

**Każ ASF 126/2024**

**ZP**

**(‘l-Ilmentatur’)**

**vs**

**MAPFRE MSV Life p.l.c.**

**(C-15722)**

**(‘il-Fornitur tas-Servizz’ jew ‘MSV’)**

**Seduta 16 ta’ Mejj 2025**

**L-Arbitru,**

Wara li ra l-ilment magħmul kontra s-soċjetà *MAPFRE MSV Life p.l.c.* rigward polza ta’ assikurazzjoni fuq il-ħajja (*Endowment Assurance with Profits including Funeral Expenses*) bin-numru 41249.

Fis-sustanza tiegħu, l-ilment jittratta telf li l-Ilmentatur jallega li sofrwa wara li l-polza ta’ assikurazzjoni fuq il-ħajja favur tiegħu immaturat f’ammont ferm inqas minn dak li kien għe mwiegħed lilu originarjament mill-istess Fornitur tas-Servizz.

**L-Ilment**<sup>1</sup>

Fl-ilment tiegħu, l-Ilmentatur ippremetta u ssottometta s-segwenti:

1. Illi fl-1998, l-Ilmentatur xtara polza ta’ investiment mal-*Middle Sea Valletta Life Assurance* (li aktar tard saret il-*MAPFRE MSV Life p.l.c.*, *cioè*, l-Fornitur tas-Servizz).

---

<sup>1</sup> Formola tal-Ilment minn paġna (p.) 1 - 5, bid-dokumentazzjoni addizzjonali minn p. 6 - 88

2. Illi kemm fl-1998 u fl-2001, rappreżentanti tal-Fornitur tas-Servizz qalu lill-Ilmentatur li l-investment ser jirrendi somma ta' Lm14,555 (c. €33,904).
3. Illi dan l-ammont ġie mwiegħed lilu dejjem jekk huwa jimxi mal-kuntratt u jonora l-obbligu li jħallas il-*premium* (ta' Lm87.50 kull sitt xhur) sal-aħħar, kif fil-fatt għamel. L-Ilmentatur jikkjarifika li qatt ma qabeż xi pagament jew ħallsu tard.
4. Illi, sfortunament, l-Ilmentatur ġie infurmat mid-direttur tal-*MFSP Financial*, Matthew Pace, illi l-investment tiegħu kien, fil-fatt, ser jirrendi valur ta' €15,000.
5. Illi l-Ilmentatur iqis dan l-ammont bħala ferm inqas minn dak li kien ġie mwiegħed originarjament.
6. Illi l-Fornitur tas-Servizz spjega li l-investment kien wieħed normali fejn irritorn jista' jvarja. Izda, għalkemm din hija xi ħaġa normali fis-settur tal-investimenti, l-Ilmentatur isostni li dan m'huwa miktub imkien fid-dokumenti ppreżentati lilu mill-Fornitur tas-Servizz u qatt ma ffirmat għalih.

#### *Rimedju mitlub*

Għaldaqstant, l-Ilmentatur jitlob is-somma sħiħa li kienet ġiet imwiegħda lilu u, *cioè*, €33,904, jew tal-inqas somma viċin dan l-ammont.

#### **Ra t-twegiba tal-Fornitur tas-Servizz<sup>2</sup>**

*“Reply of MAPFRE MSV Life p.l.c. in terms of Chapter 555 of the Laws of Malta*

1. *MAPFRE MSV Life p.l.c. ('MMSV') refers to the allegation made by the complainant that the maturity value of the policy in question numbered 41249 of nature Endowment Assurance with Profits including Funeral Expenses ('the Policy') was not equivalent to the maturity value which was indicated by MMSV when the Policy was sold to the complainant. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to pay the complainant the different between the said*

---

<sup>2</sup> P. 94 - 132

*figures by paying an amount in addition to the Maturity Value of the Policy which originally amounted to Euro 13,846.09 and which amount MMSV was in a position to pay upon the maturity of the Policy.*

*In this regard, MMSV is of the view that the claimant's request is unfounded and, therefore, the complainant is not entitled to receive any compensation in addition to the maturity value, and this for the reasons that have already been communicated in detail to the complainant by virtue of the reply letter of MMSV to the complaint made by the complainant, dated 2<sup>nd</sup> February 2023 (a copy of which was presented with the complaint marked as Fol.009-011) and as is going to be explained in further detail hereunder.*

- 2. Without prejudice to the above, it must be said that the policy in question was explained to the complainant by a representative on behalf of Azzopardi Insurance Brokers Ltd which in fact had an insurance broker's license. In this regard, it needs to be emphasized that the broker is the agent of the insured not of the insurance company and therefore information given to the insured by the broker is not considered as information given by the insurance and therefore MMSV is not responsible for the actions and omissions of Azzopardi Insurance Brokers Ltd vis-à-vis the complainant, and the relationship of MMSV with the complainant is limitedly governed by the policy contract itself together with the proposal form.*
- 3. The estimated maturity values are based on estimates shown in the quotations that were presented by the complainant together with his complaint (the quotations are marked as fol.16, fol.17, fol.22, fol.23, fol.32, fol.58, and fol.59 of the complaint). The quotations in question contained the words Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses. Therefore, none of the figures which were indicated in the quotation as 'estimated' could be said to have been guaranteed.*
- 4. The estimated maturity values shown in the quotations in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold. In fact, it is also to be noted that*

*the estimated values had an asterisk (\*) next to them which shows that the 'illustrations are based on the current rate of return' and hence this further proves that the complainant was informed that estimates were based on the current rate of return, and hence these were not guaranteed since rates of return may change.*

5. **The estimated maturity values shown in the quotations were not guaranteed because they were based on the investment conditions and circumstances at the time.**

*At the time, the value of investments was much higher than it is today. In fact, the rate used in 1998 was that of 6.75%, which rate had remained constant until the year 1998 and then increased slightly in 1999 to 7% and started to decrease from the year 2000. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower.*

**In the light of the above, the quotations in question were in fact correct because they were issued according to the circumstances at the time and, therefore, MMSV had acted in good faith.**

6. *Furthermore, it must be stated that in the quotations there was a distinction between reversionary bonuses and terminal bonuses and MMSV was not obliged to pay the terminal bonuses. The fact that the quotations presented during that stage indicate two estimated maturity values, the value of which are substantially far apart from each other, further confirms that there was an investment element to the Policy and that the estimates being claimed by the complainant could not have been guaranteed. In the circumstances at the time that the Policy was being sold, MMSV was already indicating that if the circumstances in the investment market had remained constant, the Policy (in accordance with fol. 16 and fol. 17 – Illustration 1) could have matured either at a value of Lm10,586 (Euro 24,658.75) or at the higher value of Lm14,555 (Euro 39,904). It results that the complainants based their complaint on the largest estimated maturity value indicated in the quotation. It is clear that the complainant cannot claim that the quotations were not conditional because there were in fact the words 'estimated' and 'illustration' as well*

*as the words next to the words 'estimated maturity value including reversionary and terminal bonuses'.*

7. *Besides the fact that the quotation indicates two maturity values as 'estimated' and therefore, said figures could not have been guaranteed, the complainant was also presented with 'IMPORTANT NOTES – PLEASE READ CAREFULLY' together with the quotation (OVERLEAF) (a version of which was attached as fol. 33 and another version which was also given with the complainant shall be attached and marked as **Dok. MSV 1**).*

*The said notes delve into the meaning of 'Reversionary Bonuses' and 'Terminal Bonus'. The said notes also explain that the Policy was participating in the Company's 'distribution of its profits by means of an allocation of an annual Reversionary Bonuses declared from time to time ... The rates of Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured.'*

8. *The IMPORTANT NOTES also state that 'These are usually expressed as a percentage of the Policy Account which is made of all the investment premia paid plus bonuses (if any) which accrue on a daily basis' and, therefore, the word if 'any' shows that the 'estimated' maturity values were not guaranteed and were in fact conditional.*

**These notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion to do so.**

*Therefore, the amount that was indicated in the quotation as estimated maturity value including reversionary bonus was not guaranteed because one needed to wait at the end of every year in order to confirm whether MMSV was going to declare a reversionary bonus for the previous year and if in the affirmative at what rate and it was only at that time that the complainant could have been certain how the value of the Policy Account of his Policy was increasing over the years. This is so, because as was explained in the notes, it was only those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.*

9. *In fact, the Life Policy Schedule of the Policy (presented with the complaint fol. 74), provides that 'In respect of each premium paid, Lm81.30 shall be credited to the Policy Account which will be increased by the bonuses which may be declared by the Company from time to time'. This continues to support what was provided for in the notes above-mentioned in relation to the fact that MMSV was not obliged to declare reversionary bonuses every year but once declared then they were guaranteed to be paid to the policyholder. This also explains that the investment premium, which as at the date of the maturity of the Policy had amounted to Euro 9,469 was in fact also guaranteed to be paid upon maturity or on prior death of the life assured and this in addition to the bonuses which would have been declared by MMSV during the term of the Policy.*

*This was not the case with other investments, such as those known as the unit linked policies where the payments of no amounts were guaranteed. Therefore, MMSV adhered to its obligations under the Policy because the Maturity value of the Policy exceeded the investment premium that was paid by the complainant by an additional Euro 4,377.09 which amount represents the bonuses that have been declared by MMSV during the term of the Policy.*

10. *Furthermore, the only amount mentioned in the Life Policy Schedule was the sum assured, and no amounts containing the word 'Estimate' in the quotation were mentioned in this Schedule, which further shows that therefore according to the agreement between the parties the estimate maturity value including reversionary bonus and the estimate maturity value including reversionary bonus and terminal bonus were never guaranteed.*
11. *The notes that formed part of the quotation above mentioned also provided that 'Whilst the purpose of these notes is to guide the policyholders and prospective policyholders .... the benefits provided by the Policy are conferred by the Policy document ... In the case of conflict of meaning between this quotation and the Policy document, the Policy document shall prevail.'*



**This meant that the complainant could not treat the quotation as a stand-alone document but had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the policy document (also presented with the claim).**

12. In addition, the IMPORTANT NOTES (Dok. MSV 1) make it clear that:

**'The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end.'**

**'Depending on the performance of the company, bonus rates may go down as well as up.'**

**This therefore show that the complainant was informed that the bonus rates could vary** and the complainant is **incorrect** when in his complaint he stated that 'Mapfre MSV Life replied by saying that the investment of the Complainants was a 'normal' investment that could go up and down based on the circumstances. Even though this is the norm in the 'investment world', **this was never clearly written by the Company to the Complainants nor signed for by the Complainants**' and 'the contracts that the complainants signed at the start of the Policy was never subject to proportionality nor any disclaimers' (added emphasis in bold)

13. In so far as the Terminal Bonus is concerned, the notes forming part of the quotation, provided that: **'Depending on its profit experience, the Company may, after the Policy's TENTH year ... decide to allocate from time to time a Terminal Bonus in addition to the other declared bonuses ... as they depend materially on the investment performance at the time of the claim, they may be reduced or even withdraw altogether.'**

Therefore, the amount being indicated in the quotation as 'estimated maturity value including reversionary and terminal bonus' was likewise not guaranteed because MMSV had the discretion not to pay a terminal bonus.

14. It must also be mentioned that when the complainant bought the policy, he chose the option to pay the premiums on a half-yearly basis instead of an annual basis and the IMPORTANT NOTES also made it clear the

***'Payment of premiums on a more frequent basis will result in slightly lower returns'.***

15. *It is therefore unfair for the complainant to state that he was promised an estimated maturity value without taking said estimated figures and putting them in the context of the other documents and the explanations given to him.*
16. *Furthermore, on 23<sup>rd</sup> February 1998, the complainant also signed a document known as 'Product Information' (a complete copy of which shall be attached and marked as **Dok. MSV 2**) which explained among many things how policy bonuses are calculated and paid. This document explains that 'With Profits policies may earn Reversionary and Terminal Bonuses.'*

*The method of calculation is as follows:-*

*Reversionary Bonuses are calculated daily as a percentage of the Investment Premium whilst Terminal Bonuses, **if declared at the option of the Company**, are normally expressed as a percentage of the Policy Account or as a nominal account after payment of the ten full years' premium.*

*A Terminal Bonus if declared is payable on policies that become claims by maturity or death, but not surrender.*

***The rate of bonus if declared will depend upon the performance of the Company and the investment market both locally and overseas.***

***When presenting you with the Company's official written quotation for the Estimated Maturity value we have based our calculations solely on current bonus rates.***

***Please note that past performance is not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed.'***



*The policy document and in particular the policy schedule also states that bonuses were not mandatory but it was within the MSV's discretion to declare or not to declare such bonuses. This is another reason why the estimated maturity value of the policy in question indicated in the estimate was not guaranteed but was only an estimate and only the sum assured was guaranteed.*

***It is to be noted that this Product Information is another document which further shows that the complainant was given information which provided disclaimers on how the policy and the bonuses worked.***

17. *The complainant attached a document entitled 'Benefits of Endowment Policies' to their complaint (attached as fol. 44). If one reads this document, which was issued by the same Azzopardi Insurance Brokers Ltd, it lists down the following benefits of endowment policies:*

- a. Systematic savings*
- b. Immediate life assurance and family protection*
- c. Loan Facility Available in future years*
- d. Monthly to yearly savings*
- e. Level premium system*
- f. Premium within one's budget*
- g. Automatic premium loan*
- h. Middle Sea Valletta Life Assurance Co. Ltd shareholders are Middle Sea Insurance Co. Ltd, Bank of Valletta Ltd and Munich Re.*
- i. Maltese law protection*
- j. No currency risk: maturity value and premium in Maltese Liri*
- k. Maturity Value/Life Cover always exceeds premium invested*
- l. Professional service*
- m. Can serve as security for bank loans*

*n. Choice of maturity date*

*o. Life assurance can be increased through Convertible Term Assurance*

*p. Annual bonus statements*

*It is clear that nowhere in the above list of benefits is a mention that the estimated maturity values indicated in the quotation are guaranteed, as being expected by the complainant in his complaint. This further emphasises the fact that this document shows that it couldn't be the case that complainant has a legitimate expectation and the promises given by MSV. In fact, point (k) stipulates that 'Maturity Value/Life Cover always exceeds premium invested' and in fact that's what happened with respect to the policy in question.*

*18. In the complaint, the complainant refers to a graph (fol. 27). In this respect it needs to be pointed out that since the complainant could have never made a loss on his Policy because he could never lose what he had invested, the graph had to go up and not down. This is in accordance with the guarantee outlines in the Policy that MSV had to pay 'the greater of the sum assured or the Policy account, whichever is the greater' and the benefits 'on the happening of the Event Assured Against'. In fact, this is the advantage of this product, that it is a low-risk product, since the policyholders could never lose the premium that they had paid, but instead they could continue to accumulate them in the policy as savings and therefore the graph went upwards because they could never lose their investment.*

*It is also clear that the graph is a generic example of how endowment policies work and it is not specific to the policy taken by the complainant. In fact, the title of the graph is 'Simplified version of How an Endowment Policy Works'. It is also clear that the graph is qualified with the word 'Estimated'. It should also be noted that, the quotations and the graph quotation are clearly conditional upon taking them together with the context of the other above-mentioned documents, i.e., the IMPORTANT NOTES (fol. 33 and **Dok. MSV 1**) and the PRODUCT INFORMATION (**Dok. MSV 2**) which were provided to the complainant which clearly state that*

*rates may go up as well as down – ‘bonus rates may go up as well as down’, ‘estimated maturity value we have based our calculations solely on current bonus rates’ and ‘past performance is not necessarily a guide to future performance. once reversionary Bonuses are declared they are guaranteed.’*

*With respect to the terminal bonus, said documents also state that ‘the Company may after the end of the Policy’s TENTH year and ten years full premia have been paid, decide to allocate from time to time a Terminal Bonus in addition to other declared Bonuses’. It should also be noted that the policy document and in particular the policy schedule it is stated that bonuses were not mandatory but it was within the MSV’s discretion to declare or not to declare such bonuses.*

19. *Therefore, at the moment that the Policy was being sold, MMSV had provided the complainant with sufficient information about the Policy, including the fact that part of it was an investment and what the eventual maturity value shall be made up of and how said amount was calculated.*

***Notwithstanding, the complainant is merely basing his claim on the quotations without putting them in the context of all the other documents also provided to the complainant when the Policy was being sold to the complainant and every year thereafter as shall be explained hereunder.***

20. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until the maturity thereof because it always managed the MSV With Profits Fund in the best interests of the policyholders including the complainant. Said Fund has been managed not only subject to the scrutiny of the independent actuary director of Willis Towers Watson and of the Malta Financial Services Authority. The performance of the said Fund is entirely and always subject to the changes and shifts that take place in the value of the investment markets in which MMSV invests the investment premium of its policyholders. The investment returns can go down as well as up and therefore past performance is not necessarily a guide to the future. Therefore, the difference between the estimated maturity values shown in the*

*quotations and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.*

- 21. Notwithstanding the fact that the maturity value could not be equivalent to any one of the estimated maturity values indicated in the quotations due to the said shift in the performance of the market investments, the investment part of the Policy still rendered a good return when compared to other similar investments that were available during the term of the Policy despite the fact that the return was made while there were three financial crises, besides the fact that during the year 2018, the classes of assets around the world had registered a negative income and when the Policy matured the investment markets had been substantially negatively impacted as a result of the COVID 19. In fact, the complainant made a gain in the amount of Euro 4,377.09 after deducting the maturity value from the investment premium that was paid by the complainant, and this represents a rate of return-on-investment premium amounting to 2.86% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.36%.*
- 22. It also needs to be emphasised that the maturity value of the Policy is tax free and that this benefit is not applicable in other forms of regular savings where the complainant would have been otherwise obliged to pay taxes from his return.*
- 23. During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of his Policy and how said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV by sending to him, on a yearly basis, a Bonus Statement together with the so-called Important Notes.*

*As from 2001, MMSV had also started sending to the complainant, every year, a Media Release (copies of the bonus statements are attached with the complaint and marked Fol. 019 - 020, fol. 025 - 026, and fol. 045 -fol. 056, Fol. 061 - 062) and copies of some Important Notes and Media Releases and other bonus statements are being attached to this reply and*

marked as Dok. 'MSV 3'). Therefore, the complainant was fully aware of what bonuses were being declared and of the value of the Policy over the years. Apart from the use of the terms 'Estimated' and 'illustration' used in the quotations which are self-explanatory, the Important Notes forming part of the Bonus Statements above-mentioned as well as the media releases have repeatedly made it clear that the bonus rates were not guaranteed and that they depended on the performance of the underlying investments, and therefore, said investments could go up as well as down. Therefore, the values of the Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotations could be varied depending on the performance of the investments during the term of the Policy.

Thus, MMSV continues to demonstrate and acclaim that it has supplied sufficient information to the complainant about the policy in question at all stages including after the issuance of the policy and in fact **MMSV did not receive any request for withdrawal of the policy after these documents were provided to the complainant.**

24. Apart from the investment element to the Policy, the same Policy also provided a guaranteed life cover over the complainant's life, such that MMSV was obliged to pay the sum assured in the amount of Lm3,738 (Euro **8,707.20**), to the heirs of the complainant in the case of their demise at any time that the Policy was in force. The said life cover had a price and have been completely ignored by the complainant and not normally available under other forms of regular savings.
25. The Policy (a complete version of such is being attached and marked as **Dok. MSV 4**) provides that

'The **COMPANY HEREBY AGREES to pay the greater of either the Basic Sum Assured or Policy Account (if any)** (emfasi mizjud) and/or the specified additional benefits (if any) to the Payee named in the Schedule on the happening of the Event Assured Against subject to the payment to the Company of the Premiums detailed in the Schedule in the manner specified therein and to the proper observance of the terms and

*conditions of this contract.’ Therefore, MMSV clearly adhered to its obligations under the Policy, as opposed to what is being alleged, because it has offered the value of the Policy Account of the Policy as at the date of the maturity thereof because said value had by far exceeded the value of the Sum Assured.*

26. *MMSV maintains that the Policy was sold in accordance with the regulations that were applicable at the time when the Policy was being sold. In fact, the complainant was presented with the Statutory Notice that was issued in accordance with the provisions of the Life Insurance (Statutory Notice) Regulations, 1989 and was in fact signed by the complainant (a copy of which shall be attached with this reply and marked as **Dok. MSV 5**).*

*The Statutory Notice set out several warnings including the right of the complainant to give policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was somehow pressured to purchase the policy. However, in this case, the complainant did not exercise any of the said rights set out in the Notice and consequently agreed to proceed with the Policy. In addition, the Product Information (also attached with this reply) also informed the complainant that ‘The Life Insurance (Statutory Notice) Regulations 1989, give you the right to cancel your policy (with a full refund of premium paid) within 15 days from the issuing of your policy.*

27. *Finally, MMSV maintains that it has always adhered to its obligations under the Policy and, therefore, it should not be ordered to pay any compensation other than the final maturity value or any expenses that may be incurred in relation to this procedure because it has been instituted for no valid reason, as shall also be proved during the course of these proceedings.*

*With reservation for any further pleas.”*

**Seduti**



Fl-ewwel seduta ta' nhar is-16 ta' Jannar 2025, deher l-Ilmentatur fejn issottometta s-segwenti:

***“Ngħid li sitta u għoxrin sena ilu, kien ġie wieħed id-dar tiegħi biex ibiegħli l-polza. U dak iż-żmien ma tantx kelli aptit għax kont għadni kemm xtrajt id-dar. U, minn hemm u minn hawn, ikkonvincieni li nħallas għal ħamsa u għoxrin sena.***

***Ngħid li għandi l-kuntratt hawnhekk u kitibli s-somma li kont ser nieħu fl-aħħar. Ngħid li kien hemm kuntratt, qalli biex niffirma. Ngħid li kont inħallas Lm80 kull sitt xhur. U, minn hemm u minn hawn, aċċettajna bil-kundizzjoni li wara ħamsa u għoxrin sena, ikollna daww l-Lm 14,000.***

***Ngħid li kull sitt xhur konna nħallsuhom u ma qbiżniex darba li hi darba.***

***Ngħid li dakinhar tal-laqqgħa, kien qalli li jekk nibqa' nħallasha għal ħamsa u għoxrin sena sħaħ jagħtina s-somma ta' Lm 14,500. Qalli li ma trid taqbeż qatt. U jekk taqbeż waħda, tista' tħallas darb'oħra imma jiena dejjem puntwali kont għal ħamsa u għoxrin sena sħaħ.***

***Ngħid li jiena dejjem ħallastha anke fi żminijiet diffiċli; anzi kont inħallasha qabel.***

***Ngħid li darba kienu baġtu għalina l-MSV biex inbiddlu l-polza.***

***Jien lili dan li ġie jbiegħli l-polza u anke fl-ittra li kien baġtilna Matthew Pace fl-2018, ħadd ma qalilna li ma stajt nieħu dan l-ammont u li dan l-ammont seta' jvarja.***

***Jien kont mingħalija li jekk inħallas kont ser nieħu dan l-ammont.***

***Ngħid li fl-1998, kien ċempilli xi ħadd id-dar tiegħi biex ibiegħli l-polza u ġie d-dar tiegħi, jiġifieri ma kontx ikkuntattjajthom jiena. Lanqas biss kelli idea tagħhom. Ngħid li kien ġie darbtejn id-dar ikellimna.***

***Ngħid li kien ġie l-ewwel darba u baqa' jiffittani. Ngħid li ma nafx kemm dam eżatt meta ġie l-ewwel darba d-dar imma naħseb kien dam siegħa.***

***Ngħid li dak iż-żmien li xtrajt il-polza kelli edukazzjoni sa Skola Sekondarja u kont naħdem f'petrol station.”<sup>3</sup>***

Taħt kontroezami, l-Ilmentatur wieġeb:

Ingħad li l-partijiet jaqblu li l-polza inbiegħet sebgħa u għoxrin sena ilu u li l-Ilmentatur spjega x'seħħ f'dik il-laqgħa. Mistoqsi jikkonferma li ma jiftakarx kelma b'kelma dak li ntqal f'dik il-laqgħa, l-Ilmentatur qal li ***“sebgħa u għoxrin sena ilu lanqas ħadd ma jiftakar kollox”***.

Ingħad li ma jigix eskluż li l-Ilmentatur ma tax l-isjegazzjoni kollha li kien tah is-salesperson. L-Ilmentatur qal ***“ser ngħid kelma: huwa qalli li wara ħamsa u għoxrin sena nieħu dik is-somma kollha. La li titla', la li tinzel; dawk l-affarijiet kollha ma semmihomli qatt.”***

Mistoqsi xi spjegazzjoni tah fuq kollox, l-Ilmentatur wieġeb: ***“niftakar li qalli li jekk ma nħallashiex kollha nieħu xi ħaġa inqas, jaqtgħuli xi ħaġa.”***

Mistoqsi x'qallu fuq il-figuri ta' fuq il-quotation, qal li ***“qalli li jekk inħallas Lm80 kull sitt xhur wara ħamsa u għoxrin sena, nieħu Lm 14,500.”***

Mistoqsi x'qallu dwar il-figura ta' Lm3,736, qal li ***“dik ma semmihilix. Semmieli tal-ħamsa u għoxrin sena.”***

Mistoqsi x'qallu dwar il-figura ta' Lm10,586, tenna li ***“dik ma semmihieli xejn. Fuq il-kbira qalli.”***

Meta gie mistoqsi forsi nesa x'qallu dwar dawn il-figuri, qal li ***“dawn il-figuri ma semmihomlix żgur.”***

Mistoqsi staqsihx dwar dawn il-figuri, qal li ***“lanqas idea tagħhom ma kelli dawn l-affarijiet. Lili qalli fuq tal-ħamsa u għoxrin sena, li wara ħamsa u għoxrin sena nieħu Lm 14,500. U għidtlu, ‘Lm 14,500, lanqas nafu fejn se nkunu f'ħamsa u għoxrin sena!’”***

Mistoqsi jekk spjegalux fuq il-Life Cover, li hu kellu garanzija ta' Lm3,736, qal li: ***“iva, jekk immut jew jiġrili xi ħaġa, neħodhom.”<sup>4</sup>***

---

<sup>3</sup> P. 133 - 134

<sup>4</sup> P. 134 - 135

Issir referenza għal dak li hemm miktub fl-ilment, fejn l-Ilmentatur qal:

*“The Contracts that the Complainants signed at the start of the Policy was never subject to proportionality nor any disclaimers.”*

*‘[...] this was never clearly written by the Company to the Complainants nor signed for by the Complainants [...] that the investment of the Complainants was a “normal” investment that could go up and down based on the circumstances.”*

Mistoqsi għadux jikkonferma dan kollu, qal li: **“lili qalli li wara ħamsa u għoxrin sena ser nieħu Lm 14,500.”**

Ingħad illi fl-*Important Notes* (Dok. MSV1 anness mar-risposta) hemm miktub:

*“The Estimated Maturity Values shown overleaf have been calculated using bonus rates declared by the Company at the previous year end. Depending upon the performance of the Company, bonus rates may go down as well as up.”*

Mistoqsi għalfejn qed jagħmel dik l-allegazzjoni li qatt ma gie infurmat fil-kuntratt li jistgħu jitolgħu u jinżlu meta fid-dokumentazzjoni li ngħatatlu dakinhar li ddecieda li jixtri l-polza jgħid mod ieħor, l-Ilmentatur sostna li **“lili ma semmieli xejn minn dawn l-affarijiet.”**

Ingħad illi, allura, dan id-dokument l-Ilmentatur ma qrahx, u dan wiegeb: **“ma nafx”**.

Meta gie referut għall-*Product Information* (Dok. MSV2), l-Ilmentatur ikkonferma li dik hija l-firma tiegħu.<sup>5</sup>

Ingħad illi fit-tieni paġna ta’ dan id-dokument hemm titlu ‘*Policy Bonuses*’ u fl-aħħar żewġ sentenzi ta’ dak il-paragrafu, l-Ilmentatur iffirma illi:

*“When presenting you with the Company’s official written quotation for the Estimated Maturity Value we have based our calculations solely on current bonus rates.”*

---

<sup>5</sup> P. 135

*Please note that past performance is not necessarily a guide to future performance.”*

Ingħad illi, allura, l-Ilmentatur ma tax kashom. L-Ilmentatur spjega li **“hu qalli, ‘Għandek is-somma tal-aħħar, ħallashom dejjem,’ u ejja ħa mmorru.”**<sup>6</sup>

L-Ilmentatur gie referut għall-paġna 44, li hija lista ta’ beneficiċċji bit-titolu ta’ *Azzopardi Insurance Brokers*. Qed jingħad li din hi l-ispjegazzjoni tal-*broker* u li l-MSV ma tidher imkien għax hu kien qed ibiegħlu l-polza. Mistoqsi jaqbilx li meta għamel din il-polza, l-Ilmentatur ma riedx jitlef il-kapital imma biss li jfaddal, wiegeb: **“infaddal imma nieħu dik is-somma tal-aħħar. Ngħid li iva, ma ridtx nitlef il-kapital.”**

Mistoqsi meta nduna l-ewwel darba li ma kienx ser jirċievi l-ammont, qal: **“meta ċempluli biex inbiddlu l-kuntratt għax l-antiki kienu qed jibdlulhom il kuntratti. Ngħid li konna morna l-lmsida, l-MFSP.”**

L-Arbitru ċċara li hemmhekk ma nbidlitx il-polza imma nbidel ir-rappreżentant.

L-Ilmentatur gie referut għall-paġna 8 tal-proċess fejn hemm ittra datata 30 ta’ Jannar 2023 mingħand Dr Keith Farrugia fejn hemm miktub:

*“On the 22nd of June 2021 my Clients have received a Policy Account Statement re: Policy number 41249 that clearly delineates that the amount awarded to my Clients after the expiry of this Policy shall be far less than what was promised, and agreed to, by your Company.”*

Mistoqsi kif fl-2021 huwa ntebaħ li mhux ser jieħu dak li gie mwiegħed meta fis-snin ta’ qabel xorta kien qed jirċievi *bonus statements* kull sena, u mistoqsi x’differenza hemm bejn *bonus statement* tal-2020 u *bonus statement* tal-2021, l-Ilmentatur irrisponda li **“naqbel li kull sena kont qed nirċievi l-bonus statements.”**

Ingħad li fl-ilment (p. 3) hemm miktub:

*“Both in 1998 and 2001, the Complainants were always told that their investment will yield a return of Lm14,555.”*

---

<sup>6</sup> P. 136

Mistoqsi għalfejn qed isemmi s-sena 2001, qal li ***“kien hemm xi haġa żgur imma bħalissa mhux qed niftakar.”***<sup>7</sup>

Dehret ukoll mart l-Ilmentatur, li ssottomettiet is-segwent:

***“Ngħid li dan kien ikkuntattja lil (Ilmentatur). Jien kont ġejt mix-xogħol u kien qalli, ‘Illejlja għandu jiġi bniedem .... għax iridna nagħmlu insurance, biex nagħmlu polza biex wara li jgħaddu s-snin ikollna xi haġa mfaddla.’ Hekk kien qalli.***

***U f’daqqa waħda ħabbat il-bieb u ġie. U jien kif ġie hekk għallarrieda, għidtlu, ‘Għalissa mhu ser nagħmlu xejn.’ Ngħid il-verità, dak iż-żmien, kienu bdew ibiegħu il-garaxxijiet, xi Lm 3,000 u kellna ħsieb nixtru wieħed għax kelli karozza ġdida imma nbidlu l-affarijiet għax kelli l-baby u ma stajtx nibqa’ nañdem għax inqalgħuli ħafna problemi. Qalilna, ‘Aħsbuha, issa nerġa’ niġi.’ Għaddiet xi ġimgħa, ma nafx eżatt għax issa nsejt imma malajr, u reġa’ ġie u reġa’ beda jiffittana biex nagħmluha.***

***Qalli, ‘Halli nispjegahielek imqar. Jekk tibqa’ tħallas sal-aħħar għal ħamsa u għoxrin sena, hallik mill-garaxx li trid tixtri u jkollok somma taħt rasek ‘il quddiem.’***

***Qalli, ‘Issa forsi qed tara li qed tħallas ħafna,’ għax dakinhar kellna bejn wieħed u ieħor xi Lm 35 fil-ġimgħa paga u trid tħallas kollox.***

***Imbagħad, reġa’ ġie t-tielet darba għax xi tliet darbiet ġie, għax kien naqra fitt, u qabad u ġabhieli u għidtlu li ried jiffirmahieli u ffirmali din.***

***Qalli, ‘Hallas din għal ħamsa u għoxrin sena u qatt m’għandek twaqqafha qabel.’ U jien kont għamilt direct debit il-bank biex titħallas.***

***U għamilniha.***

***Ngħid li ma qgħadx jispjega; ġie ta’ malajr. Ngħid li dak iż-żmien ma kinux jitilgħu u jinżlu.”***<sup>8</sup>

---

<sup>7</sup> Ibid.

<sup>8</sup> P. 137

Taht kontroezami, hija wiegbet:

Mistoqsija kemm damet il-laqqha meta spjegalhom, qalet li **“kien gie xi tliet darbiet id-dar u ma kienx idum hafna. Jitkellem jghaggel u jhazzeż fuq il-karti u dejjem jghidilna, ‘Ibqa’ f’moħħok li dejjem trid thallashom.’ Aħna ghidnilu li aħna m’aħniex nies t’hekk; jekk ser nidħlu għal dan il-commitment, ser inħallsuhom.”**<sup>9</sup>

Mistoqsija kemm damet il-laqqha meta spjegalhom, qalet li **“ma damx, forsi dam tliet kwarti. Kien jigi fil-ghaxija tard, wara x-xogħol, ghax naħseb li dan kien xi part-time tiegħu.”**

Mistoqsija xi spjegalha fuq il-figuri ta’ fuq il-quotation, spjegat li **“anzi kien qalilna, ‘Tagħtix kas dan. Hares dejjem li tibqa’ thallasha ghax wara hamsa u ghoxrin sena ser tieħu dik is-somma. U ssibha, Sinjura!’ Dan li beda jghidli. Imbagħad, ir-raġel qalli, ‘Mela nagħmluha,’ u peress li baqa’ jiffitta, ghidtlu, ‘Mela agħmilha.’ Ngħid li daqshekk kienet. Aħna bqajna nħallsu dejjem; stajna u ma stajniex dik dejjem ħallasniha.”**

Mistoqsija x’fehmet fuq il-figura ta’ Lm3,738, wiegbet li **“dik ma spjegahilix. Dik ma qallix fuqha. Li qalli fuq il-kapital. Qalli, ‘Dan il-kapital. Ibqa’ imxi fuqu.’ U wrieni l-quotation u qalli, ‘Qed taraha din hamsa u ghoxrin sena?’**

**Qed jingħad li dik ma kinitx għandi u rċevejtha wara li ħarget il-polza.**

**Ngħid li kien għamel il-polza u ġabhomli miegħu id-dar. Ngħid li naf naqra u nikteb.”**<sup>10</sup>

Giet muriija l-Important Notes (Dok. MSV1) li huma fuq wara tal-quotation, u mart l-Ilmentatur qalet: **“U ngħid li dik ma qrajthiex. Ngħid li jien qgħadt fuq il-kliem tiegħu. Dan kien jaħdem m’Azzopardi u kien qalli, ‘Intkom moħħkom mistrieħ bija; li qed ngħidilkom għandkom tafdawh.’ U daqshekk.**

**Jien daħħalt f’moħħi li jekk ser nibqa’ nħallas, għandi wara hamsa u ghoxrin sena nsib dak il-kapital li wegħdni hu.”**<sup>11</sup>

---

<sup>9</sup> Ibid.

<sup>10</sup> P. 138

<sup>11</sup> Ibid.



Fit-tieni u l-aħħar seduta, ta' nhar it-3 t'April 2025, is-Sur Victor Farrugia ħalef ir-risposta tal-Fornitur tas-Servizz għall-ilment bħala x-xhieda tiegħu.<sup>12</sup>

Is-Sur Josef Busuttil xehed is-segwenti:

***“Ngħid li fis-sena 1998 kont naħdem ma’ Azzopardi Insurance Brokers Ltd.***

***Bħala insurance brokers konna nbiegħu kull tip ta’ polza ta’ kull kumpanija, li fil-fehma tagħna dak iż-żmien, kienet l-aħjar għall-klijent speċifiku li jkun hemm quddiemna.***

***Ngħid li kont immur għal-laqgħat dejjem bl-appuntament.***

***Nikkonferma l-firma tiegħi fuq il-quotation maħruġa fuq letterhead ta’ Azzopardi Insurance Brokers Ltd. (p. 17 tal-proċess).***

***Qed niġi referut għall-Proposal Form (p. 30 u 31 tal-proċess) u nikkonferma li dik hija l-kitba tiegħi.***

***Nikkonferma l-firma tiegħi fuq il-Product Information (Dok. MSV2; p. 104 u 105 tal-proċess) u nikkonferma wkoll il-firma tiegħi fuq l-Avviż Statutorju (p. 28 tal-proċess).***

***Ngħid li jien ma kontx nippersisti mal-klijenti biex jixtru l-poloż; kont nispjega kollox kif taħdem. Dawk id-dokumenti li ġejt muri jixhdu li kont nispjega u nidhol fid-dettall.”***<sup>13</sup>

Is-Sur Busuttil ġie muri *graph* (p. 27 tal-proċess) li kien ta lis-Sur ZP, li turi li huwa kien jispjega u jieħu l-ħin biex jispjega. Ġie muri wkoll il-lista ta’ beneficiċċji tal-polza li kienet tipprepara Azzopardi Insurance Brokers (p. 44). Is-Sur Busuttil qal:

***“Irrid inkun ċar mill-ewwel u ngħid li lil dawn is-Sinjuri ma niftakarhomx. Assolutament ma niftakarx.***

***Ngħid li b’mod inġenerali konna nagħmlu appuntament. Min jaċċetta l-appuntament konna mmorru nkellmuh; nispjegawlu kif kienet taħdem il-polza u, jekk togħgħbu, jhallas kemm inkunu ftehemna waqt li nkun qed nispjega u l-polza tibda.***

---

<sup>12</sup> P. 139

<sup>13</sup> P. 139 - 140

***Nghid li kont nispjega kif taħdem il-polza u x'fiha l-polza, jiġifieri s-Sum Assured, kif inhuma bbażati l-Maturity Values. Hemmhekk għandek il-karti kollha li kont inħalli lill-klijenti. Jekk tħarsu lejn il-karti li jiena ħallejt, jidher biċ-ċar li kont nispjega għax hemm ħafna tħażiż għax waqt li kont nispjega kont nagħmel il-marki tiegħi biex inkun ċert li nkun spjegajt lil dak li jkun u dak li jkun ikun fehem.***

***Nghid li f'dawk il-karti li ħallejt hemm ċar u tond li hu estimated maturity value. Jekk rajt sew huwa underlined. B'mod inġenerali kont nispjega x'inhu l-estimated maturity value, x'inhu t-Terminal Bonus. It-Terminal Bonus għamilt salib għax jista' ma jitteħidx. U barra minn hekk, jekk inti tara kemm fuq ir-Reversionary Bonus, kemm fuq il-Maturity Value u kemm fuq it-Terminal Bonus, hemm ukoll underlined u jidher li jien spjegajt ċar lill-klijent.***<sup>14</sup>

***Nghid li jien xogħoli dejjem għamiltu sew.***<sup>15</sup>

Taħt kontroezami, is-Sur Busuttil wieġeb is-segwenti:

Meta mistoqsi kif kien l-andament meta mar id-dar tagħhom, jekk kienx l-istess kif qed jispjega issa, qal li ***“jiena nista’ nitkellem b’mud inġenerali – bdejt biha, lil dawn il-persuni ma niftakarhomx; probabbli lanqas huma.***

***Nghid li m’għadnix involut f’dan is-settur. Nghid li ili ħamsa u għoxrin sena li waqaft. Nghid li anke t-terminologija insejt. Imma għamilt disa’ snin naħdem f’dan is-settur u minn dak li niftakar qiegħed nispjega.***<sup>16</sup>

Mistoqsi kienx spjega kemm ir-Reversionary Bonus u kemm l-Estimated Cash Surrender Value, qal li ***“jiena xogħli dejjem ħadtu u għamiltu b’reponsabilità kbira. Dejjem u kont fejn kont. Nghid li iva, dak iż-żmien kont ma’ Azzopardi Insurance Brokers bħala salesperson.”***

Ingħad li, allura, huwa meqjus bħala salesperson ta’ MSV Life ukoll. Għal dan, is-Sur Busuttil ikkonferma li ***“jiena kont salesperson impjegat ma’ Azzopardi Insurance Brokers.”***<sup>17</sup>

<sup>14</sup> P. 17

<sup>15</sup> P. 140

<sup>16</sup> Ibid.

<sup>17</sup> P. 141

Ġie mistoqsi jekk jiftakarx dak iż-żmien kienx għamel enfasi jew aċċenn fuq is-somma finali tal-Lm14,500 li tiegħu wara ħamsa u għoxrin sena jekk tibqa' tħallas kull sitt xhur, wieġeb li ***“jiena dejjem kont nispjega l-fatti kif inhuma bbażati fuq l-istimi li kienet tagħtina l-kumpanija li qed tinxurja, f’dan il-każ, il-Middle Sea Valletta.”***<sup>18</sup>

Mistoqsi dak iż-żmien kienx jistaqsi jekk il-klijenti kellhomx esperjenza, qal li ***“ma niftakarx imma kont nidhol fid-dettall biex nara dawn il-klijenti kemm jaffordjaw. Fil-fatt, il-karti jixhdu dak li qed ngħid.”***<sup>19</sup>

Mistoqsi jiftakarx kemm-il darba mar għand l-Ilmentaturi, wieġeb li ***“assolutament ma niftakarx.”***<sup>20</sup>

Min-naħa tal-Fornitur tas-Servizz, Dr Veronica Grixti ddikjarat li m’għandhomx aktar evidenza xi jressqu.

### **Sottomissjonijiet finali**

Fis-sottomissjonijiet tagħhom, il-partijiet tennew il-pożizzjoni li kienu għamlu fl-Ilment, fir-Risposta u waqt ix-xhieda fis-seduti.

### **Sema’ lill-partijiet**

### **Ra l-atti kollha tal-każ**

### **Jikkunsidra:**

### **FIL-MERTU**

L-Arbitru jrid jiddeċiedi l-każ b’referenza għal dak li, fil-fehma tiegħu, huwa ekwu, ġust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.<sup>21</sup>

Il-punt kruċjali f’dan l-ilment jittratta l-allegati wegħdiet li saru mir-rappreżentant tal-Fornitur tas-Servizz<sup>22</sup> u dan fir-rigward tal-ammont li l-Ilmentatur kellu

---

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> Kap. 555, Artiklu 19(3)(b)

<sup>22</sup> Għalkemm ir-rappreżentant kien ta’ *broker* mhux direttament tal-MSV ġie aċċettat li l-MSV jirrispondu għall-ilment għax il-prodott kien tagħhom.

jingħata mal-maturità tal-polza, li iżda issa li l-istess polza immaturat, ġie offrut ammont ferm inqas.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'ġie mwiegħed lill-Ilmentatur u x'eventwalment ġie mogħti jew offrut lilu mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *“l-aspettattivi raġonevoli u legittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.”*<sup>23</sup>

L-Arbitru għandu quddiemu żewġ pożizzjonijiet estremi dwar dak li verament ġara u ntqal sabiex ġiet mibjugħa din il-polza ilmentata. Primarjament, l-Arbitru ma jistax ma jinnotax kemm il-verżjoni mogħtija mir-rappreżentant tal-Fornitur tas-Servizz dwar il-mod kif sar il-bejgħ tal-polza in kwistjoni hija dettaljata u, fuq kollox, iħoss li din hija waħda kredibbli.

Mill-banda l-oħra, kruċjali li janalizzà l-fatt jekk din hix kwistjoni fejn hemm xi forma ta' memorja selettiva min-naħa tal-Ilmentatur, li jiftakar dak li jrid jew li jaqbillu, jew jekk ir-rappreżentant li biegh il-polza spjega biss is-sabiħ b'mod imprudenti bla distinzjoni bejn dak li kien assikurat u dak li kien stimat.

Fix-xhieda tiegħu, l-Ilmentatur stqarr li hu kien ġie ikkuntattjat minn aġent tal-Fornitur tas-Servizz sabiex jagħmel polza tal-assikurazzjoni, u wara li saru tliet laqgħat, iddeċieda li jmexxi kif kien sugġerit.

L-Ilmentatur xehed ukoll li minkejja li ma jiftakarx kelma b'kelma dak li ntqal lilu iżda jiftakar żgur li r-rappreżentant ma kien spjegalu xejn għajr li jekk iżomm il-pagamenti bla ebda nuqqas tul ħamsa w'għoxrin sena, allura, żgur kien ser jieħu s-somma ta' Lm14,500 meta tagħlaq.

Fil-fatt, meta mistoqsi dwar il-figuri indikati fil-*quotation*, l-Ilmentatur xehed li,

***“ser ngħid kelma: huwa qalli li wara ħamsa u għoxrin sena nieħu dik is-somma kollha. La li titla', la li tinžel; daww l-affarijiet kollha ma semmihomli qatt.”***

Mistoqsi xi spjegazzjoni tah fuq kollox, l-Ilmentatur wieġeb: ***“niftakar li qalli li jekk ma nħallashiex kollha nieħu xi ħaġa inqas, jaqtgħuli xi ħaġa.”***

<sup>23</sup> Kap. 555, Artiklu 19(3)(c)

Mistoqsi x'qallu fuq il-figuri ta' fuq il-*quotation*, qal li ***“qalli li jekk inħallas Lm 80 kull sitt xhur wara ħamsa u għoxrin sena, nieħu Lm14,500.”***

Mistoqsi x'qallu dwar il-figura ta' Lm3,736, qal li ***“dik ma semmihilix. Semmieli tal-ħamsa u għoxrin sena.”***

Mistoqsi x'qallu dwar il-figura ta' Lm10,586, tenna li ***“dik ma semmihieli xejn. Fuq il-kbira qalli.”***

Meta gie mistoqsi forsi nesa x'qallu dwar dawn il-figuri, qal li ***“dawn il-figuri ma semmihomlix żgur.”***

Mistoqsi staqsiehx dwar dawn il-figuri, qal li ***“lanqas idea tagħhom ma kelli dawn l-affarijiet. Lili qalli fuq tal-ħamsa u għoxrin sena, li wara ħamsa u għoxrin sena nieħu Lm14,500. U għidtlu, ‘Lm14,500, lanqas nafu fejn se nkunu f’ħamsa u għoxrin sena!’”***

Mistoqsi jekk spjegalux fuq il-*Life Cover*, li hu kellu garanzija ta' Lm3,736, qal li: ***“iva, jekk immut jew jiġrili xi ħaġa, neħodhom.”***<sup>24</sup>

Din ix-xhieda ma tregi xejn max-xhieda li ta r-rappreżentant li biegh il-polza li rrefera għal dokumenti f'pagna 23 u pagna 27 ippreżentati mal-ilment mill-Ilmentatur stess, li juru li kien hemm spjega dettaljata ta' kif taħdem il-polza u fejn il-figuri juru li ġew saħansitra akkompanjati mill-kelma *'estimated'* li kienet *underlined*.

Il-bilanċ tal-probabbiltà juru li diffiċli jitwemmen li fi tliet laqgħat ma gie spjegat xejn ħlief li l-ogħla ammont imsemmi fil-kwotazzjoni kien garantit. Aktar jidher li dan huwa każ ta' memorja selettiva min-naħa tal-Ilmentatur.

Biex tintlaħaq il-figura kkwotata jrid isir *'compounding'* b'rata għolja li għalkemm kienet fattibbli fis-sena ta' qabel is-sena 1999, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal 25 sena sħaħ.

Anke persuna mhux tant intiża fil-finanzi tifhem li mhux floku tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal 25 sena speċjalment peress li l-kontribuzzjonijiet tagħhom kienu mifruxa fuq 25 sena u mhux xi *'lump sum investment'* li tista' tiġi investita mill-ewwel biex torbot ir-rati tal-imgħax għal

---

<sup>24</sup> P. 134-135.

żmien twil. Dan appartni li dak iż-żmien, *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

Min-naħa l-oħra, l-Arbitru jhoss li l-Fornitur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu ħareġ *spectrum* ta' kwotazzjonijiet maħduma b'rati differenti għax fuq perjodu ta' 25 sena xejn ma jibqa' stabbli.

Fil-fatt, ingħad li wara s-sena 2000, bdew joħroġu tliet kwotazzjonijiet u mhux waħda, u dan biex jgħin lill-klijent jifhem li ma kien hemm xejn garantit għal 25 sena.

**Għalhekk għar-raġunijiet kollha mogħtija aktar 'il fuq f'din id-deċiżjoni, l-Arbitru jiddeċiedi li l-ilment huwa wieħed ġust, ekwu u raġonevoli, u ser jilqgħu limitament sakemm dan huwa kompatibbli ma' din id-deċiżjoni.**

### **Kumpens**

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentatur, sal-limitu ta' fejn kienu legittimi, ma ġewx milħuqa. L-aspettattivi tiegħu kienu li mal-maturità tal-polza kien ser jirċievi s-somma ta' €33,904 (l-ekwivalenti għal Lm14,555) li, iżda, fid-data tal-maturità ġew offruti ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentatur kienu kompletament legittimi.

L-Arbitru jrid jasal għal kumpens li jrid ikun ibbażat fuq ġustizzja ekwitattiva kif huwa sanzjonat li jagħmel espressament permezz tal-Artikoli 19(3)(b) u 26 tal-Kap. 555 tal-Liġijiet ta' Malta. Filwaqt li jara wkoll li dan l-ammont ikun raġonevoli, ma jistax ikun preċiż minħabba li hemm diversi fatturi li jridu jiġu kkunsidrati.

L-Ilmentatur u martu ma pprezentaw l-ebda prova li dak iż-żmien kellhom xi għażla għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. Għaldaqstant, l-Ilmentatur u martu lanqas ipprezentaw xi tip ta' prova li minħabba li huma ddeċidew li jieħdu l-polza offruta lilhom, huma garrbu xi tip ta' *opportunity loss*.

Għalkemm mart l-Ilmentatur fix-xhieda tagħha qalet li kienu qed jithajjru jixtru garaxx, dan ma jinxtarax billi tħallas ammont żgħir għal ħamsa w'għoxrin sena, u ma pprezentaw ebda evidenza li kellhom xi offerta f'dan is-sens.



Fuq kollox, mingħajr preġudizzju għal dak dikjarat hawn fuq, l-Arbitru ma jhossx li permezz ta' din il-polza, wieħed kellu x'jitlef.

Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentatur u martu kellhom iċ-ċans li jikkontribwixxu għat-tfaddil permezz ta' din l-istess polza u dan billi jħallsu ammont żgħir kull sena għal ħamsa u għoxrin sena sħaħ.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' madwar 3%<sup>25</sup> li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investment kien sostanzjalment garantit. Anke kellhom il-benefiċċju ta' kopertura fuq il-ħajja li beda mill-ewwel ġurnata tal-polza.

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għad-deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentatur. Dan għal raġunijiet diġà mfissra hawn fuq u anke għaliex:

- L-Ilmentatur u martu ma kinux ġustifikati jassumu li r-rati prevalenti fl-1998 kienu ser jibqgħu applikabbli għal 25 sena sħaħ ġaladarba l-investment tagħhom ma kienx fuq bażi *lump sum*.
- Il-kundizzjonijiet tal-*quotation* kienu għand l-Ilmentatur u martu għal żmien biżżejjed qabel ma gie ffinalizzat l-impenn għall-polza ilmentata, u kellhom kull ċans jifhmu dak li kien garantit u dak li kien stimat.
- Meta tingħata stima għal affarijiet li jseħħu fi żmien qasir huwa raġonevoli li wieħed jistenna li l-varjazzjoni tar-realtà mill-istima tkun żgħira. Izda stima għal żmien 25 sena ma tistax raġonevolment tistenna li l-varjazzjoni tkun żgħira, għax 25 sena huwa żmien twil u kollox jaf jinbidel, u ma hawn ħadd li jista' jbassar x'ser jiġri mill-investimenti fi żmien daqstant twil.

Għalhekk, l-Arbitru jiddeċiedi li s-somma xierqa li għandha tingħata lill-Ilmentatur bħala kumpens hija dik ta' **€2,076.91**.

**Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV Life p.l.c. tħallas lill-Ilmentatur is-somma ta' elfejn u sitta u sebghin ewro punt disgħa wieħed (€2,076.91) b'żieda**

<sup>25</sup> P. 100

mas-somma diġà offruta, *cioè*, mas-somma ta' €13,846.09<sup>26</sup> u, għalhekk, iħallsu is-somma kumplessiva ta' €15,923.00.

Bl-imġax ta' 2.40%<sup>27</sup> minn hamest ijiem tax-xogħol wara d-data ta' din id-deċiżjoni sad-data tal-ħlas effettiv.

L-ispejjeż ta' dan il-każ huma għall-Fornitur tas-Servizz.

**Alfred Mifsud**

**Arbitru għas-Servizzi Finanzjarji**

### **Nota ta' Informazzjoni relatata mad-Deciżjoni tal-Arbitru**

#### ***Dritt ta' Appell***

Id-Deciżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deciżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deciżjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taht l-artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili mitluba skont l-artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien hmiestax (15)-il ġurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deciżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell.

---

<sup>26</sup> p. 9

<sup>27</sup> Rata kurrenti MRO (*Main Refinancing Operations*) tal-Bank Ċentrali Ewropew

Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.

### ***L-Ispejjeż tal-Proċeduri***

Skont l-artikolu 26(3)(d) tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), l-Arbitru ddecieda min għandu jhallas l-ispejjeż tal-proċeduri u f'liema proporzjon, skont iċ-ċirkostanzi partikolari tal-każ.

L-ispejjeż tal-proċeduri mhumiex limitati għall-pagament tal-ispejjeż applikabbli fuq ilment magħmul mal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji (f'dan il-każ Ewro25), imma jistgħu wkoll jinkludu kull pagament raġonevolment u legalment applikabbli ta' spejjeż professjonali u legali mħallsa mill-ilmentatur, limitati għal atti ppreżentati matul il-każ. Tali spejjeż professjonali m'għandhomx jinkludu spejjeż ġudizzjarji jew ħlasijiet oħra kontingenti magħmula barra l-proċeduri tal-każ.

L-ammont ta' tariffi u spejjeż rigward servizzi professjonali jew ta' konsultazzjoni mogħtija lill-konsumaturi relatati mat-talbiet jew proċeduri taħt l-Att, li jistgħu legalment u raġonevolment jintalbu bħala parti mill-ispejjeż tal-proċeduri, mhumiex speċifikati fid-dispożizzjonijiet preżenti tal-Att.

L-Arbitru jistenna iżda li tali tariffi u spejjeż għandhom jirriflettu t-tariffi u spejjeż hekk kif stipulati u applikabbli għal proċeduri magħmula fil-Qorti Ċivili ta' Malta fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.