

a Equitable Life Assurance Society v Hyman

COURT OF APPEAL, CIVIL DIVISION

LORD WOOLF MR, MORRITT AND WALLER LJ

30 NOVEMBER, 1, 2 DECEMBER 1999, 21 JANUARY 2000

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Pension – Retirement annuity contracts – Final bonus – Policy providing policyholders with various options including annuity at guaranteed rate – Policy-provider deciding to pay policyholders opting for guaranteed annuity rate lower final bonus than other policyholders – Whether policy-provider entitled to declare differential final bonuses.

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In 1979 the appellant, H, entered into a retirement annuity policy with the respondent life assurance society, entitling him to membership of the society and to participate in its profits. H's policy, like all such policies entered into before 1988, entitled the policyholder, on maturity, to 'the annuity increased by Related Bonuses (if any)', an annuity at a guaranteed annual rate (GAR) applied to a fund

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composed of three elements, including a final bonus. Schedule 4 gave the policyholder two alternative options to the GAR, namely an option to take an annuity from another provider (para 1.1) or an option to take an annuity from the society calculated by reference to its current rates rather than the GAR (para 2). Those options were expressed as a right 'to renounce all or any part of the annuity increased by Related Bonuses (if any) and in lieu thereof to have' the

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alternative annuities, calculated by reference to 'the Policy Annuity Value' (PAV). The definitions schedule provided that 'Related Bonuses' meant 'in relation to the annuity ... such amounts (if any) as shall' under the society's rules and regulations 'have been allotted by way of addition to or bonus thereon'. The PAV was defined as meaning 'in relation to all or part of the annuity increased by

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Related Bonuses (if any) ... the Policy Annuity Value attributable thereto' calculated in the manner set out in schedule 6. That schedule provided first for the calculation of 'the Accumulation Value ... of the premium paid in respect of the annuity', and then set out in para 1.5 the mechanism for calculating the amount of the GAR annuity. The society's initial practice was to pay the same final bonus to all policyholders, irrespective of the option they had chosen.

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However, after the current annuity rate fell below the GAR, the society's board decided to pay to those policyholders who had opted for the GAR a lower final bonus than that paid to those who had taken the other options, thereby reducing the size of the fund to which the GAR applied. In introducing that policy, the board purported to act in exercise of the discretion conferred on it by art 65 of the

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society's articles of association, namely a discretion to determine how any surplus was to be apportioned by way of bonus to policyholders. In proceedings brought to test the validity of the differential bonus policy, H contended, on behalf of all the pre-1988 policyholders, that such a differential was precluded by the terms of the policy or fell outside the scope of the art 65 discretion. Those contentions

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were rejected by the Vice-Chancellor who accordingly upheld the validity of the differential bonus policy. H appealed.

Held – (Morritt LJ dissenting) The appeal would be allowed for the following reasons—

(1) (Per Lord Woolf MR) The declaration of a differential final bonus was not a permissible exercise of the discretion conferred by art 65 of the society's articles.

The powers contained in that provision were not conferred for the purpose of treating a policyholder differently depending on the manner in which he sought to exercise his rights under the policy. Yet that was precisely the result of the policy adopted by the society, and that was a collateral purpose designed to negate a benefit to which the policyholder would otherwise have been entitled. Although the society had no obligation to pay the final bonus, that did not mean, if it decided to do so, that it could make the payment in a manner which deprived the policyholder of a share of the society's investment return that would be conferred on him if he selected other options available under the policy (see p 345 g h and p 346 h to p 347 b, post).

(2) (Per Waller LJ) On their true construction, the terms of the policy precluded the allotting of different bonuses on the GAR policies depending on whether the beneficiary took the annuity or a capital sum with which to purchase an annuity elsewhere. Differential 'Related Bonuses' were impermissible since, in view of the wording of para 1.1 of schedule 4, the 'annuity increased by Related Bonuses' could not be different depending on whether it was being taken as an annuity or used as a basis for calculating the PAV. Furthermore, para 1.5[ii] of schedule 6, which set out the means of calculating the PAV, did not allow for the payment of a top up sum. Rather, the terms of the policy required the society (i) to calculate the annuity plus related bonuses that would be payable if an annuity was taken, and (ii) calculate back from that resulting annuity its capital equivalent. Accordingly, the board had conducted an exercise that was not permitted by the policy (see p 359 h, p 363 b to j and p 364 d, post).

Notes

For retirement annuity contracts generally, see 44(2) *Halsbury's Laws* (4th edn reissue) paras 677–709.

Cases referred to in judgments

- Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1947] 2 All ER 680, [1948] 1 KB 223, CA.
- Bromley London BC v Greater London Council* [1982] 1 All ER 129, [1983] 1 AC 768, [1982] 2 WLR 62, CA and HL.
- Company, Re a (No 00709 of 1992)* [1999] 2 All ER 961, [1999] 1 WLR 1092, HL.
- Edge v Pensions Ombudsman* [1999] 4 All ER 546, CA.
- Motor Oil Hellas (Corinth) Refineries SA v Shipping Corp of India, The Kanchenjunga* [1990] 1 Lloyd's Rep 391, HL.
- O'Reilly v Mackman* [1982] 3 All ER 1124, [1983] 2 AC 237, [1982] 3 WLR 1096, HL.
- Padfield v Minister of Agriculture Fisheries and Food* [1968] 1 All ER 694, [1968] AC 997, [1968] 2 WLR 924, HL.
- Prescott v Birmingham Corp* [1954] 3 All ER 698, [1955] Ch 210, [1954] 3 WLR 990, CA; *affg* [1954] 3 All ER 299, [1955] Ch 210, [1954] 3 WLR 600.
- Roberts v Hopwood* [1925] AC 578, [1925] All ER Rep 24, HL.

Appeal

The appellant, Alan David Hyman, acting on his own behalf and in a representative capacity on behalf of approximately 90,000 holders of retirement with profit policies with the respondent, the Equitable Life Assurance Society (the Society), appealed from the decision of Sir Richard Scott V-C on 9 September 1999 rejecting Mr Hyman's challenge to the validity of the Society's policy of paying differential

- a* final bonuses on such policies. The facts are set out in the judgment of Lord Woolf MR.

Jonathan Sumption QC, Sarah Asplin and Simon Salzedo (instructed by Norton Rose) for Mr Hyman.

- b Lord Grabiner QC, Brian Green QC, Andrew Lenon and James Ayliffe (instructed by Denton Hall) for the Society.*

Cur adv vult