

Phoenix Life Ltd, Re

Also known as:

Reassure Life Ltd, Re

Phoenix Life Assurance Europe

Designated Activity Co, Re

Chancery Division

24 October 2022

Case Analysis

Where Reported

[2022] EWHC 2669 (Ch); [2022] 10 WLUK 412; [Official Transcript](#);

Case Digest

Subject: Insurance

Keywords: Business transfer schemes; Passporting; Brexit; Policyholder protection; Insurance policies

Summary: The court sanctioned a business transfer scheme to transfer to a newly established Irish company the insurance business of Phoenix Life Ltd and Reassure Life Ltd that had been written in the Republic of Ireland, Iceland, Germany, Norway and Sweden to ensure that the relevant policyholders continued to obtain the full range of benefits under their policies following Brexit.

Abstract: The applicant companies (RLL, PLL and PLAE) applied for the sanction of an insurance business transfer scheme under the [Financial Services and Markets Act 2000 s.111](#).

PLL and RLL were large UK insurers engaged in closed-fund run off in the long-term sector. PLAE was an Irish designated activity company which had been established for the purposes of the scheme. They were all wholly-owned subsidiaries in the same group. The business to be transferred by the scheme had been written in five EEA states: the Republic of Ireland, Iceland, Germany, Norway and Sweden. The scheme's purpose was to ensure that policyholders in those countries obtained the full range of benefits under their policies following the UK's departure from the European Union. The essential effect of the scheme was to transfer to PLAE the legal rights and obligations of PLL and RLL relating to the transferring policies together with their associated assets and liabilities. Mis-selling and mal-administration claims were excluded. The scheme affected a relatively small proportion of each transferors' business, so the solvency coverage ratios of

PLL and RLL were only affected to a small extent. PLAE was to be capitalised by a contribution of assets in order to achieve a coverage ratio of 150% (compared to coverage ratios of 164% and 1,229% for PLL and RLL respectively), and a reinsurance arrangement was to be put in place relating to the transferring with-profits and unit-linked policies. There would be a security package of fixed and floating charges to be granted by PLL and RLL to PLAE, designed to achieve the financial equivalent of a *pari passu* ranking for PLAE's reinsurance claims alongside the non-transferring policyholders and other direct insurance creditors of PLL and RLL.

An independent expert concluded that the scheme would not have a material adverse effect on the security of the benefits under the transferring policies, the profile of risks to which those policies were exposed, the protection offered by the regulatory regime and the reasonable expectations of the transferring policyholders in respect of their benefits, including the level and standards of administration and service. He also concluded that there would be no material adverse effect on the non-transferring policyholders.

The technical requirements of the legislation had been complied with. There were no parts of the independent expert's reports that suffered from obscurity or inadequate or defective reasoning. His overall conclusion on PLAE's financial strength was reasonable and was accepted by the court. The court also agreed with his conclusion that the reinsurance arrangements would not lead to a material adverse effect on the security of benefits under the policies to be transferred under the scheme. He had also been justified in concluding that the loss of Financial Services Compensation Scheme protection for transferring policyholders, because there was no similar scheme in Ireland, would not lead to a material adverse effect on the security of benefits as the likelihood of default was remote and the loss of protection was more than outweighed by the other benefits of the scheme. The balancing exercise carried out by the expert was both reasonable and correct. Questions of international recognition provided no impediment to the scheme being sanctioned. The court exercised its discretion to sanction the scheme (see paras 29, 38, 46, 49, 52, 63 of judgment).

Judge: Trower J;

Counsel: For the applicant: Martin Moore KC

Solicitor: For the applicant: Linklaters LLP

Related Cases

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Ch D

Phoenix Life Ltd, Re
[2022] EWHC 2669 (Ch); [2022] 10 WLUK
412; Ch D

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[2019] EWHC 642 (Ch); [2019] 3 WLUK 280
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Aviva Life and Pensions UK Ltd, Re
[2019] EWHC 312 (Ch); [2019] 2 WLUK 261
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[2016] EWHC 44 (Ch); [2016] 1 WLUK 185
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[2015] EWHC 2664 (Ch); [2015] 7 WLUK 817
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[2007] EWHC 146 (Ch); [2007] 1 WLUK 687
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Legislation Cited

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Financial Services (Miscellaneous)
(Amendment) (EU Exit) Regulations 2019 (SI
2019/710)

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2000 (Control of Business Transfers)
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s.111

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s.112

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