Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 109/2025

ZO

('l-Ilmentatur')

vs

MAPFRE MSV Life p.l.c.

(C-15722)

('il-Fornitur tas-Servizz')

Seduta tal-14 ta' Novembru 2025

L-Arbitru,

Ra l-ilment[1]**,** fejn l-Ilmentatur issottometta li minkejja li għoxrin sena ilu, il-Fornitur tas-Servizz kien ippreżenta lilu nnifsu bħala l-ikbar fl-industrija tal-investimenti billi sar enfasi kbir fuq il-profitti li saru, issa wara dan iż-żmien kollu, ir-ritorn li ġie offrut lilu fuq polza tal-assigurazzjoni fuq il-ħajja huwa inaċċettabbli.

L-Ilmentatur jallega li minkejja li rappreżentant tal-istess Fornitur tas-Servizz kien mar id-dar tiegħu sabiex jaċċertah dwar il-mod serju kif taħdem il-kumpanija, huwa ċar li saru diversi żbalji li issa l-konsegwenzi qed jiġu b'mod inġust mitfugħa fuq il-klijent.

Hu insista li dak kollu li ġie mwiegħed, anke bil-miktub, mhux qed jitwettaq, meta fuq kollox, fatturi esterni li jaffetwaw l-ekonomija xorta waħda ma jiġġustifikawx valur tal-maturità daqstant baxx.

L-Ilmentatur iħoss li hu ġie, b'xi mod jew ieħor, imqarraq, anke meta fil-mument li l-polza ġiet mibjugħa lilu, ġie mwiegħed li l-Fornitur tas-Servizz kien ser jaħdem

[1] Paġni (p.) 1 – 6 u dokumenti annessi p. 7 - 59

għal ritorn ta' 10%. Stqarr li fil-kuntratt li hu ffirma l-ogħla ritorn kien dak ta' 7% u, għaldaqstant, qed jitlob li jingħata s-somma ta' €37,002[2] (l-ekwivalenti ta' Lm15,885).

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

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

1. *MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainant that the maturity value of the Comprehensive Flexi Plan in question numbered FP427957 ("the Policy") was not equivalent to the estimated maturity value including reversionary and terminal bonus which was indicated by MMSV when the Policy was sold to the complainant. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to pay the complainant the sum of EUR 37,002.*

2. *In this regard, MMSV is of the view that the claimant's request is unfounded and therefore, the complainant is not entitled to receive any compensation in addition to the maturity value as is going to be explained in further detail hereunder.*

3. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotation, provided by MMSV (fol. 009), which is being presented by the complainant together with this complaint. Therefore, none of the figures which were indicated in the quotation as "estimated" could be said to have been guaranteed.*

4. ***Furthermore, the quotation in question shows three different rates, calculated namely on the rates of 3%, 5% and 7%, showing three different scenarios of the estimated maturity value including reversionary bonus.*** *In fact, the estimated maturity value including reversionary bonus was indicated as Lm8,866, Lm11,028 and Lm13,813.* ***The quotation calculated the estimated maturity value including reversionary and terminal bonus based on a 1.5% Terminal Bonus. Therefore, the quotation clearly shows three Estimated Maturity Values***

[2] P. 3
[3] P. 66 - P. 72

including Reversionary and Terminal Bonus, with values of Lm10,196, Lm12,683 and Lm15,885.

5. *However, apart from the fact that there were **three scenarios** and therefore none of these three scenarios could have been guaranteed, the quotation presented with the complaint (fol. 009) states that "These illustrations are only examples and are not guaranteed – they are not minimum or maximum amounts". **Hence, the quotation made it clear that these rates are not guaranteed and therefore could fluctuate. Such values were only projected amounts and not promised amounts.***

6. *The estimated maturity values shown in the quotation 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 quotation were not guaranteed because they were based on the investment conditions and circumstances at the time**. At the time, the bonus rate was much higher than it is today, with a rate of 4.25% in 2005 and an increase in 2006 and 2007, with a rate of 4.35%, which started to decrease as from 2008 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**.*

7. *It is also stated in the quotation (fol. 009) that such rates, including the terminal bonuses are high volatility, "Policyholders should be aware that Terminal Bonuses rates are likely to be highly volatile and very dependent on the Company's investment performance." Besides the fact that the quotation itself presented **three scenarios** and provided that those scenarios could not materialize if the rates were to change and therefore said figures could not have been guaranteed, the complainant was also presented with notes together with the quotation (DOC MSV 1).*

8. *The Important Notes (MSV DOC 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 ... *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 mentioned in point 4, indicated in the quotations as "Estimated Maturity Value including Reversionary Bonus" were not guaranteed because one needed to wait until the finalisation of the bonus declaration process in order to confirm whether MMSV was going to declare a reversionary bonus for the previous year, and if in the affirmative at what rate, and it was only at that time that the complainant could have been certain of how the value of the Policy Account of 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 which were in fact guaranteed to be paid to the complainant.*

9. *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 bonuses ... Policyholders should be aware that Terminal Bonus Rates are likely to be highly volatile and very dependent on the Company's investment performance." Therefore, the three amounts mentioned in point 4 being indicated in the quotation as "Estimated Maturity Value including Reversionary and Terminal Bonuses" were likewise not guaranteed since the Terminal Bonus was highly volatile.*

10. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol. 013) was the sum assured of Lm10,000 and no amounts containing the word 'Estimate' were mentioned in this Schedule, which further shows that according to the agreement between the parties the estimated maturity value including reversionary bonus and the estimated maturity*

value including reversionary bonus and terminal bonuses were never guaranteed.

11. *The notes that formed part of the quotation (MSV DOC 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 complainant 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 quotation and more importantly in the light of the terms and conditions of the Policy document.***

12. *At the moment that the Policy was being sold, MMSV had provided the complainant with sufficient information about the Policy, including the fact that part of it was an investment, what the eventual maturity value shall be made up of and how the said amount was calculated including that the bonus rates may go up or down as expressly shown in the quotations and the other documentation provided by the Company.* ***Notwithstanding, the complainant is merely basing his claim on estimated maturity value without putting them in the context of all the documents provided when the Policy was being sold and every year thereafter as shall be explained hereunder.***

13. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders, including the complainant. In fact, the said fund has been managed not only subject to the scrutiny of MMSV's executive management and investment committees, but also subject to the scrutiny of the independent actuary director of Willis Towers Watson and of the Malta Financial Services Authority. The performance of the said fund is entirely and always subject to the changes and shifts that take place in the value of the investment markets in which MMSV invests the investment premium of its policyholders.* ***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 quotation 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. Moreverover, 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 €4,663.13 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 2.49% and a rate of return (gross of 15% witholding tax) on investment premium amounting to 2.93%.*

15. *It also needs to be emphasised that the maturity value of the Policy is tax free and that this benefit is not applicable in other forms of regular savings where the complainant would have been otherwise obliged to pay taxes from their return.*

16. *During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of their Policy, and how the said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV by sending on to them, on a yearly basis, a Policy Account Statement together with the so-called Important Notes. As from 2001, MMSV also started sending to the complainants, every year, a Media Release (copies of the Policy Account are presented as fol. 038-050). Therefore, the complainant was fully aware of what bonuses were being declared and of the value of the Policy over the years. Apart from the use of the term "Estimated" which was conditional in the quotation which is self-explanatory, the Important Notes forming part of the Policy Account Statements mentioned above as well as the media releases have repeatedly made it clear that the bonus rates were not guaranteed and that they depended on the performance of the underlying investments,*

and therefore, said investments could go up as well as down. Therefore, the values of the Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotation could be varied depending on the performance of the investments during the term of the Policy.

17. *Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover 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 'Sum Assured' on the Policy Schedule (fol. 013) with an amount of Lm10,000. Another characteristic of this Policy is that the investment premium, which was as at the date of the maturity of the Policy had amounted to €15,155.01 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 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 €4,663.13 which 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 guaranee 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. 0053) states that "The*

Maturity Value shown here is illustrative and may be different if the bonus rates change or if the interest rate on premium/policy loans changes or if any outstanding premiums due remain unpaid." *This implies that no estimate could crystallise the value that would be paid to the complainant on the maturity date of the Policy in question because that value could only be 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 "**promise**" in the comment made by the complainants in the online complaint (fol. 003) has no basis, since the complainant 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 as explained earlier in point number 13. Moreover, the company provided the complainant with yearly statements, keeping him informed on the performance of the investment. On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion.*

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 complainant was presented with the Statutory Notice (MSV DOC 2) that was issued in compliance with the provisions of the Life Insurance (Statutory Notice) Regulations, 2000. 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-23 ta' Settembru 2024, l-Ilmentatur issottometta s-segwenti:

"Ngħid li qed nitkellmu fuq għoxrin sena ilu. Kienu kkuntattjawni through mutual friends għax dak iż-żmien kienu jaħdmu billi javviċinawk u jistaqsuk tliet ismijiet tal-aktar ħbieb qrib jew familjari. U ngħid li ġew għandi through ħabib tiegħi li konna ħbieb ħafna.

Hu kien għamilha l-polza u jien kienu ġew għand ommi dak iż-żmien. Meta ngħid huma nkun qed nirreferi għal Karen Grima li kienet impjegata ma' Middlesea Valletta.

Ngħid li konna ftiehemna li nagħmlu meeting u ġiet id-dar ma' rappreżentant ieħor. Kienu nice u puliti; il-kumpanija ma kinitx kumpanija kbira ħafna.

Ngħid li l-proposal kienet tajba ħafna u kienu wegħduni li ser jaħdmu għal 10%. Kienu jiktbu 10% u jgħidulek aħna fuq dawn ser naħdmu.

Ngħid li hawnhekk hawn ċertu garanziji li lanqas wasalna għalihom dawn il-garanziji. Kienu qaluli, 'Insihom dawn! Aħna ser naħdmu fuq l-Lm10,000.'

Li ma nistax nifhem hu li llum jekk dawn qed jiddefendu dan, xi ħaġa, xi żbalji min-naħa tagħhom saru.

Ngħid li l-karta li fuqha hawn il-firma tiegħi jista' jkun li konna għamilniha dakinhar stess.

Ngħid li dan il-meeting dam naqra għax bdew ifiehemuni. Ngħid li fuq dawn l-investimenti bqajt lura għax tkun għadek żgħir. Dan qed nitkellem fuq għoxrin sena ilu. Ngħid li dam tlett kwarti, siegħa.

Ngħid li jiena ħallejt f'idejn il-kumpanija għax huma l-esperti, huma għandhom ir-riżorsi.

Ikolli ngħid li d-deċiżjoni biex nagħmel din il-polza kont ħadtha dakinhar.

Ngħid li meeting wieħed sar u forsi xi telefonata wara.

Ngħid li dak iż-żmien kont naħdem ġo ħanut taż-żebgħa.

Bħala edukazzjoni ngħid li dak iż-żmien kont iddroppjajt mill-Junior College, qbadt naħdem u kont qed nagħmel kors żgħir ta' marketing u għaddejt. Imma ma konx nifhem f'dawn l-investimenti. Jien qgħadt fuq li qaluli huma.

Ngħid li iva, kelli dsatax jew għoxrin sena dak iż-żmien.

Ngħid li lili kkonvinċewni; mhijiex kumpanija taċ-ċajt. Riżorsi kellhom, kienu nice ħafna u spjegawli sew."[4]

Waqt kontroeżami, hu kompla li:

"***Qed jingħad li dan ġara għoxrin sena ilu u jien m'inix ċert jekk il-quotation ingħatatlix dak il-ħin u jekk saritx laqgħa waħda u forsi kien hemm xi telefonata.***

Mistoqsi naqbilx allura li ma niftakarx x'intqal lili kelma b'kelma Karen Grima u l-kollega tagħha, ngħid li naqblu. Għadda ħafna żmien u mija fil-mija m'inix ċert imma jidhirli li ffirmajt dak il-ħin, kont konvint dak il-ħin u mexxejna.

Qed jingħad li jien kont naf li l-ammonti li kelli jidhru fuq il-quotation ma kinux garantiti u li setgħu jiċċaqalqu 'l hawn u 'l hemm skont kif imorru l-investimenti.

Ngħid li l-garanzija ta' Lm10,000 ma tistax tiċċaqlaq dik żgur. Lili qaluli li l-inqas li nista' nieħu hija din Lm10,000.

Qed jingħad li l-figuri l-oħra jistgħu jiċċaqalqu; u li l-ilment tiegħi hu li l-MSV ma kinitx diliġenti kif investiet.

Ngħid li huma mhumiex bħalna, jkunu jafu l-liġi eżatt u jdurulek u jagħtuk l-inqas biex huma jibqgħu in law, imma dak mhux partnership. Jiena meta dħalt magħhom dħalt bħala partner biex ninvestu l-flus għall-aħjar taż-żewġ partijiet.

[4] P. 73 - P. 76

Hawnhekk jekk illum tgħiduli, 'Agħtuna recommendation', jiena ser nagħti recommendation lil xi ħabib tiegħi biex jinvesti magħhom wara li saru dawn l-affarijiet?

Ngħid li le, mhux hekk?

Qed jingħad li jien fl-ilment semmejt ħafna drabi 'guarantees promised also in writing and signatories have not been delivered.'[5]

Mistoqsi minħabba li għadni kif ikkonfermajt li l-garanzija li tawni hija mhux inqas minn Lm10,000, naqblux li dawk il-garanziji li hemm fil-quotation ta' 3%, 5% u 7% qatt ma ngħatawli, ngħid li hekk hu.

U qed jingħad li kont naf li setgħu ivarjaw. Ngħid li huma jgħidulek.

Mistoqsi naqbilx li fl-Important Notes (MSV Doc 1 anness mar-risposta tal-Middlesea) kien hemm ħafna spjegazzjonijiet illi l-investimenti jistgħu jitilgħu u jinżlu, u mistoqsi jekk il-firma li hemm f'MSV Doc 2 hix il-firma tiegħi, ngħid li iva, dik hi l-firma tiegħi.

Mistoqsi naqbilx li l-garanzija kienet li f'każ li jien immut, ser nieħu mhux inqas minn Lm10,000 u fil-każ tal-maturità, jien kont ser nieħu l-valur tal-polza, ngħid li le. Il-garanzija hija li jiġri x'jiġri hija l-inqas li tista' tieħu. Ma tiċċaqlaqx dik il-garanzija ta' Lm10,000. Jien dejjem hekk fhimtha.

Ngħid li l-Lm10,000 hija s-Sum Assured u ma nistax nifhem kif offrew inqas minn dik. Jekk għandek il-firem kollha hawnhekk jiġri x'jiġri.

Qed niġi referut għal paġna 12 tal-proċess (Preamble) u għat-tieni paragrafu li jgħid:

'The Company hereby agrees to pay either the Death Benefit or the Maturity Value'.

Qed jingħad li l-MSV iggarantietli li tħallasni jew il-Benefiċċju f'każ ta' Mewt (paġna 34 Nru. 17) li

'Ifisser liema jkun l-akbar mis-Somma Assigurata jew mill-kont ta' Investiment ikkalkulat l-għada li fiha l-kumpanija tirċievi notifika bil-miktub tal-mewt tal-

[5] P. 2

Ħajja Assigurata', jiġifieri kienet ser tagħtini mill-inqas l-Lm10,000 jew aktar jekk il-polza kienet ser tikber aktar minn Lm10,000.

Qed jingħad li llum qed nitkellmu fuq il-valur tal-maturità u mhux fuq il-valur tal-mewt.

Il-Valur ta' Maturità:

'Ifisser il-Valur tal-kont ta' Investiment ikkalkulata fid-data ta' maturità ta' din il-Polza.'

Qed jingħad li kull sena kont nirċievi l-Bonus Statements u kont qed nara l-valur kif qed jikber.

Naqbilx li jien irċevejt l-ammont ekwivalenti għal dak li kelli fil-Bonus Statements u mhux inqas, ngħid li dawn fl-aħħar sena waqgħu f'daqqa.

Ngħid li fil-Bonus Statements, is-Sum Assured dejjem hemm tkun. Jien ma kontx naf b'din tal-mewt mod il-garanzija, u jekk tibqa' ħaj ... Din int qed tispjegahieli.

Mistoqsi ridtx nagħmel investiment riskjuż jew jekk ridtx infaddal, ngħid li kif ġie r-return qisu ta' vera high risk. Dan ma tistax toffrih lil bniedem għadu ħiereġ mill-iskola!

Qed jingħad li għamilt gwadann ta' 2.93% fis-sena, ngħid li, le, ma tliftx flus.

Qed jingħad li l-fatt li tawni tliet quotations ma wrinix li l-ammont jista' jvarja, ngħid li iva imma meta ġejt biex nagħmel il-complaint, qaluli mur għall-ogħla."[6]

Wara din is-seduta, il-Fornitur tas-Servizz ippreżenta kopja tal-*Proposal Form*[7] datata 12 t'April 2005.

Fit-tieni seduta ta' nhar id-29 t'Ottubru 2025, xehdet Karen Grima, rappreżentanta tal-Fornitur tas-Servizz li biegħet il-polza in kwistjoni lill-Ilmentatur. Hi xehdet li:

"***Qed niġi murija l-Quotation (paġna 9 tal-proċess) u nikkonferma li din hija l-firma tiegħi.***

[6] P. 74 - P. 76
[7] P. 79 - P. 84

Nikkonferma li ma' din il-Quotation inkun tajt l-Important Notes (Dok. 1), il-Proposal Form (Dok. 3) fejn nikkonferma l-firma tiegħi flimkien mal-iStatutory Notice (Dok. 2).

Nikkonferma li dawk huma l-firem tiegħi u li kont jien li biegħejt il-polza.

Ngħid li kien ikun hemm referrals minn familjari jew minn ħbieb. Inkun ċempilt lis-Sur Bonnici u ngħidulu fuq il-polza. Naqblu fuq appuntament u, mbagħad, immorru għandu, ovvjament, bil-kunsens tiegħu.

Ngħid li konna nispjegaw il-polza kif taħdem, ovvjament, fid-dettall. Ma konniex naqraw l-Important Notes kelma b'kelma, però, nkunu dħalna fid-dettall kif taħdem il-polza.

Konna nispjegaw li l-polza kellha Life Cover u anke investiment. Inkunu spjegajna wkoll is-Sum Assured, li f'dan il-każ kienet ta' Lm10,000 u kienet ser tingħata f'każ ta' mewt lill-eredi tal-policyholder.

Konna nispjegaw ukoll il-premium kif kien jiġi investit, li parti mill-premium kien jiġi investit u parti jmur għal-Life Cover.

Konna nispjegaw ukoll il-bonuses ta' kull sena; li fl-aħħar tas-sena kienu jingħataw il-bonuses plus il-premiums investiti li kien jiġi l-valur tal-policy account.

Konna nispjegaw ukoll li jekk iħalli l-polza sal-aħħar tal-maturità, seta' jirċievi t-Terminal Bonus. Qatt ma nkun għidt ovvjament li ser jingħata mill-Middlesea għax setgħet tiddeċiedi li ma tagħtihx.

Konna nispjegaw ukoll il-perjodu tas-snin tal-polza u konna ngħidulu li ma kienx jaqbillu jwaqqafha qabel.

Fl-aħħar konna ngħidu li l-valur tal-polza ma kienx taxxabbli, ovvjament, jekk ma tinbidilx il-liġi.

Ngħid li konna niddeċiedu kemm ser ikun il-premium, is-Sum Assured li f'dan il-każ kienet ta' Lm10,000, u t-tul tal-perjodu tal-polza.

Ngħid li konna noħorġu l-Quotation dak il-ħin.

Ngħid li fuq il-Quotation hemm Illustrative Maturity Values fejn kont nispjega li dawk huma projections abbażi ta' rates of returns li ovvjament setgħu

ivarjaw kull sena. Ma kinux garantiti; kienu bħala estimate biex ikollu indikazzjoni ta' kemm setgħu ikunu r-returns fl-aħħar tal-polza.

Ngħid li kont nispjega li dawn qatt ma jkunu garantiti u l-bonuses kienu jiġu ddikjarati kull sena. Ngħid li l-bonus kien ikun garantit.

Ngħid li fuq din il-Quotation hemm Illustrative Maturity Values on assumed bonus rates ta' 3.00%, 6.00% u 7.00%, u ngħid li jiena qatt ma nista' nassigura bonus ta' 10%. Ma kellix awtorità li ser jingħata bonus ta' 10%.

Ngħid li lis-Sur Bonnici ma nkunx iggarantejtlu ammont. Il-bonus ser jiġi ddikjarat mill-Middlesea Valletta.

Ngħid li ma kellix awtorità li ngħid il-bonus kemm ser ikun.

Ngħid li żgur qatt m'għidt lis-Sur Bonnici li s-Sum Assured kienet ser titħallas ukoll mal-maturità. Ngħid li s-Sum Assured ta' Lm10,000 tiġi mħallsa f'każ ta' mewt minn kif jibda l-policy account.

Ngħid li jiena qatt ma ggarantejtlu li seta' jirċievi s-7.00% minn dawk it-tliet xenarji għax ma nkunx naf il-Middlesea kemm ser tħallas. Dawk kienu bħala guidelines.

Ngħid li dak iż-żmien li biegħejt il-polza kont impjegata ma' Sciortino & Formosa li kienu aġenti tal-MSV li kellhom il-liċenzja biex ibiegħu dawn il-poloz. Ngħid li anke aħna kellna l-liċenzja. Jien kont liċenzjata.

Qed jingħad li l-ilment huwa abbażi li jien stajt tajt l-aspettattiva lis-Sur Bonnici, meta kont qed inbiegħ din il-polza, li żgur kien ser jieħu l-ogħla figura li hemm taħt is-7.00%.

Ngħid li jiena ma nistax niggarantixxi kemm il-Middlesea kienet ser tagħti. Ir-rati ta' 3.00%, 5.00% u 7.00% kienu bħala guidelines. Jiena ma stajtx niggarantixxi li l-Middlesea ser tagħti bis-7.00%. Il-Middlesea kienet tiddikjara l-bonuses kull sena."[8]

F'din l-istess seduta, l-Ilmentatur ressaq is-sottomissjonijiet finali b'mod verbali fejn stqarr li:

"***Jien nifhem li jimxu eżatt - ma nimmaġinax li joħorġu barra mil-liġi.***

[8] P. 85 - P. 87

Però, kif tkun mibjugħa l-polza hija ħafna differenti minn kif qed jiġi spjegat hawnhekk: illi kollox iva, żgur, għidnilu, kien ċert, fehem. Le! Jiddispjaċini, ma fhimtx.

Sakemm biegħuli l-oġġett kollox sabiħ kien. Nimmaġina li hawn ħafna nies iċeduhom. Dan ikun hemm €3,000, €4,000 u dak li jkun jgħidlek, ġib ħa nimxi.

Jien, għalija, jagħmlu ftit differenza dawn. Jien mhux qed ngħid li xi ħadd ħareġ mil-liġi imma għalija, jien għamilt investiment, ħallejt f'min jifhem u ma mexiex sewwa.

Illum jekk ikolli nagħmel recommendation lil din il-kumpanija lil xi ħadd bħalma għamluli recommendation u għamilt recommendation jien fil-bidu, ma nagħmilhiex. Ma nħossx li mxew tajjeb miegħi."[9]

Mill-banda l-oħra, il-Fornitur tas-Servizz issottometta li:

"***Bażikament hawnhekk għandna allegazzjoni li l-MSV u s-Sinjura Karen Grima iggarantew u wegħdu lill-ilmentatur ammont li ma ntlaħaqx.***

Però, irriżulta mill-kawża u mid-dokumentazzjoni li l-ilment huwa dwar li l-ilmentatur mhux sodisfatt bl-ammonti li tħallsu mhux għax kien hemm garanziji imma, minħabba kif marru l-investimenti, huwa qiegħed iħoss illi l-MSV ma segwitx tajjeb l-investiment u ma tatux dak li ħaqqu, mhux għax l-MSV naqsitu u mhux b'kontra l-liġi imma li setgħet tagħmel aħjar.

L-unika garanzija li kien hemm kienet id-Death Benefit fil-każ ta' mewt jew il-Maturity Value u hawnhekk għall-grazzja t'Alla ma kellniex Death Benefit imma Maturity Value. U għandna definizzjoni fil-proċess (paġna 23) ta' x'inhi l-Maturity Value li hi l-valur tal-Policy Account li huwa l-bonuses iddikjarati flimkien mal-Investment premium li, fil-fatt, l-MSV hi disposta li tħallas.

Minkejja dan kollu, xorta l-ilmentatur jgħid li l-MSV ma żammitx mal-garanziji u jgħid, 'I feel somewhat scammed through this scheme'.

Però, mbagħad, jgħid ukoll li qed nitkellmu fuq għoxrin sena. Hu stess jammetti li ma jiftakarx eżatt kelma b'kelma x'qaltlu – u bir-raġun – Karen Grima. Ma

[9] P. 87

jiftakarx kienx hemm laqgħa waħda jew tnejn. Ma jiftakarx saritx telefonata wara. Ma jiftakarx jekk il-Quotation ingħatatlux dak il-ħin.

Hu stess qal li l-MSV għamlet kollox skont il-liġi għalkemm diżappuntat li l-valur li tatù kien baxx. Allura, kif tista' l-MSV tagħmel kollox skont il-liġi imma, mbagħad, tatu garanziji li ma żammitx. Ammetta wkoll li l-Illustrative Maturity Values ma kinux garantiti permezz ta' dan il-kliem:

'Qed jingħad li jien kont naf li l-ammonti li kelli jidhru fuq il-Quotation ma kinux garantiti u li setgħu jiċċaqalqu 'l hawn u 'l hinn skont kif imorru l-investimenti."

Hu qed jiffoka u jitlob l-ogħla Illustrative Maturity Value minkejja li kien hemm tliet xenarji u l-ebda mit-tliet xenarji ma kienu garantiti imma kienu biss projections.

Is-Sum Assured, f'dan il-każ, kien għoli u, għalhekk, tnaqqar ammont sostanzjali mill-Investment Premium u mill-bonuses."[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 jittratta l-wegħdiet u l-aċċertazzjonijiet li l-Ilmentatur allega li ġew mogħtija lilu fil-mument li ġiet mibjugħa l-polza, u dan partikolarment fir-rigward tal-ammont jew aħjar l-ammont minimu li kellu jingħata lilu mal-maturità tal-istess polza.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'ġie mwiegħed, u x'eventwalment ġie mogħti jew offrut mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *'l-aspettattivi*

[10] P. 88
[11] Kap. 555, Artiklu 19(3)(b)

raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.'[12]

L-Arbitru għandu quddiemu żewġ pożizzjonijiet dwar dak li ġara u ntqal waqt il-laqgħa tal-bejgħ.

Karen Grima, ir-rappreżentanta tal-Fornitur tas-Servizz li biegħet il-polza in kwistjoni lill-Ilmentatur, tat xhieda[13] dettaljata dwar il-karatteristiċi tal-polza, u l-ispjegazzjoni li hi kienet tagħti lil kull klijent prospettiv, fosthom, il-fatt li minn kull *premium* li kien jitħallas kull sena, parti minnu kien jiġi investit u l-parti l-oħra tmur għal-*Life cover,* filwaqt li saħqet li kienet tispjega wkoll li fuq il-*Quotation* li kienet tinħareġ dak il-ħin, l-*Illustrative Maturity Values* ikkwotati kienu jkunu *projections* a bażi tar-*rate of returns* li setgħu ivarjaw kull sena, ma kinux garantiti u kienu biss *estimates* biex il-klijent ikollu indikazzjoni kemm setgħu ikunu r-*returns* mal-maturità tal-polza.

Mill-banda l-oħra, l-Ilmentatur stqarr li meta r-rappreżentanti tal-Fornitur tas-Servizz marru d-dar tiegħu, kienet saritlu *proposal* tajba u kien ġie mwiegħed li ser jaħdmu għal ritorn ta' 10%. L-Ilmentatur xehed li:

"Kienu jiktbu 10% u jgħidulek aħna fuq dawn ser naħdmu ...

Kienu qaluli, 'Insihom dawn! Aħna ser naħdmu fuq l-Lm10,000.''[14]

B'referenza għal din id-dikjarazzjoni, a bażi tal-kontenut tal-*'Flexi Plan Quotation'*[15], li kopja tagħha ġiet ippreżentata mill-Ilmentatur innifsu, l-Arbitru jinnota li s-somma ta' Lm10,000 hija s-*Sum Assured*, filwaqt li din l-istess kwotazzjoni tinkludi s-somma ta' Lm10,196 bħala l-*Illustrative Maturity Value including Reversionary and Terminal Bonuses* taħt il-kolonna ta' *assumed bonus rate* ta' 3%. Minkejja li l-Ilmentatur irrefera għas-somma ta' Lm10,000, ma ddikjarax b'mod ċar għal liema figura kien fil-fatt qed jirreferi.

Iżda, taħt kontroeżami, l-Ilmentatur stqarr li:

[12] Kap. 555, Artiklu 19(3)(c)
[13] P. 85
[14] P. 73
[15] P. 9

"Qed jingħad li jien kont naf li l-ammonti li kelli jidhru fuq il-quotation ma kinux garantiti u li setgħu jiċċaqalqu 'l hawn u 'l hemm skont kif imorru l-investimenti.

Ngħid li l-garanzija ta' Lm10,000 ma tistax tiċċaqlaq dik żgur. Lili qaluli li l-inqas li nista' nieħu hija dik ta' Lm10,000.

Qed jingħad li l-figuri l-oħra jistgħu jiċċaqalqu; u li l-ilment tiegħi hu li l-MSV ma kinitx diliġenti kif investiet."[16]

Minkejja li l-Arbitru m'għandux konferma għal liema figura (Lm10,000) qed jirreferi l-Ilmentatur, id-dikjarazzjoni tiegħu fir-rigward tal-fatt li l-garanzija ta' Lm10,000 ma tistax tiċċaqlaq, u li l-figuri l-oħra li qed jidhru fuq il-kwotazzjoni ma kinux garantiti u li setgħu jiċċaqalqu skont l-andament tal-investiment, huwa indikazzjoni tal-fatt li meta l-Ilmentatur kien kontinwament qed jirreferi għall-Lm10,000, din kienet fil-fatt is-*Sum Assured.*

Dan meta fuq kollox, l-Ilmentatur innifsu stqarr ***"Ngħid li l-Lm10,000 hija s-Sum Assured u ma nistax nifhem kif offrew inqas minn dik."***[17]

Huwa evidenti li l-Ilmentatur kien konxju li l-polza in kwistjoni kien fiha element ta' investiment. Aktar kmieni saret referenza għall-fatt li hu stess iddikjara li, apparti s-somma ta' Lm10,000, il-figuri l-oħrajn inklużi fil-kwotazzjoni setgħu ivarjaw skont l-andament tal-investiment. L-Ilmentatur iddikjara li:

"Mistoqsi minħabba li għadni kif ikkonfermajt li l-garanzija li tawni hija mhux inqas minn Lm10,000, naqblux li dawk il-garanziji li hemm fil-quotation ta' 3%, 5% u 7% qatt ma ngħatawli, ngħid li hekk hu.

U qed jingħad li kont naf li setgħu ivarjaw. Ngħid li huma jgħidulek."[18]

A bażi ta' dawn id-dikjarazzjonijiet, l-Arbitru jikkonkludu li l-Ilmentatur kien jaf li l-figura assigurata ta' Lm10,000 kienet tirrigwarda d-*'death benefit'* u ma kinetx kif qed jippretendi l-minimu garantit jekk il-polza timmatura fil-kors normali tagħha.

Dan m'huwiex każ fejn l-Ilmentatur ma kienx konxju tal-mod kif taħdem il-polza, jew inkella li b'xi mod jew ieħor, ir-rappreżentanta tal-Fornitur tas-Servizz kienet

[16] P. 74
[17] P. 75
[18] *Ibid*.

imprudenti u emfasizzat biss is-sabiħ tal-polza. Dan meta, fuq kollox, l-Ilmentatur innifsu iddikjara li l-*meeting* li kien sar id-dar tiegħu u li għalih kienu preżenti kemm ir-rappreżentanta li biegħetlu l-polza kif ukoll kollega tagħha, fejn kien *"... **dam naqra għax bdew ifiehemuni."***[19]*,* filwaqt li indika li *"**Riżorsi kellhom, kienu nice ħafna u spjegawli sew**."*[20]

L-Ilmentatur ammetta wkoll li kien kull sena jirċievi l-*Bonus Statements* u kien jara li l-valur qed jikber, li dan ifisser li, kif ġustament kellu jsir, l-Ilmentatur kien qiegħed kontinwament isegwi l-andament tal-investiment tiegħu. Fil-fatt, meta mistoqsi jekk hu eventwalment irċeviex l-ammont ekwivalenti għal dak li kellu fil-*Bonus Statement* u mhux inqas, l-Ilmentatur ammetta li *"... **fl-aħħar sena*** waqgħu f'daqqa."[21]

Dan ma jirriżultax mill-i*statements* annwali li kienu juru valur ta' €16,048.95 fl-aħħar tal-2021[22], €16,977.01 fl-aħħar tal-2022[23] u €19,630.96 f'Marzu 2025.[24]

Mix-xhieda tiegħu, ħareġ ċar li l-Ilmentatur kien konxju ta' diversi aspetti tal-polza, partikolarment, l-element ta' investiment u, fuq kollox, li ma kienet ingħatat l-ebda garanzija dwar kemm il-valur tal-polza kien ser ikun meta din timmatura. Kruċjali huwa l-fatt li l-kwotazzjoni mogħtija lilu kien fiha tliet *'Illustrative Maturity Values'* ibbażati fuq tliet *'assumed bonus rates'* differenti, aspett li huwa iktar minn indikattiv li dawn l-istess figuri kienu stimi u mhux garanziji.

Kif diġà intqal aktar kmieni, l-Ilmentatur ammetta li l-figuri ta' 3%, 5% u 7% li hemm fil-kwotazzjoni qatt ma ġew garantiti lilu, u għaldaqstant, huwa suppost fehem ukoll li dawn kienu biss stimi li fuq medda twila ta' snin (20 sena) ħadd ma jista' jipprevedi.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza ilmentata, ra li r-rendiment tagħha kien ta' kważi 3%[25] li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin, u għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investiment u l-qligħ dikjarat kienu sostanzjalment garantiti. L-

[19] P. 74
[20] *Ibid*.
[21] P. 76
[22] P. 49
[23] P. 50
[24] P. 53
[25] P. 68

Ilmentatur innifsu irrikonoxxa dan il-gwadann li hu għamel filwaqt li ammetta[26] li ma tilifx flus. Barra minn hekk, permezz ta' din il-polza, l-Ilmentatur kellu wkoll il-benefiċċju ta' kopertura fuq ħajtu mill-ewwel ġurnata tal-polza.

Huwa evidenti li l-Ilmentatur m'huwiex kuntent bir-ritorn li hu kellu minn din il-polza, iżda fl-istess waqt, ma ppreżenta l-ebda prova li dak iż-żmien kellu għażla għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. Għaldaqstant, l-Ilmentatur naqas milli jippreżenta xi tip ta' prova li minħabba li huwa ddeċieda li jieħu l-polza offruta a bażi tal-informazzjoni mogħtija, huwa ġarrab xi tip ta' *opportunity loss.*

F'każi oħra simili, l-Arbitru kkritika lill-Fornitur tas-servizz li kien joħroġ stima waħda fil-kwotazzjoni u dan, minkejja dak kollu li jkun iffirma l-Ilmentatur li l-istima ma kinitx garanzija, seta' nissel aspettattiva differenti f'moħħ l-Ilmentatur. B'hekk, f'dawk il-każi, l-Arbitru kien ta xi kumpens limitat għall-fatt li l-istess Fornitur tas-Servizz kien naqas meta ma tax stimi bbażati fuq rati differenti, biex il-klijent jifhem sew li fuq medda twila ta' snin xejn m'hu garantit u l-istimi jistgħu ivarjaw sew.

Iżda f'dan il-każ, il-kwotazzjoni kienet ibbażata fuq tliet stimi ta' xenarji differenti u l-Ilmentatur ma kellux inissel pretensjonijiet li bilfors ser jieħu xi waħda minn dawk l-istimi. Anzi, suppost kellu jifhem li l-fatt li ħarġu diversi stimi fuq xenarji differenti, allura, xejn ma kien garantit, lanqas l-istima l-aktar baxxa.

Deċiżjoni

Għar-raġunijiet hawn fuq spjegati, l-Arbitru jħoss li dan l-ilment mhuwiex ekwu u raġonevoli, u mhux ser jiġi milqugħ.

Kull parti ġġorr l-ispejjeż tagħha.

Alfred Mifsud
Arbitru għas-Servizzi Finanzjarji

[26] P. 76

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 wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.