Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 238/2024

TU

('l-Ilmentatur')

vs

MAPFRE MSV Life p.l.c.

(C-15722)

('il-Fornitur tas-Servizz')

Seduta 24 t'Ottubru 2025

L-Arbitru,

Ra l-ilment[1], fejn l-Ilmentatur issottometta li lura għas-sena 2000, kien għamel polza tal-assikurazzjoni fuq il-ħajja għal perjodu ta' erbgħa u għoxrin sena. Dak iż-żmien, kien ġie kkwotat lilu li s-somma li hu kellu jieħu mal-maturità, kienet tammonta għal Lm10,243, ekwivalenti għal €23,859.77, liema ammont jinkludi r-*Reversionary Bonus* u t-*Terminal Bonus*.

L-Ilmentatur stqarr li tul il-perjodu tal-polza, hu ħallas total ta' €7,485.60 fi *premiums*, iżda issa li attwalment immaturat din il-polza, ġie offrut biss is-somma ta' €10,420.46, liema somma hija ferm inqas minn dik oriġinarjament ikkwotata lilu, u minħabba f'hekk, iħossu aggravat.

L-Ilmentatur ammetta li l-istima mogħtija lilu erbgħa u għoxrin sena qabel setgħet tvarja mill-*Maturity Value* attwali, iżda stqarr li d-differenza f'dan il-każ hija kbira.

Dan meta, fuq kollox, fl-ebda punt tul il-perjodu tal-istess polza ma kien ġie mwissi dwar din il-varjazzjoni meta l-Fornitur tas-Servizz seta' faċilment jinduna

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dwar dak li kien ser iseħħ. Minħabba f'hekk, l-Ilmentatur żviluppa aspettattivi leġittimi li iżda dawn ma ntlaħqux.

Għaldaqstant, l-Ilmentatur qed jitlob is-somma ta' €13,439.31, liema somma tirrappreżenta d-differenza bejn il-*Maturity Value* li kien ġie kkwotat lilu fil-mument li ġiet mibjugħa l-polza (€23,859.77), u l-ammont li ġie eventwalment offrut lilu mal-maturità (€10,420.46)[2].

Ra t-tweġiba[3] tal-Fornitur tas-Servizz

"*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 complainant that the maturity value of the policy in question numbered 54686 of the nature Endowment Policy with Sum Assured ("the Policy") was not equivalent to the estimated maturity value including reversionary and terminal bonus 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 sum of EUR23,859.77.*

   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 as is going to be explained in further detail hereunder.

2. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotation (a handwritten copy is presented as fol. 44, a printed copy is presented as DOC. MSV 1). Therefore, none of the figures which were indicated in the quotation as "estimated" could be said to have been guaranteed.*

3. *The estimated maturity values shown in the quotation 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 the quotation were not guaranteed because they were based on the investment conditions and circumstances at the time</u>****. The Imporant*

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Notes attached to the quotation, presented as fol. 45, states that "The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end. ***<u>Depending on the performance of the company, bonus rates may go down as well as up.</u>****" At the time, the bonus rate was much higher than it is today, with a rate of 5.75% in 2000 which started to decrease with mior fluctuations throughout. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower.* ***<u>This shows that the quotations provided were indeed correct as they were issued according to the circumstances at the time, therefore, MMSV had acted in good faith</u>****.*

4. *The Important Notes (fol. 45) delve into the meaning of "Reversionary Bonuses" and "Terminal Bonuses". The said notes also explain that the Policy was participating "* ***<u>in the Company's distribution of its profits by means of an allocation of annual Reversionary Bonuses declared from time to time …</u>*** *The rates of Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured."* ***<u>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.</u>*** *Therefore, the amounts that were indicated in the quotations as "Estimated Maturity Value including Reversionary Bonus" were not guaranteed because one needed to wait until the finalisation of the bonus declaration process 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 of 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.*

5. *With regards to the "Terminal Bonus", the same document showing the Important Notes also explains that* ***"<u>Depending on its profit experience the Company may,</u>*** *after the end of 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 other declared bonus ... 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 quotations (fol. 44 and DOC. MSV 1) as "Estimated Maturity Value including Reversionary and Terminal Bonuses" of Lm10,243 was likewise not guaranteed since it was highly volatile.*

6. *In fact, the Life Policy Schedule (presented in the complaint as fol.15) provides that "In respect of each premium paid, LM126.39 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 above-mentioned notes 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.*

7. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol.15) was the sum assured of LM2,724 and no amounts containing the word 'Estimate' were mentioned in this Schedule, which further shows that according to the agreement between the parties the estimated maturity value including reversionary bonus and the estimated maturity value including reversionary and terminal bonus were never guaranteed.*

8. *The notes that formed part of the quotation (fol. 45) also provided that "Whilst the purpose of these notes is to* ***guide*** *policyholders and prospective policyholders, the* ***conditions applying to all the benefits provided by the Policy are defined in the Policy document ...*** *In 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 this 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.***

9. *It is to be noted that the Assured in fact signed at the bottom of the Life Assurance Quotation (fol. 44) and hence confirmed that:*

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

10. *In addition, MMSV has observed what is contained in the Product Information Document (DOC. MSV 2 and 3) that "**The policy, on death or maturity, will pay out the basic Sum Assured or the Policy Account whichever is the greater"** since the maturity value is the Policy Account value, a sit is greater than the sum assured.*

11. *Furthermore, the complainant also signed the second page of the above-mentioned Product Information Document declaring to have received and understood a copy of the document, a quotation showing the estimated cash surrender values and estimated maturity values, and the statutory notice where applicable. The document stated the below:*

*"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 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***

- ***<u>Please note the past performances are not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed</u>".***

12. *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, what the eventual maturity value shall be made up of and how the said amount was calculated including that the bonus rates may go up or down as expressly shown in the quotations and the other documentation provided by the Company.* ***Notwithstanding, the complainant is merely basing his claim on estimated maturity values without putting them in the context of all the documents provided to him when the Policy was being sold to him and every year thereafter as shall be explained hereunder.***

13. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders including the complainant. In fact, the 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.* ***<u>Therefore, the difference between the estimated maturity values shown in the quotation and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy</u>***.

14. *Notwithstanding the fact that the maturity value could not be equivalent to 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 EUR3,354.62 after deducting the investment premium that was paid by the complainant from the maturity value, and this represents a rate of return-on-investment premium amounting to 2.99% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.51%.

15. *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.*

16. *During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of his Policy, how the 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 Policy Account 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 Policy Account statements are attached with the complaint and marked Fol. 21-35). 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 term "Estimated" which was conditional in the quotations which is self-explanatory, the Important Notes forming part of the Policy Account Statements mentioned above 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 quotation could be*

varied depending on the performance of the investments during the term of the Policy.

17. *Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover during the duration of the Policy. This amount was guaranteed to be paid upon death of the Life Assured, in fact it is referred to as the 'Basic Sum Assured' on the Policy Schedule (fol.15) with an amount of LM2,724. Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR7,065.84 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 knows as the unit linked policies where no amounts were guaranteed. <u>In addition, the Policy allowed the Policy Owner to name his children under the Baby Bond option, and upon reaching the age of 18, they would be allowed to issue a separate life insurance protection up to the amount mentioned on the policy without requiring any medical evidence (subject to the submission of an HIV free declaration)</u>. In fact, the complainants exercised this right under the policy, which is evidenti in the Endorsement attached to this complaint (fol. 41). Furthermore, the policyholder had the benefit of designating a beneficiary in the event of death of the person covered. This is shown in the endorsement issued in 2020 (DOC. MSV 4)*

18. *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 EUR3,354.62 which amount represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates over time, the Policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the Policy also provided cover on the complainant's life.*

19. *As explained, MMSV has met all its contractual obligations, because the quotation did not guarantee the estimated maturity values, but the*

estimated maturity values were only an indication of the potential performance of the policy which could vary in the future.

20. *It is clear that the Policy does not guarantee payment of the estimated maturity values but guarantees that the **maturity value** is paid in the event that the life assured is still living when the policy matures. The maturity value according to the Maturity notification letter issued one month in advance of the maturity date (fol. 37) states that "The Maturity Value shown here is illustrative and may be different if the bonus rates change or if the interest rate on premium/policy loans changes or if any outstanding premiums due remain unpaid." This implies that no estimate could crystallise the value that would be paid to the complainant on the maturity date of the policy in question because that value could only be confirmed on the date of maturity of the policy. Therefore, naturally the figures indicated on the quotations could not be guaranteed because the maturity value continues to change until the maturity date of the policy and therefore the Company observed its obligations according to the policy in question.*

21. *The word **"quoted"** in the comment shown in the online complaint (fol. 3) stating that "It would suffice to say that the final Maturity Value of the assured policy is nowhere near close to the value **quoted** to [the Complainant] when he subscribed the policy." further confirms that the complainant was aware that he was being presented with quoted values. Moreover, it was also stated that "There is a substantial discrepancy of €13,439.31 between the **quoted** value at subscription and the value at maturity. [The Complainant] accepts that **estimations made 24 years prior** may vary from the final Maturity Value, however in this case there is too large a discrepancy between such **quoted** value and Maturity Value." The adverse financial conditions over the years since 2000 have evidently affected the bonus rates which reduced from 5.75% to 0.9% in 2022, hence, this comment has no basis as it's noti n any way a wrongful act of MMSV. On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion. This is because, "The Company aims to achieve a fair and equitable distribution of these profits between different generations and types of With-Profit*

Policies. It is important to note that the profits made on with-profit business depend primarily on the investment returns earned on the underlying investment. Although the Company aims to provide the policyholders with ***some protection from fluctuations in the investment markets*** *by* ***smoothing*** *the Reversionary Bonus rates from year to year, Reversionary Bonus rate may vary significantly over the lifetime of the Policy."* <u>This implies that unlike what happens with other volatile investments, smoothing ensures that in periods of low investment</u> <u>**returns, MMSV may still be able to declare a positive Reversionary Bonus Rate**</u>. In addition, the comment stating that *"... at no point during the policy term was [the Complainant] warned of the considerable variation in value, something which Mapfre MSV Life could have definitely foreseen and warned about" has no basis as the company provided the complainant with* ***annual Policy Account Statements****, clearly showing the investment value as at year end for the respective year.*

22. *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 it-18 ta' Marzu 2025, l-Ilmentatur issottometta s-segwenti:

"Ngħid li kien ċempilli Oliver Said minn ROCS Group biex jiġu jkellmuna fuq xi polza. Iffissajna appuntament u ġie jkellimni d-dar.

Ngħid li l-polza kienet tidher attraenti dak iż-żmien. Fil-fatt, bid-diskors li kien qalli, ikkonvinċieni u ftaħna din il-polza. Kont inħallas circa Lm133 fis-sena. Għalija, bħala ħaddiem, kien ammont konsiderevoli dak iż-żmien.

Ngħid li jien xogħoli technician mal-gvern. Dak iż-żmien kont ? mal-Gvern, jiġifieri kont grad baxx iżjed mil-lum. Il-mara ma kinitx taħdem dak iż-żmien

imma għamilniha biex 'il quddiem it-tfal ikunu jistgħu jieħdu xi ħaġa minn din il-polza.

Din il-polza, li kienet Baby Bond, kont għamiltha għal erbgħa u għoxrin sena.

Ngħid li kien indikat lili li meta tagħlaq il-polza kelli nieħu Lm10,240.

Ngħid li meta kien ġie Mr Oliver Said id-dar, kien konvinċenti ħafna. Ma semmieli xejn negattiv f'din il-polza li jista' jvarja xi ħaġa jew hekk. Qalli li dak l-ammont qisu mhux garantit imma qalli li dak l-ammont li ser nieħu jien fl-aħħar.

Ngħid li spjegali li biex jinvestu l-flus huma, jiena nista' nieħu dak l-ammont ta' flus, more or less, mhux inqas ħafna minn dak l-ammont ta' flus jew iżjed.

Ngħid li qatt ma qalli li jista' jkun hemm varjazzjoni kbira.

Ngħid li tani dokument biex niffirma li hu l-Life Assurance Quotation (Doc 'B' paġna 16 tal-proċess). Nikkonferma li dik hi l-firma tiegħi. L-affarijiet li hemm bil-kitba mimlijin jew minn Mr Oliver Said jew minn xi persuna oħra. Il-firma ma nagħrafx ta' min hi. Ngħid li din il-quotation ġiet iffirmata jew id-dar tiegħi jew ir-ROCS għax jien mill-Mellieħa u jista' jkun li mort ir-ROCS dak iż-żmien imma m'inix ċert.

Ngħid li f'laqgħa waħda iddeċidejt; dawn ċempluli, ġie d-dar, u ġie darb'oħra bil-karti biex iffirmajna dak id-dokument. Wara t-telefonata, kien ġie d-dar, spjegali, lili u lill-mara, imbagħad, kien ġie darb'oħra bil-karti biex niffirma.

Rigward in-noti importanti li hemm fuq wara, ngħid li ma niftakarx jekk qgħadx jaqrali paragrafu, paragrafu dawn x'jgħidu.

Rigward il-figura ta' Lm7,587 li hi l-Maturity Value including estimated Reversionary Bonus, kien qalli li huma jinvestuhom il-flus, jieħdu l-imgħax minnhom jew iħaddmuhom huma. Ngħid li kif wasal għal din il-figura ma spjegalix.

Ngħid li ma kienx spjegali dwar il-figura ta' Lm10,243 (il-Maturity Value including estimated Reversionary Bonus and Terminal Bonus) jew inkella insejt.

Ma jidhirlix li spjegali x'inhu Reversionary Bonus jew inkella insejt. Ngħid li ma nafx xi jfisser Terminal Bonus. Ngħid li għadni sal-lum ma nafx xi jfisser Reversionary Bonus.

Ngħid li kont nirċievi Account Statement Policy kull sena.

Nirreferi għall-Account Statement Policy tal-2002 (paġna 21 tal-proċess)

Ngħid li tul is-snin li kont nirċievi din id-dikjarazzjoni, qatt ħadd ma għamel komunikazzjoni miegħi, la s-Sur Said u lanqas xi ħadd ieħor, biex jispjegali l-kontenut tal-Account Statement Policy xi jfisser.

Ngħid li qatt ħadd ma spjegali xi jridu jgħidu biha Present Basic Sum Assured.

U lanqas ħadd qatt spjegali x'inhu Reversionary Bonus rate declared for 3.75%, x'inhu s-sinifikat ta' 3.75%.

Ngħid li lanqas qatt ħadd spjegali x'inhu Average Reversionary Bonus declared between 1994 to 2002 (9 years) 6.10%, is-sinifikat ta' dan is-6.10%.

Ngħid li lanqas qatt ħadd spjegali x'inhu Average Reversionary Bonus declared between 1998 to 2002 (5 years) 5.60%, is-sinifikat ta' 5.60%.

Il-polza tiegħi bdiet fis-sena 2000, la fl-1994 u lanqas fl-1998. Ngħid li ma jidhirlix li kienu ndikawli x'kien l-Average Bonus ta' bejn is-sena 2000 u s-sena 2002. U, fil-fatt, mhumiex indikati hawnhekk.

Jekk naraw il-Policy Account Statement tal-2003, (paġna 22) hemm miktub Reversionary Bonus rate declared for 2003 huwa 3.60%. Ngħid li ħadd ma spjegali li l-bonus ta' dik is-sena kien 3.60%.

Ngħid li ħadd ma ndikali x'impatt dan seta' kellu fuq il-maturity value fl-aħħar tal-polza.

Hemm li l-Average Reversionary Bonus declared between 1994 (sitt snin qabel ma għamilt il-polza) to 2003 (tliet snin wara li ħriġt il-polza) (10 years) huwa ta' 5.85%. Ngħid li ħadd ma spjegali kif seta' jimpatta l-Estimated Maturity Value tal-polza tiegħi għada pitgħada.

Ngħid li kull meta kont nirċievi dawn il-policy statements qatt ħadd ma indikali personalment jew bil-miktub dawn ir-rati li kienu qegħdin jiġu indikati bħala *bonus rates jew average reversionary bonus għall-aħħar għaxar snin, jew tnax-il sena, jew ħmistax-il sena, kif kienu ser jaffettwaw il-polza tiegħi meta tiġi biex timmatura.*

Ngħid li mid-dokumenti li kont nirċievi, ħadd qatt ma ġibidli l-attenzjoni biex jagħtini x'nifhem li l-polza ma kinitx sejra tajjeb bħal kif suppost kellha tkun fil-bidu.

Ngħid li qatt ħadd minn MAPFRE jew mir-ROCS ma bagħtuli karta biex jgħiduli, 'Isma', aħna fil-quotation li konna tajnik konna indikajnilek illi fl-egħluq tal-polza kont ser tieħu 'il fuq minn Lm10,000, iżda rridu ngħidulek li kif sejrin l-affarijiet jidher li ser ikun diffiċli ħafna biex tieħu din il-figura.'

Fil-Policy Account Statement – 2021 (paġna 34) hemm Total Investment Premium ta' €6,447.02, Total Regular Bonus ta' €2,682.50; Policy Account Balance as at 31.12.2021 ta' €9,159.52.

Jien m'inix intiż f'dan is-suġġett u għalija, Policy Account Balance, ma tfisser xejn.

U għalija ma tfisser xejn meta nara Present Basic Sum Insured għax ma nifhimx f'dawn l-affarijiet.

Ngħid li ma stajt nifhem xejn għalfejn kien hemm dik id-differenza bejn il-Policy Account Balance ta' €9,159 u l-Present Basic Sum Insured ta' €6,345.

Ngħid li jien qatt, fl-ebda ħin, ma mmaġinajt li fl-aħħar ser nieħu anqas mill-Lm10,000 li kienu imwiegħdin lili meta għamilt il-polza. Qatt ma immaġinajt għax ħadd qatt ma avviċinani biex jgħidli, 'Ara, ġara hekk u ġara hekk.'

Ngħid li meta ħarġu din il-polza qatt ma qaluli, 'Isma', aħna qed niggarantulek l-Lm10,000 biex il-bonus rate jibqa' bħala medja ta' 5%, 10%, 7%.' Ngħid li qatt ma wrewni din l-istampa lili.

Ngħid li fl-2007, kont mort fiżikament għand ir-ROCS, il-Mellieħa, u kont kellimt lil Mr Vella mir-ROCS Group fejn tlabtu li xtaqt nagħlaq din il-polza. Dak iż-żmien, il-prezz tal-bini ma kienx daqshekk għoli u għidt aħjar niġbidhom forsi ninvestihom fil-ġebla, fil-proprjetà. U kont irċevejt ittra datata 22 ta' Jannar 2007, (paġna 69 tal-proċess) fejn qaluli li biex timmatura s-somma trid tieħu ċertu żmien. Jien, imbagħad, qisni bżajt u ħallejt kollox kif kien.

Ngħid li kif kienet ser tagħlaq il-polza, irċevejt ittra mingħand MAPFRE MSV fejn, fost ħafna diskors, qaluli li €10,420 kienet is-somma finali. Jien ħassejtni xxukkjat x'ħin rajt dak l-ammont u għidt dan x'ġara? Mort kellimt persuna mir-ROCS, lil Mr Vella erġajt, u ma tanix widen.

Ċempilt lil MAPFRE u ma tawnix widen lanqas. Bdejt naqra online u bdejt nara li kien hemm ħafna complaints mal-Middlesea fuq din il-biċċa tax-xogħol. U kellimt lil Dr de Marco biex niftħu każ quddiem l-Arbitru.

L-ilment tiegħi essenzjalment hu li jien ftaħt il-polza taħt impressjoni mod u r-realtà kienet mod ieħor. U tul dawn l-erbgħa u għoxrin sena qatt ma ngħatajt l-impressjoni li l-affarijiet setgħu ivarjaw daqshekk. U minn kważi €24,000 niżlu għal €10,000 – differenza sostanzjali, meta jien qatt ma ġejt mgħarraf."[4]

Meta mistoqsi mill-Arbitru kemm dam il-*meeting* meta r-rappreżentant tal-Fornitur tas-Servizz mar ikellmu dwar il-polza, l-Ilmentatur qal li *"**Naħseb dam xi nofs siegħa.**"*[5]

Fit-tieni seduta tal-20 ta' Ġunju, sar il-kontroeżami tal-Ilmentatur fejn iddikjara li:

"Iva, naqbel li l-polza nbiegħet lili erbgħa u għoxrin sena ilu fis-sena 2000.

Mistoqsi niftakarx kelma b'kelma dak li ntqal waqt din il-laqgħa erbgħa u għoxrin sena ilu, ngħid li le, ma niftakarx kollox.

Nikkonferma li qed nibbaża fuq dak li għidt fis-seduta l-oħra.

Qed niġi referut għal dak li hemm fl-ilment tiegħi (paġna 3 tal-proċess) fejn hemm miktub:

'[the Complainant] accepts that estimations made 24 years prior may vary from the final Maturity Value, however in this case there is too large a discrepancy between such quoted value and Maturity Value.'

Allura, qed jingħad li aħna naqblu li jiena fhimt li 'estimated' qatt ma setgħu kienu fixed jew guaranteed.

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[4] P. 87 – P. 90
[5] P. 90

Ngħid li hekk hu imma mhux dik id-differenza kollha.

Mistoqsi naqbilx li fixed amount ma setax ikun, ngħid li iva, però, f'dawn l-aħħar erbgħa u għoxrin sena ħadd ma nfurmani li bil-miktub u lanqas bil-fomm, ħadd.

Fix-xhieda tiegħi għidt li iffissajt appuntament ma' Oliver Said u ġie d-dar. Fit-tieni paġna tax-xhieda tiegħi (paġna 88 tal-proċess) hemm miktub:

'Ngħid li din il-quotation ġiet iffirmata jew id-dar tiegħi jew ir-ROCS għax jien mill-Mellieħa u jista' jkun li mort ir-ROCS dak iż-żmien imma m'inix ċert.'

Mistoqsi niftakarx kemm-il meeting kien sar, ngħid li meeting wieħed kien sar.

Qed jingħad li fix-xhieda tiegħi għidt li ħadd ma spjegali xi jridu jgħidu biha l-Present Basic Sum Assured (paġna 88 tal-proċess).

Qed niġi mistoqsi jekk jiena ddeċidejtx li nixtri polza with an investment element mingħajr ma kont naf xi tfisser a Basic Sum Assured, ngħid li le, ma kontx naf; jiena m'inix ġej mill-qasam finanzjarju.

Qed niġi referut għal Dok MSV 4 (paġna 86 tal-proċess) fejn fis-sena 2020 jiena emendajt il-polza u żidt lis-Sinjura [mart l-Ilmentatur] bħala benefiċjarja tad-Death Benefit.

Qed jingħad, allura, jien għamilt il-benefiċjarju u ma nafx xi tfisser Basic Sum Assured, u mistoqsi jekk kontx naf liema ammont qed naffettwa b'din l-emenda, ngħid li, le ma kontx naf. Is-somma kienet li kienet imma jekk niġi nieqes jien, l-ammont jaqa' fuq il-mara.

Nikkonferma li ppleġġjajt din il-polza mal-Bank of Valletta p.l.c. minn Frar 2023 sa Diċembru 2023.

Mistoqsi naqbilx li minbarra raġuni ta' investiment jiena għamilt il-polza għal-Life Cover u għal benefiċċji oħra bħalma meta użajt il-polza bħala garanzija, ngħid li, iva.

Qed jingħad li waqt il-meeting li kelli ma' Mr Said ingħatawli xi dokumenti. Qed niġi muri Dok. B, il-quotation (paġna 16) fejn fuq wara tal-quotation hemm l-Important Notes (paġna 45), l-iStatutory Notice (li ser jiġi ppreżentat *illum għax ma kienx fil-file) u l-Product Information (Dok MSV 2, paġna 84; u Dok MSV3, paġna 85).*

Nikkonferma l-firma tiegħi fuq Dok MSV 3.

Qed jingħad li l-Important Notes jgħidu:

'Depending on the performance of the company, bonus rates may go up as well as down. Past performance is not a guide to future performance.'

Fuq it-Terminal Bonus li huwa parti mill-ammont li qed nitkellmu fuqu f'din il-kawża, hemm:

'Terminal Bonus can be reduced or withdrawn completely.'

U jekk inħarsu lejn Dok MSV 3, fuq Policy Bonuses, jgħidlek li:

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

Please note that past performances are not necessarily a guide to future performance.'

Mistoqsi jekk qrajtx dawn id-dokumenti, ngħid li le. Lanqas biss spjegawhomli.

Qed jingħad li ingħataw lili u ffirmajthom u ma tajtx kashom. Ngħid mhux ma tajtx kashom. Jien ma nifhimx f'dawn l-affarijiet. Jien għamiltha għall-ġid tal-familja. Ngħid li ma spjegahomlix paragrafu, paragrafu.

Mistoqsi peress li ffirmajthom jekk ħadtx il-ħin biex naqrahom, ngħid li le.

Mistoqsi naqbilx li ingħatali żmien ta' 14 days biex naħsibha qabel ma ħadt il-polza, fejn f'dan il-perjodu stajt niddeċiedi jekk ridtx nikkanċella l-polza jew le, ngħid li ma kontx naf li kelli dawn il-14 days.

Nikkonferma li Policy Account Statements irċevejthom kull sena.

Qed jingħad li ma' dawn il-Policy Account Statements kont nirċievi wkoll l-Important Notes."[6]

[6] P. 91 - P. 93

Dr De Marco, il-persuna li qed jassisti lill-Ilmentatur fl-ilment tiegħu, semma l-*headings* tal-paragrafi tal-*Important Notes* u qal li dawn huma *standard format* li jintbagħtu lil kulħadd u li ma hemm xejn personalizzat dwarhom.

Għal dan, Dr Jeanine Mallia Schembri, f'isem il-Fornitur tas-Servizz, wieġbet li:

"They are explaining the main aspects of the policy."[7]

L-Ilmentatur kompla li:

"Qed jingħad li matul ix-xhieda tiegħi u anke llum għidt li ħadd ma spjegali l-Policy Account Statements. Qed jingħad li kont nirċievi dawn l-istatements kull sena, qatt ma fhimthom, u mistoqsi jekk qattx ċempilt l-MSV biex ifiehemuhomli dawn l-istatements, ngħid li fl-2007 kont mort ir-ROCS u ma spjegawlix li sejra ħażin jew li sejra tajjeb; ħadd qatt ma qalli għalfejn hemm diskrepazzjoni kbira.

Ngħid li le, qatt ma ċempilt lill-MSV biex jispjegawli dawn il-Policy Account Statements.

Mistoqsi jekk meta xtrajt il-polza ridtx nagħmel investiment, jiġifieri nieħu riskju fuq il-kapital jew inkella xtaqtx inġemma', ngħid li le, ma ridtx nieħu riskju."[8]

Qed jingħad li allura ridt investiment li jkun garantit, li jibqa' hemmhekk, ngħid li iva."

Fit-tielet seduta tat-2 ta' Settembru 2025, xehed Oliver Said, ir-rappreżentant tal-Fornitur tas-Servizz li biegħ il-polza in kwistjoni lill-Ilmentatur. Hu xehed li:

"Qed niġi muri l-Quotation (paġna 16 tal-proċess) u ngħid li dik il-handwriting żgur mhix tiegħi. Ħamsa u għoxrin sena ilu jista' jkun li l-affarijiet inbidlu xi ftit jew wisq min-naħa tal-firma, però, nista' nassigurak li ma niktibx daqshekk pulit; dik il-kitba mija fil-mija mhijiex tiegħi.

Ngħid li dik il-format ta' dik il-Quotation mhix l-istess li konna nużaw aħna. Aħna konna nużaw a printed version.

[7] P. 93
[8] P. 93 - P. 94

Qed niġi muri dokument ieħor (Dok MSV5 – l-Avviż Statutorju) u ngħid li l-firma tixbaħ lil tiegħi, però, ma nistax nagħtik garanzija li l-firma hija tiegħi. Li nista' nagħtik garanzija mija fil-mija hija li dik il-kitba, 100%, bla ebda dubju, mhijiex tiegħi. Ma nistax niggarantilek li l-firma hija tiegħi. Tixbaħha imma ma nistax nagħtik garanzija għax jista' jkun li nbidlet xi ftit, tixbaħ lil tiegħi imma l-kitba 120% mhijiex tiegħi.

Ngħid li jiena ili nieqes minn Malta xi ħamsa u għoxrin sena. Dak iż-żmien dawk il-poloz kienu jinbiegħu min-naħa tar-ROCS, jiġifieri mhux f'ismi imma jiena parti mir-ROCS. Ili shareholder tar-ROCS for over twenty years. And I have attended thousands of meetings għal dak li għandu x'jaqsam ma' dak il-bejgħ ta' policies bħal dik ta' [the Complainant] li ma nafx min hu u ma nafx jekk hux qiegħed hawn."[9]

L-Ilmentatur ikkonferma li kien is-Sur Oliver Said li kien biegħlu l-polza.

Oliver Said kompla,

"Jiena ovvjament rajt eluf ta' nies u m'inix qed neskludi li kont jien li biegħejt il-polza lill-Ilmentatur."[10]

L-Arbitru intervjena u qal li la l-Ilmentatur qed jikkonferma li kien is-Sur Oliver Said li biegħlu l-polza, allura, l-bilanċ ta' probabilità huwa li kien proprju s-Sur Oliver Said li biegħ din il-polza. Is-Sur Victor Farrugia, f'isem il-Fornitur tas-Servizz, ikkonferma dan a bażi tar-*records* tal-kumpanija[11].

Oliver Said kompla:

"Nikkonferma li dak iż-żmien kont inbiegħ l-Endowment Assurance policies.

Ngħid li kont inkun ħafna fuq it-TV, kont nattendi ħafna fieri. Il-maġġor parti tal-meetings li kont nattendi jien kienu jaqgħu f'wieħed minn dawk iż-żewġ kategoriji.

Rigward kif kont inbiegħ dawn il-poloz, il-Life Assurance Endowment with Profits, ngħid li d-dokumenti ma niftakarhomx. Inġib analoġija tal-quddies, li inti t-talb tafu eżatt, kelma b'kelma, allura, ser ngħidlek kelma b'kelma

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[9] P. 100 – P. 101
[10] P. 101
[11] *Ibid.*

għalkemm għaddew aktar minn għoxrin sena. Bażikament Endowment kif niftakar li konna niddeskrivuha kienet sempliċiment li inti ser tinvesti, ser tfaddal ammont ta' flus fis-sena. Il-kumpanija ser tamministrahom u l-kumpanija kull sena ser joħorġu statement bir-Reversionary Bonuses li la jkunu ddikkjarati dawn huma garantiti sakemm il-polza tittieħed u tinżamm sal-aħħar.

Niftakar li kien hemm an optional bonus (li bħalissa mhux qed niftakar x'jismu) li kien abbażi li jekk il-kumpanija tmur tajjeb jista' jew ma jistax jitħallas fl-aħħar. Niftakar biċ-ċar li fuq quddiem kien ikun hemm il-Quotation fejn ikun hemm xi jfissru t-tip ta' bonuses u, fuq wara, kien ikun hemm deskrizzjoni pjuttost sempliċi ta' kull wieħed u waħda minn dawn il-bonuses; xi jfissru u ma jfissrux u meta jitħallsu u meta ma jitħallsux. Konna nispjegaw b'mod sempliċi u konna nkunu oltre attenti fuq it-TV biex jinftiehem id-diskors.

Ngħid li meta rreferejt għall-informazzjoni fuq wara tal-Quotation, kont qed nirreferi għall-Important Notes (paġna 45 tal-proċess).

Rigward xi spjegazzjonijiet kont nagħti dwar il-punti saljenti ta' dawn l-Important Notes, ngħid li mhux talli imma jekk tfittxu fl-arkivji tat-TVM, (nerġa' ngħidlek, dan il-meeting partikolari ma' dan il-klijent partikolari inkun qed nonqos jekk ngħid li niftakru personali, għax ma niftakrux, imma ġeneralment sia f'meetings u sia b'mod pubbliku fuq it-TV, l-istess konna nispjegaw), hemm recorded events. Dawn huma public facts.

Ngħid li kemm fuq it-TV u kemm fil-laqgħat li kien ikolli dejjem l-istess kont nispjega.

Qed niġi referut għal Dok MSV2 (paġna 84) li hu l-Product Information. Ngħid li niftakar hu li kien hemm il-Brochure, il-Quotation bl-ispjegazzjonijiet fuq wara bid-dettalji kull bonus xi jfisser, meta kien garantit u meta ma kienx; fejn kien hemm nota fuq is-Surrender Value. Kien hemm ukoll dokument tal-bank rigward loans. Ngħid li kien hemm quite a detailed information ta' kif jitħallsu u ma jitħallsux.

Ngħid li kont nispjega dan kollu mija fil-mija.

Ngħid li l-format tad-dokumenti niftakru bħala format ta' kif kien ittajpjat u mhux ittajpjat but, broadly, dak li qed niġi muri, it coincides mal-memorja tiegħi.

Qed niġi muri l-Quotation fejn hemm is-Sum Assured u l-ammonti 'estimated'. Ngħid li s-Sum Assured kien garantit f'każ ta' mewt u kien hemm żewġ figuri: wieħed tar-Reversionary Bonus u l-ieħor including Terminal Bonus. It-Terminal kien spjegat. Dak kien jingħata għad-diskrezzjoni tal-kumpanija abbażi ta' kif tkun marret il-kumpanija. Li naf fiċ-ċert hija li r-Reversionary Bonuses ta' kull sena kienu żgur mija fil-mija garantiti ġaladarba jkunu ddikjarati. Kien bħall-imgħax tal-bank, jiżdied u ma jistax jitnaqqas. Ovvjament, l-imgħax jista' jitla' u jinżel.

Ngħid li ovvjament li nkun spjegajt x'inhu s-Sum Assured.

Jien inkun spjegajt ċar u tond it-tliet figuri x'kienu. Kien hemm wieħed f'każ ta' mewt, wieħed li kien 'estimated' li kienu l-bonuses li jitħallsu jew jakkumulaw kull sena u, safejn naf jien, il-kumpanija dak iż-żmien kienet tibgħat statement kull sena tal-ammonti li tħallsu kull sena plus l-imgħax, bir-Reversionary Bonus.

Imbagħad konna nispjegaw li fl-aħħar kien hemm dan l-optional amount li jiżdied minn waħda għall-oħra. Fil-fatt, il-figuri suppost li maqsumin fi tnejn.

Ngħid li jien qatt ma għidt lill-ebda persuna nkluż dan il-klijent li l-ammont tal-aħħar ma jistax jinbidel, jiġifieri li ser ikun l-ammont eżatt. Dik nista' ngħidha biċ-ċert. Ma nistax ngħid li niftakar dan il-meeting, però, għalkemm kelli eluf ta' meetings, l-istorja dejjem baqgħet l-istess."[12]

Taħt kontroeżami, Oliver Said qal li:

"Qed niġi referut għal-Life Assurance Quotation fejn qed nitkellmu fuq Baby Bond indikata. Qed jingħad li t-titlu tad-dokument hu daqsxejn misleading – Life Assurance Quotation u fl-istess ħin għandna 'the policy illustrated' hija indikata bħala Baby Bond. Period of assurance huwa għal 25 sena. U minkejja li ġiet deskritta bħala Baby Bond hawnhekk għandna indikat bħala

[12] P. 101 – P. 103

'Guaranteed Minimum amount payable on first death during the policy term - Sum Assured' huwa indikat bħala Liri Maltin – Lm2724.

Mistoqsi nindika kif din il-figura nkun wasalt għaliha, ngħid li jekk immorru għas-sena 2000, it is either through a rate book fejn bażikament kien hemm ktieb qisu Bibbja li jkollok ir-rata per mil. Based on the age of the assured, kellek rata li int skont il-premium inti timmultipplikaha skont ir-rate book u jagħtik speċifikament dik il-figura. Eventwalment saret bil-computer. Konna ndaħħlu l-informazzjoni u tiġi awtomatikament. U r-riżultat huwa l-istess.

Naqbel li dan kien ktieb li kien jiġi ppubblikat mill-kumpanija, mill-Middlesea, u konna nużawh internament biex naslu għall-figura.

Mistoqsi kienx ktieb li jiġi shared mal-klijent, ngħid li le għax inti għandek l-etajiet kollha. Dan kien a calculation manual. Qisu a logarithm book.

Qed niġi referut għall-Cash Value Estimates on Surrender before the policy term fejn f'year 3 hemm il-figura ta' 346; year 4, 478; year 5, 625; year 10, 1584; year 15, 3027 u year 20, 5168, u qed niġi mistoqsi jekk dawn humiex it-totali li jkunu tħallsu sa dakinhar.

Hawnhekk jintervjeni l-Arbitru biex jiċċara s-sitwazzjoni u jispjega li l-figura tan-Number of Years' premium paid qed jirreferi għan-numericals ta' fuq il-kaxxi.

In-numri li hemm fil-kaxxa huma 'Estimate at the end of the year' mhux il-premiums paid sa dik is-sena. Dawk huma stima tas-Surrender Value jekk tieħu s-Surrender Value f'dak il-perjodu."[13]

L-Arbitru kompla jispjega li l-kumulu tal-*premium paid* huwa t-Lm3,214.

Ix-xhud kompla:

"Qed jingħad mela jekk jagħmel surrender tal-polza f'year 20, dan jieħu Lm5168.

Ngħid li 'estimated'.

[13] P. 103

Nerġa' ngħid li l-uniċi affarijiet li kien hemm garantiti milli niftakar, kienu żewġ fatturi: 1) the immediate death benefit f'każ li l-persuna assigurata f'dan il-każ jew the parent, or the grandparents or the guardian, whoever it is, u 2) li niftakar li kien garantit hu li kull sena, kull bonus li kien jitħallas ġaladarba jiżdied fil-kont, ma jistax jitnaqqas; però, jekk jinkiser it-terminu tal-polza, li kien 25 sena, dak l-ammont kien ser jitnaqqas. Allura, kien hemm an estimated surrender value. Inti għalkemm l-imgħax diġà tħallas, inti peress li qisek qed tikser il-'fixed', allura, kien hemm dawn l-istimi. Suppost xi mkien hemm li dawn il-figuri kienu 'estimated'.

Qed niġi referut għar-Reversionary Bonus fejn is-somma indikata hija ta' Lm7587. Mistoqsi jekk dik is-somma kinitx garantita, ngħid li le. Ngħid li jien mhux hekk għidt. Għidt li dik kienet stima. Dak iż-żmien il-kumpanija kienet tgħid li kienu jinvestu l-flus fejn kien hemm numru ta' reserves, kien hemm il-bonds tal-Gvern, però niftakar li kull sena kienu jiddikjaraw bonus fejn huma kienu jispjegawlna li this is based on an estimate of an averaged out Reversionary Bonus which can be higher or lower than the amount indicated.

Ngħid li naf ċert li r-Reversionary Bonuses ta' kull sena ladarba kienu jiżdiedu abbażi li l-polza kienet ser tinżamm sal-aħħar, iva, kienu jkunu garantiti. Jekk, għall-grazzja tal-argument, iddikjaraw li matul is-snin kien hemm Lm6,000/Lm7,000 declared and accumulated until that point, ma jistax after 24 years jgħidlek, 'Isma', jien ser inaqqaslek xi ħaġa mill-kont.'

Id-differenza kienet li kien hemm adjustment in the last year li kien it-Terminal Bonus.

Mistoqsi kif konna naslu għall-figura pjuttost preċiża ta' Lm7587, ngħid li mil-istess rate book jew mill-programm tal-computer, it was literally finding on a matrix and multiplying the rate. That was not rocket science; it was the easiest part, to be frank with you.

L-unika ħaġa li m'inix qed nagħraf hija l-handwriting, però, l-proċess huwa tajjeb.

Naqbel li s-somma 'including estimated Reversionary Bonus and Terminal Bonus' ta' Lm10,243 inħadmet bl-istess rate book.

Qed jingħad li l-ilmentatur ma kienx bniedem li jinvesti l-flus u din kienet l-ewwel mill-affarijiet li kien għamel. Mistoqsi kif fissirt 'Reversionary Bonus' lil xi ħadd bħall-ilmentatur, nerġa' ngħid li aħna konna sibna mod b'Ingliż jew Malti sempliċi kif aħna niddeskrivu affarijiet li kienu jistgħu jinstemgħu tekniċi bħal Life Assured, Reversionary Bonus, Terminal Bonus, accruals u dawn l-affarijiet. Dak iż-żmien kienu pjuttost very low risk, very low entry investments, a stepping stone u għalhekk ngħidlek we're on record kif konna niddeskrivu x'inhuma Reversionary Bonuses, Terminal Bonuses mhux biss f'dawn il-meetings privati imma fil-pubbliku on record. Niftakar li konna nagħmluha ċara li dawn huma tip ta' imgħax li ladarba jiżdied mal-kont, dan ser jiġi iggarantit.

Terminal Bonus konna niddeskrivuh bħala bonus addizzjonali li kien optional, għad-diskrezzjoni li jiżdied mal-polza fl-aħħar. Kull sena l-kumpanija kienet tiddeċiedi jekk kinux ser jagħtu Terminal Bonus jew le u kienet tapplika dak il-bonus għal dik is-sena.

Ngħid li konna niddiskrevuh b'tali mod u manjiera li it makes it very simple. Eventwalment, kienu ħarġu poloz differenti li kienu Unit-Linked which grew more significantly more advanced fejn nitkellmu fuq equities, eċċ.

Ngħid li dak iż-żmien din il-polza kienet deskritta as a low-risk policy minħabba l-fatt li inti ladarba ser tpoġġi l-flus u ser tħalli din il-polza sal-aħħar, u sia l-flus tiegħek kollha li inti poġġejt, sia l-imgħax li jakkumula kull sena kien garantit li ser jitħallas, allura, kien jiġi ikkunsidrat low risk. Mentri tal-Unit-Linked not even the money you put in was guaranteed.

Il-kelma 'Revisionary' huwa żball fil-kitba. It-terminu huwa Reversionary Bonus.

Ngħid li għamiltha extremely clear li r-Reversionary Bonuses kienu stimi. Kont nagħmilha ċara u tonda li dawn huma stimi li nħarġu min-naħa tal-kumpanija based on an estimated assumption ta' bonuses li jistgħu jitilgħu u jinżlu. This is not just in these meetings, but also on TV.

Mistoqsi fuqiex kien ikun l-assumption, ngħid li l-assumption kienu jagħtuhulna l-kumpanija, jiġifieri aħjar tistaqsi lill-Middlesea."[14]

Hawn, Victor Farrugia iċċara li r-risposta qiegħda bil-miktub fl-informazzjoni li kellu l-Ilmentatur f'paġna 45 li huma n-noti fuq wara tal-*Quotation,* fejn Paragrafu 3 tal-paragrafu tar-*Reversionary and Special Bonuses* jgħid: *@The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end."*

Oliver Said kompla:

"Jiġifieri l-kumpanija kienet tieħu l-bonus tas-sena ta' qabel u tagħmel il-projection fuqu. Imbagħad, tkompli tispjega:

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

Mela l-kumpanija qed tgħid, 'Għamilna projection fuq il-bażi tal-bonus tas-sena l-oħra imma dawn il-bonus rates jistgħu ivarjaw.'

Mistoqsi kontx spjegajt lill-[Ilmentatur] il-bonus rates ta' qabel, ngħid li din kienet mistoqsija li kien jistaqsiha kull klijent mhux biss [l-Ilmentatur]. Huma kienu jistaqsu x'kienet bejn wieħed u ieħor ir-rata tal-imgħax ta' kull sena u konna nagħtuhom more than one, jiġifieri niftakarha li konna nagħtu r-rati tal-previous years. Tant hu hekk li kien ikollna kopja wkoll ta' what the Reversionary Bonus statement looks like. Imma ovvjament kien ikun blanked out.

Mistoqsi kienx ikun iffirmat, ngħid li ma niftakarx il-formoli kollha individwali, imma niftakar li kien hemm proċess ta' formoli u, għalkemm dik il-handwriting żgur mhux tiegħi, il-format huwa dak, jiġifieri l-klijent kien jiffirma numru ta' dokumenti."[15]

[14] P. 104 – P. 105
[15] P. 106

Sottomissjonijiet finali

Il-partijiet għamlu sottomissjonijiet finali estensivi b'mod verbali li iżda kienu sostanzjalment repetizzjoni tal-istess argumenti li ressqu fl-ilment, fir-risposta u waqt ix-xhieda li taw 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.[16]

Il-punt kruċjali f'dan l-ilment jittratta l-allegat informazzjoni mogħtija lill-Ilmentatur meta ġiet mibjugħa l-polza ilmentata, u dan fir-rigward tal-ammont li kellu jingħata mal-maturità tal-istess polza.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'ġie mwiegħed, u x'eventwalment ġie mogħti jew offrut mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *'l-aspettattivi raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.'*[17]

L-Ilmentatur xehed kif kien ġie ikkuntatjat minn Oliver Said, dak iż-żmien f'isem ir-*ROCS Group,* sabiex ikellmu dwar din il-polza. Sar appuntament u mar ikellmu d-dar tiegħu stess. Hu stqarr li dak iż-żmien, il-polza kienet tidher attraenti ħafna, u bid-diskors li kien qallu, ikkonvinċih u eventwalment saret il-polza. Insista li f'dak li ntqal, ma kien semmielu xejn li kien negattiv jew inkella li seta' kien hemm xi varjazzoni fl-ammonti.

Mill-banda l-oħra, l-Arbitru jinnota li Oliver Said ipprova, b'xi mod jew ieħor, jinnega li kien hu li biegħ din il-polza, l-ewwel meta stqarr li l-*format* tal-*Quotation,* dik li hija miktuba bl-idejn mhix l-istess li kienu jużaw huma, meta qal li l-kitba fuq din l-istess *Quotation* mhix tiegħu, imbagħad, meta qal li mill-Avviż

[16] Kap. 555, Artiklu 19(3)(b)
[17] Kap. 555, Artiklu 19(3)(c)

Statutorju, minkejja li l-firma tixbah lil tiegħu, ma jistax jagħti garanzija li dik hija tiegħu. Barra minn hekk, Oliver Said stqarr ukoll li hu lanqas biss jaf lill-Ilmentatur.

L-Ilmentatur insista li kien proprju Oliver Said il-persuna li biegħ il-polza ilmentata lilu, fattur li anke ġie kkonfermat minn Victor Farrugia, ukoll f'isem il-Fornitur tas-Servizz a bażi tar-*records* li dan tal-aħħar għandu. Wara dan kollu, ix-xhud iddikjara li *'Jiena ovvjament rajt eluf ta' nies u m'inix qed neskludi li kont jien li biegħejt il-polza lill-Ilmentatur.'*[18]

Minkejja li Oliver Said xehed dwar il-mod kif hu kien ibiegħ il-poloz bħal dik ilmentata, tikkunsidra l-inkonsistenza tiegħu sempliċiment dwar il-fatt jekk kienx hu li biegħ il-polza jew le, l-Arbitru qed jikkonsidra x-xhieda ta' Oliver Said bħala waħda ġenerali u mhux speċifika għal dan il-każ li ammetta li ma jiftakrux.

Kif diġà intqal aktar kmieni, l-Ilmentatur xehed kif, fil-mument li ġiet mibjugħa l-polza lilu, fl-ebda ħin ma ntqal lilu li seta' kien hemm xi varjazzjoni fl-ammonti kkwotati. Iżda, xehed ukoll:

"*Qalli li dak l-ammont qisu mhux garantit imma qalli li dak l-ammont li ser nieħu jien fl-aħħar.'*[19]

Fl-istess dikjarazzjoni, l-Ilmentatur qal li r-rappreżentant qallu l-ammont li kien ser jieħu fl-aħħar, u fl-istess waqt qal ukoll li ntqal lilu li l-ammont *'qisu mhux garantit'*.

Fuq kollox, minkejja li oriġinarjament stqarr li, *'Ma semmieli xejn negattiv f'din il-polza li jista' jvarja xi ħaġa jew hekk'*[20], imbagħad qal li *'... qatt ma qalli li jista' ikun hemm varjazzjoni kbira.'*[21] Dan, għalhekk, ifisser li fir-rigward tal-ammonti kkwotati lilu, l-Ilmentatur kien konxju tal-fatt li dan m'huwiex garantit u li għalhekk seta' jvarja.

Daqskemm għandu dubju dwar x'eżattament kien spjega Oliver Said lill-Ilmentatur waqt il-proċess tal-bejgħ, daqstant ieħor l-Arbitru għandu d-dubji tiegħu dwar jekk dan huwiex każ fejn l-Ilmentatur fehem dak li ried hu u ma kienx

[18] P. 101
[19] P. 87
[20] *Ibid*.
[21] P. 88

insidjuż biżżejjed biex jagħti importanza partikolarment lill-aspetti mhux garantiti tal-*quotation*, avolja dawn setgħu kienu ġew spjegati.

Dan meta, b'mod partikolari, l-Ilmentatur xehed li,

"... spjegali li biex jinvestu l-flus huma, jiena nista' nieħu dak l-ammont ta' flus, more or less, mhux inqas ħafna minn dak l-ammont ta' flus jew iżjed."[22]

Xehed ukoll li minkejja li ma jafx kif ir-rappreżentant wasal għal din il-figura,

"... ta' Lm7,587 li hi l-Maturity Value including estimated Reversionary Bonus, kien qalli li huma jinvestuhom il-flus, jieħdu l-imgħax minnhom jew iħaddmuhom huma."[23]

Barra minn hekk, minkejja li l-Ilmentatur qal li kien konxju tal-*Maturity Value including estimated Reversionary Bonus',* hu allega li, *"... ma kienx spjegali dwar il-figura ta' Lm10,243 (il-Maturity value including estimated Reversionary Bonus and Terminal Bonus) jew inkella insejt", u* dan meta, aktar qabel, l-Ilmentatur innifsu kien iddikjara li *"... kien indikat lili li meta tagħlaq il-polza kelli nieħu Lm10,240."*[24]

Evidentement, l-Ilmentatur kien konxju sew tal-fatt li l-*premium* li hu kien qed iħallas, kien ser jiġi investit u, għalhekk, kien jaf bl-element ta' investiment tal-polza. Dan ħareġ biċ-ċar meta waqt kontroeżami ntqal li:

"Allura, qed jingħad li aħna naqblu li jiena fhimt li 'estimated' qatt ma setgħu kienu fixed jew guaranteed.

Ngħid li hekk hu imma mhux dik id-differenza kollha.

Mistoqsi naqbilx li fixed amount ma setax ikun, ngħid li iva, ...".[25]

Fix-xhieda tiegħu, l-Ilmentatur stqarr li qatt ma kien ġie spjegat lilu t-terminu *'Present Basic Sum Assured'* u kkonferma dan anke taħt kontroeżami. Meta ġie mistoqsi jekk kienx iddeċieda li jixtri polza b'element ta' investiment mingħajr

[22] P. 87
[23] P. 88
[24] P. 87
[25] P. 91

ma kien jaf xi tfisser *'Basic Sum Assured'*, l-Ilmentatur stqarr li *"...le, ma kontx naf; jiena m'inix ġej mill-qasam finanzjarju."*[26]

Iżda, l-Arbitru jinnota li, minkejja li l-Ilmentatur allega li ma kienx jaf bil-*Basic Sum Assured*, hu jidher li kien jaf b'dak li hemm wara l-*Basic Sum Assured,* jiġifieri bl-element tal-kopertura fuq il-ħajja. Dan minħabba li, apparti l-*Baby Bond Option*[27] fil-konfront taż-żewġ uliedu, hu kien, ftit jiem wara li bdiet il-polza, appunta[28] lil [martu] bħala l-benefiċjarja tad-*Death Benefit* taħt din l-istess polza, u dan filwaqt li, kif inhu ġust, uża wkoll din il-polza bħala garanzija fuq self li hu kien ħa mill-Bank.

Fl-aħħar mill-aħħar, ukoll taħt kontroeżami, ġie dikjarat li,

"Mistoqsi naqbilx li minbarra raġuni ta' investiment jiena għamilt il-polza għal-Life Cover u għal benefiċċji oħra bħalma meta użajt il-polza bħala garanzija, ngħid li iva."[29]

Tikkunsidra wkoll dawn il-kontradizzjonijiet fid-dikjarazzjonijiet tal-Ilmentatur, huwa evidenti li l-Ilmentatur qed iressaq dan l-ilment minħabba li l-ammont offrut lilu mal-maturità huwa inqas minn dak li kien qed jistenna li jirċievi.

Minkejja li l-Arbitru ma jistax jikkonkludi x'kienet eżatt l-informazzjoni li ġiet mogħtija lill-Ilmentatur u x'intqal eżatt bejniethom, iżda mix-xhieda fehem li l-Ilmentatur ifforma aspettattivi għolja li ma kinux għal kollox leġittimi.

Biex tintlaħaq il-figura kkwotata, jrid isir *'compounding'* b'rata għolja li għalkemm kienet fattibbli fis-sena 2000, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal 24 sena sħaħ. Għaldaqstant, mill-banda l-oħra, kruċjali li jiġi ikkunsidrat il-fatt li anke persuna mhux tant intiża fil-finanzi, tifhem li mhux floku tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal 24 sena speċjalment peress li l-kontribuzzjonijiet tiegħu kienu mifruxa fuq 24 sena u mhux xi *'lump sum investment'* li tista' tiġi investita mill-ewwel biex torbot ir-rati tal-imgħax għal żmien twil.

[26] P. 92
[27] P. 41
[28] P. 86
[29] P. 92

L-Arbitru jifhem li polza bħal din ilmentata taħdem hekk kif spjegat mill-Fornitur tas-Servizz fit-tweġiba għall-ilment u mhu fl-ebda ħin jiddeċiedi mod ieħor. Iżda min-naħa l-oħra, iħoss li l-Fornitur tas-Servizz messu kien iktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu ħareġ *spectrum* ta' kwotazzjonijiet maħduma b'rati differenti għax fuq perjodu ta' 24 sena xejn ma jibqa' stabbli.

Fil-fatt, ingħad li wara s-sena li ġiet mibjugħa din il-polza, bdew joħorġu tliet kwotazzjonijiet u mhux waħda, u dan jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal 24 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 limitatament 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 leġittimi, ma ġewx milħuqa. L-aspettattivi tiegħu kienu li mal-maturità tal-polza kien ser jirċievi s-somma ta' €23,859.77 (l-ekwivalenti ta' Lm10,243), li iżda, fid-data tal-maturità ġie offrut ferm inqas.

Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentatur kienu kompletament leġittimi, partikolarment fid-deher li l-Ilmentatur kien evidentement konxju ta' ċertu dettalji fir-rigward tal-mod kif taħdem il-polza.

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 ikkunsidrati.

L-Ilmentatur xehed li r-rappreżentant tal-Fornitur tas-Servizz irnexxielu jikkonvinċih sabiex jixtri din il-polza u ammetta li fl-ebda ħin ma mmaġina li mal-maturità kien ser jieħu inqas mill-Lm10,000 li kienu allegatament imwiegħda lilu. Iżda, minkejja li l-Ilmentatur insista li ma ġie fl-ebda punt avviċinat minn ebda rappreżentant sabiex jiġi spjegat lilu li maż-żmien l-affarijiet kienu inbidlu u, għalhekk, l-ammont imwiegħed kien naqas, fl-ebda ħin ma ppreżenta ebda prova li dak iż-żmien, minħabba li hu ddeċieda li jieħu l-polza offruta, hu ġarrab xi tip ta' *opportunity loss*.

Dan minbarra l-fatt ukoll li permezz ta' din il-polza, l-Ilmentatur żgur li ma kellu xejn x'jitlef. Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentatur kellu ċ-ċans li jikkontribwixxi għat-tfaddil permezz ta' din l-istess polza u dan billi jħallas ammont żgħir kull sena. Dan minbarra l-fatt li l-istess polza serviet lill-Ilmentatur ukoll bħala *pledge* fuq self li hu kien ħa mill-bank, mingħajr ma kellu l-ħtieġa li jixtri xi tip ieħor ta' kopertura fuq il-ħajja għal dan il-għan.

Meta l-Arbitru ħares lejn l-andament kumpless tal-polza, ra li r-rendiment tagħha kien ta' madwar 3.5%[30], li fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu jiġi ikkunsidrat fi sfond fejn il-kapital tal-investiment kien sostanzjalment garantit, fattur li l-Ilmentatur innifsu ammetta[31] li kien proprju dan li huwa ried.

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għad-deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentatur, u jiddeċiedi li s-somma xierqa li għandha tingħatalu bħala kumpens hija dik ta' **€1,563 (elf, ħames mija u tlieta u sittin ewro)**.

Għaldaqstant, *ai termini* tal-Artikolu 26(3)(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' elf, ħames mija u tlieta u sittin ewro (€1,563) b'żieda mas-somma diġà offruta, cioè, mas-somma ta' €10,420.46[32] u, għalhekk, iħallsu s-somma kumplessiva ta' €11,983.46 (ħdax-il elf, disa' mija u tlieta u tmenin ewro, u sitta u erbgħin ċenteżmu).

Bl-imgħax ta' 2.15%[33] minn ħamest ijiem ta' 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

[30] P. 79
[31] P. 94
[32] P. 11
[33] Rata kurrenti MRO (*Main Refinancing Operations)* tal-Bank Ċentrali Ewropew.

<u>Nota ta' Informazzjoni relatata mad-Deċiżjoni tal-Arbitru</u>

Dritt ta' Appell

Id-Deċiżjoni 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-Deċiżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deċiżjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt 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 ħmistax (15)-il ġurnata min-notifika tad-Deċiżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deċiżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. 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 ddeċieda min għandu jħallas l-ispejjeż tal-proċeduri u f'liema proporzjon skont iċ-ċirkostanzi partikolari tal-każ.

L-ispejjeż tal-proċeduri 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 kontinġenti 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.