Before the Arbiter for Financial Services

Case Number 431/2016

QE (the complainant)

vs

HSBC Life Assurance(Malta) Ltd. (C-18814)

(the service provider or 'HSBC')

Sitting of the 4 December 2018

The Arbiter,

Having seen the complaint whereby the complainant in brief submits the following:

That her husband, Mr EE, and herself jointly had bought an International Capital Protected Bond from HSBC Life (Europe) Limited in Dublin.

Her husband died on the 16 December 2012, in Berlin. She presented his death certificate to HSBC Bank Curzon Street, London, and all their bank accounts and investments were transferred by the bank to her sole name. Upon maturity she received all the investments plus interest.

However, with regards to their joint investment with HSBC Life (Europe) Limited (which HSBC later transferred the business to its Malta office with HSBC Life Assurance (Malta) Ltd. (HSBC), the service provider did not pass to her the proceeds of this policy.

The policy was made through HSBC London, was managed from Dublin but was finally transferred to HSBC Malta in early 2015.

She also said that HSBC Bereavement Team Coventry released information on her private investments to the heirs of her late husband, but this is not the merits of this case and was dealt with elsewhere.

Since she saw the situation in Greece negatively affecting the markets, she surrendered the policy or Bond without penalty on the 24 June 2015. However, the service provider, still to the date of the complaint, were withholding her the capital investment and some of the interest gained and received half of her money on the 16 May 2016, into her Credit Libanaise account. HSBC Malta delayed this payment for a number of excuses, including that the amount was a large amount and had to carry certain checks. She contended that the large sum was from the beginning because her husband had transferred it from a personal bank account with HSBC in Bahrain and was accepted by HSBC Curzon Street, London.

After several weeks of many telephone calls on her part to HSBC Malta, she was informed that, between the time of surrendering the policy and the funds transfer to her chosen bank account, they had received a letter from a Bahrain firm of solicitors regarding her investment to which the bank did not respond.

Ms Balzan, who spoke to her, said that she had to engage the bank's lawyer to contact a firm in Bahrain to enquire as to the bank's position, but she assured her that she should not worry because she will receive all her investment in full. But complainant feels deceived because for 11 months the bank had held all her money, and at the time of the complaint, they still held half the initial capital and some profit.

The reason for withholding the money was because of the law of the domicile and it would seem Bahrain's Sharia Law, which is not recognised under the laws of England and Wales, they chose to invest in England so that English law would apply.

They had been assured at the time of the investment that should anyone of them dies, all the accounts and investments would be transferred to the name of the surviving spouse. They were always assured that their investments were secure under the laws of England and Wales.

Although HSBC agreed to transfer half of her money, they have wrongfully held half of her money because they were concerned that the heirs of Mr EE and their mother might sue the bank. The heirs and their mother are not the bank's customers and have no claim to her money. The heirs and their mother did not take any legal action against the bank.

During a telephone conversation, her representative and representatives of the bank, a certain Eric from the bank, maintained that the remaining 50% of her money will be retained by the bank as security for any claim which may be made by the heirs of her late husband against his estate. Because of this intransigence from the bank, her lawyer agreed on condition that the funds are managed in secure capital investments to be managed by Mr Tom Hearnden, an independent financial advisor, and the bank must agree to pay its fees and any other investment charges that the investments might incur. In spite of this, till the date of the complaint to the Arbiter, the bank continues to hold her money despite the fact that Mr Hearnden continues to send proposals to the bank's lawyer.

She had intended to transfer the proceeds of the policy to an overseas account in June 2015 – the date of surrender of the policy or bond - in a US dollar account and placed on a 2-year fixed deposit account at a guaranteed rate of interest of 5.10 per cent; and the delay by the bank was causing her the loss of interest, '*to very wrongfully, only agree to transfer half of my initial capital of my money and much of the interest*', she had been '"*forced" to accept their terms provided that HSBC Malta honour their assurances to me that after a period of five years from the date the investment went into my sole name, which I was notified was 3 January 2013.'*

Her representative wrote to HSBC informing them of her instructions as above. She was not satisfied with the interest offered to her on half the amount of the proceeds because she could have invested it at 5.10 per cent.

While the bank was worried that the heirs could take legal action against them, they were not concerned that she, as their '*only customer'*, is in a position to take appropriate action by way of legal proceedings against both HSBC Malta and HSBC Coventry.

She had confirmation from the bank that the value of the policy at the time of surrendering her bond was £635,520 in her sole name.

She is seeking from HSBC Malta the full return of her investment and all the profit gained and lost interest at 5.10 per cent in US Dollars and payment by HSBC for all legal fees both in London and Bahrain and compensation for all the tremendous anxiety this matter has caused her.

Having seen the reply by the service provider:

Preliminary Pleas:

1. That preliminarily, the Arbiter does not have the competence to hear and take cognizance of the Complaint on the basis that the monetary compensation being demanded is in excess of two hundred and fifty thousand euro (EUR250,000) and on this basis the Arbiter does not have the competence *ratione valoris* to decide the merits of the Complaint in accordance with Part IV of Chapter 555 of the Laws of Malta;

2. That preliminarily and without prejudice to the above, the Arbiter is precluded by law from considering the remedy being sought by the Complainant by means of which the Complainant is demanding that the Financial Services Arbiter compensate her '*for all the tremendous anxiety this matter has caused me'* owing to the fact that the Arbiter does not have the competence to order such remedy and in doing so would be acting '*ultra vires'* to his functions set out in Article 8 and his powers of adjudication under Article 26 of the Act;

3. That also preliminarily and without prejudice to the above, the Arbiter is precluded by law from considering the Complaint with respect to the alleged unlawful disclosure by HSBC Coventry Bereavement Team to the firm of solicitors William Sturges LLP London, since this entity is not licensed or authorised by the Malta Financial Services Authority and therefore does not fall within the remit of the Financial Services Arbiter.

   Moreover, the Complainant has informed that '*this matter is now being investigated by the Ombudsman here in London'* and therefore the Arbiter is precluded from considering the same complaint under Article 21(2)(a) of the Act;

4. That the matter concerns a contention as to whether the funds should be released to the surviving joint account holder solely or also to the heirs of the deceased account holder as stipulated by the laws of the country of domicile of the account holders and hence the Arbiter cannot decide the issue unless the heirs are also called into the suit and can have their position heard and determined; to do otherwise would be in breach of the principle of Natural Justice Audi Alteram Partem which every tribunal is bound to follow.

Merits:

5. That, entirely without prejudice to the above and on its merits, the Complaint is unfounded and should be dismissed because of the following reasons:

    a. That the subject-matter is already at the advanced stages of settlement as indicated in a letter from Complainant's Counsel at Quastel Midgen LLP London ("**Complainant's Counsel**") to the Company dated 10th March 2016 (annexed and marked as DOK ESJ 1) confirming the Complainant has acknowledged and accepted to receive half the amount together with all accrued interest, and to enter into an undertaking or indemnity on the other half of the investment.

    b. That in order for the Company to adhere to its regulatory obligations to act with the highest standard of diligence and prudence, it sought to obtain a legal opinion on the position in Bahrain with respect to succession rights of the heirs of the late Mr. EE. Given that the position in Bahrain is one where the said heirs may have a claim to half Mr EE's investment, the Company could not be faulted for acting in a prudent manner as required of it under the applicable regulatory regime and thereby not divesting of all the investment under the Policy.

    c. That the company could have taken a much safer course and simply deposited all or half of the proceeds in court for the court to then decided who was entitled to what. This the company did not do in the interest of equity and to assist the widow, allowing the period of prescription to run vis-a-vis a claim by the heirs while retaining half the

funds, for its pains in assisting the complainant responsibly, the company is being hauled up before the Financial Arbiter.

d. That in actual fact it was the Complainant's Counsel (on behalf of the Complainant) in a letter via email to the Company dated 15th October 2015 (annexed and marked as ESJ 2) who actually proposed that the amount is paid to the Complainant against an indemnity to hold the bank harmless in respect of any action which may be brought against the Company by the heirs of the late Mr. EE. To this end, the Company has been in contact with Investec Wealth and Investment Management Limited with respect to the indemnity as proposed by the Complainant's Counsel. Therefore, the allegation that the Complainant was '*forced to accept*' the terms of the Company with respect of the remaining half of the investment is vehemently rejected and is downright defamatory and, in this regard, all rights are reserved.

e. That in an email dated 23rd May 2016, to the Complainant (annexed and marked as DOK ESJ 3), the Company confirmed that in virtue of an agreement between the parties, half the proceeds were to be transferred to a bank account designated by the Complainant. Further, the Company invites the Complainant to provide '*further information in relation to the remaining policy proceeds.*' This email remained unanswered and therefore it is emphatically rejected that the Company has '*grossly deceived*' the Complainant, and reiterates that it has been consistent throughout its dealings with the Complainant.

6. That accordingly, and always without prejudice to the above, the Complaint is unfounded in fact and at law and should therefore be rejected with costs because:

(i) It seeks to obtain a remedy for the Complainant that is *ultra vires* the powers of the Arbiter *inter alia* compensation for the tremendous anxiety this matter has caused;

(ii) The Complainant seeks to recover all the legal fees both in London and Bahrain for matters that are outside the scope of the alleged misconduct of the Company, to the extent that the Complainant's

legal advisors in London are engaged for a separate matter currently before the UK Financial Services Ombudsman;

(iii) The Complainant seeks to recover lost interest of 5.10% in US Dollars which she claims would have benefitted from had she invested the remainder of the proceeds of the Policy in an unnamed bank account. Thus, this is purely speculative, not certain and due.

(iv) At all times, the Company acted in accordance with the standards required by the regulatory framework, in a prudent manner and in accordance with the highest standard of diligence under applicable law and, if need be, this will be adequately proved during the hearing of this case.

7. That in view of the above, it is submitted that there could be no remedy to the Complaint as its claim is unjustified in fact and at law.

Having seen all the documents and submissions filed by the parties.

Having seen the records of the sitting of the 23 January 2018, whereby the parties agreed that the capital had been paid to the complainant and the only issue that needs to be decided by the Arbiter is the question relating to the payment of interest, or otherwise, by the service provider to the complainant.

The Arbiter gave the opportunity to the complainant to give reasons for her insistence on the payment of interest and the opportunity to the service provider to respond.

Considers

Preliminary:

Since the parties have agreed that the capital of the policy had been paid and the Arbiter is to consider only the question relating to interest (if any), all the preliminary pleas submitted in the reply by the service provider are considered to be exhausted and the Arbiter will consider the merits limited to the request of the complainant to be paid interest on the capital withheld from her by HSBC.

Salient Facts

On the 9 September 2011, the complainant, together with her husband, took out an International Capital Protected Bond ('the policy' or 'Bond').[1]

Sadly, her husband, EE, passed away on the 16 December 2012, and HSBC Life (Europe) Limited (HLE)[2] were notified about his death on the 3 January 2013. On that same date, the policy was transferred to the complainant's sole name.[3] Later, HSBC informed the complainant that the actual date of transfer to her sole name happened on the 9 January 2013, but for the purpose of the calculation of interest they considered 3 January 2013, as the actual date of transfer of the Bond to her name.[4]

In 2014, HSBC Life Europe Limited transferred its insurance business including the Bond to HSBC Life Assurance (Malta) Ltd. and the complainant was informed of that transfer by letter of the 10 June 2015.

The complainant explains that, contrary to what had happened to all their other joint bank accounts and investments (with other services providers and also with HSBC), which were transferred to her sole name, in spite of the fact that the Bond was transferred to her sole name in 2013, the service provider only passed to her half the capital amount of the policy **after quite some time**.

The complainant states that: '*I surrendered my bonds without any penalty on the 24 June 2015. This investment was due to mature on September 2015. This I did without any problem. However, for several weeks (and still to date 10 months from my surrendering my bonds) HSBC (Malta) delayed transferring my money plus interest to my chosen bank account, which they had assured me they would do as soon as they had received my investment plus interest in full. Their initial excuse was that as it was a very large sum of money they had to do some investigations ….*

After several weeks of many telephone calls on my part to HSBC Malta and hearing many of their excuses, at last Ms Doreen Balzan admitted and informed me that between the time of my surrendering bonds and the funds transfer to

[1] A Fol. 195
[2] Later, HSBC Life Assurance (Malta) Ltd.
[3] A Fol. 38.
[4] A Fol. 39

my chosen bank account, they had received a letter from a Bahrain firm of solicitors re my investment to which the bank did not respond. Therefore, since the time of my surrendering my bonds, all of my money has been held in an 'Escro Account' with them.'[5] Still, they assured her that she will, nonetheless, receive all of her investment in full. But, 10 months after this assurance, her money was still in this 'Escro Account'.

HSBC stated that they held half the proceeds of the policy because they were advised that, according to Bahrain Law, the heirs of Mr EE could have a claim on this half[6] and, '*if we pay the other half of the proceeds to Mrs QE we may be sued by the heirs of Mr EE.*[7]

The surrender value of the policy was estimated by the service provider at £635,520.[8]

Way back in October 2015, the service provider's legal counsel informed the representative of the complainant that acting on the basis of a legal advice given in terms of Bahrain Law, *'Mrs QE is entitled to surrender half the policy proceeds with immediate effect being her share of the policy as a joint holder. The other half as already explained could be subject to full or in part….to the claims of the heirs. If we pay the other half of the proceeds to Mrs QE we may be sued by the heirs of Mr EE.*

After an exchange of correspondence between the parties or their representatives, in May 2016 HSBC paid the complainant the sum of £369,911.03,[9] and informed her that the prescriptive period for the possibility of the heirs of Mr EE to sue them would end on the 3 January 2018.

During the sitting of the 23 January 2018, before the Arbiter, the parties agreed that all the capital in question had been paid to the complainant, but the complainant insisted on the payment of interest due and expenses.

[5] A Fol. 22
[6] A Fol. 165, Letter by HSBC dated 6 October 2015
[7] Ibid.
[8] A Fol. 167
[9] A Fol. 71

Consequently, the parties agreed that the only issue to be decided by the Arbiter was whether the complainant was entitled to receive interest on the proceeds of the policy.

In accordance with Chapter 555 of the Laws of Malta,[10] the Arbiter shall determine the complaint '***by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case'.***

There is no doubt that there was a contractual relationship between the parties arising out of the policy agreed between the service provider, the complainant and her late husband.

In order to reach a fair, equitable and reasonable decision on the question of the payment of interest or otherwise, the Arbiter makes reference to a case decided by the First Hall Civil Court dated 26 February 2008,[11] whereby the Court explained the circumstances when interest should be paid.

It explained that payment of interest is the secondary effect arising out of an obligation. Interest becomes due when the obligation is not performed as agreed or when the obligation is performed belatedly. The payment of interest is due because the creditor has suffered a damage caused by the party obliged to perform the obligation either because it performed the obligation wrongly; or because it did not perform the obligation in due time; or because it did not perform the obligation at all.[12]

Each case has to be decided according to its own facts and on its own substantial merits as Chapter 555 of the Laws of Malta directs.[13]

In this particular case, the Arbiter considers that these parameters established by the First Hall Civil Court should serve as a guiding light in using his discretion in deciding the case on the basis of fairness, equity and reasonableness.

There is no controversy that the complainant has by now been paid the full amount of the proceeds of the policy, but the complainant insists that HSBC had

[10] Article 19 (3)(b)
[11] *Carin Construction Ltd. vs Awtorità tad-Djar*
[12] Translation from the Maltese version of the judgement
[13] Cap. 555, Art. 19 (3)(b)

no right to retain the proceeds of the policy for such a long time and without a valid justification.

On its part, the service provider pleads that it acted in a correct manner because it had a legal advice that, in accordance with the law of Bahrain, where the QE and EE had their habitual residence, the '*heirs*' of Mr EE could have a right to a part or to all of half of the proceeds of the policy.

The onus of proof for the delayed payment of the proceeds of the policy rests on the service provider who has to prove, on the basis of fairness, equity and reasonableness, why it did not honour its obligations under the policy in time.

There is no contestation between the parties that on the 3 January 2013, HSBC transferred the policy in question to the sole name of Mrs QE. The Arbiter is of the opinion that since that date the complainant became the sole beneficiary of the policy. The service provider did not provide any proof to the contrary. It only had the fear that the '*heirs*' of Mr EE might have an interest.

It based its decision to retain half of the proceeds of the policy on the advice it was given by their Bahraini lawyer.

The Arbiter has analysed this advice and, in his opinion, the retention of the proceeds (or part of it) by the service provider till 2018 is not justified for the following reasons:

In his advice to the service provider, Mr Hugh Stokes, Attorneys and Legal Consultants in Bahrain, advised:

'*There is no legal provision dealing specifically with life policies in joint names, but there are particular provisions relating to joint bank accounts'*.[14]

The advice that the heirs of Mr EE could have a claim on the policy was not based on a specific law provision dealing with joint-policy holders but merely on the premise that a Court in Bahrain could make an analogy with the position in the case of a joint-bank account.

The advice was not backed by any case law on the matter but simply on the advisor's opinion that an analogy to a joint bank account could be '*very possible*'.

[14] A Fol. 228

The advice clearly stated that what applied to bank joint accounts '*does not specifically refer to other jointly held property (or rights) but it is very possible that a Bahrain court would apply the same principle to the life policy by analogy*'.

However, Mr Stokes, who was advancing the advice, did not substantiate this belief by any sound case-law; it was only his belief. At the same time, he also stated that the applicable law of the policy was governed by English and Welsh laws which, according to Clause 9 of the Policy, '*only the survivors would be entitled under the policy'.*[15]

However, *'If the Bahrain Court were required to consider the application of the laws of England and Wales it would take the view that provided the relevant English law is proved to the Bahrain Court by expert evidence, it would only apply English law to the extent that it did not conflict with any mandatory provisions of Bahrain law or with Bahrain public policy or ethics.'* Then, on the basis of the Commercial Law of Bahrain **dealing with joint bank accounts** (and not with joint policies), he arrived at the conclusion that these provisions of the law were '*mandatory*' and '*The Bahrain Court would therefore be unlikely to uphold the English law position'.*[16]

However, in a later email,[17] the service provider's advisor, while reiterating that the advice was based on the law related to joint bank accounts, wrote '*it is possible (**it cannot be said to be certain**)*[18] *that a court would apply the same principle to a joint life policy as to a joint bank account'.*

The Arbiter notes that both the service provider and his advisor based the provider's fear that the heirs of Mr EE would sue it, merely on an analogy not substantiated by any sound legal provision or any judicial authority. In this situation, where the service provider had an advice fraught with possibilities and uncertainties, it would have been more prudent if it had taken a second opinion.

Moreover, the advice of Mr Stokes did not explain the law of succession of Bahrain but only based his advice on the presumption that the Courts in Bahrain could '*possibly*' make an analogy with the release of a joint-bank account.

[15] Ibid.
[16] A Fol. 229
[17] A Fol. 225
[18] Bold by the Arbiter

However, there is a stark difference between a joint-policy and a joint-bank account which is basically a deposit with a bank while a joint-policy is governed by the stipulations of the policy.

The withholding of the proceeds of the policy from Mrs QE is not justified considering also the fact that the heirs of Mr EE did not take any legal action against the service provider but simply asked for information. This has been confirmed by the service provider who stuck to its guns and did not provide the information requested by the '*heirs*' lawyer basing its refusal on data protection law. The service provider acted unilaterally without any judicial authorisation to withhold the proceeds.

It is clear that the service provider was acting only in its own interest and not in the interest of the client as it was expected to do. Having said so, the Arbiter does not dispute the right of service providers to guard their legal interests but in doing so, they should not overlook the interests of their clients; the particular circumstances and difficulties the client is facing; and, not least, the financial burdens the customer has to bear as a result of their decisions. It may not be easy to balance these interests, but it has been firmly established in the financial services sector that the service provider has to act fairly. Fairness entails the balancing of rights and interests and not the sole interest of one party only.

Furthermore, the service provider had already accepted Mrs QE as the sole beneficiary way back in 2013. In fact, as soon as the service provider was informed with the death of Mr EE, it transferred the policy to the sole name of Mrs EE. From that date, Mrs EE became the sole owner and beneficiary of the policy and had the right to surrender the policy as she rightfully did on the 24 June 2015.

The Arbiter is not convinced that the advice given by the Bahrain lawyer was sufficient to establish that the Bond or English law were '*in conflict with any mandatory provisions of Bahrain law or with Bahrain public policy or ethics'*. Mr Stokes himself confirmed that there was no specific law relating to joint-policies in Bahrain.

The service provided acted correctly when it transferred the policy to the sole name of the complainant in 2013, and when it established the surrender value

of the Bond in 2015. However, it failed the complainant when it did not transfer all the capital sum to her as she instructed according to the terms of the policy.

Section 9 of the Bond provided that: '*On the death of the Life Assured, or the last surviving Life Assured in joint life cases, the Sum Assured will become payable. Once the Sum Assured has been paid, the Policy will terminate*…'[19]

Moreover, Section 11 stipulated that: '*At any time during the Policy, the Policyholder may by written notice to the Company … request the full or partial surrender of the Policy ….'*[20]

The service provider fully understood these provisions and was morally and legally convinced that Ms QE was the rightful policyholder; it transferred the policy to her sole name and also had serious doubts that the heirs of Mr EE had any rights on the policy.[21] In fact, in his email to Mr Stokes of the 30 July 2015, the service provider's lawyer stated that:

'*According to the terms and conditions of the policy, the policy is payable upon the death of the last surviving Life Assured. Therefore, the policy remained in place in favour of his wife and no payment was due upon the death of her late husband.*

The policy is also payable upon surrender of the policy. The widow has now decided to surrender the policy; however, the heirs of her late husband's children from a previous marriage) are asking for information on the policy and we believe that they may claim against us as heirs for payment of their interest in the policy. ***We interpret the terms of the policy in the sense that the heirs are not entitled to any payment under the policy',***[22] however, the service provider still had the fear that the heirs could claim against it.

The Arbiter holds that upon the death of her husband, Ms QE became the sole policyholder and beneficiary and had the right to surrender the policy as she did in 2015. Consequently, on that date she became entitled to receive the total amount of the surrender value of the policy.

[19] A Fol. 177; p. 10 of the Bond
[20] Ibid.
[21] However, they had a doubt as to whether they had a right in accordance with the law of succession of Bahrain Law
[22] A Fol. 238. Bold by the Arbiter

The service provider had no justifiable reason to withhold the capital sum from Ms QE and is, therefore, considered to have failed in its obligations in accordance with the terms of the policy.

The fact that the service provider transferred the retained portion of the capital sum to the complainant *following the lapse of the five-year prescriptive period from the notification of the death of the late of Mr EE,* does not justify its late payment.

Ms QE had consistently insisted with the service provider, both personally and through her representatives, that she was the sole owner of the policy and, therefore, she was the only beneficiary. However, the service provider disregarded the terms of the policy and only paid the full capital when it considered it '*safe*' to do so.

Furthermore, the service provider did not act fairly when it did not convey the advice given to it by its Bahraini lawyer to the complainant or her representatives who only got sight of this advice when the service provider filed it together with its note of final submissions in this case. Consequently, the complainant could not take a legal advice herself on the laws of Bahrain on which the service provider based its arguments for delaying the full payment of proceeds of the policy till the end of 2017.

As has been rightly stated: '*The requirement to be fair plays a particularly prominent role in the regulation of financial services firms' dealings with their consumers. As well as the obligations placed on all traders, there are further specific duties incumbent upon those in the financial services sector.'*[23]

It is true that the parties had tried to find a way to solve the impasse, but the negotiations were on a '*without prejudice'* basis and did not materialise in an agreement satisfactory to the complainant. Mrs QE finally agreed on the terms suggested by the bank's lawyers because after 11 months since the surrender date she did not receive any amount from the proceeds of the policy and had no alternative. Her bargaining power was next to zero. The Arbiter accepts the

[23] P. Cartwright, *Fairness, Financial Services and The Consumer in an Age of Principles-Based Regulation: Position and Consultation Paper*

complainant's declaration that she was '*under great duress'* and had to accept nearly everything to start receiving any of the proceeds of the policy.

The Bank should have also considered her vulnerable situation being an advanced aged person and suffering from the trauma of losing her husband. These are few examples which the law has in mind when it directs the Arbiter to consider '***the particular circumstances of the case'***. The arrangement was not fair, equitable or reasonable and should not influence in any way the deliberations of the Arbiter.

For the above-mentioned reasons, the Arbiter decides that the complaint, limited to the issue of the payment of interest, is equitable, fair and reasonable in the particular circumstances and substantial merits of the case.[24]

The complainant surrendered the policy on the 24 June 2015,[25]and the service provider informed her that the surrender value of the policy was £635,520.[26] However, the first payment of £369,911.03, was paid to the complainant on the 23 May 2016,[27] together with interest and was accepted by the complainant.

The complainant states in its note of submissions that '*Therefore HSBC held in excess of £250,000 (the Capital Sum) without legal entitlement between 2015 and the release of funds in January 2018.'*[28]

The Arbiter holds that, since first half of the capital sum together with profits and interest were paid to the complainant who accepted them, there is no issue on that amount.

The only issue is the late payment of the retention capital which was paid on the 29 December 2017,[29] two and a half years after the surrender date.

On the award of interest, Chapter 555 of the Laws of Malta provides that the Arbiter may grant the payment of interest '*at such reasonable rate and within the parameters established by law.'*[30]

[24] Cap. 555, Art 19(3)(b)
[25] C3omplaint
[26] A Fol. 41
[27] A Fol. 222
[28] A Fol. 157
[29] A Fol. 221
[30] Art. 26(3)(c)(iv)

The complainant has proven that she could have invested the capital sum earning an interest of 5.1. per annum. The Arbiter thinks it is reasonable that the complainant be granted interest on half the capital sum which was £250,000 at the rate of 5.1% from the surrendering date of the policy on the 24 June 2015 till the 29 December 2018 when it was paid.

Therefore, the Arbiter, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, orders HSBC Life Assurance (Malta) Ltd. to pay the complainant interest at the rate of five point one (5.1) per cent per annum on the amount of two hundred and fifty thousand British pounds (£250,000) from the 24 June 2015 to 29 December 2017.

Further legal interests at the rate of 8% per annum should be paid from the date of this decision until the date of effective payment.

Regarding the award of costs, the Arbiter agrees with the service provider that Chapter 555 of the Laws of Malta stipulates that the Arbiter could only '*adjudicate the costs of the proceedings*' and no other fees or expenses.

The Arbiter, therefore, decides that the costs of the proceedings limited only to the question relating to the payment of interest, are to be borne by the service provider.

Dr Reno Borg
Arbiter for Financial Services