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ROYAL COURT
(Samedi Division)

81.

25th April, 1997

Before: Sir Philip Bailhache, Bailiff, and
Jurats Vibert and Jones

Between: The Norwich Union Life Insurance Society — Plaintiff

and

Norwich Union Annuity Limited — First Defendant

and

Norwich Union Life & Pensions Limited — Second Defendant

and

The Finance and Economics Committee of the States of Jersey — Third Defendant

Application by the Plaintiff for an Order sanctioning a scheme ("the Jersey Scheme") pursuant to Article 26 of the Insurance Business (Jersey) Law, 1996, and the Second Schedule thereto.

Advocate A.R. Binnington for the Plaintiff and for the First and Second Defendants. The Third Defendant was not represented, but a Representative of the Committee was in Court.

JUDGMENT

THE BAILIFF: This is an application under Article 26 and the second schedule of the Insurance Business (Jersey) Law, 1996 ("the 1996 Law") for the sanction of this Court to the transfer of the long-term insurance business of Norwich Union Life Insurance Society ("NULIS") to two transferee companies. NULIS is an unlimited company which is duly authorised to carry on long-term business in Jersey by virtue of being a category A permit holder under the Law. The members of NULIS are the policy holders falling within the definition of members in the Articles of Association of NULIS.

It is right to say that this application, which is necessary to comply with the relevant legislation in this jurisdiction is really subsidiary to an application which has been made to the High Court of Justice in England, pursuant to the Law in force there. The overall scheme was approved by the High Court in England on 23rd April, 1997.

For our part, however, we have to be satisfied that the application is one which ought to be granted, having regard to the various requirements set out in the second schedule to the 1996 Law. We have seen the lengthy reports both of the actuary appointed by NULIS and of the independent actuary and we are satisfied from those reports that the interests of policy holders will not suffer. The scheme was approved at an Extraordinary General Meeting of members by an overwhelming majority. Well over 98% of those attending voted in favour of the proposal.

We do not think it is necessary to set out *in extenso* the statutory requirements contained in the second schedule. Suffice it to say that all those requirements have been met. We note in passing that on 17th March, 1997, we dispensed, pursuant to paragraph 4(b) of the second schedule, with the requirement to circulate policy holders with a statement of the terms of the scheme, together with a summary of the independent actuary's report. This derogation was granted since NULIS would be sending documents to all policy holders on its computer base in accordance with certain proposals set out in an affidavit of Mr. Richard John Harvey, the Group Finance Director and Deputy Group Chief Executive of NULIS.

We have seen a letter from Mr. N.A. Woodroffe, the Deputy Director of the Financial Services Department, which makes it clear that the Finance and Economics Committee has given careful consideration to the scheme and has no objection to it.

Finally, no objections to the scheme have been brought to the attention of the Court by any policy holder entitled to object and to appear before the Court.

Counsel drew our attention to a Judgment of Hoffmann J in re London Life Association Limited (21st February, 1989) Unreported Judgment of the High Court of England, where the learned Judge referred to the principles to be applied in applications of this kind:

> *"Although the statutory discretion is unfettered, it must be exercised according to principles which give due recognition to the commercial judgment entrusted by the company's constitution to its board. The court in my judgment is concerned in the first place with whether a policyholder, employee or other person would be "adversely affected" by the scheme in the sense that it appears likely to leave him worse off than if there had been no scheme. It does not however follow that any scheme which leaves someone adversely affected must be rejected. For example, as we shall see, one scheme which might have been adopted in this case would have adversely affected many of London Life's employees because they would have become redundant. But such a scheme might nevertheless have been confirmed by the court. 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".*

We respectfully adopt that approach. We are satisfied that the scheme is fair to all persons affected by it and that it is proper to grant our sanction to it. We accordingly make the Order in the terms of the draft settled by counsel and placed before us.

Authorities

In the matter of The London Life Association Ltd & Ors (21st February, 1989) Unreported Judgment of the High Court of England.