

### PART VII TRANSFERS: COURT AFFIRMS ROLE OF INDEPENDENT EXPERT

In the *Re Eagle Star Insurance Co Ltd and others* judgment published last week, the High Court rejected the arguments of potential objectors seeking to reassess the conclusions reached by an independent expert appointed to report on an insurance business transfer under Part VII of the Financial Services and Markets Act 2000.

#### ▶ THE ISSUE

At the final Court hearing for the sanctioning of the Eagle Star transfer scheme, some policyholders argued that the final hearing should be adjourned to allow them to assemble evidence so they could comment upon and perhaps even challenge evidence given by the independent expert.

#### ▶ THE JUDGMENT

Pumfrey J refused to adjourn the hearing and sanctioned the scheme.

He pointed out that although the independent expert's report shares certain features of experts' reports prepared for the purposes of inter partes litigation, its nature is somewhat different. Before an independent expert can report on a proposed transfer scheme, the expert's appointment and the form of the expert's report must have been approved by the FSA; and the FSA has provided detailed guidance on the independence of an expert reporting on a transfer scheme and on the areas the report should cover. So the report is intended to be, and the FSA takes care to ensure that it is, an objective assessment of a Part VII transfer scheme by a person to whom the importance of retaining independence and objectivity are repeatedly emphasised.

Consequently, Pumfrey J took the view that where it seems that the independent expert has identified the possible problems with a particular transfer scheme and has, on what appear to be satisfactory grounds, rejected them, a challenge to the report should only be capable of being mounted where there are strong grounds for supposing that the independent expert has mistaken his function or made an error.

As no substantial challenge to the expert's report had been mounted by the potential objectors, Pumfrey J refused their request to see her detailed workings in order to provide them to a further expert to assess the prospects of challenging her conclusions.

**If you would like more information or require any advice on insurance business transfers under Part VII of the Financial Services and Markets Act 2000 please contact [tim.goggin@lovells.com](mailto:tim.goggin@lovells.com), [charles.rix@lovells.com](mailto:charles.rix@lovells.com) or your usual contact at Lovells.**

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