

Before the Arbiter for Financial Services

Case No. 107/2019 (which also includes Case No. 009/2020, 022/2020, 041/2020 and 042/2020)

VA and others, in total 62 (together 'the Complainants')

vs

Integrated-Capabilities (Malta) Ltd (C50348) as

substituted by Optimus Fiduciaries (Malta) Ltd (C90147)

('the Service Provider' or 'the Trustee')

Sitting of the 6 July 2021

The Arbiter,

PRELIMINARY

Having seen the **Complaint** made against Integrated-Capabilities (Malta) Ltd ('ICML') as substituted by Optimus Fiduciaries (Malta) Ltd (interchangeably 'the Service Provider' or 'the Trustee'), 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 administered by the Service Provider as its Trustee and Retirement Scheme Administrator.

Consideration of similar complaints

By a decree dated 19 December 2019, the Arbiter decided to treat the complaint filed by the first fifty-six complainants listed above as intrinsically similar in nature and to accordingly treat together the said complaints in line with Article

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

30 of Chapter 555 of the Laws of Malta ('the Act'). The complaints were treated together taking also into account Article 19(3)(d) of the Act, which obliges the Arbiter to deal with complaints in '*an economical and expedited manner*'.²

During the hearing of 14 July 2020,³ the Arbiter observed that apart from the complaint filed by the said fifty-six complainants, the Office of the Arbiter for Financial Services ('OAFS') also received a similar complaint in case 009/2020 involving three complainants,⁴ as well as other similar individual complaints in case 022/2020,⁵ case 041/2020⁶ and case 042/2020.⁷ The Arbiter decided that given that all the said cases were intrinsically similar, the said complaints were also to be treated together as one, in Case No. 107/2019, in accordance with the Act.

Substitution of the Service Provider

During the hearing of 14 July 2020, the Arbiter raised the point that Integrated-Capabilities (Malta) Ltd had informed the OAFS that Optimus Fiduciaries (Malta) Ltd was the new trustee and retirement scheme administrator of the Retirement Scheme.

The Arbiter accordingly ordered a correction in the acts of the relevant cases involving the substitution of Integrated-Capabilities (Malta) Ltd by Optimus Fiduciaries (Malta) Ltd.⁸

Representative of Complainants

The Complainants were represented by Brian McLean ('the Representative') – initially, as an official of Tynebank Claims Ltd,⁹ which was described as a claims management company incorporated in the UK, and later as an official of Bushido

² A fol. 1-2

³ A fol. 475

⁴ XX; XX; and XX. Through a decree dated 28 January 2020, the Arbiter decided to treat their complaint as one, given they were treated as intrinsically similar – A fol. 19 of Case 009/2020.

⁵ Complaint filed by XX

⁶ Complaint filed by XX

⁷ Complaint filed by XX

⁸ A fol. 474

⁹ According to the records of the UK Companies House, Brian McLean is a Director of Tynebank Claims Ltd - <https://find-and-update.company-information.service.gov.uk/company/SC574884/officers>

Support Services CIC described as a '100% not-for-profit CIC' (community interest company).¹⁰

Withdrawal of Complaints

During the hearing of 29 July 2020, the Representative informed the Arbiter that '*four complainants have withdrawn their complaint*',¹¹ and that he had sent a notification to this effect to the OAFS.

The Representative was requested to clarify the information sent in his emails to the OAFS with respect to withdrawals as there was conflicting information. The clients that were ultimately indicated as having withdrawn their complaints were YY and YY.

The names of three other clients were also mentioned by the Representative but these three clients never featured in either of case 107/2019, 009/2020, 022/2020, 041/2020 and 042/2020.¹²

In his email to the OAFS of 8 June 2021, the Representative confirmed that given that '*we no longer represent the clients we withdrew the client's cases with the Arbiter*'.¹³ In reply to the OAFS's request for receipt of the authorisation held by the Representative authorising him to withdraw the complaints, the Representative replied that '*We do not require authorisation in the UK as the contract with the client was terminated*'.¹⁴

In the circumstances, the complaints originally filed by YY and YY are being considered by the Arbiter as having been withdrawn for the purposes of this decision. The reference to 'Complainants' throughout this case shall accordingly be construed to exclude YY and YY.

¹⁰ As per his letter addressed to the OAFS dated 17 March 2021 and signed in the capacity of Chief Executive of Bushido Support Services CIC where it was pointed out that '*Bushido Support Services CIC has purchased Tynebank Claims Ltd*' and that '*As of 1 February 2021, we will represent all Tynebank Claims Ltd's clients in all matters*' – A fol. 936

¹¹ A fol. 750

¹² Email from Brian McLean to OAFS dated 8 June 2021

¹³ *Ibid.*

¹⁴ *Ibid.*

Having considered in its entirety the Complaint including attachments, filed with the OAFS,¹⁵

Where, in summary and in essence, the Complainants claimed *inter alia* that the Service Provider: allowed, and failed to disclose, conflicts of interests involving the investments into The Resort Group ('TRG'); had a conflict of interest throughout the TRG investment process; failed to ensure consideration of the Complainant's circumstances, aims and investment objectives/strategy; and failed to ensure the appointment of adequately qualified financial advisors in relation to the transfer of their UK pension and the investments into TRG.

Various Complainants¹⁶ also highlighted another additional aspect in their Complaint Form to the Arbiter, namely, that the Service Provider was refusing to transfer their pension back into the UK, to a UK company of their choice, despite their repeated requests to the Trustee to undertake such transfer.

The Complainants made the following submissions, claims and allegations in their Complaint Form to the Arbiter:

- (1) That ICML had not replied to the complaint made by their Representative;
- (2) That the full details of their complaint can be found in the complaint letter that was attached to the Complaint Form.¹⁷ The said letter of complaint dated 17 July 2019,¹⁸ alleged: that the actions of ICML were in breach of the applicable rules; that ICML had not acted in the best interests of the complainants and placed post-sale barriers; that complainants were also unable to access all of their personal data.

¹⁵ A fol. 3 - 449 of Case 107/2019; A fol. 1-95 of Case 009/2020; A fol. 1-45 of Case 022/2020; A fol. 1-49 of Case 041/2020; A fol. 1-50 of Case 042/2020

¹⁶ XX (A fol. 71); XX (A fol. 83); Deborah Taylor (A fol. 119); XX (A fol. 125); XX (A fol. 137); XX (A fol. 149); Graham XX (A fol. 161); XX (A fol. 179); XX (A fol. 185); XX (A fol. 191); XX (A fol. 197); XX (A fol. 203); XX (A fol. 209); XX (A fol. 266); XX (A fol. 290); XX (A fol. 308); XX (A fol. 369); XX (A fol. 381); XX (A fol. 411); XX (A fol. 417); Stewart XX (A fol. 441); XX (A fol. 447); XX (A fol. 4 of Case 42/2020)

¹⁷ A fol. 9-12

¹⁸ A fol. 9

The letter of complaint, included various references to, and quotes from laws,¹⁹ and listed the following claims and requests:

- (i) Allegations of '*failure to comply with Data Subject Access Requests*' where it was claimed that ICML was refusing to comply with data subject access requests in full and preventing the Complainants from receiving all of their personal data held by ICML;
- (ii) Requests for details of the systems and procedures of the Service Provider on the '*Due diligence/suitability checks*' in relation to the underlying investment portfolio of clients as it was claimed that ICML had no such checks;
- (iii) Request for the reason as to why the Service Provider had not informed clients '*what was held within the investment bonds*';²⁰
- (iv) Request for explanation why the Service Provider did not provide clients with Annual Statements;
- (v) Allegations on conflict of interest in relation to The Resort Group ('TRG') investments where it was claimed that ICML must have been aware that TRG was owned by First Review Pension Services ('FRPS'). It was questioned why ICML did not see this as a conflict of interest and why it did not advise its scheme members accordingly. It was further alleged that FRPS was one of a number of introducers for TRG and clients were cold called by FRPS. It was also claimed that ICML had written to a number of clients thus acknowledging their meetings with FRPS, but chose not to disclose the conflict of interest.

¹⁹ Namely, the GDPR Act and Trusts & Trustees Act Cap. 331 ('TTA'), as well as MFSA rules, namely, the MFSA's Code of Conduct under the TTA and Conduct of Business Rules and Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act 2011 – as per the letter dated 17 July 2019 sent by Tynebank Claims Ltd to ICML (A fol. 9-12)

²⁰ A fol. 10

- (3) The Complainants claimed that they had reason to believe that FRPS, who cold called them, was owned by TRG and that the trustees failed to disclose this.
- (4) That the facts indicated that the trustee was working with TRG and not in the best interests of members.
- (5) That the Complainants believed they were a victim of conflict of interest between FRPS, TRG and the Scheme's trustees.
- (6) That the Complainants circumstances, aims and objectives were never considered and instead all parties appeared to be working to their own agenda.
- (7) That the investment strategy had never been discussed with the Complainants and they had serious concerns that the TRG investments (consisting of a bond and property holding investments) will never mature or be realised.
- (8) That the pension fund transfer activity had been concealed by using Strategic Wealth in Gibraltar where it was claimed this went against UK Law as it was alleged that Strategic Wealth was not a financial advisor with the required qualification.
- (9) That the trustee has instead appointed Templar EIS Ltd as the fund's financial advisor and instructed them to offer three options.

Request made by the Complainants

All of the Complainants requested the trustee of the Scheme to purchase any illiquid assets from their Scheme and place the money into their pension fund.

Some of the Complainants²¹ also requested the entire sum of money received from the Service Provider, together with interest, to be placed into a UK pension provider of their choice.

One of the Complainants²² worded his request slightly different where, in his Complaint Form, he requested the purchase by the Service Provider of '*any illiquid assets at full market value*', the placement of the proceeds into his pension fund as well as to '*encash my pension and transfer it to the company of my choice*'.²³

Having considered, in its entirety, the Service Provider's reply, including attachments,²⁴

Where, in summary and in essence, the Service Provider refuted all the claims made against it as being unfounded in fact and at law, claiming *inter alia* that: it did not have any conflicts of interest; it acted in line with the regulatory requirements; it was not satisfied with its due diligence carried out in relation to the Bushido Scheme into which the transfer out was requested to be made; that it considered the Representative to have conflicts of interests as he had common links and significant control on the claims management company, the Bushido Scheme and its trustee; that the remedy requested for the Trustee to purchase any illiquid assets and place the proceeds into the Scheme went contrary to the Malta Pension Rules.

In its reply, ICML submitted the following:

- (i) That the letter of formal complaint dated 17 July 2019, was replied to by ICML on 9 January 2020, and that the delay in replying was also caused by the additional work and issues caused to them by the Representative;²⁵

²¹ XX (A fol. 71); XX (A fol. 83); XX (A fol. 119); XX (A fol. 125); XX (A fol. 137); XX (A fol. 149); Graham Robert Figg (A fol. 161); XX (A fol. 179); XX (A fol. 185); XX (A fol. 191); XX (A fol. 197); XX (A fol. 203); XX (A fol. 209); Lynn XX (A fol. 266); XX (A fol. 290); XX (A fol. 308); XX (A fol. 369); XX (A fol. 381); XX (A fol. 411); Robin Kenneth Crosby (A fol. 417); XX (A fol. 441); XX (A fol. 447); XX (A fol. 4 of Case 42/2020)

²² XX (A fol.10 of Case 009/2020).

²³ *Ibid.*

²⁴ A fol. 458-466

²⁵ A fol. 459

- (ii) That, in May 2019, it had performed enhanced due diligence on the Representative, who is known to ICML from other related issues,²⁶ which due diligence, it was claimed revealed that:
- the recent financial statements of the Bushido Scheme indicated no or very little activity;
 - the Representative had significant control and influence on matters related to the trustees of the Bushido Scheme, this being Assured Trustees Ltd, apart from significant control and influence on the company handling the Complainants' claims, Tynebank Claims Ltd;
 - the Bushido Scheme and Assured Trustees Ltd had a common beneficial owner, Premier Mortgage Club Ltd. The Service Provider further noted that the Representative was in turn listed as director and beneficial owner of Premier Mortgage Club Ltd, Financial Claims Support Services Ltd and Tynebank Claims Ltd, apart from being also director (and indirect beneficial owner) of Assured Trustees Ltd.
- (iii) That the Service Provider considered such links to give rise to conflicts of interests. The Service Provider was concerned that there may be another agenda to the transfer and questioned the real intention of the transfer and whether this was in the best interests of the Complainants. It further indicated the possibility of a scam.
- (iv) That the Service Provider did not act as tied agent of either TRG or FRPS and its relationship with TRG is restricted to the Service Provider acting as trustee of the Scheme where, by virtue of the said role, the Service Provider holds various investments issued by TRG (as underlying investments of the Scheme) on behalf of the members of the Scheme as instructed by the same members.
- (v) That Strategic Wealth was appointed as investment adviser by the members prior to joining the Scheme. It was claimed that such advisor acted as an independent advisor as it held no ties to the Service Provider

²⁶ The Service Provider referred to case 084/2019 of Benita Wilding against Integrated-Capabilities (Malta) Ltd.

and neither with FRPS or TRG. It was also noted that the advisor was appropriately licensed and regulated as allowed in terms of the MFSA rules applicable at the time.

The Service Provider further explained that Strategic Wealth, as independent investment advisors, *'recommended TRG as part of the Members portfolio as a long term income producing asset that would support the income for life concept and at the time when they provided recommendations they worked on the basis that there was a liquidity option after 5 years of investment with TRG and a large portion of each members portfolio was kept liquid for any unforeseen retirement benefit payments during this 5 year period'*.²⁷

It was further pointed out that members received suitability letters from their investment advisor regarding the TRG investment and that the members had confirmed their agreement in writing to the recommendations made by Strategic Wealth.

- (vi) That the Service Provider had no conflict of interest with TRG, FRPS or the investment advisor of the Complainants, Strategic Wealth, and that the Service Provider acted in line with its regulatory obligations, ensuring that investments were permitted and were in accordance with the Scheme's investment policy, the Scheme rules and the rules of the MFSA that were applicable at the time of investment.
- (vii) That there was no requirement under the Scheme or MFSA rules requiring the Retirement Scheme Administrator to purchase illiquid assets.
- (viii) That the TRG assets are still held within the Scheme.
- (ix) That, with respect to the transfer of assets, the Service Provider would like the Arbiter to refer to the contents of case number 084/2019 before him as the position of the Service Provider still stood.
- (x) That Templar EIS Ltd was considered to be suitably licensed and regulated with the MFSA to act as an investment advisor and that this company was recommended to certain members of the Member Directed Scheme who

²⁷ A fol. 459 - Case 107/2019; A fol. 102-103 – Case 009/2020; A fol. 52 – Case 022/2020; A fol. 58 – Case 041/2020; A fol. 59 – Case 042/2020

either did not have an appointed investment advisor or their existing advisor was no longer qualified to act in such role as was required in line with new MFSA rules that came into force on 1 January 2019.

It was also pointed out that a director of Templar EIS Ltd has confirmed its position and concerns on the Representative through its communication of 19 November 2019.²⁸

- (xi) That with respect to the status of the Representative, the Service Provider noted that Tynebank Claims Ltd is listed on the UK Financial Conduct Authority ('FCA') website as having a *'Temporary permission to carry out claims management activities'*.²⁹ It was pointed out that such permission did not however involve investment or pension transfer advice and that neither the Representative nor any of the entities in which he has an interest has any authorisation by the FCA to provide financial, pension or investment advice.
- (xii) That the original complaint forms submitted to the OAFS refer to 68 members but the list of members filing a complaint with the Arbiter is 56.
- (xiii) That the Service Provider is aware from conversations with some of the Scheme's members *'that some felt they might have been misled or pushed into making a claim by Tynebank's use of scaremongering tactics, such as suggesting that they could have lost their pension assets or that the Scheme was a scam'*.³⁰
- (xiv) That, after the Service Provider discussed the allegations with members, some advised that they wished to withdraw their original complaints after the Service Provider:
 - provided them with reassurance that the Scheme was in existence and regulated by a competent regulator and that the Scheme still held the assets in question and is subject to an independent audit;

²⁸ A fol. 460

²⁹ *Ibid.*

³⁰ A fol. 461

- outlined the common tactics employed by scammers and explained ICML's concerns that their pension could be subject to a potential scam.

(xv) That the Service Provider informed those members wishing to transfer out of the Retirement Scheme that it would consider transferring to an alternative pension provider other than the Bushido Scheme, but at the date of its reply, none of the Members provided it with an alternative.

Having heard the parties and seen all the documents and submissions made, including the witness statements, additional submissions and respective attachments,

Further Considers:

Delay by the Service Provider in replying to the formal complaint

Firstly, the Arbiter notes that the formal complaint dated 17 July 2019 sent by the Representative was only replied to by ICML, nearly 6 months thereafter, through its letter of 9 January 2020.

The Arbiter deems it highly inappropriate for ICML to have taken so long to issue its formal reply to the formal complaint sent to it by the Complainants through their Representative. It is indeed considered that there is no reasonable excuse for such excessive and unnecessary lengthy delay and procrastination in replying to the formal complaint.

The Arbiter would like to highlight the importance that a financial services provider is duty bound to reply promptly and expeditiously to complaints filed by consumers of financial services, besides ensuring that complainants are provided with a reply which is comprehensive, clear and easy to understand.

Preliminary Plea - Request made by the Complainants for the Trustee to purchase illiquid assets

Since the Service Provider raised the plea that the remedy requested by the Complainants, that is, for the Trustee to purchase any illiquid assets held within their Retirement Scheme, went contrary to the Pensions Rules applicable in Malta, the Arbiter will deal with this plea first.

The consideration of such aspect first and foremost is also in view that the Arbiter may not grant a remedy which goes beyond that being requested by the Complainants and, also, given that the Arbiter's adjudication is limited to that permitted within the provisions of the Arbiter for Financial Services Act, Chapter 555 of the Laws of Malta ('the Act'), Article 26(3) of the said Act.

The Arbiter further notes that during the hearing of 1 December 2020, during which an official from the Insurance and Pensions Supervision Unit of MFSA testified, the said official made reference to Standard Licence Condition B.3.2.1, condition 4 of the Pension Rules for Personal Retirement Schemes.³¹

The MFSA's official testified that the said condition states that a retirement scheme shall not engage directly or indirectly in transactions with any of its members and added that,

'The purchase of any illiquid assets would be tantamount to a transaction and as such it would run counter to the rules'.³²

During the said sitting it was also *inter alia* noted that:

'The rules say that the Scheme which is administered by the RSA cannot engage directly with the Members, and so, the RSA cannot purchase from the Members'.³³

The Arbiter notes that Standard Licence Condition 3.2.1 of Part B.3.2 titled '*Investment Restrictions of a Personal Retirement Scheme ("the Scheme")*', of the Pension Rules for Personal Retirement Schemes states the following:

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

...

*iv. subject to paragraph (vi), a Scheme shall not engage, directly **or indirectly**,³⁴ in transactions with, or grant loans to, any of its Members or connected persons thereto.*

³¹ A fol. 899

³² A fol. 900

³³ *Ibid.*

³⁴ Emphasis added by the Arbiter

Considering the facts and particular circumstances of this case, the Arbiter agrees with the testimony of the MFSA's official quoted above that the RSA cannot purchase from the Members any assets or engage with them directly or indirectly as the above-mentioned Rules provide.

Moreover, the Arbiter considers that he does not have the powers, in terms of the Act, to order the Trustee to purchase any illiquid assets from the members as the requested remedy does not fall within any such powers available to the Arbiter under the Act, particularly, Article 26(3)(c).

Hence, the Arbiter considers that those Complainants³⁵ whose request for remedy in the Complaint Form was only limited to a request for the Trustee to *'Purchase any illiquid assets from me and put the money into my pension fund'*,³⁶ cannot be considered further by the Arbiter.

Furthermore, for the avoidance of doubt, had the Complainants' request involved a request for payment of *'an amount of compensation for any loss of capital or income or damages suffered by the complainant as a result of the conduct complained of ...'*, as permitted in terms of Article 26(3)(c)(iv) of the Act, the Arbiter still considers that no loss of capital or income or claim of damages has been clearly, adequately and sufficiently substantiated by the Complainants in this case.

It is further considered that:

- no valuations were provided in respect of the contested assets which, is noted, are still held within the portfolio as confirmed by the Service Provider;³⁷

³⁵ XX (A fol. 47); XX (A fol. 53); XX (A fol. 59); XX (A fol. 65); XX (A fol. 77); XX (A fol. 89); XX (A fol. 95); XX (A fol. 101); XX (A fol. 107); XX (A fol. 113); XX (A fol. 131); XX (A fol. 143); XX (A fol. 155); XX (A fol. 167); XX (A fol. 173); XX (A fol. 254); XX (A fol. 260); XX (A fol. 272); XX (A fol. 278); XX (A fol. 284); XX (A fol. 296); XX (A fol. 302); XX (A fol. 314); XX (A fol. 363); XX (A fol. 375); XX (A fol. 387); XX (A fol. 393); XX (A fol. 399); XX (A fol. 405); XX (A fol. 423); XX (A fol. 429); XX (A fol. 435); XX (A fol. 4 of Case 009/2020); XX (A fol. 16 of Case 009/2020); XX (A fol. 4 of Case 022/2020); XX (A fol. 4 of Case 041/2020).

³⁶ Section D of the Complaint Form, section titled *'Describe clearly the remedy you are seeking'*

³⁷ A fol. 461

- apart from the aspects already raised, not even the price (such as whether at cost, market price or other lower or higher benchmark) at which the illiquid asset was requested to be bought was specified by the Complainants (with the exception of one)³⁸ in their Complaint. The extent of any requested monetary compensation is accordingly unclear.

Specific requests by certain Complainants requesting the transfer out of the Retirement Scheme

The Arbiter shall proceed next to consider the other specific request made by those Complainants who requested a transfer out of the Retirement Scheme to their identified UK scheme.

Request to Transfer Out

A number of Complainants³⁹ requested, in their Complaint Form for the Trustee to transfer out their Retirement Scheme to a UK pension provider of their choice.

The said transfer out was requested to be made into the Bushido Capital Pensions Community Interest Company ('the Bushido Scheme').⁴⁰

The Arbiter notes that the Trustee of the Scheme is required to *inter alia* adhere to 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* by the MFSA.

The said condition stipulates the following:

'4.1.16 The Service Provider shall co-operate fully with any duly appointed replacement Service Provider to ensure a proper, orderly and complete transfer of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the Scheme and its Members and

³⁸ XX who requested the purchase of illiquid assets at full market value (A fol.10 of Case 009/2020).

³⁹ XX (A fol. 71); XX (A fol. 83); XX (A fol. 119); XX (A fol. 125); XX (A fol. 137); XX (A fol. 149); XX (A fol. 161); XX (A fol. 179); XX (A fol. 185); XX (A fol. 191); XX (A fol. 197); XX (A fol. 203); XX (A fol. 209); Lynn XX (A fol. 266); XX (A fol. 290); XX (A fol. 308); XX (A fol. 369); XX (A fol. 381); XX (A fol. 411); XX (A fol. 417); XX (A fol. 441); XX (A fol. 447); XX (A fol. 4 of Case 42/2020)

⁴⁰ According to the records of the UK's Companies House this changed its name to Bushido Support Services Community Interest Company in May 2020:

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

Beneficiaries and/or the Retirement Fund and its unitholders/ Investors as applicable.'⁴¹

The Arbiter further notes that the Service Provider had certain concerns, following its due diligence exercise in relation to the Bushido Scheme.

Having considered the submissions made by the Service Provider on this specific matter, the Arbiter considers that there is validity to certain issues identified as stalling the satisfactory conclusion of the Service Provider's due diligence process. This is also when taking into consideration recent information publicly available with respect to the financial standing, common links, regulatory status and track record of parties mentioned in this case relevant to the Bushido Scheme as follows:

(i) *Financial status & common links* - Details of the common links and financial status of the respective entities mentioned in this case, namely of:

- Tynebank Claims Ltd (Co. no. SC574884);
- Assured Trustees Limited (Co. no. 08987364).
- Bushido Support Services Community Interest Company (Co. no. 08891797) previously known as Bushido Capital Pensions Community Interest Company;⁴²
- Premier Mortgage Club Ltd (Co. no. SC325607);
- Financial Claims Support Services Ltd (Co. no. SC572219)

are publicly available from the UK's Companies House.

It is noted that 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 them being dissolved, Premier Mortgage Club Ltd had a deficit '*Capital and reserves*' of (£9,562) for the year 2019 according to its latest available Micro-entity Balance Sheet as at 30 June 2019,⁴³ whilst Financial Claims Support Services Ltd had

⁴¹ Emphasis added by the Arbiter

⁴² <https://find-and-update.company-information.service.gov.uk/company/08891797>

⁴³ <https://find-and-update.company-information.service.gov.uk/company/SC325607/filing-history>

'Total Shareholders funds' of £1 according to its latest Balance Sheet as at 31 July 2018 as detailed in its 'Dormant Accounts' as at that date.⁴⁴

The latest 'Micro-entity Accounts' of Tynebank Claims Ltd as at 28 February 2021, available from the UK's Companies House, indicated *inter alia* that the said entity had *Total net (liabilities)* or negative *Capital & Reserves* of (£116,106) as at 31/08/2019 and of (£2,912) as at 28/02/2021.⁴⁵

The latest 'Micro-entity Accounts' of Assured Trustees Ltd as at 5 April 2020, available from the UK's Companies House, indicated *inter alia* that the said entity had *Total net (liabilities)* or negative *Capital & Reserves* of (£3,837) as at 2019 and of (£4,451) as at 2020.⁴⁶

The latest 'Financial Statements And Accounts For The Year Ended 5 April 2020', of Bushido Support Services Community Interest Company, available from the UK's Companies House, indicated *inter alia* net liabilities of (£22,465) represented by a negative Profit & Loss Account of (£22,465) as at the date of the said statement.⁴⁷

Hence, all of the indicated existing companies had a net deficit position according to the indicated statements.

The Complainants' Representative featured in all of the said companies as evidenced from the information available from the UK's Companies House, hence, confirming the common links highlighted by the Service Provider and potential conflict of interest 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.⁴⁸

- (ii) *Regulatory Status* - The letterhead of Tynebank Claims Ltd, which was described as a claims management company incorporated in UK, stated that:

⁴⁴ <https://find-and-update.company-information.service.gov.uk/company/SC572219/filing-history>

⁴⁵ <https://find-and-update.company-information.service.gov.uk/company/SC574884/filing-history>

⁴⁶ <https://find-and-update.company-information.service.gov.uk/company/08987364/filing-history>

⁴⁷ <https://find-and-update.company-information.service.gov.uk/company/08891797/filing-history>

⁴⁸ <https://find-and-update.company-information.service.gov.uk/officers/4TQoNi3mTy1LL0fzsY2I2QDhmJM/appointments>

'Tynebank Claims Limited has permissions to carry out Claims Management Activities under the Financial Conduct Authority Reference Number: FRN829745'.⁴⁹

In answering to the question posed by the Service Provider as to what qualifications and licences the Representative had to act in the capacity of Professional Advisor for the Complainants, the Representative itself placed emphasis on the regulatory status held with the FCA, just stating in its reply that *'Tynebank Claims Ltd is regulated by the FCA for claims management activities'.⁵⁰*

It is noted that, as at end May 2021, The Financial Services Register of the Financial Conduct Authority ('FCA') in UK, however, indicated the status of Tynebank Claims Ltd as *'Lapsed Since 18/05/2021'.⁵¹*

The term *'Lapsed'* was explained as follows in the FCA's website:

'This firm no longer has temporary permission to undertake claims management business'.⁵²

The Arbiter further notes that the Representative had advised the OAFS, through a letter dated 17 March 2021, that Bushido Support Services CIC, (that is, the Bushido Scheme) had purchased Tynebank Claims Ltd and that as of 1 February 2021, Bushido Support Services CIC will represent all Tynebank Claims Ltd's clients.⁵³

The letterhead of Bushido Support Services CIC⁵⁴ states *inter alia* that:

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

Hence, it appears that, as at end of May 2021, no comfort can be derived that there are regulated companies involved with the claims/transfer, as

⁴⁹ A fol. 3

⁵⁰ A fol. 815

⁵¹ <https://register.fca.org.uk/s/firm?id=0010X00004KSqDkQAL>

⁵² <https://register.fca.org.uk/s/search?q=829745&type=Companies>

⁵³ A fol. 936

⁵⁴ *Bushido Support Services Community Interest Company* is a UK registered company (with Company Registration No. 08891797) and whose previous name up till 19 May 2020 was *'Bushido Capital Pensions Community Interest Company'*

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

none of the entities featuring in the claims/transfer seem to be regulated as at that date.

It is further noted that, in replying to the questions posed by the Service Provider to the Representative about the experience and qualifications of Assured Trustees Ltd, the Representative just noted that The Pensions Regulator in the UK ('TPR'), '*considers Assured Trustees to be a professional organisation ...*'.⁵⁵

No further basis and/or supporting evidence was however provided.

It is also noted that in a letter dated 26 March 2020, issued by the lawyers of Tynebank Claims Ltd, Assured Trustees Ltd and Bushido Capital Pensions Community Interest Company, it was *inter alia* noted that '*Bushido's scheme is an Occupational Pension Scheme*' and that '*Bushido's scheme is regulated by the Pension Regulator, not the FCA ...*'.⁵⁶

During the proceedings of this case no supporting evidence of the regulatory status with the Pension Regulator (TPR) and type of permission or authorisation held with the Pensions Regulator (TPR) has however been produced despite the extensive documentation presented by the Representative.

The Arbiter accepts 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.

Taking into consideration the submissions made and other information as described above, the Arbiter furthermore considers that there is validity to the probing and additional comfort required by the Service Provider in relation to the pension scheme identified by the Complainants prior to it being in a position to proceed with the requested transfer.

The Arbiter also notes that in its submissions, the Service Provider confirmed that members were informed that it '*would consider transferring to an*

⁵⁵ A fol. 815

⁵⁶ A fol. 824

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'.⁵⁷

Such a statement, which was not contested by the Complainants, indicates that the Complainants are not being precluded by the Service Provider 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 is *inter alia* bound 'to preserve and safeguard the interests of the Scheme,' and, thus, of its individual members and act in their best interests.

In the particular circumstances of this case, and for the reasons amply 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, unjustified or unreasonable in the circumstances.

Whilst the Complainants can 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 his roles. The Trustee and Retirement Scheme Administrator is ultimately required to act in the best interests of the Complainants in relation to a request to transfer out and fully co-operate in the context of a favourable outcome of a reasonable due diligence exercise.⁵⁸ It has not been adequately and sufficiently proven that this was not the case.

Conclusion

The Arbiter considers that, in the particular circumstances of this case, and for the reasons amply explained above, there are no sufficient reasonable, fair and/or justifiable grounds on which the Arbiter can uphold the remedy requested by the Complainants on the basis of the submissions made and the

⁵⁷ A fol. 461

⁵⁸ 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.

facts presented and emerging during this case. The complaint made by the Complainants is accordingly being rejected by the Arbiter.

Considering the novelty of this case, each party is to bear its own costs of these proceedings.

**Dr Reno Borg
Arbiter for Financial Services**