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Case No: CR-2019-001161

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

The Rolls Building, 7 Rolls Buildings,
Fetter Lane, London, EC4A 1NL

Tuesday 22nd October 2019
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Before:
MR. JUSTICE MORGAN

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In the matter of:

CANADA LIFE LIMITED
- and -
SCOTTISH FRIENDLY ASSURANCE SOCIETY LIMITED
- and -
FINANCIAL SERVICES AND MARKETS ACT 2000

- -

MARTIN MOORE QC (instructed by Hogans Lovell International LLP and CMS Cameron McKenna Nabarro Olswang LLP) for the **Applicants.**
WILLIAM EDWARDS for the **Regulators**

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APPROVED JUDGMENT

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MR. JUSTICE MORGAN:

1. This is an application under Part VII of the Financial Services and Markets Act 2000, to which I will refer as "FSMA". In particular, it is an application by Canada Life Limited and Scottish Friendly Assurance Society Limited for the sanction of the court under section 111 of FSMA to a proposed scheme for the transfer of insurance business from Canada Life Limited to Scottish Friendly Assurance Society Limited.

2. The provisions of Part VII of FSMA are well-known. I can go straight to section 111, which has the heading: "Sanction of the court for business transfer schemes". Subsection (1) of section 111 sets out the conditions which must be satisfied before the court may make an order under that section. Subsection (2) identifies a number of matters in respect of which the court must be satisfied. These matters refer to certain certificates and an authorisation. In addition, there are other requirements prescribed by Regulations. I can say at once that all of those matters have been satisfied in this case and I need not refer to them further in this judgment.

3. Section 111(3) is in these terms: "The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme." There have been many cases over the years which have considered these provisions and their statutory predecessors. Some of the decided cases have identified the principles to be applied by the court. These principles are now well settled. I will apply them in this case, but it is not necessary to restate them in full in this judgment.

4. For present purposes I direct myself that I should ask three questions in particular. The first is whether the proposed transfer scheme has the potential to have a material adverse impact on a relevant person or persons. The second is whether the proposed transfer scheme would be unfair to a relevant person or persons. The third question is whether, in the light of the answers to the above two questions, I should or should not sanction the transfer scheme.

5. At the hearing of this application, Mr. Moore, QC appeared on behalf of the Applicants. Mr. Edwards of counsel appeared on behalf of the Prudential Regulation Authority and the Financial Conduct Authority. A policyholder, Mr. Owen Carr, appeared to explain his objections to the proposed transfer and he invited me to withhold sanction to the transfer scheme. I am grateful to counsel for the submissions they have made. I am grateful in particular to Mr. Moore for a very thorough exposition, both in writing and orally, in relation to all matters that need attention. Mr. Carr explained his point of view with proper moderation and in a way that enabled me fully to understand the points he wished me to take into account.

6. Although some of the documentation which has been prepared in order to give effect to the proposed transfer scheme involves a degree of complexity, the basic facts can be stated relatively shortly. I can take a useful summary of the background to the application from Mr. Moore's written submissions in support of the application.

7. The business which is to be transferred comprises around 127,000 contracts of long-term insurance as at 30th June 2019, which was the last occasion on which the matter was assessed. These contracts consist of unit-linked, non-profit and with-profits business which was either initially written by Canada Life or transferred into Canada Life pursuant to earlier transfers of insurance business. These contracts today

comprise a legacy closed book of business which is no longer within Canada Life's core focus of operations. The best estimate liabilities for the transfer in business is approximately £2.3 billion.

8. As to the reasons on the part of Canada Life and on the part of Scottish Friendly for the proposed transfer, the evidence shows the following: Canada Life has made the strategic decision to focus on the integration of a certain business called Retirement Advantage which it acquired in January 2018 and upon its core business areas of annuities and group and individual protection business. I add that the Retirement Advantage business is the subject of an intra-group transfer in relation to which there will be a Part VII sanction hearing scheduled for mid December 2019. Nothing, for today's purposes, turns upon the fact that that sanction hearing has not yet taken place.

9. After a competitive tendering process, the criteria of which included the preferred transferee's ability to service the business, Canada Life identified Scottish Friendly as its preferred transferee. From Scottish Friendly's point of view the acquisition of this business is in line with its strategy of growth and diversification in pursuance of which it identifies merger and consolidation opportunities in the life sector. This proposed transfer is not the first occasion on which Scottish Friendly has given effect to that strategy.

10. I have, of course, been given considerable information about the current and proposed future financial standing of both Canada Life and Scottish Friendly. Those subjects are dealt with, as one would expect, in considerable detail in the report of the independent expert who has been appointed in accordance with the requirements of Part VII of FSMA. The independent expert in this case is a Mr. Simon Grout, FIA, and I can see from his report that he has the necessary experience and qualifications to be of real assistance to the court in dealing with the questions he addresses. I refer in due course to the conclusions reached by Mr. Grout, but I can summarise some of the material which was before him, and which is before the court. Again, I take this summary largely from the written submissions of Mr. Moore.

11. As at 31st December 2018 Canada Life had approximately 643,000 policies to which it ascribed best estimate liabilities of approximately £18.8 billion. Its solvency coverage ratio as at 30th June 2019 was 139% which ratio is not forecast to change as a result of the scheme. Solvency II does require insurance companies to hold very high levels of capital and the requirements of Solvency II Pillar 1 are fully explained in the report of Mr. Grout. I do not regard it as necessary for me to provide my own summary of the detailed comments he has made on those matters. I have been taken to his comments, his elaboration of them, and I understand and indeed accept what he has said on those subjects.

12. The business to be transferred comprised, as at 31st December 2018, approximately 21% in terms of numbers of contracts and about 10% by value of the total of Canada Life's best estimate of liabilities. The business is a mix of with-profits, unit-linked and other non-profit life, pension, annuity and permanent health policies and includes the entirety of what has been set up as the Manulife Fund which will be transferred to Scottish Friendly where it will be established as a new ring-fenced fund to be known as the New Manulife Fund. I have been given a much more detailed breakdown of

the insurance business being transferred, but it is not necessary for me to set that out in this judgment.

13. Having said something about Canada Life, I will now describe Scottish Friendly. It is a Friendly Society. It was established in 1862 as the City of Glasgow Friendly Society. It operates as a mutual, providing a wide range of financial products and services. It is still based in Glasgow. I referred earlier to its strategy. I am told that the strategy is a three-stranded strategy to grow organically by providing outsourced services and by merger and consolidation. The proposed transfer furthers the third of these strands.

14. In consequence of previous steps taken to implement that strategy, Scottish Friendly currently has a main fund and four closed ring-fenced funds to which it will add, if the transfer is sanctioned, the New Manulife Fund. Scottish Friendly currently has policies numbering slightly in excess of one-and-a-quarter million. The number of policies to be added if the transfer proceeds is approximately 127,000. That, in terms of number, is around 10% but in terms of the assets and liabilities to be transferred to Scottish Friendly, pursuant to the proposed transfer, the assets and liabilities will be significantly increased. The assets and liabilities will be almost, but not quite, double in each case. Mr. Moore has correctly described the effect of the transfer on Scottish Friendly as "significantly transformative".

15. At this point I will give a little more detail as to the financial position of the companies before and after the proposed transfer takes effect, if it is to take effect.

16. Starting with the financial impact of the transfer on Canada Life, I have been given figures by the independent expert for the Solvency Capital Requirements ("SCR") coverage ratio as at 30th June 2019. The ratio at that date before the transfer was 139%. If the transfer had occurred by that date the ratio would still have been 139%. 30th June 2019 is the most recent date for which this assessment has been carried out and it has not been suggested to me that these figures should not be used for present purposes to assess the up-to-date position. That means that, so far as policyholders in Canada Life who are not being transferred, the coverage ratio is unaltered by the transfer.

17. I have also been given figures by the independent expert relating to Scottish Friendly showing the SCR coverage ratio, again as at 30th June 2019. The actual position, that is before the transfer takes effect, shows a coverage ratio of 171% and at the same date, on the assumption that the transfer had then taken effect, the coverage ratio is 160%. That means that existing policyholders in Scottish Friendly, absent the transfer, have a coverage ratio of 171% and following the transfer that will be reduced to 160%.

18. Finally, I have been shown what really follows from what I have said, which is the effect on a transferring policyholder currently in Canada Life, who will, if the transfer proceeds, have a policy with Scottish Friendly. For the reasons already explained, as to the figures, the position of that policyholder will be that the SCR coverage ratio for Canada Life at the present time before transfer is 139% and after transfer will be 160%. These figures for coverage ratio are, however, figures which are judged by the independent expert to offer satisfactory financial security for all three groups of policyholders, those remaining in Canada Life, those transferring to Scottish Friendly

and those currently in Scottish Friendly who will be joined by the policyholders transferring in.

19. What I have stated as to the financial position of the two companies is, of course, a brief summary only of the very much more thorough and certainly more detailed material considered by the independent expert. At this point I can go to the conclusion of the independent expert. I will take this from his supplementary report very recently prepared on 16th October 2019 where he refers back to his first report of earlier this year.

20. What he says is that in his first report he drew the following main conclusions: "The transfer will not have a material adverse effect on transferring CLL policyholders, non-transferring CLL policyholders or SF policyholders in relation to security of benefits, benefit expectations, risk profile, service standards and governance arrangements." He adds: "I am satisfied that the transfer is equitable to all classes and generations of CLL and SF policyholders."

21. In his supplementary report he states that he reviewed further updated information, he conducted further analysis, he had further discussions with relevant stakeholders and he remains satisfied that his original conclusions should remain unchanged.

22. I referred earlier to the comment of counsel that the transfer would be significantly transformative for Scottish Friendly. They will double their assets and liabilities, although the increase in the number of policies is very much more modest than that. I have therefore given considerable thought to what is said to me about the ability of Scottish Friendly to accommodate these new responsibilities and liabilities. That matter is described in detail by the independent expert, in particular in his supplementary report. He there provides considerable factual material and his opinions on the question of Scottish Friendly's ability to accommodate, manage and deliver services for the additional responsibilities it will undertake.

23. In the light of the material there set out, I am able to conclude, with the independent expert, that there is no real cause for concern in those respects. I am given further information on the question of governance in relation to Scottish Friendly by the reports that have been provided to me by the Regulators, the Prudential Regulation Authority and the Financial Conduct Authority, and in relation to the present point as to governance I refer in particular to the second report of the Financial Conduct Authority. The FCA has referred to a thematic review of one part of Scottish Friendly's business in particular. It appears that action needed to be taken, and was taken, so much so that the FCA is able to say in this report that all requirements of the FCA have been met and outstanding issues were addressed to their satisfaction by a date in September 2019.

24. Dealing with the overall conclusion of the FCA, that appears in the second report, where they state that they are satisfied that the proposed transfer is within the range of reasonable and fair schemes available to the two parties. The Prudential Regulation Authority has also reported to the court that, having considered the transfer scheme in the light of its objectives, that is the PRA statutory objectives, the PRA currently is not aware of any issue that would cause it to object to the scheme. The position of these two Regulators has been confirmed to the court by Mr. Edwards of counsel, who appeared on their behalf.

25. There have been objections from policyholders to the proposed transfer. The objections have all been copied in the court bundles. The objections have been divided between a number of objectors who indicated that they would, or at least might, attend the hearing, and then other objectors. Irrespective of which part of the bundle the objection is in, these objections have been considered by the independent expert and by the two Regulators. I have been able in the course of the hearing to consider the individual objections and the comments which have been made in response to them. It is not I think necessary for me to take the objections one by one because the independent expert and the PRA and the FCA have themselves considered the objections with a proper level of care and attention to detail, and the conclusions of those persons is that, whilst the objections may sometimes be understood, they do not give rise to any cause for concern and they suggest should not give rise to a cause for concern on the part of the objector.

26. One objector, Mr. Carr, as I have described, has attended the hearing, and he has explained his position very clearly to me in the course of the hearing. He had earlier put his points in a letter to Canada Life; the letter is dated 26th August 2019. What Mr. Carr wanted to know was: what were the principles behind the proposed transfer; what was the logic of transferring policies; what was the reason for this to be done? When he wrote the letter, Mr. Carr did not, of course, have access to the very considerable volume of material which has been provided to the court. Like Mr. Carr, the court wants to know what is the reason for the transfer. I have already indicated that both the transferor and the transferee have sound commercial reasons for the proposed transfer. They are substantial concerns and it is not difficult to see why it is, from a commercial standpoint, they wish this transfer to proceed.

27. Mr. Carr's letter then draws attention to the fact that he has not been asked to consent to the transfer. Of course, it is inherent in the court sanctioning a scheme that the sanction of the court permits the scheme to proceed. The consent of individual policyholders is not a prerequisite to the transfer taking effect.

28. Mr. Carr also told me that he had bought his policy with Canada Life some 30 years ago and he regards a transfer of his policy by Canada Life against his wishes as something which undermines the trust he placed in Canada Life. He explained that he did trust Canada Life and he has not yet been given proper reason to trust the suggested transferee, Scottish Friendly.

29. I can understand why an individual policyholder may be concerned about a transfer of a policy in the way that Mr. Carr is genuinely concerned in this case. However, the statutory provisions, which are longstanding and form the legal background to any policy which is part of insurance business, provide for a number of levels of safeguard to such transfers proceeding. I have already referred to the role of the independent expert. I have referred to the involvement of the Regulators. There is a requirement that policyholders are properly informed of what is proposed, and last, but I think not least, is the requirement that the transfer is sanctioned by the court, and the court will (and in this case I did) go into the matter so as to understand all of the points in play and to pose for itself the three questions I posed earlier, which are real questions which have to be considered with all the material weighed up before a proper judicial conclusion is reached.

30. That is the material before me, and I will now come to my conclusions as to the matters which have been identified and as to the way forward. I am satisfied that Canada Life has proper commercial reasons for the proposed transfer. Similarly, Scottish Friendly has proper commercial reasons for the proposed transfer. The independent expert has considered the position of both of these companies and has considered the position of the three groups of policyholder to which I have referred. The independent expert has considered all of the questions that need attention and he has found no reason for there to be a concern for a policyholder if the transfer were to proceed. I agree with the assessment of the independent expert.

31. In addition, Mr. Moore has explained the potential benefits of the transfer for a policyholder such as Mr. Carr. It is right to acknowledge that policyholders ought to benefit from this transfer, although I stress it is not necessary for there to be a finding of benefit before the court can sanction such a scheme. The benefit arises in this way: that it is likely to be beneficial to policyholders to be policyholders of a company for whom their business is core to its strategy (that of course is a reference to Scottish Friendly) rather than in a legacy business which is not core which must compete for resources in terms of investment and staff, with business areas considered to be more important. (That of course is a reference to Canada Life.)

32. Secondly, a company to whom the business is central is more likely to invest in infrastructure and improvements and reflect other market developments. I also have noted that the two Regulators have not raised concerns, having carried out a sufficiently thorough review of the material to enable them to give a proper answer to those questions.

33. Based on those findings, I can now address the three questions I posed earlier. First, does the proposed transfer scheme have the potential to create a material adverse impact on a relevant person or persons? The answer to that is "no". Secondly, will the proposed transfer scheme create unfairness to any relevant person or persons? The answer is again "no". The third question is: is there any reason for the court to withhold its sanction to the proposed transfer scheme? Again, the answer is "no". Accordingly, on the facts of this case, applying the established legal principles, the right order for me to make is to sanction this transfer scheme.

34. In the course of his detailed submissions, Mr. Moore took me to the decision of Snowden J in the case of *Re The Prudential Assurance Company Ltd., and Re Rothesay Life plc* [2019] EWHC 2245 (Ch). In that case the learned judge withheld sanction to the scheme before him. He gave a number of reasons for that conclusion. I am not persuaded by the reasoning in that case to take a different view from the one I have expressed in the present case. The present case simply does not have the features which persuaded the learned judge to reach the conclusion he reached. The present case is readily distinguishable from that case. Accordingly, I continue to apply the established principles to the facts of the case before me, and, as I have indicated, that persuades me, without any hesitation, that this is a proper case in which to sanction the transfer scheme.

35. Mr. Moore has addressed me on the form of order which I am asked to make, and, having heard those submissions, I will make the order as drafted, subject to any further points that now need to be mentioned.