Neutral Citation Number: [2014] EWHC 4770 (Ch)

Case No: 4524 OF 2014

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 13/11/2014

Before :

MR JUSTICE BIRSS

- -

IN THE MATTER OF PRUDENTIAL ANNUITIES LIMITED
- and -
IN THE MATTER OF THE PRUDENTIAL ASSURANCE COMPANY LIMITED
- and -
IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

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- -

Martin Moore QC (instructed by **Hogan Lovells LLP**) for **both Companies**
Nehali Shah for the **Prudential Regulatory Authority**

Hearing dates: 16th September 2014

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Judgment

Mr Justice Birss :

1. This is an application for the sanction of the court to an insurance business transfer scheme under which the entire long-term insurance business of Prudential Annuities Limited (PAL) is to be transferred to The Prudential Assurance Company Limited (PAC). Ancillary orders are sought under s112 of the Financial Services and Markets Act 2000 (FSMA).

2. The purpose of the transfer is to simplify the corporate structure of Prudential UK's business and improve the flexibility and efficiency of capital management. The transfer is intended to facilitate Prudential's response to regulatory developments, such as the EU legislative programme Solvency II (Directive 2009/138/EC). The business transferred will be allocated to PAC's with-profits sub-fund (WPSF).

3. The two relevant regulators, that is to say the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA) have both considered the scheme. The PRA has confirmed that it is not aware of any issue that would cause it to object to the scheme. The FCA has confirmed that it is satisfied that the scheme is within the range of reasonable and fair schemes available to PAL and PAC and that, accordingly, it does not object to the Scheme.

4. The scheme concerns approximately 134,000 contracts of long-term insurance business (all of which are non-profit pension policies) and affects about 90,000 policyholders. Policyholders are individual annuitants and corporate pension schemes. By the hearing on 16th September, none had indicated that they might attend at court and object and on the day none did. Nevertheless a number of points were raised in writing by policyholders and I will return to those points below.

5. Mr Moore QC appears for both PAL and PAC, instructed by Hogan Lovells. Ms Shah appears for the PRA. The FCA was not represented at the hearing.

6. The matter commenced as a Part 8 Claim on 25th June 2014 and came before Deputy Registrar Briggs on 3 July 2014, when the Deputy Registrar gave directions for the publication of notices and for the final hearing to be listed. The hearing before me on 16th September was the final hearing of the application to sanction the scheme. At the hearing I indicated that I would approve the scheme, with my reasons to be given afterwards. This judgment sets out those reasons. At the time I indicated that I would try to have the reasons available for hearings which were to take place later in September in Jersey and Guernsey but regrettably that did not prove possible.

The materials in support

7. Extensive factual evidence was filed in support of the application, as follows:

    i) A number of witness statements from Andrew Taylor, a Project and Support Actuary employed by Prudential UK Services Ltd (PUKS). PUKS provides actuarial services to PAC and PAL. His was the main evidence from the companies. He explained the background of the companies, the purpose of the scheme and the steps taken to notify policyholders and other relevant persons, such as trustees and members of the PAL group pension scheme, about the proposed transfer.

ii) A witness statement from Christopher Squire, the Customer Service Implementation Manager at PUKS. He had particular responsibility for printing and mailing the Policyholder Pack sent to policyholders.

iii) A witness statement of Charles Rix, a partner at Hogan Lovells, who summarised the volume and type of responses received to the communications. His witness statement was signed on 10th September 2014 and Mr Moore was able to provide the up to date figures on instructions as at the date of the hearing. By the time of finalising the witness statement, 1359 responses had been received. The up to date figure given to me on instructions was 1406. Of this 66% did not actually relate to the transfer. Of the remainder nearly all amounted to enquiries about the transfer rather than objections and a total of 8 (0.6%) contained objections.

8. A critical aspect of the application is the role of the independent expert appointed under s109 of the FSMA. This was Oliver Gillespie FIA. Mr Gillespie qualified in 1999 and is a Fellow of the Institute and Faculty of Actuaries. He holds a certificate issued by the Institute and Faculty of Actuaries to act as a Life Actuary (including with-profits). He is a partner in Milliman LLP is an approved person under the FCA's Financial Register. His appointment was approved by the PRA after consulting with the FCA in a letter dated 27th January 2014 to PAC. Mr Gillespie's main report was dated 23rd June 2014 and his supplementary report was on 4th September 2014. Mr Gillespie's opinion is in support of the transfer.

9. In addition the companies relied on reports from three further actuaries: a report dated 19th June 2014 of David Belsham FIA, then the Actuarial Function Holder of PAC and PAL; a supplementary report of the Actuarial Function Holder of PAC and PAL dated 4th September 2014 (now Stewart Gracie FFA); two reports of the With Profits Actuary of PAC (R G Myers FIA) dated June and September 2014. These actuaries conclude that the proposed transfer is appropriate.

10. Finally both the PRA and FCA issued reports into the transfer. Both regulators issued two reports, both first on the 30th June 2014 and second on the 10th and 11th September 2014 respectively. Their conclusions have been summarised above.

Background to the applications

11. PAC is a very large and famous insurance operation. It has more than 8.3m policyholders. Nearly all its business is long-term insurance business. Today (i.e. prior to transfer) the corporate structure of the group is such that PAL is already an asset of the WPSF (i.e. the fund into which it is proposed that the long-term business of PAL is to be transferred).

12. The WPSF had as at 31st December 2013 on a Pillar I, Peak 2 basis realistic liabilities of £80.4bn and assets of £87.3bn. It had excess capital after its Risk Capital Margin of £6.1bn.

13. PAL is very much smaller that the WPSF. Its principal business is pension annuity business. The majority of its business has comprised the reinsurance of annuity business written by other companies in the Prudential group. It ceased to accept such business during 2004 and has, save for increments on existing policies been closed to

new business since 1st July 2004. The policies in force, with statutory liabilities on a Pillar 1 Peak 1 basis, represent approximately £5.7bn.

14. Since 2012 the vast majority (about 99%) of PAL's business has been reassured into the WPSF under arrangements whereby assets equal to PAL's Pillar 1 liabilities have been deposited back with PAL and over which PAL has granted a floating charge to the PAC WPSF. The floating charge also extends to all long-term insurance assets of PAL. The effect of these arrangements is that although in legal terms the relationship between the policyholders of PAL and PAC is that of an insured and reinsurer (of the insured's insurer) in economic terms the effect is as if the relationship were that of insured and insurer. The balance of the business of PAL which is not reinsured by the PAC WPSF is reinsured by Swiss Re, one of the world's largest reinsurance companies.

15. Mr Moore submitted, accurately, that the proposed scheme will give legal form to the economic reality already in existence.

16. PAL has a very small number of policyholders whose current addresses are in the Bailiwicks of Guernsey and of Jersey. It has received advice that is necessary in both jurisdictions to conduct separate schemes to effect the transfer of the long-term business of PAL. Both these island schemes are conditional upon sanction of the mainland scheme and were due to be heard on 19th and 23rd September 2014 respectively.

The principal features of the scheme

17. The structure of the scheme is as follows:

    i) Section A and the Definition Schedule identify the business to be transferred. A feature is that assets representing the shareholders' fund and certain related agreements will not transfer by virtue of the scheme but the assets will, after de-authorisation and liquidation of PAL, fall into the PAC WPSF.

    ii) A concept of "Excluded Polices" was adopted to deal with the possibility that a regulator in an EEA state refuses consent to the scheme or that the Island Schemes are not sanctioned. Mr Moore submitted this concept was conventional. I have no reason to doubt it. In the event the certificate from the PRA under Schedule 12 of FSMA rendered the EEA aspect of the definition of Excluded Policies redundant. Moreover there is no reason to suppose that the Island Schemes will not receive sanction in due course.

    iii) Clauses 8-11 deal with the transfer of the Transferring Business, Policies, Assets and Liabilities and the allocation of the Transferred business to the PAC WPSF.

    iv) Clauses 12-13 and 15-16 contain provisions for continuity of construction, proceedings, collection of premiums and mandates and the like. They are said to be conventional and I have no reason to doubt it.

v) Clause 14 deals with Excluded Policies and Clauses 17-18 make provisions in relation to Residual Assets and Residual Liabilities, which Mr Moore submitted were conventional concepts.

vi) Clauses 19-25 and following contain miscellaneous provisions, including the anticipated Transfer Date of 00/01 GMT on 1st October 2014.

The legal framework

18. Section 104 of the FSMA prohibits "insurance business transfer schemes" not approved by the Court. Section 105 defines what an "insurance business transfer scheme" is. The scheme before me is such a scheme by reason of s105(2)(a) in that the business to be transferred is carried on in the UK by a UK authorised person (PAL) who has permission to effect or carry out contracts of insurance. The transfer will result in the business transferred being carried on from an establishment of the transferee, PAC, in an EEA state, namely the United Kingdom. The Scheme is not an excluded scheme under sub-sections 105(1)(c) and (3) FSMA.

19. Section 107 FSMA sets out the circumstances in which an application may be made to the Court. Section 107(2) permits the application to be made by either or both of the authorised person and the transferee. Since in this case both companies have their registered offices in England the application must be made in England to the High Court.

20. Section 108 confers upon the Treasury power to impose requirements on applicants making an application for the sanction of a scheme. Pursuant to that rule-making power a set of rules referred to in this case as the "Regulations" have been made. Under s108, the court must be satisfied that these Regulations have been complied with. Together the Regulations are: The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (S.I.2001/3625); the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (S.I. 2007/3255); and the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) (Amendment) Regulations 2008 (S.I. 2008/1467).

21. Section 110 of the FSMA permits but does not require the regulators to be heard at the hearing of the application. Both the FCA and PRA filed full reports and had the opportunity to attend. The PRA attended the hearing and were represented by Ms Shah. I am grateful to them for doing so and to Ms Shah for the assistance, particularly for her skeleton argument which put into context and explained various important matters.

22. The section also permits any person who alleges they would be adversely affected by the scheme to attend and be heard. No-one attended the hearing. I will consider the points raised in various letters from policyholders below.

23. Section 111 of FSMA provides (so far as relevant):

> (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);

(aa) ……

(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.

24. Thus overall the applicable legal framework has three fundamental aspects: compliance with the Regulations, compliance with the formal requirements in s111(2) and then the court has a discretion to be exercised (s111(3)).

Compliance with the Regulations

25. The Regulations oblige the firm to notify policyholders directly and by way of advertisement and the policyholders have a period between the directions hearing and the final hearing to consider the proposed scheme and to ask questions, make representations or object to the scheme.

26. The PRA approved in advance the draft notices to be sent to policyholders and published and published in the press. The applicants sought to waive certain aspects of the notification requirements of the Regulations and in the circumstances, the PRA and FCA did not oppose that waiver.

27. These issues were canvassed at the directions hearing before Deputy Registrar Briggs. The Order of 3rd July 2014 declared that the Court was satisfied with the steps proposed to be taken to comply with the Regulations. Directions were given for advertisement. The order also dispensed formally with (a) the giving of notice to every policyholder and (b) the publication of an advertisement in the national newspapers of any EEA state other than the UK which was notified by the PRA.

28. The notices were published in the press and "Policyholder Packs" were posted to policyholders by 24th July 2014. Letters were also sent to re-assurers of PAL. The PRA indicated that it was satisfied with the way in which communications to policyholders had been conducted.

29. The FCA also indicated that it was satisfied that the way in which communications to policyholders have been conducted does not give it cause to object to the scheme and that policyholders and other persons affected by the scheme have received sufficient information about it.

30. Also in compliance with the Regulations, copies of the sanction application, the Independent Expert's report, the statement setting out the terms of the scheme and the summary of the IE report were given to PRA and FCA on 21st July 2014.

31. I am satisfied that all the relevant requirements of the Regulations have been complied with.

Formalities (s111(2))

32. Section 111(2)(a) requires that the appropriate certificates have been obtained, referring to Schedule 12 FSMA.

33. Paragraph 2(1)(a) of Schedule 12 requires a certificate from the PRA that PAC will, taking the proposed transfers into account, possess the necessary margin of solvency. That Certificate as to Margin of Solvency was issued on 5th September 2014.

34. Paragraph 4 of Schedule 12 requires a certificate from the PRA recording that the regulatory authorities in EEA states in which a risk is situated have either consented or not refused within three months of notification. That Certificate as to Long Term Business was issued on 5th September 2014. It records that the PRA notified regulators of 31 EEA states (which are listed), that the regulators from 25 states (listed) have consented and identifies the remaining 6 states. It certifies that the regulators from those 6 states have not refused to consent within the relevant three month period.

35. The PRA report explains that Cyprus and Portugal both consented after specific steps were taken in those countries. The Lithuanian supervisory authority responded to the PRA indicating that the scheme had to be announced in local newspapers and if that was done and no objections were received, it would consent. In the end however PAL confirmed to the PRA that it believed there were no policyholders for which Lithuania was the relevant state (i.e. the state of commitment) and so it would not undertake any publicity in Lithuanian newspapers. The Lithuanian supervisory authority acknowledged this and stated that no further details were required.

36. The effect of s111(2)(b) is to require PAC to have the necessary authorisation to carry on the business transferred to it. This is confirmed by the first report of the PRA. The PRA is satisfied that no other certificates under Schedule 12 are needed.

37. I am satisfied that the requirements of s111(2) have been met on this application.

The s111(3) discretion

38. In ***Re Allied Dunbar Assurance plc*** [2005] EWHC 28 (Ch) Evans-Lombe J applied the same approach to the court's jurisdiction under s111 FSMA as had been taken before by the court under Schedule 2C to the Insurance Companies Act 1982. The principles to which the Court had regard in deciding whether to exercise its discretion under Schedule 2C to the Insurance Companies Act 1982 were set out in the decisions of Hoffmann J (as he then was) in ***Re London Life Association Ltd*** 21st February 1989 (Unreported) and Evans-Lombe J. in ***Re Axa Equity & Law Life Assurance Society plc and Axa Sun Life plc*** [2001] 1 All ER (Comm) 1010.

39. At pages 6 and 7 of the transcript in ***Re London Life*** 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."

40. In ***Re Axa Equity & Law*** Evans-Lombe J applied Hoffmann J's decision and derived eight principles which he considered governed the approach of the court to applications for the sanction of transfers of long term business. The eight principles were set out at pages 1011 and 1012 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 paras (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."

The independent expert

41. The third principle identified by Evans-Lombe J relates to the report of the independent expert. Given the importance of that role, I read Mr Gillespie's two reports with particular care. The reports examine the nature and effect of the implementation of the scheme both from the perspective of its effect on policyholders of both PAL and PAC and its impact on the capital framework. The capital framework is considered under the two regimes, Pillar I and Pillar II, introduced by the FSA in 2004. Mr Gillespie explains what Pillar I and Pillar II are but the details are not material to this judgment. Mr Gillespie also considered the impact from the point of view of the Solvency II regime which is due to come into effect in the EU on 1 January 2016.

42. Considering the security of benefits of the policyholders of PAL and PAC, he explains that (a) on a Pillar I basis the PAC WPSF is well capitalised before and after implementation of the scheme and the transfer results in a modest increase in the capital coverage due to a reduction in the required capital in respect of PAL business; and (b) on a Pillar II basis, because PAC's Pillar II calculations currently make full allowance for the value and risks associated with PAL and treat PAL as if it were part of PAC, the capital resources, individual capital assessment and excess capital of the PAC WPSF are unchanged as a result of the implementation of the scheme. Finally, he explains that it is unlikely that consideration from a Solvency II perspective would lead to materially different conclusions.

43. Mr Gillespie explains that the expectations of policyholders are essentially two fold, to receive their income guaranteed under the policy on the relevant dates specified and that the administration and governance of the policies are in line with the relevant contractual terms. His clear view is that the implementation of the scheme will not lead to a change in contractual benefits or the security of guaranteed benefits (see also above), will not effect the administration and service standards applicable to PAL policyholders and will have no material effect on the management and governance of the PAL policies.

44. Mr Gillespie also looks in detail at the effect of implementation of the scheme on PAC policyholders. Again his clear view is that there will be no adverse change in that regard either. He draws attention to the fact that today, in theory, looked at as a matter of company law, the PAC WPSF could not be compelled to support PAL and in theory the PAC WPSF could walk away and allow PAL to become insolvent. That will obviously change if the scheme is implemented but as Mr Gillespie explains, in practice both the PAC WPSF and PAL have been managed on the implicit assumption that PAL is part of the PAC WPSF. Moreover and importantly, the reinsurance arrangements significantly restrict the ability of the PAC WPSF to "walk away" from PAL. There is in truth no realistic "walk away" option today.

45. In his supplementary report Mr Gillespie updates his analysis to take into account financial and other changes since the initial report. He confirms that he has reviewed the correspondence with the 8 policyholders who have voiced objections or concerns and that they do not raise issues which he had not already considered when he wrote the main report. He confirms that his conclusions from the main report are unchanged.

46. I bear in mind the judgment of Briggs J as he then was in ***Re Pearl Assurance (Unit Linked Pensions) Ltd*** [2006] EWHC 2291 (Ch) at paragraph 6 in which he emphasised the importance of the court's role in this process as not in any way exercising its discretion as a rubber stamp and also cited the passage in the judgment of Rimer J (as he then was) in ***Re Hill Samuel Life Assurance Ltd*** [1998] 3 All ER 176 at 177 in which he explained that the report of the independent actuary was amongst the most important material before the court on applications of this kind.

47. Mr Gillespie's reports set out persuasive and detailed reasons in support of his conclusions.

Objections by policyholders

48. 8 responses from policyholders contained what could fairly be called an objection to the transfer. Full copies of the correspondence and records of conversations with three individuals (Mr R Bolland, Mr G Benson and Mr H Van Schreven) who specifically requested that their objections be placed before the court were provided to me. In addition full copies of the correspondence and conversation records of the other five individuals who raised objections were placed before the court.

49. In its second report the PRA set out and collated the objections by theme and explained the views of the PRA and the FCA on them. Below I set out, in very brief summary, each of the major points and the main answers to them:

    i) *Is the Independent Expert sufficiently independent and expert?*

    The short answer is yes. Mr Gillespie's standing clearly makes him a suitable and appropriate independent expert. Moreover ensuring objectivity, independence and expertise of the Independent Expert was recognised by the PRA as part of its statutory objectives. The PRA considered this and is satisfied that Mr Gillespie has sufficient expertise and is independent. The FCA was also consulted, considered Mr Gillespie and did not object.

    ii) *Lack of certainty in the scheme reports*

Some policyholders noted that the reports of the actuaries (including Mr Gillespie) did not give a 100% assurance that they would not be affected. That is true but a 100% assurance is not required nor would it be realistic to expect such an assurance. The reports record that the opinions of these individuals are that the risks are sufficiently low to justify sanctioning the scheme. This is a matter of assessment and judgment. The PRA was also satisfied about this. The FCA regards this as a key consideration in the context of its statutory objectives. The FCA is satisfied that these concerns do not give cause to object to the scheme.

iii) *Legal protection of policyholders*

One policyholder was concerned that their legal protection against misconduct by PAL would be lost in the transfer to PAC. However since both PAL and PAC are subject to the same regulatory regime (at least so far as material), there is no basis for an objection here. Both the PRA and FCA took this view.

iv) *Communication to policyholders about the scheme*

Some of the policyholders who objected complained they had not received documents about the transfer and were not sufficiently informed. The court approved the communication plan at the directions hearing. The FCA regards the communication strategy and its implementation as material to its statutory objectives and so has considered and monitored this aspect of the process. The FCA is satisfied by what was planned and what took place. Given the very low number of policyholders who raised this point, I am satisfied it is not an indication of a wider problem. There is no ground to object here.

v) *Cost of the scheme*

One person objected that the total cost associated with the transfer had not been disclosed and would fall on policyholders. The FCA regards this as material to its statutory objectives and considered this point. The cost will ultimately be borne by the PAC WPSF rather than by a PAC shareholder. The Independent Expert confirmed this was reasonable since the expected benefits of the transfer will accrued to the PAC WPSF. The apportionment of cost between PAL and PAC was subject to detailed scrutiny by the FCA and it did not raise an objection. The Independent Expert also considered the total costs and concluded they were reasonable.

vi) *Motives for the scheme*

Some of the policyholders who objected contended that the motives for the scheme were to: (i) transfer Prudential's business outside the UK or sell PAC to a third party, (ii) compensate PAC for weak Asian performance, (iii) benefit shareholders not policyholders and (iv) cut jobs and save costs. In paragraph 4 of his first witness statement Mr Taylor states that the purpose of the scheme is to simplify the corporate structure and improve flexibility and efficiency of capital management. Each of the PRA and the FCA regarded this question as material to its statutory objectives, considered it and did not raise any objection to the scheme. Neither regulator has reason to believe the purpose is not what Mr Taylor stated.

vii) *Changes to policy terms and conditions*

Some raised a concern about reduced annuity payments in future and other changes. This issue is part of the matters considered in detail by the Independent Expert, who concluded there would be no material change to expectations or security. The FCA regards this as material to its statutory objectives and considered this point. It concluded there would be no material change to any policyholders' security, benefit expectations or the service standards or governance applicable.

viii) *Increased risk resulting from the scheme and PAC's solvency*

Concerns were raised about whether there would be more risk when transferring to PAC, about the result if PAC became insolvent, and one asked about compensation limits. This concern engaged the statutory objectives of both regulators. They both approved the scheme. The PRA pointed out that business of a similar nature is already written by PAC, that PAL is already a wholly owned subsidiary of PAC and that given the reinsurance position, in effect PAC is already ultimately responsible for the policies. The policyholders will be protected by the Financial Services Compensation Scheme which covers 90% of each claim with no upper limit. These protections will not change.

ix) *Sharing details with Portuguese regulators*

On receiving a communication from the Portuguese regulator, two policyholders queried this. The explanation was that the PRA was required to inform all relevant EEA supervisory regulators. The Portuguese regulator confirmed it would carry out its own notification process and needed the details from the PRA to do so. The PRA confirmed that the information will only be used for that purpose.

x) *Transfer of assets from PAL to PAC*

A number of concerns were raised about the security of the transfer process itself and the change in the security of policyholders' benefits. This concern engaged the statutory objectives of both regulators. They both approved the scheme. Once the scheme is implemented, the assets which previously backed the PAL annuities will be transferred to the PAC WPSF and PAL annuitants will have equal call on the assets of the PAC WPSF. The Independent Expert also focussed on security and was satisfied there was no material change.

50. Another element in the concerns raised by a number of policyholders related specifically to the Dalgety pension fund, which will be part of the transfer from PAL to PAC WPSF. The concerns raised are either matters considered above or they are matters which related to the operation of that fund specifically and do not relate to the scheme at all.

51. Finally I should mention specific complaints raised by Captain Weston. They arose after the second reports of the PRA and FCA and so were not taken into account in those documents. I read Captain Weston's letters. He is clearly very concerned about the behaviour of the Prudential, including in relation to a transfer in the past. He has taken his concerns to the ombudsman, who has dealt with them. None of the points Captain Weston took are germane to the scheme or are reasons for not approving the scheme. His prime concern is the level of his annuity. Whether or not the scheme would involve a material change in that regard is a matter covered by the Independent

Expert. Also I note that the PRA did consider Captain Weston's objections and stated they did not give it cause to object to the scheme.

Conclusion

52. In considering whether to sanction this scheme the court is engaged in a difficult task both because the scheme itself is complex and technical and because assessing the likely impact involves detailed consideration of numerous matters and matters of actuarial judgment and assessment looking to the future. The court's task is simplified very significantly by the work done by the statutory regulators and by the work of the Independent Expert. Their role is not only to consider the scheme and its impact and (in the case of the regulators) whether to object to it, their role is also to assist the court in understanding the issues and understanding why there is no reason to object and why there is no material change to the position of those affected by the scheme (assuming this is so). This second aspect of their role is critical since the court has an independent function in exercising its own judgment on an application of this kind.

53. In this case the regulators, Mr Gillespie and the solicitors and counsel appearing on this application have made sure that the court can not only see that there are no substantial objections to this scheme but can understand why that is so. Unless the court understands this, the exercise will be nothing more than a rubber stamp.

54. Exercising my own independent judgment, based on all this material but in particular the reports of the Independent Expert, I am satisfied that there will be no material change to the position of either PAL or PAC policyholders by this scheme. I will sanction it.