

Każ ASF 042/2025

LO & PO

(‘l-Ilmentaturi’)

vs

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

(‘il-Fornitur tas-Servizz’)

Seduta tat-18 t’Awwissu 2025

L-Arbitru,

Ra l-ilment¹, fejn l-Ilmentaturi ssottomettew li huma ma jaqblux mas-somma li qed tiġi offruta lilhom mill-Fornitur tas-Servizz mal-maturità tal-polza, u dan minhabba li lura għas-sena 2000, meta rappreżentant ta’ dan tal-aħħar kien id-dar tagħhom u offriellhom il-polza in kwistjoni, kien għamilhiellhom ċara li mal-iskadenza tal-ħamsa u għoxrin sena, kienu ser jirċievu s-somma ta’ €23,473.

Huma saħqu li din is-somma kienet konvinċenti u tul iż-żmien għamli diversi saġriċċji sabiex setgħu jkomplu jħallsu l-ammont dovut minnhom kull sena, bil-ħsieb li mal-maturità jirċievu somma tajba.

L-Ilmentaturi sostnew li minkejja li jafu li kien hemm xi snin fejn ir-rati tal-*bonus* niżlu, iħossu li din mhix problema tagħhom għax huma fdaw lill-Fornitur tas-Servizz bl-investiment tagħhom u, allura, għandu jkun dan tal-aħħar li jerfa’ r-responsabbiltà ta’ kif investa flushom. Huma jħossu li dak iż-żmien, ir-rappreżentant tal-Fornitur tas-Servizz qarraq bihom sabiex wassalhom jixtru l-polza hekk kif offruta lilhom.

¹ P. 1 - 6 b’dokumentazzjoni addizzjonali minn p. 7 - 74

Għaldaqstant, huma qed jitolbu² li jingħataw is-somma ta' €20,964, li hija ibbażata fuq dak li kien allegatament wegħedhom ir-rappreżentant, jġigifieri, tliet darbiet iktar minn dak li huma kienu ser jinvestu.

Ra t-tweġiba tal-Fornitur tas-Servizz³

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

1. *MAPFRE MSV Life plc (“MMSV”) refers to the allegation made by the complainants that the maturity value of the Policy in question numbered 55308 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 complainants. Consequently, the complainants are requesting the Honourable Arbiter to order MMSV to pay the complainants EUR20,964.*

In this regard, MMSV is of the view that the claimants’ request is unfounded and therefore, the complainants are not entitled to receive any compensation in addition to the maturity value as is going to be explained in further detail hereunder.

2. *In the first place, the amount being requested by the complainants is based on estimates shown in the quotations that were presented by the complainants together with this complaint (a handwritten copy is presented as fol. 12 and a printed copy is presented as fol. 13). 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.** The Important Notes attached to the quotation, marked as DOC. MSV 1, states that ‘The Estimated Maturity Values shown overleaf have been calculated*

² P. 3

³ P. 81 - 86

using the bonus rates declared by the Company at the previous year end. **Depending on the performance of the company, bonus rates may go down as well as up.** At the time, the bonus rate was much higher than it is today, with a rate of 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 shows that the quotation provided was indeed correct as it was issued according to the circumstances at the time, therefore, MMSV had acted in good faith.**

4. The Important Notes (DOC. MSV 1) delve into the meaning of 'Reversionary Bonuses' and 'Terminal Bonus'. The said notes also explain that the Policy was participating **'in the Company's distribution of its profits by means of an allocation of annual Reversionary Bonuses declared from time to time ...** The rates of Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured.'

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

Therefore, the amounts that were indicated in the quotations as 'Estimated Maturity Value including Reversionary Bonuses' 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 complainants could have been certain how the value of the Policy Account of their Policy was increasing over the years. This is so, because as was explained in the notes, it was only those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainants.

5. With regards to the 'Terminal Bonus', the same document showing the Important Notes also explains that **'Depending on its profits experience**

the Company may, 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. 12 and fol. 13) as 'Estimated Maturity Value including Reversionary and Terminal Bonuses' of LM10,077 was likewise not guaranteed since it was highly volatile.

6. In fact, the Life Policy Schedule (presented in the complaint as fol. 20) provides that 'In respect of each premium paid, LM112.52 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 policyholders.
7. Furthermore, the only amount mentioned in the Life Policy Schedule (fol.20) was the sum assured of LM2,569 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 bonus and terminal bonuses were never guaranteed.
8. The notes that formed part of the quotation (DOC. MSV 1) 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 complainants could not treat the quotation as a stand alone document but had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the Policy document.**

9. *It is to be noted that the Assured in fact signed at the bottom of the Life Assurance Quotation (fol. 12) 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 in 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, as it is greater than the sum assured.*

11. *Furthermore, the complainants 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 performances of the Company and the investment market both locally and overseas***
- ***When presenting you with the Company's official written quotation for the Estimated Maturity value we have based our calculations solely on current bonus rates***

- **Please note the past performances are not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed’.**

12. At the moment that the Policy was being sold, MMSV had provided the complainants with sufficient information about the Policy, including the fact that part of it was an investment, 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 complainants are merely basing their claim on estimated maturity values without putting them in the context of all the documents provided to the complainants when the Policy was being sold to them 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 complainants until the maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders including the complainants. 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.

14. Although the maturity value could not match the estimated figures in the quotations due to shifts in market performance, the investment part of the Policy still rendered a good return when compared to other similar investments that were available during the Policy term, despite the challenges posed by three financial crises. Moreover in 2018, asset classes

worldwide recorded negative returns, and by the time the policy matured, investment markets had been significantly impacted by COVID-19. Nonetheless, the complainants made a gain of EUR 3,417.92 after deducting the investment Premium that was paid by the complainants from the maturity value, and this represents a rate of return-on-investment premium amounting to 3.09% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.64%.

- 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 complainants would have been otherwise obliged to pay taxes from their return.*
- 16. During the term of the Policy, MMSV always kept the complainants informed about the value of the Policy Account of their 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 complainants by MMSV by sending to them, 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 complainants, every year, a Media Release (copies of the Policy Account statements are attached with the complaint and marked fol. 36-58). Therefore, the complainants were fully aware of what bonuses were being declared and of the value of the Policy over the years. Apart from the use of the 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 quotations 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 for 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.20) with an amount of LM2,569. Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR3,417.92 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. In addition, the Policy allowed the Policy Owners to name their 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 only to the submission of an HIV free declaration).
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 EUR3,417.92 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 complainants' 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. 68) 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 complainants on the maturity date of the Policy in question because that value could only be realised 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 “**earn**” in the comment made by the complainants in the online complaint (fol. 3) stating that “We do not agree with the sum offered to us because way back in the year 2000 when a representative of MSV Life visited my house and sold us the insurance he made it clear that by the end of the 25 year term we were going to earn the amount of Eur23,473” has no basis, since the complainants signed the quotation (as used and understood by the normal meaning of the word) showing estimated values and not an agreement showing a promised maturity value.*

*In addition, the complainants also stated that “Although we know that there were some years that the bonus rates went down, this is not our problem because we trusted them with our investment and so they have to shoulder responsibility on how they invested the money.” This is also an incorrect statement since the Company has always managed the MSV With Profits fund in the best interest of its policyholders as explained earlier in point number 13. On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion. In fact, as stated in the Important Notes (DOC MSV 1) “The Company’s continued bonus policy is that bonus rates should reflect the returns actually earned on the underlying investments, supplemented by the value added from the profits of non-profit business. 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.***

22. MMSV maintains that the Policy was sold in accordance with the regulations that were applicable at the time when the Policy was being sold. In fact, the complainants were presented with the Statutory Notice (DOC. MSV4) that was issued in compliance with the provisions of the Life Insurance (Statutory Notice) Regulations, 1989. The Statutory Notice set out several warnings including the right of the complainant to withdraw from purchasing the Policy and the manner to do so. This Notice was intended to give policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was allegedly pressured to purchase the policy. However, in this case, the complainants did not exercise any of the said rights set out in the Notice and consequently agreed to proceed with the Policy.
23. 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 tat-22 ta' Mejju 2025, l-Ilmentatur xehed:

"Ngħid li l-insurance għalqet wara 25 sena, u l-MSV qalulna li aħna intitolati għal €9,900. Aħna meta rajna din ħadna xokk (u ma kienx l-ewwel xokk għax kellna insurances oħrajn u ġara l-istess),

Lura fis-sena 1999, meta kien ġie tal-insurance id-dar biex jipperswadina nagħmlu din it-tip ta' insurance, għall-bidu ma stajniex nagħmluha, konna għadna kif iżżewwigna u l-mara kienet taħdem imma kellha tiegaf minħabba raġunijiet ta' saħħa. Kellna tarbija, kellna d-dar għadha vojta, konna qed inħallsu l-loans tal-post imma b'xi mod ir-rappreżentant tal-Middlesea kien

ipperswadiena billi qalilna li dan kien investment tajjeb u wara 25 sena, konna ser nieħdu s-somma ta' madwar €23,000, dak iż-żmien kien qalilna Lm10,000.

Anzi kien qalilna wkoll li fl-aħħar ħames snin tagħha din bejn is-sena 20 u s-sena 25, taf tiżdied. Allura, għamlilna aktar kuraġġ. Il-mara dak iż-żmien iċċekkja is-Sun Life u l-bank biex nagħmlu xi investment żgħir u nħallsuh kull sena. Niftakar li dak iż-żmien kien talabna Lm120 fis-sena, u aħna veru konna naqra mgħaffġin, imma xorta rajna li naffordjaw b'xi mod li nħallsuhom. U f'25 sena jkollok il-maltemp, ikollok il-bnazzi imma b'xi mod dejjem żammejna mal-pagamenti tagħna.

Ngħid li matul dan iż-żmien, aħna bqajna fuq dak li qalilna dak ir-rappreżentant li kien salesman verament tajjeb u anke tana graphs ta' kif ser takkumula s-somma tagħna u b'hekk irnexxielu jipperswadina.

Meta mbagħad tirċievi €9,900 meta int suppost ħadt €23,000, għalik huwa xokk. U għalija huwa xokk doppju għax fl-2019 kelli tiegħi personali u kienet kbira mhux ħażin u l-istess, ħadt in-nofs. U, barra minn hekk, il-mara u t-tfal tiegħi, għandna żewġ subien, għadhom kif wirtu tlett insurances oħra mingħand il-kunjata fejn kienet tgħidilhom li ser ikollhom somma tajba x'jirtu biex ħadu ċucata.

Jigifieri jiena mill-2019 sal-lum, sitt insurances blaġt kanna kbira bihom. Lanqas ħaq q il-flus li investejna fihom.

Tiġux tgħiduli għax is-suq tela' u niżel; jien fdajt bniedem biex jinvestili l-flus u tiġix tgħidli inħallas fuq €7,000 u kulma nirċievi €9,900 f'ħamsa u għoxrin sena!

Dan hu l-punt tagħna li s-somma hija żgħira wisq għall-investment li għamilna.”⁴

Xehdet ukoll l-Ilmentatriċi fejn stqarret li:

“Ngħid li dak iż-żmien, f'Jannar tas-sena 2000, kien hawn il-boom tal-insurances u kulhadd jibda jċempel. Dan kien iċempel u konna ngħidulu li ma nistgħux. Darba minnhom spjegajtlu fuq it-telefon il-pożizzjoni tagħna għalfejn ma niħajjirux nagħmlu insurance u qalli, ‘Ara, għandek tarbija tat-twelid, l-

⁴ P. 92 - 93

Baby Bond hija xi ħaġa tajba għalikom. Ħa niġi nfiehemkom, nispjegalkom u naħdmu fuq il-Baby Bond.'

Wara din id-diskussjoni fuq it-telefon, ġie d-dar u beda jfiehema fuq il-Baby Bond għat-tifel.

Ħareġ bis-somma ta' Lm120, beda jaħdimha u wrieni l-graphs u dejjem telgħin dawn il-graphs. Qalli, 'Għax aħna nies serji, għandna nies serji jaħdmu magħna. Dawn għandek garanzija li tiegħu tliet darbiet ta' dak li tħallas.'

Ngħid li l-ewwel kellimni fuq it-telefon, imbagħad, kien ġie d-dar u għidnilu biex jagħtina ċans biex naraw jekk naffordjawx inħallsu din is-somma. Ngħid li kien iċempel kull ħmistax u dejjem baqa' jgħidli, 'Għandek Lm10,000 garanzija!' imbagħad, saret laqgħa oħra, ġie d-dar u ffirmajnilu l-karti.

Laqgħat fiżiċi, mhux fuq it-telefon, saru tnejn u kienu jdumu madwar siegħa u konna nkunu t-tnejn flimkien.

Ngħid li dak iż-żmien, qabel ma waqaft naħdem, kont Line Technician u r-raġel kien jaħdem ma' missieru u għandu edukazzjoni ta' A Level."⁵

Taħt kontroezami, l-Ilmentatur qal li:

"Mistoqsija naqbilx li wara 25 sena, ma niftakarx kelma b'kelma l-ispjegazzjoni li ngħatat fuq it-telefon u waqt it-tieni laqgħa li kienet saret, ngħid li jien forsi ma niftakarx imma l-mara għandha memorja aktar minn ta' ljunfant."⁶

Taħt kontroezami ukoll, l-Ilmentatriċi kompliet li:

"Mistoqsija jekk l-unika spjegazzjoni li ngħatat kienet kemm ser jithallas Premium u l-ammont li ser niħallsu fl-aħħar, ngħid li aħna staqsejnih kif dawn il-flus ser jiġu investiti u hu kien anke ħareġ graphs minn ġol-pocket u wrihomlna u qalilna li l-kumpanija li jaħdem magħha għandha kumpaniji barra u li huma jinvestu fil-bonds u x-shares tagħhom. Jien biex inkun onesta, fil-finanzi ma nifhimx.

Hu kellu dawn il-graphs ta' kumpaniji fejn aħna nvestejna l-flus u dawn dejjem telgħin. Qalilna li għandhom nies serji u baqa' dejjem jibbaża fuq dawn l-

⁵ P. 93

⁶ P. 94

affarijiet, li n-nies li kien qed jirrappreżenta dak il-ħin kienu nies ta' stoffa ta' dan il-mestier.

Qed jingħad li nħarget il-quotation li kien fiha ftit figuri u mitluba nispjega x'qalilna dwar dan id-dokument (paġna 12 tal-proċess), ngħid li qalilna li l-insurance kienet għal 25 sena. U qalilna li għall-ewwel għoxrin sena meta nibdew nirċievu l-karti ma konniex ser naraw ħafna andament, però, jekk aħna nżommuha għal 25 sena full, bejn l-għoxrin sena u l-ħamsa u għoxrin sena tal-polza ser naraw boom fl-investment.

Meta staqsejnih x'jiġifieri 'boom', qalilna li 'Il-bonus tant inkunu investejnih tajjeb li intkom ser ittellgħuh ħafna.' U fil-fatt, bejn l-għoxrin sena u l-ħamsa u għoxrin sena hemm Lm5,500 fejn splodiet l-insurance.

Qalli, 'Dak hu li qed jiggarrantilek l-Lm10,000 li aħna qed inwiegħduk.' U, fil-fatt, hawn tidher li hemm gap kbira. Il-pagament xorta baqa' Lm120, imma bejn l-20 u l-25 sena, u biex hu lilna urienu eżatt l-affarijiet kif inhuma, hawnhekk baqa' jinsisti li aħna qed narawhom.

Ngħid li wara daħħal il-quotation handwritten li kien tana fil-kumpanija li kien jirrappreżenta, irċevejna quotation typed, pulita u l-figuri huma l-istess jiġifieri min kiteb il-figuri, dawn baqgħu l-istess.

Qed niġi referuta għal dak li għidt li bejn l-20 u l-25 sena kien hemm qabza kbira. Mistqosija fħimtx li daww il-figuri japplikaw jekk jien nirtira l-polza qabel iż-żmien, ngħid li qalilna li jekk tirtira, titlef. Jekk iżzommha sal-aħħar, tisplodilek. Ngħid li għalhekk ħallejniha għal 25 sena.

Mistqosija xi spjegalna igward il-figura ta' Lm7,328, ngħid li meta huwa kien qed jikteb il-figuri, qalilna, 'Inti dejjem l-aħħar waħda tgħodd għalikom għax intom għandkom bilanċ li qed tħallsu li jkun parti mill-Estimate minn sena għall-oħra u għandek parti pagament u parti l-bonus'.

Kien qalilna wkoll,

'Jien nibbaża dejjem fuq l-Lm10,000 għar-raġuni li intkom tistgħu tmorru anke aħjar mill-Lm10,000. Però, inti inqas mhux ser tmur.'

Ngħid li le, fuq il-figura ta' Lm7,328 ma kien spjegali xejn u dejjem baqa' jagħfas fuq din tal-Lm10,000.

Qed jingħad li fl-ilment l-ewwel qed nitlob €23,473 imbagħad €20,964 u mistoqsija jekk kelli wegħda ta' tliet darbiet aktar jew l-Lm10,000, liema hija l-figura, ngħid li aħna naqqasna dawk it-€3,000 minn kemm konna mwiegħedin għax l-Lm10,000 u aħna, give and take, b'€20,000 nikkuntentaw għax aħna ħadna in konsiderazzjoni xi ċaqliq li seta' jkun hemm.

Qed jingħad li allura aħna konna nafu li seta' kien hemm xi ċaqliq għax konna qed nagħmlu investment, ngħid iva imma mhux inqas min-nofs. Naqra żgħira nifhimha.

Qed jingħad li fuq il-quotation li aħna ffirmajna hemm li din il-quotation ma tagħtik l-ebda drittijiet:

'This quotation is an illustration only and does not confer any rights'.

U tgħid ukoll illi fhimtu din il-quotation.

Qed niġi referuta għal noti, Dok. MSV1, li jkunu fuq wara tal-quotation li aħna ffirmajna li fhimnihom.

F'paragrafu 3 hemm miktub, partikolarment għall-figuri tal-Estimated Maturity Values tas-Lm7,000 u l-Lm10,000

'... have been calculated using bonus rates declared by the company at the previous year end. Depending on the performance of the company, bonus rates may go up as well as down.'

Qed niġi mitluba, fid-dawl ta' dan kollu, kif qed ngħid li konna mwiegħda s-somma ta' Lm10,000, u li setgħet is-somma tkun aktar minn Lm10,000, meta aħna nafu li s-somma setgħet tvarja għax investment, ngħid li l-kwota ta' Lm10,000 hu ħareġ biha u mhux aħna.

Meta jiena staqsejtu kemm hi vera ġusta dik is-somma ta' Lm10,000, għax jekk tagħmel Lm120 għal 25 sena, jiġi Lm3,000; allura, inti ser tagħtini tliet darbiet aktar? Għax Lm10,000 hija tliet darbiet it-Lm3,000.

Qalli, 'Iva għandek din il-Baby Bond li hija investment tajjeb ħafna.'

Ngħid li huwa qatt ma uża l-kelma 'estimated'.

Qed jingħad li fid-dokument hemm miktub kullimkien li kienu 'estimated'.

Ngħid li jien kont għidtlu, 'Spjegali ċar bil-Malti kristall għax fl-investimenti aħna ma nifhmux. Jekk mhux ser tispjegali ċar tista' toħroġ minfejn ġejt.'

Għax la ma nifhimx, ma nifhimx. U għalina l-flus kienu issue importanti għax jien ma stajtx naħdem.

U baqa' jgħidilna u jiggwidana fuq l-ewwel paġna. Kont ngħidlu, 'Qabel niffirma, dak kollu li għidtilna huwa minnu?' U kien jgħidilna, 'Iva'.

Ngħid li dawn in-noti ta' fuq wara tal-quotation qatt ma qrahomlna jew spjegahomlna. Qatt ma qara xejn. Qatt ma qalilna li kien hemm riskju, għall-argument, li ma nistgħu nieħdu xejn. Dejjem baqa' jinsisti li ser neħduhom.

Qed jingħad li setgħet tvarja spjegalna għax aħna hekk xehedna.

Ngħid li le, jien m'għidtlekx li hu qalilna li tista' tvarja. Tvarja mill-Lm10,000 'il fuq. Jew tibqa' l-Lm10,000 jew titla' aktar 'il fuq.

Mistoqsija kif allura tlabna €20,000 meta ppretendejna aktar, ngħid li b'rispett lejkom għax illum għaddew 25 sena u forsi tmur xi naqra żmerċ 'l hemm jew 'l hawn.

Ngħid li fl-2000 konna għamilna l-ewwel polza bħala Baby Bond.

Qed jingħad li aħna diġà kellna żewġ poloz oħra qabel il-Baby Bond, tal-Endowment with Profits u, allura, konna diġà familjari ma' dawn it-tip ta' poloz.

Ngħid li daww kienu personali, imma terġa' l-Baby Bond kienet aħjar minnhom għax meta għamilna l-oħrajn ma tawniex il-vantaġġ li toffri l-Baby Bond. Il-Baby Bond toffri three times as much, kien fiha!

Ngħid li l-polza tal-1998, għalkemm il-premium kien għoli, din kienet aktar.

Ngħid li kellna żewġ poloz, tal-1994 u tal-1998, u ġejna mqarrqin bil-goff fihom ukoll.

Mistoqsija wara li bdejna naraw kull sena li l-polza ma kinitx sejra tajjeb, fejn ingdimt tliet darbiet, ngħid li ma konniex nafu qabel li ser ningidmu, sirna nafu issa.

Mistoqsija kif allura, fl-2007, fl-2018 u tnejn fl-2019, ħriġna erba' poloz oħra tal-istess natura, ngħid li 2019 ilha sitt snin – u aħna dejjem stennejna li bejn l-20 u l-25 sena dawn ser jagħtuna income.

Ngħid li tal-2007 dik hija insurance tal-business tar-raġel li hu partner.

Qed jingħad li jekk konna daqshekk diżappuntati matul is-snin bil-Bonus Statements li konna qed nirċievu, ngħid li l-insurance tar-raġel li għandhom x'jaqsmu max-xogħol, jekk tara sew, kien hemm ħafna pagamenti mdaħħlin fiha – health, accidents, eċċ – aħna ma konniex nafu eżatt kif ser taħdem dik għax dik tax-xogħol.”⁷

L-Ilmentatur imbagħad sostna:

“U l-polza li ngħalqet fl-2019, ergajt bdejtha għax peress li jiena nserraħ moħħi bl-insurance, jien ix-xogħol tiegħi hu perikoluż ħafna. Fil-fatt, diġà għaddejti minn aċċident ikrah u dan taf bih l-insurance. Allura, bilfors irrid nagħmel insurance sura ta' nies. U tax-xogħol inħares lejha bħala insurance.

U l-poloz tiegħi personali qed nagħmilhom biex jekk ikolli aċċident fuq ix-xogħol, inkun covered.

Qed jingħad li mela napprezzaw li waqt li qed nagħmlu investiment, huwa importanti li nagħmlu life cover minħabba ħajti. U qed jingħad li aħna xorta bqajna ninvestu avolja dak iż-żmien kellna nindunaw li l-poloz tal-1994, 1998 u 2000 ma kinux ser jiġu achieved.

Ngħid li ma stajniex nindunaw dawn il-poloz kif ser jiġu għax dawn lanqas biss kienu qabdu daww il-ħames snin li tgħid il-graph.”⁸

Fit-tieni seduta tat-30 ta' Ġunju 2025, xehed Ian Mercieca Bons, ir-rappreżentant tal-Fornitur tas-Servizz li biegh il-polza in kwistjoni lill-Ilmentaturi.

Hu iddikjara:

⁷ P. 94 - 97

⁸ P. 97

“Nikkonferma l-firem tiegħi fuq id-dokumenti Life Assurance Quotation (paġna 12 tal-proċess), fuq il-Baby Bond Proposal Form (paġna 15 tal-proċess), il-Product Information u l-Avviż Statutorju (Dok. MSV4).

Ngħid li konna nċemplu lista li kienet tiġi pprovduta lilna. Min jaċċetta l-appuntament, konna mmorru fid-dar tagħhom. Konna nagħzlu ġurnata u ħin li jkun komdu għal kulĥadd.

U konna mmorru d-dar tagħhom jew fuq il-post tax-xogħol tagħhom, imma normalment id-dar u nispjegawhom il-polza. F’dan l-ewwel appuntament konna nispjegaw il-polza kif inhi, x’tagħmel u x’ma tagħmilx; kif jinĥadmu l-pagamenti, l-imgħaxijiet, eċċ.

Ngħid li rari kien li xi ħadd jiffirma dak il-ħin għax dak kien investiment għal tul ta’ żmien u dak li jkun ikun irid jaħsibha. Aħna konna nagħtu l-quotation u dak li jkun jaħsibha.

Min-naħa tagħna, konna nagħmlu follow-up, inċemplu lill-klijent prospettiv u jgħidilna kif jaħsibha, għaliex iddeċieda, eċċ., u normalment hemmhekk isir it-tieni appuntament.

Ngħid li għadda ż-żmien u dawn il-klijenti partikolari ma niftakarhomx. Jien qed ngħid x’konna nagħmlu in ġenerali u l-ispeġja kienet tkun ma’ kulĥadd l-istess.

Ngħid li nkun spjegajt u tajt il-quotations fuq l-ammont li wieħed ikun jista’ jaffordja; kemm kien ser jagħmel investiment fix-xahar, kull tliet xhur jew fis-sena għax kien hemm various options kif tħallas il-polza.

Imbagħad, konna nagħtu quotations ta’ kemm wieħed jista’ jieħu once li l-imgħaxijiet jiġu ddikjarati. Konna nagħmluha ċara li dawn ma kinux garantiti. Kienet garantita s-Sum Assured – is-somma li tingħata f’każ li wieħed jiġi nieqes meta l-polza tkun in forza.

Future interest qatt ma kien ikun garantit u din konna nagħmluha ċara ħafna għax ħamsa u għoxrin sena huwa żmien twil u l-affarijiet jistgħu jinbidlu.

U konna nagħtu rendikont tal-ammonti li jista’ wieħed jieħu; konna ngħidu li kienu tax free sakemm il-liġi ma tinbidilx.

In a nutshell, dik kienet l-ispjegazzjoni tagħna li konna nagħtu.

Fil-Life Assurance Quotation (paġna 12 tal-proċess) hemm is-Sum Assured ta' Lm2,568, il-Maturity Value including estimated Reversionary Bonus ta' Lm7,328 u l-Maturity Value including estimated Reversionary Bonus and Terminal Bonus ta' Lm10,077.

Ngħid li jien kont niddistingwi bejniethom għax speċjalment it-Terminal Bonus qatt ma kien garantit u l-kumpanija kellha d-dritt li dak ma tiddikjarahx anke jekk tkun sejra tajjeb. Dak kien optional min-naħa tal-kumpanija.

U anke r-Reversionary Bonus qatt ma kien garantit. Infatti, fuq konna niktbu 'estimated' u 'estimated' dejjem konna ngħiduha għaliex ma kien hemm xejn garantit hlief is-Sum Assured. Dik konna nagħmluha ċara ħafna. U dejjem kien ikun hemm miktub 'estimated' anke meta jiffirmawlna l-karti konna nagħmluha ċara li din hija 'estimated'.

Dwar id-dokumenti, l-Important Notes (MSV1) u l-Product Information (MSV2 u MSV3), ngħid li huma dokumenti daqsxejn twal u ma konniex naqrawhom sentenza b'sentenza, però, konna nispjegaw a voce daww id-dokumenti u konna nħalluhom mal-klijent biex ikun jista' jaqrahom bil-kwiet meta jiena nkun tlaqt mingħandhom. Konna nispjegaw il-ġist u l-aktar affarijiet importanti li jkun fih dak id-dokument.

Ngħid li apparti li r-riskji konna nispjegawhom ċarament, dejjem konna ngħidu li dan huwa 'estimate'. Ngħid li min-naħa tagħna, qatt ma konna nagħtu garanziji ta' xejn.

Ngħid li aħna konna nagħmlu anke tlieta u erba' appuntamenti. Ma nistax ngħid kemm għamilna mas-Sinjuri għax ma niftakarx. Ngħid li ġieli fit-tieni darba, jkollok klijent li jgħidlek li hu interessat u jitolbok nerġgħu niltaqgħu għax ikollu xi mistoqsijiet għaliha. Ngħid li pressjoni qatt ma kien hemm.

Ngħid li dak iż-żmien, jien kont self-employed. Kont intermedjarju awtorizzat mill-MFSA. Kont għal rasi u kont nieħu commission fuq kull polza li nbiegħ.⁹

⁹ P. 98 - 100

F'dan l-istadju, l-Ilmentaturi ddikjaraw li ma kellhomx mistoqsijiet għax-xhud, filwaqt li Victor Farrugia, ukoll f'isem il-Fornitur tas-Servizz, ikkonferma r-risposta tiegħu għall-ilment.

L-Arbitru stieden lill-partijiet sabiex, jekk iridu, jagħmlu s-sottomissjonijiet finali tagħhom, kemm verbalment jew inkella bil-miktub. L-Ilmentaturi stqarrew li huma kienu ser jistrieħu fuq ix-xhieda li taw fl-ewwel seduta, filwaqt li l-Fornitur tas-Servizz issottometta li:

“Fl-umli fehma tagħna, mix-xhieda tal-ilmentaturi joħroġ biċ-ċar li filwaqt li kienu konxji li qed jagħmlu investiment u, allura, li seta’ kien hemm ċaqliq, id-dizappunt tagħhom hu li kienu ser jirċievu somma ħafna iżgħar minn dak li kienu qed jaħsbu li ser jirċievu. U, li skont huma, l-MSV ma nvestietx tajjeb u li kieku investiet tajjeb kienu, skont huma, tintlaħaq il-figura li hemm fil-quotation.

Fix-xhieda tagħhom, huma qalu, ‘Dan hu l-punt tagħna li s-somma hija żgħira wisq għall-investiment li għamilna,’ u

‘Qed jingħad li allura aħna konna nafu li seta’ kien hemm xi ċaqliq għax konna qed nagħmlu investiment, ngħid iva imma mhux inqas min-nofs. Naqra żgħira nifhimha.’

Allura, għalkemm li fl-ilment u f’parti tax-xhieda tagħhom l-ilmentaturi jitekellmu li l-Estimated Maturity Value kien imwiegħed, fl-istess ħin qed jikkontradixxu rwieħhom għax konxji li wara ħamsa u għoxrin sena l-MSV setgħet ‘tmur xi naqra żmerċ’ l hemm jew ’l hawn.’

Fil-fatt, hemm anke inkonsistenza fit-talba tagħhom: huma qalu li kienu mwiegħdin l-Lm10,000, però, imbagħad, kienu għamlu talba għal ammont inqas għax qalu ‘nikkuntentaw għax aħna ħadna in konsiderazzjoni xi ċaqliq li seta’ jkun hemm.’

Fl-umli fehma tagħna ngħidu li ammont ma jistax ikun garantit jekk kienu jafu li seta’ kien hemm xi ċaqliq. L-allegazzjoni tal-wegħda mhix korroborata lanqas bid-dokumenti u s-Sinjuri kkonfermaw li jafu jaqraw u jiktbu għax id-dokumenti ċarament ma jgħidux dak li qed jallegaw.

M'hemmx għalfejn nirrepeti u nirreferi għall-quotation (pagna 12), l-Important Notes (MSV1), il-Product Information (MSV2 u MSV3) u l-Avviz Statutorju (MSV4).

Kien hemm inkonsistenza oħra meta s-Sinjuri ġew mistoqsija minkejja li kienu rċevew il-Bonus Statements u kienu jafu li kien hemm it-tnaqqis fil-bonuses baqgħu jinvestu f'diversi poloz u huma qalu għax 'sirna nafu issa', però, f'nifs ieħor ammettew dan illi 'Although we know that there were some years that the bonus rates went down, this is not our problem because we trusted them with our investment and so they have to shoulder responsibility on how they invested the money.'

Jiġifieri mhuwiex minnu li ma bdewx jindunaw li l-bonus rates ma kinux neżlin imma, fil-fatt, xtraw ħames poloz oħra. Minkejja li huma ddizappuntati, xorta ridu hom għax kien importanti l-element tal-Life Cover. Fil-fatt, is-Sinjur qal:

'U l-polza li ngħalqet fl-2019, ergajt bdejtha għax peress li jiena nserraħ moħħi bl-insurance, jien ix-xogħol tiegħi hu perikoluż ħafna. Fil-fatt, diġà għaddejt minn aċċident ikrah u dan taf bih l-insurance. Allura, bilfors irrid nagħmel insurance sura ta' nies. U tax-xogħol inħares lejha bħala insurance.

***U l-poloz tiegħi personali qed nagħmilhom biex jekk ikolli aċċident fuq ix-xogħol, inkun covered.'* Jiġifieri kienet importanti li s-Sinjur jixtri Life Cover.**

Fl-istess ħin, minkejja li kellu s-serħan tal-moħħ illi għandu l-Life Cover, għamel gwadann ta' 3.64% u mhux telf. Is-Sinjuri ma pprovawx li kien hemm xi opportunity loss anzi l-ilmentatur xehed:

'Il-mara dak iż-żmien iċċekkja is-Sun Life u l-bank biex nagħmlu investment żgħir u nħallsuh kull sena.'

Jiġifieri l-availabilities kienu simili jekk mhux pjuttost marru aħjar b'din l-option.'¹⁰

Sema' lill-partijiet

¹⁰ P. 100 - 101

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.¹¹

Il-punt kruċjali f'dan l-ilment jittratta l-allegat wegħdiet li saru lill-Ilmentaturi fil-mument li l-polza in kwistjoni ġiet mibjugħa lilhom, u dan fir-rigward tal-ammont li huma kellhom jirċievu mal-maturità.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'ġie mwiegħed lill-Ilmentaturi u x'eventwalment ġie mogħti jew offrut lilhom mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *'l-aspettattivi raġonevoli u legittimi tal-konsumaturi u dan b'referenza għaž-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għal-ilment.'*¹²

L-Arbitru għandu quddiemu żewġ pożizzjonijiet dwar dak li verament ġara u x'intqal waqt il-laqgħa tal-bejgħ. Ir-rappreżentant tal-Fornitur tas-Servizz iddikjara li minkejja li hu ma jftakarx il-każ tal-Ilmentaturi, l-ispjega li kien qed jagħti kienet waħda ġenerali u li iżda kienet tkun ma' kulhadd l-istess.

L-Arbitru ma jstax ma jinnotax, però, kemm din il-verżjoni, minkejja li hija waħda ġenerali, hija wkoll dettaljata u, fuq kollox, ma jara l-ebda raġuni għalfejn din m'għandhiex tkun kredibbli. Mill-banda l-oħra, kruċjali li janalizzza l-fatt jekk din hix kwistjoni fejn hemm xi forma ta' memorja selettiva min-naħa tal-Ilmentaturi li jftakru jew jiddikjaraw dak li jridu jew li jaqblilhom, jew jekk kienx każ fejn ir-rappreżentant saħaq biss fuq il-pożittiv b'mod imprudenti bla distinzjoni ċara bejn dak li kien garantit u dak li kien stimat.

L-Ilmentaturi xehdu li fis-sena 1999, kien għamel kuntatt magħhom rappreżentant tal-Fornitur tas-Servizz sabiex jipperswadihom jagħmlu din it-tip ta' polza li, minkejja li kienu oriġinarjament qalulu li ma setgħux jagħmluha, dan kien b'xi mod ipperswadihom sabiex jagħmlu *Baby Bond* għat-tifel li huma

¹¹ Kap. 555, Artiklu 19(3)(b)

¹² Kap. 555, Artiklu 19(3)(c)

kellhom. Kien qalilhom li riedu jhallsu s-somma ta' Lm120 fis-sena u wriehom xi *graphs* li kienu *'dejjem telgħin'*.

L-Ilmentatriċi xehdet kif wara li kellimhom bit-telefon, u anke mar id-dar tagħhom, huma kienu qalulu sabiex jagħtihom ċans jaraw jekk jaffordjawx iħallsu dik is-somma. Hi kompliet li kien iċemplilhom kull ħmistax u allegat li dejjem baqa' jgħidilha *'Għandek Lm10,000 garanzija.'*¹³

L-Ilmentatur stqarr li *'Il-mara dak iż-żmien iċċekkja is-Sun Life u l-bank biex nagħmlu xi investiment żgħir u nħallsuh kull sena. Niftakar li dak iż-żmien kien talabna Lm120 fis-sena, u aħna vera konna naqra mgħaffġin, imma xorta rajna li naffordjaw b'xi mod li nħallsuhom ...'*¹⁴

Hawn l-Arbitru jinnota li mid-dikjarazzjonijiet tal-Ilmentaturi, huma kellhom il-ħsieb li jagħmlu investiment. Kienu wkoll iċċekkjaw mal-bank u ma' kumpanija oħra tal-assigurazzjoni fuq il-ħajja, u minkejja li ammettew li għamlu r-riċerka tagħhom dwar x'oportunitajiet ta' investiment kellhom dak iż-żmien, fl-ebda ħin ma ddikjaraw x'wassalhom li jaċċettaw dak offrut lilhom mir-rappreżentant tal-Fornitur tas-Servizz u mhux dak li kienu rriċerkaw dwaru.

L-Ilmentaturi stqarrew li, *'... matul dan iż-żmien, aħna bqajna fuq dak li qalilna r-rappreżentant li kien salesman verament tajjeb u anke tana graphs ta' kif ser takkumula s-somma tagħhna u b'hekk irnexxielu jipperswadina.'*¹⁵

Ingħatat l-impressjoni li kulma l-Ilmentaturi kienu konxji kien il-fatt li s-somma li huma ser iħallsu kull sena kienet ser tiżdied skont il-*graph* li r-rappreżentant urihom. Izda, minn dikjarazzjonijiet oħrajn li huma għamlu, huwa evidenti li l-Ilmentaturi kienu konxju tal-fatturi ewlenin tal-polza, jiġifieri, l-element ta' kopertura fuq il-ħajja u, fuq kollox, l-element ta' investiment.

Fil-fatt, fix-xhieda tiegħu, l-Ilmentatur għamilha ċara li *'Dan hu l-punt tagħna li s-somma hija zgħira wisq għall-investiment li għamilna.'*¹⁶

¹³ P. 93

¹⁴ P. 92

¹⁵ P. 93

¹⁶ *Ibid.*

Fl-istess waqt, l-Ilmentatriċi iddikjarat ukoll li *‘... aħna konna nafu li seta’ kien hemm xi ċaqliq għax konna qed nagħmlu investiment, ngħid iva imma mhux inqas min-nofs. Naqra żgħira nifhimha.*¹⁷

L-Ilmentatriċi xehdet ukoll li *‘Laqgħat fiżiċi, mhux fuq it-telefon, saru tnejn u kienu jdumu madwar siegħa u konna nkunu t-tnejn flimkien.*¹⁸

Hawn l-Arbitru għandu d-dubji tiegħu dwar dak li qed jingħad mill-Ilmentaturi fejn jistaqsi kif, allura, saru żewġ laqgħat fiżiċi, damu xi siegħa-il waħda, appartati l-komunikazzjonijiet li kien hemm bejniethom permezz tat-telefon, u kulma ntqal lilhom kien biss l-allegati wegħdiet li mal-maturità kienu ser jieħdu somma partikolari.

Dan meta fuq kollox, kif l-Ilmentaturi infushom ammettew, din il-polza ilmentata ma kinitx l-ewwel waħda tax-xorta tagħha li huma għamli. Taħt kontroezami, l-Ilmentatriċi stqarret¹⁹ li kellhom żewġ poloz, waħda li saret fl-1994 u l-oħra fl-1998. Diversi poloz oħrajn, imbagħad, saru wara li kienet fil-fatt inxtrat din il-polza ilmentata.²⁰

L-Arbitru m’għandux informazzjoni dwar il-perjodu taż-żmien ta’ dawn il-poloż, u jekk, fil-fatt, dawn immaturawx jew le. Wara li għamli din il-polza ilmentata, irriżulta²¹ li l-Ilmentaturi għamli erba’ poloz oħra tal-istess natura.

Iżda wkoll taħt kontroezami, l-Ilmentatur stqarr li, *‘Qed jingħad li mela napprezzaw li waqt li qed nagħmlu investiment, huwa importanti li nagħmlu life cover minħabba ħajti. U qed jingħad li aħna xorta bqajna ninvestu avolja dak iż-żmien kellna nindunaw li l-poloż tal-1994, 1998 u 2000 ma kinux ser jiġu achieved. Ngħid li ma stajniex nindunaw dawn il-poloż kif ser jiġu għax dawn lanqas biss kienu qabdu dawk il-ħames snin li tgħid il-graph.*²²

¹⁷ P. 95

¹⁸ P. 93

¹⁹ P. 96

²⁰ P. 97

²¹ *Ibid.*

²² *Ibid.*

Żgur li ma jistax jingħad li l-Ilmentaturi ma kinux konxji tal-andament tal-polza tagħhom, għax fl-ilment tagħhom oriġinarjament sottomess, huma ddikjaraw li, ‘... we know that there were some years that the bonus rates went down ...’.²³

Dan għalhekk ifisser li, bħalma kienu qed jagħmlu l-moniteragg tagħhom fil-poloż li saru wara s-sena 2000, ċertament li l-istess kien qed isir fil-poloż li saru qabel din l-istess sena.

Evidentement, l-Ilmentaturi kienu konxji tal-fatt li l-polza kien fiha element ta’ investiment filwaqt li kienu wkoll konxji tal-element ta’ kopertura fuq il-ħajja flimkien ma’ diversi benefiċċji oħrajn li huma applikabbli taht polza oħra li l-Ilmentatur għandu f’ismu.

Minkejja li ddikjaraw li din kienet l-ewwel *Baby Bond* li huma għamlu, il-karatteristiċi ta’ din tal-aħħar huma l-istess bħall-poloż l-oħra li kien diġà kellhom għajr għall-benefiċċju addizzjonali kif spjegat²⁴ mill-Fornitur tas-Servizz fit-twegiba għall-ilment.

Kif diġà inqal aktar kmieni, l-Arbitru m’għandux informazzjoni dwar il-poloż li l-Ilmentaturi kien diġà kellhom u, għaldaqstant, jifhem li minkejja li l-polza ilmentata kienet it-tielet waħda li huma għamlu, fil-mument tal-bejgħ jaf kien għadhom ma kinux f’sitwazzjoni li jindunaw li seta’ jkun hemm xi problema. Dan fis-sens li l-ewwel żewġ poloż kienu għadhom ma mmaturawx u li, għaldaqstant, ma setgħux jissoponu li mit-tielet polza setgħu jirċievu inqas minn dak li allegatament kien imwiegħed lilhom.

Fl-istess waqt, huwa diffiċli li jiġi aċċettat li kulma fehmu minn dak li qalilhom ir-rappreżentant tal-Fornitur tas-Servizz kien biss li l-ammont ta’ €23,473 jingħata lilhom mal-maturità. Dan, fuq kollox, meta giet ukoll mogħtija lilhom informazzjoni fuq dokument titolat ‘*Product Information Document*’,²⁵ liema dokument gie anke iffirmit minnhom stess. L-Ilmentatriċi iddikjarat li żewgħa huwa *business partner* u, għaldaqstant, l-Arbitru ma jistenniex li dan l-istess dokument kellu jiġi iffirmit minnhom mingħajr ma kien gie moqri u mifhum.

²³ P. 3

²⁴ P. 85

²⁵ P. 89 - 90

Għaldaqstant, huwa evidenti li huma qed iressqu dan l-ilment minħabba l-fatt li l-ammont offrut lilhom mal-maturità huwa ferm inqas minn dak li kienu qed jistennew li jirċievu u, allura, l-aspettattivi li huma kellhom kienu tali li iżda dawn ma ġewx milħuqa.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fl-2000, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal 25 sena shaħ. 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 25 sena speċjalment peress li l-kontribuzzjonijiet tagħhom kienu mifruxa fuq 25 sena u mhux xi '*lump sum*' *investment* li tista' tiġi investita mill-ewwel biex torbot ir-rati tal-imgħax għal 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. 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' 25 sena xejn ma jibqa' stabbli, u dan, kif fil-fatt ingħad li aktar tard dik is-sena, bdew joħorġu tliet kwotazzjonijiet u mhux waħda, u dan jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal 25 sena.

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

Kumpens

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentaturi, sal-limitu ta' fejn kienu leġittimi, ma ġewx milħuqa. L-aspettattivi tagħhom kienu li mal-maturità tal-polza kienu ser jirċievu s-somma ta' €23,473 (l-ekwivalenti ta' Lm10,077), li iżda fid-data tal-maturità ġew offruti ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentaturi 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 raġonevoli, ma jistax ikun preċiż minħabba li hemm diversi fatturi li jridu jiġu ikkunsidrati.

Primarjament, minkejja li mal-maturità tal-polza, l-ammont offrut lill-Ilmentaturi ma kien xejn viċin dak allegatament imwiegħed lilhom, minkejja li ddikjaraw li kienu għamli r-riċerka tagħhom ma' kumpanija oħra tal-assikurazzjoni kif ukoll mal-bank biex jagħmlu investment żgħir, huma ma pprezentaw l-ebda prova konkreta li turi li l-fatt li huma għażlu li jagħmlu din il-polza wasslet għal xi 'telf' meta kkomparat ma' xi opportunitajiet oħrajn li huma seta' kellhom dak iż-żmien u li, fil-fatt, ma ħadux.

Fuq kollox, mingħajr preġudizzju għal dak dikjarat hawn fuq, l-Arbitru ma jhossx li permezz ta' din il-polza wieħed għandu x'jitlef. Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentaturi kellhom iċ-ċans li jikkontribwixxu għat-tfaddil permezz ta' din l-istess polza u dan billi jħallsu ammont żgħir kull sena għal ħamsa u għoxrin sena sħaħ.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' iktar minn 3.6%²⁶ li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investment kien sostanzjalment garantit.

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għal deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentaturi, u jiddeċiedi li s-somma xierqa li għandha tingħatalhom bħala kumpens hija dik ta' **€1,496**.

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-Ilmentaturi s-somma ta' elf, erba' mija u sitta u disgħin ewro (€1,496) b'żieda mas-somma diġà offruta, cioè, mas-somma ta' €9,970.42²⁷ u, għalhekk, iħallashom is-somma kumplessiva ta' €11,466.42.

²⁶ p. 84

²⁷ p. 8

Bl-imgħax ta' 2.15%²⁸ minn ħamest 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 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-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.

²⁸ Rata kurrenti MRO (*Main Refinancing Operations*) tal-Bank Ċentrali Ewropew

L-Ispejjeż tal-Proċeduri

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

L-ispejjeż tal-proċeduri 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 ħlasijiet oħra kontingenti magħmula barra l-proċeduri tal-każ.

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

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