Neutral Citation Number: **EWHC 2690 (Ch)**

Case No: CR-2025-005763 and CR-2025-005674

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

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

Date: 9 October 2025

Before:

Mr Justice Richards

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Between:

IN THE MATTER OF SWS HOLDINGS LIMITED
IN THE MATTER OF GREENSANDS FINANCING PLC
AND IN THE MATTER OF THE COMPANIES ACT 2006

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Mr D Bayfield KC and **Mr R Perkins** (instructed by **Latham & Watkins (London) LLP**) for **SWS Holdings Limited**
Mr W Willson and **Mr E Lupi (**instructed by **Jones Day)** for **Greensands Financing Plc**

Hearing date: **9th October 2025**

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APPROVED JUDGMENT

Thursday, 9 October 2025

MR JUSTICE RICHARDS

INTRODUCTION

1. On 2 September 2025 I made orders convening meetings of creditors of two companies, SWS Holdings Limited and Greensands Financing Plc to consider, and if thought fit to approve, schemes of arrangement of those two companies under Part 26 of the Companies Act 2006. I gave reasons for doing so in my judgment reported at [2025] EWHC 2318 (Ch) (the "Convening Judgment"). In the rest of this judgment use defined terms that I used in that Convening Judgment.

2. Both Schemes were approved by overwhelming majorities:

    a. In the SWS Scheme, there was a turnout of 100% of creditors in Class A1, A2 and A3 and a turnout of 93.45% by value in Class A4. 100% of those present and voting in all class meetings voted in favour of the SWS Scheme.

    b. In the MidCo Scheme, there was a 100% turnout at the single class meeting with all creditors voting in favour of the scheme.

3. There is no one attending court or making written submissions to challenge the Schemes and in those circumstances I do not need to go into any more detail on the Schemes, the rationale for them or the "comparator" situation that would occur should the Schemes not be sanctioned beyond that set out in the Convening Judgment. I therefore take as read those sections of the Convening Judgment and more generally treat the Convening Judgment as if it forms part of this judgment.

4. The issues that I must consider today following the summary Snowden J as he then was in *KCA Deutag UK Finance Plc* [2020] EWHC 2997 (Ch) at [16] are 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? …

UPDATE ON RELEVANT MATTERS SINCE THE CONVENING JUDGMENT

Resolution of CBA's opposition to the MidCo Scheme

5. In the Convening Judgment I dealt with matters on the basis that CBA might vote against the MidCo Scheme and invite the court not to sanction it if it was nevertheless approved by the requisite majority. My order convening the single class meeting for the MidCo Scheme therefore made case management directions for CBA to outline any objection, and provide its evidence in support, so that any objection could be dealt with at today's hearing.

6. In the event, CBA have decided not to oppose the MidCo Scheme. In fact, as I have said, 100% of the MidCo Scheme debt eligible to vote, including that held by CBA, voted in favour of the Scheme.

7. CBA voted its rights arising under the MidCo Facility Agreement in favour of the MidCo Scheme as it was the lender of record on the relevant record date for voting. It never acceded to the lock-up agreement referred to at [18] of the Convening Judgment. By the time of the meeting, CBA had agreed to sell its interest in the MidCo Facility Agreement to Bank of America Europe Designated Activity Company (the "New Lender"). The

transfer to the New Lender was completed too late for the New Lender to be entitled to vote on the MidCo Scheme. Moreover, the New Lender has not acceded to the lock-up agreement, perhaps simply for the administrative reasons: it is a long document and the New Lender has beneficial owners of rights under the MidCo Facility Agreement sitting behind it who would need to be satisfied that that the lock up agreement is appropriate for them to approve.

8. However, the New Lender has confirmed, both on its own behalf and on behalf of the other parties with an economic interest in the MidCo Facility Agreement, that it supports the MidCo Scheme. In addition, the New Lender has undertaken not to take any action which would reasonably be expected to frustrate the MidCo Scheme. No-one with any interest in the MidCo Facility Agreement has attended today to articulate any reservation about the MidCo Scheme or to suggest that it should not be sanctioned.

"Tap Bonds"

9. On 2 October 2025, two days after the scheme meetings, SW (Finance) I plc issued £100 million of bonds (the "Tap Bonds"). The Tap Bonds would not be bound by the SWS Scheme if sanctioned, but holders of rights under those bonds would have fallen into Class A4 for voting purposes if the bonds had been issued in time.

10. The beneficial owners of the Tap Bonds have instructed the security trustee to execute the amendment agreement that I refer to in paragraph 16 of the Convening Judgment. That ensures that the terms of the Tap Bonds are altered in just the same way as they would have been had they been bound by the SWS Scheme. That is achieved as a matter of contract rather than pursuant to the SWS Scheme itself. More generally, the security

trustee has also agreed to do whatever is necessary to ensure that the relevant changes to the terms of the Tap Bonds take effect.

The outcome of the SWS Scheme meetings

11. As ordered in the convening order, there were four class meetings. They took place on 30 September 2025. Mr Ledger acted as chairperson and he has provided a chairperson's report. The scheme meetings were conducted by way of video conference over the Zoom platform and Mr Ledger's second witness statement relating to the SWS Scheme ("Ledger 2 (SWS)") has confirmed that the video conference technology worked well and that no technological difficulties arose.

12. The results of the scheme meetings were as follows:

    a. Six SWS Scheme Creditors attended the Class A1 meeting, one in person and five by giving proxies to the chairperson. There was therefore the requisite "meeting" of that class. All Class A1 debt was represented at that meeting, so there was 100% turnout. 100% of the Class A1 debt voted in favour of the SWS Scheme.

    b. In Class A2, 10 SWS Scheme Creditors attended, one in person with nine giving proxies to the chairperson. Again, there was 100% turnout in that class and 100% of the Class A2 debt voted in favour of the SWS Scheme.

    c. In Class A3, six SWS Scheme Creditors attended, one in person and five by proxy so that there was the necessary "meeting". Again, all the Class A3 debt was represented at that meeting, so there was 100% turnout and all of the Class A3 debt voted in favour of the SWS Scheme.

d. In Class A4 758 SWS Scheme Creditors attended the meeting. One attended in person and 757 gave proxies so that there was the necessary "meeting". There was a 93.45% turnout by value at this class meeting and 100% of those present at the meeting both by number and by value voted in favour of the SWS Scheme. The chairperson exercised some discretion to accept some late voting instructions. Only some 4.91% by value of the votes were affected and so the exercise of this discretion had no impact on the result. I am satisfied that the discretion was properly exercised.

13. Thus, there was an exceptionally high turnout at all four class meetings and, as I have said, no one is suggesting that I should withhold sanction of the SWS Scheme.

The outcome of the meeting for the MidCo Scheme

14. Nineteen MidCo Scheme Creditors attended the MidCo Scheme Meeting. There were five creditors who chose to vote in person and appointed a representative to attend the MidCo Scheme Meeting to vote on their behalf, and 14 attended by proxy. A "meeting" therefore took place. 100% by value of all MidCo Scheme Debt was represented at that meeting and 100% of the MidCo Scheme Debt voted in favour of the MidCo Scheme.

DISCUSSION

Were the statutory provisions complied with?

15. I can deal with this issue in relation to both of the Schemes together. The short answer is, "yes".

16. Ledger 2 (SWS), Mr Ledger's second witness statement in relation to the MidCo Scheme ("Ledger 2 (MidCo)") and Mr Slyfield's second witness statements in respect of each Scheme satisfy me that the requirements of the convening order were met. I am satisfied that proceedings at the meetings for both Schemes were conducted fairly and that there were no technological problems. As I have explained, the statutory majority was achieved.

17. Class composition was considered in the Convening Judgment. No one has suggested that a different class analysis should be adopted in relation to either of the Schemes.

18. The mandatory requirements for the explanatory statement accompanying both Schemes were satisfied. I considered both explanatory statement to be appropriate. Both explanatory statements contain the necessary information on directors' interests.

Fair representation – SWS Scheme

19. The short answer is that there was indeed the requisite fair representation. There was, as I have said, an exceptionally high turnout in all classes. I have no concerns at all about the possibility of the substantial majority "oppressing" a minority. There was no "minority" to oppress in that not a single creditor opposed the SWS Scheme. At most it can be said that some 6.55% by value of the SWS Scheme Debt in Class A4 chose not to be represented at the meeting. There is nothing to suggest that this was anything other than their free choice. Nor is there any suggestion that those voting in favour of the SWS Scheme were doing so otherwise than for bona fide reasons.

Fair representation – MidCo Scheme

20. There was clearly fair representation at the meeting on the MidCo Scheme given the 100% turnout and 100% vote in favour. There was simply no minority to oppress and no basis to conclude that those voting in favour did so otherwise than bona fide.

Could creditors reasonably approve the SWS Scheme?

21. The answer is quite clearly "yes". A disparate group of creditors did approve the SWS Scheme and I see no basis for a conclusion this was anything other than a reasonable commercial decision. It is manifestly reasonable to vote for a scheme that, for the price of narrowing the definition of an event of default, secures much needed equity funding that will indirectly benefit SWS HoldCo and the WBS Group as a whole.

22. I have taken into account that a small consent fee was payable of £1,000 for each creditor acceding to the lock-up agreement. I remain of the view expressed in paragraph 53(b) of the Convening Judgment that this could have made no realistic difference to SWS Scheme Creditors' decision to vote in favour of the SWS Scheme.

Could creditors reasonably approve the MidCo Scheme?

23. Again, the answer is clearly "yes". Sophisticated financial institutions, including CBA who had initial reservations, have voted unanimously in favour of the MidCo Scheme. A statement that they could not reasonably approve that scheme would be untenable and would suggest that all creditors who voted in favour were acting unreasonably. In any event, the terms of the MidCo Scheme are manifestly such that a reasonable person could vote in favour of them. Projections suggest that under the MidCo Scheme holders of MidCo Scheme debt could realistically expect 100% recovery. The comparator analysis

suggests that they might get significantly less, perhaps as little as 2.4% recovery, in the alternative.

24. I note that creditors acceding to the lock-up agreement had their advisers' fees paid but, as I explained at [61] of the Convening Judgment, I do not consider that to be a fact that would have influenced the decision to vote because it simply represented a reimbursement of expenses without any bounty or "net benefit".

Are there any "blots" on the SWS Scheme?

25. By a blot I mean some sort of technical or legal defect which means that "would, for example, make it unlawful or in any other way inoperable" in the words of Snowden J at [17(iv)] of *Re Noble Group Ltd* [2019] BCC 349.

26. Very fairly, the following potential "blots" were drawn to my attention without in any way suggesting that they were actually blots:

    a. the fact that conditions remain to be satisfied before the SWS Scheme can become fully effective,

    b. the arrangements in relation to the Tap Bonds and

    c. the deed of contribution.

27. I start with conditionality. It is of course important that the court should have some comfort that it would not be acting in vain by sanctioning the SWS Scheme. By the SWS Scheme, the amendments to terms of the SWS Scheme Debt only become fully effective if the Sponsor makes the equity injection. It is, therefore, relevant for the court to consider the prospects of that equity injection being made.

28. There are some legal matters that remain to be dealt with before the Sponsor's obligation to provide the equity becomes unconditional. Those include finalising some legal documents and also the sanction of the MidCo Scheme. As will be seen, I do propose to sanction the MidCo Scheme. I do not need cast iron certainty that the other conditions will be satisfied to make it appropriate to exercise my discretion to sanction the MidCo Scheme. The court certainly would not want to act in vain but provided that there is a realistic prospect that the equity injection will indeed be made that is likely to be sufficient.

29. I have read Ledger 2 (SWS). Mr Ledger is well placed to assess the prospect of the conditions being satisfied and he has a high degree of confidence that they will be. I accept his assessment and conclude that there is a high degree of likelihood that the Sponsor will become unconditionally contractually obliged to make the equity injection.

30. Nor have I any reason to doubt that, if subjected to an unconditional obligation to make the equity contribution, the Sponsor will do so. Obviously no one can predict the future but there is no reason to suspect that the Sponsor will fail to honour an unconditional contractual obligation.

31. I am entirely satisfied, therefore, that the issue of "conditionality" involves no blot on the SWS Scheme.

32. Turning to the Tap Bonds, a mechanism has simply been adopted to ensure that the Tap Bonds are bound in the same way as other debt. That involves no blot on the SWS Scheme, but simply an arrangement that operates in parallel with the SWS Scheme.

33. Finally, I turn to the deed of contribution. It is significant to note by way of background that SWS HoldCo has throughout been a guarantor of SWS Scheme Debt and therefore holders of debt issued by the SWS Borrowers are creditors of SWS HoldCo by virtue of having contingent claims under that guarantee. The deed of contribution that I described in the Convening Judgment means that the SWS Borrowers can seek a contribution from SWS HoldCo if claims are made under debt that the SWS Borrowers have issued. Without the deed of contribution, the position would be the other way round with claims under that debt leading to claims under SWS HoldCo's guarantee so that SWS HoldCo had rights of subrogation creating claims against SWS Borrowers. The deed of contribution "reverses the current" and means that claims against the SWS Borrowers give the SWS Borrowers rights to make "ricochet" claims against SWS HoldCo (rather than the other way round).

34. That deed of contribution is said to give the court power to sanction a scheme that amends rights SWS Scheme Creditors have against the SWS Borrowers as well as rights that they have against SWS HoldCo itself.

35. I confess to thinking that the deed of contribution may not be needed in this case at least. The scheme binds creditors of SWS HoldCo, who are precisely the same people as creditors of the SWS Borrowers, to execute or procure execution of an amendment agreement. That amendment agreement when executed effects changes to the common terms agreement that changes rights against the SWS Borrowers. It seems to me entirely realistic to say that the operation of the SWS Scheme would be enough to alter rights against the SWS Borrowers without any need for a deed of contribution.

36. That said, approaching matters on the basis that the deed of contribution achieves something, its result is not such as to amount to a blot on the SWS Scheme.

37. In *Re Lehman Brothers (No 2)* [2009] EWA Civ 1161 Patten LJ emphasised at [62] that the rights that can be released or re-organised under a scheme are not limited to those enjoyed by scheme creditors as creditors of the company: they could include rights against third parties related to and essential for the operation of the scheme.

38. In the Convening Judgment I mentioned references in some cases to the proposition that the court could alter rights against third parties where such alteration is "ancillary" to the scheme under consideration. I raised the question whether amendment to the terms of the underlying debt truly is "ancillary" to the SWS Scheme when it is the true prize sought. Having considered the clear and helpful submissions on behalf of SWS HoldCo on this issue, I conclude that the question of whether the release of such rights would be "ancillary" may well be a relevant consideration when the court is exercising its discretion to sanction a scheme. However, I do not consider it to impose a jurisdictional condition. Zacaroli J, as he then was, expressed a similar conclusion in paragraph 165 of his judgment in *Re Gategroup (No 1)* [2021] EWHC 304.

39. More recently, in *Re Thames Water Utilities Holdings Ltd* [2025] EWCA Civ 475, the Court of Appeal accepted that the possibility of a scheme including a mechanism for the release of claims against third parties that might otherwise give rise to ricochet claims was "well-established". The Court of Appeal went further, stating that the risk of ricochet claims is not the only justification for the release of rights against third parties. The overriding consideration is that releases against third parties can be ordered, in the words of Patten LJ in *Re Lehman Brothers (No 2)* "where necessary in order to give effect to the arrangement proposed for the disposition of debts and liabilities of the company to its own creditors".

40. In this case if there is no amendment to the event of default definition in the underlying debt of the SWS Borrowers, then the occurrence of a Ratings Downgrade would accelerate principal and interest on that debt. Holders of that debt could demand early repayment from the SWS Borrowers and any such claim would give rise to a ricochet claim against SWS HoldCo by virtue of the deed of contribution. Without a variation in the rights of creditors against SWS Borrowers, the SWS HoldCo Scheme would have little practical effect. It is indeed necessary to alter rights against the SWS Borrowers in order to give proper effect to the SWS Scheme.

41. In those circumstances it is appropriate to sanction a scheme that results both in rights against the guarantor (SWS HoldCo) being varied and rights against the underlying SWS Borrowers. No one has suggested otherwise. I see no blot on the SWS Scheme arising out of the deed of contribution mechanism.

Are there any blots on the MidCo Scheme?

42. Possible blots that were very fairly canvassed with me in submissions were:

    a. The possibility that the MidCo Scheme might have been "too successful" with all creditors voting in favour at least raising the question of whether the assistance of the court is needed for the MidCo Scheme to achieve its objective.

    b. The deed of contribution mechanism that is used in the MidCo Scheme as well.

    c. The fact that conditions remain to be satisfied before the MidCo Scheme can become fully effective.

    d. I also discussed with Mr Willson the provisions for the release of directors.

43. I start with the possibility that the MidCo Scheme might have been "too successful". I can quite accept that a court might be reluctant to convene a meeting if it is known at the time it is asked to do so that everyone is going to vote in favour. That raises the question of whether the court's intervention truly is needed as in such a case the parties could simply be invited to enter into a consensual or contractual restructuring.

44. However, that is not this case. At the time of the convening order, CBA was thought to be opposing the MidCo Scheme. It has changed its position late in the process. Now that it is known that CBA has voted in favour of the MidCo Scheme, the question is whether it would be appropriate to decline sanction on the basis that the MidCo Scheme Company could change tack and embark on a purely contractual restructuring. I do not consider that it would be correct or fair for the court to exercise discretion in this way. It would make no sense to withhold sanction to a scheme on which 100% voted in favour, following a change of heart by a creditor previously opposed to the scheme, when the court would be quite prepared to sanction a scheme in which 99% voted in favour.

45. I am also satisfied that there are practical reasons why I should exercise discretion to sanction the MidCo Scheme. Requiring the MidCo Scheme Company to change tack now would mean that it would have to sign up the New Lender to a contractual restructuring. As Mr Ledger says in Ledger 2 (MidCo), that would raise questions about timing. It would also raise issues associated with the fact that the two Schemes are conditional on each other. There would be a question of costs too since, if the MidCo Scheme Company changed tack to move to a contractual restructuring it would need to ask 19 creditors individually to execute an appropriate suite of documents. I do not consider I should impose that kind of burden on the MidCo Scheme Company when it has, quite understandably, spent a lot of time and money already in getting the MidCo Scheme to the

sanction hearing. The appropriate thing for me to do is to exercise my discretion to sanction the MidCo Scheme which all creditors in the relevant class have approved.

46. For reasons given in connection with the SWS Scheme, I do not consider that the conditions to full effectiveness of the MidCo (which are similar to those arising in relation to the SWS Scheme and also addressed in Ledger 2(MidCo)) represent any blot.

47. For reasons given in relation to the SWS Scheme, I do not consider the deed of contribution to represent any blot.

48. I discussed the provisions regarding the release of directors with Mr Willson. In my judgment that release is appropriately framed because it preserves the rights of an officeholder in an insolvency, should there ever be one, to bring claims against advisers and directors.

CONCLUSION

49. Having gone through all of the various considerations that are relevant to the exercise of my discretion I have reached the clear conclusion that the correct course is for me to sanction both Schemes.