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IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

[2019] EWHC 1778 (Ch)



No. CR-2018-008807

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Wednesday, 12 June 2019

Before:

SIR GEOFFREY VOS, CHANCELLOR OF THE HIGH COURT

B E T W E E N :

ZURICH ASSURANCE LTD

Applicant

- and -

SCOTTISH WIDOWS LTD

Respondent

\_\_\_\_\_  
MR M. MOORE QC (instructed by Pinsent Masons) appeared on behalf of the Applicant and the Respondent.  
  
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J U D G M E N T

SIR GEOFFREY VOS, CHANCELLOR OF THE HIGH COURT:

INTRODUCTION

- 1 This is an application for an order under s. 111(1) of FSMA 2000 sanctioning an insurance business transfer scheme which will effect the transfer of the large majority of Zurich Assurance Limited's (ZAL) workplace pensions and savings business to Scottish Widows Limited (SWL). The applicants also seek ancillary orders under s. 112 of FSMA 2000. There are some 287,034 transferring policies, which include policies of various kinds, with an aggregate value of unit funds amounting to some £18.2 billion as at 31 December 2018.
- 2 The Financial Conduct Authority and the Prudential Regulatory Authority have both confirmed that the scheme proposed is within the range of reasonable and fair schemes available to the parties to it. Neither regulator objects to the scheme and, indeed, neither has appeared by counsel before me, although I am told that they both are in court represented by observers.
- 3 In his three reports, Mr John L McKenzie of Hymans Robertson, the independent expert who has been appointed under s. 109 of FSMA, has concluded that the scheme will not have a material adverse impact on the security of the benefits of the transferred policies or SWL's existing policyholders, and that the scheme will have no impact on the security of the benefits of the excluded policies. I refer, without reading, to the conclusions at paras. 2.92-2.96 of the independent expert's main report and to the details contained in both his supplemental and updated reports, each of which I have read with care. The scheme will have the effect of increasing slightly ZAL's solvency capital requirement coverage ratio from some 137 per cent to 140 per cent and will have the effect of reducing slightly SWL's solvency capital requirement coverage ratio from some 145 per cent to some 140 per cent.
- 4 There are a number of notable features of the scheme which I will mention, but I do not intend to set out a summary of the scheme itself, which is seen from the documentation circulated to policyholders both in full and in summary. The four notable features which need mentioning here are, first, that the accrued mis-selling and mis-administration liabilities, if any, that have accrued in relation to the activities of ZAL will, under the scheme, remain with ZAL and as liabilities of ZAL.
- 5 Secondly, SWL intends not in the future to use a payment agent for payments from policyholders as ZAL did, so that will amount to a type of change in the policy machinery.
- 6 Thirdly, and perhaps most importantly for the purposes of today, there is intended under the scheme to be a trading suspension period to take place at the moment between 25 June and 3 July 2019, a period of about a week, as part of the transfer undertaken by the scheme. I have seen a great deal of material relating to the trading suspension period and the need for it. It appears, to cut a long story short, that the regulators and the independent expert both see and understand the need for such a suspension actually in order to protect policyholders from errors and omissions that might be caused if the transfer took place whilst trading was underway or, as it is called, in flight or transactions were in flight.
- 7 The fourth notable feature is that participation of policyholders in Jersey and Guernsey - of whom there are some, but not a huge number - will be dependent on the approval of the courts of those jurisdictions, which it is intended to seek at hearings fixed, as I understand it, for 20 and 21 June 2019 respectively.

## PROCEDURAL HISTORY

- 8 In October 2017, it was announced that ZAL would be transferring its workplace pensions business to SWL and a business transfer agreement was entered into. On 3 April 2018, ZAL's master trust and retirement saver workplace pensions and savings business moved in one sense to SWL, in that the corporate savings platform was acquired by SWL and administration of the transferring policies was then outsourced to SWL.
- 9 These proceedings were then initiated after consultation, as is usual, with the regulators, and on 15 February 2019 ICCJ Jones gave directions as to the advertising and communication of the scheme, dispensing formally with giving notice to each policyholder. That did not, in fact, mean that the policyholders were not notified because, as it appears, some 385,900 policyholder packs were sent out. That number, it will be observed, is significantly greater than the 287,034 transferring policies because, as Mr Moore has explained, in many cases there is a trustee as policyholder but with a number of members who are not themselves policyholders but who were communicated with, so that they could comment on the scheme if they chose to do so.
- 10 The effective date of the scheme is intended to be 1 July 2019, if the scheme is approved. It will be observed that that date is in the midst of the trading suspension period. In fact, I am told, that the trading suspension period will become irreversible in the sense that there will be a point of no return on the Saturday morning and, provided that things go well up to that stage, it is to be hoped that the period will be limited to the one-week suspension ending on 3 July that I have already mentioned.

## COMMUNICATIONS AND OBJECTIONS

- 11 As I have said, 385,900 policyholder packs were sent out. Thereafter, 12 letters, 108 emails, 3,647 telephone communications and 55 other communications were received from policyholders. In the context of a scheme of this large size, that is a relatively small number of communications. Out of those communications or responses, 28 objections were catalogued and 37 expressions of dissatisfaction were catalogued. Again, those are relatively small numbers in the context of a scheme of this size. Moreover, when the case was called on for hearing this afternoon, no objector sought to appear or to make submissions orally to the court to make good any specific objection that had been put forward orally or in writing in response to the policyholder packs and other circulated information.
- 12 There are a number of categories of objection or dissatisfaction that the communications fall into. The FCA's document records nine categories of objection. I do not intend to look at all those because, in reality, they can be distilled into a smaller number. First, concerns have been expressed about the fact that policyholders will be required by the scheme to change their pension provider to SWL or will be required to change their pension provider at all, or that their terms will be changed. As regards the change of terms, that is really a misapprehension, save in respect of the payment method that I have already referred to. As regard the concerns expressed about changing to SWL, that is a reasonable point to make, but, in the circumstances of this case, policyholders would be at liberty, if they did not wish to remain with SWL after the transfer, to change to another provider.
- 13 The second area of concern that is expressed is that policyholders have not been asked or able to consent to the transfer.

- 14 The third area of concern expressed is that ZAL have communicated with policyholders so much as to irritate them by deluging them with information. That might be a point of virtue rather than criticism.
- 15 Then some policyholders have complained that they do not want to have two policies with either SWL or their parent, Lloyds Banking Group, because they might receive less compensation if things went wrong under the Financial Services Compensation Scheme (or FSCS). That also, so Mr Moore submits and I accept, is somewhat of a misapprehension arising from the banking situation since policyholders in this kind of business are fully protected.
- 16 I have looked at these expressions of dissatisfaction and objections in some detail. I have also read with care what has been said about them by the independent expert and by the Financial Conduct Authority. It seems to me that none of these objections raises matters of great concern as to the fairness and appropriateness of the scheme, but I shall return to that aspect in a moment.
- 17 I turn then to the law.

#### THE APPLICABLE LAW

- 18 Section 111 of FSMA provides in material part as follows,
- “(1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme ...
- (2) The court must be satisfied that:
- (a) ... the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12); ...
- (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).”
- (3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.”

- 19 I summarised the authorities applicable to insurance business transfers in *Re Barclays Bank plc* [2018] EWHC 472 (Ch) at paras. 37-41. I do not intend to go through those authorities again. As Mr Moore has submitted, the principles were summarised accurately by Evans-Lombe J in *Re AXA Equity and Law* [2001] 1 All ER Comm 1010 and were then additionally and helpfully referred to with further explanation in *Royal Sun Alliance Insurance plc* by David Richards J, as he then was, at [2008] EWHC 3436 (Ch) at paras. 5-11 inclusive.
- 20 As the court has repeatedly emphasised and I emphasise today, it does not act in any sense as a rubber stamp and it must be satisfied that in all the circumstances of the case it is appropriate to sanction the scheme. That is an exercise that takes time and care, the time and care of the judge informed by the time and care of the regulators and of the independent expert. I am grateful to all those people for their assistance in preparing detailed and helpful reports in this case, which I have read.

## THE CONDITIONS FOR SANCTIONING OF THE SCHEME

- 21 It is clear that SWL has the necessary authorisation to carry on the business transferred to it under the proposed scheme, as is required under s.111(2)(b) of FSMA. The PRA has so confirmed, so that condition precedent is satisfied. Moreover, I am told that all the appropriate certificates have been obtained under sch. 12 of FSMA. In reality, however, in this case the only appropriate certificate is that from the PRA confirming that SWL will, taking the proposed transfer into account, have the necessary margin of solvency.
- 22 As I have already indicated, the PRA has stated that it is not aware of any issues that would cause it to object to the scheme and the FCA has said that the scheme is within the range of reasonable and fair schemes available to the parties to it.

## DISCUSSION

- 23 In the light of the background information to which I have already referred in this judgment and in the light of the detailed contents of the three reports of the independent expert and the documentation emanating from the FCA and the PRA, I have to consider the statutory test, namely whether it is appropriate in all the circumstances of this case for the court to approve this scheme. In order to make that decision, I have to ask myself a number of questions, including whether the scheme gives effect to a reasonable commercial objective; whether the scheme is likely to have a material adverse effect on policyholders; whether the regulators have objected to the scheme; whether the independent expert objects to the scheme; whether the scheme has been fully explained to policyholders in accordance with the court's order; whether any objections have been raised that provide proper grounds for a refusal to sanction the scheme; whether all the statutory pre-conditions for sanction have been met; and whether the court both has jurisdiction under s. 112 to make the ancillary orders that are sought and whether those orders are necessary to secure under s. 112 that the scheme is fully and effectively carried out.
- 24 I have asked all those questions and I come to the conclusion, clearly, on the evidence that is before me and on the basis of the helpful submissions from Mr Moore acting for ZAL and SWL, that the scheme certainly does give effect to a reasonable commercial objective; that it is not likely to have a material adverse effect on policyholders. In that respect I refer to the detailed report of the independent expert. I conclude, as is clear from what I have already said, that neither the regulators nor the independent expert object to the scheme. I conclude that the scheme has indeed been fully explained to policyholders in accordance with the order of the court. I conclude that no objections have been raised that provide proper grounds for a refusal to sanction the scheme, and I conclude that all the statutory pre-conditions for sanction have been met and the court has jurisdiction to make the ancillary orders sought in the draft order under s. 112. It is, I am satisfied, necessary to make those orders to secure that the scheme is fully and effectively carried out.

## CONCLUSIONS

- 25 In those circumstances, having taken care to read the papers that have been put before me and consider the opinions, as I say, of the regulators and of the independent expert, I have decided that the scheme should be sanctioned and I duly sanction it.
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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge