

# a Equitable Life Assurance Society v Hyman

HOUSE OF LORDS

LORD SLYNN OF HADLEY, LORD STEYN, LORD HOFFMANN, LORD COOKE OF THORNDON  
AND LORD HOBHOUSE OF WOODBOROUGH

b 12 JUNE, 20 JULY 2000

*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 rate lower final bonus than other policyholders –*

c *Whether policy-provider entitled to declare differential final bonuses.*

d Before 1988, the appellant mutual life assurance society issued a large number of with-profits pensions policies, entitling policyholders to an annuity, on maturity, to which a guaranteed annual rate (GAR) was applied. Rather than taking that annuity, the policyholder could instead elect to take an annuity from another provider or an annuity from the society, both calculated by reference to the society's current rates rather than the GAR. Under art 65 of the society's articles of association, the directors had a discretion to apportion surpluses by way of bonus among policyholders 'on such principles, and by such methods, as they may from time to time determine'. Initially, the society paid the same final bonus e on maturity to all policyholders, irrespective of the option they had chosen. However, after the current annuity rate fell below the GAR, the society decided to pay those policyholders who had opted for the GAR a lower final bonus than that paid to those who had taken the other options. Following complaints by a number of GAR policyholders, the society brought proceedings to test the f validity of the differential bonus policy. The Vice-Chancellor held that it was valid, but his decision was reversed by the Court of Appeal which concluded, inter alia, that the art 65 discretion had been exercised improperly. The society appealed to the House of Lords, relying on the wide terms of the discretion.

g **Held** – Article 65 of the society's articles of association contained an implied term precluding the directors from exercising their discretion in a manner which deprived the relevant guarantees of any substantial value. Such an implication was essential to give effect to the reasonable expectations of the parties, namely that the directors would not exercise their discretion in conflict with contractual rights. In any event, the directors were not entitled to exercise their powers, no h matter how widely expressed, for a purpose which subverted the basis of the policies. The GAR policy was based on the assumption that, when current rates fell below the GAR, the annuity received by the policyholder would be higher than if there was no GAR. However, the differential bonus policy treated the right to a GAR as working to the disadvantage of a policyholder who took the annuity. Thus the differential bonus policy was not consistent with the purpose of the j GAR policy. It followed that the directors were not entitled to adopt a principle of making the final bonuses of GAR policyholders dependent on how they exercised their rights under the policy. In adopting such a principle, the society had acted in breach of art 65. Accordingly, the appeal would be dismissed (see p 962 g, p 970 j to p 971 d g to j and p 972 c h to p 973 c, post).

### Notes

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

### Cases referred to in opinions

*Luxor (Eastbourne) Ltd v Cooper* [1941] 1 All ER 33, [1941] AC 108, HL.

*Padfield v Minister of Agriculture Fisheries and Food* [1968] 1 All ER 694, [1968] AC 997, [1968] 2 WLR 924, HL. b

*Scally v Southern Health and Social Services Board (British Medical Association, third party)* [1991] 4 All ER 563, [1992] 1 AC 294, [1991] 3 WLR 778, HL.

*Smith (Howard) Ltd v Ampol Petroleum Ltd* [1974] 1 All ER 1126, [1974] AC 821, [1974] 2 WLR 689, PC. c

*South Australia Asset Management Corp v York Montague Ltd, United Bank of Kuwait plc v Prudential Property Services Ltd, Nykredit Mortgage Bank plc v Edward Erdman Group Ltd* [1996] 3 All ER 365, [1997] AC 191, [1996] 3 WLR 87, HL.

### Appeal

The claimant, the Equitable Life Assurance Society (the Society), appealed with permission of the Court of Appeal from its decision (Lord Woolf MR and Waller LJ, Morritt LJ dissenting) on 21 January 2000 ([2000] 2 All ER 331, [2000] 2 WLR 798) allowing an appeal by the defendant, Alan David Hyman, acting in his own behalf and in a representative capacity on behalf of approximately 90,000 holders of retirement with profit policies with the Society, from the decision of Sir Richard Scott V-C on 9 September 1999 upholding the validity of the Society's policy of paying differential final bonuses on such policies. The facts are set out in the opinion of Lord Steyn. d

*Elizabeth Gloster QC, Brian Green QC, Andrew Lenon and James Ayliffe* (instructed by Denton Wilde Sapte) for the Society. f

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

Their Lordships took time for consideration. g