**Quddiem l-Arbitru għas-Servizzi Finanzjarji**

**Każ ASF 111/2025**

**RE u KE**

**('l-Ilmentaturi')**

**vs**

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

**('il-Fornitur tas-Servizz')**

**Seduta 9 ta' Jannar 2026**

**L-Arbitru,**

**Ra l-ilment[1],** fejn l-Ilmentaturi ssottomettew li huma ma jaqblux mas-somma li qed tiġi offruta lilhom mal-maturità tal-polza, u dan minħabba li, wara li issa għaddew ħamsa u għoxrin sena, din hija ferm 'il bogħod minn dak li huma kienu allegatament imwiegħda.

Huma sostnew  li r-raġuni ewlenija li għamlu din il-polza hi sabiex tkopri s-saħħa tal-familja tagħhom u biex eventwalment jgħinu lil uliedhom jixtru l-ewwel proprjetà tagħhom u żgur li m'għamluhiex għall-fini ta' negozju.

L-Ilmentaturi ammettew li fi żmien il-COVID, kien diffiċli ferm għalihom li jkomplu bil-pagamenti dovuti u, għaldaqstant, xtaqu jieqfu jagħmlu dan, iżda kien rappreżentant tal-Bank of Valletta li pperswadihom sabiex ma jagħmlux dan minħabba li l-polza kien fadlilha biss ħames snin sabiex timmatura u li, fuq kollox, kienet tiġi wkoll imposta fuqhom tariffa talli jkunu tterminaw il-polza qabel il-waqt.

[1] P. 3

Huma iddikjaraw li l-Fornitur tas-Servizz ma segwiex dak li hemm imniżżel fil-kuntratt tagħhom, u minflok tahom is-somma ta' €40,165 (l-ekwivalenti ta' Lm17,423), qed jiġi offrut lilhom €16,979.02 biss.

Għaldaqstant, huma qed jitolbu[2] li jingħataw is-somma ta' €40,165, li hija dik is-somma li kienet allegatament imwiegħda lilhom fil-mument li ġiet mibjugħa l-polza.

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

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

1. *MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainants that the maturity value of the Policy in question numbered 56233 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 €40,165.*

   *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, one of which was presented by the complainants together with this complaint (fol. 012), and another signed copy provided by Bancassurance to the complainants, provided as MSV DOC. 1. Therefore, none of the figures which were indicated in the quotations 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.*

[2] P. 3
[3] P. 70 - P. 75

***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 MSV DOC 2, states that 'The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end.* ***Depending on the performance of the company, bonus rates may go down as well as up.*** *' 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 as from 2001 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 (MSV DOC 2) delve into the meaning of 'Reversionary and Special Bonuses' and 'Terminal Bonus'. The said notes also explain that the Policy was participating '* ***in the Middle Sea Valletta Life Assurance Company Limited'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' of Lm12,540 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 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:*

   *'**<u>Depending on its profits experience Middle Sea Valletta Life Assurance Company Limited 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 **<u>depend materially on the investment performance at the time of the claim, they may be reduced or even withdrawn altogether.</u>**' Therefore, <u>the amounts being indicated in the quotations (fol. 12 and MSV DOC 1) as 'Estimated Maturity Value including Reversionary and Terminal Bonuses' of LM17,243 was likewise not guaranteed</u> since it was highly volatile.*

6. *In fact, the Life Policy Schedule (presented in the complaint as fol. 017) 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 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. 017) was the sum assured of LM4,415 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 (MSV DOC 2) also provided that 'Whilst the purpose of these notes is to **<u>guide</u>** policyholders and prospective policyholders, the **<u>conditions applying to all the benefits</u>***

***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 it had to be read and understood in the light of the notes that formed part of the quotations and more importantly in the light of the terms and conditions of the Policy document****.*

9. *In addition, MMSV has observed what is contained in the Product Information Document (MSV DOC 3 and 4) 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.*

10. *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***

11. *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 them when the Policy was being sold to them and every year thereafter as shall be explained hereunder.***

12. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until the maturity thereof because it always managed the MSV With Profits Fund in the best 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.*

13. ***Therefore, the difference between the estimated maturity values shown in the quotations and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.***

14. *Although the value of the maturity 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 complainant made a gain of EUR 5,769.52 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 3.06% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.60%.*

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 complainant, every year, a Media Release (copies of the Policy Account statements are attached with the complaint and marked fol. 033-050). 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 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. 017) with an amount of LM4,415. Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR11,209.50 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.*

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 EUR5,769.52 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. 052) states that*

*'<u>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.</u>'*

*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 **"promised"**in the comment made by the complainants in the online complaint (fol. 003) stating that "We are seeking compensation of the full amount they promised they should have given us after 25 years ..." has no basis, since the complainant was presented with the quotation showing estimated values and not an agreement showing a promised maturity value. The complainants signed the quotation showing estimated values and not an agreement showing a promised maturity value.*

    *The Company has always managed the MSV With Profits fund in the best interest of its policyholders. 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 MSV DOC 2 'The Company's continued bonus rates should reflect the returns actually earned on the underlying investments, supplemented by the value added from any profits of non-profit business. The Company aims to achieve a fair and equitable distribution of these investment returns and profits between different generations and types of with-profit policies ... the company aims to provide policyholders with **some protection from fluctuations in the investment markets by smoothing Reversionary bonus rates from year to year".*** <u>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**.*</u>

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-10 ta' Novembru 2025, ('l-Ilmentatriċi) xehdet li:

***"Ngħid li ħamsa u għoxrin sena ilu, kont mort il-bank nagħmel din l-insurance għax kienet qisni qed inġemma' l-flus għat-tfal ħalli jekk ma nkunx nista' ngħinhom ikollhom din.***

***Dak iż-żmien kienu bi flus Maltin. Kienu jagħtuk somma tajba, ta' xi Lm25,000 dak iż-żmien. Fi żmien il-Covid kont ser inwaqqafha għax ma stajtx inħallasha. Qaltli li ma kienx jaqbilli nwaqqafha għax ma kontx ser nieħu li ħaqqni u neħel l-ispejjeż. Għamilna sagrifiċċju u komplejniha.***

***Ngħid li issa li għalqet, ma tawnix is-somma kemm suppost meta għamilna l-kuntratt. Ngħid li rajthom li tawni ftit.***

***Ngħid li din għamiltha biex inkun nista' ngħin lit-tfal.***

***Ngħid li tfixkilt fil-flus, is-somma li konna qed nistennew li nirċievu hija Lm17,243.***

***Ngħid li jiena kont għamilt din il-policy. Kulħadd kien jagħmilha din il-policy; tisma' 'l hemm u tisma' 'l hawn u mort il-bank biex nagħmilha.***

***Ngħid li kelli żewġ meetings għax jagħtik ċertu affarijiet biex tmur għand it-tabib biex jara kif aħna fis-saħħa u affarijiet hekk.***

***Rigward x'fehemuni tal-bank meta mort biex nagħmel din l-insurance, qaluli li jien kont qisni qed inġemma' u li 'l quddiem nieħu somma tajba għax dejjem titfa' kull sena. Ngħid li kien qalli wkoll li jekk niġu neqsin nieħdu ċertu somma.***

***Ngħid li kull meeting dam xi tliet kwarti.***

***Ngħid li iva, tani garanzija li konna ser nieħdu dik is-somma.***

***Ngħid li għandi edukazzjoni sa Skola Sekondarja u naqra u nitkellem bl-Ingliż."***[4]

Taħt kontroeżami, hi stqarret li:

***"Mistoqsija nikkonferma li niftakar dak kollu li ntqal lili ħamsa u għoxrin sena ilu, ngħid li niftakar kollox għax għoġobni dak li qalli. Kieku ma kontx nagħmilha kieku ma kinitx worth it.***

***Ngħid li spjegali dak li hemm fuq il-kuntratt.***

***Qed niġi referuta għal-Life Assurance Quotation (paġna 12 tal-proċess) fejn qed jingħad li fuqha hemm tliet figuri: dik ta' Lm4,415 li hi s-somma li konna nieħdu kieku xi ħadd minna ġie nieqes; il-figura ta' Lm12,540 u l-figura l-oħra ta' Lm17,243.***

***Mistoqsija jekk inix nirreferi għal din il-karta meta nsemmi li qegħdin fil-kuntratt, ngħid li iva.***

***Mistoqsija inix konxja li dan id-dokument huwa kwotazzjoni u mhux kuntratt, ngħid daqskemm għandi karti hawnhekk!***

***Qed niġi referuta għall-kwotazzjoni li ppreżentaw l-MSV Life mar-risposta tagħhom (MSV DOC 1) u mistoqsija niftakarx dan id-dokument ingħatax lili, ngħid li iva, niftakar.***

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[4] P. 81 - P. 82

*Nikkonferma l-firem tagħna fuq l-Important Notes (MSV DOC 2) u li dawn ingħataw lilna waqt il-laqgħa.*

*Qed niġi murija dokumenti (MSV DOC 3, MSV DOC 4 u MSV DOC 5) u nikkonferma l-firem tagħna fuqhom.*

*Qed niġi murija wkoll Statement of Compliance (li għad irid jiġi ppreżentat mill-MSV Life) u nikkonferma li dawk huma l-firem tagħna.*

*Nikkonferma li dawn id-dokumenti kollha ġew mogħtija lilna waqt il-meeting fl-2000.*

*Qed niġi mistoqsija għalfejn qed ngħid li s-somma ta' Lm17243 li hija l-Estimated Maturity Value including Reversionary and Terminal Bonuses kienet garantita meta fid-dokumenti hemm li din kienet stima skont ir-rati ta' dak iż-żmien tal-2000 u ma kienx hemm garanzija li ser neħodhom meta tiskadi l-polza.*

*Eżempji:*

*Fl-Important Notes hemm 'Depending on the performance of the Company, bonus rates may go up as well as down.'*

*Fuq it-Terminal Bonus hemm, 'However as they depend materially on the investment performance at the time of the claim, they may be reduced or even withdrawn altogether.'*

*Fuq l-iStatement of Compliance hemm, 'The quotation which I have received only contains estimates based on the continued attainment of the current performance by Middlesea Valletta and such estimates are not guaranteed by Middlesea Valletta, the bank or any of its employees.*

*...*

*We have also been warned that past performance is not a guide to future performance.'*

*Ngħid li bejn l-istima u l-ammont hemm differenza kbira.*

*Qed jingħad mill-Arbitru li dawn il-karti li ffirmajna hemm fihom li xejn mhu garantit.*

***Mistoqsija qrajthomx u fhimthomx, ngħid li iva. Mistoqsija meta mort il-bank fiehemnix dan kollu qabel ma qalli biex niffirma, ngħid li mhux kif qed tgħidli Dr Schembri.***

***Nikkonferma li ridt inġemma' f'dan l-investiment u nagħmel ftit qligħ biex inħalli l-flus għat-tfal.***

***Nikkonferma li kont konxja li kelli ż-żmien biex naħsibha jekk neħux il-polza jew le***."[5]

Wara din l-ewwel seduta, il-Fornitur tas-Servizz issottometta kopja tal-i*Statement of Compliance*[6] iffirmat mill-Ilmentaturi, kif ukoll kopja tal-*Policy Document*[7] komplut.

Fit-tieni seduta, Victor Farrugia, f'isem il-Fornitur tas-Servizz, ħalef u kkonferma r-risposta sottomessa minn dan tal-aħħar. F'din l-istess seduta, xehed ukoll John Paul Abela, il-persuna li biegħ il-polza għan-nom tal-Bank of Valletta in kwistjoni lill-Ilmentaturi.

Hu ddikjara li:

***"Ngħid li f'Marzu 2000 u għamilt perjodu ta' tmien snin kont naħdem il-Bank of Valletta, l-Ħamrun. Hemmhekk għamilt perjodu ta' tmien snin u f'dak iż-żmien, parti mix-xogħol li kelli, wara training u tpoġġi għal eżami ta' kompetenza, parti minn xogħoli kien nagħmel dawn il-poloz ta' sigurtà tal-Middlesea.***

***Ngħid li l-bank għadna s'issa li qabel jesponik biex tippromovi kwalunkwe prodott, jgħaddik minn training. Wara t-training, jgħaddik minn eżami ta' kompetenza. Imbagħad, tieħu l-liċenzja, imbagħad ikollok lil xi ħadd jikkowċjak u mbagħad tkun tista' tippromovi l-prodott paritkolari.***

***Ngħid li jiena kont fully licensed, fully trained biex jiena nippromovi dawn il-poloz tas-sigurta tal-MSV.***

***Ngħid li aħna assolutament ma konniex nirċievu commissions fuq dawn il-poloz. Aħna l-bank din is-sistema qatt ma eżistiet u ma nafx li teżisti issa. Il-fatt***

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[5] P. 82 - P. 83
[6] P. 87
[7] P. 88 - P. 105

*li aħna konna mmexxu l-prodptt tal-MSV, kien parti minn xogħolna bħallikieku jien qed niftaħ fixed jew savings account, prodott normali tal-bank.*

*Inti għandek dan il-prodott, tispjegah, għandek ir-regoli, timxi mal-proċeduri u tara li l-klijent ikun komdu u tmexxi daqslikieku qed tagħmel kwalunkwe prodott ieħor tal-bank.*

*Qed niġi muri dokument, Statement of Compliance, fir-rigward tal-polza numru 56233, l-Endowment with Profits Policy tal-MSV u mistoqsi biegħejtx din il-polza lis-Sinjuri RE & KE, ngħid li bla dubju dik hija l-firma tiegħi. Għalkemm illum viżwalment, jekk ngħidlek li qed niftakarhom, avolja qegħdin preżenti u nsellmilhom, iz-zmien għadda, però, iva dik hi l-firma tiegħi 100%.*

*Dwar proċedura, ngħid li llum għalkemm għaddew għoxrin sena, jiena proprjament m'għandix x'niftakar. Irrid ngħid kif kont nimxi b'mod regolari. Jien kont nagħmel minimu ta' żewġ meetings. Ngħid li l-ewwel meeting ikun li aħna ltqajna u dak li jkun ikollu somma fis-savings li jixtieq jinvesti parti minnha u, allura, niddiskutu l-prodott x'inhu, niddiskutu jekk tgħoddx għalihom, niddiskutu kemm jixtiequ jagħmlu ammont u għal kemm żmien.*

*Ngħid li hemm proċess ta' kemm hi s-somma assikurata, x'inhi s-somma li hi prevista skont l-interessi. Dan kien ikun l-ewwel meeting.*

*Jiena kont nesiġi, kienet xi ħaġa li dejjem kont nemmen fiha, li d-deċiżjonijiet ma jitteħdux fl-ewwel meeting. Kien ikun hemm każijiet u nirringrazzja lil Alla dan huwa l-ewwel u nimmaġina l-unika każ fejn hemm din id-diskrepanza.*

*Ma' kull meeting li kont nagħmel u ma' kull bejgħ li kont nagħmel jiena kont nagħti l-informazzjoni, nibgħathom id-dar, nagħti gap ta' ħamest ijiem/sitta,. Imbagħad, konna niftiehmu fuq telefonata jekk kinux komdi nerġgħu niltaqgħu ħalli nkomplu niddiskutu jew jekk ma xtaqux ikomplu biex jekk il-klijent ma jkunx komdu li jrid jinvesti, forsi fuq it-telefon ikun komdu jgħidi le. Però, mbagħad konna niltaqgħu għat-tieni u, jekk hemm bżonn, għat-tielet meeting, jiġifieri kollox kien isir very swiftly, very smoothly without any pressure.*

*Ngħid li l-ewwel ħaġa li kont nispjega kienet il-Life Cover fejn kien ikun hemm is-Sum Assured li kienet tkun is-somma li jiena kont nispjegaha li jekk Alla* *jħares qatt, il-klijent jiffirma u jagħmel il-polza u jiġi nieqes l-għada, huwa ser jieħu dik is-somma assikurata.*

*Kien ikun hemm il-premium l-ieħor skont il-parti tal-investiment tal-polza, jiġifieri l-MSV kienet tiddikjara investment return kull sena u skont dik id-dikjarazzjoni – ovvjament wieħed kien jispjega li ma kienx hemm garanzija unless din tkun iddikjarata, u hawnhekk forsi tista' tikkonferma min-naħa tal-kumpanija kif kienet taħdem, li l-MSV tinfurmahom permezz tal-bonus statements tagħhom dwar il-bonuses li kienet ser tiddikjara is-sena ta' qabel u f'dak ir-rigward jekk dawk jibqgħu hemmhekk regolari sal-aħħar tal-polza, jirċievu l-ammont iddikjarat tal-bonuses, jiġifieri l-polza kien ikollha ammonti differenti x'wieħed jispjega. Kien ikollha d-dokumenti differenti u jiena kont ngħaddi minn proċess li nispjegahom wieħed wieħed.*

*Ngħid li mbagħad, konna nitkellmu fuq l-ammont tal-premium huma komdi li jħallsu u għal kemm żmien. U meta dawn jgħiduli, 'Isma', aħna nixtiequ Lm200,' konna ngħidu mela s-Sum Assured hija daqshekk u l-Estimated Maturity Value – importanti li ngħidu estimated għax ovvjament kienet tkun stima – jista' jkun dan. Imbagħad, kien ikun hemm ċertu dokumenti, Statutory Notice, u ħafna affarijiet oħra, quotation, Proposal Form. U konna nimxu minn hemmhekk.*

*Nikkonferma l-handwriting tiegħi fuq il-Proposal Form u li nkun għaddejthielhom jien, fuq l-iStatutory Notice li hi l-handwriting tiegħi u li nkun għaddejtulhom jien. Niftakar il-format tal-quotation. U nikkonferma l-handwriting tiegħi fuq il-Product information u nikkonferma l-firma u l-handwriting tiegħi fuq l-Important Notes u anke l-iStatement of Compliance.*

*Ngħid li hemm dokumenti varji. Ngħid li wara li nkun spjegajthomlhom u tajthomlhom biex jiffirmaw, jien kont nagħmel summaru verbali ta' kull dokument f'lingwaġġ li jista' jiftiehem u bil-punti ewlenin. Jien inkun dort id-dokument, spjegajtilhom x'fih u nkun tajt summary tiegħu b'mod dettaljat tas-salient points ta' kull dokument.*

*Qed jingħad li f'paragrafu 4 tal-iStatement of Compliance jgħid:*

*'The quotation which we have received only contains estimates based on the continued attainment of the current performance by Middlesea Valletta Life*

***Assurance Policy Limited. And such estimates are not guaranteed by Middlesea Life Assuance Company Limited, the bank or any of its employees.'***

***Ngħid li dan bilfors inkun spjegajtu għax dik hija parti mill-qofol tal-polza, jiġifieri, iva inkun spjegajtha lil kull klijent. U mhux biss inkun spjegajtha u suq ħa mmorru, imma nkun spjegajtha u nara li dak li jkun ikun fehemni x'qed ngħid. U jekk jien ikolli dubju li l-klijent ma fehmnix, ser nerġa' nistaqsi għall-ewwel, it-tieni u t-tielet darba. Dak kien il-mod kif nopera jien.***

***Ngħid li s-Sum Assured fuq il-quotation kienet il-garanzija ta' dan il-prodott. Jekk inti tmut l-għada li tiffirma u l-polza tiġi in operation, l-eredi ser jieħdu dik is-somma. U dwar l-Estimated Maturity Value inkun spjegajt li din hija estimate minnha nfisha, il-figuri setgħu ivarjaw u, għalhekk, ma stajtx niggarantixxi għax ma kinux garantiti.***

***Kont nagħmel emfasi li dak li ġara fil-passat ma jfissirx li ser jiġri fil-futur. Ngħid li dawn il-figuri kienu projections ibbażati fuq ir-rate of return ta' dak iż-żmien, qed nitkellmu għoxrin sena ilu.***

***Rigward l-ispjegazzjoni ta' x'kienet id-differenza bejn ir-Reversionary Bonus u t-Terminal Bonus, ngħid li kont nispjega li din il-figura kienet projection ikkalkolata bir-rati li kienu jkunu ġew iddikjarati s-sena ta' qabel mill-MSV. Fil-fatt, fl-Important Notes u l-Product Information sheet, kien ikun hemm il-klawsola li l-passat mhux garanzija tal-futur, però, ovvjament jien qatt ma niggarantixxi la lis-Sinjuri u la l-klijenti l-oħra li kelli li kienu ser jitħallsu l-Estimated Maturity Value including Revisionary Bonus. Minħabba f'hekk ma kontx nista' niggarantixxi lil ħadd.***

***Ngħid li kont nispjega li dan jiddependi fuq il-bonus li l-MSV tkun iddikjarat u li dan jista'  jinbidel minn sena għall-oħra.***

***Ngħid li jiena ma stajtx inwiegħed somom deskritti bħala estimated.***

***Rigward l-iStatutory Notice nispjega li jagħti lill-policyholder dak il-15 days cooling off period biex jaħsibha u jekk ma jkunx komdu, jerġa' lura***."[8]

[8] P. 106 – P. 109

Filwaqt li l-Ilmentaturi iddikjaraw li m'għandhomx mistoqsijiet x'jagħmlu lix-xhud, huma ressqu s-sottomissjonijiet finali tagħhom b'mod verbali fejn stqarrew li:

***"Ngħidu li mbilli kienet estimate, ma stennejniex li ser tinżel ħafna s-somma.***

***Alright mhux ser tagħtini €40,000, imma li tkun daqsxejn viċin is-somma. Niżlitli inqas min-nofs. Kieku tgħid qiegħda viċin, tgħid alright.***

***Li kieku lili qalli li ser nieħu €20,000 wara għoxrin sena, ma kontx nagħmilha jien.***

***Meta ridna nwaqqfuha ħames snin ilu, qalulna biex ma nwaqqfuhiex għax ma jaqblilniex. Aħna konna msallbin dak iż-żmien u qalulna li jekk inwaqqfuha nħallsu tal-ispejjeż.***

***Għalhekk iddispjaċiena għax aħna għamilniha biex ngħinu lit-tfal. Aħjar bagħtu għalina u qalulna li ma konniex ser nieħdu dik is-somma u li wara għoxrin sena daqshekk ser nieħdu. Mhux mingħalina li ser nieħdu dik is-somma, webbilna lit-tfal għax għandna bżonn daqsxejn flus u dik is-somma m'aħniex ser neħduha."***[9]

Il-Fornitur tas-Servizz ukoll ressaq is-sottomissjonijiet finali tiegħu b'mod verbali fejn tenna li:

***"Filwaqt li nistrieħu fuq ir-risposta, ser nagħmlu sommarju fuq il-każ li qed nitħaddtu fuqu.***

***Hu allegat li l-MSV wegħdet il-ħlas tal-Estimated Maturity Value including Reversionary and Terminal Bonuses. Izda l-MSV tikkontesta dan għaliex il-wegħda tal-MSV hija dik li hemm fuq il-kuntratt tal-polza u mhux fuq il-quotation.***

***Dan kien il-ftehim tal-partijiet.***

***Il-:Policy Account, fil-fatt, eċċeda s-Sum Assured u, allura, l-MSV kienet disposta tħallas l-ammont tal-Policy Account bħala Maturity Value. Fil-fatt, fil-Policy Schedule li hija parti mill-kuntratt tal-polza ma hemm ebda ammont stmat indikat.***

[9] P. 109

*L-ammont abbażi tal-ilment huwa abbażi l-quotation li l-MSV li ngħatat minħabba li l-MSV kienet obbligata bil-liġi li tagħti dan id-dokument u għada sal-lum obbligata li tagħtih meta persuna tixtri l-polza. Barra minn hekk, il-quotation  jiddistingwi b'mod ċar bejn dak li hu garantit, li hi s-Sum Assured, u dak li huwa estimated. Għalhekk, is-Sum Assured biss kien imwiegħed.*

*Barra minn hekk, il-quotation innifisha ħdejn l-Estimated Maturity Value including Reversionary Bonus and Terminal Bonus, li qed jippretendu l-Ilmentaturi, għandha miktub il-kliem 'if any' u dan jurik li dan l-ammont ma kienx garantit.*

*Mix-xhieda tas-Sur Abela, għadna kemm smajna li ma wiegħed l-ebda ammont li huwa stmat u s-Sinjuri qablu ma' dak li spjega fix-xhieda tiegħu is-Sur Abela, jiġifieri li huwa ċar anke b'mod verbali li dan l-ammont qatt ma ġie ggarantit lis-Sinjuri.*

*Barra minn hekk, l-Ilmentaturi iddeċidew li jqisu l-quotation bħala kuntratt. Xi ħaġa li mhix il-każ. Fil-fatt, fix-xhieda tas-Sinjura, meta ġiet irreferuta għall-quotation, ikkonfermat li għaliha din hi l-kuntratt u, kif għidna, mhux il-każ. Allura, s-Sinjuri għażlu li jinjoraw dak li hemm miktub fil-quotation li huwa kkwalifikat b'estimated kif ukoll id-dokumenti varji li ngħataw, jiġifieri, Product Information, Statement of Compliance u l-Important Notes u dak li hemm fil-polza. U ddeċidew li minkejja li l-ammont indikat fil-quotation bħala Maturity Value huwa estimated, xorta qed jinsistu li kienu mwiegħda.*

*L-Ilmentaturi jippretendu fl-ilment li jieħdu l-ogħla ammont imma kif għidna, fuq il-quotation m'hemmx dak l-ammont biss, kien hemm is-Sum Assured u din kienet l-unika figura garantita.*

*Barra minn hekk, fix-xhieda tas-Sur Abela, dan kien impjegat tal-bank, ma kellux kummissjoni minn din il-polza u dan isaħħaħ l-argument li qablu miegħu l-Ilmentaturi li ma kinux ippressati biex jixtru dan il-prodott u ngħataw iż-żmien li kellhom bżonn biex jaħsbuha.*

*Irid jingħad ukoll li s -Sinjuri ħadu l-inizjattiva huma stess u marru l-BOV biex jixtru l-polza. Dan qalitu (l-Ilmentatriċi) stess fejn qalet:*

*'Kont mort il-bank nagħmel l-insurance għax kont qisni qed inġemma' l-flus għat-tfal ħalli jekk ma nkunx nista' ngħinhom ikollhom din.'*

*'Jien kont għamilt din il-policy, kulħadd kien jagħmilha din il-policy, tisma' 'l hemm u 'l hawn u mort il-bank biex nagħmilha.'*

*'Tisma' 'l hemm u 'l hawn', dan jindika interess ċar fix-xiri tal-polza u juri inizjattiva u motivazzjoni u l-interessi tas-Sinjuri biex jesploraw u possibbilment jakkwistaw il-polza. U turi l-interess ġenwin li kellhom fil-polza.*

*Fil-fatt jidher li semgħu minn terzi persuni u kienu diġà influwenzati qabel ma marru l-BOV għax qalu li semgħu 'l hemm u 'l hawn x'qalu terzi biex imbagħad marru l-bank biex jixtru l-polza.*

*Fix-xhieda l-Ilmentatriċi qalet ukoll li fir-rigward tad-dokumenti li ngħatawlhom hi ftakret li ngħatawlhom fil-laqgħa u li ffirmathom, qrathom u fehemithom.*

*Għalhekk kienet negliġenza di parte tagħhom li bbażaw deċiżjoni biss fuq il-figuri li raw fuq il-quotation u interpretawhom bħala garantiti u ma ndenjawx ruħhom jagħtu l-importanza lill-kontenut tad-dokumenti mogħtija lilhom.*

*Barra minn hekk, kif għidna, s-Sinjur Abela tahom ħmistax-il ġurnata cooling off period biex jaqrawhom u jekk ma jaqblux mad-dokumenti, setgħu jikkanċellaw.*

*Nirreferi għall-varji disclaimers anke għall-punt 4 fuq l-iStatement of Compliance li jurik biċ-ċar x'inhu garantit u x'mhuwiex.*

*Hawnhekk hawn kontradizzjoni ċara mill-Ilmentatriċi li min-naħa ssostni li qrat u fehmet id-dokumenti li ma jiggarantixxux l-ammont stmat u madankollu f'nifs wieħed hi xorta qed tippreżumi d-dritt li tirċievi l-Estimated Maturity Value.*

*Is-Sinjura kkonfermat ukoll li taf taqra bl-Ingliż, għandha skola sekondarja jiġifieri kienet kapaċi taqra dawn id-dokumenti u li jekk ma qablitx magħhom setgħet tistaqsi mistoqsijiet lis-Sur Abela li kien dispost għalihom.*

*L-Ilmentaturi ma ġabu l-ebda prova li dak iż-żmien kellhom xi għażla ta' xi polza oħra differenti jew inkella sofrew xi tip ta' opportunity loss minħabba l-polza in kwistjoni u qalet fix-xhieda tagħha li hi ma riditx tidħol f'riskju imma riedet iġġemma'. Tant hu hekk li (l-Ilmentatriċi) iddikjarat li l-bank spegalha*

***dak li hemm fil-kuntratt. U meta ġiet mistoqsija dwar x'fehmet minn dak li qalulha, hija wieġbet:***

***'Qaluli li jien kont qisni qed inġemma' u nieħu somma tajba għax nitfa kull sena.'***

***U, fil-fatt, hekk ħadet għax hi ħadet somma, għamlet gwadann u mhux tilfet mill-investiment. Għamlet gwadann ta' €5,769 u average rate of return ta' 3.6% u average rate of return gross withholding tax fuq l-investiment ta' 3.60%. Kellhom ukoll il-benefiċċju tal-Life Cover kif spjega lill-Ilmentaturi fejn huma kienu konxji tiegħu u ingħataw ukoll il-Policy Account Statements u l-Important Notes. U kkonfermaw li rċevewhom ukoll.***

***Għalhekk hija ċara li l-aspettattiva tal-Ilmentaturi li rċevew l-Estimated Maturity Value including Reversionary and Terminal Bonus ma kinitx waħda leġittima u l-Ilmentaturi konvenjentement jirreferu għall-ogħla ammont li hemm fuq il-quotation.***

***Għalhekk l-MSV qed tiċħad dawn l-allegazzjonijiet li qed isiru kontriha***."[10]

**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.**[11]

Il-punt kruċjali f'dan l-ilment jirrigwardja l-ammont offrut lill-Ilmentaturi mal-maturità tal-polza, liema ammont ivarja sostanzjalment minn dak allegatament miftiehem, u li kien il-fattur ewlieni li wassalhom jixtru din il-polza in kwistjoni.

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 leġittimi tal-konsumaturi u dan b'referenza*

[10] P. 110 - P. 112
[11] Kap. 555, Artiklu 19(3)(b)

*għaż-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 jiftakarx min kienu l-Ilmentaturi u l-każ tagħhom x'kien, il-proċedura li hu kien jimxi magħha kienet waħda regolari u, għaldaqstant, kienet tkun ma' kulħadd l-istess.

L-Arbitru ma jistax 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 janalizza l-fatt jekk din hix kwistjoni fejn hemm xi forma ta' memorja selettiva min-naħa tal-Ilmentaturi li jiftakru jew jiddikjaraw dak li jridu jew li jaqblilhom, jew jekk kienx każ ta' *misselling* min-naħa tal-Bank of Valletta.

L-Ilmentatriċi xehdet li kienet marret il-bank sabiex tagħmel din il-polza bl-għan li ġġemma' l-flus biex tkun tista' tgħin lil uliedha.  Hi saħqet li:

***"Kulħadd kien jagħmilha din il-policy, tisma' 'l hemm u tisma' 'l hawn u mort il-bank biex nagħmilha**."*[13]

Qalet li saru żewġ laqgħat ta' xi tlett kwarti-il waħda u kien intqal lilha li ***"… jien kont qisni qed inġemma' u li 'l quddiem nieħu somma tajba għax dejjem titfa' kull sena.  Ngħid li kien qalli wkoll li jekk niġu neqsin nieħdu ċertu somma**.'*[14]

L-ilmentatriċi insistiet li fil-mument li l-polza ġiet mibjugħa lilha, hi kienet fil-fatt ngħatat garanzija li mal-maturità tal-polza kienu ser jieħdu s-somma indikata fil-kuntratt, li taħt kontroeżami, ikkonfermat[15] li kienet proprju l-*Life Assurance Quotation,*[16] id-dokument li hi qed tirreferi għalih bħala l-kuntratt.

Ta' min jinnota, però, li minkejja li l-Ilmentatriċi tinsisti li kien ġie garantit lilha dak l-ammont partikolari, u li dan l-ammont kien imniżżel fil-kuntratt, meta wkoll taħt kontroeżami, ġiet mistoqsija jekk hix konxja li l-*Life Assurance Quotation* hija

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[12] Kap. 555, Artiklu 19(3)(c)
[13] P. 81
[14] P. 82
[15] Ibid.
[16] P. 12

kwotazzjoni u mhux kuntratt, l-Ilmentatriċi rrispondiet biss ***'… daqskemm għandi karti hawn.'***[17]

Hi fl-ebda ħin ma kkontestat il-fatt li d-dokument li hi qed tirreferi għalih huwa kwotazzjoni jew inkella indikat li hi għandha fil-pussess tagħha juri dan il-kuntratt li qiegħda kontinwament tirreferi għalih.

L-Arbitru ma jistax ma jinnutax li, minkejja li fix-xhieda tagħha, l-Ilmentatriċi insistiet fuq il-ftehim u l-kuntratt li jirrigwardja l-ammont li kellhom jieħdu mal-maturità tal-polza, fis-sottomissjonijiet finali tagħhom, l-Ilmentaturi ddikjaraw li, ***'Ngħidu li mbilli kienet estimate, ma stennejthiex li ser tinżel ħafna s-somma.'***[18]

Bla dubju, din hija konferma li l-ilment mhuwiex fir-rigward tal-fatt jekk l-Ilmentaturi kinux konxji li l-ammonti kkwotati lilhom kinux stima jew le, iżda għax id-differenza bejn dawn l-istess ammonti kkwotati u l-ammont li bih immaturat il-polza, hija waħda sostanzjali. Dan ikkonfermatu l-Ilmentatriċi nnifisha meta saħqet b'mod ċar li *'…* ***bejn l-istima u l-ammont hemm differenza kbira****.'*[19]

Kif kien indikat aktar kmieni, l-Ilmentaturi kienu konxji tal-fatt li l-polza kienet tinkludi wkoll l-element ta' kopertura fuq il-ħajja. Barra minn hekk, b'referenza għall-*Bancassurance Quotation*[20]*,* l-*Important Notes*[21], il-*Product Information Document*[22], u l-i*Statutory Notice*[23], l-Ilmentatriċi, mhux biss ikkonfermat li l-firem fuqhom huma tagħhom, iżda ikkonfermat[24] ukoll li dawn id-dokumenti ġew fil-fatt mogħtija lilha u li fuq kollox, qrathom u fehmithom.

Minkejja li l-Ilmentatriċi stqarret li meta ġiet mogħtija dawn id-dokumenti u allegat li l-ispjega mogħtija lilha qabel ġiet mitluba tiffirma ma kinitx hekk kif ġew spjegati lilha l-fatti tul il-proċeduri tal-ilment, l-Arbitru għandu d-dubji tiegħu dwar kif f'żewġ laqgħat ta' madwar tlett kwarti-il waħda, u wara preżentazzjoni tad-dokumenti referuti, l-informazzjoni li allegatament ġiet mogħtija lill-Ilmentaturi kienet biss hekk kif indikat mill-Ilmentatriċi fix-xhieda tagħha meta ddikjarat li,

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[17] P. 82
[18] P. 109
[19] P. 83
[20] P. 76
[21] P. 77
[22] P. 78 – P. 79
[23] P. 80
[24] P. 83

***'Rigward x'fehemuni tal-bank, meta mort biex nagħmel din l-insurance, qaluli li jien kont qisni qed inġemma' u li 'il quddiem nieħu somma tajba għax dejjem titfa' kull sena. Ngħid li kien qalli wkoll li jekk niġu neqsin nieħdu ċertu somma**.'*[25]

Dan apparti li, l-Ilmentatriċi innifisha ikkonfermat li *"… **kont konxja li kelli żżmien biex naħsibha jekk neħux il-polza jew le**."*[26]

Fuq kollox, kienet l-Ilmentatriċi li żaret il-fergħa tal-bank bl-għan ewlieni li tagħmel din il-polza, li għaldaqstant jirrifletti l-fatt li kienet diġà semgħet b'dawn it-tip ta' poloz u kellha diġà xi informazzjoni dwarhom.

Ċertament li bejn laqgħa u oħra, l-Ilmentaturi kienu f'pożizzjoni fejn kellhom iċ-ċans jaqraw id-dokumenti ppreżentati, jifhmuhom, u jekk ma jifhmuhomx, jistaqsu għal iktar informazzjoni jew kjarifika dwarhom.

Kif diġà intqal aktar kmieni, l-Arbitru jsib ċertu diffikultà biex jifhem jekk dan kienx każ is-*salesperson,* li b'mod imprudenti emfasizza s-sabiħ u ma kienx kawt biżżejjed biex jispjega sew id-differenza bejn dak li kien garantit u dak li kien stmat, jew inkella kienx każ fejn l-Ilmentaturi fehemu dak li riedu jifhmu u ma kinux insidjużi biżżejjed biex jagħtu importanza anke l-aspetti mhux garantiti tal-*quotation*, avolja dawn ġew spjegati. Dan minħabba l-fatt ukoll li, f'wieħed mid-dokumenti preżentati, fl-*iStatement of Compliance,* permezz tal-firma tagħhom, l-Ilmentaturi aċċettaw li,

*"The quotation which I/we have received only contains estimates based on the continued attainment of the current performance by Middle Sea Valletta Life Assurance Company Limited and such estimates are not guaranteed by Middle Sea Valletta Life Assurance Company, the Bank or any of its employees. I/we have also been warned that past performance is not a guide to future performance."*[27]

Għaldaqstant, a bażi tal-informazzjoni li l-Ilmentaturi kellhom fil-mument tal-bejgħ, 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

[25] P. 82
[26] P. 83
[27] P. 87

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 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 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 apparti 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 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-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' €40,165 (l-ekwivalenti ta' Lm17,243), 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 kkunsidrati.

Primarjament, minkejja li mal-maturità tal-polza, l-ammont offrut lill-Ilmentaturi ma kien xejn viċin dak oriġinarjament ikkwotat lilhom, fl-ebda ħin ma ddikjaraw li ħamsa u għoxrin sena ilu setgħu ikkunsidraw investiment jew tfaddil ieħor u li iżda m'għamlux dan minħabba li r-ritorn ikkwotat kien ser ikun inqas minn dak ikkwotat għal din il-polza. Dan meta, fuq kollox, wieħed iqis li kienu huma minn jeddhom li marru l-fergħa tal-bank biex speċifikament jagħmlu din il-polza.

Fuq kollox, mingħajr preġudizzju għal dak dikjarat hawn fuq, l-Arbitru ma jħossx 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.

Ċertament li l-għan tal-polza intlaħaq u dan minħabba li taħt kontroeżami, l-Ilmentatriċi ikkonfermat li l-għan tagħhom kien li *"... **ridt inġemma' f'dan l-investiment u nagħmel ftit qligħ biex inħalli l-flus għat-tfal.**"*[28]

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' 3.6%[29] li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investiment 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' **€2,547**.

**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-Ilmentaturi s-somma ta' elfejn, ħames mija u erbgħa u sebgħin ewro (€2,547) b'żieda mas-somma diġà offruta, cioè, mas-somma ta' €16,979,02[30] u, għalhekk, tħallashom is-somma kumplessiva ta' €19,526.02.**

[28] P. 83
[29] P. 73
[30] P. 8

**Bl-imgħax ta' 2.15%[31] 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-Deċiżjoni tal-Arbitru**

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

***L-Ispejjeż tal-Proċeduri***

[31] 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 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.