

Before the Arbiter for Financial Services

Case No. 082/2019

**HJ
(‘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 3 May 2021

The Arbiter,

PRELIMINARY

The Office of the Arbiter for Financial Services (‘OAFS’) has discovered, through its own research, that in the year 2020, 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 (MBR) in June 2020 relating to the change in name.¹

The Service Provider confirmed such a change in name and stated that the MBR issued the change in name certificate on 13 July 2020. For all intents and purposes the records of this case have been accordingly updated to reflect the change in name of the Service Provider.

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 Case in question

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 claimed that STM Malta, as trustee of his QROPS² pension investment portfolio, did not undertake its fiduciary duty to provide him with the protection he, as a declared low risk retail investor, expected of a trustee.

He also submitted that as trustee, STM Malta was responsible for ensuring that his pension scheme was run properly and that his investments were secure.

The Complainant explained that when he started to gather information for his complaint against the Service Provider, he requested a list of documents from STM Malta and two of the documents requested, in particular, the Scheme's '*Client Profile Questionnaire and Application Form*' and the '*Royal Skandia Bond Application Form*', gave him considerable cause for concern.

The Complainant submitted that the Scheme's '*Client Profile Questionnaire and Application Form*' did not match with any of the copies of the original documents that he had from his original meetings with his investment advisor, Continental Wealth Management ('CWM'), was not written in his hand, and had a copied signature on the declaration page that effectively disassociated STM Malta from any activity or actions undertaken by its financial advisors, CWM.

He further submitted that he had never seen the '*Royal Skandia Application Form*' which he stated contained a statement in clause 11 of the '*Declaration by STM*', signed by one of its directors, saying that:

'We may wish to invest into Professional/non-retail type investment schemes and if so we will make sure we have had the opportunity to read the offering documents for funds of this nature. Where we decide to invest into Professional/non-retail investment schemes, we accept the levels of risk

² Qualifying Recognised Overseas Pension Scheme

associated with these, including the risk that the investment into such a scheme could result in a loss of a significant proportion, or all of the sum invested'.³

The Complainant claimed that he could only conclude from this that STM Malta were cognisant of the activities of CWM and party to them in respect of investment of his funds into unsuitable professional/non-retail schemes which were not compliant with his investor profile of low/medium risk.

It was further explained that Premier Pension Solutions SL ('PPS') were employed by CWM to provide him with advice regarding transferring his UK pensions into a QROPS. The Complainant made reference in this regard to a number of statements which he quoted from a report sent to him by PPS,⁴ and argued that the risks outlined in this report detailed nothing about the fact that under the trusteeship of STM Malta his investments would be placed into high risk products by CWM with the potential for total loss of his pension fund.⁵

The Complainant stated that he was convinced by the said report issued by a company registered with the *Comision Nacional del Mercado de Valores and Direccion General de Segros y Fondos de Pensiones* and he entrusted his pension's future to CWM's safe in the knowledge that a large well-established trustee was going to look after his best interests.

It was further noted that he had however discovered much later that his small QROPS fund was channelled by CWM into high risk '*Professional Investors Only, not suitable for Retail Distribution*' structured notes whose term sheets stated that '*These securities are not 100.00% Principal protected, there is a risk that you could lose all or part of your investment*'.⁶

The Complainant submitted that this was in clear violation of his fact find completed in respect for a pension investment where his risk profile was stated as Low to Medium and his financial priorities were '*protection, tax efficiency, growth and income*'. Reference was made to the fact sheet attached to his complaint in this regard.

³ A fol. 5

⁴ A fol. 134

⁵ A fol. 6

⁶ *Ibid.*

The Complainant noted that every investment product detailed in the dealing instructions obtained by him from STM Malta indicated ISIN numbers for structured products provided by investment banks. He noted that one of the investment banks, EFG Bank AG, said of structured products that '*Only investors who are fully aware of the risks associated with investing in the products and who are financially able to bear any losses that may arise, should consider engaging in transactions of this type*'.⁷

The Complainant submitted that he clearly did not meet the investor profile described and was in no way seeking to take the massive risks associated with this type of investment product that were totally unsuitable for the purposes of building a secure pension fund for his future retirement.

The Complainant attached to his complaint a document which he noted was published in 2015 by the Swiss Structured Products Association and submitted that if during their normal regulatory activity the compliance department of STM Malta had read such document, then the disaster on his pension scheme could have been averted and he would be enjoying a funded retirement.

It was further claimed that, in addition, STM clearly did not have any oversight of the dealing instruction process, otherwise, they would have observed the fraudulent use of a copied signature on the instructions, that CWM was operating as an unlicensed firm acting in an advisory capacity using unqualified '*advisors*' under the supervision of the trustee, STM Malta.

The Complainant pointed out the following roles and duties of the trustees that he claimed were applicable in relation to his case against STM Malta:

1. *Fiduciary duties*

It was remarked that a trustee must fulfil its fiduciary duties under section 1124(A) of the Civil Code (Chapter 16 of the Laws of Malta). The Complainant noted that the duty of care requires trustees: to act with the care, skill and prudence exercised by similar fiduciaries in investment-related matters including diversification of investments, risk profiles and guidelines; to perform due diligence in matters related to investment of his assets; to incur only costs that are appropriate and reasonable; to act in

⁷ *Ibid.*

accordance with applicable statutes and regulations and their own guidelines; to act in the members' best interests as laid out in the Retirement Pensions Act 2011 part B.1.3.1; to exercise due diligence as laid out in the Retirement Pensions Act 2011 part B.4.1.4(b); to fulfil the compliance obligations as laid out in the Retirement Pensions Act.

2. *Liability of Trustees and Retirement Scheme Administrators*

The Complainant claimed that the losses totalling GBP61,712.54 that his pension fund has suffered is totally due to the extreme early, wilful and ongoing negligence of his trustees and, therefore, they are fully responsible for a reimbursement payment as laid out in the Retirement Pensions Act 2011, part B.1.5.1.

It was stated that the Retirement Pensions Act 2011, Liability 4.1.17 provides that:

'The Scheme Administrator will be liable to the scheme, Members, Beneficiaries and Contributors of the Scheme for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part of its obligations'.⁸

3. *Introducers*

The Complainant noted that the Pensions Act 2011, part D.1 indicates the requirement to carry out due diligence in order to ensure that introducers act within the rules of the Pension Rules.

4. *CWM, Financial Advisors*

The Complainant remarked that the Arbiter has previously ruled that:

'The Retirement Scheme Administrator shall retain ultimate responsibility to ensure compliance by the Member or any person acting on his behalf with the objective of the retirement scheme and with any applicable licence conditions and provisions of the law'.⁹

⁸ A fol. 7

⁹ Ibid.

5. *High Risk investments*

The Complainant stated that he was never supplied with a copy of the Skandia/OMI Fund Advisor Form but was informed that this form states that:

'Options at the discretion of the fund advisor only with Trustee Approval'.¹⁰

The Complainant noted that the Pension Rules for Service Providers 2011, Part B.4, 1.4(b) states that:

'The Service Provider shall act with due skill, care and diligence' and that such action shall include 'Where applicable, taking all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order'.¹¹

6. *Risk profile*

The Complainant stated that the MFSA Consultation Document on amendments to the Pension Rules issued under the Retirement Pensions Act (MFSA REF:09-2017), that came into force in 2018, stated on page 4 that:

'It considers that the RSA remains responsible for current retail members and in particular they ensure that the investments made reflect the risk profile of such members'.¹²

The Complainant also noted that page 10, part 2.7 of the MFSA Consultation Document stated that:

'In the case of member directed schemes the RSA is expected to have adequate knowledge of the risk profile of the member so as to ensure that the proposed investments are in line with the investment strategy and investment restrictions of the member-directed scheme and with the risk profile of the member, in order to approve proposed transactions in a

¹⁰ A fol. 8

¹¹ *Ibid.*

¹² *Ibid.*

members account. In this respect the RSA is expected to vet and approve the investment advice provided by the investment manager or the investment advisor and raise certain queries when necessary'.¹³

It was submitted that STM Malta clearly had sight of this fact find as they sent him a copy when requested, which copy clearly stated that investments should be using 'protected' and 'guaranteed' products.

The Complainant submitted that trustees should, as part of their due diligence and know your customer review, independently establish the member's risk profile.

7. *Fees & Charges/OMI Bond*

The Complainant noted that Section B.4(1.7) of the pension rules for service providers stated that:

'The service provider shall, before offering any services to the member, provide in writing a description of the nature and amount of any direct or indirect charges or fees a member or beneficiary will or maybe expected to bear in relation to the scheme or fund and investments within the scheme or fund (if applicable)'.¹⁴

It was further noted that the Retirement Pensions Act 2011, part B.4.1.3(f) provides that:

'Trustees should avoid unfair or unreasonable charges on members also taking into account the charges levied on underlying investments'.¹⁵

8. *Legal right to cancel*

The Complainant specified that:

'A member is given a period of 30 days to withdraw from the contract entered into with the scheme. Pursuant to regulation 7 of the Distance Selling (Retail Financial Services) Regulations (S.L. 330.07), the member must be given a period of 30 calendar days to withdraw from the distance

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

contract relating to personal pension arrangements, without incurring any penalty and without having to give any reason'.¹⁶

It was submitted that within the first 30 days of the commencement of the contract, he was completely unaware that his transferred pension fund was being placed into unsuitable professional/non-retail type investment scheme so was not in a position to withdraw from the scheme.

The Complainant submitted that the MFSA has identified issues in their onsite visits and state in their new rules, page 18 part 2.15.2 that:

'The member is also to be provided with a cancellation notice on a durable medium which shall include information on the conditions for exercising the right of cancellation, the consequences of not exercising the cancellation period and the practical instructions for exercising the cancellation period indicating the address to which the notification of cancellation or withdrawal is to be sent, (vide SLC 5.12 and SLC 5.1.3(h) of part B of the Pension Rules for Personal Retirement Schemes. For that period of thirty days, the funds would not be invested'.¹⁷

It was claimed that the Arbiter has previously ruled that:

'In accordance with the Pension Rules to which it is subject to, the Service Provider must communicate, in a reasonable and timely way, relevant details about the investment and the applicable cooling-off period regarding the underlying investment'.¹⁸

9. *Fraudulent Dealing Instructions*

The Complainant submitted that the trustee is required to exercise due diligence and referred to Pension Law, part B.4.1.4(b). The Complainant stated that the RSA must exercise due diligence, carrying out investigations or audits of any potential investment or product to confirm all facts, such as, reviewing all financial records, term sheets plus anything else deemed material, i.e. risk profile and documentation submitted.

¹⁶ A fol. 9

¹⁷ Ibid.

¹⁸ Ibid.

It was further noted that this was the care a reasonable person should take before entering into an agreement or a financial transaction with another party.

The Complainant further submitted that the Service Provider is also subject to *inter alia* Condition 9.3 (b) of Part B.9 titled 'Supplementary Conditions in the case of Member Directed Schemes' of the Pension Rules for Personal Retirement Schemes issued by the MFSA, which also provides that '*members have the right to timely and fair execution of their investment decisions and to written confirmation of these transactions*'.¹⁹

10. *Treating all members & beneficiaries fairly*

The Complainant pointed out that the trustee/custodians, should act honestly, fairly and with integrity as laid out in the Retirement Pensions Act 2011, part B.4.1.3(a)(c)(e).

It was submitted that STM took the decision to offer him compensation following his earlier complaint regarding the fraudulent use of his signature on the dealing instructions and offered him a refund of fees in return for signing a gagging agreement and not proceeding with any future complaint or action.

The Complainant attached a copy of this agreement to his Complaint²⁰ and noted that he had refused to sign such agreement. The Complainant noted that he was advised that this offer was not extended to all other members and could thus not be seen as acting fairly and with integrity as per the Retirement Pensions Act, 2011.

The Complainant deemed that by such action STM Malta indicated its acceptance of its lack of fiduciary duty as trustees.²¹

Request made by the Complainant

The Complainant submitted that there are a number of financial elements associated with the losses he incurred as a result of this fiasco.

¹⁹ *Ibid.*

²⁰ *A fol. 171*

²¹ *A fol. 11*

Reference was made to the four pension funds, the Honeywell, Invensys, Friends Life and Zurich annual pension, related to the transfer to the QROPS and the pension estimated on each as per the calculations the Complainant made on the basis of a mean figure of 4%.²²

The Complainant claimed that the total annual pension he could have expected to receive in this regard was of GBP10,419.65 per annum. The Complainant further explained that he was now one year past his planned retirement age of 65 and so he requested to be compensated for the loss of pension income plus a percentage of the per annum amount up to and including the month of the final arbitration date.²³

The Complainant noted that the second issue concerns the losses that he has incurred as a result of the total loss of his funds. The Complainant determined that major problems were occurring with the CWM management of his investments when they called him to tell him that they wanted to reinvest the miniscule proceed from the sale of a failed investment. He noted that he refused and insisted that the money be transferred to the cash account and that it should not be reinvested. It was noted that, at this point, the cash held in the account totalled GBP15,142.39 with this being subjected to further charges just for safekeeping.

The Complainant submitted that this has meant that he has now lost a total of GBP61,712.54 including charges and fees from his initial transfer of GBP89,644.93 which includes drawdowns of GBP10,000 and GBP2,790.

The Complainant therefore asked for a total of GBP76,854.93 (calculated as GBP15,142.39 + GBP61,712.54), to be paid back to him plus interest on the said amount at a rate of 3% per annum. It was noted that compounded over the period from the date of the transfer into the scheme, over 7 years, the amount would total to GBP91,768.81.

The Complainant further stated that in the event that the arbitration is not shortly resolved, then, he requested the compensation to be increased by 1/12 of 3% for each month.

²² A fol. 10

²³ Ibid.

The Complainant also submitted that he has not sought to obtain any compensation for the considerable stress that this financial disaster has wreaked upon his family and the fact that without any work-related pension he is still actively engaged in work to generate an income stream. It was stated that should the Arbiter think it fitting, then, the Complainant would welcome some form of family stress related compensation and he left it in the Arbiter's hands as to the amount deemed suitable as compensation in this regard.

In its reply, STM Malta essentially submitted the following:²⁴

That before considering the detail of the Complaint, the Service Provider wanted to emphasise that whilst it has every sympathy for the Complainant given the apparent reduction in the worth of his pension fund, STM Malta has no liability for this.

STM Malta explained that the Complainant completed and signed, on 3 July 2012, an application form (referred to as the STM Application attached as '*DOC STM01*' to its reply),²⁵ and signed an Instrument of Adherence on the 3 August 2012, (attached as '*DOC STM02*' to its reply),²⁶ for the transfer of his United Kingdom pension investments in Honeywell, Invensys and Friends Life, at the time held directly by the Complainant, to the STM Malta Retirement Plan ('the Plan').

It was noted that this transfer was effected following the advice which the Complainant received from his appointed investment and pension advisors, independent of and not connected with STM Malta, via the issue on the 11 January 2013, in the name of STM Malta (as trustee for the Complainant as Member of the Plan), of an insurance policy issued by Skandia International, namely, the Executive Investment Bond Number 2105682-0 for a premium amount of GBP89,644.93 ('the Investment Bond').

STM Malta stated that the transfers to the Investment Bond were made in accordance with instructions received from the Complainant and his chosen pension advisors, namely Premier Pension Solutions CL (via Stephen Ward) as indicated in Section 3 of the STM Application.

²⁴ A fol. 179-187

²⁵ A fol. 188

²⁶ A fol. 200

STM Malta submitted that the Complainant's investment via the Plan was carried out in line with the investment advice given by the investment advisor which the Complainant himself had chosen at the time, namely, Continental Wealth Management (via Anthony Poole/Anthony Downs) as indicated in Section 9 of the STM Application.

STM stated that the aforementioned advisors and persons were not agents or employees of STM Malta but were independent entities and persons appointed or chosen by the Complainant himself in order to advise him on the transfer of his UK pension at the time and the subsequent investments to be undertaken on his behalf by the Scheme.

STM Malta noted that following his membership of the Plan, and for many years thereafter, the Complainant continued to take advice from such advisors; he invested in underlying investments that were a permitted pension investment; signed the various forms confirming the investments were his choice and acknowledged STM Malta's (limited) role that did not include advising on investments. It was further noted that the Complainant was fully aware that under the provisions governing the appointment of STM Malta, given STM Malta's limited role, STM Malta had the benefit of various indemnities and warranties and STM Malta would not have provided a service to the Complainant absent such indemnities and warranties.

STM Malta submitted that, in fact, in his own words, the Complainant acknowledged in the Complaint that by accepting to become a member of the Plan this *'effectively disassociates STM from any activity or actions undertaken'* by third parties, most notably the pension and investment advisors selected by the Complainant himself. It was further noted that, were it not so, STM Malta would never have accepted to allow the member to join the Plan and would never have accepted to provide the service of retirement scheme administrator to the Complainant.

The Service Provider submitted that it should be noted that STM Malta's responsibility to ensure compliance with the Plan's objective and the applicable licence conditions and provisions of the law, does not and can never be construed to mean that STM Malta is accepting responsibility for the actions, investment recommendations and selections made by the Complainant himself

and/or his appointed pension and/or investment advisors. It was further noted that the Complainant goes on to accuse his selected advisors with forgery and that these may have conducted certain activities behind his back and that investments were made without his knowledge or consent. STM Malta submitted that it always acted on the basis of instructions purported to be signed by the Complainant and can never be held responsible if it is now alleged by the Complainant that his signatures were forged by persons other than the STM Malta who it claimed always acted with utmost good faith.

It was stated that CWM claimed to be regulated not only with the Complainant but with STM Malta itself. (STM Malta referred in this regard to the email signature at the bottom of the email from Anthony Downs, CWM to STM Malta dated 11 December 2015, indicated as '*Doc STM03*' in its reply).²⁷

STM Malta pointed out that in his application for membership to the Plan the Complainant had in particular declared and confirmed that STM Malta had recommended that the Complainant should obtain financial, legal and tax advice concerning his financial affairs and the transfer of his pension, noting that STM Malta could not provide such advice and cannot be held responsible for any advice obtained or advice not sought by the Complainant.

The Service Provider further noted that indeed, the Complainant also declared and confirmed that he had obtained all such advice in connection with the suitability of the Plan for his circumstances and the suitability of his preferred investments on agreeing to become a member of the Plan.

STM Malta submitted that it is not an agent or representative of the pension and investment advisors selected by the Complainant and cannot therefore be held responsible for any of their acts or omissions including any alleged forgery of the Complainant's signature by such advisors or any other person. It was noted that similarly, STM Malta cannot accept any responsibility in respect of any dealing instructions that the Complainant may have decided to sign in blank and leave in the custody and control of his appointed pension and investment advisors (and referred to '*Doc STM04*' attached to its reply).²⁸

²⁷ A fol. 202-203

²⁸ A fol. 204-220

STM Malta submitted that any loss suffered by the Complainant is therefore entirely due to actions, investment recommendations and (as alleged by the Complainant himself) the fraud of his pension and investment advisors and it was those actions, recommendation and possibly fraud alone that has caused his loss. STM Malta further submitted that it cannot be held responsible for the acts or omissions and possibly fraud perpetrated by a third party selected by the Complainant himself.

Order sought from the Arbiter

STM Malta noted that in the Complaint, the Complainant states that he has '*lost a total of £61,712.54 including charges and fees from [his] initial transfer of £76,854.93,*' and requests the Arbiter for Financial Services to order STM Malta to reimburse the Complainant in respect of these losses with interest at a rate of 3% per annum.

STM Malta noted that at the same time, however, the Complainant acknowledges that '*major problems were occurring with the CWM management of [his] investments*' and yet he decided to continue seeking the advice of his selected advisors notwithstanding such '*major problems*'.²⁹ It was noted that despite of this, the Complainant never ever raised the issue with STM Malta and continued to rely on the possibly fraudulent CWM.

The Service Provider referred to Paragraph B.1.5.1 of the Malta Financial Services Authority's ('MFSA') Pension Rules for Service Providers, Part B.1 - Pension Rules for Retirement Scheme Administrators which states:

'1.5.1 The Scheme Administrator shall be liable to the Scheme, its Contributor(s), Members and Beneficiaries for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or [i]n part its obligations'.³⁰

STM Malta submitted that, as shall be elaborated in more detail below and during the course of these proceedings, and as already stated in STM Malta's earlier response dated 29 August 2019 to the Complainant's Complaint, (to which the Service Provider cross-referred as if it was included and repeated in

²⁹ A fol. 181 & 182

³⁰ A fol. 182

full in its reply to avoid repetition), STM Malta does not accept any responsibility for any losses that may have been suffered by the Complainant since: (i) any such losses are or may have been the result of market movements in the value of investments selected by the Complainant himself and/or his appointed investment advisors; and/or (ii) the alleged fraud perpetrated, acts or omissions by the investment advisor selected and appointed by the Complainant himself.

The Service Provider further submitted that the alleged losses do not result from the fraud, wilful default, negligence or unjustifiable failure of and on the part of STM Malta to perform in whole or in part any of its obligations. It was submitted that without prejudice to the Service Provider's other arguments and defences, no responsibility can ever be imputable on STM Malta in view of the fraud that the Complainant accuses his investment advisor, CWM, of having perpetrated. It was noted that the Complainant claims that CWM falsified signatures and other documents.

Advisors selected by the Complainant himself

STM Malta stated that the Complainant clearly admits in his Complaint that:

*'Premier Pension Solutions SL [selected and appointed by the Complainant himself] were employed by Continental Wealth Management (CWM) to provide [the Complainant] with advice regarding transferring [his] UK pensions into a Qualifying Recognised Overseas Pension Scheme (QROPS) [...]'.*³¹

It was further noted that the Complaint continues that the Complainant *'was convinced by the report from a company registered with the Commission Nacional del Mercado de Valores and the Direccion General de Segros y Fondos de Pensiones and [he] entrusted [his] pensions future to CWM [...]'.*³²

STM Malta submitted that the Complainant was also aware that STM Malta was not providing any investment advice whatsoever and that, therefore, the risk of selecting an adequate investment advisor rested solely on the Complainant since STM Malta was not competent or qualified as an investment advisor.

³¹ *Ibid.*

³² *Ibid.*

STM Malta further submitted that, in summary, the role of the trustee was to hold the Executive Bond as trustee of the Complainant being a member of the Plan, and not to step into the shoes or duties of the investment advisor selected by the Complainant himself who had advised the selection of the Executive Bond by the Complainant and who would advise any further purchases or disposals of the pool of investments structured via the Executive Bond.

STM Malta submitted that, as trustee, it always acted on the basis of dealing instructions signed by the Complainant himself and there was no way in which it could have become aware of the fraud on the part of CWM as now alleged by the Complainant.

STM Malta submitted that the Executive Bond was a life policy investment wrapper holding underlying financial instruments, in each case selected by the Complainant and/or his appointed investment advisor/s, and, as warned on numerous instances in the STM Application signed by the Complainant before joining the Plan, was at the Complainant's own risk.

The Service Provider pointed out that on instruction of the Complainant, CWM was appointed to act as 'fund advisor' in respect of the Executive Bond, as selected by the Complainant himself. It was noted that although Skandia International were entitled to accept instructions in respect of the Executive Bond from CWM, all such instructions were counter-signed by the Complainant himself, with the Complainant now alleging that his signature was forged (or at best obtained in advance in blank fraudulently) by CWM.

Application by Complainant to join the Plan

STM Malta submitted that whilst it may be somewhat convenient for the Complainant to make absolutely no reference whatsoever to the STM Application he signed on the 3 July 2012 when seeking membership of the Plan, STM Malta is hereby referring in full to the said application form which clearly sets out the information provided, declarations made and warranties and indemnities given by the Complainant on the basis of which the Complainant was eventually allowed to join the Plan as a Member and transfer his then UK pension thereto.

The Service Provider pointed out that in what is, in effect, the first sentence of the document, at the second page the STM Application warns that:

'Membership of the STM Malta Retirement Plan (the Plan) should only be applied for once your [i.e. the Complainant's] Advisor has determined its suitability for your own personal circumstances'.³³

It was further noted that part 9 of the STM Application, continues:

'STM Malta does not provide investment advice. Your investment nomination will be considered in accordance with the Scheme Trust Instrument Rules [...] no investment advice is provided [...]'.³⁴

The Service Provider also noted that Part 13 (Declaration) of the STM Application signed by the Complainant includes extensive confirmation and agreements by the Complainant which are most relevant to his Complaint.

STM Malta submitted that, most notably, the Complainant:

- a) Confirmed that it was recommended by STM Malta that financial, legal and tax advice should be obtained concerning his financial affairs and that STM Malta cannot provide any such advice and cannot be held responsible for any advice obtained or not obtained by him;
- b) Confirmed that the STM Malta Retirement Plan Trust Instrument and Rules dated 3 November 2010 ('the Trust Rules), to which the Complainant eventually adhered on him becoming a Member of the Plan, will be made available to him on request and agreed to be bound thereby;
- c) Confirmed that he was provided with written information of all fees, expenses and running costs of his membership in the Plan and that STM Malta was authorised to automatically collect fees from his Member's Sub-fund;
- d) Confirmed that he received financial, legal and tax advice with regard to the suitability of the Plan for him and the implications of him entering into the Plan;

³³ A fol. 183

³⁴ Ibid.

- e) Confirmed that he received advice on his preferred investments [namely the Executive Bond and the underlying investments within this wrapper] with regard to their suitability and appropriateness for the Plan; and
- f) Agreed that STM Malta will not incur any liability in connection with the Plan's investments except where this arises as a result of STM Malta's fraud, wilful misconduct or gross negligence.

Fraud by Third Party

STM Malta submitted that, as is immediately evident in the Complaint, the Complainant's membership in the Plan was recommended to the Complainant by Pension Solutions SL and later (as noted by the Complainant) '*channelled by Continental Wealth Management*' into the Executive Bond.³⁵

STM Malta noted that the Complainant states that '*investments were made without [his] knowledge or consent*' and that '*dealing instructions were forged*'.³⁶

The Service Provider submitted that, therefore, saving any provisions that the Arbiter might deem necessary and opportune on the basis of the powers granted to the Arbiter by virtue of the definition of 'parties' in Article 2 of the Arbiter for Financial Services Act, Chapter 555 of the Laws of Malta ('the AFS Act'), STM Malta is respectfully requesting the joinder, as parties to the complaint, of:

- i. Continental Wealth Management;
- ii. Premier Solutions SL;
- iii. Mr Stephen Ward; and
- iv. Mr Anthony Poole; and
- v. Mr Anthony Downs

(collectively together referred to as 'the Joinder Parties').

³⁵ A fol. 184

³⁶ *Ibid.*

STM Malta noted that the AFS Act defines 'parties' as *'in relation to a complaint means the complainant, the financial services provider against whom the complaint is made, and any other person who in the opinion of the Arbiter should be treated as a party to the complaint'* [added emphasis].³⁷

It was submitted that noting the age-old maxim *fraus omnia corrumpit*, it was in the interest of justice that the Joinder Parties, or whoever amongst them, should answer for themselves in these proceedings in respect of the fraud which the Complainant is attributing to them. STM Malta submitted that it would not be fair and equitable on STM Malta to have any responsibility imputable to it if this results from the fraud of a third party.

The Service Provider respectfully submitted, therefore, that in view of the allegations of fraud levelled by the Complainant against the Joinder Parties (and their respective officers, directors, agents and employees), and in addition to the defence that fraud corrupts everything, STM Malta cannot be found to have any liability towards the Complainant.

Other Warranties and Indemnities by the Complainant in favour of STM Malta

STM Malta submitted that in any event, and without prejudice to the foregoing, any such liability (while none was admitted) on the part of STM Malta towards the Complainant arising from the behaviour which the Complainant attributes to CWM or any of the other Joinder Parties, should be indemnified to STM Malta in terms of Rule 12.1 of the Trust Rules, from the Member's Sub-Fund itself.

The Service Provider noted that Rule 12.1 of the Trust Rules provides:

'12.1 Save only in the case of fraud, wilful default or negligence the Retirement Scheme Administrator shall be entitled to be indemnified out of the Fund in priority to any payment to or in respect of the Members against all liabilities and reasonable expenses incurred by them in the execution of the purported execution of the powers trusts authorities and discretions vested in the retirement Scheme Administrator by these Rules and against all proceedings costs charges expenses claims and payments in respect of any matter or thing done or omitted in any way relating to the Plan or

³⁷ A fol. 185

relating to or arising out of these Rules. The Retirement Scheme Administrator may retain and pay out of the Fund the amount of any such liabilities and expenses and of any monies payable to them under the indemnity in this Rule 12.1 and the retirement Scheme Administrator shall have a prior privilege on the assets in the Fund for all monies payable to them under these Rules or otherwise howsoever'.³⁸

STM Malta respectfully submitted therefore that, and in addition to the defence that fraud corrupts everything, by relying on the instructions, warranties, indemnities and declarations signed (or which STM Malta, at the time unaware of the alleged fraud by CWM, in good faith believed to be signed) by the Complainant to invest the entirety of the Member's sub-fund consisting in the Executive Bond, no negligence can be equitably attributed to STM Malta. It was further submitted that, likewise, given CWM's alleged fraud, no failure to honour their obligations as a fiduciary and act in a prudent manner in the Complainant's interest can be equitably attributed to STM Malta.

STM Malta noted that, in addition, Rule 12.2 of the Trust Rules states:

'12.2 No Retirement Scheme Administrator shall be liable if the assets of the Fund or any Member's Sub-Fund or Proportionate Member's Sub-Fund are insufficient to pay any of the benefits specified under these Rules whether by reason of the contributions payable being insufficient or by reason of any loss or depreciation of the assets of the Fund (unless that loss or depreciation of the assets has arisen from the Retirement Scheme Administrator's fraud, wilful default or negligence'.³⁹

Ex-Gratia Offer by STM Malta

STM Malta noted that, without prejudice to the foregoing, STM Malta has every sympathy for the Complainant because of the loss in the Complainant's pension savings. It submitted that STM Malta, however, has no liability for this.

The Service Provider explained that it is because of this that STM Malta had offered an *ex-gratia* settlement to the Complainant on the 28 November 2018. It was further noted that such settlement was offered as a way to bring closure

³⁸ A fol. 185/186

³⁹ A fol. 186

to the issues raised in respect of CWM with STM Malta at the time, avoid future unnecessary costs and expenses and, as with any such settlement of this nature, it was obvious that STM Malta sought to close the matter by requesting the Complainant to acknowledge that STM Malta has no fault for the wrongdoing of third parties.

STM Malta submitted that it was preposterous for the Complainant to seek to infer in the *ex-gratia* offer that the STM Malta was thereby in any way admitting that STM Malta was to blame for the Complainant's losses. It was further submitted that following the same logic, it would thus appear that for the Complainant the entertaining of a possible mediation (including any contemplated under the AFS Act), would be tantamount to STM Malta somehow admitting liability, which is certainly not the case.

The Service Provider submitted that because of this, the Complainant's claim that STM Malta has not been dealing fairly with other members of the Plan, should be likewise dismissed.

STM Malta further submitted that, without prejudice to the foregoing, the Complainant has presented no proof of any fraud, wilful misconduct or negligence that can be equitably attributed to the Service Provider.

The Service Provider refuted any responsibility which the Complainant attributes to STM Malta in his claim and denies any liability towards the Complainant to reinstate his pension fund to its value at inception. STM Malta submitted that it is not responsible for investment losses suffered by the Complainant's Retirement Scheme in respect of investment decisions instructed by the Complainant himself or his chosen investment advisor.

STM Malta also submitted that it is not, and never claimed to be, an investment advisor. The Service Provider claimed that any redress in respect of the fraud or misconduct or negligence of the Complainant's chosen advisors should be sought by the Complainant against the said advisors or the principals he chose and appointed, and not against STM Malta who is an unrelated third party to such advisors with no knowledge or involvement in their alleged fraud or misconduct.

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

Further Considers:

Allegations relating to copied signatures and alleged fraudulent dealing instructions and Joinder request by the Service Provider

The Complainant alleged that STM Malta accepted documentation, namely the *Client Profile Questionnaire and Application Form* and dealing instructions for investments which had '*a copied signature*'.⁴⁰

This is a serious allegation which had to be specifically proven by specific facts and, in the case of allegations of false or copied signatures, the Arbiter must be comforted in such a way as to accept the allegation. However, the Complainant did not provide enough evidence to the Arbiter to accept his allegation.

Moreover, fraud is a criminal offence over which the Arbiter has no jurisdiction. If the Complainant has enough evidence to prove fraud, he should report the case to the relevant authorities.

In the context of this allegation, the Arbiter notes that in its reply to the Office of the Arbiter for Financial Services ('OAFS') received on 15 October 2019, STM Malta requested the joinder, as party to the complaint, of a number of parties, that is, of '*Continental Wealth Management, Premier Solutions SL, Stephen Ward, Anthony Poole and Anthony Downs*' (collectively referred to as '*the Joinder Parties*').⁴¹

Since the Arbiter has decided that the Complainant did not produce enough evidence to prove fraudulent behaviour, the Arbiter is rejecting the request for the joinder of other parties.

Moreover, the Arbiter notes that, in Section C of the Complaint Form, the Complainant identified STM Malta as the financial services provider against whom his Complaint before the Arbiter is being made in relation to the Scheme.⁴² The Complaint that is being considered by the Arbiter under the Act is

⁴⁰ A fol. 5 & 7

⁴¹ A fol. 185

⁴² A fol. 3

indeed one relating solely to the alleged shortcomings of the Service Provider as Administrator and Trustee of the Retirement Scheme.

Therefore, the Arbiter will consider STM Malta as the only Service Provider against whom the Complaint is being lodged by the Complainant.

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.⁴³

The Arbiter is considering the Complaint and all pleas raised by the Service Provider relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555⁴⁴ which stipulates that he should deal with complaints in '*an economical and expeditious manner*'.

The Complainant

The Complainant was born in August 1953, is of British nationality and was indicated as residing in Portugal.⁴⁵

The Complainant was indicated, in the Scheme's Application Form for Membership, as having acquired his wealth through the '*Supply + Install Heating Equipment*'.⁴⁶ In CWM's Confidential Client Fact Find, his occupation was indicated as a self-employed manager.⁴⁷

His attitude to risk in the same CWM's form, was indicated as '*Low/Medium*' with his '*Financial Planning Priorities*' being indicated as '*1. Protection; 2. Growth/Income; 3. Tax efficiency; 4. Lump Sum Investments from QROPS*'.⁴⁸

⁴³ Cap. 555, Article 19(3)(b)

⁴⁴ Art. 19(3)(d)

⁴⁵ A fol. 190

⁴⁶ *Ibid.*

⁴⁷ A fol. 157

⁴⁸ A fol. 159

The fact find also indicates *inter alia* that the Complainant's experience in investments was limited to investments in 'UK Banks' and 'UK Gov. Premium Bonds'.⁴⁹

The Service Provider

STM Malta is licensed as a Retirement Scheme Administrator⁵⁰ by the Malta Financial Services Authority and acts as the Retirement Scheme Administrator and Trustee of the Scheme.⁵¹

Investment Advisor

The *Client Profile Questionnaire and Application Form* in respect of the Scheme indicates that the Investment Advisor was Continental Wealth Management ('CWM'), an entity based in Spain with Antony Poole indicated as contact person.⁵²

The application form in respect of the underlying policy held by the Scheme, the '*Executive Investment Bond*' issued by *Royal Skandia*,⁵³ indicates '*Continental Wealth Management/GlobalNet Ltd*' as financial advisor.⁵⁴

Particularities of the Case

The Product in respect of which the Complaint is being made and other background information

The STM Malta Retirement Plan ('the Retirement Scheme' or 'Scheme') is a trust domiciled in Malta and authorised by the Malta Financial Services Authority ('MFSA') as a Personal Retirement Scheme.⁵⁵

The Scheme was initially registered with MFSA under the Special Funds (Regulation) Act (Chapter 450 of the Laws of Malta).⁵⁶ The scope of the Scheme

⁴⁹ A fol. 158

⁵⁰ <https://www.mfsa.mt/financial-services-register/result/?id=204>

⁵¹ A fol. 197

⁵² A fol. 193

⁵³ A fol. 122

⁵⁴ A fol. 125

⁵⁵ <https://www.mfsa.mt/financial-services-register/result/?id=209>

⁵⁶ This being the regulatory framework applicable in Malta for personal retirement schemes at the time of the Complainant's Application for Membership into the Retirement Scheme in 2012. A fol. 196.

is to provide for retirement benefits where it was '**established to provide a life-time income to its members**'.⁵⁷

The assets held into the Complainant's Retirement Scheme account were used to purchase a life insurance contract, the '*Executive Investment Bond*' ('the Skandia Plan') issued by Royal Skandia Life Assurance Limited. The policy was in GBP and was issued on 11 January 2013 with a premium of GBP89,644.93.⁵⁸

The value of the Complainant's account with the Retirement Scheme is linked to the value of the underlying Skandia Plan which is, in turn, linked to the performance of the respective portfolio of underlying investments held within the said policy.

Underlying Investments

Whilst neither the Complainant nor the Service Provider presented any table summarising the investments undertaken during the contested period of CWM, the Arbiter was able to extract details of the underlying investment portfolio from the statements submitted by the Complainant attached to his Complaint Form.

Table A below includes an overview of the investments transactions undertaken within the underlying Skandia Plan as per the information resulting from the '*Historical Cash Account Transactions*' statement presented by the Complainant,⁵⁹ which covered the period from 11/01/2013 to 20/08/2019:⁶⁰

⁵⁷ A fol. 189

⁵⁸ A fol. 19-20

⁵⁹ A fol. 42-54

⁶⁰ A fol. 43

Table A - Overall Portfolio

Investment Name (as indicated in the said statement)	Date bought	CCY	Purchase amount	Date sold/ matured	CCY	Maturity/ Sale price	Capital Loss/ Profit (excl. div.)	% of Capital loss/ profit (excl. div) on capital invested
Nomura 5Y East to West 5	21/02/13	GBP	38,000	19/08/14	GBP	38,190	190	0.5 %
Commerzbank 1Y Pharma Inc NT	22/02/13	GBP	50,000	24/02/14	GBP	50,000	0	0
Commerzbank AG GLBL Pharma Note	21/03/14	GBP	26,000	23/03/15	GBP	26,000	0	0
RBC Large Tech Inc 8% 25/03/16	25/03/14	GBP	26,000	26/03/18	GBP	4,977.90	-21,022.10	-80.85 %
RBC Online Large Caps Inc Note	05/09/14	GBP	5,000	05/09/16	GBP	2,425	-2,575	-51.50 %
Leonteq 1.5Y Multi Barrier	19/09/14	GBP	5,000	23/04/15	GBP	4,900	-100	-2%
Nomura Inc NT US Diversified ST	1/10/14	GBP	28,000	01/10/15	GBP	464.91	-27,535.09	-98.34 %
EFG EY MB Exp Cert Red March 1	01/04/15	GBP	1,962.80	20/03/17	GBP	122.50	-1,840.30	-93.76 %
Leonteq TCM Blue 2Y Multi Barr Bitauto Navios Maritime WW	21/04/15	EUR	12,510	06/03/17	EUR	4,529.84	-7,980.16	-63.79 %
Commerzbank 2Y AC RCB Worst of TLW JCP BBRY TWTR	24/04/15	EUR	12,000	24/04/17	EUR	3,470.16	-8,529.84	-71.08 %
EFG Red April 6	08/05/15	EUR	6,000	08/05/17	EUR	222.63	-5,777.37	-96.29 %
RBC GBP Notes Linked to P UN, Yelp UN, CTRP UQ, Expe UQ	13/09/16	GBP	2,425	13/09/17	GBP	1,499.63	-925.37	-38.16 %
Total capital loss (excl. div.) on GBP & EUR denominated structured note investments							(-GBP53,807.86) & (-EUR22,287.37)	

It is clear that the investment portfolio underlying the Skandia Plan constituted solely of structured notes.

The above table further indicates substantial realised capital losses (exclusive of dividends) arising from such investments.

It is also noted that, as indicated in Table B below, even when taking into consideration the dividends received (which result from the information in the *Historical Cash Account Transactions* statement), substantial **realised** losses still arise on the overall portfolio.

Table B - Performance of Structured Note investments (inclusive of dividends)

Investment Name (as indicated in the 'Historical Cash Account Transactions' statement)	CCY	Capital Loss/ Profit (excl. div.)	Total Dividends Received	Total Loss/Profit (inclusive of dividends)	% of Total loss/ profit (incl. of div.) on capital invested
Nomura 5Y East to West 5	GBP	190	0	190	0.5 %
Commerzbank 1Y Pharma Inc NT	GBP	0	4,250 ⁶¹	4,250	8.5 %
Commerzbank AG GBLB Pharma Note	GBP	0	2,600 ⁶²	2,600	10 %
RBC Large Tech Inc 8% 25/03/16	GBP	-21,022.10	4,160 ⁶³	-16,862.10	-64.85 %
RBC Online Large Caps Inc Note	GBP	-2,575	875.01 ⁶⁴	-1,699.99	-33.99 %
Leonteq 1.5Y Multi Barrier	GBP	-100	225 ⁶⁵	125	2.5 %
Nomura Inc NT US Diversified ST	GBP	-27,535.09	2,800 ⁶⁶	-24,735.09	-88.34 %

⁶¹ 4 dividend payments of GBP1062.50 each.

⁶² 4 dividend payments of GBP650 each.

⁶³ 8 dividend payments of GBP520 each.

⁶⁴ 7 dividend payments of GBP125 each.

⁶⁵ 2 dividend payments of GBP112.5 each.

⁶⁶ 4 dividend payments of GBP700 each.

EFG EY MB Exp Cert Red March 1	GBP	-1,840.30	358.4 ⁶⁷	-1,481.90	-75.50 %
Leonteq TCM Blue 2Y Multi Barr Bitauto Navios Maritime WW	EUR	-7,980.16	3,900 ⁶⁸	-4,080.16	-32.62 %
Commerzbank 2Y AC RCB Worst of TLW JCP BBRY TWTR	EUR	-8,529.84	1,824 ⁶⁹	-6,705.84	-55.88 %
EFG Red April 6	EUR	-5,777.37	0	-5,777.37	-96.29 %
RBC GBP Notes Linked to P UN, Yelp UN, CTRP UQ, Expe UQ	GBP	-925.37	0	-925.37	-38.16 %
Total capital loss (incl. div.) on GBP & EUR denominated structured note investments				(-GBP38,539.45) & (-EUR16,563.37)	

According to the *Historical Cash Account Transactions* statement provided, the Complainant is calculated to have experienced a material total realised capital loss (inclusive of dividends) of (-GBP38,539.45) on the portfolio of GBP denominated structured note investments and of (-EUR16,563.37) on the EUR denominated structured notes.

It is clear, that the Complainant has accordingly experienced a material loss overall on his investment portfolio which solely constituted of structured notes as indicated above.

Hence, it has clearly emerged that the Complainant did indeed experience substantial capital losses on his investment portfolio, with such material losses attributed to the structured note investments.

It is noted that the above losses are calculated strictly on the portfolio of investments. The said losses do not take into account fees charged to the Scheme. The total losses actually experienced on the Scheme would accordingly be higher when taking into account all the various fees paid out of the Scheme's assets.

⁶⁷ 8 dividend payments of GBP44.8 each.

⁶⁸ 8 dividend payments of EUR487.50 each.

⁶⁹ 8 dividend payments of EUR228 each.

The Legal Framework

As part of the consideration of this Complaint, it is pertinent to refer to the legal framework applicable to STM Malta and the Retirement Scheme and the responsibilities, duties and obligations emerging under such framework.

The Retirement Scheme and STM Malta 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 2015.⁷⁰

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 authorisation by the MFSA under the RPA.

The Trusts and Trustees Act (Chapter 331 of the Laws of Malta), ('TTA') is also much relevant and applicable to the Service Provider as per Article 1(2) and Article 43(6)(c) of the TTA, in light of STM Malta's role as the Retirement Scheme Administrator and Trustee of the Retirement Scheme.

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',

⁷⁰ 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/>

with Article 43(6)(c) in turn providing 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 ...'

Responsibilities of the Service Provider

STM Malta 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 STM Malta 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, STM Malta 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, STM Malta 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 STM Malta in its role as Retirement Scheme Administrator under the SFA/RPA regime respectively, it is pertinent to note the following general principles:⁷¹

⁷¹ Emphasis added by the Arbitrator.

- 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 STM Malta 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 ...'

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 STM Malta 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 STM Malta 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'

Duties as a Trustee

As highlighted above, the Trusts and Trustees Act ('TTA'), Chapter 331 of the Laws of Malta is also relevant for STM Malta considering its capacity as Trustee of the Scheme.

Article 21(1) of the TTA 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 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, STM Malta 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*'.⁷²

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'.⁷³

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,

⁷² Editor Max Ganado, '*An Introduction to Maltese Financial Services Law*', Allied Publications 2009, p. 174.

⁷³ *Op. cit.* p. 178

quasi-contract or trusts. 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'.⁷⁴

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 STM Malta in its actions and which shall accordingly be considered in this decision.

Observations and Conclusions

Allegations in relation to fees

The Complainant also made certain allegations relating to the fees and charges.

The Arbiter has, however, not found sufficient evidence to uphold the Complainant's claim on fees.

With respect to fees and charges, the Arbiter would like to make a general observation. The Arbiter considers that the trustee and scheme administrator of a retirement scheme, in acting in the best interests of the member as duty bound by law and rules to which it is subject to, is required to be sensitive to, and mindful of, the implications and level of fees applicable within the whole structure of the retirement scheme and not just limit consideration to its own fees.

In its role of a *bonus paterfamilias*, the trustee of a retirement scheme is reasonably expected to ensure that the extent of fees applicable within the whole structure of a retirement scheme is reasonable, justified and adequate overall when considering the purpose of the scheme. Where there are issues or concerns these should be reasonably raised with the prospective member or member as appropriate.

Consideration would in this regard need to be given to a number of aspects including: the extent of fees vis-à-vis the size of the respective pension pot of

⁷⁴ Pg. 9 – Consultation Document on Amendments to the Pension Rules issued under the Retirement Pensions Act [MFSA Ref: 09-2017], dated 6 December 2017.

the member; that the extent of fees are not such as to inhibit or make the attainment of the objective of the Scheme difficult to be actually reached without taking excessive risks; neither that the level of fees motivate investment in risky instruments and/or the construction of risky portfolios.

Key consideration

The Complaint, in essence, revolves around the claim that the Complainant experienced a loss on his Retirement Scheme due to STM Malta not having adequately carried out its duties as administrator and trustee of the Scheme with the Complainant raising various aspects.⁷⁵

In the particular circumstances of this case, and on the basis of the evidence resulting, the Arbiter considers that he is in a position to consider a principal alleged failure made by the Complainant against STM Malta.

This principal alleged failure relates, in this case, to the claim that STM Malta failed to ensure that the investments were in line with his '*Low to Medium*' risk profile and in his best interest as the Complainant claimed massive risks were allowed to be taken on his portfolio with his capital being invested in totally unsuitable structured notes which were not aimed for retail investors but for professional investors only, and with the constituted portfolio being '*unsuitable for the purpose of building a secure pension fund for [his] future retirement*'.⁷⁶

The Arbiter shall consider this aspect based on the information resulting from this case.

General observation

On a general note, it is clear that STM Malta did not provide itself investment advice in relation to the underlying investments of the Retirement Scheme. The role of the investment advisor was the duty of other parties, such as, CWM.

This would reflect on the extent of responsibility that the financial advisor and the RSA and Trustee had in this case as will be later seen in this decision.

⁷⁵ A fol. 5-9

⁷⁶ A fol. 5 & 6

However, despite that the Retirement Scheme Administrator was not the entity which provided the investment advice to invest in the contested investment portfolio, **STM Malta had nevertheless certain obligations to undertake in its role of Trustee and Scheme Administrator.**

The obligations of the trustee and retirement scheme administrator in relation to a retirement plan are important ones and could have a substantial bearing on the operations and activities of the scheme and affect directly, or indirectly, its performance.

Consideration thus needs to be made as to whether STM Malta failed in any relevant obligations and duties and, if so, to what extent any such failures are considered to have had a bearing or otherwise on the financial performance of the Scheme and the resulting loss for the Complainant.

Permitted portfolio composition

The Arbiter refers to the composition of the permitted investment portfolio and the realised losses as indicated in the section of this decision titled '*Underlying Investments*' above and notes that the Complainant's portfolio had been allowed to comprise solely of structured note investments with considerable exposure to individual structured note products also prevailing in multiple instances.

The portfolio of investments indeed commenced with around 98% of the Complainant's capital being allowed to be invested into just two structured notes at the time.⁷⁷ The Complainant's underlying investment portfolio continued to remain solely exposed to structured notes investments in subsequent years with various material exposures in a few structured note investments as can be seen in Table A in the section titled '*Underlying Investments*' above.

The said table also indicates that there were various instances of high exposures to single structured note investments as well as high exposure to single issuers (such as RBC, Nomura, and Commerzbank) where in the case of high exposures

⁷⁷ A fol. 44 - A material investment of GBP38,000 into one single product, the *Nomura 5Y East to West 5*, and another substantial investment of GBP50,000 into the *Commerzbank 1Y Pharma Inc NT* together amounting to GBP88,000 and constituting at the time 98.17% of the total premium of GBP89,644.93.

to single issuers this occurred at the time of purchase of the respective product and/or through cumulative purchases of structured notes issued by the same issuer.

The said exposures to structured products, both overall and individually, that were allowed to prevail by the Service Provider in the Complainant's portfolio do not provide any comfort regarding the prudence that was required to be achieved with respect to the investment portfolio, nor comfort regarding an adequate level of diversification being ensured or that such a portfolio composition was reflective of and compatible to a portfolio of a retirement scheme whose scope was to provide for retirement benefits.

Standard Operational Condition ('SOC') 2.7.1 and 2.7.2 of 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 in 2010⁷⁸ until the registration of the Scheme under the RPA after this came into force into 2015, stipulated various benchmarks with respect to investment portfolios of retirement schemes by providing conduct of business rules related to a scheme's assets.

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 ...*'.

SOC 2.7.2, in turn, required the Scheme Administrator 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*',⁷⁹ and that such assets are '*properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole*'.⁸⁰

SOC 2.7.2 of the Directives also provided other benchmarks including for the portfolio to be '*predominantly invested in regulated markets*';⁸¹ to be '*properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings*',⁸² where the exposure to single issuer was: in

⁷⁸ A fol. 200

⁷⁹ SOC 2.7.2 (a)

⁸⁰ SOC 2.7.2 (b)

⁸¹ SOC 2.7.2 (c)

⁸² SOC 2.7.2 (e)

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.⁸³

Despite the said standards STM Malta allowed the portfolio to comprise solely of structured products with individual exposures to single issuers at times being seemingly in excess of 20% of the portfolio (this being the maximum limit applied in the Rules to diversified investment instruments, such as collective investment schemes whose performance was not materially impacted or determined by a single underlying asset); and, in certain cases, even higher than 30%, the latter being the maximum limit applied in the Rules to relatively safer investments such as deposits as outlined above.

As Trustee and Retirement Scheme Administrator of the Scheme, STM Malta should have indeed intervened and not allow such portfolio composition. Whilst STM Malta was not the investment advisor, however, in its capacity of Trustee of the Scheme and Retirement Scheme Administrator it had the power and authority, besides the duty, not to permit such portfolio composition to be undertaken within its Scheme, given that the portfolio was not reflective of the requirement, which it had to ensure, that assets were to be invested in a prudent manner and also reflective of the scope for which the Scheme was created - that is, to provide for retirement benefits rather than being a speculative investment vehicle.

The Service Provider itself chose not to demonstrate and submit any proof whatsoever that the investments allowed within the Retirement Scheme were done in a prudent manner and reflective of the rules to which it was subject as mentioned in the section titled '*Responsibilities of the Service Provider*' above.

In its reply and submissions, the Service Provider chose to omit and not delve into any details of the actual investment portfolio and neither did it submit any justifications and explanations of how the investment portfolio of the

⁸³ SOC 2.7.2 (h)(iii) & (v)

Complainant was in line with the applicable requirements and followed the prudence principle. This despite the material nature of the claim made by the Complainant including that the investments were outside of his risk profile.

Another important aspect relevant to the determination of the inadequacy of the portfolio composition which has been considered by the Arbiter in arriving to the above conclusions, is also the nature, as well as the features of the type of structured note investments, that were being allowed to be invested into, within the Scheme as described hereunder.

Fact Sheets

The Complainant submitted fact sheets in respect of the following structured notes⁸⁴ which featured in his investment portfolio:

- the Nomura 5Y East to West 5 with ISIN no. XS0875788878;⁸⁵
- the Commerzbank AG GLBL Pharma Note with ISIN no. XS1035007969;⁸⁶
- the RBC Large Tech Inc 8% 25/03/16 with ISIN no. XS1015512533;⁸⁷ and
- the RBC Online Large Caps Inc. Note with ISIN no. XS1092556452.⁸⁸

The fact sheets for the said notes indicated the products as being linked to a number of underlying stocks (equity) or financial indices. Fixed income returns were indicated in the said fact sheets as 10% p.a. for the above-mentioned structured notes with the exception of the RBC Large Tech Income Note whose fixed level of income was 8% p.a.

It is noted that the high rate of returns indicated on these products in themselves reflect the high level of risk being taken as per the risk-return trade-off.

It is further noted that the fact sheets of the said structured notes highlighted a number of risks in respect of the capital invested into these products. Apart from the credit risk of the issuer and the liquidity risk, the indicated fact sheets further highlighted risk warnings about the notes not being capital

⁸⁴ (Name of structured note as reflected in the Historical Cash Account Transactions.)

⁸⁵ A fol. 55 & 56

⁸⁶ A fol. 60 & 61

⁸⁷ A fol. 64 & 83

⁸⁸ A fol. 70 & 71

protected, warning that the investor could possibly receive less than the original amount invested, or potentially even losing all of the investment.

A particular feature emerging in the indicated structured notes involved the application of capital buffers and barriers. In this regard, the fact sheets described and included warnings that the invested capital was at risk in case of a particular event occurring. Such event comprised a fall, observed on a specific date of more than a percentage (specified as 50% of the initial value in the respective fact sheets), in the value of any underlying asset to which the structured note was linked.

The said fact sheets also included a warning on the lines that if any stock has fallen by more than 50% (a Barrier breach) then investors receive the performance of the Worst Performing Stock at Maturity, and capital will be lost.⁸⁹

It is clear that there were material consequences if just one asset, out of a basket of assets to which the said structured notes were linked, fell foul of the indicated barrier. The implication of such a feature should have not been overlooked nor discounted, even more so when high individual exposures to single structured notes were being taken.

Whilst the fact sheets of other structured notes invested into were not presented, it is nevertheless clear that the portfolio of the Complainant indeed included structured notes which carried certain risks not reflective of a prudent approach as one would expect in a pension portfolio and as ultimately required in terms of the rules outlined in the section titled above.

Such investments also did not reflect the low/medium risk attitude of the Complainant and, even more, when one considers that his investment portfolio was solely constituted of structured products and also material positions were being taken into single products.

⁸⁹ E.g. Fact sheets in respect of the *RBC Large Tech Income Note (A fol. 65)* and the *RBC Online Large Caps Income Note (A fol. 71)* with similar disclosure featuring in the other fact sheets provided.

For example, there were on various occasions material positions being taken into a single-structured product some of which constituted between approximately 30 - 55%⁹⁰ of the original transfer value respectively.

The Arbiter does not have figures of the value of the portfolio at the respective time of purchase of the products, where the respective percentages into a single product could have been even higher in case where the value of the other existing investments had dropped in value.

The Arbiter considers that an objective assessment of the investment portfolio would indicate that the investments chosen were, in the context of a pension scheme, not even suitable for an investor with a higher attitude to risk, let alone for the Complainant, who had a low/medium risk attitude, who looked for '*protection*' as one of his first financial planning priorities and whose investment experience was limited to low risk investments such as '*UK Gov. Premium Bonds*' and deposits with UK Banks.⁹¹

The Arbiter is of the view that not only was the investment portfolio not of '*low risk*', but rather one involving substantial high risks as reflected in the extent of realised losses experienced by the Complainant, where many of the structured notes invested into yielded a capital loss, some of which on nearly all or substantial parts of the capital invested,⁹² even when taking into consideration dividend payments.

By its very nature, a pension scheme is not a speculative investment account/vehicle.

Moreover, it is also noted that the fact sheets presented all specify, that the target audience for these products were '*Professional Investors Only*',⁹³ and accordingly such products were not aimed for retail investors, as the Complainant was. The structured notes cannot accordingly be deemed to have somehow either been in his best interests as they did not reflect *inter alia* his profile of a retail investor nor a low/medium attitude to risk.

⁹⁰ E.g. GBP28,000 of GBP89,644.93 = 31.23%; GBP50,000 of GBP89,644.93=55.78%.

⁹¹ A fol. 158 & 159

⁹² As detailed in the section titled '*Underlying Investments*' above

⁹³ Fact sheets refer - for example, section titled '*Key Features*' and '*Target Audience*' in the fact sheets issued by RBC refer.

Other aspects

Alleged 'Limited' role of STM Malta

The Service Provider submitted in its reply that its role was 'limited' where it *inter alia* argued that the Complainant 'signed the various forms confirming the investments were his choice and acknowledged the Respondent's (limited) role that did not include advising on investments'.

The Service Provider also stated in its reply that:

'... under the provisions governing the Respondent's appointment, given the Respondent's limited role, the Respondent had the benefit of various indemnities and warranties ...'.⁹⁴

Furthermore, STM Malta also submitted that:

'the role of the trustee was to hold the Executive Bond as trustee of the Complainant being a member of the Plan, and not to step into the shoes or duties of the investment advisor selected by the Complainant himself who had advised the selection of the Executive Bond by the Complainant and who would advise any further purchases or disposals of the pool of investments structured via the Executive Bond'.⁹⁵

Whilst it is true that STM Malta's role in respect of the Scheme did not involve the provision of investment advice, however, STM Malta's role in respect of the Scheme is far from 'limited' as indicated above, and such comments by the Service Provider rather demonstrate a lack of appreciation and understanding of the significance of the role of a trustee and retirement scheme administrator in respect of a retirement scheme; besides, a possible disregard of the regulatory requirements applicable thereto.

The Service Provider is ultimately responsible to answer in respect of its duties and role in relation to the Retirement Scheme.

⁹⁴ A fol. 180

⁹⁵ A fol. 183

Reference to various disclaimers

In its submissions, the Service Provider also based its defence by quoting various disclaimers and provisos included in its own forms. Apart that a service provider should not hide behind such disclaimers or use them to avoid answering for reasonable and justified complaints made against it in relation to its responsibilities, in the circumstances of the case, **where a lack of diligence on the part of the Service Provider has been determined as described in this decision, not much weighting can be attributed to the said disclaimers.**

No comfort relating to the underlying portfolio

As already indicated, no adequate comfort has emerged that the investments were suitable for inclusion in a pension portfolio, something which the Service Provider has not even contested during the proceedings of this case, other than pointing out that structured notes 'were a permitted pension investment'.⁹⁶

Whilst structured notes could have possibly been allowed, there is no apparent justification for allowing *all the portfolio* to be invested into such instruments, nor for the excessive exposures being taken cumulatively and even at times on single investments individually.

Hence, the general statements made by the Service Provider do not provide any comfort whatsoever in the circumstances of this case, even more so, when it has been determined that the Complainant's portfolio included investments not suitable for a retail member and of a high risk.

The Complainant is ultimately claiming losses which are equivalent to nearly 70% of the total amount invested into his Retirement Scheme.⁹⁷

The Arbiter further notes that during the proceedings of this case, the Service Provider never contested the extensive losses claimed by the Complainant.

The material losses claimed are indeed in themselves indicative of the failure in achieving the Retirement Scheme's primary objective 'to provide a life-time

⁹⁶ A fol. 180

⁹⁷ (GBP61,712.54 of sum invested in the Executive Investment Bond of GBP89,644.93 (A fol. 180) = 68.8%.

income to the Member',⁹⁸ and in the failure to ensure an adequate level of diversification and assets being invested in a prudent manner. Such material losses, which are reasonably not expected to occur in a pension product whose scope is to provide for retirement benefits, would have otherwise not occurred.

It is clear that STM Malta permitted an investment portfolio that cannot be construed as reflecting the principle of prudence and in the best interests of the Complainant as was required in terms of the rules as amply explained above.

Causal link

The actual cause of the losses experienced by the Complainant on his Retirement Scheme cannot just be attributed to the alleged actions/fraud by the investment advisor as argued by the Service Provider in its submissions and/or losses of market movements in the value of the investments selected by the advisor.

There is sufficient and convincing evidence of deficiencies on the part of STM Malta in the undertaking of its obligations and duties as Trustee and Retirement Scheme Administrator of the Scheme as amply highlighted above. At the very least, such deficiencies impinge on the diligence STM Malta was required and reasonably expected to exercise in such roles.

It is also sufficiently clear that such deficiencies prevented the losses from being minimised and, in a way, contributed in part to the losses experienced. The actions and inactions that occurred, as explained in this decision, enabled such losses to result within the Scheme, leading to the Scheme's failure to achieve its key objective.

Had STM Malta undertaken its role adequately and as duly expected from it in terms of the obligations resulting from the law, regulations and rules stipulated thereunder, as explained above, such losses would have been avoided or mitigated accordingly.

⁹⁸ A fol. 189

The actual cause of the losses is indeed linked to and cannot be separated from the actions and/or inactions of key parties involved with the Scheme, with STM Malta being one of such parties.

The losses experienced on the Retirement Scheme is, in the case in question, ultimately tied, connected and attributed to events that have been allowed to occur within the Retirement Scheme which STM Malta was duty bound and reasonably in a position to prevent, stop and adequately raise as appropriate with the Complainant.

Final remarks

Whilst the Retirement Scheme Administrator was not responsible to provide investment advice to the Complainant, the Retirement Scheme Administrator had a duty to check and ensure that the portfolio composition recommended by the investment advisor was *inter alia* in line with the applicable requirements and reflected the profile and objective of the Complainant in order to ensure that the interests of the Complainant were duly safeguarded.

It should have also ensured that the portfolio composition was one enabling the aim of the Retirement Plan to be achieved with the necessary prudence as one would reasonably expect from a retirement plan, promoting in the process the scope for which the Scheme was established.

The principal purpose of a personal retirement scheme is ultimately that to provide retirement benefits. Such purpose is so important that it has been ingrained and reflected in the primary legislation, the Special Funds (Regulation) Act ('SFA')⁹⁹ and the Retirement Pensions Act ('RPA'), itself.¹⁰⁰

⁹⁹ 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 ...*'.

¹⁰⁰ 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*'.

The Complainant ultimately relied on STM Malta as the Trustee and Retirement Scheme Administrator of the Scheme, as well as other parties within the Scheme's structure, to achieve the scope for which the pension arrangement was undertaken, that is, to provide for retirement benefits and also reasonably expect a return to safeguard his pension.

Moreover, with respect to the portfolio composition, the Arbiter considers that whilst losses may indeed occur on investments within a portfolio, a properly diversified and balanced and prudent approach, as expected in a pension portfolio, should have mitigated any individual losses and, at the least, maintain rather than substantially reduce the original capital invested.

For the reasons amply explained above, it is accordingly considered that there was, at the very least, a clear lack of diligence by the Service Provider in the general administration of the Scheme in respect of the Complainant and in carrying out its duties as Trustee with respect to the permitted investment portfolio.

The Arbiter also considers that the Service Provider did not meet the '*reasonable and legitimate expectations*'¹⁰¹ of the Complainant who had placed his trust in the Service Provider and others, believing in their professionalism and their duty of care and diligence.

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.

However, cognisance needs to be taken of the responsibilities of other parties involved with the Scheme and its underlying investments, particularly, the role and responsibilities of the investment advisor to the member of the Scheme.

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.

¹⁰¹ Cap. 555, Article 19(3)(c)

Compensation

Being mindful of the key role of STM Malta Pension Services Limited as Trustee and Retirement Scheme Administrator of the STM Malta Retirement Plan and, in view of the deficiencies identified in the obligations emanating from such roles as amply 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 STM Malta for part of the realised losses experienced on his investment portfolio.

In the particular circumstances of this case, considering the role of STM Malta as Trustee and Retirement Scheme Administrator of the Scheme, the Arbiter considers it fair, equitable and reasonable for STM Malta to be held responsible for seventy per cent of the realised losses sustained by the Complainant on his overall investment portfolio, that is, the portfolio of structured notes.

In this regard, the amount of compensation is being calculated on the total cumulative realised losses (after deducting any realised gains and dividend payments received) arising on the underlying investment portfolio constituted by CWM.

The Net Realised Loss calculated accordingly on such portfolio amounts to (-GBP38,539.45) on the GBP denominated investments and (-EUR16,563.37) on the EUR denominated investments as per calculations included in the section titled '*Underlying Investments*' above.

The compensation being awarded in this decision shall accordingly amount to seventy per cent of (-GBP38,539.45) on the GBP denominated investments and seventy per cent of (-EUR16,563.37) on the EUR denominated investments which total GBP26,977.62 and EUR11,594.36 respectively.

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders STM Malta Pension Services Limited to pay the sum of GBP26,977.62 and EUR11,594.36 respectively as compensation to the Complainant.

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

The expenses of this case are to be borne by the Service Provider.

**Dr Reno Borg
Arbiter for Financial Services**