



MALTA

**QORTI TAL-APPELL**  
(Sede Inferjuri)

**ONOR. IMĦALLEF**  
**LAWRENCE MINTOFF**

Seduta tal-15 ta' Settembru, 2023

Appell Inferjuri Numru 138/22 LM

**Christopher Ball (Detentur tal-Passaport nru. GBR 518406710)**  
(*'l-appellant'*)

**vs.**

**STM Malta Pension Services Limited (C 51028)**  
(*'l-appellata'*)

**Il-Qorti,**

**Preliminari**

1. Dan huwa appell magħmul mir-rikorrent **Christopher Ball (Detentur tal-Passaport nru. GBR 518406710)** [minn issa 'l quddiem 'l-appellant'] mid-deċiżjoni tal-Arbitru għas-Servizzi Finanzjarji [minn issa 'l quddiem 'l-Arbitru'] mogħtija fit-28 ta' Settembru, 2022, [minn issa 'l quddiem 'id-deċiżjoni

appellata’], li permezz tagħha ddecieda li jilqa’ parti mill-ilment tiegħu fil-konfront tas-soċjetà intimata **STM Malta Pension Services Limited (C 50128)** [minn issa ‘l quddiem ‘is-soċjetà appellata’], u dan safejn kompatibbli mad-deċiżjoni appellata, u wara li kkonsidra li l-istess soċjetà appellata għandha tinżamm biss parzjalment responsabbli għad-danni sofferti, huwa ddikjara li a tenur tas-subinċiż (iv) tal-para. (ċ) tas-subartikolu 26(3) tal-Kap. 555, hija għandha tħallas lill-appellant il-kumpens fis-somma ta’ GBP196,376.92 (mija sitta u disgħin elf tliet mija sitta u sebghin Lira Sterlina u tnejn u disgħin pence) kif ukoll iċċedi jew tirrifondi l-*exit fees* tagħha jekk applikabbli, bl-imgħaxijiet legali mid-data ta’ dik id-deċiżjoni appellata sad-data tal-effettiv pagament, filwaqt li s-soċjetà appellata kellha tħallas l-ispejjeż kollha konnessi ma’ dik il-proċedura.

## **Fatti**

2. Il-fatti tal-każ odjern jirrigwardaw it-telf eventwali li allegatament jgħid li sofra l-appellant mill-investment li huwa kien għamel tramite s-soċjetà appellata fi skema tal-irtirar magħrufa bl-isem Harbour Retirement Scheme [minn issa ‘l quddiem ‘l-Iskema’]. Jirriżulta li l-imsemmi appellant kien ċempillu ċertu wieħed Marc Rees, li huwa kien fehem li kien konsulent finanzjarju ma’ *Aspinal Chase*, għall-ħabta ta’ Lulju, 2013, fejn offrieli li mingħajr l-ebda dritt jew kumpens jirrevedi l-investment tal-pensjoni tiegħu. Imbagħad għall-ħabta tat-8 ta’ April, 2014 l-istess Marc Rees talbu sabiex jikteb u jiffirma ittra li huwa kien persuna idonea sabiex tinvesti ma’ Blackmore Global, u sussegwentement il-pensjoni kollha tiegħu giet investita b’dan il-mod. F’Dicembru, 2016, l-appellant kien għamel talba sabiex jifdi l-investment tiegħu, u saħansitra talab

bosta drabi għall-informazzjoni. Iżda kien biss permezz ta' ittra tal-11 ta' Awwissu, 2020 li s-socjetà appellata kienet infurmatu bil-preokkupazzjonijiet tagħha dwar l-istess investment.

### **Mertu**

3. L-appellant ipprezenta lment quddiem l-Arbitru fil-11 ta' Frar, 2021 fil-konfront tas-socjetà appellata, fejn issottometta fost affarijiet oħra li din bħala *trustee*/amministratrici tal-Iskema kienet ippermettiet li l-investment tal-pensjoni tiegħu kollha fil-Blackmore Global Fund, li ma kien joffri l-ebda trasparenza, kien jipprezenta riskju għoli, ma kien bl-ebda mod regolat u saħansitra ma kienx wieħed likwidu, u dan fejn huma sallum ma kienu jafu xejn dwaru. Għalhekk, huwa kien qed jitlob li (i) il-valur tal-pensjoni tiegħu jerga' għal dak li kien orġinarjament u jiġi aġġustat sabiex jirrifletti t-telf; (ii) tinghata rifużjoni tad-drittijiet kollha mħallsa minnu; (iii) il-pensjoni tiegħu tiġi ttrasferita fi flus lil provditur tas-servizzi finanzjarji regolat ġewwa r-Renju Unit a spejjeż tas-socjetà appellata; u (iv) jitħallsu danni għad-dwejjaq u għall-inkonvenjenza kkawżati.

4. L-imsemmija socjetà appellata wiegbet fit-9 ta' Marzu, 2021 billi eċċepiet li (a) skont id-disposizzjonijiet tal-para. (ċ) tas-subartikolu 22(1) tal-Kap. 555, l-Arbitru ma kellu l-ebda kompetenza sabiex jittratta l-ilment; (b) hija ma kinitx il-legittimu kuntradittur; (ċ) l-*ex trustees* u l-amministratturi tal-Iskema m'għandhom l-ebda setgħa li jagħtu parir dwar l-investimenti magħżulin mill-appellant stess; (ċ) kienu dawk il-persuni li taw il-parir lill-appellant sabiex jittrasferixxi l-pensjoni tiegħu, li kellhom jinżammu responsabbli għad-

deċiżjonijiet meħuda mill-appellant; (d) Harbour Pensions Limited agixxiet b' mod diligenti; u (e) ma kien hemm l-ebda delega tal-obbligi.

### **Id-deċiżjoni appellata**

5. L-Arbitru għamel is-segwent i konsiderazzjonijiet sabiex wasal għad-deċiżjoni appellata:

#### ***“The Merits of the Case***

*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 555 (fn. 95 Art. 19(3)(d)) which stipulates that he should deal with complaints in ‘an economical and expeditious manner’.*

The underlying investments - Exposure

*The Complainant applied to become a member of the Scheme on 18/04/2014. (fn. 96 P. 58) He was accepted by Harbour Pensions as a member on 13 May 2014. (fn. 97 P. 16 & 29)*

*As indicated in the ‘Subscription Statement and Current Valuation’ attached to the letter dated 29 July 2015 issued by Harbour Pensions, the Scheme was invested into four cells (sub-funds) forming part of the Blackmore Global PCC Limited, the BG Fund, as follows:*

- (i) Blackmore Sustainable Sub-Fund – a subscription of £42,735.03 (42,735.03 shares @ GBP1) allocated on 16 September 2014 as well as a further subscription of £16,325.69 (16,271.99 shares @ GBP1.0033) allocated on 22 January 2015, amounting in total to a subscription of £59,060.72;*
- (ii) Blackmore Lifestyle Sub-Fund - a subscription of £10,683.76 (10,683.76 shares @ GBP1) allocated on 16 September 2014 as well as a further subscription of £4,081.42 (3,986.15 shares @ GBP1.0239) allocated on 22 January 2015, amounting in total to a subscription of £14,765.18;*
- (iii) Blackmore Property Sub-Fund - a subscription of £85,470.07 (85,470.07 shares @ GBP1) allocated on 16 September 2014 as well as a further*

*subscription of £32,651.39 (32,469.56 shares @ GBP1.0056) allocated on 22 January 2015, amounting in total to a subscription value of £118,121.46;*

- (iv) *Blackmore Private Equity Sub-Fund - a subscription of £64,102.55 (64,102.55 shares @ GBP1) allocated on 16 September 2014 as well as a further subscription of £24,488.54 (24,017.79 shares @ GBP1.0196) allocated on 22 January 2015, amounting in total to a subscription value of £88,591.09.*

***Hence, the investment into the four cells of the BG Fund in total amounts to GBP280,538.45 according to the said statement. Apart from the amount invested into the BG Fund, the Complainant kept other assets in cash, as per the said statement. (fn. 98 P. 165) The valuation 'based on 30.04.2015 NAV' indicated a total value overall of GBP304,604.55.***

***It is accordingly noted that a staggering 95% of the Scheme's investible amount (of approx. GBP295,000), (fn. 99 £213,675.17 + £81,628.47 = £295,303.64 as per the 'Subscription Statement and Current Valuation' – P.165) was solely invested into the BG Fund, with 20% of such investible amount being placed in the Blackmore Sustainable Sub-Fund; (fn. 100 £59,060.72 of GBP295,303.64 = 20%) 5% into the Blackmore Lifestyle Sub-Fund; (fn. 101 £14,765.18 of GBP295,303.64 = 5%) 40% in the Blackmore Property Sub-Fund; (fn. £118,121.46 of GBP295,303.64 = 40%) and 30% in the Blackmore Private Equity GBP Sub-Fund. (fn. £88,591.09 of GBP295,303.64=30%)***

The underlying investments – Key Features & relevant observations

*As emerging from the copy of the Offering Document presented in respect of the BG Fund, this scheme and its cells had the following distinguishing features: (fn. 104 Emphasis added by the Arbiter)*

- (i) *Incorporated as a **closed-ended** investment company with limited liability on 2 October 2013, (fn. 105 P. 88) and 'tailored for long term investment'; (fn. 106 P.93)*
- (ii) *The **Cell Shares were 'non-voting, non-redeemable** preference shares'; (fn. 107 P. 89)*
- (iii) *Investors were 'not entitled to have their Cell Shares redeemed or repurchased by, or out of funds provided by the Company' and could not 'trade Cell Shares on an investment exchange' either; (fn. 108 P. 111)*
- (iv) *The Exit Strategy was very tight and restrictive. The Offering Document stated inter alia that 'Shareholders will **not be entitled to redeem their***

**shares at any time'** (fn. 109 P. 107) and that **each cell had 'a fixed investment period'** where 'At the end of each investment period, it is the intention of the Directors that the assets of the relevant Cell are sold and the proceeds distributed to the Cell Shareholders by way of an offer to repurchase the Cell Shares, a cash dividend or combination of the two'. (fn. 110 P. 96)

*The Offering Document further provided that 'In the event the Directors do not believe the market conditions are beneficial for the sale of any particular investment, **the Directors may extend the lifetime of any individual Cell or Cells at their discretion'**. (fn. 111 Ibid.)*

*Indeed, the Offering Document warned that 'The investor should be aware **the investment is viewed for the lifetime of the closed Cell ... A shareholder will not be permitted to assign or transfer its shares ... without prior consent of the Directors ... Shareholders must therefore be prepared to bear the risks of owning Cell Shares for an extended period of time in excess of the lifetime of a particular Cell'**. (fn. 112 P. 97)*

*As also emerging from the Fact Sheet produced during the case, the **lock-in period for the cells was of 10 years** as also described throughout the proceedings of the Complaint by both parties. (fn. 113 P. 76)*

- (v) *That **investments were 'not subject to any restriction and may hold any number of investments in any particular Cell'**; (fn. 114 P. 97)*
- (vi) *That with respect to borrowing and leverage the Directors of the BG Fund had **'unlimited power to borrow for the account of any Cell'**; (fn. 115 P. 96)*
- (vii) *That **'Investors may not recover the full value of their investment either during the life of the Company or on completion of the closed-ended period'**; (fn. 116 P. 97)*
- (viii) *That **'Close Ended Investment Companies are regarded as private arrangements and are not subject to regulation. A Close Ended Investment Company is not subject to approval in the Isle of Man and investors in such companies are not protected by any statutory compensation arrangements in the event of the Company's failure'**. (fn. 117 P. 111)*

***Given the features of the BG Fund and the extent of exposure to this single collective investment scheme, there are clearly concerns regarding the adequacy***

***of such investment and how this fitted and satisfied the scope of the Retirement Scheme and the applicable investment principles and restrictions.***

***The fact that:***

- ***the BG Fund was closed-ended, with no entitlement to redemptions;***
- ***the investment was of long-term having a fixed lock-in period of 10 years and where the lifetime of the cell could possibly be extended even further solely at the discretion of the directors;***
- ***the shares were non-voting and hence investors lacked control on the fund;***
- ***the fund was relatively new and had no, or very limited, track record of only around a year;***
- ***the fund was not subject to any restriction on investment;***
- ***the fund was not subject to regulation,***

***make it all amply clear that this was not an adequate investment for a retirement scheme.***

***Moreover, the fact that 95% of the investible premium was solely invested into the cells of the BG Fund makes it even more questionable how such investment could have been allowed and concerns not raised by (i) Harbour Pensions at the time of investment, and (ii) also by STM Malta at the time when it took over as trustee and RSA of the Scheme.***

***It should have clearly and immediately become evident to both Harbour Pensions and STM Malta that there are issues with this investment.***

***Irrespective of any confirmation letters from the Complainant or from any investment adviser (regulated or otherwise) regarding the alleged suitability of such investment, the Trustee had to undertake its own independent proper assessment.***

***A trustee cannot just abdicate from its responsibilities by relying on a third party who may have had his own interest and/or on a member's confirmation, an unprofessional retail investor, when it itself had such a key and important duty to ensure the proper administration of and the Scheme's compliance with its scope, the provisions of the trust deed and applicable regulatory requirements.***

Scope of the Scheme and oversight function by the Trustee/RSA

*The purpose of the Scheme is defined in the Trust Deed. Clause 2.4 of the Deed provides that:*

*'its principal purpose shall be and shall continue to be to provide retirement benefits during retirement and other benefits as set out in this Deed ...'. (fn. 118 P. 193)*

*As to the role of the Trustee/RSA with respect to investments, it is noted that as outlined in the Declaration section of the Retirement Scheme's Application Form, '... **the final decision in respect to the acceptance of any assets or investment into the Harbour Retirement Scheme is with the Administrator of the Harbour Retirement Scheme**'. (fn. 119 P. 57)*

*This aspect where the RSA had the final decision in respect of a member directed scheme, in order to ensure compliance and adherence with the investment restrictions/principles, is further reiterated in the 'Scheme Key Facts/Particulars Document' ('the Scheme Particulars'). The latter provided inter alia that 'The final decision in respect to the investment and the overall weighting within the Scheme rests with the Administrator' (fn. 120 P. 66) The Scheme Particulars also provided that 'The Administrator will retain ultimate control and discretion with regard to the investment decisions ...'. (fn. 121 P. 69)*

*It is noted that in its reply, STM Malta ultimately itself acknowledged that the Trustee/RSA had '... a regulatory obligation to ensure that the investments chosen are within the parameters of the rules applicable at the time'. (fn. 122 P. 159)*

*It is furthermore noted that clause 5.3.3 of the Trust deed also provided that 'for the purposes of 5.3.1 and 5.3.2 the directions from the Member to the Scheme Administrator shall be ... subject to the Retirement Scheme Administrator retaining the overall responsibility for the overall operation of the Scheme'. (fn. 123 P. 200)*

***The Trustee/RSA had accordingly a key monitoring function with respect to investments which function formed part of the important safeguards and controls on the Scheme's underlying investments.***

Investment principles and regulatory requirements

*Clause 5.6 of the Trust Deed provided that 'All investments of the Scheme ... shall be made in accordance with Maltese Law and with the Retirement Scheme Law'. (fn. 124 P. 201 – Emphasis added by the Arbiter)*

*'Retirement Scheme Law' was defined as meaning the Special Funds (Regulation) Act, ('SFA') including 'any regulation, rule, directive, guidance or requirement issued under it from time to time'. (fn. 125 P. 192)*



*Clause 5.4 of the Trust Deed further provided inter alia that '... the Retirement Administrator shall arrange for the Scheme assets to be invested in the best interest of Beneficiaries...'. (fn. 126 P. 200 – Emphasis added by the Arbiter)*

*With respect to investments, the Scheme Particulars issued at the time by Harbour Pensions, (fn. 127 P. 65) stipulated that:*

**'The Administrator must ... always execute investments within the parameters of restricted investments, prudent management and diversification as required by the MFSA'. (fn. 128 P. 66 – Emphasis added by the Arbiter)**

*The Scheme Particulars further stated that 'The MFSA imposes strict restrictions on investments ...' (fn. 129 Ibid.)*

*The MFSA's investment principles and regulatory requirements which originally applied to the Retirement Scheme, were specified in 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'). The said Directives applied from the Scheme's inception in 2013 until the registration of the Scheme under the RPA.*

*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 that the assets of a scheme are 'invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole' (fn. 130 SOC 2.7.2 (a)) and that such assets are 'properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole'. (fn. 131 SOC 2.7.2 (b))*

*SOC 2.7.2 of the Directives also provided other benchmarks including for the portfolio to be 'predominantly invested in regulated markets'; (fn. 132 SOC 2.7.2. (c)) to be 'properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings' (fn. 133 SOC 2.7.2 (e)) where the exposure to single issuer was: in 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. (fn. 134 SOC 2.7.2 (h)(iii) & (v))*

***Despite the standards of SOC 2.7.1 and SOC 2.7.2, Harbour Pensions allowed the Complainant's investment portfolio to comprise solely the investment into the BG***

***Fund and its cells. STM Malta did not question either, when it took over as Trustee/RSA, the portfolio's compliance with the mentioned investment principles and regulatory requirements.***

*The Arbiter also notes that following registration of the Scheme under the Retirement Pensions Act ('RPA') (fn. 135 The Retirement Pensions Act (Cap. 514) eventually replaced the Special Funds (Regulation) Act, 2002 when it came into force in January 2015. 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 authorization under the RPA) the Scheme became subject to the 'Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act 2011' (Pension Rules'). The investment restrictions for member directed schemes were outlined in Part B.2 titled 'Investment Restrictions of a Personal Retirement Scheme' and Part B.9, 'Supplementary Conditions in the case of entirely Member Directed Schemes' of the Pension Rules.*

*It is noted that SLC 3.2.1 of the Pension Rules provided inter alia that 'the Retirement Scheme Administrator shall ensure that the assets of the scheme are sufficiently liquid and/or generate sufficient retirement income to ensure that retirement benefits payments can be met closer to retirement date for commencement of retirement benefits'. (fn. 136 SLC 3.2.1 (iii) of Part B of the Pension Rules)*

*Whilst it is noted that SLC 9.5(d) of the Pension Rules, which also dealt with the conditions in relation to investments, included a footnote stating that 'The said investment restrictions shall apply to the current investments of members in a member directed scheme once any movements occur within the member's pension account or in the case of new investments entered into, as from 1st January 2019', **STM Malta should nevertheless still have promptly raised the matters involving the adequacy of the underlying portfolio – that is the lack of diversification, lack of liquidity and lack of compliance with the principles and requirements outlined, for necessary action to be taken.***

***The high exposure to the BG Fund and the peculiar features of such fund for a pension investment as outlined above, not only did not reflect and clearly went against the investment standards and principles outlined above but neither can they be construed to reflect the prudence, diligence and attention of a bonus paterfamilias required out of the Trustee of the Scheme.***

*Indeed, Article 21 (1) of the TTA which deals with the 'Duties of trustees', inter alia stipulates that the trustee should act as a **bonus paterfamilias**, where '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 their role as Trustee, Harbour Pensions and STM Malta respectively were accordingly duty bound to administer the Scheme and its assets to high standards of diligence and accountability.***

Compliance with investment conditions – Other

*It is noted that STM Malta argues in its reply that 'S.2.7.2(a) and (b) refer to the scheme as a whole and not to the pension assets of Mr Ball in isolation'. (fn. 137 P. 160)*

*This argument however cannot be accepted by the Arbitrator.*

*S.2.7.2 refers to the 'portfolio as a whole' and can only reasonably be considered, in the case of a member directed scheme, to refer to the whole portfolio within the respective individual's member's account, given that such account would have its own specific and distinct investment portfolio.*

*Hence, it is only reasonable and correct for the principles, including the investment restrictions specified for the Retirement Scheme to have been applied and adhered to at the level of the individual account. Failure to do so would have meant that the safeguards emanating from the investment conditions and diversification requirements would have not been adopted and ensured in practice in respect of the individual member's portfolio, defeating the aim of such requirements in the first place.*

*The application of investment restrictions at a general level, that is at scheme level without application on an individual account basis, would only make sense and be reasonable in the context of, and where, the members of such a scheme are participating in the same portfolio of assets held within the scheme and **not in the circumstance where the members have their own individual separate investment portfolios, as was the case in question.***

*An analogy can be made in this regard to the market practice long adopted in the context of collective investment schemes, namely in respect of stand-alone schemes (fn. 138 i.e., a collective investment scheme without sub-funds) and umbrella schemes. (fn. 139 i.e., a collective investment scheme with sub-funds, where each sub-fund would typically have its own distinct investment policies and separate distinct investment portfolios) Whilst investment restrictions would be applied at scheme level in the case of a stand-alone scheme (given that the investors into such scheme would be participating, according to their respective share in the scheme, in the performance of the same underlying investment portfolio), in the case of an umbrella fund, the investment restrictions are not applied at scheme level but at the sub-fund level and would indeed be tailored for each individual sub-fund given that each sub-fund would have its own distinct and separate investment portfolio and investment policy.*

Further Considerations

***For the reasons amply stated above, the BG Fund was not appropriate and suitable for the scope of the Retirement Scheme and the applicable requirements, let alone in the case where the Complainant's risk profile was actually one of 'Medium Risk', where his 'Investment Objective' was described as 'willing to accept a small amount of risk to provide for potential growth over the medium to long term'. (fn. 140 P. 56)***

***Hence, one cannot really justify how the investment in the BG Fund was allowed in the first place and how no Trustee and RSA had ever raised any issues about the incompatibility and inadequacy of such investment within the Retirement Scheme, not only with reference to the Complainant's risk profile, but also with the scope of the Retirement Scheme and provisions of the Trust Deed as outlined above.***

***There was ultimately no prudence, no diversification and no adherence with the relevant investment provisions.***

***In the case in question, the Arbiter cannot thus conclude that STM Malta has truly acted in the best interests of the Complainant when it took over as Trustee and RSA.***

***Not only has STM Malta not promptly raised itself concerns and alerted the Complainant on the various issues with the BG Fund investment as indicated in this decision, but STM Malta has rather itself untenably took the stance of defending the position taken by Harbour Pensions in allowing such investment within the Retirement Scheme.***

***It is indeed somewhat incredulous how, in the face of the glaring and manifest breaches of trust, STM Malta kept defending the actions of Harbour Pensions stating inter alia in its reply that '... the Respondent asserts that in any event Harbour Pensions did take actions that were sufficient to satisfy any obligation of diligence required by S21 of the Trusts and Trustee Act', and that '... Harbour Pensions Limited has acted with due care in relying on the advice of a regulated investment adviser'. (fn. 141 P. 162)***

***Even during the hearing of 1 June 2021, the official of STM Malta stated before the Arbiter that 'Being asked what steps are STM taking to remedy the breach of trust that has been carried out by the Trustees of the Harbour Pension Scheme as per TTA 30, Sub-Section 3, I say that I have got no evidence of a breach of trust'. (fn. 142 P. 257)***

***The Arbiter considers that it would have only been reasonable, adequate and appropriate for STM Malta to promptly raise and bring to the Complainant's attention the various issues related to this investment as considered and mentioned in this decision, with the aim to remedy the breaches.***

***As outlined above, in its letter of 11 August 2020, (fn. 143 P. 72) STM Malta raised, (nearly two years after taking over as trustee) only certain issues involving just the value of the investment, by which time the previous trustee and retirement scheme administrator, Harbour Pensions, had already been dissolved and struck off from the Malta Business Registry.***

#### **Conclusion & Compensation**

***For the reasons stated throughout this decision, the Arbiter considers the Complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case (fn. 144 Cap. 555, Article 19(3)(b)) and is partially accepting it in so far as it is compatible with this decision.***

***Being mindful of the key role of STM Malta Pension Services Limited as Trustee and Retirement Scheme Administrator of the STM Harbour Retirement Scheme, the Arbiter concludes that the Complainant should be compensated by STM Malta for the damages suffered by the Complainant as a result of the breaches allowed and committed in relation to this scheme and the lack of protection afforded to him to safeguard his pension as amply outlined in this decision.***

***The Arbiter considers that apart from the Service Provider, other parties, like the investment adviser, were involved and also carried responsibility. Therefore, the***

**Arbiter considers that in the particular circumstances of this case, it is fair, equitable and reasonable for STM Malta Pension Services Limited to:**

- (i) compensate the Complainant for the amount of 70% of the value invested in the Blackmore Global PCC Limited, which is calculated to amount to GBP196,376.92; (fn. 145 70% of GBP280,538.45 which is the total amount invested in the four cells of the BG Fund as indicated in the statement titled ‘Subscription Statement and Current Valuation’ attached to Harbour Pensions letter of 29 July 2015 – P. 165)) and**
- (ii) as part of the compensation being awarded, waive or reimburse its own exit fees that may be applicable in case of a transfer out of the Retirement Scheme.**

**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 Complainant the sum of GBP196,376.92 (one hundred and ninety-six thousand, three hundred and seventy-six pounds sterling and ninety-two pence), as well as waive or reimburse its own exit fees in case of a transfer out of the Retirement Scheme.**

**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.”**

## **L-Appell**

6. L-appellant ħass ruġu aggravat bid-deċiżjoni appellata, u ntavola appell minnha quddiem din il-Qorti fit-18 ta’ Ottubru, 2022, fejn talab sabiex:

*“...din l-Onorabbli Qorti jognġobha tilqa’ dan l-appell, u tirriforma u timmodifika d-deċiżjoni appellata, billi filwaqt li tikkonfermaha fir-rigward tas-sejbien dwar responsabbiltà tas-Service Provider, **tħassarha u tbiddilha** fejn stabbiliet il-perċentwali ta’ 70%, u jognġobha tissostitwiha bil-perċentwali ta’ 100% stante li r-responsabbiltà tas-Service Provider bħala ‘Trustee’ hija responsabbiltà inframmentabbli; u barra minn hekk, jognġobha **tħassar** il-figura żbaljata addotata mill-Arbitru ta’ GBP196,376.92, u jognġobha tissostitwiha biex taqbel u tkun konformi mat-talba ta’ Christopher Ball lill-Arbitru sa mill-bidu tal-proċeduri, jigifieri, **“He accordingly sought a compensation of the total initial investment of £309,351.51***

***plus lost growth, plus refund of all charges, plus compensation for distress and inconvenience.***” *Konsegwentement, din l-Onorabbli Qorti jogħgobha tgħaddi biex tillikwida figura oħra superjuri ta’ kumpens li tkun tinkwadra u tinkludi fiha l-figura ta’ GBP309,351.51, kif ukoll it-telf ta’ ‘growth’, kif ukoll ir-rifużjoni tač-‘charges’ kollha versati, u dan bla preġudizzju għal kull telf minħabba danni morali, ‘si et quatenus’. Bl-ispejjeż.”.*

Jgħid li l-aggravji tiegħu huma (i) fir-rigward tas-sejbien ta’ responsabbiltà għal 70% biss tat-telf soffert minnu; (ii) l-Arbitru uża ċifra żbaljata waqt il-komputazzjoni tal-ħsara.

7. Is-soċjetà appellata filwaqt li rrilevat li hija wkoll kienet ipprezentat rikors tal-appell mid-deċiżjoni appellata, talbet sabiex l-appell odjern jiġi miċħud, iżda jintlaqa’ l-appell tagħha appena msemmi.

### **Konsiderazzjonijiet ta’ din il-Qorti**

8. Il-Qorti ser tgħaddi sabiex tikkonsidra l-appell imressaq mill-appellant, u dan fid-dawl ta’ dak li ġie kkunsidrat u deċiż fid-deċiżjoni appellata, u meħudin ukoll in konsiderazzjoni s-sottomissjonijiet tas-soċjetà appellata.

9. L-ewwel aggravju tal-appellant jirrigwarda r-responsabbiltà limitata għat-telf li huwa sofra. Filwaqt li jaċċetta li d-deċiżjoni appellata hija waħda ekwa u ġusta, u saħansitra li din fiha motivazzjoni tajba dwar is-sejbien ta’ responsabbiltà, jiddikjara li huwa ma jaqbilx mal-Arbitru fejn dan illimita r-responsabbiltà tas-soċjetà appellata għal 70% tat-telf li huwa sofra. Jikkontendi li filwaqt li l-liġi ċivili tippermetti li r-responsabbiltà tista’ tinqasam, il-każ odjern ma kienx wieħed minn dawk fejn dan huwa permess. Jissottometti li t-trustee jerfa’ r-responsabbiltà kollha għaliex ma jistax jinstab responsabbli għal 70% ta’

*malpractice* jew malamministrazzjoni. Jikkontendi li l-liġi dwar ir-rwol ta' *trustee* mhijiex b'hal dik tal-liġi ċivili ġenerali. L-appellant jispjega li dan għaliex l-enti kummerċjali tkun għalqet sakemm l-investitur ikun sar jaf mingħand il-provditur tas-servizz li l-investment tiegħu jkun spiċċa fix-xejn, proprju kif ġara fil-każ preżenti, u kif ikkonstata l-Arbitru. Isostni li f'każ b'hal dan, ma jkun hemm l-ebda raġuni valida fil-liġi li żzomm milli t-*trustee* jiġi dikjarat waħdu responsabbli għall-akkadut, meta dan ikun tallef lill-investitur l-opportunità li jieħu azzjoni f'waqtha. It-tieni aggravju tal-appellant huwa li l-Arbitru uza ċifra żbaljata fil-komputazzjoni tiegħu tal-ħsara sofferta minnu, u dan meta huwa kien iċċita ċ-ċifra korretta f'pagna 12 tad-deċiżjoni appellata. Jispjega li huwa kien talab lill-Arbitru għall-kjarifiki tal-imsemmija deċiżjoni appellata, billi talbu sabiex isewwiha, u anki permezz tal-ittra tiegħu tat-12 ta' Ottubru, 2022, huwa kien talab lill-Arbitru sabiex jikkorreġi l-komputazzjoni tiegħu billi juża ċ-ċifra korretta. Wara li jiċċita dak li qal l-Arbitru fil-provvediment tiegħu tal-5 ta' Ottubru, 2022, dak li qal huwa stess fl-ittra tiegħu lill-Arbitru fuq indikata, u anki l-*email* li huwa rċieva mill-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji [OAFS], sostna li l-iżball tal-Arbitru kien wieħed li seta' ġie evitat li kieku dan żamm iċ-ċifra li huwa kien indika lill-Arbitru, u li l-istess Arbitru għamel riferiment għaliha f'pagna 12 tad-deċiżjoni appellata. Jikkontendi li ċ-ċifra li għażel li jaddotta l-Arbitru hija waħda ferm inferjuri, u ġejja minn sors li ma kienx verifikabbli u għalhekk inaffidabbli, jiġifieri miċ-ċifri ta' Blackmore Global. L-appellant isostni li l-iżball tal-Arbitru mhuwiex wieħed ġustifikat u/jew raġonevoli, u lanqas mhux wieħed li seta' ġie antiċipat u evitat mill-appellant innifsu. B'hekk hemm lok għal tiswija f'dan l-istadju tal-appell. Huwa hawnhekk jiċċita parti mid-deċiżjoni



appellata li tinstab fil-paġna 11 tagħha, sabiex juri kif tassew l-Arbitru kellu quddiemu ċ-ċifra l-preciza, u li huwa ma kienx jaħti għan-nuqqas.

10. Is-soċjetà appellata tilqa' billi tagħmel riferiment għar-rikors tal-appell tagħha, iżda fejn il-Qorti tosserva hija ma tindirizzax b'xi mod l-ewwel aggravju tal-appellant, u minflok tirrileva kwistjoni oħra u cioè li *trustee* "...*ma jistax jitqies responsabbli għal azzjonijiet ta' haddieħor, ma jistax jitqies bħala a 'continuation from one person to another', ma jistax jitqies bħala suċċessur tat-trustee ta' qablu*". Dwar it-tieni aggravju tal-appellant, is-soċjetà appellata tibda billi tagħmel riferiment għal paġna 39 tad-deċiżjoni appellata, fejn l-Arbitru elenka l-investimenti formanti l-portafoll tal-appellant. Tgħid li ċ-ċifri ċċitati rriżultaw mill-provi stess, u l-partijiet qatt ma kkontestawhom, u kien biss wara li ngħatat id-deċiżjoni appellata li l-appellant xtaq jipprezenta provi ulterjuri dwar l-ammont investit minnu, u talab l-Arbitru sabiex jikkorreġi żball fil-komputazzjoni tiegħu. Is-soċjetà appellata tgħid li kien jispetta lill-appellant li jressaq il-provi relattivi sabiex isostni l-ilment tiegħu, u tilmenta mill-fatt li huwa addottata proċedura saħansitra mhijjex kontemplata mil-liġi sabiex permezz ta' ittra tat-12 ta' Ottubru, 2022 huwa talab mill-ġdid għal kjarifika. Tirrileva li lanqas l-appellant m'huwa f'pożizzjoni li jivverifika s-somma rappreżentanti t-telf li għamel fuq il-portafoll tiegħu. Is-soċjetà appellata tikkontendi li l-Arbitru ma jistax jagħti kumpens fi flus ta' iżjed minn €250,000, u għalhekk it-talba tal-appellant kif magħmula ma tistax tintlaqa'. Tikkontendi li kif issottomettiet fir-rikors tal-appell tagħha, ma jirriżulta l-ebda ness kawżali fid-deċiżjoni appellata bejn in-nuqqasijiet tagħha u t-telf soffert mill-appellant, u l-appellant stess ma ressaq l-ebda prova li turi li kien hemm dan in-ness. Tikkontendi wkoll li d-deċiżjoni tal-Arbitru li jalloka 70% tat-telf lilha hija waħda arbitrarja u mingħajr

proporzjon, meta jitqies li l-istess Arbitru rrikonoxxa r-responsabbiltà ta' Harbour Pensions u tal-konsulent finanzjarju magħżul mill-appellant stess.

11. Il-Qorti tirrileva li joħroġ ċar mid-deċiżjoni appellata li hemm diversi fatti li joħorgu mill-provi li juru li l-aġir ta' terzi persuni ikkontribwixxa wkoll lejn it-telf soffert mill-appellant. Għalhekk tgħid li l-Arbitru kien qed ikun korrett u anki ġust, meta attribwixxa parti mir-responsabbiltà għad-danni sofferti mill-appellant lil dawn it-terzi persuni. Għalkemm l-imsemmi appellant jinsisti li l-każ odjern mhux wieħed fejn huwa permess skont il-liġi ċivili li r-responsabbiltà għad-danni tiġi attribwita skont ir-responsabbiltà għall-akkadut, u saħansitra jippretendi li t-*trustee* għandu jerfa' ir-responsabbiltà kollha, ma jiċċita l-ebda provvediment legali in sostenn ta' dan l-argument tiegħu. Il-Qorti madankollu xorta waħda ħaditu in konsiderazzjoni, iżda tirrileva li m'hemm l-ebda provvediment legali li jista' jsaħħaħ dan l-argument tal-appellant. Għaldaqstant ma ssibx l-ewwel aggravju tiegħu ġustifikat, u tiċċdu.

12. Dwar it-tieni aggravju tal-appellant, hawnhekk ukoll ma ssibx li dan huwa ġustifikat. Tikkunsidra li l-allegata '*figura korretta*' li l-appellant jgħid li l-Arbitru saħansitra jindikaha f'paġna 12 tad-deċiżjoni tiegħu, ma ġietx sostanzjata min-naħa tiegħu permezz ta' prova jew ikkonfermata u spjegata fix-xhieda tiegħu. Filfatt l-uniku prova li seta' jistrieħ fuqha l-Arbitru korrettement sabiex jikkwantifika kemm kien l-investment tal-appellant, kienet is-"*Subscription Statement and Current Valuation*" annessa mal-ittra ta' Harbour Pensions tad-29 ta' Lulju, 2015 a *fol.* 165 tal-atti tal-Arbitraġġ. Hawnhekk l-appellant jirrileva li ċ-ċifra li straħ fuqha l-Arbitru ma kinitx affidabbli, ġaladarba ma kinitx ukoll verifikabbli. Iżda l-Qorti tgħid li kkunsidrat in-nuqqas ta' prova dwar is-somma

investita mill-appellant, l-Arbitru kien pjuttost ġeneruż lejha meta għażel li jaddotta din iċ-ċifra, u ċertament l-appellant ma jistax jinsisti li minflok l-Arbitru messu qagħad fuq id-dikjarazzjoni mhux ġuramentata tiegħu kif ipprezentata fl-ilment imressaq minnu. Għaldaqstant dan l-aggravju wkoll qiegħed jiġi miċhud.

### **Decide**

**Għar-raġunijiet premissi l-Qorti tiddeċiedi dwar l-appell tal-appellant billi tiċhdu, u dan filwaqt li tikkonferma d-deċiżjoni appellata fl-intier tagħha.**

**L-ispejjeż marbuta mad-deċiżjoni appellata għandhom jibqgħu kif deċiżi, filwaqt li l-ispejjeż ta' dan l-appell għandhom ikunu a karigu tal-appellant.**

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.  
Imħallef**

**Rosemarie Calleja  
Deputat Registratur**