

Before the Arbiter for Financial Services

Case No. 058/2020

ME

(‘the Complainant’)

vs

TMF International Pensions
Limited (C 76483)

(‘the Service Provider’ or ‘TMF’)

Sitting of the 9 November 2021

The Arbiter,

Having seen **the Complaint** relating to the Melita International Retirement Scheme Trust (‘the Retirement Scheme’ or ‘Scheme’), this being a personal retirement scheme licensed by the Malta Financial Services Authority (‘MFSA’),¹ established in the form of a trust and administered by TMF International Pensions Limited (‘the Service Provider’ or ‘TMF’).

Having considered, in its entirety, the Complaint²

Where, in summary, the Complainant claimed that an exit fee that was levied against his Retirement Scheme was not clearly disclosed at the outset and he felt that this was unfair.

The Complainant explained that the Application Form in respect of his Scheme stated that charges would not apply to a transfer out if this was *‘for PCLS, income or on death’*.³

¹ <https://www.mfsa.com.mt/financial-services-register/result/?id=206>

² A fol. 1-69

He further explained that as his pension had depleted, he withdrew his final payment. This payment was subject to an exit penalty of EUR2,000. The Complainant considered this to be unfair and explained that whilst he accepted the charge, he queried this with the Service Provider when he had the opportunity to consider things further. He noted that he was referred to by TMF to the trust deed and noted that page 49 of the deed contained a paragraph stating that the trustee is able to impose a charge on the winding up of the scheme at its discretion.

The Complainant also submitted that this charge was not sufficiently prominent or obvious when he joined the Scheme.

The Complainant requested a refund of EUR2,000 so that he is not disadvantaged.⁴

Having considered the Service Provider's reply:⁵

Where, in summary, the Service Provider submitted that they have not acted improperly as they had informed the Complainant of the EUR2,000 exit fee before this was applied and that the Complainant had accepted this charge and proceeded with the closure of his Retirement Scheme.

TMF explained that the Complainant had requested a full and final distribution of the remaining fund within his retirement plan and that, on 27 December 2019, TMF complied with such request, in turn closing his pension account.

The Service Provider further explained that the cost of closing the Scheme was notified to the Complainant, as required in the Trust Deed, both in an e-mail on 22 November 2019, before he proceeded, and in the documents that he signed. TMF submitted that the Complainant had replied the same day of the email in acceptance of this, as he had agreed in the submissions made to the OAFS. The Service Provider explained that the charge was subsequently deducted from the final payment made on 27 December 2019.

TMF further explained that the Complainant had requested a copy of the Trust Deed on 3 July 2014 which they had supplied.

³ A fol. 4

⁴ *Ibid.*

⁵ A fol. 74

It also noted that the Trust Deed states that:

*'The Trustee shall be entitled to be reimbursed from the Scheme for and in respect of all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Scheme (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank account debits tax but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee.'*⁶

TMF submitted that by informing the Complainant of the EUR2,000 exit fee before applying it, and being in receipt of his confirmation accepting this charge, it did not feel that as trustee it acted in any way improperly.

TMF further submitted that had the Complainant felt unhappy with the fee, he had ample opportunity to consider this and question it before accepting it. The Service Provider noted that in such absence TMF simply followed procedure.

Having heard the Complainant,

Having noticed that the Service Provider had declared that it rested its case on its written submissions.

Having seen all the documents of the case.

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.⁷

Considerations

Facts of the Case & other pertinent Considerations

⁶ A fol. 74 & 45

⁷ Cap. 555, Art. 19(3)(b)

The following is a summary of the pertinent facts as emerging from the documents provided, hearing and submissions made:

(a) *Power to deduct charges*

As indicated by the parties themselves, the Trust Deed contains various provisions empowering the trustee to deduct certain costs from the Scheme's assets - such as clause 39(b)(ii) inferred by the Complainant⁸ relating to the 'Procedure on winding up of Scheme' which provides that:

'Where the Scheme is to be wound up the Trustee shall: ... (ii) arrange to pay or transfer Benefits ... after deducting from the assets of the Scheme the costs of administering and winding up the Scheme and such amount as may be required to meet any Taxation, duty or other liability which may be or become payable in connection with the Scheme or the winding up of the Scheme',⁹

as well as clause 20(c) quoted by the Service Provider¹⁰ relating to 'Reimbursement' which provides that:

'The Trustee shall be entitled to be reimbursed from the Scheme for and in respect of the following expenses: (i) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Scheme (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank account debits tax but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee.'¹¹

It is further noted that in addition, clause 20(a) of the Trust Deed relating to 'Fees, Commissions, Costs and Disbursements' provides that:

'The Trustee shall be entitled to receive remuneration out of the Scheme, in respect of the provision of services as Trustee of the Scheme, which fees,

⁸ A fol. 4

⁹ A fol. 61

¹⁰ A fol. 74

¹¹ A fol. 45

*commissions, costs and disbursements will be debited ... as reasonably determined by the Trustee’.*¹²

Hence, the trustee of the Scheme clearly had powers, in terms of the Trust Deed, to deduct relevant fees applicable to the Retirement Scheme.

(b) Awareness by the Complainant of the disputed fee

Another key aspect relating to this Complaint is whether the Complainant was aware of the applicable exit fee of EUR2,000.

In its reply, the Service Provider referred to an email of 22 November 2019, which it had sent prior to the closure of the Scheme, where *‘The cost of closing the scheme was notified to him ...’.*¹³

As indicated by TMF, the Complainant’s Scheme was closed shortly thereafter on 27 December 2019, after the Complainant had *‘replied the same day of the e-mail in acceptance’.*¹⁴

In his complaint to the Arbiter, the Complainant himself admitted, that ***‘I accepted this charge, but when I had the opportunity to consider things further, I queried this with TMF International’.***¹⁵

The Arbiter notes that during the hearing of 21 October 2020, the Complainant again confirmed being informed beforehand of the cost when he stated that *‘In the email they told me that I would be charged €2,000’.*¹⁶

Whilst the Complainant explained during the same sitting that he *‘thought that the €2,000 referred to the annual fee’*¹⁷ given that the applicable annual fees were of €2,000, and he *‘did not realise that they were trying to charge an additional €2,000 fees’*,¹⁸ **the Arbiter does not consider that the Complainant’s possible ‘misunderstanding’ of the €2,000 fee that**

¹² *Ibid.*

¹³ *A fol. 74*

¹⁴ *Ibid.*

¹⁵ *A fol. 4* – Emphasis added by the Arbiter

¹⁶ *A fol. 75*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

was indicated by the Service Provider in its email, forms, on its own, a convincing reason to justify the claim of a refund in the particular circumstances of this case. This is also in the absence of *sufficient* evidence provided by the Complainant that the information provided to the Complainant by the Service Provider was in any way misleading or incomplete or the charges were unfair as further considered below.

As stated by the Service Provider in its reply, since the Complainant was informed beforehand about the exit fee, he could have queried it had he any doubts about it. But the Complainant not only accepted it the same day, but he signed the relevant documents signalling his agreement with the fee.

(c) *Claim of unfair charge*

The Complainant considered the exit penalty of €2,000 as being unfair,¹⁹ and explained during the hearing of the 21 October 2020, that the fees of €4,000,²⁰ *'sounds totally disproportionate, not only because they did not tell me in advance that it was disproportionate, but they told me that I had it in there by law'*.²¹

The Arbiter however considers that there is no sufficient proof and basis that the fee charged was unreasonable or unfair, particularly, where this was disclosed *a priori*, and also in the absence of convincing evidence of a breach of or lack of compliance with applicable regulatory requirements or of the disputed fee not being reflective of market practice.

(d) *Other aspects*

As part of the attachments to his Complaint Form, the Complainant included exchange of emails that occurred in 2013 with the original trustee of the Scheme,²² where in an email dated 24 June 2013 the

¹⁹ A fol. 4

²⁰ Which reflected the €2,000 annual fee and the €2,000 exit fee.

²¹ A fol. 76

²² Which at the time was Custom House Global Fund Services Limited (A fol. 7-8 & 10)

original trustee confirmed that there was agreement for '*a formation fee of €2,500 and the annual fee as €2,000 for your Spanish resident client*'.²³

The Arbiter however considers that, on its own, this does not convincingly prove and provide sufficient comfort either that the exit fee did not apply. The said exchange of emails covered two specific fees, the formation fee and the annual fee, and there is no mention of the exit fee and any waiver of or disapplication of such fee which typically features in such products.

The Complainant has also not substantiated his submission that '*the Application Form stated that charges would not apply to a transfer out of the fund*' either.

The Arbiter notes that the Complainant further alleged in his Complaint that he felt that the exit fee was not '*sufficiently prominent or obvious when [he] joined the Scheme*'.²⁴

However, no official documentation was presented to substantiate such claim. In the absence of specific reference to the document in question, the Arbiter cannot comment on it and, therefore, has no specific proof that the wording was in such a way as to mislead the Complainant.

There is accordingly lack of evidence that the exit fee did not apply or was agreed to be waived or not disclosed with respect to the Complainant's Scheme.

From the evidence submitted during the case, and on the basis of what has already been stated above in this decision, the Arbiter concludes that:

- **There were no apparent breaches of the regulatory requirements relevant to the case;**
- **The Service Provider was entitled to charge and deduct costs from the Scheme's assets as evidenced in the provisions of the Trust Deed;**
- **The Complainant proceeded to close his pension account despite**

²³ A fol. 7

²⁴ A fol. 4

being informed and made aware of a charge of €2,000 and,

- **There was no lack of or incomplete disclosure relating to the exit fee.**

Conclusion

In the particular circumstances of this case, and for the reasons mentioned above, the Arbiter cannot uphold the complaint.

Each party is to bear its costs of these proceedings.

**Dr Reno Borg
Arbiter for Financial Services**