

Before the Arbiter for Financial Services

Case No. 084/2019

ZP

(‘the Complainant’)

vs

Integrated-Capabilities (Malta) Ltd

**(C50348) (‘ICML’) as substituted by
Optimus Fiduciaries (Malta) Ltd**

Sitting of the 6 July 2021

The Arbiter,

PRELIMINARY

Having seen the **Complaint** made against Integrated-Capabilities (Malta) Ltd, relating to The Optimus Retirement Benefit Scheme No. 1 (‘the Retirement Scheme’ or ‘Scheme’), this being a personal retirement scheme licensed by the Malta Financial Services Authority (‘MFSA’).¹

The Retirement Scheme is established in the form of a trust and was previously administered by Integrated-Capabilities (Malta) Ltd, its previous Trustee and Retirement Scheme Administrator.

The Arbiter is aware, from another case before him, case no. 107/2019,² involving a complaint against Integrated-Capabilities (Malta) Ltd (‘ICML’) in relation to the Scheme, that Integrated-Capabilities (Malta) Ltd was eventually,

¹ <https://www.mfsa.mt/financial-services-register/result/?id=9519>

² Decided today

in the year 2020,³ substituted by Optimus Fiduciaries (Malta) Ltd as the new retirement scheme administrator and trustee of the Scheme.

For all intents and purposes of this decision, the new trustee and retirement scheme administrator of the Scheme, Optimus Fiduciaries (Malta) Ltd, is the entity which, at the date of this decision, will follow any order issued by the Arbiter to the Trustee and Retirement Scheme Administrator of the Scheme.

Having considered, in its entirety, the Complaint including attachments, filed by the Complainant with the OAFS,⁴

Where, in summary and in essence, the Complainant claimed that the Service Provider was not allowing her to transfer her pension back to the UK.

The Complainant explained that she wanted to transfer all her pension and assets back to the UK, with immediate effect, to a pension scheme of her choice, but the Service Provider keeps refusing her request. She submitted that she had a right to transfer her pension.

The Complainant requested the Trustee to transfer all assets including legal documents and legal title to the property held within her Retirement Scheme back to the UK to the company of her choice.⁵

Having considered, in its entirety, ICML's reply, including attachments,⁶

Where, in summary and in essence, ICML replied that it will allow a transfer to a UK scheme subject to the receiving scheme and any other relevant parties satisfying its due diligence checks, which it noted were in place to protect members.

ICML explained that it kept the Complainant informed on the status of the transfer and that it had not outrightly refused to make a transfer as this is pending its satisfaction of the due diligence checks.

³ Following a Deed made on the 29 May 2020 between Integrated-Capabilities (Malta) Ltd and Optimus Fiduciaries (Malta) Ltd – A fol. 779 of Case 107/2019

⁴ A fol. 1 - 84

⁵ A fol. 4

⁶ A fol. 98 - 124

In essence, ICML claimed the following reasons for not being satisfied with its due diligence checks:

- (i) That the Complainant, who is being assisted by Brian McLean of Assured Trustees Ltd in her complaint, wished to transfer her Retirement Scheme to a UK scheme, referred to as the Bushido Scheme. ICML claimed that Brian McLean is involved with Tynebank Claims Ltd (a claims management company incorporated in the UK), and is also a director and beneficial owner of Assured Trustees Ltd, the trustee of Bushido Scheme;
- (ii) That it undertook enhanced due diligence when: (a) Brian McLean started dictating to ICML the manner how ICML was to communicate with the Complainant. The Service Provider claimed that Brian McLean was insisting with the Complainant not to speak to ICML when the latter tried to contact the Complainant by phone to discuss the transfer; (b) pressure was being exercised to rush the transfer;
- (iii) That it discovered that the financial statements of the Bushido Scheme retrieved via the UK company registry, indicate no or very little activity to date. ICML referred to the unaudited abridged accounts for the year ended 05 April 2018 in respect of Bushido Capital Limited in this regard;⁷
- (iv) That from its enhanced due diligence ICML found that the trustee of the Bushido Scheme was Assured Trustees Ltd and that both the Bushido Scheme and Assured Trustees Ltd had Premier Mortgage Club Ltd as their beneficial owner. ICML claimed that Brian McLean was listed as director and beneficial owner of Premier Mortgage Club Ltd and was also director and beneficial owner of the claims management companies, Tynebank Claims Ltd and Financial Claims Support Services Ltd.

ICML accordingly considered Brian McLean as having significant control and influence on matters related to the Bushido Scheme, the trustees of the Bushido Scheme and also on the indicated claims management/support companies;

- (vi) That ICML considered the said links, between the claims management company, trustee and pension scheme to which the request for transfer is

⁷ A fol. 113

being made, to give rise to conflicts of interest and that such significant controls and influence by the same person may not be in the Complainant's best interest. ICML was further concerned that there may be another agenda to the transfer.

The Service Provider further noted that one other aspect which added to their concerns was that the Complainant, in reply to a questionnaire sent to her by ICML, confirmed that she obtained advice to transfer from Assured Trustees Ltd.

ICML submitted that it has acted in the best interest of the Complainant and that it would be irresponsible to undertake the transfer until the due diligence enquiries are concluded.

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

Further Considers:

The Arbiter refers to case no. 107/2019⁸ which involved, *inter alia*, a similar request from a number of Scheme members to transfer out of the Retirement Scheme into the *Bushido Support Services Community Interest Company* ('the Bushido Scheme'), originally named as *Bushido Capital Limited*.⁹

The Arbiter is applying in full hereto, the same considerations and decision taken in case no. 107/2019 with respect to the said request to transfer out where, in summary and in essence, it was considered and decided as follows:

- (a) That the Arbiter considers that there is validity to certain issues identified as stalling the satisfactory conclusion of the Service Provider's due diligence process in respect of the requested transfer.

The Arbiter's decision took into consideration the submissions made by the Service Provider on this specific matter and also recent information publicly available with respect to the financial standing, common links, regulatory status and track record of parties relevant to the Bushido Scheme as follows:

⁸ Also decided today

⁹ According to the records held at the UK Companies House, previously named as: '*Bushido Capital Pensions Community Interest Company*' during the period '*09 Jan 2019 - 19 May 2020*' and named as '*Bushido Capital Limited*' during the period '*12 Feb 2014 - 09 Jan 2019*' - <https://find-and-update.company-information.service.gov.uk/company/08891797>

(i) Where according to the latest information publicly available from the UK's Companies House it emerged that:

(i.i) Premier Mortgage Club Ltd and Financial Claims Support Services Ltd were dissolved via voluntary strike-off on 22 September 2020 and 17 September 2019 respectively. Prior to being dissolved, Premier Mortgage Club Ltd had a deficit '*Capital and reserves*' of (£9,562) according to its latest Micro-entity Accounts as at 30 June 2019,¹⁰ whilst Financial Claims Support Services Ltd had '*Total Shareholders funds*' of £1 according to its latest Balance Sheet as at 31 July 2018.¹¹

(i.ii) That the latest:

- '*Micro-entity Accounts*' of Tynebank Claims Ltd as at 28 February 2021,¹²
- '*Micro-entity Accounts*' of Assured Trustees Ltd as at 5 April 2020,¹³
- '*Financial Statements and Accounts for The Year Ended 5 April 2020*', of Bushido Support Services Community Interest Company;¹⁴

all indicated a net deficit position as further explained in case no. 107/2019 under the section titled '*Request to Transfer Out*'.

(i.iii) That Brian McLean featured in all of the aforementioned companies¹⁵ ¹⁶ hence confirming the common links highlighted by the Service Provider and potential for conflict of interest

¹⁰According to its latest available Micro-entity Balance Sheet as at 30 June 2019 -

<https://find-and-update.company-information.service.gov.uk/company/SC325607/filing-history>

¹¹As detailed in its '*Dormant Accounts*' as at that date –

<https://find-and-update.company-information.service.gov.uk/company/SC572219/filing-history>

¹² <https://find-and-update.company-information.service.gov.uk/company/SC574884/filing-history>

¹³ <https://find-and-update.company-information.service.gov.uk/company/08987364/filing-history>

¹⁴ <https://find-and-update.company-information.service.gov.uk/company/08891797/filing-history>

¹⁵ https://find-and-update.company-information.service.gov.uk/officers/d1xsvrF_2AG77f3itJDrAlmBWi8/appointments

¹⁶ <https://find-and-update.company-information.service.gov.uk/officers/4TQoNi3mTy1LL0fzsY2I2QDhmJM/appointments>

arising from having a common party involved in the claims management company, the pension scheme into which the transfer is being requested and the trustee of such scheme.

(ii) Where according to The Financial Services Register of the Financial Conduct Authority ('FCA') in UK:

(ii.i) the regulatory status of Tynebank Claims Ltd¹⁷ had '*Lapsed Since 18/05/2021*',¹⁸ which meant that '*This firm no longer has temporary permission to undertake claims management business*'.¹⁹

(iii) That, following Brian McLean's notification letter to the OAFS dated 17 March 2021, that Bushido Support Services Community Interest Company, (i.e. the Bushido Scheme) had purchased Tynebank Claims Ltd and that as of 1 February 2021, Bushido Support Services Community Interest Company was to represent all Tynebank Claims Ltd's clients,²⁰ where the former was described as follows:

'Bushido Support Services 100% not-for-profit CIC is exempt from regulation by the Financial Conduct Authority but adheres to its principles',²¹

it appeared that as at end of May 2021, no comfort could be derived either that there were regulated companies involved with the claims/ transfer, as none of the entities featuring in the claims/ transfer seemed to be regulated as at May 2021.

That, furthermore, despite the extensive documentation presented during the case, no basis and/or supporting evidence was provided as to the claim that The Pensions Regulator in the UK ('TPR'), *'considers Assured Trustees to be a professional organisation ...'*²²

¹⁷ Tynebank Claims Limited was previously described as having '*permissions to carry out Claims Management Activities under the Financial Conduct Authority Reference Number: FRN829745*' – A fol. 3 of case 107/2019

¹⁸ <https://register.fca.org.uk/s/firm?id=0010X00004KSqDkQAL>

¹⁹ <https://register.fca.org.uk/s/search?q=829745&type=Companies>

²⁰ A fol. 936 of Case 107/2019

²¹ *Ibid.*

²² A fol. 815 of Case 107/2019

and that *'Bushido's scheme is regulated by the Pension Regulator, not the FCA ...'*²³

- (b) That the arguments made by the Service Provider that it needs to be adequately satisfied of its due diligence exercise prior to proceeding with the transfer in order *'to preserve and safeguard the interests of the Scheme'* and act in the best interests of its members are being accepted by the Arbiter.
- (c) That taking into consideration the submissions made and other information as described above, the Arbiter considered that there was validity to the probing and additional comfort required by the Service Provider in relation to the pension scheme identified for the transfer out prior to the Service Provider being in a position to proceed with the requested transfer.
- (d) That in its submissions, the Service Provider confirmed that it:

*'would consider transferring to an alternative pension provider if they still wished to proceed with a transfer out of the Scheme. To date, none of the Members provided us with an alternative'*²⁴

That such uncontested statement indicated that members were not being precluded to transfer out to a Scheme of their choice as long as adequate due diligence is carried out to the reasonable satisfaction of the Service Provider which *inter alia* is bound *'to preserve and safeguard the interests of the Scheme'* and, thus, of its individual members, and act in their best interests.

Conclusion

In the particular circumstances of this case, and for the reasons explained, the Arbiter considers that the actions taken by the trustee to require further comfort and request its due diligence exercise to be satisfactorily satisfied prior to transferring to the Bushido Scheme, do not appear frivolous,

²³ A fol. 824 of Case 107/2019

²⁴ A fol. 461 of Case 107/2019

unjustified or unreasonable in the circumstances and is being accepted by the Arbiter.

That whilst it is indeed a right of the member to request a transfer out in terms of the applicable rules and requirements, the Trustee and Retirement Scheme Administrator is also duty bound to act within, and adhere to, the provisions of the laws, rules and requirements applicable in respect of its function.

That the Trustee and Retirement Scheme Administrator is ultimately required to act in the best interests of the Scheme's member in relation to a request to transfer out and fully cooperate in the context of a favourable outcome of a reasonable due diligence exercise.²⁵

The Arbiter considers that, in the particular circumstances of this case, and for the reasons explained, there are no sufficient reasonable, fair and/or justifiable grounds on which the Arbiter can uphold the Complainant's request.

The complaint is accordingly being rejected.

Because of the novelty of this case each party is to bear its own costs of the proceedings.

**Dr Reno Borg
Arbiter for Financial Services**

²⁵ Such as in line with Condition 4.1.16 of *'Part B.4.1 Conduct of Business Rules'* of the *Pension Rules for Service Providers issued in terms of the Retirement Pensions Act, 2011* and the provisions outlined in the section titled *'B.5.3 Transfer out of the Retirement Scheme'* of section B.5 *'Conditions relating to information for Scheme Members and Beneficiaries'* of Part B of the *Pension Rules for Personal Retirement Schemes* issued by MFSA.