

Każ ASF 022/2025

WI

(‘l-Ilmentatur’)

vs

MAPFRE MSV Life p.l.c.

(C-15722)

(‘il-Fornitur tas-Servizz’)

Seduta 22 ta’ Lulju 2025

L-Arbitru,

Ra l-ilment¹, fejn l-Ilmentatur issottometta li hu jinsab ferm diżappuntat rigward l-ammont li qed jiġi offrut lilu mal-maturità tal-polza maħruġa mill-Fornitur tas-Servizz. Hu insista li dan l-ammont ma jirriflettix is-somma li ġiet originarjament imwiegħda lilu, liema somma ġiet imnizzla f’dokument uffiċjali mogħti lilu dak iż-żmien.

L-Ilmentatur stqarr li din is-somma mwiegħda lilu kienet il-punt li attirah sabiex jixtri din il-polza in kwistjoni, u li kieku din is-somma ma kinitx imwiegħda lilu, żgur li ma kienx jaċċetta li jidhol għal dan l-irbit ta’ tletin sena. Qal li għalhekk iħoss li l-Fornitur tas-Servizz naqas fil-konfront tiegħu meta ma onorax il-ftehim li sar permezz tal-kuntratt, u minhabba li ġie mqarraq b’informazzjoni żbaljata biex sempliċiment jiġi attirat li jidhol għal dan il-ftehim. Insista li qatt ma kien infurmat li s-somma kkwotata lilu setgħet tonqos.

¹ P. 3

Għaldaqstant, l-Ilmentatur qed jitlob li jingħata s-somma originarjament imwiegħda lilu, liema somma tammonta għal €64,848 (l-ekwivalenti ta' Lm27,839.26).

Ra t-tweġiba² 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 20924 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 EUR64,848.*

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 (fol. 12). 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 quotations in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold. **The estimated maturity values shown in the quotations were not guaranteed because they were based on the investment conditions and circumstances at the time.** At the time, the bonus rate was much higher than it is today, with a rate of 6.75% from 1994 to 1998 and 7% in 1999 which started to decrease as from 2000 onwards with minor 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. **This***

² P. 75 – P. 78

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.

4. **When considering the Policy in question, it should be noted that there is an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary and terminal bonuses every year but that it was in its discretion to do so.**

Therefore, the amount that was indicated in the quotation (fol. 12) as 'Estimated Maturity Value including Reversionary Bonus' was 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. Similarly, the 'Estimated Maturity Value including Reversionary and Terminal Bonuses' was likewise not guaranteed as terminal bonuses are also declared at the discretion of the Company since they are highly volatile. This was also explained in the definitions section provided with the policy account statement for year ending 2023 (MSV DOC 1), whereby it is stated that 'Final Bonus means an extra amount, which **may** be allocated at Maturity or upon payment of a Death Benefit. It is highly dependent on the investment performance of the MAPFRE MSV With-Profits Fund and MAPFRE MSV Life p.l.c. is under no obligation to pay a Final Bonus, meaning that this is **not guaranteed**.'

5. In fact, the Life Policy Schedule (presented in the complaint as fol. 19) provides that 'In respect of each premium paid, LM192.49 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 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.
6. Furthermore, the only amount mentioned in the Life Policy Schedule (fol. 19) was the sum assured of LM5,645.00 and no amounts containing the

word 'Estimate' were mentioned on 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.

7. At the time 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 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.

8. 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.

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.

9. 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 EUR12,384.75 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 3.67% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 4.31%.

- 10. 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.*
- 11. During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of his Policy and how said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated by MMSV to the complainant by providing, on a yearly basis, a Policy Account Statement (fol. 36 – fol. 61) together with the so-called Important Notes (MSV DOC 1). 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.

12. Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover during its duration. This amount was guaranteed to be paid upon death, in fact it is referred to as the 'Basic Sum Assured' on the Policy Schedule (fol. 19) with an amount of LM5,645.00. Another characteristic of this policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR14,851.20 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 no amounts were guaranteed. Therefore, MMSV adhered to its obligations under the Policy because the Maturity value of the Policy exceeded the investment premium that was paid by the complainant by an additional EUR12,384.75 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 in question was not only an investment but also provided cover on the complainant's life.

13. 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.
14. 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. 63) 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.

15. The comment made by the complainant in the online complaint (fol. 3) stating that ‘... l-ammont li qed jigi offrut wara l-iskadenza tal-imsemmija polza, għall raġuni li ma jirriflettix i-somma li originarjament ġejt imwiegħed, kienet ferm akbar’ is incorrect as it is very evident in all documentation provided, that this amount was not assured, but rather an estimate depending on investment performance. Therefore, this further confirms that the complainant was aware that he was being presented with **estimated values and could not be considered as assured values.**

In fact, the bonuses declared by the Company, including the Terminal Bonuses, are never guaranteed and are calculated according to the investment performance of the With Profits Fund. Terminal Bonuses can also be reduced or even withdrawn in times of drastically low investment performance, which is known to have happened in the past. However, even though the investment returns were decreasing throughout the duration of the Policy, the Company always declared Reversionary Bonuses at its discretion. This is because the Company aims to provide policyholders with **some protection from fluctuations in the investment markets** by **smoothing** bonus rates from year to year. This implies that unlike what happens with other volatile investments, smoothing ensures that in periods of low investment returns, MMSV may still be able to declare a positive Reversionary Bonus Rate.

16. 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 l-4 ta' Ġunju 2025, l-Ilmentatur issottometta s-segwenti:

“Ngħid li kont għamilt polza tal-assigurazzjoni fuq il-ħajja f’Novembru tal-1994.

Kont tħajjart nagħmel din il-polza u kienu tawni s-somma kemm ser nieħu wara li jgħaddu dawn it-tletin sena. Aktar ma tagħmilha għal żmien twil, aktar jaqbillek. U, fil-fatt, jien kont għamiltha għal tletin sena.

Ngħid li t-tletin sena għaddew. Dak iż-żmien il-valur tal-flus kien ħafna differenti minn tal-lum. L-ammont li kont qed inħallas dak iż-żmien huwa l-istess ammont tal-lum imma l-valur kien differenti.

Ngħid li kif għaddew it-tletin sena u mmaturat il-polza, minn dak l-ammont ma kien hemm xejn. Jien għamilt sagriċċju kbir biex ħallastha din il-polza. Dak iż-żmien kelli dsatax-il sena u, fil-fatt, kont żidtha wara l-ewwel sena b’10% għax wara l-ewwel sena stajt iżidha b’10% għal kull sena. U wara l-ewwel sena kont żidtha b’10%.

Ngħid li ma affordjajtx inkompli nżidha għax, kif għidt, dak iż-żmien il-valur tal-flus kien ħafna aktar. Kelli dsatax-il sena u kont għamilt sagriċċju kbir biex kont inħallashom dawk il-flus kif kienet tgħaddi s-sena.

Wara li mmaturat il-polza, baġtu għaliya l-Bank of Valletta għax jiena kont għamiltha mal-Bank of Valletta l-polza u ħarġuli somma totalment differenti minn dak li wegħduni. Id-differenza hija kbira. Tista’ tgħid li tawni 40% minn dak li wegħduni.

Ngħid li l-polza kont għamiltha mal-Middlesea imma through l-branch ta’ H’Attard tal-Bank of Valletta.

Ngħid li jien qed nitlob li ningħata s-somma li ġejt imwiegħed, is-somma ta' Lm27,839.26 (€64,848), filwaqt li offrewli €27,000.

Ngħid ukoll li s-somma ta' Lm27,839.26 ħarġuha meta għamilt il-polza tletin sena ilu. U, kif għidt, sena wara židt 10% u fuq dawk l-10% qatt ma tawni quote kemm ser titlali. Dan l-ammont ta' Lm27,839.26 huwa fuq il-quote originali.”³

Taħt kontoeżami, l-Ilmentatur kompli:

“Mistoqsi kontx jien li ħadt l-inizjattiva biex nixtri l-polza, ngħid li dak iż-żmien kont għadni żgħir, kulma kelli dsatax-il sena, u ġejt imħajjar minn missieri. Nikkonferma li mort minn jeddi l-bank biex nieħu quote. Mort nistaqsi l-affarijiet fuqha għax ma kont naf xejn fuqha.

Ngħid li rajt li kienet vantaġġjuża u ħajjritni.

Mistoqsi niftakarx lil min kellimt, ngħid li ma niftakarx, għaddew wieħed u tletin sena.

Mistoqsi kemm dam dan il-meeting ma' din il-persuna, jekk ngħid li niftakar inkun qed nigdeb għax għadda ħafna żmien.

Mistoqsi niftakarx id-dettall kollu ta' dak li ntqal lili waqt din il-laqqgħa, ngħid li għandi kollox bil-miktub.

Ngħid li daqsxejn impossibbli li niftakar id-dettalji għax għadda wisq żmien. Ngħid li aħna nimxu fuq il-quote.

Jien għalija l-kumpanija Middlesea u l-Bank of Valletta huma kumpaniji serji. U qatt ma stennejt li ser jiġri dan.

Mistoqsi meta xtrajt il-polza kontx konxju li minbarra li xtrajt investiment, l-Endowment tal-polza, il-polza nnifisha kienet tagħtini garanzija fuq ħajti tas-Sum Assured, ngħid li iva.

Mistoqsi meta xtrajt il-polza ridtx nagħmel investiment riskjuż u mistoqsi meta kelli dsatax-il sena dak iż-żmien kontx lest li nitlef il-kapital inkella ridtx polza biex ingemma', ngħid li jiena ridt ingemma', ma ridtx nidhol f'riskju.

³ P. 83 – P. 84

Ngħid li jien ridt investiment għal quddiem, għal meta jkolli familja u jkolli rasi mistrieħa li jkolli xi ħaġa taħt rasi.

Fil-fatt, jiena għamilt pass minħabba l-familja tiegħi u stennejt li issa ser nieħu dak l-ammont imma ma kien hemm xejn minn dan.

Qed niġi referut għall-iStatutory Notice (li ma ġiex ipprezentat u għandu jintbagħat wara din is-seduta) fejn hemm il-firma tiegħi. Din il-firma ġiet imqabbla mal-firma tiegħi fuq il-Proposal Form u tidher li hija l-istess firma. Jiena nikkonferma l-firma tiegħi fuq il-Proposal Form.

Qed jingħad li l-iStatutory Notice jagħtini ħmistax-il ġurnata cooling off period fejn jien stajt nerġa' naħsibha u nikkanċella din il-polza f'dan il-perjodu.

Ngħid li ma kellix għalfejn nikkanċella. Rajt li kienu ser jagħtuni dak l-ammont u ma kellix għalfejn naħsibha. Ngħid li aċċettajt dak l-ammont.

Mistoqsi huwiex korrett li jien irċevejt Policy Account Statements matul it-terminu tal-polza li juru l-bonus rates tal-kumpanija matul is-snin, ngħid li iva, kont nirċevihom.

Mistoqsi mill-Arbitru jekk meta mort il-bank biex nixtri l-polza kinitx saret xi laqgħa oħra minbarra dakinhar, ngħid li vera ma niftakarx. U lanqas niftakar il-persuna li ltqajt magħha.

Ngħid li fi tletin sena ma kienx hemm komunikazzjoni bejni u bejn il-bank jew MSV fuq din il-polza ħlief meta darba kont mort nistaqsi jiena fuq din il-polza. Ma niftakarx id-data, forsi kien xi għaxar snin ilu, u kont staqsejt (ma niftakarx jekk hux lill-bank jew lill-MSV) għax kont rajtha għadha lura l-polza. U qaluli li dak mhux issa imma lejn l-aħħar togħla 'l fuq.

Ngħid li m'intix ser iċċaqlaqha meta tkun wasalt lejn l-aħħar tal-polza.”⁴

F'dan l-istadju, l-Arbitru ġibed⁵ l-attenzjoni tal-Fornitur tas-Servizz dwar aktar dokumenti li jkunu iffirmati kemm minn min xtara l-polza u kif ukoll mill-persuna li bieghet l-istess polza, li iżda ma ġewx ipprezentati mill-ebda parti għal dan l-

⁴ P. 84 – P. 85

⁵ P. 85

ilment. Eventwalment, il-Fornitur tas-Servizz ippreżenta kopja tal-Avviż Statutorju⁶ flimkien ma' verżjoni⁷ iktar legibbli tal-*Proposal Form*.

Fit-tieni u l-aħħar seduta tat-30 ta' Ġunju 2025, Dr Jeanine Mallia Schembri, f'isem il-Fornitur tas-Servizz, infurmat⁸ lill-Arbitru li wara attentati li huma għamli biex jintraċċaw lill-persuna li bieghet il-polza in kwistjoni lill-Ilmentatur, li dak iż-żmien kienet anke impjegata mal-Bank of Valletta p.l.c., sar eventwalment kuntatt magħha fejn iżda nfurmathom li ma tiftakarx x'għara tletin sena ilu u tiftakar biss b'mod generiku. Minhabba raġunijiet personali u ta' saħħa, il-Fornitur tas-Servizz hass li m'għandux jinsisti biex din ir-rappreżentanta tittella' tixhed, liema deċiżjoni giet ukoll aċċettata mill-Arbitru.

F'dan l-istadju, Dr Mallia Schembri ddikjarat⁹ li l-Fornitur tas-Servizz m'għandux iktar provi xi jressaq għajr li s-Sur Victor Farrugia, ukoll f'isem l-istess Fornitur tas-Servizz, jikkonferma dak kollu li hemm fir-risposta tiegħu għall-ilment.

Hawn l-Arbitru offra l-opportunità lill-partijiet biex, jekk iridu, jagħmlu sottomissjonijiet finali tagħhom, verbalment jew inkella bil-miktub.

L-Ilmentatur iddikjara¹⁰ li m'għandux xi jzid mal-evidenza li hu ta fl-ewwel seduta, filwaqt li l-Fornitur tas-Servizz stqarr li:

“Kif nafu, l-allegazzjoni hi li l-MSV wiegħdet il-ħlas tal-Estimated Maturity Value including Reversionary Bonus. Kif hemm fir-risposta wkoll, l-MSV qed tikkontesta dan għax il-wegħda li għamlet l-MSV kienet dak li hemm ipprovdut fuq id-dokument tal-polza, jiġifieri dak li huwa l-ftehim tal-partijiet u mhux il-quotation.

Id-dokument tal-polza jgħid li dak li hu garantit hu s-Sum Assured jew inkella l-policy account. Il-policy account eċċeda s-Sum Assured u, allura, l-Maturity Value huwa l-ammont li hu dispot li tħallas l-MSV.

Il-quotation huwa dokument li ngħata mill-MSV għax kienet obligata dak iż-żmien li tagħtiha skont il-liġi u għadha obligata sal-lum li tagħmel dan. Din il-quotation (paġna 12 tal-proċess), tiddistingwi bejn tliet figuri differenti: is-Sum

⁶ P. 90

⁷ P. 91 – P. 92

⁸ P. 93

⁹ Ibid.

¹⁰ Ibid.

Assured, I-Estimated Maturity Value including Reversionary Bonus u I-Estimated Maturity Value including Reversionary and Terminal Bonuses.

Hemmhekk hemm span; m'hemmx ammont wiehed. Is-Sinjur qed jiffoka fuq ammont wiehed meta, fil-fatt, għandu 'if any' ħdejh, u dan ikompli juri li dan l-ammont ma kienx garantit.

Fix-xhieda tiegħu, is-Sinjur qal li hu ħa l-inizjattiva u mar il-BOV biex ħa l-polza. Dan qalu hu stess fix-xhieda tiegħu. Qal, "Mort minn jeddi l-bank biex nieħu quote," u "ġejt imħajjar minn missieri". Dan jindika interess ċar fix-xiri tal-polza. Din l-inizjattiva turi motivazzjoni u intenzjoni tal-ilmentatur biex jespjora u possibbilment jakkwista l-polza. U tirrifletti wkoll l-interess ġenwin li kellu fil-prodott.

Dan juri wkoll li min bieghlu l-prodott ma setax jeżerċitalu pressjoni għax ovvjament ma kinitx il-persuna ċemplitlu kif qalilna hu stess, imma hu ħa l-inizjattiva biex mar.

Il-kredibilità tax-xhud qiegħda wkoll tiġi kkontestata minħabba ċerti incertezzi li joħorgu mill-verżjoni tiegħu fil-verbal. L-ilmentatur jiddikjara li ma jiftakarx lil min kellem u lanqas kemm damet il-laqqgħa. U qed jibbaża biss fuq il-quotation u fuq id-dokumenti li rċieva. Qal li ma ftakarx id-dettall kollu li jista' jiftakar.

Ħdejn l-istess quotation hemm 'estimated'; hemm aktar minn figura waħda u, allura, dan juri li l-allegazzjoni li kien hemm figura waħda mwiegħda hija bla bażi.

Għalhekk il-memorja tal-ilmentatur dwar x'intqal verbalment mhix wisq affidabbli, u nibbażaw fuq il-polza u fuq id-dokumenti li rċieva.

L-ilmentatur ippretenda li jieħu l-ogħla ammont u ma ġab l-ebda prova li turi dan għax ovvjament kien hemm il-kliem li jikkwalifikaw dan l-ammont.

Nixtieq ukoll nemfasizza li avolja sfortunatament ma tellajniex lir-rappreżentanta, ngħidu li r-rappreżentanta kienet impjegata mal-BOV u dan, fil-fatt, jikkonfermah l-ilmentatur li kien hu li mar il-BOV. Bħala impjegata dan juri inqas intenzjoni li din il-persuna kienet titħallas b'xi mod b'xi commissions għax kienet impjegata mal-bank u, allura, ma hemm l-ebda motivazzjoni għajr

li dan il-klijent jixtri l-polza għaliex irid hu. Ma kienx hemm motivazzjoni ulterjuri għaliex din ma kinitx taqla' xi commissions bħalma rajna f'kazijiet oħra fejn jidhlu l-BOV fejn jgħidu li l-impjegati ma kinux jithallsu commissions.

Din turi nuqqas ta' intenzjoni biex issir pressjoni fuq l-ilmentatur.

Barra minn hekk, l-ilmentatur għamel gwadann ta' €12,384.75 li jiġi rate of return ta' 3.67% u rate of return (gross of 15% withholding tax) on investment premium ta' 4.31%.

Nixtieq nagħmel enfasi wkoll fuq id-dokument li pprezentajna l-ġimgħa l-oħra, l-iStatutory Notice li l-ilmentatur kellu 15-il ġurnata notice period biex jekk dak li qaltlu r-rappreżentant ma qabilx ma' dak li hemm miktub fil-polza, hu seta' jikkancella l-polza. U, fil-fatt, fuq dan id-dokument hemm miktub "Date Very Important" hdejn id-data tat-12 ta' Novembru 1994, jiġifieri l-15-il ġurnata kienu importanti. Kien hemm din l-annotation li jurik li dan kellu dan it-terminu biex jaħsibha biex jikkancella jew le.

Barra minn hekk, kien hemm benefiċċji li kienu parti minn dan il-prodott: hemm il-Life Cover, li l-ilmentatur stess qal li kien konxju tiegħu u l-ilmentatur stess qal li ma riedx jidhol f'riskju imma ried iġemma', jiġifieri, ma kienx hemm xi tip ta' opportunity loss li sofra l-ilmentatur meta daħal f'din il-polza.

L-aħħar punt huwa li l-ilmentatur irċieva wkoll waqt it-terminu tal-polza Policy Account Statements u l-Important Notes li dejjem spjegaw kull sena x'jinkludi l-prodott u x'kienu l-garanziji u x'kienu l-istimi (dokument anness MSV1), li juru li minkejja li r-rati kienu neżlin, l-MSV dejjem tat informazzjoni kompluta lill-ilmentatur fuq il-polza tiegħu."¹¹

Sema' lill-partijiet

Ra l-atti kollha tal-kaz

Jikkunsidra:

FIL-MERTU

¹¹ P. 94 – P. 95

L-Arbitru jrid jiddeciedi l-każ b'referenza għal dak li, fil-fehma tiegħu, huwa ekwu, għust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.¹²

Il-punt kruċjali f'dan l-ilment jitratta l-allegati wegħdiet li saru lill-Ilmentatur fir-rigward tal-ammont li hu kellu jirċievi mal-maturità tal-polza, liema ammont kien dak li ħajjru jaċċetta l-polza hekk kif offruta lilu.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'għie mwiegħed lill-Ilmentatur u x'eventwalment għie mogħti jew offrut lilu mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *'l-aspettattivi raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaž-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.'*¹³

Hawn l-Arbitru għandu sitwazzjoni fejn, fir-rigward tal-mod kif sar il-bejgħ tal-polza in kwistjoni, għandu biss f'idejh il-verżjoni tal-Ilmentatur minħabba li r-rappreżentanta tal-Fornitur tas-Servizz li bieghet din l-istess polza iddikjarat li ma tiftakar xejn x'gara tletin sena ilu. U minħabba problemi personali u anke dawk ta' saħħa, għie deciz li ma jkunx hemm insistenza biex din titla' tixhed.

Għalhekk, dan il-każ jippreżenta ċirkostanzi ta' żbilanċ li ma jippermettux lill-Arbitru jkollu wkoll il-verżjoni tar-rappreżentanta li kienet preżenti fil-mument tal-bejgħ u, għalhekk, l-Arbitru sema' biss qanpiena waħda. Minħabba f'hekk, huwa iktar diffiċli għall-Arbitru sabiex jasal għal konkluzjoni jekk dan kienx każ ta' *mis-selling* min-naħa tar-rappreżentanta tal-Fornitur tas-Servizz jew xi forma ta' memorja selettiva min-naħa tal-Ilmentatur li jiftakar biss dak li jrid.

Minkejja li l-Arbitru għandu f'idejh il-verżjoni tal-Ilmentatur, jinnota li l-informazzjoni li wiegħed jista' jiġbor mix-xhieda mogħtija minnu hija limitata ferm. L-Ilmentatur stqarr li dak iż-żmien, missieru kien ħajjru sabiex jagħmel din it-tip ta' polza ilmentata fejn, eventwalment, kien minn jeddu mar il-fergħa tal-Bank għal kwotazzjoni u iktar informazzjoni. Qal li kien għie kkwotat lilu l-ammont li kellu jieħu mal-maturità tal-polza, raha vantaġġuża u tħajjar li jagħmilha. Minkejja dan, però, ma jiftakarx min kien ir-rappreżentant jew rappreżentanta tal-Bank, ma jiftakarx kemm damet il-laqqgħa mal-istess rappreżentant, jekk fuq

¹² Kap. 555, Artiklu 19(3)(b)

¹³ Kap. 555, Artiklu 19(3)(c)

kollox saritx iktar minn laqgħa waħda u lanqas jiftakar id-dettalji kollha li ġew diskussi. Iżda, hu stqarr li “... *aħna nimxu fuq il-quote*,”¹⁴ filwaqt li jammetti wkoll li kien konxju tal-fatt li meta xtara din il-polza, minbarra l-element ta’ investiment, il-polza kellha wkoll l-element ta’ kopertura fuq il-ħajja rappreżentata mis-*Sum Assured*.

Minkejja li l-Ilmentatur stqarr li kien missieru li ħajjru sabiex jagħmel din il-polza, l-Arbitru m’għandux informazzjoni dwar jekk missieru kienx diġà detentur ta’ polza simili, u li kien għalhekk li ħajjar lil ibnu sabiex jagħmel waħda bħalha. Iżda li hu ċert hu l-fatt li meta l-Ilmentatur kien żar il-fergħa tal-Bank għal iktar informazzjoni, kien diġà jaf għal xiex mar u xi prodott irid.

Kif diġà saret referenza aktar kmieni, l-Ilmentatur kien konxju tal-fatt li l-polza in kwistjoni kien tinkludi l-element ta’ kopertura fuq il-ħajja. Meta taħt kontroezami, ġie mistoqsi dwar jekk meta nxtrat din l-istess polza riedx jagħmel investiment riskjuż, kienx lest li jitlef il-kapital jew inkella riedx polza biex iġemma’, l-Ilmentatur iddikjara li “... *jiena ridt iġemma’, ma ridtx nidhol f’riskju*.”¹⁵

Minkejja din id-dikjarazzjoni, l-Ilmentatur fl-ebda ħin ma kkontesta l-fatt li hu kien konxju li l-polza kien fiha l-element ta’ investiment u dan huwa kkorroborat mill-kontenut tal-*Proposal Form*,¹⁶ li hija anke iffirmata minnu stess, fejn, taħt il-mistoqsija, ‘*Reason for policy/ies*’, ġie mnizzel ‘*Investment*’.¹⁷

Minkejja li ma kienx hemm ammissjoni diretta ta’ dan, l-Arbitru huwa tal-fehma li l-Ilmentatur kien konxju ta’ diversi aspetti tal-polza u, għaldaqstant, huwa evidenti li hu qed iressaq dan l-ilment minħabba l-fatt li l-ammont offrut lilu mal-maturità huwa ferm inqas minn dak li kien qed jistenna li jirċievi.

L-Arbitru m’għandux informazzjoni dwar x’intqal eżattament waqt il-laqgħa bejn l-Ilmentatur u r-rappreżentanta tal-Fornitur tas-Servizz, u x’informazzjoni ngħatat, iżda huwa evidenti li l-aspettattivi tal-Ilmentatur kienu tali u dawn ma ġewx milħuqa.

¹⁴ P. 84

¹⁵ P. 85

¹⁶ P. 14 – P. 15

¹⁷ P. 15; 92

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fis-sena 1994, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal 30 sena sħaħ.

Għaldaqstant, 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 30 sena speċjalment peress li l-kontribuzzjonijiet tiegħu kienu mifruxa fuq 30 sena u mhux xi '*lump sum investment*' li tista' tiġi investita mill-ewwel biex torbot ir-rati tal-imgħax għal żmien twil. Dan appartni li dak iż-żmien, *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

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. Izda min-naħa l-oħra, jhoss li l-Fornitur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu ħareġ *spectrum* ta' kwotazzjonijiet maħduma b'rati differenti għax fuq perjodu ta' 30 sena xejn ma' jibqa' stabbli. Fil-fatt, ingħad li wara s-sena 2000, bdew joħroġu tliet kwotazzjonijiet u mhux waħda, u dan jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal 30 sena.

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

Kumpens

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentatur, sal-limitu ta' fejn kienu leġittimi, ma ġewx milħuqa.

L-aspettattivi tiegħu kienu li mal-maturità tal-polza kien ser jirċievi s-somma ta' €64,848,¹⁸ li izda fid-data tal-maturità gie offrut ferm inqas. Izda, ma jistax jingħad li l-aspettattivi tal-Ilmentatur kienu kompletament leġittimi.

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

¹⁸ p. 3

ragonevoli, ma jistax ikun preċiż minħabba li hemm diversi fatturi li jridu jiġu kkunsidrati.

Minkejja li mal-maturità tal-polza, l-ammont offrut lill-Ilmentatur ma kien xejn viċin dak oriġinarjament ikkwotat lilu, ma ġiet ipprezentata l-ebda prova li dak iż-żmien hu kellu xi għażliet oħrajn ta' investiment jew tfaddil u li minnhom seta' jkollu ritorn daqs dak ikkwotat jew iktar u, għalhekk, ifisser li ma ġiet ipprezentata l-ebda prova ta' *opportunity loss* imġarrab mill-Ilmentatur innifsu.

Dan minbarra l-fatt ukoll li permezz ta' din il-polza, l-Ilmentatur żgur li ma kellu xejn x'jitlef. Apparti l-benefiċċju ta' kopertura fuq ħajtu li beda mill-ewwel ġurnata tal-polza, l-Ilmentatur kellu ċ-ċans li jikkontribwixxi għat-tfaddil permezz ta' din l-istess polza kif, fil-fatt, hu stess xehed li kienet l-intenzjoni tiegħu, u dan billi jhallas ammont żgħir kull sena għal tletin sena sħaħ.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' aktar minn 4.3%,¹⁹ li fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu jiġi wkoll ikkunsidrat fi sfond fejn il-kapital tal-investiment kien sostanzjalment garantit, u l-Ilmentatur innifsu ammetta²⁰ li meta xtara l-polza ilmentata ma riedx jidhol f'riskju.

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' **€4,085 (erbat elef u ħamsa u tmenin ewro)**.

Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV Life p.l.c. tħallas lill-Ilmentatur is-somma ta' erbat elef u ħamsa u tmenin ewro (€4,085) b'żieda mas-somma diġà offruta, cioè, mas-somma ta' €27,235.95²¹ u, għalhekk, iħallsu s-somma kumplessiva ta' €31,320.95 (wieħed u tletin elf, tliet mija u għoxrin ewro u ħamsa u disgħin ċenteżmu).

¹⁹ p. 77

²⁰ p. 85

²¹ p. 8

Bl-imgħax ta' 2.15%²² minn hamest ijiem tax-xogħol wara d-data ta' din id-deċiżjoni sad-data tal-ħlas effettiv.

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

Alfred Mifsud

Arbitru għas-Servizzi Finanzjarji

Nota ta' Informazzjoni relatata mad-Deciżjoni tal-Arbitru

Dritt ta' Appell

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

Skont il-prattika stabbilita, id-Deciżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.

L-Ispejjeż tal-Proċeduri

²² Rata kurrenti MRO (Main Refinancing Operations) tal-Bank Ċentrali Ewropew

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

L-ispejjeż tal-proċeduri jistgħu wkoll jinkludu kull pagament raġonevolment u legalment applikabbli ta' spejjeż professjonali u legali mħallsa mill-Ilmentatur, limitati għal atti pprezentati matul il-każ. Tali spejjeż professjonali m'għandhomx jinkludu spejjeż ġudizzjarji jew flasijiet oħra kontingenti magħmula barra l-proċeduri tal-każ.

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

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