Neutral Citation Number: [2025] EWHC 789 (Ch)

Case No: **CR-2024-002460**

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **19 March 2025**

Before:

Mr Justice Richards

- -

Between:

IN THE MATTER OF RELIANCE NATIONAL INSURANCE COMPANY (EUROPE) AND IN THE MATTER OF THE COMPANIES ACT 2006

- -

Adam Al-Attar KC (instructed by **Clifford Chance LLP)** for the **Claimant**

Hearing dates: **19th March 2025**

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APPROVED JUDGMENT

Richards J **Wednesday, 19 March 2025**
(3:30 pm)

Judgment by **Mr Justice Richards**

1. This is an application by Reliance National Insurance Company (Europe) Limited (the **Company**) for sanction of a scheme of arrangement (the **Scheme**) under Part 26 of the Companies Act 2006 (**CA 2006**).
2. By order of 13 May 2024 (the **Convening Order**) Sir Anthony Mann convened a meeting of a single class of creditors (the **Scheme Meeting**). The Scheme Meeting opened on 28 June 2024 but has been successively adjourned. The Company says the Scheme Meeting completed on 4 March 2025 with approval of the Scheme by the requisite majority. The existence of that majority is disputed.
3. The Scheme is opposed by two creditors of the Company (**Calabria** and **ASL)**. However, Calabria and ASL have not appeared today either in person or through counsel to oppose sanction of the Scheme. Rather they have set out their objections to the Scheme in a number of documents sent to the Company, all of which the Company has quite properly brought to my attention.
4. At the conclusion of the hearing before me, I announced my decision that I would sanction the Scheme. I gave a summary of my reasons that I considered sufficient to enable anyone with a right of appeal against my order to file an appellant's notice in the Court of Appeal within 21 days. I said that a fuller judgment, expanding on my summary reasons, would follow. This is the fuller judgment.

THE SCHEME

5. The Company is incorporated in England and Wales. It carries on an insurance business that is in run-off. It is regulated by the Prudential Regulation Authority (the **PRA**) and the Financial Conduct Authority (the **FCA**). However, the PRA and FCA have no formal role in this Scheme. They have not indicated any objection or non-objection to the Scheme and so I treat them as being neutral on the question whether it should be sanctioned.

6. In 2018, the Company acquired a portfolio of insurance policies **(Insurance Policies**) written under Spanish and Italian law from another insurance company (**QBE**). That acquisition took place following the English court's sanction of a transfer scheme under Part VII of the Financial Services and Markets Act 2000 (the **Part VII Transfer**). Under the Insurance Policies, the Company provides cover to medical professionals and to hospitals located in Italy and Spain against claims for medical negligence.
7. Unfortunately, the actuarial assumptions and calculations that satisfied the court in 2018 that it should sanction the Part VII Transfer have proved, with hindsight, to be too optimistic. The Company is now in financial difficulties and says that if the Scheme is not approved it will have to go into administration. It proposes the Scheme as a means of avoiding that administration and, it says, offering a better return to holders of the Insurance Policies (**Policyholders**).
8. The Company is proposing the Scheme with Policyholders only. It is not proposing a compromise or arrangement with any wider class of its creditors. The Policyholders are all simple insurance creditors who enjoy a priority in any winding up of the Company under Regulation 21(2) of the Insurers (Reorganisation and Winding up) Regulations 2004 (the **2004 Regulations**).
9. In broad overview, the Scheme provides for liabilities owed to each Policyholder to be estimated without recourse to a court. If there is a dispute between the Policyholder and the Company as to the valuation of a claim, the Scheme provides for there to be a period of dialogue between the Policyholder and the Company, with the difference ultimately being settled by an expert independent adjudicator (the **Scheme Adjudicator**). The Company hopes that this process will achieve significant cost savings as compared with an administration of the Company.
10. The Scheme is proposed with Policyholders holding "**Scheme Claims**": those definitions catching any person who is pursuing or who would like to pursue a claim against the Company in respect of an Insurance Policy.

11. Any Policyholder with a Scheme Claim is required, under the Scheme, to notify the claim to the Company no later than the "**Bar Date**" that falls six months after the date on which the Scheme takes effect (the **Effective Date**).
12. On receipt of a claim from a Policyholder, the Company will, in the first instance, determine what it considers to be the amount payable in connection with that claim. The Scheme prescribes a rigorous process that the Company must follow. It must apply "**Claims Methodology**" specified in the Scheme. Accordingly, the Company will have to determine:
    a. whether the claim falls within the terms of the Insurance Policy concerned;
    b. whether the underlying Scheme Claim was originally notified to the Company in accordance with the terms of the relevant Insurance Policy and whether that Scheme Claim might be statute-barred under local Italian and Spanish law;
    c. the amount of any excess or limit applicable to the underlying Scheme Claim; and
    d. whether the Company is liable in respect of the underlying Scheme Claim and, if so, for how much.
13. The "Milan tables" apply for the purposes of determining the quantum of damages for injuries in Italy. The Claims Methodology requires regard to be had to the Milan tables when assessing an amount payable in connection with the underlying Scheme Claim.
14. After applying the Claims Methodology, the Company is required to issue the "First Determination Notice" setting out its conclusions as regards the amount payable in connection with the underlying Scheme Claim. If the Policyholder and the Company are not agreed, a further 90 days is prescribed for continuing discussion. If, following that period, the Company and the Policyholder do not reach agreement, the Company will issue a Second Determination Notice. If the Company and the Policyholder do not reach agreement within 30 days thereafter, the matter is to be referred to a Scheme Adjudicator.

15. The Scheme Adjudicators are independent experts with impressive CVs whose details were set out in the Explanatory Statement. Policyholders are entitled to require a meeting to take place with a Scheme Adjudicator for the purposes of determining the value of their Scheme Claim.
16. The determination of the Scheme Adjudicator is final except in cases where the Scheme Adjudicator is guilty of negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty.
17. Given that the whole purpose of the Scheme is to enable Scheme Claims to be determined without recourse to a court, the Scheme precludes any Policyholder from commencing or continuing any litigation against the Company connected with a Scheme Claim in any jurisdiction. The Company, however, retains the ability to bring court proceedings against Policyholders (as it may wish, for example, to bring claims against Policyholders in connection with claims for deductibles associated with an Insurance Policy or to appeal against a judgment obtained by a third party against a Policyholder).
18. The Scheme contains standard-form releases preventing Policyholders from bringing actions against the Company's advisers or directors in connection with the Scheme. However, the Scheme contains no provision by which the Company releases its own directors from any potential liability in connection with the Scheme.
19. As noted, the Scheme is not proposed with the Company's creditors generally. In particular, the Scheme does not affect the following liabilities owed by the Company:
    a. liabilities owed to holders of policies (**Employers' Liability Policies**) under which the Company has provided insurance for certain employers' liabilities;
    b. any liability owed to QBE under an indemnity (the **QBE Indemnity**) given in connection with the Part VII Transfer.

THE OPPOSITION OF CALABRIA AND ASL

20. Calabria and ASL oppose the Scheme. Central to their opposition is their argument that the Part VII Transfer by which the company acquired the policies from QBE in 2018 was ineffective because under Italian law there are statutory prohibitions on assignment of a contracts to which an Italian public administration is a party.
21. They have a number of more detailed complaints about the Scheme and the process by which it has been brought. In summary:
    a. ASL considers that it was not given proper notice of the convening hearing before Sir Anthony Mann.
    b. Calabria and ASL complain of unfair timetabling, which they submit gave them no time to register objections and participate in today's hearing.
    c. Calabria and ASL say they have not been provided with necessary information that would enable them to make a well-reasoned objection today.
    d. Calabria and ASL complain about repeated adjournments of the Scheme Meetings.
    e. Calabria and ASL say that correct voting procedures were not followed leading to doubts as to whether the Scheme was even passed by the statutory majority at the Scheme Meeting.
    f. Calabria and ASL raise doubts as to whether the Scheme would, even if sanctioned, be recognised in Italy, and say they have been deprived of the wherewithal to advance this argument because of the Company's failure to share Professor Cavallini's expert opinion with them.
    g. Calabria and ASL suggest that the Scheme might not even be better than an administration, as the Company asserts for at least two reasons:

i. They raise the possibility that a dividend of some 10 million euros that the Company paid to its shareholders in 2020 (the **2020 Dividend**) might be clawed back in an administration. No such clawback would be possible if the Scheme is implemented.

ii. The Company has not properly valued Calabria's own Scheme Claims which are said to be significant. This undervaluing of Scheme Claims means that the Company's assessment, that Policyholders could recover 100% under the Scheme, might be too rosy.

h. They argue that, by not making the QBE Indemnity subject to the Scheme, they are elevating the priority of that liability which would otherwise rank junior to Scheme Claims in an insolvency.

i. They make various complaints about the basis on which Employers' Liability Policies are excluded from the Scheme.

22. That is a list of some of the complaints that are being made. It is also significant to note some complaints that are <u>not</u> being made:

a. Calabria and ASL do not appear to dispute the Company's conclusion that, if the Scheme is not implemented, the Company will have to go into administration.

b. Calabria and ASL do not suggest that, as a matter of principle, a procedure by which Policyholders have to submit claims by the Bar Date and then have those claims valued by means of the valuation process set out in the Scheme is inherently objectionable.

23. As I have noted, Calabria and ASL have not appeared to oppose the Scheme by counsel. They have set out their objections that I have outlined in a number of long letters.

24. Some of the objections they raise issues of some potential complexity for example:

a. the proper valuation of Scheme Claims;

b. the prospects of recovery of the 2020 Dividend; and

c. conflict of law questions as to whether the Part VII Transfer was effective under Italian law and whether the Scheme, if sanctioned, would be recognised under Italian law.

25. For its part, the Company has provided evidence on all these issues. I have a report from Derek Newton FIA (the **Independent Vote Assessor**) explaining his approach to the valuation of the Scheme Claims for voting purposes and why the values he has derived are to be preferred to the competing valuations of Calabria and ASL. I have some analysis prepared by the Company's legal advisers as to why the 2020 Dividend is unlikely to be recovered in an administration. I have legal opinions prepared under the discipline of CPR 35 that explains why the Part VII Transfer was effective under Italian law and why the Scheme is likely to be recognised in Italy and Spain if sanctioned.

26. However, Calabria and ASL have chosen to provide no expert evidence and no factual evidence verified by a statement of truth on these potentially complex issues. I cannot do better than quote the following analysis of Snowden J (as he then was) in *Re Smile Telecoms Holdings Ltd* [2022] Bus LR 591 which apply with just as much force to the position that Calabria and ASL are taking as it did to the stance of Afreximbank:

> 50. I also consider that it is unhelpful for Afreximbank to take the line… that having sought to raise serious issues going to the fairness of the Plan, Afreximbank had then "decided to leave matters in relation to the sanction of the Restructuring Plan to the Company's directors and the court".
>
> 51 As I have said on numerous occasions, it is certainly the case that a company proposing a scheme or plan has a duty of utmost candour to bring all relevant matters to the attention of the court, including arguments that might properly be advanced against the sanction of the scheme or plan. However, that important obligation does not, in my view, extend to an obligation on the company to advance full argument against itself of a case based upon an expert report which it did not commission, with which it and its professional advisers do not agree, and in relation to which it has filed evidence from its own experts explaining why the rival report is wrong.
>
> 52 Nor is it realistic, appropriate or fair to judges hearing complex scheme or plan cases, who already carry a heavy burden, to expect the court itself to descend into the fray. Whilst judges are of course entitled to ask questions to ensure that they understand what is proposed, and to probe into any areas of law or evidence

> which give them concern, they cannot be expected to conduct a detailed factual investigation into the merits or demerits of the company's valuation evidence in a highly specialist area without any assistance. Still less can they be expected to engage in some sort of vicarious challenge to that evidence on behalf of creditors or members, based upon a rival report, without help from the expert responsible for it or the benefit of cross-examination.
>
> 53 Put simply, if a creditor or member wishes to oppose a scheme or plan based upon a contention that the company's valuation evidence as to the outcome for creditors or members in the relevant alternative is wrong, they must stop shouting from the spectators' seats and step up to the plate. The creditor or member should obtain any financial information from the company that may be required, either on a voluntary basis or by making a timely disclosure application; file expert evidence of its own, instruct the expert to engage in the production of a joint report in the normal manner, and tender the expert for cross-examination. They should also attend the hearing and address argument for the assistance of the court at the appropriate stage in the process at which the point is to be determined…
>
> 54 It is also worth repeating, in case there be any doubt about it, that creditors or members who follow such a course and advance reasonable arguments on genuine issues which assist the court in its scrutiny of the proposals are unlikely to be ordered to pay the company's costs of the exercise. Depending on the facts, they may also be able to recover their costs from the company, even if their opposition is unsuccessful. That appears from the principles established in scheme cases that I outlined in the interim costs judgment in *In re Virgin Active Holdings Ltd* [2021] EWHC 911 (Ch).

27. The process that Calabria and ASL have adopted in this case is very similar to that that Snowden J deprecated.

28. That said, the concerns of Calabria and ASL do raise some serious questions. For example, if the statutory majorities were not obtained, that would go to the court's very jurisdiction to sanction the Scheme. If Calabria and ASL are correct to say that the Part VII Transfer did not operate to transfer the Insurance Policies to the Company then the Policyholders are not creditors of the company for the purposes of s895 of CA 2006 with the result that there is no compromise or arrangement between the Company and its creditors that the Court has power to sanction under Part 26. It is right, therefore, that I should address the challenges to the extent I can when deciding whether to sanction the Scheme. Moreover, I should bear the allegations that are raised firmly in mind when deciding how to exercise my discretion.

THRESHOLD QUESTIONS

29. In my judgment, there are two "threshold" questions that I should address first before considering whether I should exercise any discretion I have to sanction the Scheme:

    a. Is it fair to proceed with a sanction hearing in circumstances where Calabria and ASL have suggested that they have not had sufficient time to formulate their objections to the Scheme?

    b. If so, am I satisfied that the Policyholders are, following the Part VII Transfer, creditors of the Company so that the Company is proposing a compromise or arrangement with its creditors that I have power to sanction under Part 26 of CA 2006?

Fairness issues

30. The complaints of Calabria and ASL concerning a shortage of time focus on challenges that they wish to make in respect of the procedure followed at the Scheme Meeting (including adjournments). The Chair of the Scheme Meeting relied on the valuation of Scheme Claims voted at that meeting prepared by the Independent Vote Assessor when reaching the conclusion that the requisite majority was achieved at the Scheme Meeting.

31. Calabria and ASL have claimed in the various documents that they have submitted outlining objections to the Scheme, that their own Scheme Claims were undervalued for the purposes of voting at the Scheme Meeting. They say that only by scrutinising the Independent Vote Assessor's valuation of all Scheme Claims can they determine whether proper valuations were used. However, to date they have received only a redacted version of the Independent Vote Assessor's report (which redacts personal information that might be relevant to the proper valuation of the Scheme Claims), they received that report only on or around 7 March 2025 (just 12 days before the sanction hearing), and they received it in English rather than in Italian.

32. Relatedly, one of the complaints made is that Calabria and ASL have not been given an audio recording of the Scheme Meeting held on 24 February. However, I have evidence of Mr Bolton

saying that a link to download a recording (which was a large file given that the hearing lasted for some four hours), was sent on 28 February 2025.

33. If Calabria and ASL had deployed the points summarised in paragraph 31 in support of an application to adjourn the sanction hearing they might well have had some force. However, quite strikingly, Calabria and ASL have made no application for an adjournment. If they had really wanted an adjournment of the sanction hearing to enable them to mount a proper challenge to the Independent Vote Assessor's methodology, they should have made that application before the hearing itself. If they had instructed counsel to attend the sanction hearing, counsel would have been heard even if he or she had made an adjournment application during the hearing itself, although the court might well have had some pointed questions as to why the application was not made earlier. Indeed, even though Calabria and ASL were not represented by counsel, I was told that their representatives were attending the hearing remotely (as it was in hybrid form over Microsoft Teams). One of those representatives would have been heard if he or she had applied for an adjournment.

34. The decision by Calabria and ASL not to apply for an adjournment strikes me as deliberate, rather than inadvertent. On 14 March 2025 Glaisyers, the English solicitors to Calabria and ASL, wrote to the Company's solicitors, Clifford Chance, confirming that Calabria and ASL would not be instructing counsel to attend the sanction hearing. Significantly, Glaisyers wrote:

> The non-attendance the hearing is not due to a lack of confidence on our client's part; it is a financial decision. [Calabria and ASL] have already incurred significant costs and given that all relevant matters will be considered by the court, our client takes the view that its attendance is not essential. I'd be grateful if this were to be communicated to the court as well.

35. Mr Al-Attar KC submitted that the clear implication of this email is that Calabria and ASL are reluctant to spend any more money in opposing the Scheme. No-one from Calabria or ASL contradicted that submission which set out a clear inference to be drawn from Glaisyers' email. If Calabria and ASL are indeed not prepared to spend more money challenging the Scheme, that would

be a firm pointer against adjourning the sanction hearing. Even if Calabria and ASL have not had sufficient time to formulate cogent challenges to the Independent Vote Assessor's methodology, an adjournment would not address the question of fairness since, even if they had more time, Calabria and ASL might not be prepared to spend the money necessary to mount an effective challenge to those conclusions.

36. Overall, there is no application for an adjournment before me. Moreover, I see no indication that, if I adjourned the hearing of my own motion, Calabria and ASL would be in any better position to oppose sanction of the Scheme. In different circumstances, I might well have adjourned the sanction hearing. However, in the circumstances I will not.

37. For completeness, I note that Calabria and ASL have made a number of complaints about the failure by the Company to provide them with other information unrelated to voting at the Scheme Meeting. For example:

    a. It is said that the report of Professor Cavallini as to the effectiveness of the Scheme (if sanctioned) in Italy has not been shared.

    b. It is said that the Company has not provided certain documentation surrounding the 2020 Dividend.

    c. It is said that the Company has not provided sufficient detail on Scheme Claims to enable Calabria and ASL to audit the Company's conclusion that the Scheme offers the prospect of all Scheme Claims being paid in full.

    d. It is said that the Company has failed to provide sufficient information relating to the value of liabilities under Employers' Liability Policies.

38. Those complaints do not alter my conclusion in paragraph 36. Discussions about the Scheme have been ongoing for a long time now. Calabria and ASL have known for a long time that the matters raised in paragraph 37 will be relevant both to Policyholders' assessment of the Scheme and the court's decision whether or not to sanction it. Calabria and ASL have had plenty of time to "step up

to the plate", play an active role in opposition to the Scheme and require the Company to provide this information, if necessary by seeking orders from the English court. It is not satisfactory for Calabria and ASL, having failed to "step up to the plate", to make generalised allegations that the Company failed to provide documents right at the end of the process, when the court is considering whether to sanction it.

Was the Part VII Transfer effective in Italy?

39. Calabria and ASL allege that the Part VII Transfer was not effective (or perhaps not effective in relation to their Insurance Policies) because Italian law precludes a transfer of contracts to which Italian law public bodies are party. However, they have provided no independent expert evidence for that view, although I have seen the analysis of Avv. Mortelliti, the Italian lawyer who is advising Calabria and ASL. Against that, the company has served expert evidence that complies with Part 35 of CPR. It served an opinion of Professor Cananea, who expresses his professional opinion that the Part VII Transfer was valid and would be respected under Italian law.

40. The arguments of Calabria and ASL as to the ineffectiveness of the Part VII Transfer in Italy (or its ineffectiveness in relation to Insurance Policies of public bodies) are based on Articles 116(1) and Article 118(1) of Legislative Decree 163/2006. I take the following text of those articles from Professor Cananea's expert report:

> **Article 116(1)**
>
> Subjective events of the executor of the contract – "Transfers of businesses and acts of transformation, merger, and division relating to entities executing public contracts do not have individual effect with respect to each contracting station until the transferee, or the entity resulting from the transformation, merger or division, has proceeded with respect to it with the communications provided for by Article 1 of the Prime Ministerial Decree of 11 May 1991, no. 187, and has documented possession of the qualification requirements provided for by this Code".
>
> **Article 118(1)**
>
> Subcontracting, activities that do not constitute subcontracting and protection of work – "The subjects entrusted with the contracts referred to in this code are

> required to perform the jobs, services, supplies included in the contract on their own. The contract cannot be assigned, under penalty of nullity, except as provided in article 116".

41. It is unrealistic to expect that I can conclusively determine a dispute as to the effect of Italian law in circumstances where (i) I have no expert evidence in support of Calabria and ASL's position and (ii) since Calabria and ASL have chosen not to attend the sanction hearing, I have no submissions as to why Professor Cananea's opinion is incorrect. I have done the best I can by reading Avv. Mortelliti's analysis and Professor Cananea's opinion.
42. Having done so, the following analysis has demonstrated to my satisfaction that the Part VII Transfer is, on a balance of probabilities, likely to be effective under Italian law:
    a. The Part VII Transfer took place pursuant to Part VII of the Financial Services and Markets Act 2000. That implemented an EU directive that was transposed into both UK law and Italian law. At the time of the Part VII Transfer, the UK remained a member state of the EU. That provides a pointer in favour of the Part VII Transfer taking effect in Italian law since the whole point of EU directives is to harmonise law on the areas to which they relate. It would be somewhat surprising, therefore, if the Part VII Transfer took effect in UK law, but not Italian law. Avv. Mortelliti's analysis does not address the EU law dimension.
    b. The Court of Appeal of Rome has, in its judgment no. 6028/2024 concluded that the Company, rather than QBE, was liable to the Catholic University under an Insurance Policy on the basis that the Insurance Policy in question had been transferred to the Company pursuant to the Part VII Transfer. Avv. Mortelliti has not explained how the Court of Appeal of Rome could come to that conclusion if, as Calabria and ASL argue, the Part VII Transfer is ineffective under Italian law. He has not explained, for example, whether the Catholic University would count as a "public body" or not.
    c. In paragraph 1.2 of a letter sent to the Company on 18 March 2025, Avv. Mortelliti appeared to accept that Article 116 is not relevant to the Part VII Transfer as Article 116 is concerned

with transfers of businesses, whereas Italian law would regard the Part VII Transfer as a transfer of a collection of assets, namely the underlying Insurance Policies. That would leave the analysis of Calabria and ASL resting on Article 118 which appears to be precluding subcontracting, rather than transfer.

d. Professor Cananea expresses the opinion that Articles 116 and 118 are concerned with consensual transactions rather than transactions such as the Part VII Transfer that take place by operation of law. Avv. Mortelliti has not explained why that opinion is incorrect.

43. I recognise the possibility that further expert evidence on Avv. Mortelliti's position might disprove the analysis I have set out in paragraph 42. However, since Calabria and ASL have chosen to "shout from the spectators' seats" (in the words of Snowden J in *Smile Telecoms*) I have not been provided with expert evidence in support of their conclusions of Italian law. Making the best of the evidence that I do have, I conclude that the Part VII Transfer was effective so that Policyholders are indeed "creditors" of the Company or arrangement. Since the Scheme clearly involves a compromise or arrangement with those creditors for the purposes of s895 of CA 2006, I conclude that the court's jurisdiction to sanction the Scheme is engaged.

44. I have considered a further possibility, namely that the Part VII Transfer is generally effective in Italy, but is not effective to transfer the Insurance Policies to which Calabria and ASL are party because of their averred status as public bodies. No other Policyholder appears to be suggesting that the Part VII Transfer failed to transfer their Insurance Policies from QBE to the Company. If there is a problem only with the transfer of Calabria and ASL's Insurance Policies, then the Company would still have other creditors whose Insurance Policies were successfully transferred and it could propose a compromise or arrangement with those creditors. In that case, the jurisdiction to sanction the Scheme would not be affected, but if Calabria and ASL are, as they argue, not creditors of the Company, the effect would be simply that they have no right to be consulted on the Scheme (or to object to it).

THE CORRECT APPROACH TO THE EXERCISE OF DISCRETION

45. I recognise that I have a wide discretion as to whether to sanction the Scheme. However, I will be guided in the exercise of that discretion by the approach summarised by Snowden J in *Re KCA Deutag UK Finance plc* [2020] EWHC 2977 (Ch) at [16]:

> The relevant questions for the court at the sanction hearing can therefore be summarised as follows:
>
> i) Has there been compliance with the statutory requirements?
>
> ii) Was the class fairly represented and did the majority act in a bona fide manner and for proper purposes when voting at the class meeting?
>
> iii) Is the scheme one that an intelligent and honest man, acting in respect of his interests, might reasonably approve?
>
> iv) Is there some other 'blot' or defect in the scheme? In the case of a scheme with international elements there is also the question of whether the court will be acting in vain if it sanctions the scheme. This requires some consideration of whether the scheme will be recognised and given effect in other relevant jurisdictions.

PRELIMINARY FACTUAL CONCLUSIONS

46. I have seen nothing to displace the conclusion of the Company and its advisers that, if the Scheme is not implemented, the Company will have to be placed in insolvent administration in short order. Accordingly, when assessing the benefits and disbenefits of the Scheme it is appropriate for me to consider what the position would be in the relevant alternative of an insolvent administration.

47. I also accept the Company's assessment that the Scheme offers the prospect of a materially better outcome for Policyholders than an administration. I accept the Company's estimate and evaluative conclusion that if the Company is placed into administration, a scheme under Part 26 of CA 2006 very much along the lines of the one that is before me today may be proposed in any event.

48. The assessment of the Company that I have summarised above is backed up by some analysis of third-party advisers.

49. In 2023, Ernst & Young LLP (**EY**) performed a "counterfactual analysis" which was based on the Company's financial projections setting out an estimate of the likely result for Policyholders under

i) a continuation of the Company's business in run-off; ii) implementation of the Scheme; and iii) an insolvent administration of the Company followed by a Scheme. EY's conclusion in 2023 was that the Scheme would be likely to produce an overall surplus available to policyholders of some EUR 1.4m, whereas a continuation of the Company's business in run-off would lead to a deficit of EUR 4.7m and an insolvent administration followed by a Scheme would lead to a deficit of some EUR 4.5m.

50. In July 2023, Interpath Ltd (**Interpath**) performed a review of EY's analysis. Interpath also based its report on financial information provided by the Company. Interpath concluded that the Scheme would lead to material cost savings and that an anticipated return to Policyholders of 100 cents in the euro pursuant to the Scheme appeared reasonable. Interpath endorsed as reasonable the Company's conclusion that it would be likely to have no option but to place the Company into an insolvency process should the Scheme not be approved and Interpath estimated that this insolvency would take place some time in 2027.

51. Those conclusions were reached nearly 2 years ago. The Company has concluded that it would not be an appropriate use of scarce resources to spend money on further professional fees to update these conclusions. However, the Company has performed its own analysis that draws on that performed by EY and Interpath in the light of further financial information that is available. The Company continues to believe as at the date of the sanction hearing that the alternative to Scheme is an insolvent administration. It continues to believe that in that alternative Policyholders would obtain a return of around 67% of the aggregate value of their Scheme Claims whereas, pursuant to the Scheme it remains realistic to conclude that they would obtain 100% of the value of those Scheme Claims.

52. Those are projections, of course, and not guarantees. The experience with the Part VII Transfer shows that no one can predict the future and a change in the circumstances can confound those estimates. However, I have read the Company's projections and the reports of EY and Interpath. I

consider that there is a sound and coherent basis for the Company's evaluative conclusions, and I do not propose to depart from them.

WHETHER THERE HAS BEEN COMPLIANCE WITH STATUTORY REQUIREMENTS

53. I will use the term "statutory requirements" as something of a portmanteau term that includes both requirements imposed by CA 2006, but also requirements imposed pursuant to the Convening Order.

The voting procedure to be followed

54. Section 897 of CA 2006 requires the Scheme to be passed by a majority in number, representing 75 per cent of the value of the Scheme Claims represented at the Scheme Meeting.

55. The threshold question arises as to the proper process for ascertaining the "value" of Scheme Claims that are for damages for alleged medical negligence. Claims such as these do not have a ready principal amount, like a debt, which can serve as a guide to value.

56. I agree with the company that the principled answer is to be found in *Re Dee Valley plc* [2017] 3 WLR 767. The Scheme Meeting was a meeting ordered by the court and so proceedings at it are under control of the court. Therefore, the court had power to make orders as to how difficult questions, such as the ascertainment of the value of Scheme Claims for voting purposes, must be dealt with. Paragraph 11 of the Convening Order dealt with this issue by providing:

> The claim of a Policyholder for voting purposes be determined by the Chair of the Scheme Meeting in the manner set out in part F, paragraph 14 of the Explanatory Statement

57. Accordingly, the procedure to be followed in relation to the valuation of Scheme Claims is to be found in Part F of the Explanatory Statement (**Part F**). Given the points that Calabria and ASL take as to whether the procedure was followed, or Scheme Claims valued correctly, I set out the relevant provisions in full.

13. Policyholders are entitled to submit a value on their Voting Form for the amount that they consider that they will be owed for a Scheme Claim (and therefore the amount that they consider should be admitted for voting purposes). Policyholders will need to submit a value for their Scheme Claim if they wish their Voting Form to be admitted as a Claim Form in the Scheme.

14. For the purposes of valuing votes at the Scheme Meeting, the Chair of the Scheme Meeting will make a determination of the value of each Scheme Claim. Scheme Claims will be calculated net of any known set-off or other relevant deductions. The Chair of the Scheme Meeting will take into consideration: (i) the information provided by the Policyholder; (ii) the information available to the Company from its existing records; and (iii) if any, the report of the Independent Vote Assessor (whose role is explained in paragraph 17 below).

15. The Chair of the Scheme Meeting has the power to reject a Scheme Claim for voting purposes, in whole or in part, if it considers (in its absolute discretion) that it does not represent a reasonable assessment of the value of the Scheme Claim to which it relates. However, where the Chair of the Scheme Meeting has changed or rejected a Policyholder's assessment of the value of its Scheme Claim for voting purposes, it will, if possible, notify the relevant Policyholder of such decision, and the reasons therefore, before the Scheme Meeting.

16. In the event that:

(a) all votes cast in respect of the Scheme are cast in favour of it; or

(b) the Scheme is approved by the requisite majority of Policyholders in the Scheme Meeting where the Chair of the Scheme Meeting attributes:

(i) the higher of the Chair of the Scheme Meeting's or the Policyholder's valuation of a Scheme Claim when valuing the votes cast against the Scheme; and

(ii) the lower of the Chair of the Scheme Meeting's or the Policyholder's valuation of a Scheme Claim when valuing the votes cast in favour of the Scheme, the Company shall, as soon as reasonably practicable after the Scheme Meeting, apply to the Court for the sanction of the Scheme. This is because, where these events apply, there is no scenario where the requisite majority approval required for the Scheme, will not be satisfied.

17. Where the events described in paragraph 16(a) or 16(b) do not apply, the value attributed to the votes cast at the Scheme Meeting shall be subject to an assessment by an independent person (the **Independent Vote Assessor**) as described in paragraphs 18 and 19 below. The Company has appointed Derek Newton as the Independent Vote Assessor. Details of the Independent Vote Assessor's expertise are set out in his curriculum vitae at Appendix 4 to this Explanatory Statement.

18. The Chair of the Scheme Meeting shall provide the Independent Vote Assessor with a list of, and certain details regarding, all votes submitted at the Scheme Meeting. The direction of the vote cast will not be disclosed to the

> Independent Vote Assessor. The Chair of the Scheme Meeting will indicate which votes, in his opinion, should be reviewed by the Independent Vote Assessor. This will include:
>
> (a) all votes against the Scheme;
>
> (b) sufficient votes in favour of the Scheme to determine whether the requisite majority has been achieved; and
>
> (c) any additional votes the Chair of the Scheme Meeting shall request.
>
> 19. The Independent Vote Assessor shall review the Chair of the Scheme Meeting's valuations of each vote indicated to him by the Chair of the Scheme Meeting (and such other votes as he shall reasonably determine) and shall report his findings to the Chair of the Scheme Meeting, who will review the values placed on the votes at the Scheme Meeting. The Independent Vote Assessor's report will be made available to the Court at the hearing to consider the approval of the Scheme. If the Chair of the Scheme Meeting revises his view of the value of a vote following review by the Independent Vote Assessor, the Policyholder will be notified of the revised determination. If there is any dispute, the Independent Vote Assessor's decision will be final and binding, subject to the Policyholder's right to make any objection known to the Court at the Second Court Hearing. The Chair of the Scheme Meeting will include details of any dispute in his report to the Court of the result of the Scheme Meeting and full details will be included in the evidence filed with the Court for the Second Court Hearing.
>
> 20. The values attributed to a Scheme Claim admitted for voting purposes (whether based on a value attributed by the Chair of the Scheme Meeting, Policyholder or Independent Vote Assessor) will not constitute an admission of the existence or amount of any Scheme Claim and will not bind the Company or the Policyholder.
>
> 21. For the purposes of voting at the Scheme Meetings, Scheme Claims will be valued in euros.
>
> 22. **Important note**: Whatever value is ultimately applied to a Policyholder's vote for voting at the Scheme Meeting, it should note that this: (a) does not necessarily mean that it will have an Ascertained Scheme Claim in the Scheme; and
>
> (b) it will not affect the amount that they may receive under the Scheme.

58. Therefore, when the court exercised its power to control proceedings at the court-directed Scheme Meeting in the Convening Order it provided that the Independent Vote Assessor was to have the final say on the question of how Scheme Claims should be valued for voting purposes.

The procedure by which a vote was taken

59. This was not a case in which a single vote was taken at a single meeting. In view of the criticisms that Calabria and ASL make of the process culminating in the determination of the voting outcome, I will set the process out in some detail:

    a. The Convening Order provided for the Scheme Meeting to take place on 28 June 2024 or such other date as the Company may decide for good reason to be no later than 29 July 2024. However, paragraph 13(g) of the Convening Order gave the Chair of the Scheme Meeting power to adjourn that meeting by giving notice to Policyholders in the same manner as notice was given to them of the original date and time of the Scheme Meeting.

    b. The Scheme Meeting opened on 28 June 2024. However, in response to requests from Policyholders for more time to consider the Scheme, the Chair adjourned it until 16 September 2024.

    c. There were then various successive openings of a Scheme Meeting followed by an adjournment until 24 February 2025. At the continuation of the Scheme Meeting held on that date, a vote was taken but Calabria and ASL queried whether the correct voting procedures had been followed and, after the vote was taken, the Chair adjourned that meeting, without declaring an outcome to consider that matter. The Chair explained that the votes received would be subject to a final review confirmation and review by the Independent Vote Assessor.

    d. 21 Policyholders attended the Scheme Meeting. 15 of those voted in favour of the Scheme. Six voted against. At that meeting, the Company expressed the view that, based on its figures for the value of Scheme Claims voted, the Scheme had been approved. However, that was just the Company's view of the matter. As noted above, the Chair decided to refer all Scheme Claims that were voted at the Scheme Meeting to the Independent Vote Assessor to determine their value for voting purposes.

e. It was initially hoped that the Scheme Meeting could reconvene on 27 February 2025. However, that did not happen.

f. On 28 February 2025, Avv. Tavazzi, who had until then been acting as Chair, resigned citing a conflict of interest arising from the fact that he was advising some Policyholders. Mr Bolton was appointed as Chair in his place pursuant to paragraph 12 of the Convening Order.

g. Eventually, the Scheme Meeting reconvened on 4 March 2025. No further vote was taken as the Chair concluded that a vote had been taken on 24 February 2025 and his task was now to determine the outcome of that vote in the light of the Independent Vote Assessor's conclusions.

h. The Company gave information to the Independent Vote Assessor for that purpose. It did not tell the Independent Vote Assessor which votes were in favour of the Scheme and which were against. Among the information that the Company provided to the Independent Vote Assessor were: i) the value of each Scheme Claim as presented by the relevant Policyholder; and ii) the Company's assessment of the value of each Scheme claim.

60. On 7 March 2025, the Independent Vote Assessor provided his valuation of all Scheme Claims that were voted. The arithmetic consequence of the Independent Vote Assessor's valuation was that 83% by value of the Scheme Claims voted were in favour of the Scheme and 17% were against. The Scheme Claims of Calabria and ASL were among those voted against the Scheme.

61. The Chair adopted the Independent Vote Assessor's valuations with just three minor adjustments. The Independent Vote Assessor had valued the Scheme Claims of three Policyholders (B, H and Q using the Independent Vote Assessor's terminology) as having a value of nil. Concluding that this would mean that the votes of these Policyholders would not count at all for the purposes of determining the number of Policyholders voting in favour of, or against, the Scheme, the Chair decided to ascribe those Scheme Claims a nominal value of €1. This had no significant effect on the determination of the value of Scheme Claims voted either for, or against, the Scheme.

62. As a consequence, the Chair determined that:

    a. 15 Policyholders present at the meeting voted in favour of the Scheme and 6 Policyholders voted against. (If the Chair had adopted the Independent Vote Assessor's nil valuation of certain Scheme Claims, the numbers would have been 13 in the favour and 5 against).

    b. 83% by value of Scheme Claims voted at the Scheme Meeting were in favour of the Scheme and 17% were against.

63. Calabria and ASL were provided with a copy of the Independent Vote Assessor's report shortly after it was prepared. On or around the 10th or 11th of March 2025, a redacted version of the report was placed on the Company's website.

The Independent Vote Assessor's calculations

64. Calabria and ASL assert that the Independent Vote Assessor's determinations of the value of their Scheme Claims, and so potentially the valuation of other Scheme Claims, were "wrong". That leads to the question of what defects, or alleged defects in the Independent Vote Assessor's conclusions are capable of being challenged. Since it is not suggested that the conditions of paragraph 16 of Section F were present, paragraphs 17 and 19 of Section F apply for the purposes of valuing each Scheme Claim voted at the Scheme Meeting. Paragraph 17 requires the Independent Vote Assessor to make "assessment" of value and paragraph 19 provides for that assessment to be "final and binding" subject to a Policyholder's right to make any objection known at the sanction hearing.

65. The Company argues that the scope of a permissible challenge to the Chair's determination that the Scheme was approved is not entirely clear. I was referred to authorities on this issue namely *Re Sovereign Marine & General Insurance Co Ltd* [2006] BCC 774, *The Scottish Lion Insurance Co Ltd* (2010) SCLR 107 and *Re British Aviation Insurance Co Ltd* [2006] 1 BCLC 665. In the light of those authorities, although reserving the right to argue for a narrower scope of permissible challenge should the matter proceed further, the Company accepted that I could permissibility conclude that the statutory majority was not achieved at the Scheme Meeting if:

a. the determination of values performed by the Independent Vote Assessor, and adopted by the Chair, were perverse or vitiated by dishonesty or irrationality; or

b. there was substantial non-compliance with the prescribed methodology for determining value or with the voting process specified in Part F.

66. I am entirely satisfied that the Independent Vote Assessor was both independent and had the requisite expertise to conduct the task entrusted to him.

67. The Independent Vote Assessor's report explains the approach that he has followed in order to assess the value of each Scheme Claim. He frankly acknowledges that, while he has sought to produce a "best estimate" of values using probabilistic concepts, those assessments reflect inherent uncertainties. He has had, for example, to make subjective assumptions of the likelihood of various outcomes of the main component parts of the claim settlement process. As such, he has not followed a purely statistical approach. Moreover, the Independent Vote Assessor acknowledges that his assessment is based on the information provided to him by the Company which he has not himself verified. His assessment of value is also based on assumptions and differently formulated, but similar, assumptions could reasonably have been made with a corresponding effect on outcome.

68. Calabria and ASL criticise this methodology arguing that it has not properly taken into account all the matters on which accurate determination would depend such as court pleadings, the report of medical experts, judgments and other decisions of the Italian courts, correspondence and medical records. However, the fact that the Independent Vote Assessor has not considered these matters does not in my judgment, render his conclusions perverse, irrational, or dishonest. The Court when approving the procedure for valuing claims can scarcely have intended that the Independent Vote Assessor would perform a rigorous valuation, drawing on all possible material. Such an exercise would be grossly disproportionate and indeed would anticipate the very outcome of the application of Claims Methodology to individual claims for which the Scheme was intended to provide.

69. The function of the Independent Vote Assessor was to produce a realistic valuation of Scheme Claims referred to him that would be sufficient to determine, in a real-world sense, whether the Scheme was approved or not. Given that was the Independent Vote Assessor's task, the court must have had in mind a process that could be completed in a reasonably short time. However, more significantly, the court laid down almost no rules as to how the Independent Vote Assessor was to value Scheme Claims for voting purposes. The court was obviously content to leave this to the professional judgment of the Independent Vote Assessor, whose qualifications and expertise were set out in the Explanatory Statement.

70. In addition, it is significant that all Scheme Claims voted at the meeting were referred to the Independent Vote Assessor. He was not told whether any particular Scheme Claim was voted in favour of the Scheme or against. Therefore, while the Independent Vote Assessor was necessarily applying an imprecise methodology to each particular Scheme Claim, he was applying the same methodology to each claim. The Independent Vote Assessor is an experienced actuary. His professional opinion was that this process of aggregation reduced the overall scope for uncertainty on the basis that over- and under-estimations would, at least to an extent cancel each other out when aggregated. I see no reason to doubt that professional opinion.

71. I will not, therefore, conclude that the overall process that the Independent Vote Assessor followed was so flawed as to produce an irrational or perverse outcome. There is no suggestion that the Independent Vote Assessor behaved dishonestly and the fact that he did not know which way any particular Scheme Claim was voted operates as a practical guard against any such dishonesty.

72. It is appropriate that I consider the challenges of Calabria to the valuation of its Scheme Claims before concluding on whether the Independent Vote Assessor failed to follow prescribed methodology.

    a. **Claim 1** – Calabria valued this claim at EUR 1,197,297. The Independent Vote Assessor valued it at EUR 54,932. Calabria criticises the Independent Vote Assessor's conclusion

arguing that he formed the wrong view as to when the claim was notified to the Company. However, this fails to engage with an aspect of the Independent Vote Assessor's reasoning to the effect that judgments of the Italian Court of Appeal and Supreme Court indicated that the alleged victim had suffered no medical negligence since that victim died from stabbing and the doctors involved could not have saved his life. I see nothing perverse or irrational about the Independent Vote Assessor's approach to Claim 1.

b. Claim 2 - Calabria valued this claim at EUR 814,531. The Independent Vote Assessor proposed a value of EUR 270,256. Calabria's challenge is based simply on the proposition that there is a significant risk that it may be required to pay the full amount to the injured parties. The Independent Vote Assessor noted that the Company had already paid EUR 274,000 in respect of the claim which had already been the subject of a first instance judgment. However, on appeal the Italian Court of Appeal has already indicated that it will not endorse the amount that the lower court has awarded. The Independent Vote Assessor's approach of assuming that the Court of Appeal will uphold only 50% of the award is not obviously irrational or perverse. Indeed, the Independent Vote Assessor's approach strikes me as more rigorous than the impressionistic approach for which Calabria argues.

c. **Claim 4** – Calabria valued this claim at EUR 766,778. The Independent Vote Assessor valued it at EUR 12,268. The Independent Vote Assessor concluded that the Company had shown a credible basis for concluding that (i) Calabria had made its claim under an Insurance Policy in 2007 even though the underlying victim of the alleged medical negligence had started proceedings against Calabria in 2000 and (ii) had not disclosed the claim when taking out the Insurance Policy in 2007. The Independent Vote Assessor concluded that this made a successful claim under the policy unlikely (and he evaluated the probability at 20%). He also noted that the Italian Court of Appeal had already determined that the Company should not be joined to the action (because Calabria failed to follow the

correct procedure to obtain joinder) and Calabria had only a 10% chance of disturbing that ruling in the Supreme Court. Overall that led the Independent Vote Assessor to conclude that there was only a 2% chance of the Company being found liable. No doubt with expert evidence, Calabria might be able to establish its prospects of success were greater. However, I see nothing to suggest that the Independent Vote Assessor's approach was perverse or irrational.

d. **Claim 7** - Calabria valued this claim at EUR 2,390,000. The Independent Vote Assessor valued it at EUR 538,500. Calabria says it already has a judgment from the lower court in its favour and the mere fact that the Company has appealed against that cannot justify such a significant reduction. However, the Independent Vote Assessor put forward some rationale for his discount. There is evidence that the EUR 2,390,000 figure may be unreasonably high and that the Milan tables would indicate a claim value of closer to EUR 1.2m. There are also some allegations that underlying medical records may have been forged. I am quite unable to reach a conclusion on the scanty information that I have as to the true value of Claim 7. However, I see nothing to suggest that the Independent Vote Assessor's methodology was irrational or perverse.

e. **Claim 11**: Calabria valued this claim at EUR 3,813,156. The Company proposed a value of EUR 2,060,000. The Independent Vote Assessor split the difference between Calabria's and the Company's proposed valuations. Calabria's complaint is this was an unreliable and arbitrary figure produced without reference to any official document or court decision. I have rejected that general criticism in paragraphs 68 and 69 above. In any event, by not producing any evidence of its own, Calabria provides me with no material that enables me to conclude that its valuation is correct, and still less that the Independent Vote Assessor's valuation was perverse or irrational.

73. It is quite possible that the true values of Claims 1, 2, 4, 7 and 11 are different from those that the Independent Vote Assessor derived. However, that does not make his conclusions or methodology either perverse or irrational. The simple point is that the Independent Vote Assessor was not required to achieve cast-iron certainty as to the value of each claim before him. The court did not require him to do so when producing valuations whose sole function is to decide whether the Scheme has been approved or not. Rather, the Convening Order left it to the Independent Vote Assessor and his professional judgment to determine an appropriate basis for valuing Scheme Claims voted at the Scheme Meeting. The Independent Vote Assessor did what was asked of him and brought his professional judgment and expertise to bear on the question in a reasonable way. I see no good reason depart from the Independent Vote Assessor's determinations of value and I will not do so.

Other procedural irregularities alleged

74. I do not consider there was anything wrong with the Company expressing the opinion at the meeting on 24 February 2025 that the vote had been passed before the Independent Vote Assessor had completed his work. The Company was entitled to express an opinion on a matter in which it had an interest. Whether that opinion was right or wrong would only be determined by the later work of the Independent Vote Assessor.
75. I do not consider there is any problem associated with the fact that Policyholders were not notified during the Scheme Meeting of the precise value that was ascribed to their claims. Paragraph 15 of Part F simply required that to happen "if possible". The Chair could reasonably conclude that it was not possible in the circumstances of this case. As I have explained, from around 7 March 2025, Calabria and ASL, the only Policyholders who oppose sanction of the Scheme, have been aware of the value ascribed to their Scheme Claims for voting purposes. They have chosen not to apply for an adjournment of the sanction hearing to enable them to undertake further analysis of voting

valuations. In those circumstances, I consider that generalised assertions that they have not been given enough timely information on the voting process are of little force.

76. It has been suggested that the resignation of Avv. Tavazzi is suspicious, or that there is more than meets the eye about it. I do not know the detailed reasons for Avv. Tavazzi's resignation. However, in my judgment it involved no breach of the Convening Order or similar. The Convening Order envisaged that the Chair could be someone other than Avv. Tavazzi and the Company duly appointed a new Chair in his place.

77. One of Calabria and ASL's procedural complaints concerned successive adjournments of the Scheme Meeting. I have read Sir Anthony Mann's judgment at the Convening Hearing. It is perhaps possible to read paragraph 29 of that judgment as suggesting that Sir Anthony Mann was envisaging that the Convening Hearing would have to finish by the "longstop date" (specified as 29 July 2024 in the Convening Order). However, I agree with Mr Al-Attar KC that the correct reading of the Convening Order is that there was a longstop date for the start of the meeting, but provided that the Scheme Meeting started before that longstop date, the Chair had power pursuant to paragraph 13(g) of the Convening Order to adjourn that meeting as he saw fit provided notice of the new meeting was given in the correct form. In the ordinary way, Sir Anthony Mann was asked to approve the Convening Order before it was sealed. If he considered it did not reflect his judgment, he would have required the order to be redrawn.

78. Mr Bolton's third witness statement describes the way in which notice of the various adjournments was given and I am satisfied that this was done in compliance with the Convening Order. Calabria and ASL suggest that this conclusion is vitiated by the fact that the Company (rather than the Chair) gave notice of the various adjournments. I do not accept that. Paragraph 13(g) gives the Chair discretion to adjourn meetings. I am not satisfied that the Company usurped that discretion. Even if the Chair did not personally give notice of the adjournment to Policyholders, there was no material breach of the Convening Order. The important matter was that Policyholders be told of the

adjournment and the time and place of the next meeting. This duly took place. The Chair can scarcely have been expected to send all necessary emails himself without any assistance from the Company.

Other matters and conclusion

79. Finally under this heading I have considered the question of class composition. Sir Anthony Mann considered that issue in detail. He concluded that Policyholders should vote as a single class and I see no reason to take a different view on that issue.

80. The Explanatory Statement circulated to Policyholders contains information on the material interests of directors of the Company in compliance with s897(2) of CA 2006.

81. I conclude that the statutory requirements have been complied with, as have the requirements of the Convening Order. In particular, the Scheme was approved by the statutory majority.

FAIR REPRESENTATION AT THE SCHEME MEETING

82. I see no suggestion that the majority that voted in favour of the Scheme acted otherwise than in a bona fide manner. I do not consider that the minority was coerced.

83. I have considered ASL's complaint that it did not receive notice of the convening hearing before Sir Anthony Mann until September 2024. However, in my judgment a lot of time has passed since then. If ASL considered that there was still some lingering prejudice from the fact that was unable to attend the convening hearing, it could have applied to the court for directions much earlier than today.

84. ASL has not been deprived of the opportunity to participate at today's sanction hearing. I do not see any lingering problem associated with its non-attendance at the convening hearing.

WHETHER THE SCHEME IS A FAIR SCHEME

85. That then leads to the third area of enquiry, whether an intelligent and honest person could reasonably approve the Scheme.

86. Calabria and ASL suggest that in the relevant alternative of an administration it might be possible for the Company's administrators to exercise powers to claw back the 2020 Dividend. That, they suggest, would make the relevant alternative more attractive than the Company has presented it to be since it would result in an additional EUR 10 million being available to meet Policyholders' claims.

87. However, the short answer to this point is that the possibility of the 2020 Dividend being clawed back was placed firmly in front of Policyholders. It would have informed their voting decisions at the Scheme Meeting.

88. I was shown the Explanatory Statement and I was shown a presentation to Policyholders that dealt specifically with the 2020 Dividend and articulated the possibility of an application to claw back that dividend being made in any administration of the Company. That presentation explained the view of the Company and its advisers that such applications were unlikely to succeed.

89. The Company's view that any attempt to claw back the 2020 Dividend was unlikely to succeed has a rational basis. When it paid the 2020 Dividend, the Company had ample reserves. Moreover, the Company took external advice and concluded that it would still be able to meet its solvency capital ratio and would have ample net assets after paying the dividend. The PRA was consulted and did not object to the 2020 Dividend being paid.

90. In my judgment, it was entirely rational for a Policyholder voting on the Scheme to conclude that the prospects of clawing back the 2020 Dividend were not sufficiently attractive to outweigh the benefits of the Scheme.

91. Calabria and ASL suggest that there is a fundamental flaw with the Company's projection that the Scheme offers the prospect of Policyholders being paid 100% of the value of their Scheme Claims. They point out the Company's proposed valuation of Scheme Claims voted at the Scheme Meeting for voting purposes totalled EUR 30,123,926 and the Independent Vote Assessor determined the total value of those Scheme Claims as being EUR 31,682,646. By contrast, they argue that the

Company bases its projection that Policyholders might recover 100% under the Scheme on an estimate of all Scheme Claims, whether or not voted at the Scheme Meeting, of EUR 17,500,000. They seek to skewer the Company on the horns of a dilemma: either it and the Independent Vote Assessor's valuation for voting purposes is seriously wrong, or the Company has seriously under-estimated the value of all Scheme Claims when presenting its rosy assessment that Policyholders could expect to be paid in full under the Scheme.

92. This submission has a superficial logic but is, in reality, nothing more than "shouting from the spectators' seats". As I have explained, Scheme Claims needed to be valued following the Scheme Meeting so that the vote taken could be counted. That process of valuation did not require the sort of detailed investigation that will ultimately take place if the Scheme is implemented. The attempt to draw a parallel between the Independent Vote Assessor's valuations and those on which the Company has based its projections of the outcome of the Scheme for Policyholders is misleading.
93. There is an evidential vacuum behind the assertion of Calabria and ASL because it has not mounted any proper challenge to the Company's projections or explained why the conclusions of EY and Interpath were wrong. I have no secure basis in the evidence for concluding that the Company has undervalued Calabria's own claims or Scheme Claims generally. Moreover, on any view, Policyholders have in large numbers voted in favour of the Scheme. It is reasonable to suppose that they thought the Company's projections were more or less reliable. I have no secure basis for concluding that those Policyholders were wrong and Calabria and ASL are correct.
94. Calabria and ASL suggest that it is unreasonable and disproportionate for the Company to pay an associated group company, Quest, EUR 1 million to assume liabilities under Employers' Liability Policies.
95. Calabria and ASL focus on the fact that regulatory filings between 2016 and 2023 valued likely claims under Employers' Liability Policies at just EUR 100,000. However, in my judgment that looks at only part of the picture.

96. The Company has explained in the Explanatory Statement that costs associated with this line of business projected forward would be EUR 5 million. That seems to involve an analysis of both claims and costs going forward, rather than (as in the regulatory filings) a snapshot focusing on the value of claims at a particular time. However, again this is a case of "shouting from the spectators' seats". Calabria and ASL highlight an apparent discrepancy and make a generalised assertion that something is wrong. However, that approach is not backed up by evidence as to the likely true cost of maintaining Employers' Liability Policies and does not deal with the fact that other Policyholders do not apparently see this as a sufficient problem to vote against the Scheme.

97. The same is true of the argument of Calabria and ASL's argument that, by not dealing with the QBE Indemnity under the Scheme, the Company is effectively elevating the status of QBE as creditor. It has not been satisfactorily explained why this asserted elevation takes place. Moreover, it has not been explained why it would be necessary or proportionate for the QBE Indemnity to be included within the Scheme. The Company's analysis is that since the QBE Indemnity is "out of the money", if it were to be dealt with, a plan under Part 26A, possibly involving a cross-class cramdown, would be necessary. Calabria and ASL do not explain why that more cumbersome process is preferable or proportionate and similarly do not deal with the fact that other Policyholders, acting in their own interests, apparently see no problem with the QBE Indemnity being left behind as a liability of the Company.

98. Overall, I see nothing to dent the conclusion that it is entirely rational for a Policyholder to make the choice that they did and prefer the Scheme to the relevant alternative of an insolvent administration.

BLOTS ON THE SCHEME

99. The main alleged blot on the Scheme is that a court order sanctioning the Scheme would not be recognised in Italy. This raises the question whether the court could be said to be acting in vain by sanctioning the Scheme as the following extract from the judgment of Sir Alastair Norris in *Re DTEK Energy BV* [2022] 1 BCLC 260 demonstrates:

> The relevant principles are, I think, clear although the language in which they have been expressed has occasionally differed. But the words of a judgment are not to be treated in the same way as the words of a statute: and the concepts behind the modes of expression are clear. The principles seem to me to be these:-
>
> i) The Court will not generally make an order which has no substantial effect and will therefore need to be satisfied that the scheme will achieve its purpose: Re *Magyar Telecom BV* [2014] BCC 448 at [16] per David Richards J.
>
> ii) The Court will therefore need to be satisfied that the scheme will achieve a substantial purpose in the key jurisdictions in which the scheme company has liabilities or assets: *Sompo Japan Insurance Inc v Transfercom Limited* [2007] EWHC 146 (Ch) at [18]-[26] per David Richards J.
>
> iii) The English court does not need certainty as to the position under foreign law, but it does require some credible evidence that it will not be acting in vain: *Re van Gansewinkel Groep BV* [2015] Bus LR 1046 at [71] per Snowden J.
>
> iv) Such credible evidence must show that the scheme is "likely, or at least will have a real prospect, of having substantial effect" or "at least a reasonable prospect that the scheme will be recognised and given effect": *Re Codere Finance 2 (UK) Limited* [2020] EWHC 2683 (Ch) at [34] per Falk J, *Re KCA Deutag UK Finance plc* [2020] EWHC 2977 (Ch) at [32] per Snowden J. This is not the "real prospect" standard that it is applied in procedural applications for striking out or for the grant of summary judgment or permission to appeal. Rather it is the degree of persuasion of which Hoffmann J spoke in *Re Harris Simons Construction Limited* [1989] 1 WLR 368 at 370-371 and is now regularly applied (for example) in the administration context in relation to paragraph 11(b) of Schedule B1 to the Insolvency Act. "Reasonable prospect" captures it without further elaboration.'.

100. Here, I am asked to alter the rights under contracts of insurance written under Italian and Spanish law, importantly in a situation where 99 per cent of the assets of the Company available to meet those claims are in the UK. Therefore, any judgment, even if any judgment under an Insurance Policy were obtained after the Effective Date in the courts of Italy or Spain, that judgment would ultimately have to be enforced against assets of the company located in the United Kingdom.

101. Sanctioning the Scheme would provide the Company with a defence to execution of judgment in that way. Therefore, it does seem to me that even if the Scheme were not recognised in Italy or Spain, the court would not be acting in vain by sanctioning the Scheme.

102. That said, I have considered the prospects of the Scheme being recognised in the key jurisdictions of Italy and Spain. I have applied the approach set out in *Re DTEK Energy BV* as to the degree of reassurance that I need.

103. I have considered the opinions of Professor Cavallini (as to Italian law) and Dr Garrido (as to Spanish law) in their opinions prepared under the disciplines of CPR 35. Both are well-reasoned opinions and both reach the conclusion that a court order sanctioning the Scheme is likely to be recognised in their respective jurisdictions albeit by different routes.

104. Professor Cavallini considers that would happen automatically. Dr Garrido concludes that the Company would be entitled to apply successfully for an exequatur under Spanish law. Both opinions strike me as cogent. I see no reason to doubt them and by failing to adduce any evidence on this issue, Calabria and ASL give me no reason to do so. I am satisfied to the standard set out in *Re DTEK Energy BV* that the court would not be acting in vain by sanctioning the Scheme and that an order sanctioning the Scheme is likely to be recognised in both Italy and Spain.

CONCLUSION

105. For all the above reasons, I will sanction the Scheme. I discussed with Mr Al-Attar KC whether I should, of my own motion, stay the sanctioning order in case Calabria or ASL wish to seek permission to appeal from the Court of Appeal. There was no application by Calabria or ASL for permission to appeal when I announced my decision (not least since they had not instructed counsel to attend the hearing).

106. If the Scheme is sanctioned, Calabria and ASL will suffer no immediate irreversible detriment. The immediate effects of the Scheme will be limited to i) the clock starting to tick for them to notify claims to the Company and ii) they will be immediately precluded from starting or continuing legal action against the Company. However, those consequences do not strike me as irreversible. If Calabria and ASL wish those consequences to be suspended, they will be able to apply for

permission to appeal to the Court of Appeal and seek a stay. In those circumstances, I see no reason to displace the usual rule that my order should take effect even if it is to be the subject of challenge.