IN THE HIGH COURT OF JUSTICE

No. CR-2025-001153

No CR-2025-001168

BUSINESS AND PROPERTY COURTS

OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

Rolls Building

Fetter Lane

London, EC4A 1NL

Wednesday 9 April 2025

IN THE MATTER OF ENZEN GLOBAL LIMITED

AND

IN THE MATTER OF ENZEN LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2006

Before:

Mr JUSTICE NORRIS

(Sitting in retirement)

Hearing date: 25 March 2025

-

MR ADAM AL-ATTAR KC and MISS STEFANIE WILKINS (instructed by Simmons & Simmons LLP) appeared on behalf of the Applicant Companies.

MISS CHARLOTTTE COOKE (instructed BY Paul Hastings LLP) appeared on behalf of the Applicant Companies.

MR WILLIAM WILLSON and MR HOBSON (instructed by His Majesty's Revenue and Customs) appeared on behalf of HMRC.

J U D G M E N T

This judgment was handed down at 10.30am on 9 April 2025 by e-mail to the parties and by placing in the National Archive.

1. On the 25th of March 2025 I sanctioned two inter-conditional restructuring plans under Part 26A of the Companies Act 2006 ("the 2006 Act"). One plan was propounded by Enzen Global Limited ("the Parent") and the other by its subsidiary Enzen Ltd ("the Company"). The Parent and the Company are members of the Enzen Group, which provides advice and services relating to infrastructure projects in the energy and water sectors. The businesses are asset-light and dependent upon contacts, contracts and key personnel to maintain those contracts and perform those contracts.

2. The Parent and the Company were both incorporated in England and Wales. As a result of acquiring operating subsidiaries in other jurisdictions, in particular Spain (but also in Australia, Portugal and Turkey), the business rapidly expanded. The extended operations were not underpinned by an adequate capital base and the expansion policy did not work out as intended. The new businesses required significant support from the original UK business which drained liquidity from that business. The overseas subsidiaries did not adopt the same management rigour as applied in the original business, which increased the demand for management and financial support. These trends were exacerbated by the consequences of Covid, with large projects being delayed and consequential delays in payment schedules. The pressure on liquidity led to a buildup of debts to HMRC which eventually presented a winding up petition with the inevitable consequence of frozen bank accounts and reputational damage. Although that petition was eventually withdrawn the damage was done. There was also default in payments due to a service provider, which led to the commencement of costly proceedings. In addition, a lender to a Spanish subsidiary presented a winding up petition against the Parent based upon a guarantee.

3. The Parent and the Company became increasingly dependent upon borrowing to temporarily resolve immediate liquidity pressures. Such borrowings were raised from syndicated lending by investment funds, by bilateral loan arrangements with banks and financial institutions, supplemented by borrowings from management and connected persons. Some of this borrowing was governed by English law, others by the laws of New South Wales, Spain and New York. These supplemental loans were all unsecured, and soon either in default or payable on demand.

4. It is unnecessary to recount the recapitalisation attempts and sundry liquidity raising measures adopted over the last three years and sufficient to summarise the eventual outcome by December 2024. First, there was a revolving credit facility ("the Existing RCF") in the sum of £45 million (when granted but subsequently reduced) available to the Parent as borrower and supported by a guarantee from the Company (alongside guarantees from other Group companies). Second there was a £55 million term loan ("the Existing Facility B Loan") with the Parent as borrower and the Company and others as guarantors. Third there was £22 million (rising eventually to £37.5 million) due under emergency facilities originally granted in August 2024 ("the Existing Super Priority Facility B Loan"). These facilities ("the Existing Secured Creditors") were all governed by English law and were secured by (in addition to the cross guarantees) a charge over substantially all of the Group assets.

5. These facilities are also the subject of a Intercreditor Agreement amended in August 2024 under which the Existing Super Priority Facility B Loan, the Existing RCF Loan and the existing Facility B Loan rank pari passu in right of payment but subject to a "waterfall" in the event of security realisation, with the Existing Super Priority B Loan ranking first, followed by the Existing RCF Loan and finally the Existing Facility B Loan.

6. In the course of raising this borrowing the then holding company of the Parent had charged its shareholding in the Parent as further security. In December 2024 the Existing Secured Creditors enforced this share security by the appointment of a receiver. The receiver afforded key shareholders and lenders junior to the Existing Secured Creditors the opportunity to refinance the Group, but the opportunity was not taken up. In the absence of any proposals the receiver sold the shares in the Parent to a Jersey holding company controlled by the Existing Secured Creditors ("Edge Bidco"). It was as part of this transaction that the Existing RCF was reduced to £18 million.

7. What then happened was that the Existing Secured Creditors entered into a restructuring support agreement ("RSA") with the Parent and the Company to formulate and promote a restructuring plan for each of those companies, the Existing Super Priority Facility B Creditors agreeing to provide bridge funding to underwrite operations during the negotiation of those restructuring plans. Even that was not sufficient and following further defaults in the payment of interest to the Existing Secured creditors and delivering milestones under the RSA a further £4 million of bridge funding was provided to meet immediate liquidity needs in return for the grant of a debenture creating fixed and floating charges over the remaining assets of the Parent and the Company. This additional support was expected to be wholly used shortly after 25 March 2025 and the survival of the Parent and the Company was again wholly dependent upon the injection of further funds. By the time the Part 26A applications were made the total sum outstanding to the Existing Secured Creditors was of the order of £122 million.

8. The proposed restructuring plans that have emerged are straight forward. First, certain liabilities are to be excluded from the plans. These are essentially sums due to creditors whose continued cooperation is critical to the continuation of the business. They include essential IT services providers, contractors and suppliers to current projects requiring completion, providers of employee benefits, insurance, HMRC in respect of current liabilities and the fees due to the plan advisers. Also excluded from the scope of the plan are loans made by seven key employees whose retention is regarded as vital to the continuation of the business: these have been compromised by arrangements outside the restructuring plans. There has been no challenge to the exclusion of these creditors from the scope of the plans.

9. Second, the Existing Super Priority Facility B Creditors and the Existing RCF Creditors ("the Super Senior Creditors") will amend their facilities to extend the term and to convert cash interest payments into capitalised interest payable on maturity (thereby easing the cash flow pressures). In addition, the Existing Super Priority Facility B Creditors will provide £5

million of new money to the continuing business. In return the Super Senior Creditors will receive on a pro rata basis a payment of £5000 from each of the Parent and the Company.

10. Third, the Existing Facility B Loan will be released in its entirety (it is in fact entirely "out of the money") and in return the Existing Facility B Creditor will receive a synthetic equity interest by the issue of instruments by Edge Bidco's ultimate parent, giving a preferred return in respect of dividends and distributions in priority to Edge Bidco up to 1.75 times its existing debt (prospectively yielding £52.9 million) and maturing in April 2033.

11. Fourth, HMRC, which has secondary preferential claims against the Parent for £5.3 million and against the Company for £4.3 million under section 386 of and Schedule 6 to the Insolvency Act 1986 (in addition to unsecured claims for penalties and interest of just under £2 million) will release its claims in return for a payment of £350,000 from each of the Parent and the Company (negotiated up from £250,000 during the progress of the plans before the Court).

12. Fifth, in the Parent restructuring plan one landlord which has the benefit of a rent deposit will have its claims released in full in return for the payment of £1000 +100% of its estimated return in an administration.

13. Sixth, in each restructuring plan unsecured creditors will release their claims in return for the payment of whichever is the higher of £1000 or 150% of the estimated return in an administration.

14. It is these plans that have been presented for sanction. I am grateful to all Counsel for clear and comprehensive skeleton arguments that have enabled that task to be undertaken efficiently and a decision to be delivered on the day of the hearing.

15. The first step in the process is to identify the most likely outcome absent any restructuring plan. It is the informed view of the directors and senior management of both plan companies that the realistic alternative to a restructuring plan is an accelerated sale process of the business and assets of the Parent and the Company funded by the Existing Secured Creditors for a period of approximately four weeks, followed by a prepack administration of the business to facilitate the sale to a successful purchaser. The directors, with the benefit of expert advice, are best placed to identify what is most likely to happen if a restructuring plan cannot be put in place, and it is the practice of the Court to accept that evidence if it is rational and if there is no other reason to doubt it.

16. In the instant case some form of insolvency process is inevitable given that both the Parent and the Company face imminent cash flow insolvency. A liquidation would be value destructive because it would bring to an immediate end all contracts. Administration would

provide a better return for creditors than an immediate liquidation: but a trading administration is out of the question because of the illiquid position of the plan companies, which are wholly dependent on the injection of further funds by the Super Senior Creditors. For obvious commercial reasons they will only fund the process so long as it serves realistically to maximise value. The Parent and the Company are asset light. Their value ultimately lies in their contracts with municipalities and public and private organisations, including project developers, network and pipeline owners and operators and other sections of the utilities industry: and in the personnel delivering the services due under those contracts. This value has to be captured quickly. According to the expert evidence of FRP Advisory, in administration the value of the Parent lies in the range of £7.5 million to £9.5 million and that of the Company in the range of £3.85 million to £5.85 million (giving a combined range of £11.35 million to £15.35 million). The evidence indicates that prolonging exposure to the market is unlikely to increase this return significantly. This evidence has not been challenged.

17. In the light of that evidence the expert evidence of BTG Advisory is that the best value would be obtained through an accelerated sale process funded by the Existing Secured Creditors. It is anticipated that there will be little interest from third party purchasers given (a) the failure to attract capital investment since 2022 from existing stakeholders or the market generally (b) the limited pool of purchasers with the relevant regulatory approval to undertake the business of the Parent and the Company (there are believed to be only 13 such possible purchasers) and (c) the necessity to obtain the consent of contract counterparties. The outcome is therefore likely to be a credit bid from the Existing Secured Creditors (whose current combined lending far exceeds the valuation of the businesses). This evidence is not challenged. On the figures this would give a rate of recovery to the Super Senior Creditors of about 21% in respect of the Parent and about 11% in respect of the Company: and a nil return for the Existing Facility B Creditors notwithstanding that they are secured. For HMRC there would be a 0.1% recovery in the administration of the Parent and a nil recovery in the administration of the Company. Unsecured creditors would make a nil recovery (save for the one landlord to the extent of its rent deposit). Because anticipated administration costs would equal floating charge realisations, there would be a be no surplus available for the purposes of the "prescribed part" in either administration. No evidence to the contrary was filed: and I accept the view of BTG Advisory. (In contrast, if the Parent and the Company implement the proposed restructuring plans it is estimated that the combined enterprise value would after six months be of the order of £43 million, still well below the sums now outstanding to the Existing Secured Creditors).

18. The extent and nature of the claims in the relevant alternative ("rights in") and of the rights conferred under the restructuring plans ("rights out") led Hildyard J on 16 February 2025 to order the convening of six creditors' meetings for the Parent and five for the Company. In each case there were meetings of the Super Senior Creditors, the Existing Facility B Creditors, the Secondary Preferential Creditor, the Unsecured Creditors and the Subordinated Creditors. (The Unsecured Creditors were split into two classes because, whilst there were direct unsecured claims, some unsecured claims arose because a plan company was a co-obligor or had the benefit of the guarantee and the unsecured claim was therefore a "ricochet" claim against the plan company). In the case of the Parent the landlord who had the benefit of a rent deposit but whose remaining claim was to be compromised formed a separate class. There has been no challenge to the constitution of such classes, and I do not need to review them.

19. The class meetings were held on 19 March 2025 in compliance with the order convening them and the approval of the restructuring plans was sought at the hearing on 25 March 2025. The approach of the Court to the sanction of a plan under Part 26 A is for the most part settled and I can therefore address the relevant issues without extensive citation of authority.

20. No issues arise in relation to jurisdiction over the plan companies or in relation to the nature of the respective plans as "compromises" or "arrangements". Nor does any issue arise in relation to the satisfaction of the conditions set out in section 901A of the 2006 Act. Each of the Parent and the Company has encountered financial difficulties that are affecting its ability to carry on business as a going concern. Cash resources were due to be exhausted immediately after the date of the hearing: and there had been a whole history of defaults such that each company's survival until the hearing date was dependent upon a "standstill agreement" and the emergency injection of funds. Likewise, it is plain that the purpose of the restructuring plans was to reduce or mitigate the effect of those financial difficulties and to prevent insolvency.

21. No issue arises in relation to class composition. All classes are (as Hildyard J found) technically distinct. But stepping back from technical matters there is in my view no question of class manipulation, the attempt artificially to create a class which is certain to approve the proposal and thereby anchor an application to "cramdown" dissenting classes. The Existing Secured Creditors were unanimous in their support. But all secured creditors are impaired, though in different ways. The Super Senior Creditors extend the terms of their loans and convert cash interest into a PIK return. The Existing Facility B Creditors release their debts in return for a synthetic equity instrument. The preferential claims of HMRC receive yet different treatment: in fact, far from being an artificially created assenting single member class HMRC originally opposed the plans.

22. I therefore turn to the outcome of the class meetings. In the case of both the Parent and the Company class meetings 100% of the Super Senior Creditors, the Existing Facility B Creditors and the Secondary Preferential Creditor (a single member class) both attended the meeting and voted in favour of the plan.

23. In the case of the Parent (a) 29.3% by value of the class of Unsecured Creditors attended the meeting of whom 22.69% voted in favour of the plan and 77.31% against it; (b) a single member of the Subordinated Creditor class representing 3.97% by value attended and opposed (meaning that there was no class meeting, and, following Re Listrac Midco [2023] EWHC 460 (Ch), a deemed class dissent): and (c) the landlord (a single member class) attended and, having originally supported the plan, voted against it at the meeting. There were therefore three assenting classes and three dissenting classes.

24. In the case of the Company (a) 7.59% by value of the Unsecured Creditor class attended the meeting of whom 63.03% voted in favour of the plan and 36.9% voted against (so that the plan was not approved by the requisite 75%): and (b) one member of the class of Subordinated Creditors attended (representing 61.7% by value) so that again there was no meeting and the class is deemed to dissent. There were thus three assenting classes and two dissenting classes.

25. It follows from this outcome that if the court is to sanction a restructuring plan in each case it must exercise the power conferred by section 901G(2) of the 2006 Act to disregard the votes of the dissenting classes and force a compromise upon the unwilling.

26. It is first necessary to look at the assenting classes. I am satisfied that I may safely rely upon the outcome of the respective class meetings. The Explanatory Statement clearly communicated the question for decision and provided sufficient information to enable an informed decision to be taken as to whether the risks inherent in the restructuring plans were preferable that the risks inherent in the relevant alternative. After the circulation of the Explanatory Statement certain amendments were made to the proposals. First, the opposition of HMRC to the restructuring plans was overcome by the offer of an additional £100,000 to the compromise sum originally offered (to be made by phased payments). I was told that this was the first occasion upon which HMRC proactively participated in the formulation of a plan which it could approve at a meeting and support at the sanction hearing, and that it marked a change in approach. I regard this increased engagement as a welcome development on the part of a prominent creditor. Second, the insolvency of a Spanish subsidiary meant that there was a reduction in the number of creditors regarded as critical to the ongoing business. Both changes were the subject of a Supplemental Explanatory Statement which was circulated on 11 March 2025, sufficiently in advance of the class meetings for the creditors to be able to take the changes into account. At the relevant class meetings all members of the class participated in the decision and that decision was unanimous. There is no hint of oppression. If I pose the question whether an intelligent and honest class member, having regard simply to their class interests, could reasonably approve the proposal I would unhesitatingly answer that in the affirmative since each plan offers a genuine prospect of a significantly greater future return to the relevant creditors than could be obtained in the relevant alternative.

27. It is necessary next to look at the dissenting classes and to enquire (a) whether the conditions are satisfied which open up the discretion of the Court to overrule their dissent and (b) whether as a matter of discretion the court ought so to do.

28. Section 901G(3) of the 2006 Act prescribes (as Condition A) the Court must be satisfied that no member of a dissenting class would be worse off under the proposed plan than they would be in the event of the relevant alternative. I am so satisfied. In the event of the relevant alternative of an administration each dissenting creditor would receive a nil return. Under each proposed plan that creditor will receive £1000 (the alternative of an enhanced administration return yields nothing), will do so earlier than would occur in the event of an administration and is more assured of that outcome than under the contingencies that attend any insolvency process. One creditor (OC & C Strategy Consultants LLP ("OCC")) has called upon the Court to exercise caution in reaching this conclusion. It is said that the assumptions adopted by FRP Advisory and BTG Advisory "significantly undervalued potential recoveries or overlook routes by which unsecured creditors might achieve some value". Examples are offered: the discovery of uncharged assets, potential legal claims, misfeasance or preference actions. But no factual basis for the actual existence of such claims is in suggested and the shortfall on the prior ranking claims is so great that any such recovery for unsecured creditors must remain theoretical and speculative. OCC says that the plan companies must "conclusively show" that the plan return is equal to or better than in the relevant alternative and that if there is the possibility, however small, of a higher recovery in the relevant alternative then the plan company has not discharged the burden upon it. I do not consider that this is the burden imposed by section 901G(3). In my judgment the Court must, having subjected the evidence to appropriate scrutiny in the light of any challenges to it, be satisfied as to "no worse off" on the balance of probabilities: and I am so satisfied.

29. Section 901G(5) prescribes (as Condition B) that the compromise or arrangement should have been agreed by 75% by value of a class which would receive a payment or have a genuine economic interest in the event of the relevant alternative. I find that this condition is also satisfied. The assenting classes all approved their respective plans unanimously. Of the assenting classes the Super Senior Secured Creditors have an economic interest in the Parent and in the Company since they would receive a return in the relevant alternative of an accelerated sale process followed by an administration. It is unnecessary to decide whether HMRC's prospective 0.1% return in the administration of the Parent is for this purpose "a genuine economic interest". The Existing Facility B Creditors in respect of both the Parent and the Company and the Secondary Preferential Creditor in respect of the Company would receive a nil return in the relevant alternative of an accelerated sale process followed by an administration and therefore do not count in relation to the satisfaction of Condition B.

30. The satisfaction of Condition A and of Condition B means that the discretion to sanction the restructuring plans, notwithstanding the dissent of certain classes, is open. It is well to remember that it is a discretion, and whilst it must be exercised in accordance with established guiding principles it is bound to be affected by multiple factors not all of which are easily identified or articulated. But as Snowden LJ identified in Re AGPS Bondc plc [2024] Bus LR 745 at [159]-[161]

> "…the key issue for the court in exercising its discretion to impose a plan upon a dissenting class is to identify whether the plan provides for differences in treatment of the different classes of creditors *inter se* and, if so, whether those differences can be justified…. As a matter of principle, when the court exercises its discretion to impose a plan upon the dissenting class, it subjects that class to an enforced compromise or arrangement of their rights in order to achieve a result which the assenting classes of creditors consider to be in their commercial advantage. …[T]hat exercise of judicial discretion to alter the rights of a dissenting class for the perceived benefit of the assenting classes necessarily requires the court to enquire how the value sought to be preserved or generated by the restructuring plan, over and above the relevant alternative, is to be allocated between those different creditor groups. It is this concept that has been encapsulated in the expression "the fair distribution of the benefits of the restructuring" or "fair distribution of the restructuring surplus"…

31. In the instant case the benefits of the restructuring are generated principally by the Existing Secured Creditors either extending and amending the terms of their financial arrangements or participating in what is effectively a "debt-for-equity swap": and also by the preferential creditor accepting a very substantial "haircut". The unsecured creditors, none of whom is "in the money" or possessed of a genuine economic interest in the relevant company, contribute to the restructured balance sheet by releasing their claims. This is the context in which the question of a fair distribution of the benefits of the restructuring falls to be considered.

32. In his convening order Hildyard J established a structure whereby opposition to the plans and evidence in support of that opposition could be placed before the Court, adopting the approach set out by Snowden J (as he then was) in Re Smile Telecom Ltd [2022] EWHC 740 (Ch) at [49]-[55] and [75]-[76]. Some unsecured creditors have indicated opposition to

the plans. But none has filed evidence in support of that opposition; and none has appeared at the sanction hearing to advance argument in opposition.

33. It is my view that a judge so placed can only (a) conduct a high-level review of the plan to see if there is any manifest unfairness in the allocation of benefit (such as one category of stakeholder receiving a share of the benefit without contributing to the process or having a disproportionate share without any rational basis for such differential treatment); and (b) consider whether the matters referred to in the notices of opposition raise some unanswered challenge sufficient to prevent the applicant companies discharging the burden upon them of persuading the Court that it is right to exercise its discretion to sanction the plans. Whilst expecting candour the Court cannot expect the applicant companies to argue the points of opposition to the relief they seek.

34. I see no manifest unfairness in the proposed plan. It is correct that the equity holders retain their interest (albeit diluted by synthetic instrument): but the equity owners are in substance the Existing Secured Creditors and it is they who are in essence generating the surplus for allocation: accordingly, their decision about the disposition of the restructuring surplus they have generated is highly significant. At a high level I also observe that HMRC (which to all intents and purposes would receive a nil return in the relevant alternative) will in relation to each company receive a payment of £350,000 (amounting to a return of 4.2p in the pound in the case of the Parent and 5.6p in the pound in the case of the Company) whereas each unsecured creditor with the like expectation of a nil return in the relevant alternative will receive a payment of £1000. This simply reflects (a) the standing of HMRC as a preferential creditor; (b) the commercial leverage that HMRC is able to exert in consequence of the observations in Re Naysmith Group [2023] EWHC 988 (Ch) at [115]-[116] and Re Great Annual Savings Co Ltd [2023] EWHC 1141 (Ch) at [138] as to its treatment in restructurings: and (c) the inevitability of an ongoing relationship as trading continues.

35. I therefore turn to the notices of opposition before taking a high-level view of the unexplained dissent of the dissenting classes generally. Although the opposition (and the unexplained dissent) come from "out-of-the-money" creditors I intend to consider them because they are making some contribution to the restructuring by releasing their claims, the release itself making some contribution even though the claim itself has no economic value. I do not intend to enter upon the controversy of whether "little weight" or "no weight" should be attached to these views or whether the Court should seek to identify "personal objections" and weigh them differently from generic class objections as part of an overall assessment: see, for example, Re Ambatovy Minerals SA [2025]EWHC 279 (Ch). In the instant case (and I say nothing of others) it is sufficient to ask whether they raise objections which cannot be answered by the plan companies and which are so substantial as to prevent the applicant companies discharging the burden of persuasion that lies upon them. I embark on that task constrained by the absence of evidence or argument to ground the opposition.

36. On behalf of Kryndl UK Ltd (an unsecured creditor) on 5 March 2025 Jones Day wrote to express concern about "the extraordinary and inadequately explained collapse in the Plan Companies' financial position between March 2023 and the transfer of the business and assets of {the Parent] to the secured creditors by way of a prepackaged administration in December 2024". This is a challenge to the premise upon which the restructuring plans are found (a valuation point) and to the terms of the Explanatory Statement. This general challenge was supplemented by a list of specific questions. The valuations used in the Explanatory Statement are based upon both a discounted cash flow and a comparative

valuation approach. They apply a distressed sale discount at the lowest end of the range. They value contracts by reference to the probability of their retention in administration. This is a rational approach with sensible inputs. No competing valuation evidence has been filed. Whatever the cause of the collapse in the Plan Companies' financial position the current financial position is not open to challenge. In fact the plan companies explain that subsequent to the March 2023 accounting day the precariousness of future funding meant that current contracts had to be treated as impaired for valuation purposes and that the raising of further temporary funding generated heavy finance costs, that combination leading to a collapse in the reported financial position. So far as the Explanatory Statements are concerned, I have already expressed the view that in my judgment they were sufficient to enable a creditor such as Kryndl UK Ltd to decide whether it preferred the risks of an administration to the risks under the plan: and it decided in favour of the former and voted against the plans. I consider that the Parent has satisfactorily addressed the grounds of opposition.

37. The objection of Bay Ventures BV and of Mr and Mrs van der Velden is as to class composition. They are treated as unsecured creditors in respect of their bilateral loan arrangement with the Parent and the Company and oppose the plans on the basis (a) that their claims should have been excluded from the scope of the relevant plan and that they should have been treated as critical trade creditors: and (b) that £1000 is not fair compensation. These objections do not stand in the way of sanction. The objectors are financial creditors who are being treated in the same way as other unsecured financial creditors. It is true that a small number of bilateral loan creditors are being treated differently outside the plan: that is because they are key employees whose loyalty is (in the judgment of the directors) essential to the success of the continuing business. These objectors have filed no evidence to ground a finding that they ought to be treated differently from other financial creditors who are not key employees. As to the compensation sum, this is paid in respect of the release of a claim which (if pursued) would result in a nil recovery in the relevant alternative. Beyond the complaint itself, no evidence or argument is advanced as to what greater sum should be paid or where it should come from. Payment of the sum of £1000 for the release of a claim with no economic value is real (not illusory) consideration. Being satisfied that the compromise sum is real (and not illusory) I see no basis upon which I can, of my own motion, characterise it as "inadequate". It also appears to me that these objectors have had the same opportunity as, for example, HMRC to attempt to negotiate an increase in the compromise sum during the Court process.

38. The objection of OCC (an unsecured creditor of the Parent with a claim for £771,000) is the best articulated of the objections. OCC does not oppose the principle of restructuring but urges "that it be amended to provide a more equitable outcome". Its grounds of opposition are (a) that it receives a disproportionately low return of 0.1% of its claim; (b) the unfairness of a flat sum distribution, which results in unequal treatment as between large and small claim ("intra-class discrimination") and (c) that OCC's claim is being wiped out to facilitate benefits to parties junior to the unsecured creditors. The argument advanced is a serious one and is attractively put. The treatment of the unsecured creditors in each plan does depart from the *pari passu* principle. Further, the disparity in returns within the class is striking: creditors with claims of £3000 or less (of whom there are eight) will receive the same £1000 as will be received by OCC in respect of its claim for £771,000.

39. But I have decided that these features do not justify the withholding of sanction. First, the essence of OCC's principal argument is that for the unsecured creditor plan returns should

be proportionate to the creditor's claim. But irrespective of the size of the claim in the relevant alternative all claims have the same value. A claim for £771,000 that would result in a nil return has the same value as a claim for £3000 that would also result in a nil return. From that perspective a flat sum distribution is not "unfair": it treats all nil-return claims in the same way. Second, the consideration provided to the unsecured creditors is out of funds otherwise belonging to the Existing Secured Creditors. I see no basis upon which I can say of my own motion and without any evidential foundation that they must give more or that they must distribute it in a different way. As I have already said, the consideration is real and not illusory: and no alternative plan providing an increased compromise payment is suggested. Third, the costs of a granular claims assessment and distribution process are not insignificant; on the evidence they amount to about £28,000 which would make a substantial inroad into the compromise sum available for distribution. Fourth, flat sum payments are a feature of the other compromises effected under the restructuring plans, so unsecured creditors are not being singled out for treatment in this way. Fifth, whilst it is true that unsecured claims are to be released for a small consideration whilst equity is preserved, that equity belongs to the Existing Secured Creditors who are (a) the principal generators of the restructuring surplus by deleveraging and equitisation; (b) the source of new money to fund the operational turnaround; and (c) the likely purchasers in the relevant alternative.

40. This brings me to a consideration of the unexplained dissent of the various dissenting classes. The strength of that dissent is not consistent. There is deemed dissent on the part of Subordinated Creditors of the Parent where only one member whose claim represented 3.97% by value of the class attended the meeting. There is actual dissent from the single member landlord class in the Parent plan by virtue of a change in vote at the meeting. The Unsecured Creditor class in the case of the Company voted in favour of the plan at a meeting attended by 7.59% by value of the class by a majority (63.03%) but this did not meet the statutory threshold. On the other hand, the Unsecured Creditors of the Parent positively voted against the plan at a well-represented meeting by a margin of 22.69% in favour and 77.31% against. Likewise, whilst the dissent of the Subordinated Creditor class in the case of the Company was a deemed dissent the one member of the class who attended represented 61.7% of class value and voted against. From this variable response I draw the conclusion (a) that there is no obvious flaw or imbalance in the generic treatment of the dissenting classes *inter se* or in comparison with the assenting classes; and (b) that it is likely that each dissenting class embraces to a greater or lesser degree the grounds of opposition contained in the notices I have already considered. Nor do I see any substantial disparity between the burdens borne by any dissenting class when compared with the impairments suffered by the assenting classes.

41. I therefore reached the view expressed at the conclusion of the hearing that I would sanction each of the Parent and the Company plans.

42. There is one final point to make. The enquiry whether there is a "blot" or defect in these plans effectively means in the present case an enquiry whether the order approving the plans will be regarded as effective in the key jurisdictions where there are assets or liabilities affected by the compromise or arrangement. In the case of the Enzen Group this means Spain. I have considered the expert evidence of Inigo Quintana and am satisfied that there is

at the least a reasonable prospect that the order I make will be treated as effective in that jurisdiction if due process is followed there.