

Before the Arbiter for Financial Services

Case No. 014/2019

OP ('the Complainant')

vs

**STM Malta Trust and Company
Management Limited as substituted by
STM Malta Pension Services Limited
(C51028) ('STM Malta' or 'the Service
Provider')**

Sitting of the 22 February 2021

The Arbiter,

PRELIMINARY

STM Malta Trust and Company Management Ltd changed its name to STM Malta Pension Services Limited ('STM Malta' or 'the Service Provider'). This results from the records filed with the Malta Business Registry in June 2020 relating to the change in name.¹

Following a communication from the OAFS of the 10 September 2020, the Service Provider confirmed such a change in name and also confirmed that the MBR issued the change in name certificate on 13 July 2020. For all intents and purposes, the records of this case have accordingly been updated to reflect the change in name of the Service Provider.

The Case in question

¹ As per the documents filed on 22 June 2020 with the Malta Business Registry - https://registry.mbr.mt/ROC/index.jsp#/ROC/downloadDocument.do?companyId=C+51028&filename=C+51028%2FC_51028_D50_0.pdf&archiveid=3738958&anonEmailAddress=&anonConfirmEmailAddress=

The Complaint relates to the STM Malta Retirement Plan ('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 STM Malta Trust and Company Management Ltd now renamed as STM Malta Pension Services Limited ('STM Malta' or 'the Service Provider'), as its Trustee and Retirement Scheme Administrator.

The Complainant, who is a member of the Retirement Scheme, claimed lack of reporting in respect of his Scheme.

It was claimed that STM Malta failed in its contractual obligations to provide him with quarterly statements and in so doing denied him vital information which he required by the Spanish tax authorities.²

As to the contractual obligations, the Complainant referred to the key features of the QROPS Smart Bond, an underlying investment of the Retirement Scheme, where one of the features of the said underlying investment included the provision of quarterly valuation statements by its issuer, STM Life.³

The Complainant further claimed that the lack of statements in respect of his Retirement Scheme and underlying investments made it impossible for him to monitor movements both in and out of his account and he was thus unable to take control of his account, both in the selection of underlying investments and in the implementation of any change to his investment strategy.

It was further submitted that the control of his Retirement Scheme account was an important factor in his decision to invest with the Service Provider and that STM Malta clearly knew about this requirement.

The Complainant explained that the Service Provider's response with respect to the lack of statements was that it only issued statements once yearly. The Complainant submitted that not even the yearly statements were however received.⁴

² A fol. 4

³ A fol. 8

⁴ A fol. 4/6

He also stated that fees are taken from his plan on a quarterly basis and so the Complainant argued that some of these fees must relate to the provision of the regular statements which were missing in his case.

In view of the missing statements, the Complainant requested fees to be refunded since the inception of his plan in March 2016 up to 14 January 2019.⁵ As per the email dated 14 January 2019, attached to his complaint, the refund of quarterly fees requested by the Complainant amounts to GBP825 in total, calculated as GBP225 (GBP75 x 3) for the year 2016, GBP300 (GBP75 x 4) for the year 2017, and a further GBP300 (GBP75 x 4) for the year 2018.⁶

In his Complaint, the Complainant further pointed out that the lack of statements also denied him '*sight of spurious transactions and other important information on this matter*', that will be raised in a further complaint.⁷

In its reply received by the OAFS on 15 March 2019, STM Malta essentially submitted the following:⁸

That the Service Provider understood that the Complainant is requesting it to refund the amount of GBP825, which amount represents 11 fees of GBP75 each which were paid to STM Life Assurance PCC plc ('STM Life'). The Service Provider noted that the Complainant is claiming that this refund is justified in view that he has not been provided with a quarterly statement notwithstanding the fact that the key features document issued by STM Life states that a valuation will be issued quarterly.

That before addressing the complaint itself, STM Malta would like to clarify the structure within which the Complainant's pension is held.

It was noted that the Complainant signed an application form and an Instrument of Adherence on 26 May 2015 in order to join the Retirement Scheme. STM Malta further noted that the Complainant also signed the relevant paperwork to transfer his UK pensions to the plan and to invest the pension proceeds in a QROPS smart bond, this being an investment product provided by STM Life in Gibraltar.

⁵ *Ibid.*

⁶ *A fol. 6*

⁷ *A fol. 4*

⁸ *A fol. 17-19*

The Service Provider explained that the recommendation to transfer the UK pensions to the plan and to invest the proceeds with STM Life was given to the Complainant by his advisor, namely deVere in Spain, as can be shown in the application form and in the suitability report issued by deVere dated 26 May 2015.

It was noted that following receipt of all the relevant instructions from the Complainant, STM Malta accepted the Complainant as a member of the plan, received the proceeds from his UK pensions and invested those proceeds with STM Life. The Service Provider explained that STM Malta fulfils the role of trustee of the plan and administrator of the pension, which implies that it is the policyholder of the STM Life QROPS smart bond. STM Malta noted that in order to carry out this function, STM Malta must receive statements from all investment product providers, including STM Life, on a quarterly basis in order to calculate the pension assets under administration.

STM Malta pointed out that the Complainant is making reference to the QROPS smart bond key features issued by STM Life which states:

'you will receive a detailed valuation statement quarterly, which sets out the total value of your Bond based on the latest price information that STM Life has available'.⁹

The Service Provider noted that whilst it appreciated that the Complainant might have understood this to mean that he would be receiving a valuation on a quarterly basis, this is actually applicable to the policyholder, that is, STM Malta.

It was further noted that, in fact, there is no direct link between STM Life and the Complainant, as STM Malta is the policyholder of the STM Life QROPS smart bond and not the member. The Service Provider remarked that, as provided in the pension rules issued by the MFSA, STM Malta provides a valuation on an annual basis to all its members free of charge. It was also noted that any *ad hoc* valuations which members might request from time to time are also provided free of charge.

The Service Provider submitted that the Complainant has not provided literature which states that the quarterly fee of GBP75 is paid to STM Life so

⁹ A fol. 18

that the latter issues a valuation on a quarterly basis. It was submitted that the Service Provider's understanding is that this fee is, in fact, not at all related to the provision of quarterly valuations.

STM Malta wanted to bring to the attention of the Arbiter that the Complainant had submitted another complaint in April 2018 (Case No. 044/2018) in relation to an income payment from his pension held with STM Malta. It was noted that this particular matter, together with the matter raised in the current complaint, and various other matters which the Complainant had raised on several occasions directly with STM Malta, have already been addressed by STM Malta in e-mail correspondence initiated in July 2017.

It was submitted that STM Malta had in fact accepted to pay GBP210 compensation requested by the Complainant without admission of liability on the understanding that the Complainant transfers his pension to another provider. The Service Provider noted that, however, despite the attempt to solve these issues even through telephone conversations (albeit to no avail), the Complainant so far refuses to affect the transfer of his pension. It was noted that, furthermore, the Service Provider was of the understanding that the Complainant has terminated his relationship with his advisor.

The Service Provider noted that the Complainant claims that the failure to provide quarterly valuations has in some way led him to a tax charge, although he has not explained the basis for any such alleged charge, nor quantified the amount. It was noted that as far as the Service Provider is aware, a Spanish tax resident is required to make an annual disclosure of assets, although STM Malta is of the understanding that pension assets are excluded. It was further noted that the Service Provider is therefore unclear as to the basis of such a claim.

STM Malta submitted that it nevertheless wished to resolve the matter once and for all, and the Service Provider was prepared to offer an *ex gratia* payment of Eur250 in respect of any and all historic issues raised by the Complainant, without admission of liability on their part, payable to the Complainant when he either withdraws all of his pension via flexible access or transfers his scheme to another provider.

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

Further Considers:

Other Cases presented by the Complainant

The Arbiter notes that apart from the case in question (filed in February 2019), the Complainant had submitted to the Office of the Arbiter for Financial Services ('OAFS'), two other complaints against the Service Provider in relation to his retirement scheme.

The two other complaints are Case No. 044/2018 and Case No. 100/2020.

Given that the Complainant cannot make the same or similar complaint twice, the Arbiter shall first deliberate whether the case in question, Case No. 014/2019, can be considered in the circumstances.

It is noted that the first case, Case 044/2018, related to a payment made by STM Malta which, it was claimed, went contrary to the Complainant's instructions. In this case, the Complainant requested compensation of GBP210.63 (calculated as the sum of tax of 19% on the amount claimed to have been paid in error of GBP908.62 and bank fees of GBP38).

Case No. 044/2018 was subsequently withdrawn and a refund of the complaint fee of Eur25 was paid by the OAFS to the Complainant in January 2019.

The third case, made in the year 2020, Case No. 100/2020, related to the claim of an unauthorised sale effected by the Service Provider of an underlying investment of the scheme. During the hearing of 23 November 2020 (of the said case 100/2020), a settlement was reached between the parties, where it was agreed that the Service Provider would pay the Complainant the sum of GBP1,149.50¹⁰ - this being the total of GBP787.50 in relation to the loss of interest on the investment sold prematurely, GBP272 the profit made on the investment, GBP70 dealing charges and GBP20 in bank fees.¹¹

On this basis, Case No. 100/2020 was subsequently closed by the Arbiter on 12 January 2021, following the said settlement.

¹⁰ A fol. 91 of Case No. 100/2020

¹¹ A fol. 89 of Case No. 100/2020

In its reply to Case No. 014/2019, the Service Provider stated that the complaint raised in Case No. 014/2019, the complaint raised in Case No. 044/2018 and also various other matters *'had already been addressed by STM Malta in e-mail correspondence initiated in July 2017'*.¹²

In this regard, it is noted that as part of the documents attached to his complaint, the Complainant submitted some copies of email communications exchanged between him and the Service Provider in 2017. The said communications indicate a request made in 2017 by the Complainant for STM Malta to provide him with copies of all documents signed by him,¹³ allegations made by the Complainant that he did not receive policy documents, and claims that the Complainant was unaware of the application of certain annual fees on his Scheme, apart from alleged differences between the advice the Complainant alleged he received from his investment advisor and the actual implementation of the advice, amongst other requests for clarifications.¹⁴

In its reply to Case No. 014/2019, the Service Provider also explained that it had accepted to pay GBP210 as compensation in respect of the complaints made at the time. STM Malta, however, provided no evidence that the issues raised in Case No. 014/2019 were duly addressed previously, nor did STM Malta provide evidence of any settlement previously reached with the Complainant on the same matters.

Having considered that: (a) the other complaints filed with the OAFS relate to separate and completely distinct issues to those raised in Case No. 014/2019, **which namely deals with the lack of valuations and transaction reporting**, and (b) also in the absence of any evidence emerging of a settlement already made in relation to the claims raised in this Complaint, the Arbiter finds no sufficient basis in the particular circumstances on which to preclude the consideration of this case.

The Arbiter shall accordingly proceed to consider the merits of the case.

¹² A fol. 18

¹³ A fol. 11

¹⁴ A fol. 10

The Arbiter would, however, like to caution that complaints should not be filed with the OAFS in a piecemeal fashion unless there is a justifiable and valid reason for doing so. Apart from the timely submission, complaints filed with the OAFS are moreover to be *inter alia* complete and should not involve a complaint on aspects already raised in another complaint. Failure to do so may result in a possible outright rejection of the respective case.

Basis of the Complaint

With reference to the case in question, the Arbiter would like to point out that the Complainant cannot change the basis of his complaint during the proceedings of the case. The Arbiter shall accordingly only consider and limit himself to the aspects raised by the Complainant as originally described in his Complaint Form.

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.¹⁵

Considerations and Conclusions

Contractual obligation & entitlement to quarterly valuations

The Complainant claimed that the Service Provider breached its contractual obligations to provide quarterly statements. In this regard, the Complainant referred to an extract from an unspecified key features document relating to the QROPS Smart Bond, this being an underlying investment policy of the Retirement Scheme, which on its own does not create a contractual obligation.

The Complainant's claim that the Service Provider breached its contractual obligations just with reference to such statement is not justified.

The Arbiter will however consider the entitlement and legitimate expectations of the Complainant in respect of the requested quarterly statements.

¹⁵ Cap. 555, Art. 19(3)(b)

In its reply, the Service Provider explained that the quarterly statements issued by STM Life in respect of the QROPS Smart Bond are actually applicable to the policyholder.

Indeed, STM Malta is the policyholder of the said Bond in its capacity as trustee of the Retirement Scheme. It is clear that, as trustee and retirement scheme administrator of the Scheme, STM Malta was thus the recipient of the quarterly statements in respect of the QROPS Smart Bond.

However, the Service Provider has not explained in its reply, nor in any submissions made thereafter or during the hearing of this case, whether it had any difficulties in providing to the Complainant the quarterly statements, which it should have itself been receiving on such a regular basis from STM Life.

Neither did the Service Provider explain or provide reasons as to why STM Malta did not provide the requested quarterly statements to the Complainant, other than just mentioning its usual practice of sending statements on an annual basis.

It is noted that as indicated in the Complainant's email of 14 January 2019, attached to his Complaint, the request by the Complainant for receipt of quarterly statements was made way back on 3 May 2017.

It is accordingly unclear why STM Malta has refrained to provide the Complainant with the requested quarterly statements when:

- (i) there was a clear and justifiable request from the Complainant for the submission of such statements;
- (ii) the Service Provider itself confirmed in its reply that STM Malta was the recipient of quarterly statements issued from STM Life and should accordingly have been in a position to forward and/or provide such valuation statements to the Complainant, and
- (iii) the Service Provider itself acknowledged that in addition to annual statements, members may also request *ad-hoc* statements.

It is noted that the pensions rules issued by the MFSA in respect of Personal Retirement Schemes include provisions relating to the regular reporting to members.

More specifically, Standard Licence Condition 5.1.4 and 5.1.5 of Part B.5 titled '*Conditions relating to information for Scheme Members and Beneficiaries*' of the Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act, 2011, ('the Pension Rules')¹⁶ provide as follows:

*'5.1.4 The Retirement Scheme Administrator shall provide a statement to the Member, on an annual basis **and upon ad-hoc request of the Member,***¹⁷ *noting his individual entitlements, and also provide the Member with brief particulars of the situation of the Scheme. The statement shall contain, as a minimum, the following information:*

(a) any contributions into the Scheme, if applicable;

(b) any retirement benefits paid, if applicable; and

(c) all applicable charges incurred.'

5.1.5 Notwithstanding the submission of the statement referred to in SLC 5.1.4, any material information as well as any material changes, shall be immediately disclosed to the Member.'

It is also noted that Standard Licence Condition 9.5(e) and (f) of Part B.9 titled '*Supplementary Conditions in the case of entirely Member Directed Schemes*', of the said Rules, which applies in case of member-directed schemes, provides as follows with respect to the reporting to the member of the Retirement Scheme:

'9.5 In cases where the Scheme, in its Scheme Document, allows member-direction in terms of SLC 9.2(a) to (c), the following conditions shall be complied with by the Retirement Scheme Administrator:

...

(e) as a minimum, provide the Member with the following information in relation to the member's account on an annual basis, and upon ad-hoc request of the member, during the relevant reporting period:

(i) the underlying investments and their respective value;

(ii) any contributions into the Scheme, if applicable;

¹⁶ Version '*Issued: 7 January 2015*' and '*Last Updated: 28 December 2018*'.

¹⁷ Emphasis added by the Arbitrator

- (iii) any retirement benefits paid, if applicable;*
- (iv) the name of the investment manager and/or investment advisor, if applicable;*
- (v) all applicable charges, commissions and fees incurred by the member;*
- (vi) in addition to paragraphs (i) to (v), the Member is to be informed of the availability of online access, which provides real time information of the investments held in the member account';*
- (f) notwithstanding the submission of the information referred to in paragraph (e), any material information as well as any material changes including suspension of funds, drastic fall in the investments, relating to the member's account, shall immediately be disclosed to the Member, upon the Retirement Scheme Administrator first becoming aware of such material change.'*

It is thus clear that the provision of adequate information to a member of a retirement scheme is a basic and fundamental function as reflected in the said Rules. In terms of its duties as Retirement Scheme Administrator and Trustee of the Scheme, there was a clear obligation on the part of the Service Provider to provide the Complainant with reasonable information requested by him in relation to his scheme and underlying investments.

The need for full transparency regarding fees and transactions undertaken within a retirement scheme, and the provision in this regard of timely, complete and clear information with respect to the performance, transactions and charges, effected within the retirement scheme and its underlying material policy investment is ultimately a key basic function expected and required to be upheld at all times in the administration of a retirement scheme by the trustee and scheme administrator.

Such actions would indeed be reflective of the duty and responsibility of the trustee and retirement scheme administrator to act in the best interests of the

member of the retirement scheme and act with the prudence, diligence and attention of a *bonus paterfamilias*.¹⁸

The Arbiter would also like to remark that such basic, but important issue, raised in this Complaint should have been promptly and easily resolved and dealt with by the Service Provider. Proper communication with clients and tangible efforts to promote transparency and the creation of trust are indeed basic functions reasonably expected from any professional regulated entity.

Final remarks

In this case, it is clear that the Complainant was entitled, in terms of the Rules to which the Service Provider is subject, to request further statements in addition to the annual statements. There was also no reason for the Scheme Administrator not to entertain the Complainant's request for the quarterly statements, nor to withhold or delay the provision of the requested additional statements.

As to the Complainant's request for compensation, the Arbiter, however, considers that no sufficient evidence has been provided by the Complainant that he was being directly, or indirectly, charged the claimed amount of GBP75, or any other amount for the matter, in respect of the quarterly statements issued by the provider of the policy underlying the Retirement Scheme.

Neither has any evidence been provided that the Complainant incurred any payments with the Spanish tax authorities in view of the lack of receipt of such statements, and/or the Complainant incurring loss on his Retirement Scheme account in view of the indicated lack of reporting.

¹⁸ E.g.: Article 13(1) of the Retirement Pension specifies that *'The Retirement Scheme Administrator shall act in the best interests of the retirement scheme, its members and beneficiaries...'*; Article 21 (1) of the Trusts and Trustees Act, Chapter 331 of the Laws of Malta which deals with the *'Duties of trustees'*, stipulates 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 to be noted that in terms of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter can only grant compensation *'for any loss of capital or income or damages suffered by the complainant as a result of the conduct complained of ...'*.

No such loss or damage has ultimately been proven.

Conclusion

The Arbiter considers that in the particular circumstances of this case, and for the reasons amply explained above, there are no sufficient grounds on which the Arbiter can uphold the Complainant's claim for the payment of the compensation requested. The Complainant's claim for compensation is accordingly being rejected.

However, having considered the particular merits of this case, in terms of Article 26(3)(c)(i) and (iii) of Chapter 555 of the Laws of Malta, the Arbiter is directing STM Malta Pension Services Limited to ensure that the Complainant receives in a timely manner the quarterly reports so requested by him, in addition to the annual statements, free of charge and, in case where online access to real time information is available in respect of his investments and transactions undertaken within the Scheme and underlying policy, to also inform him and assist him accordingly with such online access.

The Service Provider is also being directed, in terms of the said article, to assist in a timely and comprehensive manner the Complainant in his requests for clarifications regarding entries featuring in the said statements.

Each party is to bear its own costs of these proceedings.

**Dr Reno Borg
Arbiter for Financial Services**