Neutral Citation Number: [2020] EWHC 2299 (Ch)

Case No: **CR-2018-007713**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES LIST (ChD)

7 Rolls Building

London EC4A 1NL

Date: 20 August 2020

IN THE MATTER OF LEGAL AND GENERAL ASSURANCE SOCIETY LIMITED

- and -

IN THE MATTER OF REASSURE LIMITED

- and -

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

Before:

THE HONOURABLE MR JUSTICE ZACAROLI

Martin Moore QC (instructed by **Slaughter and May** for Legal and General Assurance Society Limited (the Transferor), and instructed by **Herbert Smith Freehills LLP** for ReAssure Limited (the Transferee))
Theodor van Sante (instructed by the **Financial Conduct Authority**)
Tom Weitzman QC (instructed by the **Prudential Regulation Authority**)
The following policyholders appeared in person: Mr John Gorrod, Mrs Susan Mulholland, Dr Kerry Platman, Ms Tamara Schillinger, Mr Joseph Sebastian, Mr Eugene Nathan, Mr Martin Smith (speaking on behalf of Mrs Anne Smith), Mr James Mallon, Mr MK Tarling, Mr Howard Phillips, Mr Keith Saxby and Mr Kevin Francis

Hearing dates: 10, 11, 12 March and 13, 14 August 2020

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APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....
MR JUSTICE ZACAROLI

Mr Justice Zacaroli:

1. This is an application to sanction a scheme (the "Scheme") under Part VII of the Financial Services and Markets Act 2000 ("FSMA") for the transfer of insurance business from Legal and General Assurance Society Limited ("LGAS") to ReAssure Limited ("ReAssure").

2. LGAS was founded in 1836. It is the main UK regulated insurance subsidiary of Legal & General Group Plc ("L&G") and is part of the Legal & General group of companies ("L&G Group"). It is authorised by the Prudential Regulation Authority ("PRA") and regulated by the Financial Conduct Authority ("FCA"). As at 31 December 2019, LGAS had assets (net of current liabilities and deferred tax) of £148.8 billion, own funds of £10.7 billion and excess funds of £4.1 billion.

3. Following a strategic decision to transition its business away from "mature" savings products towards other areas including new non-profit annuities, insurance contracts and workplace investment products and services, LGAS decided, in 2017, to dispose of its traditional insurance-based savings, pensions, life and with-profits business (the "Transferring Business"). The Transferring Business has been closed to new business and in run-off since 2015.

4. After considering proposals from a number of bidders, ReAssure was identified as the company best placed to receive the Transferring Business, because of its specialism in acquiring and consolidating similar books of business.

5. On 6 December 2017 LGAS and ReAssure entered into a business transfer agreement ("BTA"), for the transfer of the Transferring Business. The BTA provides that the transfer will take effect, subject to the approval of the court, by way of the Scheme.

6. At the same time, LGAS and ReAssure entered into a risk transfer agreement ("RTA"), a reinsurance agreement which effected the transfer of the risk and reward associated with the Transferring Business to ReAssure with effect from 1 January 2018. An advance claim amount of £650 million was paid by ReAssure to LGAS under the RTA.

7. LGAS' essential commercial rationale for entering into the Scheme is, having made the strategic decision referred to above, to enable it to pursue its objective of concentrating its resources on its core businesses, taking into account in particular the following factors:

    i) Administering the Transferring Business as a "closed book" presents certain risks, both to LGAS and its policyholders, such as diseconomies of scale and other inefficiencies that increase as the book reduces in size.

    ii) In the case of the ring-fenced with-profits fund, whose asset pool and any profits generated thereon are segregated from the rest of LGAS'

business, this results in the with-profits policyholders facing the particular risk that, as the business shrinks, the per-policy costs increase and it becomes increasingly difficult to distribute surplus fairly across generations of policyholders (known as the "tontine" effect).

iii) The demands on the firm's management and resources relative to the size of the with-profits fund are also at risk of becoming disproportionate. This would have a corresponding impact on LGAS' other policyholders, as the focus, investment and resources required cannot be channelled into other core business areas.

iv) The administration of the Transferring Business depends on a number of legacy IT systems which would become progressively less efficient and more expensive to maintain. The Scheme would enable the decommissioning of two of four major administration systems, two other core systems and a very significant number of more peripheral, smaller systems.

8. The Transferring Business, on the other hand, is compatible with ReAssure's own business model. ReAssure was incorporated in 1963, although it was then called Occidental Life Insurance Company Limited. Since then it has developed a business of acquiring and integrating closed life and pensions businesses, having to date completed 21 such acquisitions. It was acquired by the Swiss Re group in 2004.

9. As at 31 December 2019, ReAssure had assets (net of current liabilities and deferred tax) of £40.9 billion, restricted own funds of £4.9 billion, and excess own funds of £2 billion.

10. On 6 December 2019 Phoenix Group Holdings plc ("Phoenix") announced its intention to acquire ReAssure Group plc ("RGP"). This was subsequently approved by the PRA, with a legal completion date of 22 July 2020. The Phoenix group, with £248 billion of funds under management, also specialises in the acquisition and management of closed life insurance and pension funds.

11. Accordingly, ReAssure is better placed than LGAS to devote its resources to managing the Transferring Business (as it is exactly aligned with its core business strategy) and is able to take advantage of economies of scale in the administration of that business.

12. While the Scheme is undoubtedly to the commercial advantage of both LGAS and ReAssure, the following significant benefits for policyholders of the Transferring Business have been identified. First, they will benefit by being administered by a company whose strategy is concentrated on administering closed books of business. Second, they will benefit from ReAssure's ability to take advantage of economies of scale. This is to be manifested, so far as the with-profits policyholders are concerned, in a fixed fees expenses agreement which will provide certainty and, over the life of the fund, is expected to result in significant costs savings. I refer to this agreement in more detail below. Third, whereas LGAS has only one with-profits fund, so there is no possibility

of merger with another fund as the with-profits fund diminishes in size, the Scheme will permit merger with other ReAssure funds should it be no longer economically viable to run the LGAS with-profits fund on a stand-alone basis. This will enable the with-profits fund to avoid the "tontine" effect referred to above. Fourth, and reflecting the different priorities of LGAS and ReAssure, policyholders will benefit from the investment ReAssure is making, and will make in the future, in IT systems.

13. The hearing of the application to sanction the Scheme originally took place over three days on 10 to 12 March 2020 (the "March hearing"). A number of objectors (as I describe in detail below) appeared to make representations in opposition to the application. In the days following the hearing I received further submissions in writing from certain of the objectors, further update reports from the independent expert and submissions from counsel for the applicants. A particular focus of these was the potential impact on the Scheme of the Covid-19 pandemic which was then (in the UK at least) in its early stages.

14. In the evening of 23 March 2020 the government announced a lock-down across the whole of the UK. The following evening I received an application from the companies to adjourn the application on the grounds of the operational challenges that Covid-19 presented to the successful migration of the business. I granted an adjournment for reasons set out in a short judgment dated 30 March 2020: see [2020] EWHC 756 (Ch).

15. The resumed hearing of the application took place on 13 and 14 August 2020 (the "August hearing"). In view of the number of people that were likely to want to attend the hearing, the social distancing measures (and potential travel difficulties) still in place in light of the pandemic meant that it was impossible to hold the hearing in a courtroom. Accordingly, it was held remotely, by way of a Skype for Business video conference.

<u>The legal framework</u>

16. Section 111 of FSMA provides 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."

17. The principles which guide the court in the exercise of its discretion under section 111(3) have been explained in a series of previous decisions.

18. In *London Life Association Limited* (unreported, 21st February 1989), a decision concerning the transfer of long-term insurance business, Hoffmann J said:

> "In the end the question is whether the scheme as a whole is fair as between the interests of the different classes of persons affected. But the court does not have to be satisfied that no better scheme could have been devised … I am therefore not concerned with whether, by further negotiation, the scheme might be improved, but with whether, taken as a whole, the scheme before the court is unfair to any person or class of persons affected.
>
> In providing the court with material upon which to decide this question, the Act assigns important roles to the independent actuary and the Secretary of State. A report from the former is expressly required and the latter is given a right to be heard on the petition. The question of whether the policyholders would be adversely affected by the scheme is largely actuarial and involves a comparison of their security and reasonable expectations without the scheme with what it would be if the scheme were implemented. I do not say that these are the only considerations, but they are obviously very important. The Secretary of State, by virtue of his regulatory powers, can also be expected to have the necessary material to express an informed opinion on whether policyholders are likely to be adversely affected."

19. In *Axa Equity & Law Life Assurance Society plc* [2001] 1 All ER (Comm) 1010, Evans-Lombe J referred to Hoffmann J's judgment and summarised eight principles governing the approach of the court to applications for the sanction of transfers of long-term business. The eight principles which he derived from that decision are as follows:

> "(1) The 1982 Act confers an absolute discretion on the Court whether or not to sanction a scheme but this is a discretion which must be exercised by giving due recognition to the commercial judgment entrusted by the Company's constitution to its directors.
>
> (2) The Court is concerned whether a policyholder, employee or other interested person or any group of them will be adversely affected by the scheme.

> (3) This is primarily a matter of actuarial judgment involving a comparison of the security and reasonable expectations of policyholders without the scheme with what would be the result if the scheme were implemented. For the purpose of this comparison the 1982 Act assigns an important role to the Independent Actuary to whose report the Court will give close attention.
>
> (4) The FSA by reason of its regulatory powers can also be expected to have the necessary material and expertise to express an informed opinion on whether policyholders are likely to be adversely affected. Again the Court will pay close attention to any views expressed by the FSA.
>
> (5) That individual policyholders or groups of policyholders may be adversely affected does not mean that the scheme has to be rejected by the Court. The fundamental question is whether the scheme as a whole is fair as between the interests of the different classes of persons affected.
>
> (6) It is not the function of the Court to produce what, in its view, is the best possible scheme. As between different schemes, all of which the Court may deem fair, it is the Company's directors' choice which to pursue.
>
> (7) Under the same principle the details of the scheme are not a matter for the Court provided that the scheme as a whole is found to be fair. Thus the Court will not amend the scheme because it thinks that individual provisions could be improved upon.
>
> (8) It seems to me to follow from the above and in particular paragraphs (2) (3) and (5) that the Court, in arriving at its conclusion, should first determine what the contractual rights and reasonable expectations of policyholders were before the scheme was promulgated and then compare those with the likely result on the rights and expectations of policyholders if the scheme is put into effect."

20. In *Re Royal & Sun Alliance Insurance plc* [2008] EWHC 3436 (Ch) David Richards J, having referred to the above authorities, said (at [11]):

> "The word "material" is important. The Court is not concerned to address theoretical risks. It might be said that a transfer of business from a very large company to a large company involved a reduction in the cover available to the transferring policyholders, but assuming that the transferee is in a financially strong position it matters not that the level of cover in the transferee is less than that in the transferor. What the court is concerned to address is the prospect of real, as opposed to fanciful, risks to the position of policyholders."

21. The fact that the transferor's purpose in putting forward a scheme is to provide commercial benefits to it (for example through a corporate rationalisation to simplify its capital structure) does not preclude the court sanctioning the scheme provided it does not materially disadvantage any policyholder: see *Re Norwich Union Linked Life Assurance Limited* [2004] EWHC 2802 (Ch), per Lindsay J at [17].

22. The importance of the independent expert report has been stressed in a number of cases. In *Eagle Star Insurance Co Ltd* [2006] EWHC 1850 (Ch), Pumfrey J noted the special role played by the independent expert in cases such as this. Addressing, specifically, the circumstances in which the court might permit a challenge to be made to an expert's conclusions and a further expert to be instructed, he said (at [13]):

> "Where it seems that the independent expert has identified the possible problems with a particular scheme and has, on what appear to be satisfactory grounds, rejected them, it seems to me that rather more than the normal requirement to give the opponent an opportunity to impugn the report is required before permitting that opponent either to see the independent expert's detailed workings or to instruct a further expert. It seems to me that there must be strong grounds for supposing that the independent expert has mistaken his function or made an error before a challenge to the report can be mounted."

23. In the *Royal & Sun Alliance* case (above), David Richards J approved the following statement in counsel's skeleton (at [6]):

> "…the court will expect a critical evaluation of the financial strength of all the companies concerned and the security enjoyed by policyholders of the transferors and transferees before and after the scheme."

24. Nevertheless, as pointed out by Briggs J in *Re Pearl Assurance (Unit Linked Pensions) Limited* [2006] EWHC 2291 (Ch), at [6], "the discretion remains nonetheless one of real importance, not to be exercised in any sense by way of rubber stamp". Rimer J, in *Re Hill Samuel Life Assurance Limited* [1998] 3 All ER 176, at 177, said:

> "Ultimately what the court is concerned with is whether the scheme is fair as between different classes of affected persons, and in arriving at a conclusion as to whether or not it is, amongst the most important material before the court is material which the Act requires to be before it, namely the report of an independent actuary as to his opinion on the scheme."

The Transfer in outline

25. The Scheme involves the transfer of approximately 900,000 policies and assets valued (as at 31 December 2019) at approximately £30 billion. The Transferring Business includes various pension products, with-profits business, with-profits annuities and related non-profit annuities, unit-linked insurance products (including protection products) and conventional non-profit products, and approximately 7,000 self-invested personal pensions ("SIPPs").

26. If the Scheme were to be implemented, on the legal effective date the assets and liabilities associated with the Transferring Business would be transferred from LGAS to ReAssure. Specifically: (i) all of the business of the LGAS with-profits fund would be transferred to a newly created ring-fenced fund within ReAssure (the "LGWPF"); and (ii) the transferring LGAS unit-linked and non-profit business outside the LGAS with-profits fund would be transferred to the ReAssure non-profit fund.

27. The investment management services in respect of the Transferred Business will remain with Legal & General Investment Management Limited ("LGIM"), for a minimum period of seven years (provided LGIM maintains requisite standards of management), pursuant to an investment management agreement between LGIM and ReAssure.

28. The transfer of the SIPPs gives rise to particular complexities. Although, from the customer's perspective, a SIPP is a single product, its operation involves contractual and trust arrangements between LGAS and other companies in the L&G Group. Unless all of these are successfully transferred to ReAssure, there would be a number of potentially adverse consequences for SIPP members. I will address these complexities and the manner in which it is proposed to deal with them below at paragraphs 189-193.

29. The Transferred Business also includes LGAS's stakeholder pension scheme. This gives rise to a particular complexity arising for the need to ensure that the tax benefits of members are retained. I address this issue below at paragraph 194.

30. The Scheme does not effect any changes to the contractual rights of policyholders within the unit-linked and non-profit business. The Scheme contains, however, certain provisions relating to the management of the LGWPF intended to benefit policyholders.

31. First, the expenses charged for administration services in respect of the LGWPF by ReAssure shall be fixed by reference to the per-policy expenses charged for the 2018 financial year, increasing annually by RPI plus 0.5% (the "Fixed Expense Agreement"). As the fees will be charged on a per-policy basis, this means that as the number of policies declines over the period of the run-off of the LGWPF, the amount of expenses charged to the fund will similarly (in real terms) decline.

32. The independent expert has reviewed the Fixed Expense Agreement. In his most recent supplemental report he has identified four benefits for policyholders within the LGWPF: (1) an immediate reduction to per-policy expenses; (2) a reduced exposure to the expenses of diseconomies of scale; (3) increased certainty in respect of future unit costs; and (4) coverage of one-off additional expenses for new business. He has valued these benefits over the life of the agreement at approximately £90 million.

33. Against this sum, however, must be set the figure of £50 million which is to be paid from the assets of the LGWPF. Provision has already been made within the LGAS with-profits fund for this sum, which would be released upon payment of the fee. This was originally described in the Scheme as a consideration payable "due to the agreed migration costs". If this was an accurate description, then the payment of £50 million would be problematic, first because it is generally inappropriate for the policyholders to bear the costs of the transfer of business pursuant to a scheme and, second, because it would breach the FCA's Conduct of Business Rules 20.1A.10R, which requires a firm to use or apply assets in a with-profits fund solely for the purposes of the business in the with-profits fund.

34. It was explained at the March hearing, however, by reference to the "Project Actaeon With Profits Expense Term Sheet", that the description of the payment of £50 million in the Scheme document was inaccurate. Pursuant to the term sheet, while the £50 million payment from the LGWPF was described as "a contribution towards migration costs of [ReAssure]" it was "in consideration for the other provisions contained in these Terms". The other provisions relate to the Fixed Expense Agreement. Accordingly, although the use to which ReAssure was to put the money was towards payment of migration costs, the payment was the consideration for the obligations of ReAssure under the Fixed Expense Agreement. The Scheme has been amended to correct this mis-description.

35. Importantly, having re-reviewed the Fixed Expense Agreement in his second supplementary report of July 2020, the independent expert is satisfied that it is expected to be of value to the LGWPF even in adverse conditions and would not have a materially adverse effect on the transferring LGWPF policyholders.

36. Second, the Scheme provides for a power to reallocate LGWPF non-participating business from the LGWPF to the ReAssure non-profit fund, to merge the LGWPF into other ReAssure with-profits funds and vice versa (exercisable only once the value of the assets in the LGWPF has fallen below £400m) and the introduction of a "sunset clause" enabling the merger of the LGWPF into the ReAssure non-profit fund and conversion of the with-profits policies into non-profit policies, once the value of the assets in the LGWPF has fallen below £400m. These provisions, which are exercisable only subject to independent review and regulatory oversight, are intended to benefit policyholders by addressing problems which arise as the value of the closed fund diminishes towards the end of its run-off.

The Independent Expert

37. Pursuant to section 109 of FSMA, an application in respect of a business transfer scheme must be accompanied by a report of an independent expert on the terms of the scheme. For this purpose LGAS and ReAssure appointed Mr Oliver Gillespie, a consulting actuary of Milliman LLP and a Fellow of the Institute and Faculty of Actuaries. He has about 25 years' experience in the long-term insurance sector, including acting as independent expert on other Part VII transfers. Mr Gillespie's fees are borne by LGAS and ReAssure.

38. Mr Gillespie's appointment was approved by the PRA after consultation with the FCA. His independence is emphasised and ensured by the provisions of the PRA's statement of policy, the PRA's involvement in the process of nomination and oversight and Mr Gillespie's own understanding of his role and his confirmations of independence in his main report. I address challenges made to Mr Gillespie's independence below, when considering policyholders' objections.

39. Mr Gillespie's main expert report was dated 3 July 2019 (with an addendum dated 12 July 2019). He produced a supplementary report dated 24 February 2020 (with a supplementary addendum dated 6 March 2020) in advance of the March hearing. In response to various matters raised during the March hearing, Mr Gillespie provided three further short reports by way of letter to the court (dated 11 March 2020, 12 March 2020 and 22 March 2020). In advance of the August hearing, he has provided a second supplementary report dated 29 July 2020, updated by a further letter to the court dated 10 August 2020. Finally, in response to questions raised by me during the August hearing, Mr Gillespie provided a further letter to the court dated 17 August 2020.

40. In his reports, Mr Gillespie considers the effects of the Scheme upon the following groups of policyholders: (i) transferring LGAS policyholders; (ii) existing ReAssure policyholders; and (iii) non-transferring LGAS policyholders. In respect of each group of policyholders, Mr Gillespie considers whether the Scheme would have an effect upon the following four key areas:

    i) the security of benefits under the policies, which broadly equates to the financial strength of the firm;

    ii) the profile of risks to which the policies are exposed;

    iii) the reasonable expectations of the policyholders in respect of their benefits; and

    iv) the standards of administration, service, management and governance applied to each group of policies.

41. So far as security of benefits under the policies is concerned, Mr Gillespie points out that a group of policies derives its security of benefits from three sources:

    i) The strength of the calculation used to set the level of assets held to cover the technical provisions and solvency capital requirement ("SCR") of the business under the EU-wide regime known as Solvency II;

    ii) The additional financial strength required by the firm's "risk appetite statement", and the strength of the firm's governance around the risk appetite statement and any future changes to it; and

    iii) Any additional support from outside the firm, including support from its parent and/or wider group.

42. I will address these three sources in turn.

Solvency capital requirements

43. The starting point in the calculation for SCR purposes is the quantification of the firm's "best estimate liabilities", being the present value of future liability cash flows. There is then added to this a "risk margin", calculated by reference to what another insurance undertaking would require in order to take over and meet the insurance obligations on an arms' length basis. The resulting sum is known as the firm's "technical provisions". The SCR, being the amount of capital which a firm is required to hold, is then calculated as the amount required to ensure that the firm's assets exceed its technical provisions over a one-year time frame with a probability of 99.5% (i.e. sufficient to enable it to withstand a 1 in 200 year stress event and remain able to pay its liabilities).

44. The SCR coverage ratio is the product of the firm's own funds divided by the SCR.

45. A firm's risk appetite statement will operate as early warning signals, breach of which will trigger action to strengthen their capital base.

46. In his February 2020 report, Mr Gillespie calculated the impact of the Scheme on the SCR ratio relevant to the affected policyholders, as follows (all figures being as at 30 June 2019):

    i) For the policyholders within the non-profit part of the Transferring Business, LGAS's current SCR ratio was 144% and the estimated SCR ratio of ReAssure (as at the same date on the assumption that the Scheme is sanctioned) was 145%;

    ii) For the policyholders within the with-profits part of the Transferring Business, unsurprisingly given that the with-profits fund is a ring-fenced fund being transferred *en bloc* to ReAssure, the SCR ratio of the with-profits fund pre- and post-Scheme was the same, at 141%;

iii) For LGAS policyholders who are *not* within the Transferring Business, the LGAS SCR ratio was estimated to increase from 144% to 145%;

iv) For existing ReAssure policyholders, ReAssure's SCR ratio was estimated to reduce from 151% to 145%.

47. Given the delay to the hearing, in his July 2020 report, Mr Gillespie revised those calculations so as to present them as at 31 December 2019, as follows:

i) LGAS's current SCR ratio was 163% and the estimated SCR ratio of ReAssure (as at the same date on the assumption that the Scheme is sanctioned) was 162%;

ii) The SCR ratio of the with-profits fund pre-Scheme was 142% and post-Scheme was 144%;

iii) For LGAS policyholders who are *not* within the Transferring Business, the LGAS SCR ratio was estimated to increase from 163% to 164%;

iv) For existing ReAssure policyholders, ReAssure's SCR ratio was estimated to reduce from 168% to 162%.

48. These figures did not account, however, for a dividend of £400 million paid by ReAssure in May 2020. The dividend related to the financial year ended 31 December 2019. If that dividend had been allowed for in the financial information as at 31 December 2019, then:

i) The Transferring Business would have seen a fall in SCR ratio from 163% (pre-Scheme and with LGAS) to 150% (post-Scheme and with ReAssure); and

ii) The existing ReAssure business would have seen a fall in SCR ratio from 154% to 150%.

49. More importantly, in light of the market turmoil that has occurred since the onset of the Covid-19 pandemic the figures as at 31 December 2019 are substantially out of date. It is well-known that the financial markets, generally, were very badly affected when the scale of the pandemic was first appreciated in around March 2020, although there has been improvement since then. This is reflected to some extent in the value of the assets transferring under the Scheme, which dipped from £29.5 billion as at 31 December 2019 to £25.6 billion as at 31 March 2020, but recovered somewhat to £27.4 billion as at 30 June 2020 (although fluctuations in the value of the overall business may reflect other considerations than market movements).

50. Mr Gillespie's July 2020 report, and subsequent letter to the Court dated 10 August 2020, provide an update as at the end of March 2020 and as at the end of June 2020.

51. An important point to note, as Mr Gillespie states in his July 2020 report, is that LGAS and ReAssure have both been exposed to the same considerable volatility in the equity markets, credit spreads and gilt yields resulting from the pandemic. In considering whether to sanction the Scheme, therefore, the focus is not on the impact of Covid-19 on the solvency coverage ratios, generally, but on whether ReAssure has been impacted differently from LGAS such that policyholders would be materially adversely affected by being transferred from LGAS to ReAssure.

52. A good example of this is that there had been a suspension of withdrawals from the Linked Life and Linked Pension property funds of LGAS following the uncertainty in the property market as a result of the pandemic. Mr Gillespie pointed out that it is common practice to suspend withdrawals in this manner in times of uncertainty and that while this is clearly detrimental to policyholders it would have occurred, and had the same effect, whether the relevant funds remained in LGAS or had been transferred to ReAssure.

53. If the Scheme had been implemented as at 31 March 2020, Mr Gillespie concluded that both LGAS and ReAssure would have experienced a similar impact on their solvency coverage ratios as shown by the financial information at the early dates considered in his reports. He concluded:

> "This provides comfort that, if the Scheme were to be implemented, both LGAS and ReAssure would be well capitalised and would comfortably meet the requirements of their respective risk appetite statements and therefore that there is no reason to change the conclusions of my Main Report and my Supplementary Report."

54. In his letter of 10 August 2020, Mr Gillespie reached a similar conclusion, having been provided with finalised pre-Scheme financial information from both LGAS and ReAssure which reflected economic conditions as at 30 June 2020. That information "showed that both LGAS and ReAssure remained financially strong and comfortably above the requirements of their respective risk appetite statements."

55. It was notable that Mr Gillespie's updated reports contained no financial information to demonstrate or support the conclusions he reached. I accept, as Mr Moore QC (who appeared for the applicant companies) submitted, that it is unnecessary for the independent expert to show all of their "workings", and significant comfort can be taken from the fact that both the PRA and the FCA indicated that they had seen the underlying financial information and are content with the independent expert's conclusions based on it. It is the Court, however, that is required to be satisfied that the Scheme will not materially adversely affect the interests of policyholders and, for that purpose, it is essential that it is provided with at least some indication of the level of any potentially adverse impact, in order that it can test the conclusion that it is not material.

56. In light of my questions in this regard, at the August hearing Mr Moore QC provided me with the headline figures for the respective SCR ratios for LGAS and ReAssure. Notwithstanding the extreme market conditions experienced in the first six months of this year, and even taking into account the dividend paid in May 2020, ReAssure's SCR ratio stood at 164% as at 30 June 2020. I was also provided with management's estimate for the capital coverage ratio for LGAS, which stood at 150%. These were subsequently confirmed in Mr Gillespie's letter of 17 August 2020.

57. The one thing that is missing from this analysis is the estimate of the post-Scheme SCR ratio for each of the applicant companies, in light of the short time available between obtaining the requisite financial information for the end of the second quarter and the August hearing. Mr Gillespie noted, however, that at each of the "as at" dates that he had analysed the effect of the Scheme on the SCR ratio of the applicant companies, the effects had been materially consistent. Moreover, since the principal focus of objections to the Scheme, as I describe below, has been on the impact upon the LGAS policyholders on being transferred to ReAssure, the most important metric relates to ReAssure, since that demonstrates the continuing financial strength of the company to whom the policies are to be transferred.

58. Mr Gillespie has also reviewed the projections of solvency, including updated Covid-19 scenario test results. Under a central scenario (that is, neither pessimistic nor optimistic) ReAssure was expected to meet the requirements of its risk appetite statement over a five-year period. In light of actual performance over the first six months of 2020 the central scenario was considered to remain appropriate.

59. The LGAS with-profits fund was particularly badly hit by the market turmoil caused by the Covid-19 pandemic. In his July 2020 report, Mr Gillespie noted that its solvency coverage ratios "reduced significantly" in the first three months of 2020, although this improved during the second quarter. As I have noted above, however, the critical issue to consider is not the impact external events have had on the fund, since it is being transferred *en bloc* to ReAssure and those external events would have the same impact whether the transfer takes place or not. The important issue is whether the Scheme is likely to have a materially detrimental effect on policyholders including in light of those external factors. As to this, Mr Gillespie has noted, first, that as a result of certain refinements and model changes ReAssure intends to implement, the solvency positions for the fund would be slightly higher post-Scheme. More importantly, having taken into account the commitment by ReAssure to manage the fund in a broadly similar way and that similar management actions would be taken to address issues within the fund, he concludes that the Scheme would not have a material adverse effect on the future benefits of the transferring LGAS with profits fund policies.

Risk appetite and governance

60. Mr Gillespie has examined the risk appetite statements of LGAS and ReAssure including, for ReAssure, a revised risk appetite statement which was intended to take account of an initial public offering previously proposed (but not pursued) (the "IPO risk appetite statement").

61. Both companies operate on the basis that the SCR ratio should be maintained at or above a level set out in their respective risk appetite statement. If the SCR Ratio was to fall below that level, then management would be required to take action to restore the SCR ratio to the appropriate level.

62. In his July 2019 report, Mr Gillespie noted that the original ReAssure risk appetite statement might appear to be less strong than the LGAS equivalent, although this was mitigated to an extent by the subsequent adoption by ReAssure of the stronger IPO risk appetite statement. He pointed out, however, that there are many differences as between firms (for example as to the inputs and formulae used) in arriving at their target capital levels, so that apparent differences on the face of the statements may not reflect substantial differences. He also pointed out that as ReAssure is closed to new business, all else being equal one might expect it to have a lower target capital level, because it does not need to finance new business in the way that (for example) LGAS does.

63. Having analysed the risk appetite statements of the two applicant companies in detail, his conclusion is that the Scheme is unlikely to have a material adverse effect in terms of security of benefits for any of the affected groups of policyholders.

64. This is another area where the Court was provided with the expert's conclusions, but without being provided with the information to test whether any difference between the two companies was in LGAS's or in ReAssure's favour or how the conclusion that the difference was not material was justified. This included his conclusion following his analysis of the most up-to-date financial information that Covid-19 had not caused either company to breach any trigger points provided for in their risk appetite statements so as to require management to consider taking action.

65. During the August hearing, Mr Moore QC provided the underlying headline data for each company which provided further support in this regard. An important metric is the lower limit of their respective "green" levels, that is, the point which, if the SCR ratio falls below it, management action would be required. These were described as commercially sensitive in respect of both applicant companies, and there was therefore a reluctance to provide them in a public forum. It seems to me, however, that significant comfort is taken by Mr Gillespie from the fact that notwithstanding the market turmoil as a result of Covid-19, both LGAS's and ReAssure's SCR ratios are comfortably in excess of the level which would trigger management action. The court should therefore have sufficient information, not so as to review the independent expert's "workings", but so as to be able to assess that Mr Gillespie's conclusions in this important respect are soundly based.

66. For LGAS the "green" level is an SCR ratio of 130% or greater. The equivalent SCR Ratio for ReAssure is currently 132%. While being careful not to place too much reliance on headline numbers in comparing LGAS with ReAssure (for the reasons I have already given), I nevertheless draw some comfort from the fact a comparison of the two is not unfavourable to ReAssure and, more importantly, from the fact that ReAssure's most recent SCR ratio is substantially in excess of the level set by its own risk appetite statement.

67. One difference remains, as clarified in the letter provided after the hearing by Mr Gillespie, in that LGAS chooses to manage its business at a higher capital coverage ratio level in order to reduce the risk of falling below the risk appetite statement level in the normal course of its business. As a general proposition, little if any regard is to be paid to the amount of excess own funds held by an insurance company, first, because there is no legal or regulatory requirement that it continues to holds such excess funds and, second, because policyholders are sufficiently protected (for the reasons I have already given) by the regulatory requirement to maintain an SCR ratio of 100%: see, for example, *Re HSBC Life (UK) Limited* [2015] EWHC 2664 (Ch), at [46]-[47] (where Snowden J referred to the comment of Lindsay J in *Norwich Union Life Assurance Limited* [2004] EWHC 2802, at [15] that an insurance company is in general free to dispose of its surplus funds above the regulatory requirement) and *Re Rothesay Assurance Limited* [2016] EWHC 44 (Ch) at [33]-[39] (where Henderson J noted the lack of any principled basis for assessing what is the "right" level of excess capital for a firm to hold).

68. While some policyholders were alarmed at the dividend paid by ReAssure in May 2020, of £400 million, this has to be seen in its proper perspective. The dividend related to 2019. L&G, in relation to the same year, paid a final dividend of £754 million and LGAS declared an interim dividend in respect of the first half of 2020 in the sum of £276 million. The applicant companies have obligations to their shareholders, as well as their policyholders, and the fact that they are operating businesses for their (and their shareholders) commercial benefit cannot be ignored. Moreover, there are multiple safeguards around the declaration and payment of dividends, including the requirements of the Companies Act 2006 as to sufficiency of profits, and those arising from the regulation of these entities by the PRA and FCA.

69. It follows that where (as here) ReAssure operates in accordance with a risk appetite statement that requires it to maintain an SCR ratio in excess of 132% (which compares favourably to that operated by LGAS, taking into account the factors identified by Mr Gillespie including the fact that ReAssure is closed to new business), the fact that it would be free (subject to all other applicable legal requirements surrounding payment of dividends) to pay excess funds held above that level by way of dividend does not imply the conclusion that policyholders would be adversely affected.

70. Mr Gillespie has also reviewed the respective management and governance of the two companies, and concluded that the governance arrangements in place in respect of ReAssure do not represent a material change relative to those in place in respect of LGAS. Concerns were raised, by reason of the recent acquisition of ReAssure by Phoenix, as to whether changes to governance policies in the future might be made which could impact adversely on policyholders. The fact is, however, that any insurance company might in the future change its governance policies. I will deal with issues such as the relative venerability of the two companies (and their respective parent groups) in the context of policyholders' objections, but so far as the safeguards for policyholders surrounding potential governance changes are concerned, I have no reason to question Mr Gillespie's conclusions that the transfer to ReAssure would not materially adversely affect policyholders.

Additional support

71. The third source to consider in respect of security of benefits is any additional support, in particular from a parent company. The extent to which ReAssure's parent group was *likely* to step in to provide support if needed, and the comparison with the likelihood of LGAS's parent group doing the same, was the subject of many of the objections raised against the Scheme. I will deal with the detail of those objections below. For present purposes, I consider only the financial strength of ReAssure's parent and thus its *ability* to provide support if needed.

72. Mr Gillespie's conclusion in his main and first supplemental reports that policyholders would not be adversely affected, in terms of availability of parental support, by the transfer to ReAssure was based on the fact that ReAssure was then part of the Swiss Re group.

73. In his July 2020 report, he addressed the same question taking account of the acquisition of ReAssure by Phoenix. His conclusion that this has not given rise to a material change in this respect is based on the fact that as at 31 December 2019 the Phoenix group had excess own funds of £3.1 billion and an SCR ratio of 161%. As I have noted above, Phoenix has total funds under management of £248 million.

74. I can deal with the next two factors considered by Mr Gillespie (the impact of the Scheme in risk profile and policyholder expectation) relatively briefly. He noted that the implementation of the Scheme would inevitably result in a change to the risk exposures of the policies. Nevertheless, he had regard to the fact that the SCR would reflect the risk exposures of the relevant company and that the capital held in ReAssure comfortably exceeded the required SCR. The independent expert paid particular regard to ReAssure's liquidity risk policy which was updated in light of a review of LGAS' policy and also ReAssure's commitment to maintain the prevailing liquidity management standards for the with-profits business in the medium term. He concluded that he was satisfied that although the implementation of the Scheme would cause a change to the profile of risks to which the policies are exposed, this would not have a material adverse effect on the security of benefits of the relevant policyholders.

75. So far as the reasonable expectations of policyholders are concerned, Mr Gillespie noted that for the vast majority of policyholders, those with non-profit policies, there was to be no change to their terms and conditions. As I have noted above, the Scheme will effect changes in relation to the LGAS with-profits fund. These include the Fixed Expense Agreement, and the related one-off contribution of £50m from the fund, changes to bonus methodology and to the capital management of the with-profits business, provisions for reallocation of non-profit business within the LGAS with-profits fund and for merger of the with-profits fund with existing ReAssure with-profits funds, and the introduction of "sunset" clauses. Having noted the safeguards around these potential changes (including the oversight of the PRA and FCA) he concluded that these aspects of the Scheme would not have a material adverse effect on the reasonable expectations of any of the policyholders in respect of their benefits.

76. The last principal area covered by the independent expert (standards of administration and service levels) requires more consideration, particularly in light of the Covid-19 pandemic. This breaks down into two areas: (i) the risks for policyholders arising from the process of migration of data to ReAssure and (ii) comparative levels of service going forward, as between LGAS and ReAssure.

77. In his reports provided in relation to the March hearing, Mr Gillespie analysed the plans for migration of the Transferring Business onto ReAssure's platforms. This included a review of the development of new customer portals. These plans were monitored closely by the ReAssure Board and the LGAS Board. In his Supplementary Report dated February 2020, Mr Gillespie considered updates on the data migration from ReAssure and the conclusions from two separate reports from KPMG (who were specifically appointed to report on the migration process). He concluded that it was unlikely that the migration would lead to a material adverse effect on policyholders going forward.

78. The risks to policyholders arising from migrating such a large amount of data at the outset of the Covid-19 pandemic was the major factor in the decision by the applicants to pause the process at the end of March 2020 and to request an adjournment of the sanction hearing. In his July 2020 report, Mr Gillespie explains in detail the work that has been carried out within both companies since March in order to ensure a successful migration process.

79. This included a full "end-to-end" migration test at the end of May 2020, testing the ability for the migration to be performed by staff working remotely. (Both firms have taken actions to adapt to the restrictions imposed by the UK government, so that 85% of LGAS staff (as at 2 June 2020) and 90% of ReAssure staff are able to carry out their roles remotely.)

80. In addition, a number of "readiness criteria" (totalling 146) have been identified and these have been (or are to be) tested at three key "readiness gates": 7 July 2020, 31 July 2020 and 21 August 2020. They are assessed against a colour system: blue (meaning the criterion has been met successfully); green (meaning the criterion is in line with expected progress to

be achieved by the proposed target date of 29 August 2020); amber (meaning that the criterion was behind plan and mitigating actions may be needed; and red (the criterion is off-track and there is a high likelihood that the target will be missed). In Mr Gillespie's letter of 10 August 2020, he identified only two criteria that were amber, the remainder being blue or green. Both of the amber criteria were expected to change to green either prior to or at the time of the final readiness gate.

81. Concerns as to ReAssure's service levels are the subject of objection by a number of policyholders, and I address these in more detail below. I record here merely two points. First, Mr Gillespie concluded in his reports relating to the March hearing that there were sufficient controls in place within ReAssure to ensure that there would not be a material adverse effect on the standards of administration, servicing, management and governance. Second, having reviewed the steps taken by the companies (and in particular ReAssure) to address the UK government's restrictions during the pandemic, he is satisfied that his earlier conclusions as to the operational readiness of the firms remain valid.

The involvement of the PRA and FCA

82. The PRA and the FCA have ongoing regulatory functions in relation to both LGAS and ReAssure. In addition, they have statutory functions in relation to the Scheme and typically provide reports for the court. They take on the role previously undertaken by the Secretary of State, as described by Hoffmann J in the passage from the *London Life Association* case cited above.

83. They have each produced three reports regarding the Scheme (including to take account of the circumstances arising since the March hearing). Their reports are prepared from the perspective of their regulatory functions.

84. The PRA has two primary objectives under FSMA: to promote the safety and soundness of the firms they regulate and to contribute to the securing of an appropriate degree of protection for those who are or may become policyholders. In line with its statutory objectives, the PRA's general approach to the evaluation of Part VII insurance business transfer schemes is, in summary, to assess whether the applicants: (i) have appropriate financial resources; (ii) have appropriate resources to measure, monitor and manage risk; (iii) are fit and proper to conduct their business prudently; and (iv) are capable of being effectively supervised by the PRA. The PRA confirmed that it was not aware of any issue that would cause it to object to the Scheme. It does not, however, attach any weight to the venerability of and/or group support available to LGAS and ReAssure, considering those matters to be beyond its regulatory remit. These are issues for me to consider, and I do so in detail elsewhere in this judgment.

85. The FCA's statutory objectives under FSMA include its strategic objective of ensuring that the relevant markets function well, and three operational objectives of protecting consumers, ensuring market integrity, and promoting effective competition. In line with the FCA's general approach to its evaluation of insurance business transfer schemes, the FCA reviewed the

Scheme for conduct issues. The matters the FCA considers and comments on include but are not limited to: the communication plan including any waivers, communications to be sent to policyholders, links to its objectives, business rationale for the Scheme, background regulatory issues, competition considerations, changes affecting policyholders, ongoing regulatory requirements, objections and unresolved issues. The FCA confirmed that the Scheme was within the range of reasonable and fair schemes available to LGAS and ReAssure. Accordingly, the FCA did not object to the Scheme.

86. Each of the PRA and the FCA has considered the objections that have been made to the Scheme by policyholders, and has confirmed that these objections have not caused either of them to change its conclusion in relation to the Scheme.

Objections from policyholders

87. Following the Directions Hearing on 11 July 2019, a communication pack was sent to all transferring LGAS policyholders (approximately 0.7 million policyholders) and a letter was sent to all existing ReAssure policyholders (approximately 1.7 million policyholders). LGAS received approximately 1,159 objections in respect of the Scheme, which is equivalent to less than 0.1% of the overall number of transferring policyholders (and approximately 3.2% of the total number of communications received in response to publicity of the Scheme). ReAssure received approximately 53 objections, which is equivalent to less than 0.01% of the overall number of letters sent to policyholders (and approximately 1% of communications received in response to publicity of the Scheme).

88. Before I consider the objections made in more detail, it is important to record that the court's role in scrutinising the Scheme is just as great where there are (as here) proportionately very few objections as in those cases where there are many. The fact that the vast majority of policyholders have not voiced an objection cannot be considered a significant factor. As one of the objectors, Mrs Mulholland, was keen to stress, the silence of the large majority of policyholders can in no way be equated with their consent. There are many reasons why policyholders who are dissatisfied with the Scheme may nevertheless keep silent. In the *Royal Sun Alliance* case (above), David Richards J at [28] noted:

> "…in a scheme for the transfer of general business where there are large numbers of policyholders whose individual policies, when seen on their own, may have a relatively low value and in circumstances where the issues raised are often (as I have mentioned earlier) highly technical, it should come as no surprise that policyholders do not go into the detail of the information that is provided to them. In most cases, I suspect, they rely on those charged with statutory responsibilities in this respect and on the companies proposing the transfers to have full regard to the protection of their interests and, in my judgment, they are fully entitled to do so."

89. The communications with each policyholder, where that policyholder made a formal objection, have been included in the materials provided to the Court. This included transcripts of telephone calls with the helplines set up by LGAS and ReAssure and emails and letters between policyholders and LGAS/ReAssure. Prior to the start of the March hearing these filled five lever-arch files. Two further lever-arch files were produced at the start of the March hearing, mostly consisting of more recent communications with the same objecting policyholders but also containing communications with a few further objecting policyholders. A further file was provided of communications with objecting policyholders since the March hearing.

90. In addition to these source materials, I have had the benefit of a detailed analysis of the objections (in addition to that contained in the witness evidence filed on behalf of each of the companies) from the PRA, the FCA and the independent expert. While there are many in number, similar themes emerge from most of the objections. I refer in detail below to the manner in which the objections were expressed by certain policyholders. I mean no disrespect to any particular policyholder if I do not refer specifically to them or to the way in which they expressed their objection, but that is because the substance of their point is addressed in responding to a similar objection raised by others. The objections from LGAS policyholders made in advance of the March hearing were helpfully categorised in the second witness statement of Mr Davies (a director of LGAS) as follows:

    i) Concerns about ReAssure, including its reputation, financial standing, experience and the impact of the postponed initial public offering (546 objections - approximately 48% of the total number of objections received);

    ii) Policyholders having specifically chosen LGAS and not wanting to move to a different provider (349 - approximately 30%);

    iii) The transfer's perceived or potential impact on the treatment of the policyholder, including the status of policies and benefits, prices and changes to terms (206 - approximately 18%);

    iv) Non-specific concerns relating to the transfer, or concerns relating to an experience from a previously transferred product (213 - approximately 19%);

    v) Handling of the pre-transfer process, including a lack of early warning or sufficient information (149 - 13%);

    vi) Policy-specific factors, including specific contractual terms, ongoing complaints and transfers out (148 - approximately 13%); and

    vii) The transfer's perceived or potential impact on service levels (47 - approximately 4%).

91. The objections from ReAssure policyholders received prior to the March hearing were categorised in the second witness statement of Mr Cuhls (the chief executive officer of ReAssure) as follows (leaving aside those which are either based on a mistaken assumption by policyholders as to whether they hold transferring policies or relate to matters outside of the Scheme):

    i) Concerns relating to the potential impact on future service levels or performance of ReAssure (18 objections – approximately 21% of the total number of objections received);

    ii) Concerns relating to the potential impact on the policyholder's policy with ReAssure (7 – approximately 8%);

    iii) Concerns at the consolidation of multiple policies into a single provider (4 – approximately 5%);

    iv) Non-specific concerns relating to the transfer (10 – approximately 12%);

    v) Concerns relating to the transfer process, timing of the mailing and/or the migration event (12 – approximately 14%);

    vi) Concerns relating to whether any policyholder investments would be used to finance the transfer (3 – approximately 4%);

    vii) The view that there are no benefits to ReAssure's policyholders (4 – approximately 5%);

    viii) The independence of the independent expert (1 - approximately 1%); and

    ix) Uncertainty following the announcement of the Phoenix acquisition of ReAssure (1 – approximately 1%)

92. In the days prior to the March hearing, approximately 39 policyholders had expressed a wish to address the Court. In the event, only six chose to do so: Dr Platman, Mr Gorrod, Mr Sebastian, Ms Schillinger and Mrs Mulholland (all of whom are LGAS policyholders) and Mr Nathan (a ReAssure policyholder).

93. Most of the further objections received since the March hearing fall into the same categories. An additional category, however, is the impact of the Covid-19 pandemic on policyholders' interests.

94. At the August hearing, Mr Gorrod, Mr Nathan and Mrs Mulholland spoke again. In addition, the following policyholders who had not spoken at the March hearing voiced their objections in person at the August hearing: Mr Smith (on behalf of his wife), Mr Mallon, Mr Tarling, Mr Phillips, Mr Saxby and Mr Francis.

95. The most significant objection voiced by many policyholders was based on the fact that they had specifically chosen LGAS in light of the long-standing

reputation of the L&G Group, whereas they knew little about, and had little faith in, ReAssure which had nothing like the same pedigree. This was expressed by some policyholders simply as they "did not want" a policy with ReAssure (or Phoenix, if its purchase of ReAssure went through). Others stressed that they had chosen LGAS because "it was an insurance company that I knew and trusted", because of its "depth and experience". Some policyholders made the point that their choice of provider had been a "forever" decision for them, being one that was almost impossible for them to get out of. They had anticipated, from the literature provided to them when they took out their policies, that LGAS would pay their benefits for the remainder of their lives. Mr Gorrod referred to a statement on the current L&G Group website, notifying policyholders that once an annuity was set up and the cancellation period had expired "you can't change your mind. Your decision could affect your financial circumstances for the rest of your life". In some cases it was said that specific assurance was given, at the time that the policy was entered into, that it was non-transferrable by LGAS (although no-one identified written terms to that effect). Mr Mallon also raised this objection when speaking at the August hearing, saying that he had entered into a policy with L&G on the basis it was a "long-lasting relationship".

96. A vivid analogy was provided by a Ms Ward-Large in her written objection. She said "it is like I bought a house in a location that I had researched thoroughly, where I felt safe and paid for legal advice and I wake up one day to find my home is being moved to a location I have never heard of and where I do not feel secure and do not want to live." This was a sentiment echoed by many others (for example, Mrs Mulholland likened it at the August hearing to taking out a mortgage and then finding that her house was sold by the mortgagee).

97. Concerns were exacerbated by the fact that Swiss Re had sought, but failed, to divest itself of part of ReAssure via the aborted IPO, and that it had now sold it to Phoenix. In short, uncertainty was voiced as to (1) the extent to which parental support would be available in the event that ReAssure ran into financial difficulties; (2) the extent to which the current policies as to maintenance of capital above SCR would be maintained; and (3) whether the service levels achieved by LGAS would be maintained by ReAssure.

98. One policyholder, Sir Ian Kennedy, developed his objections in writing as follows. He had chosen LGAS because it was a major company with a successful history and was expected to continue for many years. While the authorities show that due weight is to be given to the directors' commercial objective, he submitted that the weight to be given will depend upon the nature of the objective and how it was to be achieved. The reasons in this case are no more than "ordinary business housekeeping" and not within the proper purpose of the legislation. He submitted that the cost to LGAS of refocussing its business cannot possibly be of such an order that it can reasonably be invoked in order to justify freeing LGAS from its contractual obligations.

99. He submitted that the reputation of L&G Group is important in two respects: first, in the event that LGAS did suffer financial difficulties at any point over the life of the policies it had issued, policyholders could have confidence that the L&G Group would stand behind it and, second, because L&G Group was incentivised to ensure that LGAS provided best quality service to its policyholders. This was to be contrasted with ReAssure. As pointed out by ReAssure itself and by the independent expert, ReAssure is not well known in the marketplace because it does not need to market itself to new customers as its business consists of managing closed books of business. It is this very fact, however, that causes concern to policyholders: since it does not need to attract new business from the public, its owners do not have the same incentive that the L&G Group has to protect policyholders' interests in the event that ReAssure encounters financial difficulties. Further, ReAssure itself does not have the same incentive to maintain the same high levels of service towards policyholders.

100. Finally, he submitted that the Scheme would result in LGAS breaking its promises to those policyholders whose premiums were invested in L&G Group's own managed funds, and that was an impermissible use of the Part VII jurisdiction.

101. Mr Angus Rodger submitted objections in writing. He holds a personal pension plan. He stressed the importance to the holders of such a plan of the choice of provider. He chose LGAS because it is one of the world's oldest and most respected financial institutions: it has greater benefits of scale than ReAssure, given the volume of assets managed by it. He referred to its claim on its website that "practice makes perfect, and for over 175 years we made sure that we are always here for our customers, providing … a clear, fair service and a safe pair of hands for your money." He contrasted that with the fact that ReAssure is a relative newcomer, that the Scheme will result in a sudden doubling of assets under management and that ReAssure is having to introduce "new and untested governance arrangements."

102. Mr Rodger echoed Sir Ian Kennedy's point as to ReAssure's lack of incentive to provide proper service levels, since the success of its business model depended only on enticing other insurance companies to sell closed books of business to it: such companies may be interested in its customer service levels but that was not necessarily so and would in any event only be one factor among others, such as the purchase price and speed of purchase.

103. Mr Rodger also referred to standardised complaints data published by the FCA (for the second half of 2018) which revealed that LGAS received 1.52 complaints per 1000 customers, whereas ReAssure received almost seven times as many complaint (10.49 per 1000). He himself holds a policy with ReAssure and said that his experience with their customer service "had been poor: I have sometimes been unable to contact it by telephone and correspondence has gone unanswered". Finally, he pointed to the uncertainty as to the future ownership of ReAssure, noting that ReAssure had recently changed its risk appetite statement and there was no basis for confidence that this would not be changed again.

104. Mr Nathan, who spoke at both the March and August hearings, is a ReAssure policyholder. While he did not object to the Scheme as such (so far as it affected his own position) he was concerned to warn customers as to ReAssure's customer service levels, based on the handling of his own long-standing complaints. Others (including Mr Gorrod and Mrs Mulholland) also expressed concerns about ReAssure's service levels. Mr Francis, a policyholder with LGAS, who also had a plan with another insurer that was, some years ago, transferred to ReAssure, complained that ReAssure changed its terms and conditions rendering it effectively useless. In light of his experience he regards ReAssure as a dishonourable, even dishonest, organisation. He wished to know that the hearing was conducted without bias or prejudice, and felt that no judge could possibly grant the application.

105. Dr Platman provided her objections in writing and developed them orally at the March hearing. She has held a unit-linked stakeholder pension since 2009. She actively manages it, as it is an essential element of her income in retirement. She described herself as a "lay" active manager, conducting regular reviews of the available funds. She is heavily dependent on the efficiency and expertise of LGAS's administrative staff with whom she has been very happy. Their execution of her instructions had been exemplary.

106. Of utmost importance to her is the functionality of the LGAS online portal, which enables her to switch between funds at the press of a button. When presented with a comparison of functionality as between the LGAS portal and the ReAssure portal, which demonstrated certain advantages of the latter over the former, she said that none of those advantages were relevant to her (or to others in her position). That same comparison pointed out that following the Scheme she would be able to switch funds only by sending instructions via email (as opposed to via the secure online portal with LGAS).

107. She is very concerned that the high levels of service that she has received from LGAS (built up over decades) will not be replicated by ReAssure. Her belief that this will not happen is based on simple economics: LGAS is unable to generate enough income from policyholders such as her to justify an appropriate level of administration (and the costs of doing so have effectively been subsidised by income made on LGAS's core business), so how can ReAssure be expected to provide proper service levels given the limited profits to be made? If the Scheme were not to be sanctioned, she does not believe that LGAS would allow its service levels to drop, despite the simple economics she referred to, because that would be too damaging for its reputation. The same was not true of ReAssure.

108. Dr Platman recognised that she had the theoretical option to transfer her policy to another provider, but felt that she was trapped, at least for the short to medium term, because the volatility currently affecting the markets meant that transferring was a very risky proposition. Her concerns were increased by a communication from LGAS after the March hearing informing her that to enable a smooth transfer of policy data in time for the transfer of policies on 6 April 2020, the fund switching service would be withdrawn for 11 days from Wednesday 25 March 2020. In view of the adjournment of the sanction hearing, the force of these points was diminished, but although Dr Platman did

not speak again at the August hearing, I take into account that concerns over market volatility remain while the pandemic continues.

109. She also made the point that the thousands of policyholders had no effective voice in responding to this Scheme. There was no effective co-ordination of policyholders' objections and they did not have their own legally qualified advocate to match the legal firepower of the applicant companies.

110. Mr Gorrod (who holds a with-profits annuity contract) contended that there were too many elements of risk which, taken collectively, made the Scheme unacceptable in its current form. He objected to its description as a "transfer" when in reality it was a commercial "sale" for £650 million where the buyer could reasonably be anticipated to want to make a substantial profit: the only people who would end up paying for the transaction were thus the policyholders. He said that the Scheme failed the FCA's consumer protection objective, because it circumvented the reasonable expectations of annuity holders. It also failed the FCA's integrity and competition objectives. He developed these points at the August hearing, submitting that there had been a failure (on the part of LGAS and the FCA) to provide full disclosure at the point of sale: no-one was told that there would come a point in time where diseconomies of scale would prejudice policyholders. He suggested that consideration should be given to carving out the annuity policies from the Scheme, or that LGAS should engage with policyholders to find another solution.

111. Ms Schillinger's overall objection was that LGAS was holding *her* money and she wanted her money to stay where it had always been. She also complained that LGAS had already transferred her money away to Aegon. Following investigation of this point by LGAS, Mr Moore QC explained that this was probably a reference to the fact that some years ago LGAS outsourced the administration of her investments to Aegon. There was no transfer of the insurance obligation, however, which throughout remained with LGAS, and the administration was in any event transferred back (and this was notified to policyholders at about the same time as the notification to policyholders of the proposed Scheme).

112. Mr Sebastian objected that under the terms of his personal retirement plan he would be subject to serious detriment (such as the loss of guarantees). He sent me details of his policies after the March hearing. Mr Moore QC explained, however, that the terms Mr Sebastian was referring to were those that restricted his rights when *he* chose to transfer the policy to another provider and that, in contrast, whatever contractual obligations LGAS owed to Mr Sebastian under his plan would be transferred to ReAssure pursuant to the Scheme. Mr Sebastian also reiterated similar concerns to those raised by others, as to the risks arising from the upgrade to ReAssure's IT systems, the possibility of different bonus calculations as between LGAS and ReAssure, and the current market disruption, which made this a poor time to be transferring policies.

113. Mrs Mulholland objected on a number of different grounds. She spoke at length both at the March hearing and at the August hearing. In addition she sent to the court numerous detailed emails and supporting documents after the March hearing, in advance of the August hearing and also after the August hearing. She was obviously very distressed by the whole process and feels intensely that the Scheme itself and the process surrounding it are grossly unfair to her and other policyholders.

114. I will develop the points made by Mrs Mulholland further below, in seeking to address policyholders' complaints. At this point, I merely summarise her heads of complaint, which were succinctly grouped under nine headings in one of her recent emails: (1) the legislation itself, and her concern about what she understood to be amendments introduced to enable transfer of insurance business without policyholder consent; (2) the fact that her policies had in fact been "sold" by LGAS to ReAssure in 2017 prior to any application for transfer being made; (3) the lack of independence of the parties involved, including but not limited to the independent expert; (4) misleading statements made about ReAssure's company history; (5) certain points arising from the February 2020 supplementary report of the independent expert; (6) concerns as to who was really benefitting from the proposed transfer; (7) concerns that the parties had not met the criteria for treating customers fairly; (8) the practice of reinsuring customer policies without their knowledge; and (9) data protection concerns.

115. She also had complaints about the service she received from the LGAS policy transfer team, whom she had called for advice following receipt of the Scheme communications pack. Her distrust of LGAS and its advisors led her to request that the transcripts of her calls (which she complained were inaccurate) were *not* forwarded to the court or the independent expert. She wished to voice her concerns directly to the court.

116. Mr Mallon expressed concerns about the lack of up to date financial information, contending that the stress tests conducted had been irrelevant because they failed to take account of the unprecedented economic disruption caused by Covid-19. He also objected to the lack of transparency over the independent expert's fees, the failure of ReAssure to give a straight answer to his question whether any of the directors had criminal convictions and the lack of choice to invest in ethical funds (although I note that LGIM will continue to manage the funds according to the same policies for at least the next seven years). In fact, as he had no desire to have his policies moved to ReAssure, Mr Mallon had, as he put it, determined to vote with his feet and transfer his policies to another insurer.

117. Mr Smith (on behalf of his wife) objected to the with-profits fund bearing the cost of £50m relating to the Fixed Expense Agreement, to the fact that ReAssure, by paying a dividend of £400m and reducing its SCR ratio to 150% (adopting the figures as at 31 December 2019), was able to enhance its income stream from funds accumulated by the policyholder, and to the fact that switching charges were to be introduced and that under the Fixed Expense Agreement fees would increase by reference to RPI, not CPI. Mr Smith provided figures showing that after 10 years a policyholder would be paying

9.3% more per year on the basis of RPI as opposed to CPI. Following the hearing, Mr Smith referred me to the recommendation of the chair of the UK Statistics Authority in March 2019 that RPI be stopped "at some point in the future" and his comments that RPI had long been seen as "not a good measure" and that all – in government and the private sector – had been consistently urged to stop using it.

118. Mr Tarling and Mr Saxby echoed the sentiment expressed by others that they had felt their pensions would always remain with LGAS. Mr Tarling additionally raised a question about merger of his policies (one of which was with LGAS and one with ReAssure). This, however, was not an objection to the Scheme and it is not the role of the independent expert to engage in such policy-specific queries. Mr Phillips' concern was, given LGAS' wish to transfer the business to ReAssure, whether either company had enthusiasm to manage the funds and whether ReAssure possessed the freedom of management to be "light on its feet" to keep the funds secure and buoyant (this last point being met by the fact that LGIM will continue to manage the funds for at least the next seven years).

<u>Response to policyholder objections</u>

Policyholders' desire to remain with LGAS

119. The most substantial of the policyholders' objections echoed those made in *Re Prudential Assurance Company Limited; Re Rothesay Life PLC* [2019] EWHC 2245 (Ch) ("*Prudential/Rothesay*"), which caused Snowden J to refuse to sanction the Part VII scheme in that case. These include the concerns about the financial standing, reputation and incentive to provide support to policyholders of (respectively) ReAssure and its parent group, and LGAS and the L&G Group, as well as more general concerns arising from policyholders' decision to choose LGAS as the provider of products essential to their income for the rest of their lives.

120. The scheme in *Prudential/Rothesay* concerned the transfer of about 370,000 annuity policies from Prudential Assurance Company Limited ("PAC") to Rothesay Life PLC ("Rothesay"). PAC had been in existence since 1848 and was part of a group with assets of over £508 billion and a strong reputation, built up organically over many years. Rothesay, in contrast, was incorporated in 2007 to conduct business as a specialist provider of annuities. It had total assets of approximately £36 billion.

121. Snowden J identified (so far as relevant to this case) the following propositions of law. First, he rejected the submission that annuity policies could not be transferred under Part VII. He also rejected the submission that policies could not be transferred under Part VII if there was a contractual restriction against transfer by the insurer. He accepted the submission made on behalf of the FCA that it is implicit in the power of the court under section 112(2A) of FSMA to make provision in an order under Part VII for the transfer of liabilities that would not otherwise be capable of being transferred without a person's consent or concurrence, that the operation of Part VII could not be prevented by contractual mechanisms. This would, however, be a

factor that the court could take into account in its discretion when deciding whether to sanction the scheme.

122. Second, in exercising the discretion, there was a balance to be struck between the interests of the policyholders and the interests of the commercial parties. Where there are differences between policyholders, then a balance had to be struck between their interests as well. In this regard, the purely subjective views of policyholders carry little or no weight.

123. Third, Snowden J concluded that the broad discretion to be exercised by the court under section 111(3) is not limited to considering whether policyholders' security of benefits and reasonable expectations of service standards would be adversely affected by the transfer. These were factors upon which, in the overwhelming majority of cases, the court's inquiry would focus but, while in relation to the first factor, for example, this was a matter primarily of actuarial judgment, the court's discretion was not constrained by the actuarial analysis or regulatory criteria derived from Solvency II. It must take into account all of the circumstances of the case.

124. On the facts of the case before him, the particular circumstances Snowden J took into account in exercising his discretion to refuse to sanction the scheme were as follows:

i) The scheme was wholly concerned with annuities, which were likely to be the major or sole source of income for the affected policyholders for the remainder of their lives.

ii) The policyholders were unable either to cash in their annuities or change provider. Under the scheme they would be bound to Rothesay for life: that was very different, for example, to a scheme involving the transfer of general insurance business, where the policyholders would be at liberty to change to another provider.

iii) In these circumstances, the current SCR metrics, upon the basis of which there was little difference between the transferor and transferee, were not determinative. It was also necessary to have regard to the longer-term prospects of the two companies and to understand how they may react to a deterioration in their financial position.

iv) In this regard, the difference between PAC, with its long history and reputation, and Rothesay, was important. For reputational reasons, PAC's parent company was likely to provide financial support. It had substantial resources for that purpose. In contrast, Rothesay's parent had neither substantial resources nor a similar long-standing reputation to protect.

v) Given the long-term dependence of policyholders on their annuities, the risk to them of parental support being needed at some point in the future but not being forthcoming would be "catastrophic".

vi) Whereas in *Royal Sun Alliance* David Richards J had drawn a distinction between material adverse effects and "theoretical risks" (see paragraph 20 above), that had been said in the context of a transfer of short-term general property, motor and liability insurance, where 70% of claims were settled within three years.

vii) Weight was to be given to the reasonable expectations of policyholders, fuelled by statements made by PAC as to the contract providing an income for the rest of life, even if these did not amount to contractual commitments not to transfer the policy. Similarly, significant weight was to be given to the choice of policyholders to take their lifetime annuities from PAC.

viii) While it was normally relevant to weigh in the balance the business objective of the transferor, the main business objective of PAC (to reduce the SCR of its shareholder-backed business so as to facilitate a demerger) had already been achieved without the need for the scheme, through an insurance policy entered into with Rothesay.

125. There is a pending appeal to the Court of Appeal against the decision of Snowden J in *Prudential/Rothesay* but, as Mr Moore QC accepts, it represents the current state of the law insofar as it sets out any legal principles. On the other hand, Snowden J's conclusions as to the application of those principles to the facts of the case before him do not constitute binding precedent. No two cases are the same and, given that the discretion to be exercised under section 111(3) needs to be undertaken by reference to "all the circumstances" of the particular case, a detailed comparison with the circumstances of other cases has limited utility. Nevertheless, given the reliance placed on the *Prudential/Rothesay* decision by many policyholders, it is important to note that there are significant differences between that case and this.

126. One of the most important differences between this case and the *Prudential/Rothesay* case is that in the vast majority of policies within the Transferring Business, the policyholder has the choice of changing provider. Although there are annuities within the Transferring Business, they constitute less than 1% of the total number of policies being transferred.

127. Moreover, 80% of these are with-profits annuities, with a right to share in the with-profits fund, as opposed to a fixed annuity. The annuitants therefore (unlike in the *Prudential/Rothesay* case) stand to gain at least some benefit from the terms of the Scheme (e.g. the Fixed Expense Agreement and the fund merger and 'sunset' provisions) which are designed to address the problems arising in a diminishing closed fund. As to the other 20% of annuities, which are non-profit, each of the relevant policyholders also holds a with-profits annuity and the two are generally treated as one policy, having been sold together. If the with-profits annuity is to be sold, then there is a practical sense in transferring the non-profit annuity at the same time so as to avoid what policyholders have viewed as a single policy being split between different providers.

128. As to Mr Gorrod's suggestion that the annuity policies be carved out from the Scheme, this would in fact work to the serious disadvantage of the annuitants, because the resulting segregated with-profits fund, if limited to the annuity policies, would be so small as to give rise immediately to the problems that face any small with-profits fund, in terms of diseconomies of scale and tontine effect. His complaint that LGAS, and the FCA, ought to have informed policyholders of this risk does not go to the question whether the Scheme should be sanctioned. Further, while his request that LGAS engage with policyholders to find an alternative solution is understandable, the authorities I have cited above make clear the court's task is to consider whether the scheme that is proposed is one which in all the circumstances the court should sanction. If it is, then it is not part of the court's task to consider whether a different scheme might be fairer to particular policyholders or whether changes might be made to aspects of the scheme.

129. I note that a similar answer applies to Mr Smith's concerns about charges to be imposed by ReAssure. While RPI has come in for much criticism over the past few years, the Fixed Expense Agreement has been subjected to considerable scrutiny by the independent expert, the FCA and the PRA, whose conclusion is that it provides an overall benefit to the with-profits policyholders. I am not persuaded that its inclusion in the overall transaction renders the Scheme unfair to policyholders and (as stated by Evans-Lombe J in the *Axa Equity and Law Life Assurance Society* case cited above) it is not for the court to amend the Scheme because it thinks that individual provisions could be improved upon. (As to Mr Smith's complaint that a charge for switching funds would be imposed, in fact the position is that ReAssure will allow a policyholder 20 fund switches before it would consider imposing a charge for further switches. The evidence also indicated that very few policyholders had historically engaged in multiple fund switches.)

130. The second major difference relates to the achievement of the business objectives of the Scheme. LGAS's business objective is very different to that of PAC and, unlike in *Prudential/Rothesay*, cannot be said to have been achieved by entry into the BTA and the RTA. LGAS will, absent the Scheme, remain the policyholders' contractual counterparty. While the BTA requires the parties to seek to agree an arrangement whereby administration of the relevant policies is outsourced to ReAssure, there is no guarantee that agreement could be reached, the costs of doing so would almost certainly exceed the costs of administration if the Transferring Business were wholly transferred to ReAssure, and LGAS would be unable to achieve its aim of exiting the traditional insurance business contained within the Transferring Business. In particular, LGAS would be unable to decommission the IT infrastructure necessary to administer the business, or to divert employee resources and management time towards its strategic objectives. In addition, the benefits which policyholders of the LGWPF would achieve, for example, through the possibility of merger with other funds within ReAssure, would not be available.

131. Mrs Mulholland objected to Mr Gillespie's comparison between this Scheme (which had a strategic purpose) and the *Prudential/Rothesay* scheme (which

had a financial purpose). She was correct to point out that there is undoubtedly a financial gain to be made by the corporate parties involved in this Scheme. That was, however, an oversimplification: the critical factor in the *Prudential/Rothesay* scheme was that the business objective of Prudential had been achieved without the scheme being sanctioned whereas, in this case, the achievement by LGAS of its business objective (over and above any financial gain that it wished to obtain from the disposal of the Transferring Business) requires the implementation of the Scheme.

132. The third significant difference relates to the question of likelihood of parental support. I have referred above to the relative financial strength of ReAssure and LGAS. As I noted there, one of the main reasons cited by policyholders for opposing the Scheme is the difference between the relative financial strength, longevity and reputation of the L&G Group and the parent group of ReAssure, and its impact on the likelihood of parental support being available.

133. Unlike Rothesay, however, ReAssure is part of a substantial and well capitalised group, even following the sale from Swiss Re and MS&AD to Phoenix, such that the *ability* to obtain parental support pre- and post- transfer is materially the same (see paragraphs 71 to 73 above).

134. As to the *incentive* for parental support, the thrust of the objection by many policyholders (such as Sir Ian Kennedy and Mr Rodger) was based on the fact that ReAssure (unlike LGAS) did not need to attract new business from the public. Its owners did not, therefore, have the same incentive as the L&G Group. I accept that the fact that ReAssure specialises in closed books of business means that it and its owners do not have the *same* incentive to protect its policyholders as LGAS and the L&G Group. I do not accept, however, that they lack any similar *level* of incentive. Since ReAssure operates closed businesses and is thus <u>incapable</u> of developing its business by attracting new customers, it is particularly dependent on retaining its existing customers, most of whom have the option to change providers themselves. The only other source of new business is by making further acquisitions of closed books from other insurance companies. The same is true of its (now) parent, as Phoenix also specialises in the same type of business. For these reasons the success of ReAssure's business model depends upon protecting its existing customers. It and its parent group therefore have a real incentive to protect policyholders' interests.

135. For the above reasons, while I have considerable sympathy with the objection expressed by a number of policyholders based on their desire to remain with LGAS and their understanding, generated by LGAS's own statements over many years, that LGAS would remain their pension, annuity or other provider for life, I do not find it sufficient to persuade me to refuse to sanction the Scheme. As I have pointed out above, a transfer scheme under Part VII is clearly capable of overriding policyholders' contractual rights so that, even if (which is not the case here) there was an express prohibition on transferring policies, that would not override the statutory power. Specifically as to the breach of promise relied on by Sir Ian Kennedy, policyholders' funds will continue to be invested in the same funds, and will continue to be managed (at

least for seven years, subject to LGIM meeting performance requirements) by LGIM.

136. While the analogy drawn, by two policyholders (see above at paragraph 96), with finding one's house moved or sold without consent was vivid, it is not in reality a fair reflection of the Scheme. Aside from the relatively limited changes in respect of the with-profits fund, the rights of policyholders will remain the same and will remain in their hands. What has changed is the identity of the counterparty to those rights. While that still causes many of the policyholders great concern, and is what requires careful consideration by this court, the independent expert and regulators, it is fundamentally different to waking up to find that a mortgagee has sold your house (i.e. *your* asset) and bought you a smaller one elsewhere.

137. Every case requires the commercial interests of the transferor/transferee to be balanced against the interests of the policyholders. In this case, in contrast to the position in *Prudential/Rothesay*, while the Scheme undoubtedly promotes the commercial self-interest of each of LGAS and ReAssure, achieving LGAS's objective of focussing its resources on its core business will benefit the policyholders in that core business, not merely LGAS and its shareholders. Moreover, there are sound commercial benefits (in particular protecting policyholders against the diseconomies of scale if the business remained in LGAS) in the consolidation of the Transferring Business in a company specialising in the run-off of closed books of business. For these reasons, I consider that Sir Ian Kennedy's characterisation of LGAS's business objective as "ordinary business housekeeping" underplays both those business objectives and the benefits to the transferring and non-transferring policyholders. I do not accept that the kind of strategic re-organisation in which LGAS is engaged is outside the proper purpose of the legislation. As I point out above, LGAS's decision to re-focus its business has been taken and is not dependent on the Scheme (as shown by the outsourcing arrangements that LGAS and ReAssure are required to negotiate under the BTA). The Scheme is designed to provide a better outcome for the policyholders of the Transferring Business than remaining with a company whose strategic focus is elsewhere.

Impact of Covid-19 on financial performance

138. I have already addressed the impact of Covid-19 on the financial position of the applicant companies, by reference to Mr Gillespie's conclusions in his second supplemental report dated July 2020 and further letters to the court dated 10 and 17 August 2020. As to Mr Mallon's concern that the economic circumstances are unprecedented, such that even the most recent financial information provided is irrelevant as being out of date, Mr Moore QC pointed to the fact that stress-testing of ReAssure's solvency over a five-year period had taken into account a number of Covid-19 credit scenarios, ranging in terms of severity between the Great Depression and the more recent Financial Crisis. Under each of the scenarios, ReAssure was expected to meet the requirements of its risk appetite statement over a five-year period. While there can be no certainty as to future market performance in light of the continuing pandemic, it is important to remember that the key issue is not market

volatility, per se (since that will affect policyholders wherever their policies are), but the comparative likely resilience of ReAssure and LGAS in the face of such volatility. I have no reason not to place reliance on Mr Gillespie's conclusions in that regard.

139. As to Mr Mallon's complaint that he had not received a straight answer to his question whether any of ReAssure's directors had any convictions, I do not agree that this is a ground for suspicion. Regulation of ReAssure carries with it the requirement that those in positions of responsibility are subjected to the fit and proper person regime, including DBS checks. It is this which provides the safeguard to policyholders and other stakeholders. I accept Mr Moore QC's submission that it is not relevant to know whether an individual director has, for example, a conviction for a minor traffic offence.

Impact on service levels

140. Many of the policyholders' objections related to a feared drop in service levels. In part these were based on the argument that ReAssure lacked the same incentive as LGAS to protect its policyholders, and would therefore be likely to provide worse service levels. I reject that argument for the reasons given above in relation to the likelihood of parental support. I recognise, as Mr Rodger submitted in answer to the point that ReAssure is incentivised to continue to provide high levels of service because its business model involves future acquisitions, that potential sellers of businesses will have regard to the price and speed of any purchase, and not merely service quality. The quality of service provided by ReAssure (as the acquiring company) to its own customers will nevertheless be a highly relevant consideration, not least because the independent expert, the PRA, the FCA and the Court would all wish to be satisfied on this issue upon the application to sanction the transfer of business pursuant to such acquisition.

141. As to Dr Platman's argument based upon 'simple economics' (see paragraph 107 above), Mr Moore QC explained that the price paid by ReAssure for the Transferring Business (£650 million) represents the current value of the future surpluses to which the business will give rise, and is the sum that ReAssure will recoup simply by administering the business into the future. This emphasises the importance to ReAssure of retaining the policyholders within the Transferring Business, and thus ensuring it maintains standards of administration. For each policyholder who changes to another provider, ReAssure will lose a proportionate part of the anticipated surplus for which it has paid LGAS. In turn this suggests that the answer to Dr Platman's rhetorical question (as to how ReAssure could hope to provide proper service levels given the limited profits available) is, as ReAssure contends, that because the Transferring Business adds to its already substantial books of closed business, it will be able to take advantage of economies of scale that were not available to LGAS. The 'simple economics' do not, therefore, point to ReAssure being incentivised to reduce service levels.

142. Certain of these objections were based on evidence of problems with ReAssure's services. I have referred above to Mr Rodger's objections based on ReAssure's service levels. Mr Nathan spoke eloquently at the March and

August hearings about the problems he has encountered with ReAssure over a period of many years. His complaints relate to two policies. The first, originally taken out with General Portfolio but which was subsequently acquired by ReAssure, contained terms enabling him to benefit from withdrawals by way of loan. His complaint is that ReAssure removed that benefit. The second was a mortgage endowment policy with Barclays which was also transferred to ReAssure. His complaint is that ReAssure failed correctly to operate policy reviews. Mr Nathan rightly recognised that this is not the appropriate forum to resolve his long-running disputes with ReAssure. Nor is it the forum to require (as he wanted) the FCA and/or the PRA to provide answers to his concerns over his policies.

143. He sought to relate his problems with ReAssure to the issues for consideration on this application, by contending, first, that ReAssure's latent liability to him arising from its removal of benefits under his policies, if replicated in relation to other policyholders, may be so great as to put its solvency margins at risk and, second, that ReAssure's customer service performance as regards him may be indicative of widespread problems.

144. As to the first point, Mr Nathan relied, for the proposition that the problems were widespread, on a letter to him from ReAssure in 2017 which referred to the fact that they, along with other companies, had removed the type of benefit from all policies. He also referred to a person who spoke to him about a policy with another life company where a similar loan benefit was stopped. The fact that many other life companies stopped this type of benefit provides no evidence either that ReAssure was acting wrongly in doing so or that even if it was the problem is so widespread within ReAssure as to put its solvency margins at risk. I note, in addition, that the relevant benefits were withdrawn well over a decade ago.

145. As to the second point, Mr Nathan said at the March hearing that ReAssure's customer service was extremely poor and he was concerned that they merely "play the game" of pretending to engage with him, when they are in reality running down the time for him to make a referral to the financial ombudsman.

146. Without downplaying in any way the depth of feeling of Mr Nathan (and those others who expressed concerns over ReAssure's customer service levels, including, for example, Mr Francis and Mr Gorrod) it is important to weigh in the balance that the evidence is based on individual, personal experiences from a very small proportion of the total number of policyholders of LGAS and ReAssure. In one case (Mrs Mulholland) the evidence relied on to question ReAssure's service levels was extremely old, being a fine levied against Windsor Life dating from 2001.

147. Data collated and published by the FCA as to complaints made, and upheld, against insurance companies is a more reliable guide. As I have noted above, Mr Rodger claimed that this data, published on the FCA's website and relating to the second half of 2018, revealed that ReAssure received almost seven times as many complaints as LGAS. The applicant companies have, however, provided a more detailed explanation of the data appearing on the FCA's website, as follows.

148. The data is ordered under several headings, of which the two most important for present purposes are: "Decumulation & Pensions"; and "Investments". The figures referred to by Mr Rodger (showing 2.2 complaints for 1,000 policies for LGAS and 11.9 complaints per 1,000 policies for ReAssure) relate to the latter ("Investments"). The applicant companies contend that this category is of little relevance in the context of the Scheme because it is neither representative of the nature of the Transferring Business nor of the bulk of ReAssure's existing business. The category which better represents both of these is "Decumulation & Pensions". The FCA data for this category reveals that LGAS's and ReAssure's performance was the same, each receiving 0.8 complaints per 1,000 during the second half of 2018. The applicant companies also point out that the poor complaints figures for ReAssure in the "Investments" category relate primarily to mis-selling of mortgage endowment polices (of which there are in any event only approximately 40,000), inherited from the particular insurance company that originally sold the policy.

149. In light of the applicant companies' fuller explanation of the FCA complaints data, that data does not provide support for there being a material risk of deterioration in service levels following the transfer of the Transferring Business to ReAssure.

150. This is reinforced by the independent expert's conclusions, albeit these are based largely on the work of LGAS's chief actuary (confirmed by ReAssure's chief actuary), given their greater involvement with the businesses over a longer period. LGAS's chief actuary reported on a comparison of key applicable service standards that had been carried out as between LGAS and ReAssure, focussing on key metrics such as call handling response times, member data update service levels, issuance of retirement quotations and complaints. His conclusion was that the actual performance levels achieved were similar across the range of processes.

151. In considering the likely impact of the Scheme on service levels, it is also important to note that, in the absence of the Scheme, it is likely that the actual servicing of the relevant business will be outsourced by LGAS in any event. While I sympathise with policyholders who feel that they are being 'abandoned' by a company to whom they have been loyal for many years, the fact is that whether the Scheme is sanctioned or not, LGAS has made a decision to focus its energies on business other than the Transferring Business and has agreed, in the BTA, to seek to agree the outsourcing of the administration of the business to ReAssure. While outsourcing itself requires regulatory approval, it does not require agreement of policyholders or the approval of the court. Both of the regulators, having reviewed the Scheme in light of the objections received from policyholders, have raised no objection to it.

152. I have referred above to Dr Platman's specific concern at the March hearing that the functionality of the ReAssure online portal, insofar as it related to switching of funds, was worse than that of LGAS, because it required her to send an instruction to ReAssure by the "insecure" and "obsolete" medium of email. In written submissions after the March hearing, however, Mr Moore QC (in a correction to the comparison table handed up during the hearing)

clarified that the ReAssure portal permitted instructions to be given by a secure messaging system, not email. Mr Cuhls' witness statement prepared in advance of the August hearing referred to a number of further improvements made to the ReAssure portal since the March hearing. I do not know whether these address the specific concerns of Dr Platman (and others in her position), but when balancing the interests of all policyholders with each other and against the interests of LGAS and ReAssure, such disadvantages as remain for her with respect to the ReAssure online portal do not weigh sufficiently strongly in the balance against sanctioning the Scheme. I take into account, in this regard, the low number of policyholders likely to engage in fund switching and the fact that the ReAssure portal has other advantages over the LGAS portal which will be of use to many other policyholders.

153. Mr Nathan also objected to the discrepancy, as he saw it, between the assurance given by counsel at the March hearing that his complaints would be addressed "at the highest level" and the eventual letter he received from ReAssure. He suggested this emphasised that evidence emanating from ReAssure could not be trusted. I reject this complaint. Mr Moore QC referred at the March hearing to the complaints being looked at "at a high level". I do not think there is any discrepancy between that statement and the eventual reply from ReAssure. In any event, it is difficult to see how this raises a justifiable objection to the Scheme.

154. Mr Nathan finally objected to the lack of any reference in the Claim Form to the case raising issues of Human Rights. He suggested that it was a breach of policyholders' human rights that the £50m being levied on the with-profits fund in relation to the Fixed Expense Agreement was not being made available for representation for policyholders. He also suggested that there was a right to protect personal property and that this encompassed endowment policies. The suggestion that a scheme under Part VII of FSMA breached the European Convention on Human Rights was considered and rejected by David Richards J in *Re ING Direct NV* [2013] EWHC 1697 (Ch). His reasoning applies with equal force to Mr Nathan's contentions in this case. Insofar as Mr Nathan considers that ReAssure's conduct in relation to the withdrawal of benefits from his policies gives rise to human rights issues, that does not amount to an objection to the Scheme, and so is not a relevant consideration on this application.

155. Some of the objections raised by Mrs Mulholland related to the poor treatment of her by LGAS/ReAssure in the course of her communications with them about the Scheme. It is clear, from reading the transcripts of some of the calls that Mrs Mulholland made to the LGAS helpline that she was on at least one occasion treated poorly. Indeed, LGAS accepted this was the case and offered her £250 in compensation. This is not relevant to the question whether the Scheme is one that should be sanctioned, but Mrs Mulholland suggested at the March hearing that the problems she had may be evidence of a systemic problem leading to other policyholders' complaints not having been properly put to the Court. She suggested, in particular, that she was told she could not turn up on the hearing of the sanction application and make representations to the court, that the transcripts of the telephone calls with her were inaccurate,

and that she was lied to by helpline staff (for example in saying that they had not got a recording of a particular call, when they had).

156. I do not accept that there is evidence of conduct on the part of LGAS/ReAssure that might have led to policyholders being systematically prevented from presenting their objections to the Court. The files contain many pages of transcripts of telephone calls with, and letters written by, policyholders who have expressed a desire that their complaints be placed before the court. These include letters written to individual policyholders by LGAS following each telephone call in which the relevant policyholder's complaints were summarised and purportedly answered. While many policyholders disagreed that their complaints had been properly answered, there is no evidence of any wider instances of policyholders complaining that the call had been improperly transcribed or that their complaint was being kept from the Court. As I have mentioned, Mrs Mulholland specifically asked that her correspondence and the transcripts of her calls *not* be placed in the bundles for the hearing and it was only after the March hearing that she sent extracts directly to the Court by email. As to her complaint that she was told she would not be able to speak at the hearing, it seems from the transcript of telephone calls with the helpline that she was being encouraged to provide her objections in writing before the hearing, and that depending on how many people attended in person to voice objections, it could not be guaranteed that she would be allowed to speak. This is water under the bridge as she was permitted to speak at some length. As to Mrs Mulholland's complaints about breaches of data protection, I received a full explanation from Mr Moore QC of the circumstances in which data was transferred and the steps taken by the applicant companies to comply with data protection legislation. The potential breaches in any event relate to the time-period prior to the transfer taking effect, and do not in themselves provide grounds for refusing to sanction the Scheme.

157. I can deal relatively briefly with the remaining points made by Mrs Mulholland. As to her concern that the policies had already been sold in 2017, leaving aside the fact that she may have been encouraged in that belief by imprecise language used by an LGAS representative on a telephone call, there is a very important distinction between the transfer of economic benefits (which was effected by the entry into the BTA and the RTA in 2017) and the transfer of the legal rights and obligations under the policies (which could only be effected by the Scheme). The transfer of legal rights and obligations is more accurately described as a sale than the transfer of economic benefits alone. Importantly, the transfer of economic benefits alone is not something which requires court approval. There is no question that anything improper occurred in this respect. The transfer of legal rights and obligations is, of course, the subject of this application and this judgment.

158. It is perhaps understandable that Mrs Mulholland, as an unaided litigant in person faced with something as complex as the proposed scheme, resorted to online research into the legislation, the FCA and PRA and the parties involved. This had the unfortunate effect of adding to her distress and led her into false conclusions. One example is her reference to documents at the

March hearing which appeared to show that the PRA had been liquidated. Another is her discovery of an amended version of FSMA which led her to believe that the ability to transfer policies without policyholders' consent was a recent innovation (whereas, apart from a power of veto given to one tenth in value of policyholders by the Life Assurance Companies Act 1870, itself removed in 1973, individual policyholder consent has never been a requirement for the transfer of insurance business: see the *London Life Association* case cited above, per Hoffmann J at p.5).

159. A further example was her reference at the March hearing to a reinsurance policy with Swiss Re that she had discovered a reference to in a L&G document. She noted a statement in that document that the "policyholder bore the risk" and submitted that it surely cannot be right to transfer risk to a policyholder. Mr Moore QC pointed out (again in the March hearing) that the policy Mrs Mulholland was referring to was a very specific technique to enable the fund management company – Legal & General Assurance Pension Management Limited (being a subsidiary of L&G) to effect economic exposure to its parent, through a reinsurance arrangement (which the subsidiary could not otherwise do).

160. Mrs Mulholland then noted that the independent expert's supplemental report in February 2020 said that this was a policy that was to be recaptured by ReAssure following the transfer. The reason for that was explained at the March hearing and Mrs Mulholland appeared to accept the explanation.

161. At the August hearing, however, she returned to the topic and asked "If the insurers are basically trying to recapture these because there's a problem with them, then why didn't they do it just now? Why did they not do it when it was identified to them. And what I'm wondering is: is that how the funds have lost money?" Mr Moore QC repeated the explanation given at the March hearing: there was nothing "wrong" with the relevant policies, and there was nothing suspicious in ReAssure's intention to recapture them.

162. In light of the particular distress caused to Mrs Mulholland, I will deal briefly with a point that arose in this connection during Mr Moore QC's reply. When he turned to address this issue, he introduced it by saying that Mrs Mulholland had expressed concerned about the "recapture of reinsurance policies by Windsor Life post the scheme." This was a slip of the tongue: the policies were with Swiss Re, not Windsor Life.

163. Mrs Mulholland feels very upset that she was not given the opportunity to reply to Mr Moore QC's submissions and that policyholders as a whole have been treated unfairly by not being given the opportunity to speak again after Mr Moore QC's reply. As I explained at the time, someone is entitled to the last word and the convention is that those making the application are entitled to respond to the policyholders that have spoken to raise objections. Mrs Mulholland should not assume, however, that merely because counsel says something in reply that the judge assumes it to be correct. In a case of this complexity, the judge is expected to go away after the hearing and consider the submissions made in the cold light of day, with the benefit of all the documents in the case.

164. In relation to this particular point, Mrs Mulholland did in fact intervene to make her point that she had said nothing about Windsor Life. Moreover, she has submitted further detailed submissions in writing reiterating the point after the hearing. For the reasons I have given, in the event I do not think that the point about the recapture of insurance policies has any relevance to the decision I have to make. The fact that Mr Moore QC referred to the relevant reinsurer as Windsor Life is therefore itself equally irrelevant.

165. Similarly, her fear that policyholders had been misled about ReAssure's corporate history was based on a mistaken assumption arising from a statement online that Swiss Re first did business in the UK in 2003. That, however, was when Swiss Re acquired ReAssure. It does not undermine the evidence of the applicants that ReAssure was incorporated in 1963 and itself has 50 years history as a provider of life and pensions business in the UK (albeit under different names).

166. After the conclusion of the August hearing, I received a communication from a Mr Groves. He had wished to attend the August hearing but through an oversight did not receive an invitation to the Skype conference call, so was unable to do so. He had submitted objections in writing (in November 2019) relating to his expectation that his annuity policy would remain with LGAS for life, his lack of confidence in ReAssure, the risk arising from the fact that the Scheme would result in a substantial jump in the total business of ReAssure, the attendant risks to service levels and the concern that ReAssure lacked the same incentive as LGAS to provide proper customer service. In a telephone communication with the applicants' solicitors since the August hearing, Mr Groves added concerns as to the independence of the independent expert, and the materiality threshold in the reports. All of the points made by him reflect those made by other policyholders, which I have addressed in this judgment.

Objections based on the Scheme process

167. A particular concern voiced by some was that policyholders were disadvantaged through having no co-ordinated response and no legally qualified advocates to speak for them.

168. This is understandable given the technical complexity of the Scheme and the weight of documentation. It is, however, important to bear in mind that the procedure has built into it a number of safeguards specifically intended to provide protection to the policyholders.

169. These include, importantly, the role of the independent expert who, as I have indicated above, owes duties to the court and not to LGAS or ReAssure. It is their specific role thoroughly to investigate the Scheme and its impact on all affected policyholders, and to express a considered opinion whether (many) specific features of the Scheme, or the Scheme as a whole, might have a material adverse effect on policyholders. I reject the suggestion that Mr Gillespie is not independent because he is being paid by the companies (see, for example, *Re Eagle Star Insurance Company Limited* [2006] EWHC 1850 (Ch), per Pumfrey J at [11]-[13]). The PRA reviews the terms on which an independent expert is appointed and would object if the expert was to be

rewarded by reference to "success", or a cap placed on their fees (so as to avoid the risk that the expert identifies further work that ought to be undertaken, but is without the fees to do so). I do not accept that Mr Gillespie's independence, or the integrity of the process, is undermined because the amount he is paid is not revealed. I am satisfied that Mr Gillespie has properly carried out his obligation as an independent expert in this case.

170. Mrs Mulholland was particularly exercised by what she perceived to be Mr Gillespie's lack of independence. She was not concerned at the fact that Mr Gillespie had worked for the Prudential for a period in 1995, but she felt she had been misled when told that he had not worked for it since, or for ReAssure, L&G or Swiss Re. This was because she discovered that Mr Gillespie had worked on a number of Part VII transfers before, including in relation to each of those companies. It is critical to bear in mind, however, that the work he had carried out was, in each case, as an independent expert. That is very different to working "for" or any of those companies. I do not accept Mrs Mulholland's complaint that it is mere wordplay to say that Mr Gillespie had not worked "for" those companies when he had clearly worked "with" them. There is a vital distinction between the two. As an independent expert he owes (and in each prior case owed) his duty to the court, not to the companies involved. I do not accept that his independence is compromised because he has, in the capacity of an expert in the context of previous Part VII transfer schemes, undertaken work "with" any of the companies.

171. So far as Mr Moore QC is concerned (Mrs Mulholland had also discovered that he too had been involved in many of the same cases and she felt that "these people" who should all have been independent were "used to working together"), his role in this, and in previous cases, has been to act as advocate for the applicant companies. As such he is neither expected nor required to be independent.

172. The safeguards for policyholders also include the roles played by the FCA and the PRA whose statutory functions (again, as I have indicated above) require them to consider the fairness of the Scheme from the perspective, respectively and in particular, of policyholder protection and financial prudence. Although each of the FCA and the PRA has itself been the target of some of the complaints from policyholders, who might regard them as being 'on the side' of the applicant companies, I am satisfied that the FCA and PRA have approached their review of this Scheme with a proper detachment and an eye on their regulatory roles. One indication of their independence is that it was Mr Weitzman QC, who represented the PRA, who drew my attention during the course of the March hearing to what appeared to be a particularly troubling aspect of the £50 million contribution to be made by the LGWPF (see paragraphs 33-34 above), which prompted further elaboration and correction to be made by the applicant companies. (For completeness, the FCA also considered and addressed this at the March hearing).

173. Finally, the Court itself plays a vital role in ensuring the interests of policyholders are protected. Policyholders are entitled to present their objections directly to the Court, and some have taken the opportunity to do so. As I have indicated, the Court has been provided with (and has read) a record

of many communications between LGAS/ReAssure and policyholders who either expressed an intention to appear at Court or asked for their communications to be brought to the Court's attention. Many of these were very thorough and presented in a highly articulate manner. I have sought, in this rather lengthy section of the judgment, to address all of the themes raised by objecting policyholders.

174. Taking account of all of the above matters, I believe that (1) the policyholders have had sufficient opportunity to make their objections known, (2) these objections have been considered (by the independent expert, the FCA, the PRA and most importantly the Court), (3) such objections as can properly be made to the Scheme have been fairly put and (4) the disadvantage that policyholders have, in terms of having no co-ordinated and legally qualified representative to make submissions for them, is not such as to render the sanction of the Scheme unfair.

Conclusions

175. Notwithstanding the powerfully expressed objections by the policyholders who spoke at the two hearings, and those expressed in writing by others, I am satisfied that the Scheme is in all the circumstances fair.

176. An important factor in reaching my decision is the conclusions of the independent expert. Having tested various of his conclusions as I have noted in the course of this judgment above, I am satisfied that his conclusion that the Scheme will not materially adversely affect any of the relevant groups of policyholders is based on a full and comprehensive review of all the relevant factors and circumstances and is based in sound reasoning.

177. Some criticism was levelled by policyholders at the repeated use by Mr Gillespie of the phrase "material adverse effect", as it did not identify the extent to which the expert concluded there was *any* adverse effect and, if so, the reasons why it was not considered material. It is the presence, or absence, of a *material* adverse effect on policyholders, however, which is of particular relevance in the exercise of the court's discretion. For this reason, it is typical for independent experts in this area to provide their conclusions in this form.

178. Nevertheless, on occasions – in order for the court to be satisfied that the expert's conclusions are soundly based – it is necessary that greater elaboration is provided. As I have noted above, I required further explanation to be provided in certain respects in the course of both the March and August hearings. I am satisfied that the further elaboration received during and after the March hearing and after the August hearing demonstrated the soundness of Mr Gillespie's conclusions.

179. I am very grateful to all those who either sent objections in writing, or took the (in some cases considerable) trouble to attend court in person. I have already commented that the small number of objectors, in comparison with the overall number of affected policyholders, does not diminish the court's responsibility to assess the fairness of the Scheme. On the other hand, when analysing the objections that are made, both in writing but particularly in person at the

hearings, it would be wrong to assume from the strength of personal opinions held by, the emotive language used by, or the distress caused to, those policyholders, that their opinions are necessarily representative of the general body of policyholders. Ultimately, as I have already noted, the Court has to balance the interests of *all* policyholders both as between each other and as against the interests of the applicant companies, in light of all the circumstances. In carrying out that balancing exercise, notwithstanding the powerful points made by many of the policyholders, for all of the above reasons I conclude that the balance comes down in favour of the applicant companies.

Ancillary orders

180. The Scheme requires the transfer of various assets held by a number of companies in the L&G Group and the transfer of rights and liabilities under contracts between various L&G Group companies and third parties. These include investment management agreements, custodian agreements and administration agreements.

181. As explained in Mr Moore QC's skeleton: "in a business as complex as this there will inevitably be a plethora of other group entities holding assets or performing functions integral to the business which assets and roles will need to be transferred to equivalent entities in the transferee group. Whilst there may be other legal mechanics to effect these transfers it is clearly sensible that it is achieved in one step by the vesting order rather than a series of steps with attendant potential for missteps. Each of the relevant entities will undertake to be bound by the Scheme which contains the detail of the transfers."

182. It is proposed that all such transfers will be effected either as a term of the Scheme or pursuant to an ancillary order under section 112(1)(d) of FSMA. That paragraph states that the court may make such provision as it thinks fit "…with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out."

183. In *Re Norwich Union Linked Life Assurance Limited* [2004] EWHC 2802 (Ch), Lindsay J discussed the relationship between section 112(1)(d) and the terms of the scheme. He first approved the conclusion reached by Knox J in *Re Hill Samuel Life Assurance* (unreported, 10 July 1995) that "necessary" lay somewhere between "vital" and "desirable", and that given that it was used in conjunction with the words "to secure that the scheme is fully and effectively carried out" and extended to consequential and supplemental matters, "it would seem to me legitimate for the court to conclude within the ambit of a scheme which it approves something which will give the full benefit of the scheme to one or other of the two units that are being amalgamated." He then concluded that there was an alternative route by which supplemental provisions can "achieve force", namely by being part of the scheme itself. He noted that provided that a scheme results in a transfer of insurance business, there is no statutory requirement that it do nothing but effect a transfer. At [11], he said the following:

> "For my part, I would thus start from a position in which it is no necessary requirement of [a scheme] that, whilst effecting a transfer of the kind provided for in section 105, it should do nothing else. Indeed, I see the line (if there is one) between that which, incidental or supplementary to or consequential upon the transfer in the Scheme, may be within the scheme itself and what, at the time of the scheme or later, can only be authorised under section 112, as being unclear. This is not to say that the contents of an IBTS are boundless; its predominant purpose must be to result in one or more transfers of the described kind. Moreover, it may be (though I do not need to decide and do not decide this issue) that only such supplemental provisions can be within an IBTS as could be authorised under the more liberal view taken of what is "necessary" under section 112(2)(d). However, there are good reasons, if the proponents of a scheme from the outset see the need for a given supplemental provision, that it should be included within the scheme itself. That is what has been done in the case at hand. In that way policyholders have a four-fold protection; the supplemental provision comes within the purview of the FSA, it is reported on by the appointed Independent Expert, is explained to members and is required to obtain the sanction of the Court as being "appropriate". By contrast, a subject dealt with only outside the scheme under section 112(1)(d) (but at the same time as the scheme or later), as it requires only the sanction of the Court under section 112, leaves those who might be affected by it unprotected in the other three ways. If the proponents of the Scheme are in doubt as to which jurisdiction, section111(1) or section 112(1)(d), is relevant they can, again as was done here, in effect invoke both."

184. In this case, the PRA's and the FCA's conclusion that they have no objection to the Scheme has indeed been based on the Scheme as a whole, including the proposed ancillary orders. The independent expert has concluded that none of them will cause the Scheme to have an adverse material effect on policyholders.

185. The scope of section 112(1)(d) was also the subject of two recent decisions concerned with a scheme for the transfer of banking business from Barclays Bank Plc ("BB") to Barclays Bank Ireland PLC ("BBI"). In order for a scheme transferring a banking business to fall within section 111, the transferor concerned must have permission to accept deposits and the business to be transferred must include the accepting of deposits. In the first of those decisions ([2018] EWHC 2868 (Ch)), I had to consider, on a preliminary basis, whether it was possible to use section 112(1)(d) to effect the transfer of a business of a separate Barclays entity, Barclays Capital Securities Limited ("BCSL") that did not include accepting deposits.

186. At [46], I concluded that the only limitations on the scope of the orders that can be made under section 112(1)(d) are to be found within it, namely that they must be incidental, consequential or supplementary to the scheme and must be necessary to secure that the scheme is fully and effectively carried out. Accordingly, provided those requirements could be satisfied, I concluded (at [57]) that an order to transfer the business of BCSL, was capable of falling within the jurisdiction of section 112(1)(d). The essential reasoning, set out at [52] to [53], was that (1) the purpose of the scheme was to enable the business currently conducted by BB to be carried on by BBI seamlessly in the event of BB's loss of authorisation to conduct business in the EEA post-Brexit, and (2) if the degree of interconnectedness between clients' relationships with BB and with BCSL was such that the seamless transfer of business by BB to BBI could not be achieved without the transfer of BCSL's business, then it could be said that the transfer of BCSL's business was incidental, supplementary or consequential, and necessary to secure the scheme was fully and effectively carried out.

187. On the subsequent application to sanction the scheme ([2019] EWHC 129 (Ch)), Snowden J had to consider whether those requirements were in fact satisfied. He concluded that it was appropriate to order the transfer under section 112(1)(d) of some, but not all, the business of BCSL. For present purposes, it is sufficient to record his conclusion as to the business whose transfer he was prepared to order, at [95]-[96]:

> "95. On the basis of [examples of actual trades] I am prepared to accept,
>
> i) that if an In-Scope Client of [BB] has existing trade(s) or transaction(s) with [BB] (either under the Terms of Business alone or under one or more Product Agreements) which are to be transferred under the Scheme,
>
> ii) that Client also has existing trade(s) or transaction(s) with BCSL (either under the Terms of Business alone or under one or more Product Agreements), and
>
> iii) those existing trade(s) or transaction(s) form part of a composite transaction or a course of dealing involving both BBPLC and BCSL,
>
> the duplication of any relevant BCSL Product Agreement(s), and the transfer of the rights and obligations under the existing trade(s) or transaction(s) with BCSL to BBI, could properly be the subject of an order under section 112(1)(d) .
>
> 96. To hold otherwise would force a severance of a composite transaction, or a course of dealing involving both [BB] and BCSL. This would inevitably detract from the purpose and utility of the duplication of [BB] Product Agreements with that Client and the transfer of the rights and liabilities of [BB] as regards that Client to BBI…"

188. The circumstances of this case are, in the main, substantially simpler. The various custodian, management and administration arrangements which are to be included in the scheme or the subject of the ancillary orders under section 112(1)(d) are clearly incidental to the relationship between the policyholders and LGAS, and their transfer is readily described as incidental, ancillary or consequential to the transfer of LGAS's business to ReAssure. Further, the purpose of the Scheme (enabling LGAS to divest itself of the Transferring Business for the reasons I have set out above) will not be fully achieved without the ancillary orders. Finally, without a seamless transfer of all ancillary arrangements, there is a risk of creating confusion among policyholders who would be required to deal in the future with both LGAS and ReAssure.

189. The SIPP business involves the following related parts:

   i) A single Corporate Trustee Investment Plan insurance policy (a "TIP"), issued by LGAS to Legal & General (Portfolio Management Services) Nominees Limited ("Nominees") and held by Nominees on trust for the SIPP members. SIPP members may choose to invest in unit-linked funds through the TIP;

   ii) Other (non-insurance) assets in which SIPP members choose to invest ("self-invested assets"), the legal title to which is held by Nominees on trust for the relevant SIPP Member. These typically consist of shares in a company owning commercial property; and

   iii) The operation of the schemes, provided by Legal & General (Portfolio Management Services) Limited.

190. All SIPP members have the option to invest in insurance assets (under the TIP), self-invested assets, or a mixture of both. Where SIPP members have invested in insurance assets, the Scheme effects the transfer of LGAS's liabilities under the TIP, together with the legal interest in the TIP held by Nominees for the benefit of the members. This is clearly a transfer of insurance business. Where, however, SIPP members have invested in self-invested assets, the only relationship is that of trustee (Nominees) and beneficiary (the relevant SIPP member). It is doubtful that this constitutes insurance business.

191. While the transfer of non-insurance assets could be effected outside of the Scheme, there would be considerable risk of complications, delay and disruption. Where a SIPP member invests in both types of assets, then the transfer of the non-insurance assets from Nominees to the new trustee company within the ReAssure group is readily seen as ancillary and necessary in order to secure that the Scheme is fully effective. The alternative would result in SIPP members, having purchased a unitary product, finding that it was divided into separate elements between two different providers.

192. In some (but likely to be limited) cases, a SIPP member has invested solely in self-invested assets. Such a member nevertheless has the option, at any time, to invest in insurance assets under the TIP. If such a SIPP member was left behind, therefore, the same point made above as to the division of a unitary product into elements provided by different companies would apply insofar as the member opted at any time to invest pursuant to the TIP. In addition, the evidence suggests that there would be considerable practical difficulties in disentangling at the custodian and fund manager level the SIPPs which held *only* self-invested assets and those that held mixed assets.

193. For these reasons, I am satisfied that it is appropriate that the SIPP business, as a whole, is transferred in conjunction with the Scheme.

194. The stakeholder pensions also require special consideration. There are two elements required to effect this transfer: the transfer of the underlying policies in respect of each in-scope member, and the transfer of the membership of each in-scope member of the pension scheme. In order for the memberships to be transferred, while retaining existing tax benefits of the members in respect of their contributions, it is necessary for "particulars and declarations" provided by the member at the outset of the arrangement to be transferred from the administrator of the LGAS stakeholder pension scheme to the administrator of the ReAssure stakeholder pension scheme. After discussions with HMRC, HMRC has indicated that it would not require fresh particulars and declarations from pensioners if the court included an order, upon sanctioning the Scheme, that the particulars and declarations given by each transferring member will be deemed to have been given to the ReAssure administrator. This seems to me clearly to fall within the ambit of section 112(1)(d), because securing the same tax treatment for the member is essential to an effective transfer of the policies.

195. Finally, the changes to the terms of the LGWPF also require consideration. As I have noted above, these contemplate (once the value of the fund has fallen below £400 million) its merger with other with-profits funds of ReAssure, the conversion of with-profits policies into non-profit policies (the "Sunset" clause) or (once the fund falls below £80 million) the merger of the with-profits fund into the non-profit fund, and the re-allocation of non-participating with-profits policies to the non-profit fund.

196. As to the first three of these, their purpose is to redress the inequalities (in terms of disproportionate distributions and cost inefficiencies) that arise in a with-profits fund once it declines in value. They are intended to provide benefits which the with-profits policyholders currently do not have if the fund remains within LGAS.

197. The court's ability to impose modifications on policyholders' rights as part of a transfer scheme under Part VII is clearly established: see *Re Abbey Life Assurance Company Limited* [2018] EWHC 3290 (Ch), at [14], citing *Re Pearl Assurance (Unit Linked Pensions) Limited* [2006] EWHC 2291 (Ch), per Briggs J, at [12] and [13]:

> "12. After initial hesitation, for which see the judgment of Rattee J. in *Re: Lincoln Assurance Ltd* (unreported) 6th December 1996, the Judges of the Chancery Division have reached a reasonable degree of unanimity that Part VII of the Act does permit the court to bring about a variation of policyholders' contractual rights which goes beyond the mere substitution of the transferee of the relevant business for the transferor as the obligor under the relevant policy: see in particular *Re: Hill Samuel Life Assurance Ltd* (unreported) 10th July 1995, per Knox J.; *Re: Consolidated Life Assurance Co.* (unreported) 11th December 1996, per Harman J.; *Re: Hill Samuel Life Assurance Ltd* [1998] 3 All ER 176, per Rimer J., in particular page 178(d) and *Re: Norwich Union Linked Life Assurance Ltd* [2004] EWHC 2802 (Ch), [2005] BCC 586, per Lindsay J. at paragraphs 9 to 13 of his judgment.
>
> 13. The rationale for so concluding has varied over time, but I am not concerned with its detail. It is sufficient for present purposes that I have jurisdiction to sanction a scheme which would have the consequence of effecting such changes to policyholders' contractual rights. The question for me is however whether I should as a matter of discretion do so."

198. One policyholder, Mrs Samuel, objected in writing to these proposals. She contended that they were a misuse of the court's ancillary powers under section 112 of FSMA, and an attempt to bypass the need for ReAssure to propose a Part 26 scheme of arrangement with transferring policyholders. In my judgment, however, it is appropriate in this case to permit these modifications. They would be activated only when the fund reaches a relatively very small amount, and would in those circumstances operate to the benefit of policyholders. They are subject to multiple safeguards, including the opinion of an independent actuary, they have been scrutinised by the independent expert, who is satisfied that they do not materially adversely affect policyholders, and there is no objection from the PRA and FCA. The LGAS with-profits actuary has also considered these provisions and concluded that they do not materially adversely affect policyholders.

199. As to the ability to transfer non-participating business out of the with-profits fund, the LGAS with-profits actuary notes that this is comparable with the actions LGAS can already take, but the terms of the Scheme impose minimum governance steps which ReAssure must take. On this basis, I consider that the provision is an appropriate one to include in the Scheme.

Formal requirements

200. In advance of the March hearing, the PRA provided certificates under paragraphs 2(1)(a) (as to margin of solvency) and 3A (as to consent from EEA regulators) of Schedule 12 to FSMA. As to the former, it has issued an updated certificate of solvency in respect of ReAssure on 11 August 2020. As to the latter, the certificate issued by the PRA prior to the March hearing confirmed that each relevant EEA regulator had either consented to the Scheme or had not responded within the period of three months from being notified. In its third report dated 11 August 2020, the PRA confirmed that no further responses had been received from EEA regulators. I am accordingly satisfied that the formal requirements imposed by regulations made under section 108(1) of FSMA have been complied with.

Disposal

201. For the above reasons I have concluded that in all the circumstances of the case it is appropriate to sanction the Scheme.