of the maximum limit of 66% in structured notes and 33% maximum limit to any one issuer as indicated in its reply.

The Scheme's Application Form for Membership signed by the complainant on 13 July 2014, itself clearly specified a number of investment restrictions which had to be satisfied. Apart from the general principles that were required to be adhered to such as, that *'investments must be diversified'* and *'assets must be invested in the best interests of the member'*, it is noted that one of the requirements detailed in the said form also stipulated that ***'not more than 10% of funds may be invested in structured notes with any one company and not more than 40% in structured notes generally'***.[75]

Whilst no details were produced during the proceedings of the case as to what percentage the respective structured notes comprised of the portfolio at the time of investment of the note, it is observed that even as a percentage of the indicated initial premium into the FPI Bond, the structured notes respectively comprised high percentages of 9% or 18% each.[76]

It is also noted that two separate purchases undertaken in April 2015 into the *EFG Intl 2.5Y Express Cert* of GBP12,000 each, resulted in a high exposure, (18% of the indicated initial premium), to the same product/issuer.

Indeed, the Arbiter has no reasonable comfort that the requirement that *'not more than 10% of funds may be invested in structured notes with any one company'* that was specified in the Scheme's Application Form was actually

[75] *A fol.* 92 - Emphasis added by the Arbiter.
[76] E.g. 24000*100/136714=17.55%; 12000*100/136714=8.78%.

adhered to in practice considering the high exposure individually and cumulatively to any one product/issuer that transpired from the investment portfolio.

Accordingly, in the circumstances of this case, the Arbiter cannot reach the conclusion that the structured notes that were allowed by SPSL were actually in line with the diversification requirements, namely the maximum exposure limit specified in the Application Form nor that they reflected the limits and standards referred to in the Directives and Rules, such as the maximum limit in exposure to any one single issuer/product and/or the concept of investments being invested in a prudent manner.

Risk factor

With respect to the portfolio composition, the Arbiter notes that the portfolio consisted of substantial investments into structured notes, some of which were sold within just a few weeks or months as further detailed in the section titled '*Underlying investments*' above.

It is also noted that the majority of the structured note investments, that is four out of the seven structured notes invested into, resulted in substantial losses of 66% to 95% (or more) of the original investment value.[77] In addition, out of the remaining three structured notes, two were sold for the same amount that they were purchased, with only minimal dividends received, and the other one only yielded a minimal profit of GBP480 (just 2% of the invested amount).

Whilst in this case no fact sheets of the structured notes invested into was produced or could be sourced, it is nevertheless sufficiently clear that such structured notes included features which enabled substantial losses to be made, or even the possibility of the investment to be completely or nearly completely lost. This indeed has transpired to be the case for some of the structured notes that were allowed within the portfolio as explained above.

[77] A loss of 66.09% on the *Leonteq 2.5Y Multi Barrier note* (GBP7931*100/12000); A loss of 69.7% on the *EFG Intl 2.5Y Express Cert* purchased in April 2015 (GBP8367*100/12000); A loss of 95.7% on another *EFG Intl 2.5Y Express Cert* purchased in April 2015 (GBP11485*100/12000); A drop of 99.38% on the value of the *Leonteq 18 mnth Trio Perf AC Nt* purchased in June 2015 (*A fol.* 168).

In its communication of 1 March 2018, the Service Provider explained *inter alia* that *'our dealings team have always scored structured notes as medium risk'*.[78]

In another communication of 25 June 2018, the *Service Provider* remarked that:

'The scoring of structured notes was determined by a team of qualified staff employed by SAM. The score of 50/100 was given to all structured notes based on a number of variables (such as time frame, underlying ETF, indices, issuing bank credit rating, etc.) and this scoring was discussed with our regulator from the outset)'.[79]

In its reply, SPSL submitted that:

'the notes selected by the Complainant and his investment adviser were scored in relation to the overall portfolio and every purchase was well within the Complainant's stated risk appetite'.[80]

During the proceedings of this case, the service provider, however, did not substantiate nor provided any tangible basis on which the structured notes were considered as being of medium risk, nor how the structured note investments *'was well within the Complainant's risk appetite'*.

It is indeed unclear how in this case, SPSL can reasonably justify that the structured notes were always of medium risk and this when the majority of such products invested into actually resulted in substantial or near total loss of the investment.

It is sufficiently clear that in classifying all structured notes as *'medium risk'*, the service provider has not given adequate attention to the specific features of the structured notes invested into, including the effects that the particular characteristics of such products had or could lead to on the performance of the investment.

When considering the overall portfolio, it seems that the cumulative and ongoing exposure to structured notes was not given sufficient attention and consideration by the service provider either, otherwise the extent of overall

[78] *A fol.* 130
[79] *A fol.* 156
[80] *A fol.* 70

losses experienced on the investment portfolio would have not occurred in the first place.

Whilst there could be varying types of structured notes, the Arbiter has no comfort that the structured notes invested into, which were ultimately allowed by SPSL, could have possibly been of medium risk, nor that the underlying portfolio of investments constituted a balanced one and ultimately reflective of the principles of prudence as required in terms of the directives/rules. This when considering the scale and extent of the losses experienced on the investment portfolio overall as a direct result of the losses incurred on the structured note investments.

In the circumstances, it cannot be reasonably determined either that the portfolio of investments was reflective of the complainant's preferred investment strategy of *'a small amount of risk'* and neither of the *'medium risk'* profile selected in the Scheme's Application Form.

The failure to achieve the Scheme's scope, that is to provide for retirement benefits, is indeed in itself indicative of the higher risks being taken within the investment portfolio overall.

Synopsis

The loss realised by the complainant on his whole investment portfolio as calculated above, is considered by the Arbiter as a material loss which justifiably and reasonably one does not expect to occur in a Retirement Scheme whose scope is to provide for retirement.

Such a loss is not expected to occur in a properly diversified, balanced investment portfolio with a prudent investment approach as was required under the applicable regulatory framework.

It is further considered that:

a) A personal retirement scheme is ultimately established with the principal purpose of providing Retirement Benefits to Members and/or Beneficiaries

with such purpose being indeed ingrained in the primary legislation, the SFA[81] and the RPA itself.[82]

b) It is deemed, in the circumstances, that no convincing nor sufficient evidence was provided by SPSL that the portfolio was reflective of a balanced and diversified portfolio with moderate risks, in line with the approach that should have been taken in the investments of the Retirement Scheme. Neither has it emerged that the portfolio constituted within the Retirement Scheme was reflective of the prudence one would reasonably expect in a portfolio whose scope is to '*accumulate a trust fund from which to provide benefits in retirement*'.

c) Whilst the Retirement Scheme Administrator was not responsible to provide investment advice to the Complainant nor to select the underlying investments of the Retirement Scheme, **the Retirement Scheme Administrator, however, had a duty to check and ensure that the portfolio composition recommended by the investment adviser was a prudent one as reasonably expected from a retirement plan, whilst also reflective of the risk profile and objectives of the Scheme as outlined in the Scheme's Application form and ultimately one which enables the aim of the Retirement Plan to be achieved.**

The Scheme Administrator and Trustee had to, in practice, promote the scope for which the Scheme was established where the choice of underlying investments allowed within the Scheme's structured had to essentially reflect such scope.

[81] Article 2(1) of the SFA defined a 'scheme' to mean '*a scheme or arrangement which is registered under this Act under which payments are made to beneficiaries for the principal purpose of providing retirement benefits …*'.

[82] Article 2 of the RPA defines a 'personal retirement scheme' as: '*a retirement scheme which is not an occupational retirement scheme and to which contributions are made for the benefit of an individual*'.
A 'retirement scheme' is, in turn, defined under Article 2 of the RPA, as '*a scheme or arrangement as defined in article 3*', where Article 3 (1) stipulates that '*A retirement scheme means a scheme or arrangement with the principal purpose of providing retirement benefits*'.
Article 2 of the RPA also defines 'retirement benefit' as meaning: '*benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death;*'.

Should there have been a careful consideration of the recommended portfolio composition, the service provider would and should have intervened, queried, challenged and raised concerns on the portfolio composition recommended and not allow the overall risky portfolio of underlying investments to develop within the complainant's member-directed scheme as this ran *inter alia* counter to the objectives of the retirement scheme and was not in the complainant's best interests, nor reflective of a prudent investment approach.

The portfolio composition ultimately had high exposure to structured notes with features that enabled significant losses to result in the investment portfolio as determined in this case.

Having considered the responsibilities of SPSL as outlined in the section titled *'Responsibilities of the Service Provider above'*, the Arbiter concludes that there was, at the least, a lack of diligence by SPSL in the administration of the Scheme, particularly in allowing such composition of investment portfolio to prevail within the Scheme involving the said investments into structured notes and the extent of exposure to such products.

Conclusion

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

Cognisance needs to, however, be taken of the responsibilities of other parties involved with the Scheme and its underlying investments, particularly, the role and responsibilities of the investment adviser. Hence, having carefully considered the case in question, the Arbiter considers that the service provider is to be only partially held responsible for the losses incurred.

Compensation

Being mindful of the key role of Sovereign Pension Services Limited as Trustee and Retirement Scheme Administrator of The Centaurus Retirement Benefit

Scheme, and in view of the deficiencies identified in the obligations emanating from such roles as explained above, which deficiencies are considered to have prevented the losses from being minimised and in a way contributed in part to the losses experienced on the Retirement Scheme, the Arbiter concludes that the complainant should be compensated by SPSL for part of the realised losses arising on his pension portfolio.

In the particular circumstances of this case, the Arbiter considers it fair, equitable and reasonable for SPSL to be held responsible for seventy per cent of the losses sustained by the complainant on his overall investment portfolio.

The service provider is accordingly being directed to pay the complainant compensation for the amount of GBP20,748.42. This is calculated as 70% of the *actual loss,* which was GBP29,640.60, as amply explained above in this decision.

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Sovereign Pension Services Limited to pay the complainant the sum of twenty thousand, seven hundred and forty-eight pounds sterling and forty-two pence (GBP20,748.42).

With legal interest from the date of this decision till the date of effective payment.

Given the particular circumstances of the case, especially that the complaint was only partially met, each party is to bear its own legal costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services