Neutral Citation Number: [2025] EWHC 3395 (Ch)

Case No: CR-2025-007624

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

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

Date: 23 December 2025

Before:

Mr Justice Hildyard

- -

IN THE MATTER OF ARGO BLOCKCHAIN PLC

- and -

IN THE MATTER OF THE COMPANIES ACT 2006

- -

Mr Matthew Abraham and Mr Rabin Kok (instructed by Fladgate LLP) for the Plan Company

Mr Joseph Curl KC (instructed by Greenberg Traurig LLP) for Growler Mining Tuscaloosa, LLC, a supporting creditor

Mr William Day (instructed by McCarthy Denning LLP) for Mr Jonathan Yorke, the Retail Advocate

Hearing dates: 8 & 10 December 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE HILDYARD

Mr Justice Hildyard:

Scope of this Judgment

1. This judgment concerns an application by Argo Blockchain plc for an Order sanctioning its proposed restructuring plan ("the Plan") under Part 26A of the Companies Act 2006 ("the Act") further to the approval of the Plan at class meetings convened in accordance with my Order made on 6 November 2025.

2. Its purpose is to elaborate on the shorter reasons for my decision to sanction the Plan which I provided in a Ruling on 10 December 2025, which has been published under the neutral citation Re Argo Blockchain plc [2025] EWHC 3257 (Ch).

Background

3. I explained the background to this application in some detail in my judgment explaining my decision to convene those class meetings ("the Convening Judgment"). I shall focus primarily in this judgment on events following the Convening Order and matters reserved to the sanction hearing, though some repetition of the background and some reference to matters in my Convening Judgment will still be necessary. Except if expressly stated otherwise, I shall adopt in this Judgment the same definitions as in the Convening Judgment. This judgment and the Convening Judgment should be read together.

4. As explained in the Convening Judgment (see paragraph [2]), the Plan Company, is an English company which functions as a holding company in a group which is in the business of the large-scale mining of Bitcoin and other cryptocurrencies. It is dual-listed on the London Stock Exchange ("LSE") and the NASDAQ Stock Exchange in New York ("NASDAQ").

5. It continues to be in serious financial difficulties. Indeed, these have become even more acute since the Convening Hearing on 5th November 2025: it has recently fully drawn down the Growler Facility (see paragraphs [10] and [11] of the Convening Judgment) and according to the second witness statement of its Chief Executive officer (Mr Justin Nolan) dated 28th November 2025 it has no access to further external funding and has, or imminently will have, insufficient *"income to discharge its normal course operating expenditure in full"*. Mr Nolan has confirmed in the same witness statement that *"…if the Restructuring Plan is not sanctioned…the Plan Company will have no choice but to enter into administration in light of the Board's statutory and fiduciary duties…and the interests of the Plan Company's creditors…as a whole."*

Overall view of the objective and scope of the Plan

6. The objective of the Plan is to facilitate what amounts to a rescue takeover by another cryptocurrency miner, an Alabama limited liability corporation called Growler Mining Tuscaloosa LLC ("Growler"), and to enable the Plan Company, with the assistance of, and contribution of assets from, Growler, to implement a turnaround plan and maintain its NASDAQ listing.

7. The Plan achieves this objective by: (i) releasing the Notes and the debt of Growler as the Secured Lender (see paragraphs [15] to [16] of the Convening Judgment); (ii) enabling an injection of $3.5m by way of equity subscription from Growler; and (iii) enabling the injection by Growler of $18.4m worth of new assets. In exchange, Growler and the Noteholders (see paragraph [26] of the Convening Judgment) are to be allocated equity entitlements equal to 87.5% and 10% respectively of the Plan Company's equity in the form of American Depositary Shares ("ADSs") represented by American Depositary Receipts ("ADRs") traded on NASDAQ. The Existing Shareholders are to be diluted to 2.5%. The Plan Company will be delisted from the LSE.

8. As also explained in the Convening Judgment, and for the reasons there given (at paragraphs [31] to [38]), the Plan does not restructure or compromise certain of the Plan Company's liabilities ("the Excluded Liabilities") because they are regarded as essential for the Plan Company and its Group's business. Beyond confirming that this sort of carve-out or exclusion is not unusual, and I am satisfied that it is justified, I need say no more about the Excluded Liabilities beyond what I have previously stated. My focus is on the fairness of the process and the effect of the Plan from the perspective of the Plan Participants.

Structure of this Judgment

9. In this Judgment, I address the following matters:

   (1) The key terms of the Plan in more detail.

   (2) The Relevant Alternative to the Plan.

   (3) Events after the Convening Hearing and steps taken to comply with the Convening Order.

   (4) What happened at the three Plan Meetings convened pursuant to the Convening Order.

   (5) The legal issues arising in consequence of what happened at the three class meetings.

   (6) The role and approach of the Retail Advocate.

   (7) Was there, in law, a valid meeting of Noteholders?

   (8) Are the statutory requirements for cross-class cramdown satisfied?

   (9) The Plan Company's engagement with Plan Participants, and in particular, with retail investors.

   (10) Source and nature of the Court's discretion to sanction a plan and its exercise.

   (11) Concerns and objections expressed through the Retail Advocate.

   (12) Whether there is any 'blot' or defect in the Plan.

(13) Whether the Plan is reasonably likely to be recognised and given effect internationally, and in particular in New York, USA.

(14) Section 3(a)(10) of the US Securities Act.

(15) Conclusion on whether the Plan is fair and it is appropriate to sanction it.

The scope and key terms of the Plan

10. I have already identified in the Convening Judgment, at paragraphs [4]-[14] and [83], the scope and principal features of the Plan.

11. By way of elaboration, under the Plan it is proposed that:

(1) The Growler Facility, the guarantees supporting the Growler Facility (including accrued and unpaid interest), and the security supporting the principal obligations and the guarantees, will all be compromised and/or released in full.

(2) The Notes (including interest) will be compromised and released in full.

(3) The Existing Shareholders will retain their equity, but will be diluted, which is the reason why I considered it necessary also to convene a meeting of such shareholders as well as two creditor meetings: and see *Re Hurricane Energy* [2021] EWHC 1418 (Ch) at [31].

Growler's role and contributions

12. Growler will also make the following contributions to the Plan Company under the Plan:

(1) Growler will contribute the Growler Exit Capital, worth US$3.5m, to the Plan Company by subscription to new equity in the restructured Plan Company. The definition of "*Growler Exit Capital*" in the Plan allows Growler to source participations in this exit capital from third party investors, however, clause 5.2.2 of the Plan places the obligation to pay it to the Plan Company on Growler alone, without any 'escape clause'.

(2) Growler will incorporate a wholly owned subsidiary ("Growler USCo") and procure the transfer of what are called "the Growler Mining Assets" to Growler USCo for a nominal amount in exchange for newly issued common stock in Growler USCo. Growler will then transfer 100% of the shares in Growler USCo to the Plan Company. As to the value of the Growler Mining Assets:

(a) The Grower Mining Assets comprise various cryptocurrency mining machines and ancillary equipment, power contracts, and hosting agreements presently owned by Growler USCo.

(b) Mr Michael Weaver ("Mr Weaver"), a Managing Director in the Valuation Services practice of Kroll Advisory, has provided an expert valuation report to the Court (his second) which analyses the Growler Mining Assets. He had originally (in his first Report) relied on an analysis by Stifel (an adviser to the Plan Company). Although he has not

in the time available been able fully to verify the market value of certain of those assets, he has felt able to provide an aggregate conservative estimate of their value of US$20.0 million (compared to Stifel's valuation of US$21.9 million). As Mr Weaver explains at [3.34], Kroll has valued the Growler Mining Assets conservatively on a break-apart basis but "*it is likely that once these assets are deployed and operating collectively…the aggregate value in use may exceed the sum of the individual parts*".

Equitisation of Notes

13. In consideration for the release of Growler's and the Noteholders' debt, and for the Growler's contributions of capital and assets, Growler and the Noteholders will receive new equity in the form of ADSs. These ADSs will be tradeable on NASDAQ so long as the Plan Company maintains its listing (which the Plan is also designed to facilitate). As to this:

    (1) Growler will be issued with ADSs in the Plan Company representing 87.5% of its ordinary shares, valued at between £16.47m – 19.59m.

    (2) The Noteholders will be issued with ADSs in the Plan Company representing 10% of the ordinary shares in the Plan Company, valued at between £1.88m - £2.24m, on a pro rata basis.

    (3) The Shareholders' existing interests in the ordinary shares of the Plan Company will be diluted, resulting in them holding 2.5% of the ordinary shares valued between c £0.47m - £0.56m.

'Plan Steps'

14. In addition to the terms set out in the Plan, it is provided that various conditions must be satisfied for the Plan to become effective. These are each defined in the Plan as a "*Plan Step*". The Plan Steps themselves, which I discuss further below, are in the Plan at Schedule 1. They include:

    (1) The establishment of Growler USCo and contribution of the Growler Mining Assets (via Growler USCo) to the Plan Company.

    (2) A Rule 9 waiver by the Takeover Panel and either approval of the waiver by the Existing Shareholders or by means of a dispensation from the Takeover Panel.

    (3) An adjustment of the ADS Ratio.

    (4) Payment of the Growler Exit Capital to the Plan Company by Growler.

    (5) Allotment of the equity due to Growler and the Noteholders under the Plan.[1]

[1] To allot the equity, the Plan Company must obtain a report of a statutory auditor valuing the consideration for the allotment pursuant to section 593 of the Companies Act 2006. This report has been obtained from HaysMac.

(6) Delisting from the LSE.

(7) Various post-Plan filings.

15. As to the planned ratio change of the Plan Company's ADSs, presently, 1 ADS is evidenced by an ADR, representing an entitlement to 10 ordinary shares. Pursuant to the Plan, the Plan Company will have to change the ratio of ADSs to ordinary shares from 1:10 to 1:2160. Mr Nolan explained in his first witness statement that the ratio change is likely to increase the bid price for 1 ADS by increasing the number of shares which an ADS is worth. But the Plan Company (and Growler) emphasise that the Plan is still needed: without the underlying capital reorganisation effected by the Plan, the price might again backslide and drop below the minimum bid price requirement, leading to delisting.

16. Provision is also made in the Plan for the consolidation and sale of fractional interests which may arise either because the pre-Plan holding of the relevant Noteholder or ADS Holder was very small, or because following the ADS ratio change and the exchange of Notes for ADSs, it is possible that Noteholders or ADR Holders may be left with fractional interests in ADSs. As explained in the Explanatory Statement, JP Morgan Chase Bank N.A. (as the Depositary of the ADSs) will liquidate any fractional interests held by the Plan Participants post-plan, and will distribute the proceeds on a pro-rata basis subject to fees or charges.

Fractional Entitlements

17. Growler will fund a Fractional Entitlement Fund which aims to ensure that any ADR Holder or Noteholder will be entitled to receive at least some distribution upon request. Whilst the fund was originally capped, Growler agreed to remove the cap during the last hearing, a matter recorded in the Convening Judgment at paragraph [81] (amendments to both the Explanatory Statement and the Plan were made accordingly before their circulation to Plan Participants).

LSE delisting

18. Another of the Plan Steps is that the Plan Company will delist from the LSE. As a result, after the Plan there will be no public market to sell shares traded on the LSE. To protect the interests of individuals in this position, the Plan Company has:

(1) set up a matched bargain trading facility with JP Jenkins that will be maintained for six months; and

(2) reminded LSE shareholders of their right (which they have always had and will always have) to exchange shares traded on the LSE for ADSs on the NASDAQ. This has occasioned various LSE Shareholders some concern, as I shall explain in more detail when dealing with various concerns and objections, some expressed at a Town Hall Meeting (see paragraph [40] below) and others received through the Retail Advocate.

19. Other key terms in the Plan, as explained in the Explanatory Statement, are the usual waivers, moratoria, non-suit covenants, and certain releases. These releases under both the Plan and a Global Deed of Release, comprise:

(1) both under the Plan itself and through Deeds of Security Release the release of Growler's claims against the Guarantor Subsidiaries, i.e. the Plan Company's direct and indirect subsidiaries which have guaranteed the principal obligations under the Growler Facility (see the Convening Judgment at paragraph [40] and the release of security supporting the Growler Facility and guarantees.

(2) under the Plan itself, customary releases by the Plan Participants against certain parties, including directors of the Plan Company and advisers, insofar as those released claims are in connection with the Plan).[2]

The Plan provides for a power of attorney ("POA") to execute the releases. The Plan Company submits that such a POA is now well-accepted, citing *Re ColourOz Investment 2 LLC* [2020] BCC 926 at [73]-[75].

20. Various additional Plan Steps which are also included must be satisfied for the Plan to become effective. More particularly:

(1) Clause 3.1 of the Plan provides that the Plan in its entirety applies from the "*Plan Implementation Date*", which is defined as the "*date on which all Plan Conditions have been satisfied*".

(2) the Plan Conditions include both (a) the Plan Effective Date, that is, the date of sanction and registration at Companies House, execution of the Restructuring Documents, and (b) a stipulation that all the Plan Steps must be completed by the "*Longstop Date*" which is 7 calendar days from the Plan Effective Date.

21. If the Plan Conditions – including the Plan Steps – are not completed, then clause 4.1 provides that the Plan will be undone.

22. Thus, if Growler does not pay the Growler Exit Capital or Growler Mining Assets into the Plan Company, or the Noteholders do not get the equity that is rightfully theirs, then the Plan will be undone and Growler will not get its equity. A further and important point is that the actual achievement of the bid price and the maintenance of the listing are not Plan Steps. If the Plan is sanctioned but the NASDAQ listing is later lost, Growler will remain bound by the Plan.

The Relevant Alternative to the Plan

23. In assessing a restructuring plan, it is always necessary to consider what is expected would happen if the relevant plan is not sanctioned. Indeed, the identification of the "Relevant Alternative" is a jurisdictional precondition to the exercise by the Court of its exceptional power under section 901G of Part 26A of the Act to sanction a plan notwithstanding opposition to it expressed by a dissenting class, since the Court must in that context be satisfied that "none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative" (see Section 901G(3) of the Act). For the purpose of the "no worse off test" it is, therefore, also necessary to determine for the purpose of the required comparison both (a) the likely

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[2] While these are releases of non-parties to the Plan, the releases will be effected under the Plan and the GDoR on the well-accepted basis that the releases are necessary to prevent subrogated 'ricochet' claims against the Plan Company: see e.g. *Re Swissport Fuelling Ltd* [2020] EWHC 3413 (Ch), [62]-[73].

recoveries to creditors in the Relevant Alternative and (b) the estimated benefits/recoveries for creditors if the Plan proceeds.

24. The Plan Company's case is that the Relevant Alternative to the Plan is an administration, followed by an orderly wind down of the Plan Company and the Group.

Reports as to the Relevant Alternative

25. The Plan Company has commissioned a report by Mr Geoff Bouchier ("Mr Bouchier") of Kroll Advisory Limited ("the Kroll RA Report") to state his expert opinion on the two different contexts which need to be compared.

26. The estimate in the Kroll RA Report of the likely returns to Plan Participants in the Relevant Alternative are set out in the table below:

Estimated returns under the Relevant Alternative and the Plan			
	Claim[8]	**Relevant alternative recovery**	**Recovery under the Plan**
Growler	£6.147m (c. US$ 7.5m)	£6.147m (100%)	£16.47m - £19.59m[9] (87.5% of equity in PlanCo)
Noteholders	£30.782m (c. US$ 40m)	£0.221m (0.72%)	c. £1.88m - £2.24m (10% of equity in PlanCo)
Shareholders	-	£0 0%	c. £0.47m - £0.56m (2.5% of equity in PlanCo)

27. According to the Kroll RA Report, therefore, the Plan produces a clearly better outcome for all Noteholders and Existing Shareholders than the outcome in the Relevant Alternative.

28. Indeed, according to that analysis, and as will be important when addressing the overall fairness of the Plan, both Noteholders and Existing Shareholders not only do better under the Plan than in the Relevant Alternative but also they would be given more than their contributions to the benefits generated and preserved by the Plan would justify. By contrast, according to that analysis, Growler actually would do worse under the Plan than in the Relevant Alternative and would stand to be given less in terms of measurable benefit under the Plan than its contributions justify (though of course, there might be broader benefits to it, including the benefit to it of the continuation of the Plan Company's NASDAQ listing).

29. With a caveat as to the measurement of more innominate benefits to enure to Growler under the Plan, I see no reason to doubt either the independence or expertise of Mr Bouchier, nor that of Mr Weaver (who provides the valuation expertise) and I am satisfied that the Kroll RA Report and the Kroll Valuation Report are each properly to be regarded as an independent expert's report and provides a reasonable estimate and comparison of the likely returns in the Relevant Alternative and the returns and benefits to be expected if the Plan proceeds.

Events after the Convening Order and steps taken to comply with its directions

30. The Convening Order made provision (in paragraphs 4 and 5) for notice to be provided and for explanatory documents (the draft Plan, the Explanatory Statement, the Notice

of Plan Meetings and Voting Forms for the meetings, together "the Plan Documents") to be made available to Plan Participants as soon as reasonably practicable after 6th November 2025.

31. In his second witness statement (dated 28th November 2025), Mr Nolan has detailed the instructions given to the "Information Agent" (namely, Kroll Issuer Services Limited) (a) to upload the Plan Documentation and the sealed Convening Order onto the dedicated Plan Website; (b) to send the Explanatory Statement and Notice of Plan Meetings to the Depositary Trust Company ("DTC") with a view to informing Noteholders of the availability of the Plan Documentation on the Plan Website; and (c) to place advertisements in the Financial Times and the Wall Street Journal, likewise by way of notifying Plan Participants on the availability of the Plan Documentation on the Plan Website.

32. I am satisfied that these steps were duly and expeditiously taken and I have seen and am satisfied by the advertisements placed in the Financial Times (International Edition) on 12th November 2025 and the Wall Street Journal on 11th November 2025.

33. Given the (to my mind, almost inevitable) difficulties of identifying the holders of all 1,600,000 Notes in issue and the additional problems inherent in the use of agents or street names or the like, the Plan Company had engaged, prior to the Convening Hearing, CMi2i Ltd ("CMi2i") to carry out a Global Bondholder Identification Analysis ("GBIA") in respect of the Noteholders, to identify their full legal name, physical address, email address and number and value of bonds held as far as possible. As Mr Nolan explains in his second witness statement, CMi2i does this by analysing securities position reports and non-objecting beneficial owner lists provided by the Plan Company and reaching out to its own networks, but these sources of information are by their nature incomplete.

34. CMi2i produced a final report on 6 November 2025 ("CMi2i Report"). The information in it is sensitive personal data and so it has not been exhibited (though I was told that I could be provided with a copy, subject to suitable confidentiality arrangements or orders being made, if I required it (which I did not)). In short, however, it was able to identify the holders of 1,299,119 of the 1,600,000 issued notes, comprising 81.19% of the notes in circulation and being 886 Noteholders in total.

35. The CMi2i report also identified 18 email addresses for retail brokers who likely hold on behalf of others, and can be expected to pass information to them. Although not part of the Convening Order, the Plan Company took the further step of verifying that these addresses were current and then sent the General Covering Letter (containing links to the Plan Website and Plan Documents) and Notice of Town Hall Meeting to these addresses.

36. I am satisfied by these arrangements. More generally, I am satisfied (and it is also the assessment of the Retail Advocate) that the Plan Company has complied with the steps in Convening Order for distribution of the Plan Documents.

The Town Hall Meeting

37. In addition to these arrangements, and as envisaged at the Convening Hearing, the Plan Company held a Town Hall Meeting with retail holders on 19 November 2025, via a

specialist investor videoconferencing platform, Investor Meet Company. The Retail Advocate, Argo's CEO (Mr Nolan), Argo's General Counsel (Mr Beech) and Mr Robinson of Fladgate were all present. Notice of the Meeting was disseminated on the Plan Website.

38. 2220 specific invitations were also sent to people who follow the Plan Company on the Investor Meet Company platform. 221 invitations were accepted. 88 attendees joined and 165 people viewed the Town Hall Meeting. Following short presentations, questions were invited. A transcript was made and provided in the evidence.

Concerns expressed at the Town Hall Meeting and how they have been addressed

39. It is convenient to address here certain concerns raised at or after the Town Hall Meeting, though I shall have to return to them when determining whether they are such as to weigh substantially against sanction of the Plan.

40. One concern relates to the conversion of LSE shares into ADSs. Following the Convening Hearing, a number of retail brokers who held interests in LSE shares on behalf of Plan Participants contacted the Plan Company to ask how ordinary shareholders could convert their ordinary shares listed on the LSE to ADSs if they so wished, to ensure that their positions remained tradeable following delisting from LSE.

41. As to this concern, on 21 November 2025 the Plan Company put out an RNS announcement setting out the process by which holders of LSE shares could convert to ADSs. The information in the RNS was later incorporated into a Supplementary Circular to the Explanatory Statement dated 26th November 2025. These documents explain that:

    (1) The LSE shares will be freely tradeable on NASDAQ post sanction if they are converted into ADSs, subject to the Plan Company regaining and maintaining compliance with the NASDAQ rules.

    (2) Existing Shareholders wishing to convert shares into ADSs should contact their broker or investment advisor "with instructions to transfer ordinary shares to JPMorgan Chase Bank, London, though a warning was given that the Depositary will charge a fee of US$5.00 per 100 ADSs or portion thereof issued after the conversion.

    (3) The RNS informed holders that they may convert before or after sanction, warning, however, that prior to the Plan Implementation Date 10 shares are convertible to 1 ADS, whereas after the Plan Implementation Date 2160 shares are convertible to 1 ADS. This is, of course because of the effect of the ADS ratio change described above.

    (4) Holders were also reminded that converting less than 2160 shares after the Plan Implementation Date will result in them holding a fractional ADS, meaning that they will be liquidated and receive a cash payment: see above where I have explained the provisions relating to fractional entitlements.

42. Another concern raised relates to the marketability of LSE shares if and after the Plan is sanctioned and the LSE shares are de-listed from the LSE. There is no doubt that the marketability of the LSE shares will inevitably be attenuated, in that post-sanction, holders of LSE shares who wish to sell, and do not wish to adopt the alternative of conversion into ADSs, will only have available to them the matched bargain trading facility established with JP Jenkins instead of converting their shares to ADSs. The facility runs for six months and, put simply, functions by connecting willing buyers of the Plan Company's shares with willing sellers and creating a private, over-the-counter market.

43. Perhaps unsurprisingly, some retail holders wrote in to the Plan Company highlighting that their brokers did not support either conversion to ADSs or private market trading on JP Jenkins.

Supplementary Explanatory Statement

44. In light of these concerns, on 26 November 2025, the Plan Company circulated a "Supplementary Explanatory Statement" in the same manner in which it circulated the Explanatory Statement itself. The Supplementary Explanatory Statement:

    (1) attached the Supplementary Expert Report of Mr Weaver, which addresses the valuation of Growler's contributions, further analyses the potential value of the NASDAQ listing as a Plan Benefit, and makes certain corrections to Mr Weaver's original report;

    (2) updates Plan Participants on the Amended NASDAQ Decision Letter (above); and

    (3) explains how holders of shares traded on the LSE might convert them to ADSs or trade them on the JP Jenkins facility (also addressed above).

45. More particularly as to sub-paragraph (3) above, paragraph 15 of the Supplementary Explanatory Statement provides a list of brokers which the Plan Company was advised were able to facilitate trading with JP Jenkins. Paragraph 15 also invites those whose brokers do not facilitate conversion of LSE shares to ADSs to write in to Argo@fladgate.com for suggestions as to brokers who can assist.

46. These solutions are imperfect; but the Plan Company has made clear that it considers there to be no real alternative. Mr Nolan has explained that the Plan Company cannot buy out the shares of any LSE or ADR holders as it has no distributable reserves. In any event, as Mr Nolan explained at the Town Hall Meeting, a buyback would cost money that should be invested into the business.

47. I shall have to return to this issue, which the Retail Advocate discussed as "Key Issue 2", when determining whether to exercise my discretion to grant sanction: see paragraphs [175] and [187] to [192] below.

Concerns I expressed at the Convening Hearing relating to the NASDAQ listing

48. Another issue which I should address before returning to events after the Convening Hearing concerns the Plan Company's listing on NASDAQ. As I explained in the

Convening Judgment (see, for example, paragraphs [7], [12], [21] and [187] to [191]), this has been an important driver for the Plan, and the requirements of the NASDAQ Panel largely explain its accelerated time-table.

49. The Court was told at the Convening Hearing that on 18 November 2025 the NASDAQ Panel, which sits in review of the Listing Qualifications Department ("the Staff"), had, on the terms of a formal Decision Letter, granted the Plan Company's request for continued listing subject to compliance with all listing rules by 14 January 2026.

50. One of the important premises expressed in the NASDAQ Decision Letter was that (on the basis of representations on behalf of the Plan Company) the Plan *"does not appear to be a bankruptcy that would trigger a delisting by the Exchange"*. I raised a question in the course of the Convening Hearing whether the NASDAQ Panel had been made aware of the decision in *Re Gategroup Guarantee Ltd* [2021] BCC 549, where Zacaroli J (as he then was) determined that a Part 26A plan could be treated as falling within the exception in the Lugano Convention for bankruptcy proceedings.

51. Mr Nolan explained at the Convening Hearing that further discussions were then ongoing between the Plan Company's advisers, the Staff and the Panel as to whether a Part 26A Plan is a bankruptcy proceeding or will result in a change of control by way of a business combination. In his second Witness Statement, which was provided for this hearing, Mr Nolan has provided a further update on these matters:

    (1) On 24 October 2025, a call was held with the Staff at which the Staff took the position that the Plan was in the nature of a bankruptcy that would require delisting pursuant to NASDAQ Rule 5110(b), despite the Panel's ruling to the contrary.

    (2) Rule 5110(b) states that a listing may be suspended if a listed company "*has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws*". The question before the NASDAQ Panel, then, was whether a Part 26A Plan was a "*comparable foreign law*" to a US bankruptcy law. As explained in Mr Nolan's first witness statement, the Panel was not concerned with whether a Part 26A was a bankruptcy or restructuring proceeding 'generally,' or under the Lugano Convention (which was the point addressed in *Re Gategroup Guarantee Ltd*).

    (3) On 2 November 2025, the Plan Company's advisors in the US filed supplemental submissions with the Panel reiterating that the Plan was not a bankruptcy. The submissions included comparisons between the Part 26A regime and US and UK bankruptcy proceedings, as well as an expert report by Matthew Weaver KC, an English silk with specialist restructuring expertise. The Plan Company's submissions to the Panel focused on the fact that US bankruptcy law contains no proceeding which is analogous to Part 26A proceedings. Those proceedings cannot, therefore, be a "*comparable foreign law*" to US federal bankruptcy law. Despite its lack of relevance to the question before the Panel, *Re Gategroup Guarantee Ltd* was nonetheless brought to the Panel's attention by Mr Weaver KC.

52. On 11 November 2025, the Panel issued a fresh decision letter, the "Amended NASDAQ Decision Letter". In that letter, the Panel accepted the Plan Company's submissions and confirmed its satisfaction that the Plan was not a 'bankruptcy' in the sense described by Rule 5110(b), nor a 'business combination' in the sense described by Rule 5110(a). The Amended NASDAQ Decision also confirms that the Plan Company may retain its listing if it regains compliance with the Listing Rules by 14 January 2026. Mr Nolan has further explained that the ruling of the Panel cannot be appealed by the Staff.

53. In these circumstances, I consider that I am entitled to proceed on the footing that the concerns I expressed have been answered and that, provided of course, its other stipulations are met, the Plan is not of such a character as to preclude continued NASDAQ listing.

What happened at the three Class Meetings

54. I turn to describe what happened at the class meetings themselves.

55. The Convening Order directed there to be three class meetings of Plan Participants, as follows:

    (1) Two classes of "Plan Creditors": (i) Growler, and (ii) the "Noteholders", being the unsecured creditors under the US $40m 8.75% senior unsecured notes issued on 17 November 2021 ("Notes"), and including the ultimate beneficial holders with a right to definitize those Notes.

    (2) One class of "Plan Shareholders", namely, the registered members of the Plan Company.[3]

56. I am required to review the composition of classes; but as there are no relevant new circumstances of relevance to this issue and no objections have been expressed, I confirm the views expressed in the Convening Judgment in this regard.

57. The Plan Company convened three Plan Meetings as directed. The Plan Meetings were held on 2 December 2025. As can be seen from the table below, all three classes voted *in favour* of the Plan.

	Total votes received	For			Against			Abstain
		#	£/$	%	#	£ /$	%	£/$
Shareholders	18,996,295	25	£15,520.130	81.70	15	£3,476.165	18.30	£2,800.676
Noteholders	642,292.91	17	$642,292.91	100	0	0	0	0
Secured Lender	1	1	$6,818,525.70	100	0	0	0%	0

[3] As noted in the Convening Judgment, while all of the Plan Company's shares are admitted to trading on the LSE, where 47.87% of them are 'directly' traded, 52.13% of the ordinary shares are held by JP Morgan Chase NA ("Depositary") and traded on Nasdaq through the use of American Depositary Shares ("ADSs"). The ADSs are represented by American Depositary Receipts ("ADR**s**").

58. In a third witness statement, Mr Patel of Kroll Issuer Services has confirmed that although the meetings took place in hybrid form, the technology worked well and that the Plan Meetings complied with the guidance on hybrid meetings set out *in Re Castle Trust Direct* [2021] BCC 1, [43]-[44].

59. However, at the Noteholder class meeting only the Chairperson attended and voted as proxy. The other two classes were quorate, albeit that both the Noteholder and Shareholder classes had very low turnout.

Issues arising from these circumstances

60. These factual matters give rise to two principal issues of law:

    (1) The first is whether, even though the requisite percentage of Noteholders signified by proxy their approval, the fact that there was no one present except the Chairman at the meeting convened means that there was not in law a 'meeting' in the sense required by the Act, and in which whether the Noteholders fall to be treated (counter-intuitively, but perhaps necessarily according to the law) as a dissenting class.

    (2) The second is what the Court's approach should be in the light of the very low turn-out at all the meetings.

61. In considering these issues, I have had the valuable assistance not only of Mr Matthew Abraham and Mr Rabin Kok of Counsel on behalf of the Plan Company, and Mr Joseph Curl KC representing Growler, but also of Mr Jonathan Yorke ("Mr Yorke") in his capacity as Retail Advocate and Mr Willliam Day of Counsel on his behalf.

62. Before returning to address the issues themselves, it is convenient first to elaborate on the scope and nature of Mr Yorke's role.

The Retail Advocate

63. I referred briefly to the Retail Advocate in paragraph [123] of the Convening Judgment. I should explain his role and its importance in a little more detail, especially in the context of the possibility that as matter of law the Noteholders fall to be treated as a dissenting class.

64. Starting with the position where there is no dissenting class, and therefore no need for the exercise of cross-class cram-down powers, it is now well-established in the case law on schemes of arrangement and restructuring plans that the appointment of an independent advocate (typically called the retail or customer advocate):

> "…is likely to be appropriate, or even necessary, where the creditors whose rights are affected by a plan or scheme are unable to represent themselves before the court-for example because there are many of them, with little financial sophistication and without the ability to co-ordinate their responses".

See *Re Thames Water Utilities Holdings Ltd* [2025] EWCA Civ 475, [2025] Bus LR 2108 at [222] (Flaux C, Zacaroli LJ and Sir Nicholas Patten).

65. The instruction of an independent advocate should not only provide some procedural protection for individuals who are creditors (or members) in plan (or scheme) proceedings; it may also serve to inform the way in which the substantive principles are applied at the sanction hearing (and at the preceding convening hearing).

66. In particular, where there are unsophisticated or unrepresented investors in an assenting class, the Court may use an independent advocate's reports at a sanction hearing as a basis for assessing the terms of the plan (or scheme) on a rationality basis, even where it might otherwise consider small retail investors not to be sufficiently informed or equipped or sufficiently representative of a considered view, to enable the Court to rely on the result as indicating satisfaction of the rationality test.[4]

67. As Mr Day noted in his skeleton argument, the independent advocate's role is less well established in connection with a dissenting class of retail investors, because that could not be of relevance in the context of a Part 26 scheme and has not arisen before in the context of a Part 26A plan; but as he submitted, there may be even more scope for the assistance of an independent advocate to represent them in such a context also.

68. First, the independent advocate can -as is already standard practice in restructurings involving only assenting classes- ensure that any matters raised by opposing plan participants are drawn to the attention of the Court, not as a "*jumble of incoherent requests for different treatment*" (cf *Re Poundland Ltd* [2025] EWHC 2755 (Ch) at [57]-[58]), but identifying in a structured way the extent to which those matters are relevant (or not) to the fairness analysis established by *Adler*, *Thames Water* and *Petrofac*. Given the "*formidable*" nature and effect of the power which a plan company seeks to invoke over its retail investors in those circumstances (per *Adler* at [63]), it is even more important than in cases involving only assenting classes that there be a full and fair presentation of those matters at the sanction hearing.

69. Second, the independent advocate may be authorised also to consider the terms of the plan so that they can (1) state a clear position as to whether the matters that have been raised by the relevant plan participants are well-founded and (2) identify any other matters which sensibly might be (but have not been) raised on behalf of the dissenting class in opposition to the plan or scheme. This does not require plan companies to engage an independent advocate to argue against a plan where retail investors are in a dissenting class.[5] Rather, this contemplates the independent advocate being instructed to cast a 'critical eye' over the plan and identify key matters on which the plan company will have to satisfy the Court on the question of fairness, as he was instructed to do in this case.

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[4] I note, for example, that such an advocate was instructed in *Re Fossil (UK) Global Services Ltd* [2025] EWHC 3058 (Ch), though the single class meeting in that plan approved the plan, and that a retail advocate was also appointed in *Re Petrofac Ltd* [2025] EWHC 859 (Ch) in respect of a retail class that eventually voted in favour of the plan despite it later being overturned by a non-retail class on appeal.

[5] Just as an independent advocate does not argue for sanction of a scheme or plan where retail investors are in an assenting class. See Sanction Report, para 4.5.

70. Third, and perhaps most obviously, the independent advocate can report to the Court on the communications between a plan company and the stakeholders represented by the independent advocate, so that the Court can be satisfied that there has been proper engagement with those stakeholders ahead of the Court being asked to exercise its cram-down power. Indeed, the instruction of an independent advocate (who, outside of the convening and sanction hearings, has a function as 'a go-between' for retail investors and the companies) is an important part of a plan company satisfying the Court that it has properly engaged with such stakeholders.

71. It merits emphasis, however, that at least the second of these functions requires some adjustment to the terms on which the independent advocate is engaged by the plan company in relation to a plan involving retail investors who may comprise a dissenting class. In scheme cases -where there are only assenting classes- it is standard practice for the independent advocate to be engaged on terms which prohibit them from expressing a view as to whether the scheme is fair or in the best interests of the retail investors. That makes sense given the focus of the independent advocate's role is on whether the usual rationality test can be applied. By contrast, in plans where there may be dissenting classes that prohibition makes little, if any, sense, since the rationality test may be irrelevant to the stakeholders whose interests they have been engaged to protect. It is hard to see how the appointment of an independent advocate will provide much reassurance to the Court unless they can (if so advised) express views, even if at a high level, on whether the plan is fair or in the best interests of retail investors.

72. In this case, and in anticipation of the possibility of there being dissenting classes containing retail investors, the Plan Company envisaged from the outset that it would be appropriate to appoint an independent advocate to represent retail investors, and it did so on the terms of an Agreement dated 22 October 2025, which included the following:

> "…the Retail Advocate shall apply a critical eye to whether the Plan gives Retal Investors a fair allocation of the value to be preserved or generated by the restructuring including identifying any significant areas of concern",

and even proposed that:

> "…the Retail Advocate shall be free to engage with the Plan Company and the Secured Lender in respect of such allocation and engage in such negotiations as he feels appropriate in the interests of Retail Investors".

73. However, the terms of his engagement in their original form did not reflect that broader scope and instead provided that Mr Yorke also should "*not give an opinion on whether the proposed Plan is fair or in the best interests of the Retail Investors*" (no doubt as a hangover from scheme cases). This might have curtailed his remit to bring a *"critical eye"* to bear in assessing factors relevant to fairness which may be crucial in the broader based assessment required before exercising cross class cram down powers. In preparing his Sanction Report, Mr Yorke identified this potential tension, and the Plan Company helpfully and promptly agreed that the latter prohibition could be treated as deleted from his terms of engagement. Mr Yorke for his part, emphasised nevertheless that he did not take this mean that he could or should, nor has he attempted to, decide the ultimate issue of fairness, since that is solely a matter for the Court.

74. In my view, the approach adopted is a sensible one, and it has certainly been of considerable assistance and comfort to me in assessing the sufficiency of the notification process, and the issues which arise from retail investors' point of view. These include both the identification of the Relevant Alternative and an assessment of the fairness of the allocation of the benefits expected to arise if the restructuring and the continued NASDAQ listing is enabled by the Plan.

75. I should, however, note that even with the scope of his appointment thus extended there was one area on which Mr Yorke, entirely understandably, felt unable to assist: he felt he could not express any final view as to the fairness of the allocation as between Noteholders (10%) and Existing Shareholders (2.5%). That is because retail investors are both Noteholders and Existing Shareholders, and Mr Yorke's role is to represent their interests generally. He felt he could not properly pick sides between the different retail investor classes. Accordingly, I was reliant on this aspect on the submissions made on behalf of the Plan Company, and my own assessment guided by the expert reports. I return to this later in this judgment.

Was there a "meeting" (in the restricted legal sense) of Noteholders such that they may be treated as an assenting class for the purposes of Part 26A of the Act?

76. Having explained the role of the Retail Advocate and with the benefit of the submissions made by Mr Day on his behalf, I now return to the legal issues identified in paragraph [60] above as to whether the presence of only the Chairman and no other person at the Noteholders class meetings means that what took place does not qualify as a "meeting" in the legal strict sense made clear by David Richards J (as he then was) in paragraphs 8, 18 and 19 of his judgment in *Re Altitude Scaffolding Ltd* [2006] EWHC 140 Ch; [2006] BCC 904. He there stated (at para 18):

> "The ordinary meaning of the word as a coming together of two or more persons is well established in the context of companies. It has been so established since 1876 at the latest, and the statutory provisions for schemes of arrangement, first enacted in 1870, have been re-enacted with the same requirement on numerous subsequent occasions. The case of the single member of the class[6] has been treated in the authorities as exceptional, resulting in what the legislature or other framers have the document in question must have intended to be an extended meaning to cover that case."

77. The first question is whether the reasoning and the restricted meaning of "meeting" applied in the *Altitude Scaffolding* case applies likewise in the context of Part 26A notwithstanding the differences in wording of relevant sections when compared to analogous provisions in Part 26. The second question is whether, if the restricted meaning does apply, a person who has appointed a proxy and does not attend either physically or virtually may nevertheless be treated as present so that there may nevertheless be said to be more than one person present where an individual holds multiple proxies. It was Mr Day on behalf of the Retail Advocate who assumed the principal burden of submissions on these questions, further illustrating the utility of his role.

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[6] which covers the position of the Growler meeting: Growler was in a class of one and attended the meeting by proxy.

78. The first of these questions has been considered in at least two cases invoking Part 26A of the Act:

    (1) In *Re Listrac Medco Ltd* [2023] EWHC 460 (Ch), [2023] Bus LR 920, at [33]-[40], Adam Johnson J held that "*meeting*" in section 901G does not on its proper construction required a meeting in the *Altitude Scaffolding* sense. However, Adam Johnson J appeared to accept (or at least assume) that the converse was true for section 901F (although the latter point does not appear from the judgment to have been the subject of argument).

    (2) The effect of *Listrac* (so understood) is that, where there is a class of more than one plan participant, but only one plan participant votes, or only one person is nominated as a proxy for multiple plan participants, sanction of a plan is possible, but only by way of cross-class cram-down.

    (3) *Listrac* was decided without adversarial argument, and as were the cases which have since followed it (all also at first instance too), and in particular, the decision of Miles J (as he then was) in *Re Chaptre Finance Plc* [2024] EWHC 2908 (Ch).

    (4) However, Adam Johnson J himself has since expressed doubt about the point, describing it as "*somewhat odd*" to treat what is in substance an assenting class as a dissenting class, and that the statutory context of Part 26A may call for a different conclusion: *Re OutsideClinic Ltd* [2025] EWHC 875 (Ch) at [48]-[51].

79. The second question was addressed by Lord Baird in the Outer House of the Court of Session in the recent Scottish case, *Re Dobbies Garden Centres Ltd* [2024] CSOH 111 at [115]. In that case, Lord Baird also addressed the first question of whether where only one creditor had attended (as was the case in respect of a class of comprised of "Class B3 landlords") there could be said to have been a meeting. In doing so, he expressed "*sympathy*" for the unsuccessful arguments in favour of a less strict meaning of 'meeting' advanced in *Altitude Scaffolding*, at least in their application in a Part 26A context rather than their original Part 26 context (at [115]). However, he did not have to decide the point, since (see [113]) *"whether or not the B3 Landlords met, they did not vote in favour of the plan and so, either way, are to be treated as a dissenting class, in respect of which the cross-class cram down power is available."* He also acknowledged that he had not heard full argument on the issue, and that he recognised *"the force of David Richard J's observation that [those arguments] involved not an exception to the ordinary meaning of meeting, but its complete replacement; and he also found it significant that express provision was made in other parts of the Companies Act for meetings to be attended only by one person."*

80. However, he did not have the same fallback or *"luxury"* in the context of a class of nine secured creditors, because they comprised the only class to approve the plan and were the only available 'anchor' for a cross-class cram down, but had expressed unanimous approval not in person but by proxy through the chair of the relevant meeting (see [120]). Having felt unable to determine the first question (see above), he was thus forced in those circumstances to determine the second question and the argument advanced (as the basis of saving the plan) by senior counsel for the plan company that *"all nine of the secured creditors were, for the purposes of section 901G, to be treated as having been present "in person or by proxy"; in this case, by proxy."*

81. He agreed with senior counsel's submission that the matter *"must be approached as one of statutory interpretation"* (see [121]). As to that, he decided as follows:

    (1) "[121] I agree with senior counsel…There is nothing in the language of section 901G to suggest that a meeting can take place only if two or more natural persons come together. On the contrary, the section expressly provides for two methods by which a person may attend a meeting "in person or by proxy". Those words appear in subsection (1), and again in subsection (5) which request agreement of the compromise for arrangement by "number representing 75% in value of a class of creditors… present and voting **either in person or by proxy** at the meeting summoned under section 901C" (emphasis added). The words "either in person or by proxy " clearly qualify the words "present and voting", But I say matter of grammar and common sense: it would make no sense that the creditor present in a physical sense, but vote by proxy (even if that were competent), the very purpose of a proxy into exercise *all* of the rights call a creditor to attend, speak at and vote at the relevant meeting.

    (2) "[122]…The requirement, if it be a requirement, that two or more creditors must participate in order for there to be a meeting is satisfied by the appointment, by two or more creditors, of a proxy who is in attendance. The section does not require that at least two proxies must be so appointed. That would also be illogical and, indeed, unworkable in practice. Illogical, because, there being nothing to prevent a proxy representing more than one creditor, why then should the proxy not represent all? And unworkable, because it would in effect result in a race to instruct the chair first; moreover, a creditor would not know if its vote would count, lest all other creditors had attempted to appoint the same proxy."

    (3) "I therefore find that the meeting of the secured creditors, which all nine secured creditors which is the chair person to act as their proxy, was a valid meeting at which the restructuring plan was unanimously approved by that class, which paves the way for further consideration of section 901G."

82. Like Adam Johnson J in *Listrac* and Miles J in *Chaptre Finance*, and unlike Lord Braid in *Dobbies Garden Centres*, I have the luxury of an assenting class to 'anchor' the cross-class cram down jurisdiction if needed. Thus, whether or not the Noteholders class in this case is to be treated as having validly met or not will make no difference to the result. However, to treat as dissenting a class which has by proxies clearly voted to approve a plan, which Adam Johnson J in *OutsideClinic Ltd* described as *"somewhat odd"*, verges on the Kafka-esque, and the question is whether I should follow Lord Braid's decision in treating the expedient of treating an assenting class as a dissenting class to overcome any issue as to the status of a meeting as illogical and wrong.

83. The Retail Advocate, the Plan Company and Growler all invited me to determine the question, and to adopt Lord Braid's approach and conclusion. My reluctance is driven by three main factors. One is that, unlike the position in *Dobbies Garden Centres,* the expedient (as I have described it) which finesses the issue is available and there is no need to follow Lord Braid's approach in order to save the Plan. A second factor is that, as I elaborate later, the exceptionally low turnout at all the meetings militates against adopting a "light touch" as would ordinarily be appropriate as regards an assenting class in favour of adopting the stricter tests applicable where one or more class dissents. In

other words, whether I decide the point one way or the other will not materially affect my approach in my assessment as to whether to sanction the Plan. A third factor is that, whilst I have had the assistance of Mr Day as well as Mr Abraham for the Plan Company, they both argued in favour of following *Dobbies Garden Centres* and I have not had the benefit of contrary argument.

84. Nevertheless, with that caveat, but in light of the helpful argument on the point advanced to me and my own tendency to prefer to form a view whether recourse to section 901G is required or not, I can state my view briefly as follows:

(1) The essence of Lord Braid's analysis, as it seems to me, is that both as a matter of language and in logic, once the premise is established or accepted that a proxy is to be treated as being present, the ineluctable conclusion is that where a meeting has been duly convened and a person present at what takes place holds a proxy or proxies for another or other persons the requirements of a meeting are fulfilled (assuming there is no additional quorum requirement).

(2) There can be no doubt as to the practicality and in many ways the attractive simplicity of that approach; and indeed in *Re Dobbies Garden Centres*, it saved a plan which would otherwise have foundered by treating the 100% approval of the secured creditors as the 'anchor' class of the exercise of cross-class cram down powers.

(3) The problem with the analysis is that it does not seem to me to address, still less answer, the crux of the decision in *Re Altitude Scaffolding Ltd* and the long line of cases referred to in the judgment of David Richards J. This is that it is an essential quality of a meeting, and the rationale of the requirement of a meeting in Part 26 (and now Part 26A) of the Act, that it is (in the words of David Richards J at [8]) *"an assembly or the coming together of two or more persons."* (See also the other cases referred to in that judgment at [8].) What (albeit in the different context of the powers of the sole surviving shareholder) Oliver J (as he then was) described as *"the lonely soliloquies"* of a single person (in *Re New Cedos Engineering Co Ltd* [1994] 1 BCLC 797[7] do not suffice.

(4) There is much to be said for the view that the notion of substantive discussion which underlies the requirement is more theoretical than real, and that the reality is that at many meetings there is no discussion at all, as indeed David Richards J expressly acknowledged at [17]. The requirement of a meeting may be unnecessary. Perhaps it will be reviewed. But for so long as the requirement remains it must be respected.

(5) Accordingly, and with regret, I would not feel able to follow Lord Braid's analysis, despite its attraction.

85. The consequence of my analysis and the view I have taken is that I must treat the Noteholders as a dissenting class in that they have not approved the Plan at a valid meeting. The Plan is thus dependent on the exercise of the cross-class cram down power provided by Section 901G of the Act.

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7 The case was heard in 1975 but not reported until nearly 20 years later.

86. For comprehensiveness and the avoidance of doubt, I should make clear that none of the above analysis should be taken to signify any concern as to the position where a class is comprised of only one creditor or shareholder. That is necessarily an exception, as acknowledged and approved in all the cases cited or referenced in sub-paragraph (4) above, including *Re Altitude Scaffolding Ltd.* Thus, in this case, I am entirely satisfied that the Growler meeting was valid though only Growler was (or indeed could be) present.

Points clarified since the Convening Hearing as to compliance with the statutory requirements

87. In the Convening Judgment, I addressed (in paragraphs [53] to [84]) the provisions of Section 901A of the Act, which must be satisfied if the Court is to have jurisdiction to sanction a restructuring plan under Part 26A of the Act.

88. Certain issues on which I expressed some hesitations have been clarified since the Convening Hearing.

89. Perhaps the most fundamental of these issues, which I identified at paragraphs [62] and [63] of the Convening Judgment, was whether the beneficial owners of the Notes held in intermediated form by Cede & Co holding a global note as nominees for DTC which in turn holds on trust for DTC participants, could properly be treated as creditors for the purposes of section 901C(1) of the Act.

90. Noting (at paragraph [64]) that authority had established that this depends on whether the underlying beneficial holders of the Notes had the right under the Indenture under which the Notes were created to call for a separate Note or, as it is called, definitise their interest, I focused on a particular wrinkle in this case, being that this had to be determined according to the applicable law of the Indenture and the bonds, which is New York, and not English law.

91. Despite some concern that I expressed in this regard (at paragraph [66] and [67]) that, though the Plan Company had been advised by an attorney for the Plan Company (Mr Besikof) there was nothing in the evidence then before me which qualified as independent expert evidence of New York law on the point, I nevertheless determined (see paragraph [68]) that I should proceed on the basis of what I conceived to be the better view that the beneficial owners did indeed have a right to 'definitise'.

92. My directions for class meetings, and more generally my provisional conclusion as to the satisfaction of the jurisdictional preconditions, were of course premised on that view. However, I did reserve my definitive view to this hearing (see paragraph [68]).

93. I have been comforted and confirmed in my provisional view by the Plan Company having obtained an expert report (which I shall treat as compliant with CPR 35) from Ms Bonnie Roe ("Ms Roe"), a securities attorney at Cohen & Gresser LLP with 30 years of experience. Ms Roe has opined that clause 3.5(h) of the Indenture does in fact entitle ultimate beneficial holders of the Notes to exchange their interests in the global note for a note in their name. I am content to rely on that evidence as sufficient proof of the beneficial owner's right to 'definitise' accordingly.

94. Another matter which caused me some concern, as mentioned in paragraphs [80] and [81] of the Convening Judgment, was that as initially presented the Plan provided a cap on the Fractional Entitlement Fund. I queried the need and wisdom for this, and noted (at paragraph [81]) my understanding that Growler had agreed to remove this cap.

95. I note that, in accordance with that understanding, the Explanatory Statement in its final form removed reference to there being a cap on the Fractional Entitlement Fund.

Whether the Court's discretion to sanction the Plan should be exercised

96. Being satisfied that the jurisdictional preconditions stipulated in respect of any restructuring plan have been fulfilled, I turn to the issues reserved for this Sanction hearing, and in particular,

    (1) the nature in general terms of the Court's discretion and relevant principles in respect of its exercise;

    (2) whether the approval of the assenting classes expressed at their respective class meetings can properly be relied on as a litmus test of the fairness of the Plan from the perspective of that class;

    (3) whether the conditions particularly relevant to the exercise of the cross-class cram down power conferred by section 910G, which I have determined need to be invoked in the case of the Noteholder class, are satisfied;

    (4) whether the benefits and burdens of the restructuring are fairly allocated;

    (5) in the round, whether the Plan is fair; and finally;

    (6) whether the Plan is sufficiently likely to have international effect that the Court can be satisfied it is not acting in vain.

Source and nature of the Court's discretion

97. As to (1) in paragraph [96] above, the wording of section 901F(1) of the Act makes clear, as confirmed in all the relevant authorities, that the Court has unfettered discretion whether to sanction a plan agreed by the necessary majority of creditors (and also, in this case, shareholders).

98. As noted by the Court of Appeal in *In re Thames Water Utilities Holdings Ltd* [2025] EWCA Civ 475; [2025] Bus LR 2108 at [91]:

> "Part 26A is silent as to the approach the court should take when exercising its discretion to sanction a plan. The approach was left to be worked out on a case-by-case basis, building on the jurisprudence developed over the century and more of experience of schemes of arrangement, under what is now Part 26 of the 2006 Act."

99. The approach of the Court differs according to whether all classes at effective meetings have voted in favour of the plan proposed or one or more classes have not approved the plan.

100. In the former case, the Court is disposed to adopt the 'rationality standard' usually adopted in the context of a Part 26 scheme).

101. If, however, the Court is invited to cram down a dissenting class in reliance upon the provisions of section 901G, or if it harbours doubts as to the reliability or representativeness of the result of an approving class, it is necessary for the Court to apply a substantially stricter assessment and form its own view of the fairness of the plan, guided of course by the evidence (including expert valuation evidence) as to the likely different effects of the plan on the various constituencies affected: and see the judgment of Snowden LJ (with which Sir Nicholas Patten and Nugee LJ agreed) in the Court of Appeal in *Re AGPS BondCo plc* [2024] EWCA Civ 24; [2025] 1 All ER (Comm) 26 (sometimes referred to as *"Adler"*).

102. In the case of an assenting class or classes, at least where there is no vitiating or other factor undermining the reliability of the approval, the principles established in the context of schemes of arrangement are ordinarily applied. These were summarised by Snowden J in *In re Noble Group Ltd (No 2)* [2019] 2 BCLC 548 in a passage at paragraph [17] of his judgment which has repeatedly been approved, as follows:

> "(i) At the first stage, the court must consider whether the provisions of the statute have been complied with. This will include questions of class composition, whether the statutory majorities were obtained, and whether an adequate explanatory statement was distributed to creditors.
>
> (ii) At the second stage, the court must consider whether the class was fairly represented by the meeting, and whether the majority were coercing the minority in order to promote interest adverse to the class whom they purported to represent.
>
> (iii) At the third stage, the court must consider whether the scheme is a fair scheme which a creditor could reasonably approve. Importantly, it must be appreciated that the court is not concerned to decide whether the scheme is the only fair scheme or even the 'best' scheme.
>
> (iv) At the fourth stage, the court must consider whether there is any 'blot' or defect in the scheme that would come up for example, make it unlawful when any other way inoperable."

103. It is that third stage which is what is often referred to as the 'rationality test': that is to say, whether the relevant plan is one that an intelligent and honest plan participant, acting in respect of its interests, might reasonably approve. That test reflects the recognition of the Court that, in the absence of coercion or other vitiating factor (including insufficient or inaccurate information) which the Court considers may render the vote unrepresentative of the class or such that the Court cannot safely treat it as an expression of the interests of the class as a whole, it is not for the Court to substitute its own views as to the commercial merits of the scheme or a different assessment than that expressed by the persons at interest.

104. In the case of a dissenting class, and an application for the exercise of the cross-class cram down power of the Court, the first and fourth stages remain applicable; but particularly at the third stage, the rationality test is insufficient, and indeed usually

inapt. The reason for that was concisely explained by Snowden LJ in *Adler* as follows (at [132] to [133]):

> "[132]…there Can be no assumption that the assenting classes that have voted in favour of a plan have any commonality of commercial interests with the dissenting class. Rather, the entire premise for the Part 26A process is the creditors will have been summoned to different class meetings precisely because the differences in their existing and proposed rights under the plan meant that they had insufficient commonality of commercial interests to consider the merits of the plan together…
>
> [133] Given that dissimilarity of interests, the mere fact that one or more classes of creditors may have acted in their own separate interests in voting in favour the plan says nothing about the commercial merits of the plan for a dissenting class or the fairness of imposing the plan upon them. Indeed, given that the very premise of Part 26A is that the company is facing financial difficulties and hence may not have sufficient assets to pay everyone in full, the assenting class(es) may have voted overwhelmingly in favour precisely because the plan requires them to accept less risk of loss, or a lower discount on their claims, than the dissenting class."

104. The present case is in some senses a hybrid, since the fact is that there is no class which has dissented, and the resort to cross-class cramdown is occasioned, not by a difference between the classes as to the commercial merits of the Plan, but rather by the failure in strict legal terms to express their approval at a 'meeting'. In exercising my discretion, I am entitled to take that into account: but both the requirements of section 901(G) and the fact (as already explained) of a low turnout mean that the limited rationality test is not sufficient in the particular 'hybrid' circumstances either. As I shall come on to explain, there are other factors very specific to this case, relating to a possible difference in interest between the LSE shareholders and the ADS holders, which further militate against the safe adoption of the rationality test, even in respect of the assenting class of Existing Shareholders.

105. Before considering each of the classes in turn, it is convenient to clear out of the way the 'first stage' of the usual assessment. For the reasons I have already given I am satisfied that the statutory preconditions have been complied with. I am further comforted in this context by the views expressed by the Retail Advocate in his (first) Sanction Report with special focus on retail investors, which have been usefully summarised in Mr Day's skeleton argument as follows:

(1) There have been no objections from retail investors to procedural matters such as notice of the Plan, and Mr Yorke himself considered that "*adequate notice had been given*", and "*reasonable efforts have been made to draw the existence of the Plan to the attention of Retail Holders*".

(2) Mr Yorke is satisfied that the PSL, Explanatory Statement and Supplementary Circular "in a reasonably concise and simply way, explain the commercial impact of the proposed Plan … and provide the Retail Holders with the information they need to decide whether or not the Plan is in their interests, and how to vote on it".

The Assenting classes

106. The two assenting classes are (a) Growler and (b) the Existing Shareholders.

107. No issue arises in respect of Growler. I have already explained that since Growler was the only person in the class, the ordinary rule that a meeting requires there to be more than one person present is inapplicable. Growler is a commercial entity which plainly voted in what it conceives to be its best interests: it is, after all, the effective promoter of the Plan.

108. The position as regards the Existing Shareholders is more complex. I must first consider whether, in light of the approval of the Plan by the Existing Shareholders it is appropriate to apply the "light touch" test of "rationality' usually adopted in respect of an assenting class. A number of questions must be addressed.

109. An obvious and important point to consider in assessing the result of the voting at the class meeting of Existing Shareholders (as indeed at the meeting of Noteholders) is one which I have also noted previously: the very low turn-out, being just 3.2% in the case of Existing Shareholders and even less (just 1.6% in the case of Noteholders).

The low turnout

110. This is a factor which might suggest that the meeting was not fairly representative of the class (and see [113] in the judgment of Miles J in *Re All Scheme Limited* [2021] EWHC 1401 (Ch), which is often referred to as *"Amigo I"* since the plan company was part of the Amigo Group).

111. Yet again I am indebted to the researches of the Retail Advocate and Mr Day in this regard, which have revealed that the turnout is lower than previously-sanctioned schemes involving retail investors in which there has been an independent advocate: see, for example, the sanction judgments in *Re Provident SPV Ltd* [2021] EWHC 2217 (Ch) at [12] (turnout possibly as low as 10%); *Re All Scheme Ltd* [2022] EWHC 1318 (Ch) (At the sanction stage often referred to as "*Amigo II"*) at [38] (turnout of 15.6%); *Morses Club* at [38] (turnout of 12%). However, it is comparable to the turnout in *Re Instant Cash Loans Ltd* [2019] EWHC 2795 (Ch), where there was no independent advocate (it was a pre-*Amigo I* case), where Zacaroli J sanctioned a scheme with a turnout of 4%.

112. The question, also helpfully addressed by Mr Day in his skeleton argument on behalf of the Retail Advocate, is whether this is a factor against the Plan which should be considered dispositive. Mr Day drew my attention to two cases which provide helpful guidance to the contrary.

113. The leading authority is *Re British Aviation Insurance Co Ltd* [2005] EWHC 1621, [2006] BCC 14, which involved a solvent scheme of arrangement proposed by an aviation insurer and reinsurer affecting very many (1000s) policyholders. Turnout by policyholders within the scheme was (on one calculation) as low as around 0.44% (but on the Court's assessment possibly more like 15%). Lewison J rejected the submission that turnout was so low that it justified by itself withholding sanction of the scheme (at [117]):

> "I am not persuaded that the low turnout, in itself, is a valid reason for refusing to endorse the majority vote. However, the size of the turnout is relevant in considering whether the result of the vote could have been affected by collateral factors affecting some members of the class … Consequently, the size of the turnout must be viewed in the context of Mr Sheldon's submissions about special interests".

114. Similarly, in *Amigo I* itself, Miles J emphasised that "*each case turns on its facts*" and the Court must consider the reasons for low participation, including whether it reflects any issues with the notice given of the meetings (at [115]). There is thus a distinction between "*[a] low turnout … due to creditors simply not being bothered to engage*" and circumstances where "*they were unable to engage, the latter being something that would threaten the conclusion that the vote was representative*": *Instant Cash Loans* at [30] (Zacaroli J). Thus, as Miles J explained in *Amigo I*, a turnout of 8.7% (at [117]):

> "…would not without more be a reason for declining to sanction the Scheme. But it is to my mind nonetheless a factor of to be given some weight in the overall exercise of the court's discretion".

115. In these circumstances, the Retal Advocate carefully addressed for my benefit whether the low turnout amongst retail investors might be said to reflect other matters which would be of concern. However, as set out in his Supplementary Sanction Report, he has not identified any such matter. He has concluded that this is a restructuring plan where "*the absence of attendance is more likely attributable to indifference rather than to an inability to participate*", and there is "*no reason for suspecting that those who did attend expressed views that were unrepresentative of the class generally*": *Re River Island Holdings Ltd* [2025] EWHC 2276 (Ch) at [34] (Sir Alistair Norris).

116. Mr Yorke supports that conclusion in large part because the other three factors which Miles J cited in *Amigo I* in refusing sanction are not present in this case. I take these as stated in Mr Day's skeleton argument, as follow:

(1) First, in this case the Plan Company so far as possible has communicated information in an appropriate content, style and form to retail investors. No retail investors have come forward to say that they do not understand the decision on which they were being asked to vote. Clarification when sought by retail investors (for example, on voting procedure or for further information regarding the Plan) has been provided by Mr Yorke, as recorded in his first Sanction Report.

(2) Second, the fact of Mr Yorke's appointment has meant that retail investors have had some access to independent professional support. In *Re Morses Club Scheme Limited* [2023] EWHC 705 (Ch) at [22], Leech J said that this concern "*was ameliorated*" by the appointment of a customer advocate (albeit observing fairly "*[b]ut it does not alleviate the concern entirely*"). On sanction of the same scheme of arrangement, Trower J was satisfied that the existence of a customer advocate who was "*available to provide additional information and assistance to [the affected redress creditors under that scheme] should the need arise*": [2023] EWHC 1365 (Ch) at [42]. In addition, Mr Yorke's first Sanction Report records that a number of retail investors appear to have support from financial institutions.

(3) Third, this is not a case involving an absence of negotiation, with the Plan imposed on a 'take it or leave it' basis by the Plan Company. Unlike cases such as *Amigo I*, there is no retail-only class of creditors leading to an inequality of bargaining power in the negotiation of the restructuring. The Retail Advocate's Sanction Report states that the class includes (some) institutional investors or (at the very least) financial institutions acting on behalf of retail investors. In any event, the Retail Advocate makes the point, with which I agree, that the Plan is a product of serious negotiation between the Plan Company and Growler (including a process of market testing in respect of the restructuring).

117. The Retail Advocate has concluded on this basis that the low turn-out not only does not preclude sanction but in the circumstances should not result in the Court adopting a more extensive assessment than the 'rationality test' is insufficient.

118. I share the Retail's Advocate's assessment that the low turn-out does not preclude treating the Existing Shareholders as an assenting class. However, the conclusion he draws that the 'rationality test' is the appropriate standard of review is a step further. Before determining for myself whether that is the appropriate test I need to address other concerns in respect of the Existing Shareholders.

Differences between ADR Holders and LSE shareholders

119. The second is a concern that I raised at the Convening Hearing and addressed in the Convening Judgment at paragraphs [98] to [101], and which arises because of the different effect of the Plan according to whether the investor is an ADR holder or an LSE Shareholder. There are two aspects to consider.

120. First, I should confirm that I was and remain satisfied that this does not mean that they should have voted in separate classes, and I note by way of additional comfort that the classing of the ADR and LSE holders together has not been challenged, and also the cases marshalled by the Plan Company in its skeleton argument for this hearing in which holders of ADRs and London-based shareholders in a dual-listed company were (without objection then or (as far as I am aware) in subsequent cases) classed together: see especially *Re BHP Group plc* [2022] BCC 681 (Trower J) at [4] and [15]-[16].

121. The second aspect, which I indicated in paragraph [102] of the Convening Judgment might become an issue, is the associated consideration that the delisting of LSE shares will change and substantially reduce their tradability (the JP Jenkins facility being a facility for matched bargains not a public market, which furthermore will only be available for six months after sanction). This second aspect goes to overall fairness, but especially (as I see it) to whether the interests of those of the Existing Shareholders who hold LSE shares are peculiarly disadvantaged. My initial concern has been increased by difficulties expressed by a number of LSE Shareholders, not least in respect of difficulties in finding a compliant broker.

122. I have again been assisted in resolving this concern by the Retail Advocate's consideration of it. He has advised that, on balance, he does not consider this to be an obstacle to sanctioning the Plan, nor a proper basis for opposing sanction. I return to his reasons in more detail later. Suffice it for the present to record that I agree with the Retail Advocate's assessment that this factor is not fatal to the Plan, especially in the light of what I have explained and accepted is the Relevant Alternative.

123. More generally, however, I find more difficult to accept the further conclusion he has reached that the light touch, 'rationality test', may safely be adopted in respect of the class of Existing Shareholders. I consider that this would be too light a touch.

124. Rather, I have concluded that in the particular circumstances I have sought to analyse, and also having regard to the fact that I must in any event be satisfied in the context of the class of Noteholders that it is appropriate to exercise powers under section 901G, that I should apply the scrutiny and standards appropriate in the context of a cross class cramdown case to both constituencies. I am fortified in this by the fact that, as the Retail Advocate has emphasised, they are to some extent in competition or more accurately, have potentially conflicting interests.

125. In short, I therefore consider that as regards both classes I should approach the exercise of my discretion as though section 901G applied.

Requirements where section 901G applies

(a) Statutory preconditions applicable

126. I have adopted much of what follows in this section from the analysis in the skeleton argument of Mr Abraham and Mr Kok on behalf of the Plan Company.

127. There are two statutory preconditions to the exercise of the Court's discretion under section 901G, which provides, in material part:

> *"(1) This section applies if the compromise or arrangement is not agreed by a number representing at least 75% in value of a class of creditors or (as the case may be) of members of the company ("the dissenting class"), present and voting either in person or by proxy at the meeting summoned under section 901C.*
>
> *(2) If conditions A and B are met, the fact that the dissenting class has not agreed the compromise or arrangement does not prevent the court from sanctioning it under section 901F".*

128. The two statutory conditions (A and B) are prescribed by sections 901G(3) and (5):

> *"(3) Condition A is that the court is satisfied that, if the compromise or arrangement were to be sanctioned under section 901F, none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative (see subsection (4)).*
>
> *(5) Condition B is that the compromise or arrangement has been agreed by a number representing 75% in value of a class of creditors or (as the case may be) of members, present and voting either in person or by proxy at the meeting summoned under section 901C, who would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative".*

129. Condition A was addressed at the sanction hearing in *Re Virgin Active Holdings Ltd* (sanction) [2022] 1 All E.R. (Comm) 1023 and is sometimes called the 'vertical comparison'. As to this:

(1) At [106], Snowden J (as he then was) described a three-step process for considering the 'no worse off' test:

> *"The "no worse off" test can be approached, first, by identifying what would be most likely to occur in relation to the Plan Companies if the Plans were not sanctioned; second, determining what would be the outcome or consequences of that for the members of the dissenting classes (primarily, but not exclusively in terms of their anticipated returns on their claims); and third, comparing that outcome and those consequences with the outcome and consequences for the members of the dissenting classes if the Plans are sanctioned".*

(2) At [107], Snowden J expanded on the meaning of "most likely to occur":

> "*It is important to appreciate that under the first stage of this approach, the Court is not required to satisfy itself that a particular alternative would definitely occur. Nor is the Court required to conclude that it is more likely than not that a particular alternative outcome would occur. The critical words in the section are what is "most likely" to occur. Thus, if there were three possible alternatives, the court is required only to select the one that is more likely to occur than the other two."*

130. Further, in identifying the relevant alternative, the directors of the company are normally in the best position to identify what will happen if a scheme or plan fails: *Re ED&F Man Holdings Ltd* [2022] EWHC 687 (Ch) *per* Trower J at [39].

131. I accept the Plan Company's submission that Condition A is clearly satisfied. The most likely outcome if the Plan is not sanctioned is the Relevant Alternative which has been come to by the directors of the Plan Company based on the detailed work carried out by Kroll. As set out in the table at paragraph 25 above, in the Relevant Alternative, the Noteholders recover 0.72% and the Shareholders recover 0%. Against those recoveries, the allocation to the Noteholders of 10% of the equity in the restructured Plan Company (c. £1.88m-£2.24m) and the allocation to the Shareholders of 2.5% of that equity (c. £0.47m – £0.56m). Each class clearly does better under the Plan.

132. Condition B is plainly satisfied also. Condition B requires the Court to consider whether the Plan has been approved by 75% of those present and voting in any class that would receive a payment, or have a genuine economic interest in the company, in the event of the Relevant Alternative. The expression "genuine economic interest" can be answered by identifying whether the creditors would be "in the money" in the Relevant Alternative: see, for example, *Re Virgin Active* (at the sanction stage), per Snowden J, at [247]-[249]. The Plan has been approved by Growler which forms an assenting class and clearly has a genuine economic interest in the Plan Company in the Relevant Alternative. In the high-case RA, Growler would receive a 100% return and as such would receive a payment and/or have a genuine economic interest in the Plan Company in the Relevant Alternative.

(b) Discretion and the fairness issue

133. In addition to meeting Condition A and Condition B, it is necessary for the Court to be satisfied that it should exercise its discretion to cram-down the dissenting class. In exercising its discretion, the Court must assess whether the Plan is "*fair*". The matters to consider in making this assessment have been the subject of detailed consideration in a trilogy of recent cases in the Court of Appeal. I take the next paragraphs largely from Mr Day's skeleton argument.

134. In the first of these cases, *Re AGPS BondCo plc* (which, as I have previously explained, is often referred to as *Adler*) Snowden LJ explained (at [148]-[149]) that what he described as the 'vertical' and 'horizontal' comparisons take the place of the 'rationality test':

> "The vertical comparison involves a comparison of the position of the particular class of creditors in question under the restructuring proposal with the position of that same class in the relevant alternative. The horizontal comparison compares the position of the class in question with the position of other creditors or classes of creditors (or members) if the restructuring goes ahead."

135. As stated in Mr Day's skeleton argument, the vertical comparison is in fact a statutory precondition for sanction (see section 901G(1), and *Adler* at [152]) so it is the horizontal comparison that really informs the discretion to sanction, and it is that comparison which has been the focus of debate in the trilogy of Court of Appeal decisions.

The trilogy of Court of Appeal decisions and subsequent cases

136. As to these decisions:

(1) In *Adler* itself, Snowden LJ said (at [159]-[161]):

> "159. …. a 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. I also agree with Zacaroli J[8] that an obvious reference point for this exercise must be the position of the creditors in the relevant alternative.
>
> 160. … In my judgment, that exercise of a judicial discretion to alter the rights of a dissenting class for the perceived benefit of the assenting classes necessarily requires the court to inquire 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.
>
> 161. 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'…".

The Court of Appeal set aside sanction of the plan in *Adler* because it contemplated a wind-down of the plan company but on terms which departed from the *pari passu* principle that would apply in the relevant alternative without proper justification (at, e.g., [233]-[238]).

(2) In *Thames Water*, the Court of Appeal (Sir Julian Flaux C, Zacaroli LJ and Sir Nicholas Patten), focusing on the question of the allocation of "*benefits preserved or generated by the restructuring*" (at [117]), rejected a contention

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8 In *Re Houst Ltd* [2022] EWHC 1941 (Ch) at [29] to [31].

that little to no regard is to be had to the views or position of creditors who would be 'out of the money' in the relevant alternative (at [149]):

> "While it may well be right in some cases to conclude that the fact that a dissenting class would be out of the money in the relevant alternative is a sufficient justification to exclude them from whatever benefit the restructuring preserves or generates, that will not necessarily always be so. … there are myriad reasons why a company might be suffering financial difficulties, and why a plan may be proposed, and a variety of structures that it might adopt. The nature of the benefits preserved or generated by a plan and the extent to which a fair distribution of those benefits will require consideration to be given to those who would be out of the money in the relevant alternative are likely to vary accordingly."

The plan in *Thames Water* was an 'interim' plan which extended maturities on existing debt together with the provision of 'super-senior' bridge funding. The Court of Appeal upheld sanction of the plan because both assenting and dissenting creditors "*contribute[d] equally in this sense [i.e., in extending maturity dates] to the benefits to be preserved or generated by the Plan*" (at [152]).

(3) In *Petrofac*, the Court of Appeal (Snowden and Zacaroli LJJ and Sir Christopher Floyd) rejected an attempt to revive the 'out of the money' argument, concluding (at [191], also [131]):

> "…the proper use of the cross-class cram down power is to enable a plan to be sanctioned against the opposition of those unreasonably holding out for a better deal, where there has been a genuine attempt to formulate and negotiate a reasonable compromise between all stakeholders".

The Court of Appeal set aside sanction of the plan in *Petrofac* on the basis that the plan company had failed to justify the (very generous) allocation of the benefits of the restructuring to those providing new money (at, e.g., [121]-[122] and [183]), which was around US$1bn of the US$1.5bn 'day one' post-restructuring equity value of the company (see [50]-[53]).

137. *Thames Water* and *Petrofac*, therefore, clarify the following aspects of *Adler*:

(1) The "*reference point*" provided by the relevant alternative (per *Adler* at [159]) is only the starting point. However, what weight in the balance of fairness the likely return to a dissenting class has in the relevant alternative will usually depend upon the nature and objectives of the proposed plan. In particular, greater weight is likely to be attached to the fact that a dissenting class will be out of the money in the relevant alternative where what is put forward is in the nature of a 'wind-down' plan than where the proposed plan's objective is to enable recapitalisation and future profitable trading. It is always necessary, therefore, to identify what the plan proposed has been formulated to achieve, as well as the likely result if it fails. As the Court of Appeal (Sir Julian Flaux C, Zacaroli LJ and Sir Nicholas Patten) put it in the single judgment in *Thames Water* (at [149]):

> "…The nature of the benefits preserved or generated by a plan and the extent to which a fair distribution of those benefits will require consideration to be given to those who would be out of the money in the relevant alternative are likely to vary accordingly."

(2) In considering any differential treatment of the parties, the Court will place greater weight on the value of the respective contributions made by plan participants to generate the benefits of the restructuring when assessing whether those benefits would be shared fairly: see, for example, *Re Waldorf Production UK plc* [2025] EWHC 2181 (Ch) at [172] (a decision of my own). That is the correct comparison required to assess whether any class in a restructuring is getting "*too good a deal*" or "*too much unfair value*" (per *Adler* at [161]). That is why the 'out of the money' argument was rejected in *Thames Water* and *Petrofac*.

(3) It is also necessary to consider the evolution of the plan, what steps have been taken to involve stakeholders, and whether alternative proposals (such as any alternative restructuring plan: see *Adler* at [173]-[182]) have been properly considered.[9] Even though there is no "*jurisdictional pre-condition of pre-plan negotiations*" (*Waldorf* at [183]), and indeed that may not be possible or realistic (*Re Poundland Ltd* [2025] EWHC 2755 (Ch) at [57] (Sir Alistair Norris), the Court will wish, where it is possible and the more so when it is an obviously available step, to be satisfied of a plan company's "*proper engagement with all stakeholders*" (*Waldorf* at [157]). That engagement is required both before "*the starting gun*" of a practice statement letter is fired, and also thereafter: see, for example, *Re Poundland* at [52(11)] and [57]-[58].

138. Very recently, in *Re River Island Holdings Limited* [2025] EWHC 2276 (Ch) at [43], Sir Alastair Norris (sitting in retirement) reviewed the authorities and offered the following valuable summary, which I gratefully adopt, of 11 guiding principles that could be drawn from them:

> "(1) There must be a fair sharing of the burden of the restructuring plan amongst those whose rights are compromised and a fair allocation of its benefits (the value preserved or generated by the plan) to and between them.
>
> (2) The assenting classes will have made their own judgment upon that question, and the concern of the Court is to look at it from the perspective of the dissenting classes and to ask why the compromise approved by the assenting classes should be imposed upon them.
>
> (3) The burden lies upon the plan company to persuade the Court that there is a fair sharing of the burdens and of the benefits even if no objectors appear at the sanction hearing.
>
> (4) The starting point (but only the starting point) is the treatment of the dissenting class in the relevant alternative.

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[9] Something which will be reinforced by the new Practice Statement dated 18 September 2025 (which does not apply to this restructuring plan) which requires evidence from plan companies on this very issue

> (5) Where the relevant alternative is an insolvency process the initial expectation will be pari passu treatment of creditors within each insolvency class.
>
> (6) Differential treatment within an insolvency class is permissible if justified on proper grounds.
>
> (7) When considering whether the treatment of a class or any differential treatment within a class is "fair" the primary focus of the Court is upon their interests qua creditor.
>
> (8) When considering the sharing of the burdens and the benefits the Court is not confined to a consideration of the restructuring plan itself but is entitled to stand back and consider also the effect of the restructuring plan on those who are not parties to the compromises (such as creditors outside the scope of the plan or shareholders).
>
> (9) When considering the sharing of the burdens and the benefits the Court is entitled to take into account the source of the benefits (how the value is preserved or generated by the plan).
>
> (10) When assessing the burdens and benefits the court is concerned with the substance not the form: the provision of new money on terms more advantageous to the provider than would be required by a lender in the market is in reality a benefit conferred on the provider rather than a contribution to the cost of the plan.
>
> (11) The Court will have regard to the evolution of the restructuring plan and will seek to assess whether it is a genuine attempt to formulate a fair and reasonable solution to a critical problem or an attempt to impose arbitrary compromise terms upon creditors with a view to extracting advantage in a critical situation."

My approach in assessing fairness

139. Having those guiding principles well in mind, I do not think it necessary mechanically to go through how each applies in the present case. Rather, I turn to address below what appear to me to be the principal issues in my assessment of fairness, as follows:

    (1) Whether the Plan has been developed as a fair and reasonable solution and where possible there has been sufficient engagement with Plan Participants.

    (2) Whether, having regard to the objectives of the Plan, there are good and sufficient reasons for the exclusion from the Plan of certain indebtedness ("the Excluded Liabilities") of the Plan Company and the Group with a view to payment in full to the creditors concerned.

    (3) Whether the differential allocation of equity in the Plan Company as between (a) Growler, (b) the Noteholders and (c) the Existing Shareholders is fair.

(4) Whether the benefits allocated to the Noteholders and the Existing Shareholders (by way of their retained equity) are real or (as a practical matter) illusory.

(5) Whether there are any additional benefits to be provided to some Plan Participants and not others, such as to raise an unfairness issue.

(6) Whether there are specific or additional concerns or complaints raised by retail investors militating against sanction.

(7) Whether there is any 'blot' on the Plan or some reason to suppose that it would not be effective.

(8) Whether in the round the Plan is such as should be sanctioned.

Evolution of the Plan and engagement with stakeholders

140. The Plan has been negotiated with Growler in the context of the Plan Company's increasingly pressing need for capital support if it was to avoid insolvency. As noted in the Convening Judgment (at [5] and [6]), the Plan Company's financial distress effectively dates back to 2022, and until the emergence of a proposal from Growler, the Plan Company had been exploring solutions to its difficulties, and in particular some means of re-capitalising, from at latest September 2023. I am satisfied that careful consideration has been given to other avenues, but none has emerged except the present Plan.

141. The Plan Company has inevitably had to negotiate the terms of the Plan with Growler from a position of increasing weakness and whilst dependent on Growler for bridge financing by way of the Growler Facility (again as described in the Convening Judgment (at [9]).

142. Nevertheless there have been open and transparent negotiations between the Plan Company and Growler, showing some measure of 'give and take'. Thus:

(1) On 16 October 2025, Growler issued its initial proposal with the economic terms of the equity split for the Restructuring Plan. Under this first proposal, the proposed economics were such that Noteholders and Shareholders would be offered 2.25% and 0.25% respectively of the interests in the Plan Company.

(2) The Plan Company rejected this proposal because it did not consider that it properly explained how Growler had calculated the value preserved or generated by the restructuring or how the equity split should be allocated.

(3) On 19 October 2025, Growler issued a second proposal such that the post restructuring interests in the Plan Company would be split with Growler holding 87.5% of the equity in the Plan Company, the Shareholders holding 2.5%, and the Noteholders holding 10%. This is the basis of the present Plan.

(4) This further proposal was accepted by the Board at an urgent meeting on that evening, but subject to any material concerns raised by the Retail Advocate, Noteholders, or Shareholders.

143. Whilst of course there is always, in circumstances such as these, the spectre of 'loan to own', and it is of course the case that the effect of the Plan is that Growler does become the economic owner of the Plan Company, I have accepted (see [8] in the Convening Judgment) that, as Mr Joseph Curl KC (representing Growler) put it "Growler is not a party with an historic investment gone bad, seeking to restructure at the expense of junior stakeholders".

144. There has been no direct, bilateral negotiation with Noteholders and Shareholders. It is not possible to negotiate directly with members of these classes, which comprised a highly dispersed group of individuals. It is a case such as was envisaged in *Poundland* [2025] EWHC 2755 (Ch) where Sir Alastair Norris made the point that it is always necessary to consider the practicability of engagement[10] and it is not fatal if it is not realistically possible, and indeed:

> "*Part 26A exists precisely because it is not possible for a company in financial distress to negotiate with each of its creditors on a bi-lateral basis, and there is no requirement that it should attempt to do so*".

145. Nevertheless, and having regard to the obvious need to do what is possible to protect the interests and enable enquiries from retail investors, the Plan Company has made considerable efforts to create mechanisms to properly engage with the concerns of Noteholders and Shareholders and, if appropriate, modify the Plan to reflect their concerns.

146. To this end:

(1) The Plan Company engaged the Retail Advocate, whose mandate involves engaging with retail holders of Notes and shares, reflecting their concerns to the Plan Company and – importantly – casting a "*critical eye*" over the Plan.

(2) Mr Yorke was engaged prior to the Convening hearing and from that time to now has collated emails from Plan Participants, has passed those emails to the Company and has responded to them.

(3) Mr Yorke has acted conscientiously and productively as a useful conduit and filter for retail investor concerns and correspondence (which I address in paragraphs [171] to [195] below); and his role in providing what he termed a *"critical eye"* over the Plan from their perspective has (as previously noted) been of very great support and assistance to the Court.

147. Echoing the words of Sir Alastair Norris in *Re River Island Holdings Limited* (see paragraph [138] above), I am satisfied that the Plan has been developed in difficult and pressing circumstances with a view to a reasonable solution to a critical problem and, accepting that Growler was in a stronger negotiating position, nevertheless does not constitute an attempt to impose arbitrary compromise terms with a view to extracting unfair or undue advantage over existing investors.

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[10] Contrast the position in *Waldorf*, where the Plan Company failed substantially to engage with just two creditors.

The Excluded Creditors

148. I noted in the Convening Judgment (at [31] to [38]) and have reconsidered carefully the exclusion from the Plan of certain indebtedness (principally wages, trade creditors, tax liabilities and debts owed to Bank of Montreal and a credit union in Quebec called Desjardins), and its consequence that there are a number of continuing stakeholders in the Plan Company who are not included as Plan Participants and who are to be paid in full in due course.

149. Obviously, the Court requires to be satisfied that this departure from the underlying principle of *pari passu* distribution is not arbitrary or self-interested (as, for example, could be the exclusion and payment in full of connected persons). However, it has held in a series of cases to be permissible if properly justified: and see, for example, *Adler* at [170], which (citing also *Virgin Atlantic Airways* at [63] to [67] and *Virgin Active* at [13]) records the "usual reason" as being that:

> "the continued supply of goods or services by those creditors is regarded as essential for the beneficial continuation of the company's business under the plan…"

150. That is indeed the reason advanced as regards trade creditors in this case; and the other Excluded Liabilities are either secured (in the case of Desjardins) or cannot be compromised under a Plan (as with the Canadian tax liabilities).

151. I accept that the exclusion of the Excluded Liabilities, and its concomitant of an obligation left to the Plan Company to pay the relevant creditors in full in due course, is not arbitrary or self-interested and is justified by reference to the needs of the Plan Company's business as it moves into post-Plan development.

Allocation of restructuring benefits: Dilution and differential allocation of equity under the Plan

152. The fairness (or not) of the allocation of restructuring benefit (principally represented by equity interests in the Plan Company post-Plan) is, in light of the trilogy of Court of Appeal cases[11] the most fundamental of the matters to be addressed.

153. The dilution of existing interests (both in the case of Noteholders and in the case of Existing Shareholders) and the allocation of ADSs representing, in aggregate. some 87.5% of the Plan Company's equity shares is the principal feature and raised the issue of principal importance and concern.

154. Inevitably perhaps, some Noteholders have questioned the fairness of their treatment as against the treatment of the Existing Shareholders; whilst some Existing Shareholders have questioned the fairness of what they regard as the virtual extinction of their equity interests (to in aggregate 2.5%) to the advantage of Noteholders and for the benefit of Growler.

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[11] See also *Waldorf*, where sanction was refused on the basis of those three Court of Appeal cases (and a manifest and unexplained failure to engage with the only two creditors). The plan company was given permission to appeal directly to the Supreme Court, with a (provisional) hearing date fixed for February 2026; but I understand that the appeal has very recently been withdrawn, after the sale of a significant part of the plan company's assets.

155. Mr Abraham emphasised at the outset (as well as at the Convening Hearing) that the Plan has been formulated with full regard to the trilogy of Court of Appeal decisions which demonstrate the departure from *Virgin Active* and from the resort to the Relevant Alternative as the litmus test of fairness (with the resulting premise that only enough to constitute 'give and take' had to be paid to a class which was 'out of the money' in that alternative). I accept his submission that the Plan has been devised to recognise the requirement for a fair allocation of benefits; and the Plan Company presented expert valuation and plan benefits reports accordingly to support the balance struck.

156. In assessing whether there has been a fair allocation of the restructuring benefits relative to the Plan Participant's contributions, the case law suggests that there are three stages. I take the identification and description of these stages very largely from Mr Abraham's skeleton argument for this hearing.

157. Stage 1 is the identification and calculation (where possible) of the restructuring benefits.

(1) In *Petrofac* at [137] the Court of Appeal identified the financial benefits derived under the Plan by identifying the difference between the day one equity value of the restructured company and the value of the company in the relevant alternative:

> "As the Teneo valuation report makes clear, the value to be preserved or generated by the restructuring of the Group is likely, on the low case, to amount to about US$1.25 billion, i.e. the difference between the day one value of the equity in the restructured Group as a going concern (US$1.5 billion) and the US$250 million that would be realised for the assets of the Group in the relevant alternative of a liquidation."

(2) Where a plan results in the continuation of the relevant company as a going concern as is the case here, it is submitted that this is an appropriate method of valuing the financial benefits of the restructuring. The position may be different where the plan is a wind down or seeks to avoid the costs of an insolvency process. This was the case, for example, in *Chandlers* where the restructuring benefit was identified as the saving of the costs of a pre-pack administration: see [46]. There may also be other non-financial benefits to be taken into account as in *Thames Water*.

158. Stage 2 is the identification and valuation of contributions being made by the relevant stakeholders to the generation (or where relevant preservation) of the restructuring benefits. This will often be a fact specific analysis in which the Court will consider the contributions and their value in the circumstances of the relevant case. However, some principles can be discerned from the recent cases:

(1) The write off of debt is a 'contribution' that falls to be taken into account: see *Petrofac* at [138], even if that debt is "out of the money" in the Relevant Alternative.

(2) By its very nature, the contribution of assets to a Plan Company under the plan is also a relevant contribution for the fairness analysis.

(3) The Court can 'weigh' the relative importance of contributions and is not limited to looking just at the numerical face value of the plan participants' contributions. For example, as in *Chandlers*, the fact that debt written off is secured is relevant because "*the nominal values do not reflect the fact that the Secured Plan Creditors' claims rank in priority to the Unsecured Plan Creditors' claims.*"

(4) Equally, the fact that debt written off is underwater and of no value in the Relevant Alternative is still *relevant*, although such debt is a contribution, because it may be (as again in *Chandlers* (see [47]) in those circumstances that the "*new money is a far more important contribution than the writing off an existing unsecured debt which may, in the circumstances, be entirely under water.*"

(5) A plan benefits report, by its nature, cannot quantify and cannot reflect certain types of contributions, such as (relevantly) a "*sacrificial approach… of turnaround expertise* [and] *the continuation of Poundland as a viable rate-paying and job-preserving entity*" (see *Poundland* at [72]). See also *Re Madagascar Oil Ltd* [2025] EWHC 2129 (Ch) at [190], in which Richard Smith J accepted that critical expertise was a relevant contribution. Benefits of this kind cannot be valued, but should be taken into account when the Court steps back and looks at the fairness of the Plan as a whole.

159. Stage 3 is the determination of the value of the benefits allocated to each stakeholder and analysis of that allocation compared to the stakeholder's contribution. As to this:

(1) In many cases, a 'white knight' is identified who is the party making a substantial contribution to the Plan and who is 'driving' the restructuring. When assessing if the 'white knight' is getting "*too much unfair value*", or if a better and fairer plan was available, it is highly relevant that the 'white knight's' involvement, and in consequence the ultimate allocation of benefit to them, results from a "robust and competitive sale process focussed upon the purchaser willing to provide the most post-sale finance to support the business": *Poundland* at [7]-[9] and [62].

(2) Although the burden is on the Plan Company to satisfy the Court that there is a fair sharing of the burdens and the benefits, that does not relieve parties who might wish to raise particular issues as to the fairness of a Plan from putting those matters into issue in the first place (see *Re Madagascar Oil Ltd* at [193]) and from adducing evidence to show that one class is getting too much unfair value (see *Poundland* at [63]).

Plan Participants	Restructuring Benefit Contribution (USD thousands)	Restructuring Benefit Contribution (%)	Plan Consideration (USD thousands)	Plan Consideration (%)
Growler	23,233	93.2%	24,210	87.5%
Argo Bondolders	1,697	6.8%	2,767	10.0%
Argo Shareholders	N/A	N/A	692	2.5%
Total	**24,930**		**27,668**	

160. The allocation of restructuring benefit in the present case is set out in the Plan Benefits Report prepared by Mr Weaver and dated 30 October 2025 ("Plan Benefits Report"), as updated in his Supplementary Report dated 26 November 2025 ("Supplementary Report"). The Supplementary Report contains an updated table setting out the contributions of each class of Plan Participant.

161. Mr Weaver explained in his (first) Plan Benefits Report how he has come to this calculation as follows:

(1) The day-1 post restructuring enterprise value ("EV") of the Plan Company is some US$32.9m as a midpoint. The EV of the Plan Company in the Relevant Alternative is some US$8m. On that basis, the Restructuring Benefit is therefore US$24.9m.

(2) In the Plan Benefits Report, Mr Weaver originally valued Growler's contribution, consisting of the Growler Mining Assets and Growler Exit Capital, as being worth US$21.9m. However, in his Supplementary Report, after having considered the valuation of the Growler Mining Assets further, and adopting (on the advice of Kroll's Fixed Assets Advisory Service) a lower figure than Stifel had suggested for certain "non-energised assets", Mr Weaver has subsequently revised the value of Growler's contributions down to US$20m. However, he suggests that this valuation, undertaken on an individual asset basis, is conservative.

(3) He has then placed a value on the 'unallocated' part of the Restructuring Benefit not referable to any definite asset contribution (after the updated and slightly lower value of Growler's contributions is accounted for) of some US$4.9m.

(4) Mr Weaver infers that the 'unallocated' part of the benefit is referrable to the "*inherent value created through the elimination of these financial liabilities and the resulting ability of the* [restructured Plan Company] *to operate on a debt free basis*".

(5) In his Plan Benefit Report, Mr Weaver suggests that it is clear that this 'unallocated' benefit is created by Growler and the Noteholders, and supports this as follows:

(a) He takes the value of the Noteholders' debt write off as US$4.1m (the market value of the Notes). This is an appropriate valuation to use instead of the face value of the Notes, given that it would be possible to buy out the Noteholders entirely for that price. Indeed, his view is that it is generous to the Noteholders since in the Relevant Alternative they would recover only 0.72% as a class.

(b) Contrastingly, he ascribes to Growler's write-off its face value (US$7.75m) given that Growler would recover in full in the Relevant Alternative.

(c) On that basis, he concludes in his Supplementary Report that 65% of the *unallocated* benefit is referable to Growler's write-off, whereas 35% is referable to the Noteholders.

(6) He notes further that as the Noteholders are contributing nothing further by way of assets, their write off is the only contribution. In his Supplementary Report, his revised assessment (less favourable to Growler than in his Plan Benefits Report) is (as shown in the table set out under paragraph [159] above) that the Noteholders contribute 6.8% of the *overall* Restructuring Benefit, whereas Growler is contributing 93.2% of the restructuring benefit.

(7) It is to be noted, however, that Mr Weaver's calculation (i) does not take into account the 'soft' contributions being made by Growler, such as the fact that it itself has significant crypto mining expertise and (ii) nor does this calculation account for the fact that Growler's debt is secured – the value of Growler's write off has been calculated by reference to the face value of Growler's debt alone, without any uplift for the fact that Growler is secured.

164. The Plan Company submits on the basis of this valuation that the allocation of 87.5% of the plan's benefits (equity in restructured Argo) to Growler is fair, as is the allocation of 10% of the equity to the Noteholders. Indeed, it follows from the approach explained above that the Noteholders are getting a larger share of the plan benefits at the expense of Growler than their contribution justifies.

165. Turning to the Existing Shareholders,

(1) Mr Weaver does not identify any contribution by the Shareholders (and so values their contribution as nil).

(2) The Shareholders are entirely out of the money *under the Plan*:

(a) The day-1 post restructuring enterprise value (EV) of the Company is c. US$32.9m as a midpoint: see paragraph 161(1) above.

(b) The Shareholders would not, in light of the current capital stack, have any interest in that value if it were distributed today. The value would be distributed to Growler and thereafter to the Noteholders whose claims stand at c. US$40m.

(c) Accordingly, the Shareholders have no economic interest in the Plan Company valued, not just in the Relevant Alternative, but even on the assumption that the Plan Company has been restructured and the 'inherent value' in its business is preserved.

166. The Plan Company submitted that it would have been fair in these particular circumstances to provide a *de minimis* share of the restructuring benefits to the Shareholders as a class on the basis that they have a merely fanciful interest in the company when considering the value of the restructured company, whether measured against the Relevant Alternative or as against the likely position and equity value of the Plan Company post-Plan. It would thus have been possible to obtain an order under Section 901C(4) excluding Existing Shareholders from voting on the Plan and/or for them to be allocated a *de minimis* share. That would not be inconsistent with the trilogy of Court of Appeal cases, it having been expressly noted in *Thames Water* that there may be circumstances in which it is appropriate for a stakeholder to have no (or *de*

minimis to avoid issues of expropriation) or minimal share of the restructuring benefit: see [149] in the judgment of the Court.

167. In fact, the Plan provides for the Shareholders to receive more than a *de minimis* share in that they are diluted to 2.5% of the equity in the Plan Company which is estimated to be worth $470k-$560k. That of course opens up an issue as to why that is so, and at whose expense this bounty to them is being provided. Some Noteholders have complained about the Shareholders retaining *anything at all* in circumstances where the Noteholders are not made whole.

168. However, it is the Plan Company's submission that it is appropriate to allow the Shareholders to retain some equity:

(1) There is a potential argument that the 2.5% share is already in practical terms *de minimis*; and see paragraph [183] below. The Plan Company has made clear that it does not accept this argument but has considered that it should be as generous as (in effect) Growler will allow (since the reality on the basis of the figures explained in the expert reports, the 'bounty' is derived from Growler, as explained in paragraph [170] below), especially, given the tight timelines it is working to retain the Plan Company's NASDAQ listing.

(2) The Shareholders have statutory rights of pre-emption under section 561(1) of the Companies Act 2006 which would have prevented the allotment of equity to Growler and the Noteholders, that is, a ransom right. section 566A of the Companies Act 2006 allows these rights to be overridden if the Plan is sanctioned. The Plan Company considers that the 'overriding' of the Shareholders' rights of pre-emption under section 561(1) might still be said to be a 'contribution' made by the Shareholders to the restructuring. Although probably minimal in terms of measurable value, especially given there is no indication that any Shareholder would have wished to exercise these pre-emption rights, the Plan Company suggests that this 'contribution' (if it is one) is another justification for the allocation of 2.5% of the equity to the Shareholders.

169. In the round, and as the table under paragraph [159] above shows, the Noteholders and Shareholders are receiving significantly more equity than what their respective contributions to the Plan justify.

170. It follows that it is Growler that is receiving less equity than its contributions to the Plan would justify. In other words, the additional equity received by both classes is coming out of Growler's 'share' of the equity in the restructured Plan Company. Consequently, the equity being given to the Shareholders is akin to a 'gift' from Growler. In this respect, the Plan Company has submitted, and I accept, that the 'gifting' principle developed in *Re Tea Corporation* and later in *Virgin Active* at [267]-[268] remains good law, save that post-*Petrofac* the party entitled to make a gift is the party which contributes the greatest share of the restructuring benefit rather than the parties which are 'in the money' under the relevant alternative. Here, Growler is in the former position and has in effect made a gift to the Noteholders and Existing Shareholders.

Concerns raised through the Retail Advocate

171. This is the context in which the concerns and complaints, whether in relation to the allocation of benefits or more generally, made by retail investors through the Retail Advocate must be assessed.

172. To give a little colour to the description of the process of distillation and assessment which his role has required:

(1) As at 28 November 2025, Mr Yorke had received 48 emails from 24 retail investors, 17 of whom had contacted Mr Yorke after the convening hearing. He has had two telephone calls with one of them.

(2) Only a minority of the emails he received raised substantive concerns or objections to the Plan.

(3) Taking into account his experience of previous schemes and plans that have been sanctioned, including *Petrofac* (at first instance) and *Fossil*, the degree of engagement by retail investors with the Plan, while "*limited*", was "*equal or greater than I might expect to see*".

(4) Most of those retail investors who have engaged with the independent advocate have shown, in Mr Yorke's view, a "*very high*" level of sophistication ("*more so than any other similar scheme or plan in which I have been involved as an independent advocate*").

(5) In the circumstances, Mr Yorke is satisfied that "Retail Holders are capable of understanding the choices that they are being asked to make in respect of the Plan".

173. The Retail Advocate has focused especially on three key themes distilled from his review of the communications he has received, and which he considers may be relevant to the Court's final determination.

174. What he has labelled 'Key Issue 1' arises out of particular concerns expressed by Noteholders as to the fairness of their treatment as against the treatment of the Existing Shareholders, and vice-versa. He has explained that this question was mainly raised by or on behalf of Existing Shareholders not Noteholders, including by Interactive Investor Services Ltd which has accounts holding 38 million Plan Company shares on behalf of 3,100 individuals, and a number of individuals after the Town Hall Meeting.

175. What Mr Yorke has labelled 'Key Issue 2' arises in respect of questions and concerns expressed by Noteholders and Existing Shareholders as to how they can realise the value of the benefits of the restructuring allocated to them, given the proposed delisting from the London Stock Exchange.

176. The third issue Mr Yorke has specifically addressed is that some retail investors (Noteholders and Existing Shareholders) raised questions about whether there was transparent, publicly accessible and consistent information in respect of the Plan and the Company's financial position. He considers that the question for the Court at the

sanction hearing is not the information historically promulgated by the Company but the documents published in respect of the Plan.

177. For completeness, in the Sanction Report, the Retail Advocate has also noted a range of other concerns or objections raised by retail investors including alternatives to the Plan, valuations of asset/equipment, tax implications, comparisons to outcomes under Chapter 11 of the US Bankruptcy Code, the sale of the Bitcoin mining facility at Helios in Texas, the past and future management of the Company, and the significant personal repercussions of the loss of their investments (or a very large part of their investments) in the Plan Company. A similar range of topics were canvassed in the 'question and answer' session at the Town Hall Meeting. I address these more compendious issues also.

178. Key Issue 1, then, essentially concerns a dispute between the Noteholder and Shareholder classes as to how the remaining equity should be divided up between them. Mr Yorke has elaborated the way the point has been put on behalf of Noteholders as follows:

(1) This is a position expressed in particular by financial institutions. So, for example, C2 Capital Management LLC's ("C2") position as expressed in two notes provided to Mr Yorke is that "*[e]quity holders sitting at the bottom of the capital structure should not receive meaningful consideration when senior creditors are absorbing massive losses*" and "*equity holders are typically completely wiped out, not given direct equity participation*" before Noteholders are asked to take any substantial 'haircut'. Hudson Park Advisors LLC similarly questioned why Existing Shareholders are "*receiving such a meaningful recovery on a relative basis to noteholders*".

(2) In contrast, retail investors have taken a slightly softer line. For example, Retail Holder C accepted that those holding Shares should receive "*some consideration*" but suggested that it should be less generous.[12] Retail Holder C proposed in particular an exchange of Shares for warrants rather than simply a dilution of Shares (which is also what C2 calls for by way of a fallback). Retail Holder E also expressed the view that "*the proposed recovery for Senior Unsecured Noteholders is substantially inadequate*", although that was a general statement without focus on the comparative treatment of Noteholders against Existing Shareholders.

(3) These were also matters raised during the 'question and answer' session at the Town Hall Meeting.

179. The Plan Company has further elaborated on the objections from C2 Capital, represented by a Mr Chris Randle, which are the most detailed. Mr Randle sent an initial set of objections on 4 November 2025, followed by a 'formal objection' on 20 November 2025 and deserve particular attention. In that 'formal objection', C2 requested that the Plan Company place its objection before all Plan Participants. In short, C2 (i) objected to the allocation of any equity at all to the Shareholders, on the basis that Noteholders held a senior position in the capital stack and (ii) suggested that

[12] This has been omitted, by error, from the appendix to the Sanction Report and will be included with the Supplementary Sanction Report.

the Shareholders be given warrants which could (on C2's calculation) be exercised only after the Plan Company's equity value rose above a price at which the Noteholders would recover in full. C2 referred to a number of previous restructurings carried out under Chapter 11 of the US Bankruptcy Code.

180. Similar objections to C2s, which the Plan Company has characterised as based largely on precepts borrowed from Chapter 11 of the US Bankruptcy Code, and especially the 'absolute priority rule' there contained, have been taken by other Noteholders. These include, for instance, Lanveer Capital, as well as Hudson Park Advisors LLC ("Hudson Park"), which states that it is an investment advisor holding over US$2m of notes on behalf of its clients. Hudson Park states that it "*do[es] not understand how equity holders, many of them short-term/speculative investors are receiving such a meaningful recovery on a relative basis to noteholders*".

181. The Plan Company issued a Response Letter to C2 dated 27 November 2025, and, in light of C2's specific request for its objection to be disseminated, placed both letters on the Plan Website. That Response Letter pointed out (correctly) that Chapter 11 does not provide a relevant guide since the principles governing restructurings under Part 26A of the Act differ from those carried out under Chapter 11, and (especially) Part 26A does not contain an 'absolute priority rule' of the same kind. The response referred C2 (and thereby others with similarly based objections) to the explanation of the methodology adopted, the Plan Benefit Report and the Supplemental Report, and in particular, the table setting out the asset and other contributions which appears also under paragraph [159] above. Suffice it to say, that I consider the response fair and accurate and I should also note that neither C2 nor any other correspondent, attended the hearing despite being given clear notice of their right to do so.

182. On the other side of the coin, a number of retail holders of shares have objected to being substantially diluted under the Plan and stated the view that the allocation of equity under the Plan is unfair to retail holders of shares. However, no alternative plans have been put forth, save for the proposal to modify the Plan so as to give the Shareholders warrants instead of equity (a similar proposal was made at the Town Hall Meeting).

183. None of these objections is surprising; but more importantly, I consider that each has, directly or indirectly, been properly addressed, and none is such as to militate against sanction. There is an inevitable conflict between the commercial interests of the Noteholders, who say that it is right for the Shareholders to get nothing at all, and the interests of the Shareholders. Against that backdrop, the allocation of 10% of the equity to the Noteholders and 2.5% of the equity to the Shareholders is a form of compromise between the interests of the warring classes. As Mr Robinson of Fladgate put it in answer to a question at the Town Hall Meeting: "*I think every group would like to see its allocation increased. If we increase noteholders, we reduce either Growler or shareholders. If we increase shareholders, we reduce noteholders or Growler, no one's going to be happy*."

184. Mr Yorke has made the following points in the Sanction Report:

    (1) The Plan has been the subject of extensive negotiation with Growler and market testing, and the proposal put forward by the Company is not unreasonable in all the circumstances.

(2) Mr Yorke has drawn my attention to the fact that some retail investors (both Noteholders and Existing Shareholders) have raised questions about whether there was transparent, publicly accessible and consistent information in respect of the Plan and the Company's financial position. He has concluded that these concerns are not of real merit. Overall, Mr Yorke's "*opinion [is] that the level of information and guidance that Retail Holders have received is satisfactory*".

(3) Mr Yorke has taken particular account of (a) Growler's very significant contributions to the restructuring; (b) Growler's position in the Relevant Alternative, where it would likely make a 100% return; (c) Noteholders/Existing Shareholders' relatively limited contributions to the restructuring; (d) Noteholders/Existing Shareholders' position in the Relevant Alternative, where Noteholders are likely to make a 0.72% return and Existing Shareholders will receive nothing; and (e) restructuring plans should not be used to confiscate or expropriate the rights of the Noteholders/Existing Shareholders for no compensation.

185. Although, as he emphasised and I have previously noted and borne in mind, he cannot express a final view as to the fairness of the allocation as between Noteholders (10%) and Existing Shareholders (2.5%), nothing in his Report or his collation of correspondence, or in my assessment, is such as to unsettle my view that the allocation between the three classes is rational and fair in the circumstances.

186. In the round as to Issue 1, I accept the approach set out in Mr Weaver's Plan Benefits Report, subject to the modifications to it in his Supplementary Report. With some reservations as to the argument based on section 901(C)(4), I agree with the analysis put forward on behalf of the Plan Company.

Are the benefits allocated to Noteholders or Shareholders illusory?

187. In paragraphs [41] to [43] above, I have already noted some of the problems which inevitably will arise in consequence of the delisting of the LSE shares, so that the value of the benefits of the restructuring can only be realised via secondary trading through (1) 'converting' Shares to ADRs to be traded on the NASDAQ and/or (2) making use of the time-limited 'matched bargain' trading facility. Mr Yorke has identified this as Key Issue 2 (see also paragraph [175] above).

188. It should be noted that this is not a matter which impacts Noteholders because they will be allocated their benefits of the restructuring in the form of ADRs not Shares at the outset.

189. As to Existing Shareholders, Mr Yorke accepts that that neither route offers the same liquidity by which secondary trading can be achieved compared to the London Stock Exchange, and some Existing Shareholders may need to change brokers or request their certificates to deal with the Shares directly in any event.

190. On balance, Mr Yorke does not consider this to be an obstacle to sanctioning -or a proper basis for opposing sanction of- the Plan because:

(1) With or without the Plan, the Plan Company is commercially entitled to take the position that it no longer wishes to be listed on the London Stock Exchange but only on NASDAQ, and one of the central objectives of the Plan is to maintain the NASDAQ listing, which is presently imperilled;

(2) The Company's evidence suggests that there is very significant delisting risk as regards both the London Stock Exchange and NASDAQ in the relevant alternative if the Plan is not sanctioned, which is administration with a view to wind down;

(3) There are alternative methods of trading which ensure (a) some liquidity in the UK for the next six months via the 'matched bargain' trading facility, and (ii) significant ongoing liquidity in the US through 'converting' shares to ADRs and trading the latter on NASDAQ;

(4) The latter option (i.e., 'conversion' to ADRs) can in fact be pursued by retail investors holding Shares at any time, before or after sanction of the Plan;

(5) While some retail investors may need to change brokers (or request their certificates to deal with the Shares directly) to take advantage of these alternative methods of trading, that is not an especially onerous burden on retail investors; and

(6) The Plan's contemplation that, post-restructuring, the Shares will become less liquid in the UK -and that there may be negative tax consequences for retail investors- may be regarded as a form of contribution by retail investors (in particular, Existing Shareholders) to the restructuring that justifies in part their share of the restructuring benefits in excess of what they could expect in the relevant alternative.

191. I broadly agree with this assessment, though I myself consider that the ultimate answer, even if brutal, is that what is being offered to Existing Shareholder is better than nothing and for the reasons I have previously identified more than the *de minimis* return to which they would strictly be entitled.

192. Lastly in this context, it seems to me also that in the unusual circumstances of this case where the statutory majorities are met but the Noteholder meeting is not a "*meeting*" for the purposes of the Act and so is treated as a dissenting classes, that fact will be (at least) a very significant factor weighing in favour of sanctioning a plan: see *Re OutsideClinic Ltd* [2025] BCC 735 at [49].

193. I have in effect already addressed the third set of issues identified by the Retail Advocate from his communications with retail investors. These were summarised by Mr Day in his skeleton argument as questions about whether there was transparent, publicly accessible and consistent information in respect of the Plan and the Company's financial position. I agree with Mr Yorke's observation that the question for the Court at this stage hearing is not the information historically promulgated by the Company but the documents published in respect of the Plan. Mr Yorke's has expressed satisfaction in that regard in this respect is set out at paragraph 105(2) above and not repeated here.

194. For completeness, in his Sanction Report, Mr Yorke has also noted more compendiously a range of other concerns or objections raised by retail investors including alternatives to the Plan, valuations of asset/equipment, tax implications, comparisons to outcomes under Chapter 11 of the US Bankruptcy Code, the sale of the Helios Bitcoin mining facility in Texas, the past and future management of the Company, and the significant personal repercussions of the loss of their investments (or a very large part of their investments) in the Plan Company. A similar range of topics were canvassed in the 'question and answer' session at the Town Hall Meeting.

195. This is already a long judgment, and I will confine myself to a compendious answer. I have reviewed these concerns, and I am satisfied that none is a ground for withholding sanction, either individually or cumulatively.

No Additional/hidden Benefits

196. I have considered whether the value to Growler of the benefit of a NASDAQ listing which it is a central objective of the Plan to achieve is a benefit to be brought into account as enuring to Growler. I raised this at the Convening Hearing. The Plan Company's answer, with which I am satisfied, is that:

    (1) In the first place, there is no way to guarantee that the NASDAQ listing will in fact be retained; even if it is not, once the Plan is sanctioned Growler will remain 'locked in' and will remain obliged to contribute the Growler Mining Assets and Exit Capital. There is therefore no certainty that the existing listing will ultimately be a benefit to anyone.

    (2) If the listing is retained (as is hoped), it is not a benefit that accrues solely to Growler but to all Plan Participants. Post-restructuring, the Noteholders will receive ADSs which can (and can only) be freely traded because of the NASDAQ listing. Similarly, the ADR holders will retain the ability to trade their shares by virtue of the Nasdaq listing. As for the LSE holders, they have the option either of selling via the JP Jenkins facility or exchanging their ordinary shares for ADSs. Indeed, as explained, the retention of an exit route is a key concern of many of the Plan Participants who have written in, which serves to illustrate that the retention of the NASDAQ listing has value to these Plan Participants.

    (3) Finally, in his Supplemental Report, Mr Weaver has explained that his calculations in the Plan Benefit Report already in effect take account of the benefits of the NASDAQ listing, because the calculation of benefits is premised on the difference between the assets of the company in the Relevant Alternative, which assumes no listing (which will be lost in an insolvency), and the value of the restructured Plan Company (with a listing).

197. Otherwise, I am satisfied that the evidence before me does not disclose any additional benefits that are being granted to Plan Participants (such as work fees and the like) that give rise to a fairness issue. There are no 'hidden' benefits.

Is there any 'blot' on the Plan or reason for material doubt as to its effectiveness?

198. The word 'blot' is somewhat quaint and, despite its usage over a long period in the consideration of schemes of arrangement and now of restructuring plans, it admits of no precise definition. Vos J (as he then was) suggested in *In re Halcrow Holdings Ltd* [2012] Pens LR 113, a case concerning a pension scheme accepted that the word *"has the benefit of a lengthy history, but has no inherent meaning…"* but suggested that it connotes something *"unlawful or inappropriate".* I described it in *Re DS Smith* [2025] EWHC 696 (Ch) at [28] as *"an arresting but not entirely instructive word suggesting some mess."* Its usage and shades of meaning were explored at some length by the Court of Appeal in *Thames Water* (at [182] to [202]), but the result was not definitive. In [199] of its judgment the Court of Appeal offered the following:

> "Without purporting to define its limits for all circumstances, the concept of "blot" is and actually capable of covering a case where the scheme or plan contains a technical defect so that it is unworkable when capable of achieving what was intended. It is equally capable of covering a case where the scheme or plan requires the company to take, or contemplates it taking, a step which is illegal, ultra vires, or in breach of some other obligation owed by the company, even where the obligation is out to persons who are not members or creditors of the company."

199. No such 'blot' has been identified in the Plan which would make it unworkable, unlawful or otherwise hinder its proper operation.

International recognition and effectiveness

200. The Court must in addition consider whether the Plan is likely to be given effect in the jurisdictions in which it is intended to operate since it is a general principle that the Court should not act in vain.

201. The test for international effectiveness was usefully summarised by Richard Smith J in *Madagascar Oil* [2025] EWHC 2129 (Ch) at [212]-[213]. In particular, only "*credible evidence*" of a "*real prospect*" of success is needed. As Richard Smith J also said in at [213]:

> *"….The court will scrutinise the evidence of foreign law relied upon but will not undertake its own researches. However, the court is not inhibited from using its own intelligence and common sense."*

202. The Plan Company has obtained an independent expert opinion from a New York law expert, Hon. James Michael Peck (a former United States Bankruptcy Judge for the Southern District of New York). Judge Peck has concluded that the Plan will likely be so recognised, either under Chapter 15 or the common law of New York. He says at [14] that:

> *"I am quite confident in expressing the opinion that courts in New York (bankruptcy and nonbankruptcy alike), if asked to give effect to and enforce the Sanction Order, would be likely to do so without any hesitation whatsoever. It is standard practice and only natural for courts in the United States to defer to the procedurally fair determinations of English courts, and I see the current Restructuring Plan as fitting squarely within that unbroken tradition of deference"*

203. I am entirely satisfied by this evidence that any risk of the Plan not being recognised and given effect in the courts of the USA is spectral and not such as to raise any material risk of this Court acting in vain.

Section 3(a)(10) of the US Securities Act of 1933

204. The issue of new shares pursuant to the Plan is, nevertheless, potentially caught by the US Securities Act of 1933 which imposes various registration requirements. The Plan Company intends to rely on the exemption from registration contained in section 3(a)(10) of that Act "Section 3(a)(10)".

205. To meet the requirements of section 3(a)(10), nothing need be included in the sanction order. However, Mr Abraham told me that in member schemes it has become common practice to ask the judge at sanction to set out in their judgment the confirmations required, and in particular that sufficient notification had been given and that the Court had been informed that the company intends to rely on the sanction of the schemes as a fairness hearing for s 3(a)(10) purposes. Mr Abraham requested that the Court set out this confirmation in its judgment and offered as an example of the wording desired appears in *Re Van Gansewinkel Groep BV* [2016] BCC 172 at [77]. I did so in my earlier, brief ruling on this matter.

206. The Plan Company cavilled at my suggestion that it might be appropriate to obtain independent expert evidence in order to satisfy the Court that the process at the sanction hearing is sufficient to meet the above mentioned requirement of section 3(a)(10) that the Court had been given sufficient notification and had being informed of the company's intention to rely on s 3(a)(10). Mr Abraham submitted that it has long been the practice to treat evidence of this matter as evidence of fact rather than law, and told me that such evidence has in numerous cases been given by the scheme company's US attorneys. In that connection, he cited cases of my own as showing a somewhat inconsistent approach.[13] I should point out however, that the fact that CPR 35 applies in the context of schemes and plans as in any other civil proceeding in these courts has tended to be ignored, wrongly.

207. As to the status and sufficiency of the evidence presented to the Court of the satisfaction, as a matter of US law, of the elements of section 3(a)(10) referred to above, I must admit to some equivocation. In the Convening Judgment, I did not formally require expert evidence to be provided, but allowed the Plan Company to obtain it if so advised. Ultimately, the Plan Company has procured a witness statement from Mr O'Grady (a US attorney for the Company) explaining the application of the section and drawing to the Court's attention specifically (as required in the US) that the sanction of the Plan will be relied upon in the US. Mr Grady is not an independent expert, though I do not have any reason to doubt his expertise. Ordinarily, the Court expects any question of foreign law to be the subject of a report from an independent expert. The boundary between an issue of foreign practice and an issue of foreign law is not easy to draw definitively. I still tend to the view that the safer view is that expert evidence is the appropriate course. But in the circumstances, and given that the position under

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13 Compare *Re Exscientia plc* (19 November 2024) in which, after querying the position, I accepted that to require expert evidence would be "*pedantic*" (at [24]) with the view I expressed in *Re DS Smith plc* [2025] EWHC 696 (Ch)

US law in this particular respect is well-known, I am content to proceed on the basis of Mr Grady's evidence.

Conclusion on whether in the round the Plan should be sanctioned

208. For the reasons I have now sought to provide in this judgment, which at greater length than I had originally hoped elaborates the short ruling I gave at the conclusion of the hearing, I have been satisfied that the Court has jurisdiction to sanction the Plan, and in its discretion should do so.

209. In framing the Order, with the assistance of Counsel, I raised the question whether it was necessary to refer to Section 901G, having regard to my conclusion as to the applicability of the tests there stated notwithstanding that all classes had in fact assented by the requisite majorities. In other analogous cases, the expedient adopted in the paragraph of the relevant Order giving sanction has been either not to refer expressly to either section, or to state simply that sanction is given pursuant to Part 26A without further differentiation. Either, in my view, suffices. However, it may assist in any subsequent cases where the same or similar point arises, for me to note that I agree with Counsel that the true analysis is that, even where recourse is required to the power conferred by section 910G of the Act, a Court (if satisfied that it should sanction a plan) gives its sanction under section 901F: see section 901G(2) of the Act.

Postscript

210. Finally, I should say a brief word about the circumstances in which this matter came before me for sanction. I have expressed my concern (see [122] to [124] of the Convening Judgment) about the "breathless" nature of the application and burden placed on the Court by the compressed timetable required in order to seek to ensure the continuation of the Plan Company's NASDAQ listing. I have always accepted that this injected unusual urgency to which the Court should and has sought to respond. However, the urgency seems to me to have been exacerbated almost to breaking point by delays earlier in the entire process; and the burden on the Court of being presented with multiple bundles and complex issues with inadequate time for proper preparation, requiring out of hours reading long into the night, has been all but intolerable. In *Adler* (at [55] to [65]) Snowden LJ drew attention to the problems particularly created by the need for considerably more scrutiny of applications under Part 26A. He warned that:

> "It must also be reiterated that the court's willingness to decide cases quickly to assist companies in genuine and urgent financial difficulties must not be taken for granted or abused..."

I echo this warning.