

Slaughter and May Podcast  
 Part VII transfer from LGAS to ReAssure

<p>Robert Chaplin</p>	<p>Hello and welcome to the Slaughter and May podcast. I'm Robert Chaplin, one of Slaughter and May's Corporate Insurance partners. With me is Kesten Laverty, one of our corporate associates and Kasim Mehmood, one of our corporate trainees.</p> <p>In this podcast, we will discuss the key themes and lessons learned from the transfer of the mature savings business from Legal and General Assurance Society Limited (or LGAS) to ReAssure Limited (or ReAssure) under Part VII of the Financial Services and Markets Act 2000 which was sanctioned by Mr Justice Zacaroli on 20 August. The transferring business comprises approximately 900,000 policies and assets valued at approximately £30 billion, making it one of the largest Part VII transfers ever undertaken. Slaughter and May acted for LGAS and Herbert Smith Freehills acted for ReAssure in respect of the transfer.</p> <p>The judgment given by Mr Justice Zacaroli is a helpful summary of the various considerations the court will take into account when determining whether to sanction an insurance business transfer scheme. Kasim and Kesten will take you through some of the key points which are applicable to all Part VII transfers and draw together some of the recent case law in this area.</p>
<p>Kesten Laverty</p>	<p>When considering whether to sanction a Scheme, Mr Justice Zacaroli made clear that the balance to be struck is between the commercial interests of the applicant transferor and transferee and the interests of the policyholders. Specifically, he noted that it should not be fatal to a scheme, that it promotes the commercial self-interest of the applicants, provided that this is not outweighed by policyholder detriment. In this case, the motivation was strategic re-organisation for LGAS and the resulting consolidation of the transferring business in ReAssure, a company which specialises in the run-off of closed books of business. Mr Justice Zacaroli was satisfied that this would result in benefits for the applicants, as well as the policyholders and could not be effected by another means. This is an important distinction from the <i>Prudential/Rothsay</i> transfer, which Mr Justice Snowden declined to sanction last year, where the primary motivation for the transfer (namely, regulatory capital benefits) was considered to be satisfied in large part by the reinsurance arrangements that were already in place.</p>

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Kasim Mehmood	<p>Another key area Mr Justice Zacaroli considered in his judgment were the objections raised by objectors both prior to and at the hearings. A number of these objections related to the lack of representation for policyholders and disproportionate “firepower” available to the applicants, ultimately questioning whether the Part VII process adequately protects policyholders. In his judgment, Mr Justice Zacaroli clarified the various safeguards for policyholders that are built into the Part VII process. He focused on the role played by the independent expert and rejected suggestions that the fact that the independent expert was paid by the companies or had worked on previous Part VII transfers could undermine the expert’s independence or the integrity of the process. He also highlighted the vital role played by the court in ensuring that the interests of policyholders are protected, using his role to test the conclusions drawn by the independent expert to confirm that these were soundly based. This underlines the point that the exercise of the court’s discretion is in no way a rubber stamp.</p>
Kesten Lavery	<p>Another key point raised in this case was the use of ancillary orders. Ancillary orders are made under section 112(1)(d) of FSMA and are used for matters that are incidental, consequential or supplementary to the scheme. Crucially, they must only be made where it is necessary to secure that the scheme is fully and effectively carried out. Following the judgment by Mr Justice Snowden in the Brexit-related Barclays banking business transfer, some doubt was cast on the extent of the scope of these ancillary orders as certain related business was not found to fall fully within the scope of Part VII.</p> <p>In the present case, LGAS was seeking to transfer all of its SIPP business, which includes elements of non-insurance business, as well as its stakeholder pensions to ReAssure. Mr Justice Zacaroli accepted the applicants’ submissions that, while the transfer of the non-insurance elements of the SIPP business could be effected outside the scheme, these arrangements were clearly incidental to the relationship between the policyholders and LGAS and their transfer was necessary to achieve the purpose of the scheme and to avoid confusion among policyholders, who could otherwise be left with two different providers. He also concluded that the transfer of the stakeholder pensions clearly fell within the ambit of FSMA because securing the same tax treatment for members is essential to the effective transfer of the policies.</p>
Kasim Mehmood	<p>Lastly, Mr Justice Zacaroli distinguished this case from that in <i>Prudential/Rothesay</i>. The decision of Mr Justice Snowden in the <i>Prudential/Rothesay</i> transfer in August 2019 sent shockwaves through the industry, particularly for firms specialising in closed books of long-term business. Helpfully, in this case Mr Justice Zacaroli clarified that the conclusions reached in <i>Prudential/Rothesay</i> do not constitute binding precedent and each case must be decided on its facts.</p>

	<p>In this case, Mr Justice Zacaroli highlighted three key distinctions. First, while the transferring business from LGAS to ReAssure includes annuities, these constitute less than 1% of the total number of policies being transferred. Additionally, the majority are with-profits annuities (rather than fixed annuities), which stood to benefit from the scheme as a result of provisions designed to address the problems of a diminishing fund.</p> <p>The second major difference was the business objective of the transfer, which we spoke about previously. It is important for applicants to be clear on the commercial rationale for transfers and consider whether the same outcome can be achieved through other means, particularly where a transfer could result in policyholder detriment.</p> <p>The third key difference related to the question of likelihood of parental support. Here, Mr Justice Zacaroli distinguished between the ability to obtain parental support and the incentive for parental support. On the first point, he took comfort from the fact that ReAssure is part of a substantial and well-capitalised group and would continue to be so following its sale from Swiss Re to Phoenix. Nevertheless, he recognised that firms like ReAssure, and by analogy, Rothesay, are particularly dependent on retaining existing policyholders because they operate closed businesses and are incapable of attracting new customers. The incentive to protect policyholders through the provision of parental support is therefore at a similar level to the transferor. It is also worth noting that parental support is likely to become more of a concern where transferring policyholders are tied in for a long time (such as annuitants).</p>
<p>Robert Chaplin</p>	<p>Thank you Kasim and Kesten for running us through the key themes arising from the judgment. This was evidently a significant and complex transfer, made particularly difficult by the COVID-19 pandemic, which hit just as the parties were preparing for sanction. As we have discussed, the judgment addresses issues that often arise not just in life transfers, but insurance and banking transfers more generally. As such, it is a helpful guide to the points that should be considered by applicants in future schemes. Most importantly, it has clearly distinguished the <i>Prudential/Rothesay</i> decision, which will likely lead to a re-liberalisation of the Part VII market, provided applicants are able to distinguish their own transfers sufficiently from the particular facts of the <i>Prudential/Rothesay</i> transfer - which is currently being appealed. If you have any other questions about this transfer or Part VII transfers more generally, please do get in touch with us or with any of your usual contacts at Slaughter and May.</p>