

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 265/2025

AS

(‘l-Ilmentatur’)

vs

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

(‘il-Fornitur tas-Servizz’)

Seduta tat-23 ta’ Marzu 2026

L-Arbitru,

Ra l-ilment,¹ fejn l-Ilmentatur issottometta illi ma jaqbilx mas-somma li qed tiġi offruta lilu mal-maturità tal-polza peress li wara tletin sena ta’ pagamenti, din hija ferm ’il bogħod mill-figuri li kienu mnizzlin fil-kwotazzjoni li ngħatatlu.

L-Ilmentatur spjega li meta kien qiegħed għand bank partikolari f’Malta ħajruh biex jistaqsi għal rappreżentant tal-poloż tal-assikurazzjoni. Impjegata tal-istess bank kienet assikuratu li jekk jagħmel l-investment offrut mal-Fornitur tas-Servizz u jhallas *premium* ta’ Lm 246.80 (ekwivalenti għal €590.73) fis-sena għal tletin sena, dan l-investment ser jirrendilu somma ta’ Lm 33,624.04 (ekwivalenti għal €78,322.94).

Izda mal-maturità tal-istess polza, il-Fornitur tas-Servizz offrielu biss is-somma ta’ €29,664.51 minflok l-ammont miftiehem ta’ €78,322.94.

Għaldaqstant, l-Ilmentatur qed jitlob² li jingħata s-somma ekwivalenti għal Lm 33,624.04 u, cioè, €78,322.94.

¹ P. 1 - 4, bid-dokumentazzjoni addizzjonali f’P. 5 - 62.

² P. 2

Ra t-twegiba tal-Fornitur tas-Servizz³

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

1. *MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainant that the maturity value of the Policy in question numbered 25369 of nature Endowment Policy with Sum Assured ("the Policy") was not equivalent to the estimated maturity value including reversionary and terminal bonus which was indicated by MMSV when the Policy was sold to the complainant. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to pay the sum of €78,322.94.*

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

2. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotation (fol.011) 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.*
3. *The estimated maturity values shown in the quotation in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold.*

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 6.75% between 1995 and 1998, 7% in 1999 and 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***

³ P. 68 - 72, bid-dokumentazzjoni addizzjonali f'p. 73 - 74.

provided were indeed correct as it was issued according to the circumstances at the time, therefore, MMSV had acted in good faith.

4. *The amount of LM22,416.03 that was indicated in the quotation as “Estimated Maturity Value including Reversionary Bonus” was not guaranteed because one needed to wait until the finalisation of the bonus declaration process in order to confirm whether MMSV was going to declare a reversionary bonus for the previous year and if in the affirmative at what rate, and it was only at that time that the complainant could have been certain of how the value of the Policy Account of the 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.*
5. *With regards to the “Final Bonus”, the same bonus is also dependent on the profit done by the Company, whereas it can be decided that after the end of the Policy’s TENTH year and ten years full premia have been paid, from time to time a Terminal Bonus is allocated. Therefore, the amounts being indicated in the quotation as “Estimated Maturity Value Including Reversionary and Terminal bonuses (if any)” of LM33,624.04 was likewise not guaranteed since it was highly volatile. This was also explained in the definitions section provided with the policy account statement for year ending 2023 (DOC. MSV 1), whereby it is stated that “Final Bonus means an extra amount, which **may** be allocated at Maturity or upon payment of a Death Benefit. It is highly dependent on the investment performance of the MAPFRE MSV With-Profits Fund and MAPFRE MSV Life p.l.c. is under no obligation to pay a Final Bonus, meaning that this is **not guaranteed.**”*
6. *The Life Policy Schedule, issued on 29th September 1995 (presented in the complaint as fol.018) provides that “In respect of each premium paid, LM232.49 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 policyholder.*

7. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol.018) was the sum assured of LM6,818.00 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.*
8. *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 quotation and the other documentation provided by the Company. **Notwithstanding, the complainant is merely basing the claim on estimated maturity values 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.***
9. *MMSV continued to act in good faith even after the Policy was issued in favor 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. **Therefore, the difference between the estimated maturity values shown in the quotation and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.***
10. *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 €13,417.71 after deducting the investment premium that was paid by the complainant from the maturity value, and this represents a rate of return-on-investment premium amounting to 3.64% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 4.28%.

- 11. 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 the gain made.*
- 12. During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account, 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. This information was communicated to the complainant by MMSV by sending, on a yearly basis, a Policy Account Statement together with the so-called Important Notes. As of 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.035-054). 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 quotations could be varied depending on the performance of the investments during the term of the Policy.*

13. Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover for the duration of the Policy. This amount was guaranteed to be paid upon death of the Life Assured, in fact it is referred to as the 'Basic Sum Assured' on the Policy Schedule (fol.018) with an amount of LM6,818.00. Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to €16,246.80 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.
14. Therefore, MMSV adhered to its obligations under the Policy because the Maturity value of the Policy exceeded the investment premium that was paid by the complainant by an additional €13,417.71 which amount represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates over time, the Policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the Policy also provided cover on the complainant's life.
15. 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.
16. 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. 056) 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.

- 17. The statement done by the complainant in the online complaint (fol.002) stating that “... ġejt offrut biss is-somma ta’ €29,664.51 minflok dak l-ammont miftiehem ta’ Lm33,624.04 (ekwivalenti għal €78,322.94)” has no basis, since the complainant was presented with 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. On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion. 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. Moreover, the company provided the complainant with yearly statements, providing information on the performance on the policy. On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion.*
- 18. 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 (DOC. MSV 2) 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.*

19. 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, li saret fit-28 ta' Jannar 2026, deher l-Ilmentatur u xehed bil-gurament illi:

'Ngħid li madwar tletin sena ilu, jiena kont il-BOV; kont qiegħed għand il-kaxxier u kien irreferieni biex nagħmel appuntament fl-uffiċċju ta' fuq minħabba dan it-tip ta' investment.

Ngħid li kienu bagħtuni fuq, kien hemm tfajla u bdiet tispjegali fiex jikkonsisti dan l-investment. Dakinhar din it-tfajla żguratni li jekk ser nintrabat għal tletin sena u nħallas l-ammont mitlub għal dawn it-tletin sena, jiena kont ser nieħu bis-7.5%. Fil-fatt, tawni l-istima b'kemm kont ser inħallas u kemm kont ser nieħu f'dan il-perjodu ta' tletin sena.

Hi stess ikkwotatli fuq l-istima kemm ser nieħu. Dak iż-żmien l-ammont kien ta' Lm33,000 li illum hu ekwivalenti għal €78,000.

Ngħid li sar ftehim fejn jiena intrabatt biex inħallas dak l-ammont. U fl-ebda mument ma ġejt mgħajjat biex jgħiduli, 'Isma', ħallas in-nofs tal-ammont għax din id-darba ma morniex tajjeb', jew 'Tagħtina xejn għax ma għamilniex qligh.' Qatt!! Jien l-ammont dovut kont inħallsu kollu sal-inqas ċenteżmu; ma stajtx ma nħallsux sal-inqas ċenteżmu.

Jekk il-Middlesea kienet sejra ħażin f'dawk is-snin, kif qed jgħidu, kienet sejra ħażin għalija wkoll. Jien bħala ħlas ħallastu kollu. U min ser jintrabat għal tletin sena u l-Middlesea ma tintrabat imkien? Jien lili qatt ma qaluli li mhux ser nieħu dak l-ammont. Lili żgurawni li kont ser nieħu dak l-ammont.

Nikkonferma li kont il-BOV u kienu huma li ħajruni nagħmel din il-polza. Fuq din il-polza kont tlajt darba u kellmitni tfajla fejn għamlitli l-quotation, l-istima

ta' kemm ser inhallas u kemm ser niehu u, mbaghad, kont mort darb'ohra meta baghtu ghalija biex naghmilha.

Ngħid li mort darbtejn. L-ewwel darba spjegawli u tawni l-quotation dak il-hin stess. Ngħid li kont domt madwar nofs siegħa, tliet kwarti. Imbaghad, kont ergajt mort biex niffirma l-karti. Ngħid li dan ilu tletin sena. Ngħid li l-polza inhadmet fuq l-istess quotation.

Ngħid li dak iż-żmien li għamilt il-polza kelli għoxrin sena. Kont għamilt sas Sekondarja, Trade School, u kont naħdem it-Tarzna.⁴

Taħt kontroezami, huwa wiegeb is-segwent i mistoqsijiet:

'Qed niġi referut għall-quotation (paġna 11 tal-proċess), fejn semmejt is-somma ta' Lm33,624.

Mistoqsi xi spjegazzjoni tatni fuq il-kumplament tan-numri, ngħid li spjegatli li jekk niġi nieqes, l-eredi jieħdu Lm6,818 (€15,000), jekk m'inix sejjer żball.

Lili spjegatli li għalkemm jiena kont ser inhallas minn dakinhar, ma kontx ser nara kambjament fl-ammont imma fl-aħħar, bil-bonus li jingħata, titla' għal dak l-ammont. Qaltli li l-ammont jien ser narah fl-aħħar.

Mistoqsi x'niftakar fuq l-ammont ta' Lm22,416, ngħid li lili qaltli li kont ser niehu l-bonus kull sena, jiġifieri fl-aħħar, imbaghad, ser jingħaqad il-pakkett kollu fejn imbaghad jasal għal dak l-ammont.

Mistoqsi x'nifhem bil-kliem '(if any)', u jekk staqsejthiex jekk dan kienx ifisser forsi iva u forsi le, ngħid li le.

Mistoqsi niftakarx kelma b'kelma dak li spjegatli, ngħid din kienet tletin sena ilu! Li niftakar żgur hu li qaltli li ser inhallas l-ammont ta' Lm246 u kemm ser niehu interessi. U fl-aħħar, wara tletin sena, kemm kont ser niehu.

Naqbel li kont konxju li qed nagħmel investment.

Mistoqsi jekk ridtx nagħmel investment mingħajr riskju li jintilef il-kapital, ngħid u żgur!

⁴ P. 75 - 76.

Mistoqsi inix konxju li jien ġemmajt u għamilt gwadann ta' €13,417, cioè, gross return ta' 4.28% fuq din il-polza, ngħid li iva imma dan huwa l-minimu.

Mistoqsi kif ngħid li dawn il-figuri ġew iggarantiti lili meta ħdejjhom fuq il-quotations hemm il-kelma 'estimated', ngħid meta qed tgħid 'estimated', jiena nifhimha kieku tmur €5,000 varjazzjoni inqas – għax aktar mhux ser tmur. Kieku l-kumpanija għamlet aktar qligħ, mhijiex ser tagħtini iżjed milli jiena għandi miktub. Jiġifieri jiena inqas nista' nieħu.

Meta jkollok stima, tippretendi li tmur €5,000/€10,000 imma mhux aktar min nofs!

Ngħid li din li għidt li kieku l-MSV għamlet aktar qligħ ma kinitx ser tagħtini iżjed milli għandi miktub, hija kif naħsibha jiena. Jekk int għandek kwotazzjoni ser jimxilek fuqha.

Mistoqsi jekk il-kelma 'estimated' nifhimha bl-istess mod, jekk hix opinjoni tiegħi, ngħid li meta tmur tixtri oġġett ser titolbu stima u fuq l-istima ser tħallas.

Qed jingħad li minbarra l-element ta' investiment li għandha din il-polza, jien xorta ridt nixtriha minħabba li židt l-Accidental Death Benefit minħabba li kelli xogħol riskjuż; li bħala prodott servietni għal żewġ skopijiet: is-Sum Assured u, over and above, l-Accidental Death Benefit u l-investment. Ngħid li iva.

Qed niġi mistoqsi min kienet din ir-rappreżentanta tal-bank li semmejt għax id-dokumenti, bħall-Proposal Form, iffirmati mis-Sur Bruno Cassar.

Ngħid li Bruno Cassar kien li għamel il-kuntratt.

Mistoqsi naqbilx li Bruno Cassar kien reġa' spjegali, ngħid li iva, reġa' kellimni u spjegali.⁵

Fit-tieni seduta, li saret nhar it-23 ta' Frar 2026, is-Sur Victor Farrugia kkonferma bil-ġurament il-kontenut tar-risposta tal-Fornitur tas-Servizz. Dr Veronica Grixti, li assistiet lill-Fornitur tas-Servizz, informat lill-Arbitru li tkellmu mal-BOV u ġew informati li s-sur Bruno Cassar ilu għal aktar minn għaxar snin ma jaħdem mal-

⁵ P. 76 - 77

bank u m'għadx għandhom id-dettalji tiegħu. Għalhekk, il-Fornitur tas-Servizz ma jistax itella' lis-Sur Cassar bħala xhud.

Għaldaqstant, il-Fornitur tas-Servizz ser joqgħod fuq ir-risposta li kkonferma s-Sur Farrugia.⁶

Fis-sottomissjonijiet finali tiegħu, l-Ilmentatur sostna illi:

'Ngħid li lili qaluli kemm għamilt qligħ matul dawn it-tletin sena meta l-kumpanija qatt ma qalet kemm għamlet qligħ minn fuqi kull sena. Kemm għamilt qligħ jien deher, kemm għamlet qligħ il-kumpanija ma jidher imkien.

Ngħid, pereżempju li l-Borża ta' Malta, fl-2025 għalqet b'5.5. L-MSV dejjem jgħidu li jinvestu barra minn Malta.

F'reklam li għamlu reċenti, jirreklamaw l-istess polza li għamilt jien, fejn jgħidu li 'Il-ħolm ma jintemm qatt'. Ngħid li jien ma kontx qed noħlom dak iż-żmien. Jien kont f'sensija u kont naf x'qed nagħmel. U kont naf x'inhuma jgħiduli.

Ma nafx għalfejn il-logo tagħhom hu 'Il-ħolm ma jintemm qatt'. Jekk hemm xi dubju, ngħid fejn sar ir-reklam ukoll għax sar reċenti.

***Kif qed tgħidu li ċ-ċifri li tajtu lili, waqqajtu l-perċentaġġ, kif qed tgħidu intom, li kellek ma tarax il-vizzjoni ta' Malta, ngħid li kulħadd qed jittallab got-toroq illum. Mhux is-sitwazzjoni li qegħdin fiha. Is-sitwazzjoni li qegħdin fiha turi differenti.'*⁷**

Fis-sottomissjonijiet finali tiegħu, il-Fornitur tas-Servizz tenna illi:

'L-Ilmentatur qed jgħid li wegħdnih il-ħlas tal-Estimated Maturity Value u l-MSV disposta tħallas il-Maturity Value f'€29,664.

Aħna qed nikkontestaw dan għax l-unika wegħda li għamilna hija li nħallsu the greater of the Sum Assured or the Policy Account if any. Il-Policy Account, fil-fatt, eċċeda s-Sum Assured u, għalhekk, aħna lesti li nħallsu aktar mis-Sum Assured.

⁶ P. 78

⁷ P. 78 - 79

Il-claim hija bbazata a fol. 11 li hija l-Quotation li ħarġet mill-MSV minħabba l-obbligu li kellha u li għad għandha l-MSV li toħroġha. Din il-Quotation tiddistingwi bejn x'inhu s-Sum Assured u l-Accidental Death Benefit u Estimated Maturity Value.

Hejtn l-Estimated Maturity Value kien hemm il-kliem 'if any'; aktar jissuggerixxu u jipprovaw li s-Sum Assured huwa li kien garantit u l-estimated ma kienx.

Fil-Quotation hemm parametru, hemm wisa' ta' avarija bejn iż-żewġ Estimated Maturity Values, u l-MSV qatt ma pprovat tqarraq bis-Sinjur għax dik il-Quotation ħarġet abbażi tal-informazzjoni ta' dak iż-żmien, ir-regoli ta' dak iż-żmien, il-market practice ta' dak iż-żmien u mhux biex tħajjar lis-Sinjur imma bir-rati ta' dak iż-żmien.

U d-differenza kienet skont l-andament tas-swieq.

Is-Sinjur ikkonferma li ma riedx jitlef kapital u, għalhekk, ried jinvesti f'xi haġa li għandu safe return u dan huwa ekwivalenti għal savings account. Fil-fatt, ir-rappreżentant tal-BOV illi ta parir lis-Sinjur biex jixtri dan il-prodott, fil-fatt, ingħata parir tajjeb għax kemm il-kapital u kemm il-bonuses kienu garantiti li jithallsu lura. Kien ukoll tax free, mhux bħal kieku ħalla l-flus il-bank u ingħata return ħafna aħjar milli kieku ħalla l-flus reqdin il-bank.

Madankollu, s-Sinjur ikkummenta illi xorta ma kienx ferħan bil-4.28%.

L-Ilmentatur semma l-iStock Exchange u semma' li l-MSV għamlet ħafna aktar profitti milli qed insemmu dwar tiegħu. L-MSV tinvesti u tbiegħ prodotti differenti u l-profitt ma jsirx minn dan l-isteam biss imma minn prodotti differenti, jigifieri aħna qed nitkellmu li mix-xogħol kollu li tagħmel l-MSV, dan huwa parti żgħira minnu minn fejn tagħmel il-profitti.

Ma tistax tikkompara investimenti oħra bħall-Borża li semma s-Sinjur għax dan kien long term, għal ħamsa u għoxrin sena, u inti ma jistax ikollok foresight għal ħamsa u għoxrin sena li inti tiggarrantixxi bil-5.5%, eċċ. Kien estimated li nħadem sena għal sena skont kif imorru l-investimenti.

Il-kredibilità tax-xhud tixtieq tiġi kkontestata minħabba li fl-ilment qal li jekk iħallas daqshekk premium, qalulu illi jieħu Lm33,624, u fix-xhieda qal ukoll li żguratu, però, fil-kontroezami qal:

‘Mistoqsi niftakarx kelma b’kelma dak li spjegatli, ngħid din kienet tletin sena ilu!’

Jiġifieri nifhmu li s-Sinjur ma jiftakarx kelma b’kelma allura mhux qiegħed fil kuntest kollu ta’ li ntqal lilu.

Meta ġie mistoqsi dwar il-kelma ‘estimated’, fil-fatt, imbagħad, mexa lil hemm minn ‘żguratni’ u mill-wegħda, u mar għal li jippretendi li stima tmur €5,000/€10,000 imma mhux aktar min-nofs.

U qal ukoll li din kienet opinjoni tiegħu.

Ingħad ukoll li ingħatatlu spjegazzjoni. U rrizulta xorta li l-Ilmentatur ried jixtriha għax minbarra l-Life Cover, ried jixtriha għall-Accidental Death Benefit u, għalhekk, serviet għal żewġ skopijiet.’⁸

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.⁹

Il-punt kruċjali f’dan l-ilment jikkonċerna l-ammont offrut lill-Ilmentatur mal-maturità tal-polza, liema ammont ivarja minn dak li kien allegatament miftiehem, u li kien fattur ewlieni li wasslu jixtri l-polza mertu tal-każ odjern.

L-Arbitru jrid jara l-waqt li kienet qed tinbiegħ il-polza lmentata; x’ġie mwiegħed lill-Ilmentatur u x’eventwalment ġie offrut mal-maturità. Jeħtieġ li jara wkoll kif sar il-bejgħ tal-polza u, fuq kollox, jekk dan laħaqx *‘l-aspettattivi raġonevoli u*

⁸ P. 79 - 80

⁹ Att dwar l-Arbitru għas-Servizzi Finanzjarji, Kapitolu 555 tal-Liġijiet ta’ Malta, Artikolu 19(3)(b).

*legittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment'.*¹⁰

Hawn l-Arbitru għandu sitwazzjoni fejn, fir-rigward tal-mod kif sar il-bejgħ tal-polza in kwistjoni, għandu biss f'idejh il-verżjoni tal-Ilmentatur minħabba li r-rappreżentant li kien biegħ il-polza lill-Ilmentatur ma setax jiġi kkuntattjat biex jixhed. Għalhekk, huwa iktar diffiċli għall-Arbitru biex jasal għal konklużjoni jekk kienx hemm xi forma ta' memorja selettiva mill-Ilmentatur jew jekk dan huwiex każ ta' *misselling* min-naħa tal-Fornitur tas-Servizz.

L-Ilmentatur jistqarr li meta kien mar għand il-BOV kien għamel appuntament għal aktar tagħrif dwar dan it-tip ta' investiment. Hu jiftakar li:

*'Dakinhar din it-tfajla żguratni li jekk ser nintrabat għal tletin sena u nħallas l-ammont mitlub għal dawn it-tletin sena, jiena kont ser nieħu bis-7.5%. Fil-fatt, tawni l-istima b'kemm kont ser inħallas u kemm kont ser nieħu f'dan il-perjodu ta' tletin sena. Hi stess ikkwotatli fuq l-istima kemm ser nieħu. Dak iż-żmien l-ammont kien ta' Lm33,000 li illum hu ekwivalenti għal €78,000.'*¹¹

Jiftakar li kien mar darbtejn; darba fejn dam madwar nofs siegħa jew tliet kwarti biex spjegawlu u tawh il-kwotazzjoni u darb'oħra biex jiffirma l-karti. Għalkemm ma jiftakarx kelma b'kelma, jidher konvint li l-Fornitur tas-Servizz kien wiegħdu somma partikolari.

Barra minn hekk, l-Ilmentatur kien konxju tal-fatt li l-polza kienet tinkludi l-element ta' kopertura fuq il-ħajja.¹² L-Ilmentatur ammetta wkoll li kien *'konxju li qed nagħmel investiment'*¹³ u kellu ċans jaqra d-dokumenti wara l-ewwel laqgħa. Meta taħt kontroezami ġie mistoqsi *'jekk ridtx nagħmel investiment mingħajr riskju li jintilef il-kapital, ngħid u żgur!'*¹⁴

L-Arbitru m'għandux iktar informazzjoni dwar x'intqal eżattament waqt il-laqgħa bejn l-Ilmentatur u r-rappreżentanta tal-Fornitur tas-Servizz, u x'informazzjoni

¹⁰ Ibid Artikolu 19(3)(c).

¹¹ P. 75

¹² P. 77

¹³ P. 76

¹⁴ P. 77

ngħatat, iżda huwa evidenti li l-aspettattivi tal-Ilmentatur kienu tali u dawn ma ġewx milfuqa.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fis-sena 1995, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal tletin sena sħaħ. Anke persuna mhux tant intiza fil-finanzi tifhem li mhux f'loku tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal tletin sena partikolarment għax dan ma kienx xi *lump sum investment* li seta' jiġi investit mill-ewwel biex jorbot ir-rati tal-imgħax għal żmien twil. Dan apparti li dak iż-żmien, *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

Apparti min hekk, fix-xhieda tiegħu l-Ilmentatur qal:

'Meta jkollok stima, tippretendi li tmur €5,000/€10,000 imma mhux aktar min nofs!'

Dan idgħajjed l-argument tal-Ilmentatur li kien ġie mwiegħed li żgur ser jieħu s-somma li qed jitlob fl-ilment. Huwa raġonevoli li jkun hemm aspettativa li stima li tingħata għal affarijiet li jkollhom terminu qasir tvarja b'mod limitat. Iżda stima għal tletin sena ma tidholx fl-istess parametri raġonevoli għax fi żmien daqshekk twil huwa ovvju li l-affarijiet ivarjaw u ħadd ma jista' jbassar kif ser jiżviluppaw l-affarijiet fuq medda daqstant twila.

Mid-dokumenti li ngħata l-Ilmentatur huwa ċar li ma kien hemm xejn imwiegħed ħlief is-*Sum Assured* jew il-*Policy Account*. L-Arbitru jifhem li polza bħal din ilmentata taħdem hekk kif spjegat mill-Fornitur tas-Servizz fit-twegiba tiegħu għall-ilment¹⁵ u mhu fl-ebda ħin jiddeciedi mod ieħor.

Iżda min-naħa l-oħra, iħoss li l-Fornitur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u minflok waħda messu ħareġ *spectrum* ta' kwotazzjonijiet maħduma b'rati differenti għax fuq perjodu ta' tletin sena huwa ovvju li xejn ma' jibqa' stabbli.

Fil-fatt, ingħad li wara s-sena 2000, bdew joħroġu tliet kwotazzjonijiet u mhux waħda, u dan jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal tletin sena.

¹⁵ P. 68 - 72

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

Kumpens

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

L-aspettattivi tiegħu kienu li mal-maturità tal-polza kien ser jirċievi s-somma ta' €78,322.94¹⁶ li, però, fid-data tal-maturità ġie offrut ferm inqas. Iżda lanqas ma jista' jingħad li l-aspettattivi tal-Ilmentatur kienu kompletament legittimi.

L-Arbitru jrid jasal għal kumpens 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 sal-aħħar minħabba li hemm diversi fatturi li jridu jiġu kkunisdinati.

Minkejja li l-ammont offrut lill-Ilmentatur mal-għeluq tal-polza ma kienx viċin dak oriġinarjament stmat lilu, l-Ilmentatur ma pprezenta l-ebda prova li dak iż-żmien hu kellu xi għażliet oħrajn ta' investiment jew tfaddil u li minnhom seta' jkollu ritorn daqs jew iktar minn dak ikkwotat. Għalhekk, l-ebda prova ta' *opportunity loss* ma ġiet ipprezentata.

Kif ukoll, permezz ta' din il-polza, l-Ilmentatur żgur li ma kellu xejn x'jitlef għaliex apparti l-benefiċċju ta' kopertura fuq ħajtu li beda mill-ewwel ġurnata tal-polza, l-Ilmentatur kellu ċ-ċans li jikkontribwixxi għat-tfaddil permezz ta' din l-istess polza billi jhallas ammont żgħir kull sena għal tletin sena.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' 4.28%,¹⁷ u gwadann ta' €13,417 mhuwiex wieħed ħażin fid-dawl taċ-ċirkostanzi kollha. Dan għandu wkoll jiġi kkunisdinat fi sfond fejn il-kapital tal-investiment kien sostanzjalment garantit, u l-Ilmentatur stess ammetta li ma xtaqx ir-riskju li jitlef il-kapital.¹⁸

¹⁶ p. 2

¹⁷ p. 70

¹⁸ p. 77

Meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għad-deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentatur, u jiddeċiedi li s-somma xierqa li għandha tingħatalu bħala kumpens hija dik ta' **€4,450**.

Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lilMAPFRE MSV Life p.l.c. tħallas lill-Ilmentatur is-somma ta' erbat elef, erba' mija u ħamsin ewro (€4,450) b'żieda mas-somma diġà offruta, cioè, ta' €29,664.51 (u għalhekk, iħallsu s-somma kumplessiva ta' €34,114.51 (erba' u tletin elf, mija u erbatax-il ewro punt ħamsa wieħed).

Bl-imgħax ta' 2.15%¹⁹ minn ħamest ijiem tax-xogħol wara d-data ta' din id-deċiżjoni sad-data tal-ħlas effettiv.

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

Alfred Mifsud

Arbitru għas-Servizzi Finanzjarji

Nota ta' Informazzjoni relatata mad-Deciżjoni tal-Arbitru

Dritt ta' Appell

Id-Deciżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deciżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deciżjoni skont l-Artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt l-Artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografici jew żbalji simili mitluba skont l-

¹⁹ Rata kurrenti MRO (*Main Refinancing Operations*) tal-Bank Ċentrali Ewropew.

Artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien ħmistax (15)-il għurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

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

L-Ispejjeż tal-Proċeduri

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

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

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

L-Arbitru jistenna iżda li tali tariffi u spejjeż għandhom jirriflettu t-tariffi u spejjeż hekk kif stipulati u applikabbli għal proċeduri magħmula fil-Qorti Ċivili ta' Malta fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (Kap. 12).