Before the Arbiter for Financial Services

Case ASF 102/2024

PF and ZF

('the Complainants')

vs

MAPFRE MSV Life p.l.c. (C-15722)

('MSV' or 'the Service Provider')

Sitting of 27 December 2024

The Arbiter,

Having seen the complaint[1] whereby the Complainants declared that, according to a proposal signed on 1 July 1998, their life insurance policy was estimated to have a maturity value of Lm62,592 equivalent to €145,800.14. However, despite having paid the monthly premiums due on the first day of each month, and this for a duration of 25 years, they were informed that, on maturity, the actual amount due is €61,329.83 implying that same maturity value has fallen significantly short of the estimated value by 57.94%.

The Complainants argued that the Service Provider demonstrated deceit, carelessness and incompetence in the manner they have treated them, and this, from the start of their relationship with them in 1998 at the time such life policy was proposed. They claim that it is now evident that such proposal was based on unattainable annual rates of return to urge them to buy the policy.

The Complainants also declared that the Service Provider has not addressed their complaint and simply referred them to the Office of the Arbiter.

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[1] P. 1 - 8 and the attached documentation (P. 9 – P. 96)

In light of the above, the Complainants request[2] the Service Provider to pay the estimated maturity value of €145,800.14 together with interest from the date it was due.

Having seen the Service Provider's reply:[3]

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

1. *MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainants that the maturity value of the policy in question numbered 43156 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 complainants. Consequently, the complainants are requesting the Honourable Arbiter to order MMSV to pay the complainants the difference between the said figures by paying an amount in addition to the Maturity Value of the Policy which has amounted to Euro 61,303.24 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 claimants' request is unfounded and therefore, the complainants are not entitled to receive any compensation in addition to the maturity value as is going to be explained in further detail hereunder.

2. *In the first place, the estimated maturity values are based on estimates shown in two quotations (fol. 15, attached herewith and marked as Dok. MSV1). The quotations in question contained the words <u>Estimated</u> Maturity Value including Reversionary Bonus and <u>Estimated</u> 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.*

3. *The estimated maturity value 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.* ***<u>The estimated maturity values shown in</u>***

[2] P. 4
[3] P. 102 – 112 and attached documentation p. 113 - 135

the quotations were not guaranteed because they were based on the investment conditions and circumstances at the time*. At the time, the value of the investments were much higher than it is today. In fact, the rate used to calculate the estimated maturity value as shown in the quotations, was that of 6.75% for reversionary bonuses and 2.5 % for terminal bonuses, which rates had remained constant until the year 1998 and then increased slightly in 1999 to 7% for reversionary bonuses 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.***

4. *Furthermore, it must be stated that in the quotations (fol. 15 and Dok. MSV1) there was a distinction between reversionary bonuses and terminal bonuses and MMSV was not obliged to pay the terminal bonuses as indicated by the words 'if any'. 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 complainants 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 could have matured either at a value of Lm45,521 (Euro 106,035.39) or at the higher value of Lm62,592 (Euro 145,800.14). It is clear that the complainants cannot claim that the quotations were not conditional because there were in fact the words "estimated" and "illustration" as well as the words "if any" next to the words "estimated maturity value including reversionary and terminal bonuses".*

5. *Besides the fact that the quotations indicate two maturity values as "estimated" and, therefore, said figures could not have been guaranteed, the complainants were also presented with notes together with the quotation (which is attached herewith and marked as Dok. MSV2). 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." 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. In addition, the notes also provide that "The Estimated Maturity Values shown overleaf have been calculated using bonus rates declared by the Company at the previous year end." The complainants were also informed that "Depending on the performance of the company, bonus rates may go up as well as down." **Therefore, 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 complainants could have been certain how the value of the Policy Amount of their 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 complainants.*

6. *In fact, the Life Policy Schedule of the Policy (fol. 14), provides that "In respect of each premium paid, Lm58.23 (per month) 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 policyholders. This also explains that the investment premium, which as at the date of the maturity of the Policy had amounted to Euro 40,691.81 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 complainants by an additional Euro 20,611.24 which amount represents the bonuses that have been declared by MMSV during the term of the Policy.

7. *Furthermore, the only amount mentioned in the Life Policy Schedule was the Basic Sum Assured in the amount of Lm15,000 as well as the Additional Temporary Sum Assured in the amount of Lm20,000, and no amounts containing the word 'Estimate' in the quotation were mentioned on 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.*

8. *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 conditions applying to all the benefits provided by the Policy are defined in 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 complainants 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 (fol. 16 - 24).

9. *In so far as the Terminal Bonus is concerned, the notes forming part of the quotation, provided that: "Depending on its profit experience, Middle Sea Valletta Life Assurance Company Limited may, after the Policy's TENTH year, and ten year's full premia have been paid, 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 withdrawn 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.

10. *It is to be noted that the complainants in fact signed the bottom of the Important Notes (Dok. MSV2) and hence confirmed that:*

    "I/We hereby confirm that I/We hereby confirm that I/we have read and understood the Important Notes to this quotation and that the Bancassurance Representative has fully explained the notes above to me/us and I/we are satisfied with the policy illustrated and its explanation."

11. *The complainants were also given a '**Statement of Compliance**' (copy attached and marked as Dok. MSV3) and by virtue of such document the Assured confirmed that they understood the contents of the Statement of Compliance, and the Policy:*

    "jien niddikjara illi fhimt dan id-dokument u l-polza tal-assigurazzjoni u l-konsegwenzi kollha tagħha li ġew spjegati lili bil-lingwa Maltija fuq talba tiegħi".

    Therefore, they confirmed that they understood point 4 of the Statement of Compliance:

    *"The quotation which I/we have received only contains estimates based on the continued attainment of the current performance by Middle Sea Valletta Life Assurance Company Limited **and such estimates are not guaranteed by Middle Sea Valletta Life Assurance Company Limited**, the Bank or any of its employees. **I/we have also been warned that past performance is not a guide to future performance**."*

    It is therefore unfair for the complainants to make such serious allegations about MMSV without taking said estimated figures and putting them in the context of the other documents and the explanations given to the complainants, which by their own signature they confirmed that those same documents were explained to them.

12. *Furthermore, on the 7th May 1998, the complainants also signed a document known as "Product Information" (a copy of which is attached herewith and*

*marked as Dok. MSV4) 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 amount 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 Estimate 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 MSV's discretion to declare or not to declare such bonuses. This is another reason why they estimated maturity value of the Policy in question indicated in the estimate that it was not guaranteed but was only an estimate and only the sum assured was guaranteed.

13. *Therefore, at the moment that the Policy was being sold, MMSV had provided the complainants 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 complainants are merely basing their claim on the quotations without putting them in the context of all the other documents also provided to the***

complainants when the Policy was being sold to the complainants and every year thereafter as shall be explained hereunder and without better understanding the investment market.

14. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainants until the maturity thereof because it was always managed the MSV With Profits Fund in the best interest of the policyholders including the complainants. Said Fund has been managed not only subject to the scrutiny of MMSV's executive management and investment committees, but also 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.*

15. *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 crisis, 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 Euro20,611.24 after deducting the maturity value from the investment premium that was paid by the complainants and this represents a rate of return-on-investment premium amounting to 3.56% (gross of 15% withholding tax).*

16. *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 complainants would have been otherwise obliged to pay taxes from their return.*

17. *During the term of the Policy, MMSV always kept the complainants 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 complainants by MMSV by sending to them, on a yearly basis, a Bonus Statement together with the so-called Important Notes. As from 2001, MMSV had also started sending to the complainants, every year, a Media Release (fol. 38 – 77). Therefore, the complainants were 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 the 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. In this connection, the complainants also complained about the manner in which the annual reports accompanying the annual statements were being presented by MSV. In this connection, MSV confirms that it intended to deliver both messages as understood by the complainants, that is that MSV's performance was strong and that through its rigorous and prudent investment management, it remained strong even during time of global uncertainty by eliminating the peaks and troughs of the financial market movements. In their complaint, the complaints say that,*

   "When reading the Policy Annual Reports (Doc. 08), I was never led to believe that the maturity value of our policy would fall short of the estimated maturity value in the Policy Document (Doc 01) by a staggering 57.94%."

   In this connection, MMSV was never in a position to advise its policyholders about the variance but it constantly reminded them that the estimated maturity value may not be achieved and this at the very start before the policy was issued and throughout the term of the Policy and also personally to the *complainants by virtue of the revised illustrative maturity values in 2009 and 2016. The complainants needed to assess the extracts reproduced in their complaint in the light of the entire annual report and in the context of the performance of the financial markets at the time.*

18. *In addition, upon the complainants' request, MMSV provided the complainants with revised illustrative maturity values which as at 8th July 2016 (fol. 79 – 80) said estimates amounted between Euro 62,161 and Euro 72,685. The complainants are complaining that they could not compare the scenarios presented in the revised illustrative maturity value letter (fol. 79 – 80) with the quotation issued before the complainants had purchased the policy. This is absolutely incorrect since the estimated maturity values proposed in 1998 and in 2016 were clearly presented to the complainants and there was no ambiguity that the estimated maturity value as proposed in 1998 had reduced in 2016 as shown in said letter (fol. 79 – 80).*

19. *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 to the heirs of the complainants in the case of the demise of either of them at any time that the Policy was in force, the sum assured, in the amount of Lm35,000 (Euro 81,528.07) made up of the basic sum assured in the amount of Lm15,000 (Euro 34,940.60) together with the Additional Temporary Sum Assured in the amount of Lm20,000 (Euro 46,587.46). The said life cover had a price and has been completely ignored by the complainants and is not normally available under other forms of regular savings. In fact, the life cover was so important for the complainants because they needed to buy additional life cover to the basic one that was provided under the endowment policies because the complainants needed to pledge the policy in favour of Bank of Valletta p.l.c. for the amount of Lm35,000 from 5th August 1998 until 27th November 2014. MSV is attaching herewith documentation in relation to the pledge marked as Dok. MSV 5.*

20. *The Policy (presented with the claim) provides that "The* ***COMPANY HEREBY AGREES to pay the greater of either the Basic Sum Assured or Policy Account (if any)*** *(emphasis added) 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 maturity thereof because said value had by far exceeded the value of the Sum Assured.

21. *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 complainants were 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 them (a copy of which is being attached herewith and marked as Dok. MSV 6. The Statutory Notice sets out several warning including the right of the complainants to withdraw from purchasing the Policy and the manner to do so. This Notice was intended to give policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was someway pressurized to purchase the policy. However, in this case, the complainants did not exercise any of the said rights set out in the Notice and consequently agreed to proceed with the Policy. In fact, the Policy was issued more than six (6) weeks from when the proposal form was signed and hence the complainants had sufficient time to review the documentation again and to raise any queries that they may have had and to cancel the Policy.*

22. *MSV would like to address the serious allegations made by the complainants that "As I show and prove in my documentation, MSV has demonstrated deceit, carelessness and incompetence in the manner in which they have treated my wife and I, from the start of our relationship … which is now evident was based on unattainable annual rates of return, in order to urge us to buy the policy." In this connection, MSV is of the view that the complainants have not justified their allegations since the complainants are basing their allegations on the wrong assumptions and calculations made by them. While the complainants "do understand that prevailing financial conditions may not have been as envisaged at the time that the policy was initiated", the*

complainants seem not to likewise acknowledge that the significant difference between the estimated maturity value and the actual maturity value, which they have commented about in their complaint, is attributable to the manner in which the financial markets have performed over the years. However, the complainants have also clearly understood that the estimates were not guaranteed because they depended on the prevailing financial conditions along the years. For this reason, MSV could not predict the prevailing financial conditions during the term of the Policy and hence, as already explained above, MSV issued the quotation based on the current rates declared at the time for a number of years before the Policy was issued and informed the complainants how said estimates were being calculated and that they may go up or down depending on the bonus rates declared over the years. At this stage, MSV wishes to address Table 1 and Table 2 produced by the complainants (fol. 82 and 84) and the interpretation thereof of the complainants in connection with same by attaching herewith tables which MSV has prepared for this purpose to set out the Projected Scenario presented in Maltese Lira marked as Dok. MSV7 and another one presented in Euro marked as Dok. MSV8 as well as the Actuals presented in Euro, which calculations are calculated on a monthly basis marked as Dok. MSV9. MSV is also attaching herewith Dok. MSV10 explaining why the calculations of table 1 in fol. 82 prepared by the complainants were inaccurate as well as Dok. MSV11 by virtue of which MSV recreated the table of the complainants based on correct workings prepared by MSV.

23. *In their complaint, complainants express their understanding that that "I am sure is perfectly normal in any economy" that rates of return go up and down and that "it is not possible to estimate the value of the annual return in future years, yet it seems from the calculations which I have presented in Table 2 that MAPFRE MSV Life was able to." Firstly, table 2 does not reflect the workings of MSV since complainant assumed incorrect estimated bonus rates and does not reflect the estimated bonus rates that were assumed by MSV before the policy was sold. In addition, although it was not possible to estimate the annual bonus rates for 25 years, MSV still needed to make assumptions to issue said quotation and as it is still obliged today. MSV also advised the complainants how it was issuing the illustration and that it was assuming the bonus rate at the time. In fact, the important notes overleaf of quotation and the product*

information informed the complainants about this. MSV informed the complainants that it was assuming that the current bonus rate remained constant for 25 years and that there may be a terminal bonus over and above, which in the estimate was calculated at the same rate of terminal bonus that was being declared at the time. MSV did not double the bonus rate from year 21 till year 25, as is being alleged by the complainants, but MSV did as was explained above and in the attached tables prepared by MSV. Therefore, the complainants were informed about all of the above and hence it may not be alleged that MSV acted fraudulently or incompetently. Therefore, what the complainants are arguing that the "real reason why the maturity value of the policy is significantly below the estimate given in the proposal is due to the fact that the estimated rates of return were unrealistic particularly in the last 5 years of the lifetime of the policy" "with deceit and with sole intention of securing the policyholder's business" is entirely incorrect.

24. *Since MSV was unable to predict the future but was still obliged by law to issue an estimate, it could only issue said estimate on the basis of rates declared at the time and by informing the complainants how it made said calculations and that they could vary if bonus rates shifted up or down. MSV could not factor in how much the shifts could have been but informed the complainants that there will be shifts. Therefore, it is incorrect for the complainants to allege that MSV issued its quotation "without factoring in any ups and downs in the annual rate of return from year to year" since MSV informed the complainants that there would be such ups and downs and because it was unable to predict by how much (as the complainants themselves understand) then it was assuming the rate to remain the same and that the complainants needed to take said information into consideration when purchasing the policy and when receiving the annual bonus statements and the revised illustrative maturity values in 2009 and 2016. At no stage did MSV "intentionally uplift" the estimated maturity value of the policy to mislead the complainants.*

25. *The complainants further argue that "I understand that the estimates provided by MAPFRE MSV Life do not guarantee the final value of the Policy at maturity" and "I understand that international investment returns will fluctuate up and down over a period of 25 years. It is absolutely inconceivable*

to imagine that such returns will remain stagnant over such a long period of time" but according to complainants, this was an unacceptable variation. However, while the assumed bonus rates were attainable at the time that the Policy was issued and not as is being alleged by the complainants, this was a variation reflecting the variation in the investment markets. In fact, MSV is setting out hereunder a graph showing the performance of the financial markets in order to justify why MSV was declaring the bonuses it did over the years. The graph also demonstrates that it applies the smoothening effect in the with profits fund since, as can be seen on the graph, there were certain years when the Fund registered a negative return, but MSV still declared a bonus during that year in favour of its policyholders. Therefore, it is correct what annual reports said that "the diversified portfolio and its ability to smooth the returns over time thus eliminating the peaks and troughs of the financial market movements" because MSV was in a position to continue declaring bonuses even at a time when there were no such returns in order to do the smoothening effect because it was in a financially strong position to do so.

26. 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 interest 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.'

Hearings

During the first hearing of the 12 September 2024, PF ('the Complainant') declared that:

"The issue is that the maturity value being proposed by MSV is substantially lower than what was given at the time that we took out the policy.

That is the issue in a nutshell.

The estimated maturity value of the policy was €145,800. What MSV is offering now including the final bonus is €61,329.

I would like the Arbiter to take into consideration the points which I have made and that MSV would offer a payout which is reasonably close to the amount which was specified in the policy document quotation.

I say, first of all, I always banked with Bank of Valletta. And in the late 1990s I approached the bank for a loan to finish building my house. The bank agreed to a loan, but they wanted an endowment policy in place as well which would guarantee the loan in the event of my demise or something like that.

I say that everything was sorted out by the Paola branch of Bank of Valletta. They got me the policy document, they got me the proposal. This came about as a result of a home loan application.

I confirm that all the meetings regarding the life policy were held at the bank.

The proposal form was quoted to me at the Paola branch of Bank of Valletta on 7 May 1998. And, apart from this policy, subject of this complaint, there was a twinning to it which was a term policy for an additional Lm20,000 but that was not part of the investment."[4]

Dr Veronica Grixti, on behalf of the Service Provider, clarified that:

[4] P. 136 – P. 137

"… the loan was for Lm35,000; Lm15,000 cover under the endowment and Lm20,000 life cover which did not include an investment."[5]

The Arbiter pointed that this happened on 7 May 1998, but it was signed in July, practically, a two-month gap between the proposal and the issue of the policy.

The Complainant stated that:

"Asked whether there were other meetings during these two months, I say that no, there were no other meetings apart from the two mentioned. And if my memory serves me right, in the gap between the two meetings we were asked to do a medical. Two months seem like a long time but at the time, I wasn't in a particular hurry to conclude the loan and the endowment policy.

I say that I am aware that the policy had a twin channel: one channel was for a life cover of Lm15,000 with an investment module which matures after twenty-five years; and the second channel was a straight life cover, a term cover for Lm20,000 that had no investment with it offering only a life cover."[6]

During the cross-examination, the Complainant declared further that:

"I confirm that I have the understanding that although I am aware that the estimated maturity value quoted on the quotation was not guaranteed to me because it could have gone up and down, my main complaint is that there was an unacceptable variation between the maturity value and the estimated maturity value.

I confirm that BOV never told me by how much this variation was going to be, up and down, or gave me a percentage on how much it could vary. BOV never informed me of anything.

In my complaint I wrote:

'It is not possible to estimate the value of the annual return in future years.'

Asked whether I agree that because this is not possible, MSV actually advised me as to how it was issuing the calculations and what assumptions they were

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[5] P. 137
[6] *Ibid*.

making their calculations on by virtue of giving me the documentation, I say, no. MSV were not telling me how they were doing the calculations.

I am being referred to documents attached to the service provider's reply; to Doc. MSV 1 (the Quotation given to me by BOV) and next to the words 'estimated maturity value including reversionary and terminal bonuses', there are the words 'if any' which means that the terminal bonus may or may not be given.

I say, yes, referring to the terminal bonus.

I am being referred to the Important Notes (Doc. MSV 2), that were overleaf. signed by my wife and by me, to paragraph 3 where there is written:

'The estimated maturity value shown overleaf have been calculated using bonus rates declared by the Company at the previous year end, depending on the performance of the Company, bonus rates may go up as well as down.'

And to the last paragraph:

'The quotation provided is for illustration only and does not confer any rights.'

Asked whether I still believe that BOV did not inform us about how the estimated maturity value is calculated despite having this documentation, I say that at the time that we took out the policy, we never had any discussions with MSV. We always spoke with BOV. Nothing was explained to us just as you are explaining now. I say that we signed every document they gave us, but they never explained the documents to us, but I am also saying that I aware that the investment could go up as well as down.

It is being said that in the quotation there is a distinction between the reversionary bonus and the terminal bonus. Asked why I am basing my claim on the higher amount, I say that I was not expecting to receive a figure as was specified with terminal bonus if any, but I was not expecting to receive an amount which was less than half the value that was shown in the policy document.

There has to be some limit as to how much this can vary, plus or minus.

When I paid my premiums to a company which is meant to be an expert in investments, I expect them to use the money and make proper investments not investments which are going down.

Asked whether I am in agreement that like everyone else in the 1990s, I would have money in the bank receiving an interest rate, I say, yes.

Asked whether I was in agreement that in the 1990s the interest rate that I would be receiving from the banks is completely different than the interest rate being paid or no interest rate being paid on the savings accounts in the banks. I say, I do not know as I do not follow the interest rates of the banks.

Asked whether I have a savings account at the bank, I say that no, I only have a current account at the bank.

I am not aware that in the 1990s the interest rates of the banks were higher compared to now when they give no interest, I say that is a subject which I do not follow.

It is being said that I am a director of a civil engineering company and that I would have managed my money, and the money of the company would have been deposited in some savings account; and asked whether I am aware that interest rates have changed over the years not just MSV's, I say that I am a civil engineer by profession and I have nothing to do with the company's money being deposited in accounts so I do not know where you are trying to get with this.

It is being said that I said that it is not possible to predict the annual bonuses throughout the years because nobody knows the future and then, at the same time, I have said in my complaint that I expect MSV to reflect the ups and down, complaining about MSV for being deceitful and other allegations because they did not reflect the downward rates.

Asked why I am contradicting myself, I say that I am not contradicting myself. What I am saying is that you are making a plan for 25 years and you surely have to consider the ups and downs and not go straight through at 6.75% especially a company like MSV which is an investment company and should know very well that sometimes you're up and sometimes you're down.

It is being said that in my complaint letter (Doc 8; page 90) I referred to the Policy Account Announcements (page 67), where I said:

"I was never led to believe that the maturity value of our policy would fall short of the estimated maturity value stated in the Policy Document ..."

It is being said that when I looked at the policy announcements of MSV, I felt that they were one sided and they were misleading me.

Asked how I could justify this when on the same document (where I highlighted that paragraph in that document), there was other information on the same document which I did not choose to highlight, for instance:

"Notwithstanding the prudent investment policy adopted by MSV, past performance is no guarantee for the future and, in the light of uncertainties that surround the capital markets the investment return may fluctuate positively as well as negatively. Fluctuations in investment returns impinge directly on the rates of bonuses declared by MSV since these need to reflect such fluctuations. Reversionary Bonus rates are therefore likely to vary significantly over the lifetime of a policy," I say that because all those announcements which came out annually with the status of the policy, MSV is always blowing its trumpet.

Being asked how MSV is blowing its trumpet when in the same document there is written that "Reversionary Bonus rates are therefore likely to vary significantly", I say that MSV says that they are strong and doing well, and then says it can go up and down. There is no contradiction there.

I am being referred to page 91 of my complaint where I state:

"MAPFRE MSV Life abstained from indicating in clear terms whether the growth of our policy was in line with the performance estimated at the time our policy commenced in May 1998 ...", when besides the Policy Account Statements, I was provided with revised maturity values.

It is being said that on 6 May 2009, I was given a revised illustrative maturity value with amounts between €63,158 and €101,151. And on 8 July 2016, (page 79 of the process) there was another variation between €62,161 and €72,685

and that both these estimates of 2009 and 2016 reflect an amount which was close to the maturity value."[7]

The Complainant continued that:

"It is being said that on page 8 of my complaint (page 93 of the process), I said that the estimated rates of return that were quoted to me in the quotation were unrealistic in the last five years of the lifetime of the policy and that they were deceitful.

Asked whether I will be withdrawing this based on the information that was given to me in MSV's reply that my calculations were incorrect and that I was assuming incorrect rates, I say that, no, my calculations were not incorrect, and I haven't seen how they were. They might not be accurate, but they were not incorrect."[8]

The Service Provider submitted the *Affidavit*[9] of Victor Farrugia, *Chief Operations Officer*, which essentially repeats what was already said in the original response submitted to the Arbiter.

During the second and last hearing for this case of the 28 October 2024, Mr Farrugia swore the present *Affidavit* under oath. In the meantime, the complainant stated[10] that, unfortunately, he did not have time to go through the same *Affidavit* and, therefore, at this stage, he cannot undertake a cross-examination of such *Affidavit.*

On the other hand, Ethelbert Perini, the person that sold the policy in question to the Complainants declared that:

"In 1998, I worked at the Paola branch of Bank of Valletta p.l.c. I was a Bancassurance representative at that time.

I used to sell all types of life assurance policies at the time.

I confirm my signature on the quotation (Doc. MSV 1), on the Important Notes (Doc. MSV 2) and on the Statement of Compliance (Doc. MSV 3).

[7] P. 137 – P. 140
[8] P. 140 – P. 141
[9] P. 143 – P. 149
[10] P. 157

I confirm that I sold this policy to Mr and Mrs F.

I say that, normally, when clients are referred to acquire a life assurance policy, especially to cover a loan, we give different quotations to cover the requirements of the bank.

In this case, the bank required a minimum of a life cover of Lm35,000.

So, we provide quotations covering either Level Term or Endowment or a mix of both depending on the customer's needs and financial strength to cover the payments.

I say that I provided different scenarios; the bank required a life cover of Lm35,000, so I presented different scenarios and the customer selected, I think, the policy that was sold at the time.

I say that when I was referred to Mr and Mrs F, I presented to them different quotations covering the life cover of Lm35,000 starting from the Level Term up to a full Endowment. And then, issued different quotations to lower or increase the premium accordingly. Then, it is up to the customer to decide which policy to purchase. It is important that it us up to the limit required by the bank.

For the Endowment policy, I explained that MSV pays out a bonus every year which is added up to the policy account. The rates are not guaranteed every year but what is paid up is guaranteed, so, the policy account cannot go down but only up. It goes up depending on the bonus rate declared by MSV every year.

I could not guarantee the Reversionary Bonus indicated on the quotation because it is only an estimate. I explain that MSV declares a bonus every year and it is added up to the policy account.

Regarding the Terminal Bonus, I explain that this is a bonus which might be paid by MSV, and it is declared every year. So, every year, MSV declares what Terminal Bonus applied for that particular year. It could be a percentage and it could be none.

I say that this meeting took some considerable time as I had to cover different scenarios, so I had to explain the Level Term and what it offers, the full Endowment and what it offers and all the quotations in between. So, it could

not be presenting a quotation and that's just it. It required presenting different quotations for consideration."[11]

During the cross-examination, he declared further that:

"The complainant states that he does not recall receiving several quotations. Asked to present the other quotations mentioned in my testimony, I say that I do not have these quotations. I do not know whether MSV has them; but surely, many different quotations had been issued to arrive at the policy purchased by the complainant. You could not issue a quotation and that's it."[12]

The Arbiter asked[13] the Service Provider whether they have the quotations being referred to. Dr Veronica Grixti, on behalf of the Service Provider, replied that MSV only keeps the quotations for businesses that were actually concluded.

Mr Perini continued that:

"Asked how much time lapsed from issuing the first quotation until they signed the policy, I say that I cannot recall exactly because it was 25 years ago.

Surely, I issued several quotations. I do not recall whether the complainants decided there and then which one to proceed with or whether they took their time to decide accordingly.

It is being said that if the last quotation which, according to the lawyer, is the only one being kept, then a copy of this should be available and the date they signed should be available as well.

I say that the policy was issued two months later."[14]

The Arbiter stated that most documents are signed on 7 May 1998 and asked whether there was another meeting apart from that of the 7 May 1998.

The witness pointed out that:

"I say that I cannot recall when the quotations were handed to because normally, we issue a number of quotations, they are handed to the customer,

[11] P. 157 – P. 158
[12] P. 158
[13] P. 159
[14] *Ibid.*

and he might or might not come back on the day or later on to proceed with the options taken.

I say I cannot recall what happened in this case.

Asked whether I recall Mr PF, I say, yes, because at that time, Mr PF was a customer of our branch. He had a business company. His name and the year 1998 did not ring a bell but PF of X Limited rang a bell. Normally, you get to know frequent customers."[15]

The Arbiter then wanted to clarify that:

"In the Life Policy Schedule (page 14), it seems that the payment of Lm102. 40 per month including Lm32.88 which was dedicated to the Lm20,000 Level Term. And then it states that from the residue, from Lm102.40 less Lm32.88 which goes for the Level Term, then there is a clause which says Lm58.23 would go to the investment part of the policy; the rest would go to the life cover part of the policy which is Lm15,000."[16]

Mr Perini confirmed that this is correct.

Mr Victor Farrugia added that:

"The portion of the premium which was invested in the policy account was Lm58.23. The rest is mostly what is called 'cost of life cover' which also includes some charges associated with the policy.

The element of the Lm102.40 which the customer was paying which was actually dedicated to the investment was Lm58.23."[17]

Both parties have also presented their final submissions[18] to the Arbiter.

Considers

[15] P. 159
[16] *Ibid*.
[17] P. 160
[18] P. 162 - P. 164 (with the relevant attachments thereto) and P. 170 - P. 176 (with the relevant attachments thereto)

The Arbiter shall determine and adjudge a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.[19]

The complaint mainly revolves around the maturity value due to the Complainants on maturity of their life assurance policy, which amount is less than the amount quoted at the time of the policy being proposed to them. The Complainants mainly argued that the quotation presented to them was based on unattainable annual rates of return to urge them to buy the policy.

The Arbiter must refer to the time when the complained policy was being sold, what was promised to the Complainants, and what was eventually offered to them at maturity. He must also consider how the sale of the same product complained took place and, above all, if such product has met the *"reasonable and legitimate expectations of consumers and this with reference to the time when it is alleged that the facts giving rise to the complaint occurred."*[20]

Primarily, the Complainant clearly declared that the main reason behind taking out such an Endowment policy was the requirement imposed on him by Bank of Valletta p.l.c. after approaching the same bank for a loan for the completion of building his house. He stated,

"… I approached the bank for a loan to finish building my house. The bank agreed to a loan, but they wanted an endowment policy in place as well which would guarantee the loan in the event of my demise or something like that. I say that everything was sorted out by the Paola branch of Bank of Valletta. They got me the policy document, they got me the proposal. This came about as a result of a home loan application."[21]

The Complainant confirmed that the proposal was quoted to him on 7 May 1998. It is evident that the Complainant understood the type of policy that was offered to him; that is, apart from the fact that an Endowment policy has two aspects, mainly, the life cover and the investment element, the Complainant also knew that,

[19] Cap. 555, Article 19(3)(b)
[20] Cap. 555, Article 19(3)(c)
[21] P. 136

"… apart from this policy, subject of this complaint, there was a twinning to it which was a term policy for an additional Lm20,000 but that was not part of the investment."[22]

He also confirmed that:

"*I am aware that the policy had a twin channel: one channel was for a life cover of Lm15,000 with an investment module which matures after twenty-five years; and the second channel was a straight life cover, a term cover for Lm20,000 that had no investment with it offering only a life cover."*[23]

The Arbiter notes that the Complainant was clearly aware of the type of policy being offered, how the policy works and, above all, that the values quoted to him were not guaranteed. In fact, during the cross-examination, the Complainant declared that:

"I confirm that I have understanding that although I am aware that the estimated maturity value quoted on the quotation was not guaranteed to me because it could have gone up and down, my main complaint is that there was an unacceptable variation between the maturity value and the estimated maturity value. I confirm that BOV never told me by how much this variation was going to be, up and down, or gave me a percentage on how much it could vary. BOV never informed me of anything."[24]

The Complainant also stated that:

"… we signed very document they gave us, but they never explained the documents to us, but I am also saying that I am aware that the investment could go up as well as down."[25]

Considering this declaration, the Arbiter doubts that the Complainant signed the documents without reviewing their content. As a company director and a regular client of the bank, he should recognise that signing a document carries understanding, acceptance, and responsibility. A company director certainly

[22] P. 137
[23] *Ibid*.
[24] *Ibid*.
[25] P. 138

possesses the knowledge to know that a document should not be signed without fully understanding its content.

As previously mentioned, the Complainant was aware that the quoted amount could not be guaranteed, as the investment had the potential to increase or decrease in value. In fact, one of the documents presented to the Complainant for signature was the *Product Information Document*,[26] which document specifically includes reference to the *Reversionary and Terminal Bonuses* and how these are calculated, but specifically, includes that,

"The rate of bonus earned 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 …".

This is a statement that the Complainant could clearly understand.

The Arbiter recognises that although as complained, the Complainant may not have been informed about the current rate of return at that time, he was clearly aware that the policy included an investment element. Most importantly, he understood how investments work.

The Complainant, being aware of the subject matter, did not provide any evidence indicating that he requested additional information about the bonus rate at the time of sale. Furthermore, he failed to demonstrate that the information provided to him was incorrect or misleading. Most importantly, the Complainant had ample time to review the information he received and gain a deeper understanding of how the policy operates.

When the Arbiter highlighted the two-month gap between the proposal and the policy issuance, the Complainant responded that,

"Two months seem like a long time but at the time, I wasn't in a particular hurry to conclude the loan and the endowment policy."[27]

It is understandable that the Complainant is not the type of person to accept what is offered without conducting further research and gaining a better

[26] P. 116 – P. 117
[27] P. 137

understanding of the subject. Therefore, the above statement emphasises what he should have done at the time of the proposal.

As stated earlier, the Complainant was informed of the policy details, including its key features and the types of benefits it provided. He understood how the policy operated and acknowledged receipt of this information by signing his acceptance.

Given the information presented to him, the fact that the Complainant had sufficient time to reflect and decide the details and calculations included in the submitted complaint, and the Complainant's profession, the Arbiter is not persuaded that the Complainant had legitimate expectations that were not respected.

The Arbiter believes that this complaint is not being filed because the Complainant feels that the Service Provider or its representative acted unfairly or incorrectly. Instead, it seems that the Complainant's intention is merely to seek a higher amount than what has already been proposed to him.

Additionally, when evaluating the overall progress and performance of the policy, it is noted that the endowment portion has generated an average return of 3.56%[28] per annum, which, given the circumstances, is a reasonable outcome. This also being considered in the context of the guaranteed invested capital and declared profits, as well as the life coverage benefit, which was the primary reason for purchasing the policy.[29]

The Complainant had the option to choose a full Term policy to provide him with the life cover required for the bank loan. However, when he opted for an Endowment policy, he did not provide any evidence that he had any other options available at that time, aside from the complained policy or a bank account with lower interest rates.

Additionally, he did not demonstrate any proof of opportunity loss incurred as a result of choosing the Endowment policy in question.

[28] P. 144

[29] A person of the calibre as the Complainant could certainly understand that (i) the illustrative rate of return of 6.75% applicable in 1998 could not be guaranteed for a future period of 25 years; (ii) that Terminal Bonus was entirely at the discretion of the Service Provider.

Conclusion

Considering all the facts of the case, the Arbiter does not consider the complaint to be fair, equitable and reasonable and cannot uphold it.

Each party is to bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.