Neutral Citation Number: [2026] EWHC 1438 (Ch)

Case No: CR-2026-001436

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: 12 June 2026

Before :

MR JUSTICE HILDYARD

- -

IN THE MATTER OF POUNDSTRETCHER LIMTED

- and –

IN THE MATTER OF THE COMPANIES ACT 2006

- -
- -

Tom Smith KC, Henry Phillips and Annabelle Wang (instructed by **Keystone Law Limited**)
for the **Plan Company**
Sir Iqbal Sacranie for the **Opposing Creditors**
Mr Steven Langton for **RCGU Properties Ltd**

Hearing date: 4 June 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 12 June 2026 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 :

A. Scope and structure of this judgment

1. Following class meetings held on 26 May 2026 to consider a proposed restructuring plan (the "Plan") between Poundstretcher Limited (the "Plan Company") and certain of its creditors ("Plan Creditors"), the Plan Company now seeks an order pursuant Part 26A of the Companies Act 2006 (the "CA 2006") sanctioning the Plan and orders "cramming down" those classes of the Plan Creditors who did not assent to it.

2. The context of the Plan, which follows a Company Voluntary Arrangement entered into by the Plan Company in 2020, is a substantial fall in turnover and its available cash. These losses, which are considerable, have been driven by present market conditions which suggests some deterioration in demand, but also, and of importance in the context of my consideration of the Plan, by the size and cost of the group's leasehold portfolio.

3. The central feature of the Plan is that it provides for alteration of the terms of the leases of premises from which the Plan Company undertakes its discount retail business, in many cases by reducing the rental payable to the extent necessary to enable the business conducted at the premises to be profitable. Its overall purpose is to restore the Plan Company and the Poundstretcher Group (the "Group") to financial stability, and to enable them to implement the turnaround business plan (the "Turnaround Business Plan").

4. These types of plan have become increasingly common in the context of significant economic headwinds confronting retail businesses. However, although not unusual, and especially if they also invoke the Court's "cross-class cramdown" jurisdiction, they require particularly careful consideration and often sceptical interrogation having regard to the economic disadvantages for landlords of what is proposed.

5. I set out briefly my reasons for acceding to the convening of 14 class meetings and the basis on which the classes were selected in a judgment delivered *ex tempore* after a convening hearing on 7 May 2026 (which I subsequently revised and approved): see [2026] EWHC 1321 (Ch), especially at paragraphs [11] to [14] and [21]. The directions given were set out in an order dated 7 May 2026 (the "Convening Order").

6. In accordance with the Convening Order, the Plan Meetings were held on 26 May 2026. At the Plan Meetings, the Plan was approved by over 75% in value of those voting at the meetings of eight classes of creditors. However, six classes voted against the Plan, which explains why the Plan Company now seeks, at the sanction hearing to which the present judgment relates ("the Sanction Hearing"), orders for cross-class cramdown.

7. At the Sanction Hearing (as indeed at the Convening Hearing), Mr Tom Smith KC, leading Mr Henry Phillips and Ms Annabelle Wang appeared for the Plan Company. Two opposing corporate landlords (namely, Global Property Projects Limited ("GPPL") and Global Property and Developments Ltd ("GDPL") (which are affiliated and together referred to as the "Opposing Creditors") were represented (with my permission) by a director (Sir Iqbal Sacranie) without legal representation. One other objecting Landlord, a B1 Landlord called RCGU Properties Ltd, was represented by Counsel, Mr Stephen Langton, who appeared without notice or other warning (in obvious breach of the relevant Practice Statement relating to such plans) on the morning of the hearing.

8. In this judgment, I assess their objections as well as whether the jurisdictional preconditions applicable and the fairness of the Plan. The remainder of this judgment is structured in line with the comprehensive Skeleton Argument provided by Mr Smith and his team (from which I have borrowed extensively, especially in rehearsing factual detail) as follows:

Section B sets out the factual background;
Section C explains the terms of the Restructuring Plan;
Section D addresses the relevant alternative to the Restructuring Plan;
Section E addresses the Convening Hearing, the distribution of documents and the Notice Period Modification;
Section F addresses the Plan Meetings;
Section G sets out the legal framework for sanctioning a Part 26A Plan;
Section H assesses whether the Plan should be sanctioned vis-à-vis the 8 assenting classes;
Section I assesses whether the Plan should be sanctioned vis-à-vis the 6 dissenting classes;
Section J addresses the Opposing Creditors' grounds of opposition; and
Section K addresses the substantial effectiveness of the Plan.
Section L summarises my ultimate conclusion.

B. Factual background

The Plan Company and the Group

9. The Plan Company is a private company limited by shares and incorporated in England and Wales. The Plan Company is a wholly owned subsidiary of Poundstretcher Leicester Limited ("PLL"). PLL is a wholly owned subsidiary of CF PS Bidco Limited ("CF PS Bidco"), a company incorporated and registered in Jersey. In April 2024, the Group's business was acquired by the Fortress Funds, which ultimately own CF PS Bidco. A simplified Group structure chart is annexed marked "A".

10. The first 'Poundstretcher' store was opened in Kirby Muxloe, Leicestershire, in 1981. The Plan Company is presently the tenant under 298 Leases in respect of operating stores (the "Leases"). In addition, PLL is the tenant in respect of the Plan Company's c.800,000 sq. ft. distribution centre in Leicester and head office (the "DC/Head Office Lease"), of which the Plan Company is a guarantor and also the sole occupier.

11. All these properties are rented: the Plan Company has no substantial assets except its inventory. The Poundstretcher Group employs approximately 3000 persons across its store network, distribution centre and head office.

The Plan Company's financing arrangements

12. The Plan Company is a borrower and guarantor under an asset backed lending facility agreement, which was entered into on 16 May 2024 with Wells Fargo Capital Finance (UK) Limited (the "ABL Lender") as lender, agent, and security agent (the "ABL Facility "). The ABL Facility is guaranteed by PLL, CF PS Bidco and subsidiaries of

the Plan Company and secured by a first-ranking debenture over assets of each of these companies (including, PLL's shares in the Plan Company).

13. As at 22 May 2026, the total amount outstanding under the ABL Facility was approximately £12.4 million. Interest is payable on the loans under the ABL Facility at a rate of 2.25% per annum plus the applicable reference rate which, in respect of drawings under the ABL Facility denominated in sterling, is the Sterling Overnight Index Average (SONIA) which is set daily with a zero floor.

14. Since the acquisition, the Fortress Funds have provided a number of unsecured shareholder loans to the Group. These have typically been provided by back-to-back intercompany loans originating higher up in the holding structure and ultimately on-lent, in part, to the Plan Company. The Fortress Funds have provided aggregate funding to the business in the sum of approximately £20.4 million. The outstanding principal amount under the intercompany loans ultimately made to the Plan Company (the "Intercompany Loans") is approximately £8.9 million.

15. In addition, as explained further below, on 24 February 2026, the Plan Company, as borrower, entered into a £30 million term loan agreement with CF PS Holdco Limited (the "SLA Lender"). The SLA Lender is an indirect shareholder of the Plan Company and a subsidiary of the Fortress Funds) (the "Shareholder Loan Agreement"), under which a committed facility of £20 million ("Facility A") and an uncommitted facility of £10 million were provided (together, the "SLA Facility"). The SLA Facility is secured by way of a second-ranking debenture over the Plan Company's assets. It is also guaranteed by PLL, secured by way of a second-ranking debenture over PLL's assets.

16. The Shareholder Loan Agreement currently has a maturity date of 31 December 2026. One of the key purposes of the Plan is to enable the Plan Company to access the remaining £4.5 million of available funding under Facility A.

The Plan Company's financial difficulties

17. The Plan Company's CVA in 2020 provided only temporary relief. The Plan Company's profit swung from a pre-tax loss of £45.3 million in FY20 to a pre-tax profit of £88.8 million in FY21, largely due to debt forgiveness and rent reductions pursuant to the CVA. However, the turnover of the Plan Company then fell substantially in FY22, with pre-tax profit falling from £88.8 million to £8.9 million. Turnover continued to decline, and in FY24 the Plan Company had a pre-tax loss of £9.8 million.

18. The Plan Company's performance has continued to deteriorate significantly due to reduced consumer confidence, rising operating costs (including increases in the National Living Wage and Employer National Insurance Contributions) and persistent inflationary pressures.

19. The Group has sought to address these challenges by adapting its product strategy and making operational changes to reduce costs, including infrastructure improvements involving migration to a new warehouse system. However, these measures have not been sufficient to return the Plan Company to profitability. Forecast EBITDA for the financial year 2026 (on a pre-Restructuring Plan basis) is expected to fall to a £6 million loss (from £0.4 million profit in the financial year 2025). The size and cost of the Group's leasehold portfolio have contributed significantly to its recent unprofitability.

20. In March 2026 the Plan Company engaged CBRE Limited ("CBRE"), commercial property advisers, to conduct an analysis of market-level rents in respect of the Plan Company's leasehold estate and to establish estimated market rental values (the "ERV Rent"). CBRE identified that a number of the Plan Company's sites are over-rented (that is, the contractual rent payable exceeds the estimated rental value for those sites). The Plan seeks to address the over-rented sites and align rent to a sustainable EBITDA threshold.

February 2026 liquidity crisis

21. In early 2026, the Plan Company required additional funding to continue trading and meet its liabilities, including critical payments to employees and key suppliers. The board of directors took steps to address this liquidity crisis by continuing to defer payments to creditors (maintaining this creditor "stretch" at levels of c.£4.5 million), agreeing a Time to Pay arrangement with HMRC in respect of c.£4.3 million of PAYE and VAT liabilities, repayable over six months, making weekly decisions about which critical creditors and suppliers to pay, and deferring payment of business rates. These are only temporary expedients.

22. In early February 2026, the Plan Company sought further funds from the Fortress Funds to enable the Plan Company to meet its short-term funding requirements, which required consent from the ABL Lender. In exchange for consent being provided, the Plan Company agreed to pay certain consent fees to the ABL Lender.

23. This enabled the Plan Company to enter into the Shareholder Loan Agreement. The Shareholder Loan Agreement was entered into in contemplation of (and conditional upon) the restructuring taking place. Without the funding provided under the Shareholder Loan Agreement, the Plan Company would not have been able to meet its obligations as they fell due and would likely have entered into administration at the end of February 2026.

24. As at 1 June 2026, the Plan Company has drawn c.£12.9 million of Facility A, and has submitted a utilisation request for the remaining c.£2.58 million which was due to be paid last week, bringing the total drawn to c.£15.5 million. However, the SLA Lender has confirmed that it will not provide access to the remaining £4.5 million of Facility A or other further funding if the Plan is not sanctioned. Thus, the remaining c.£4.5 million under Facility A remains conditional on the Plan becoming effective (or there being a reasonable prospect that it will become effective) by 10 July 2026.

25. As mentioned above, the financial difficulties facing the Plan Company are significant:

    (1) The Plan Company is operating a business that is, on the basis of recent financial performance, unprofitable.

    (2) The Plan Company has insufficient liquidity: it requires further funding of £2.8 million in the week commencing 28 June 2026, increasing to £9.7 million in the week commencing 26 July 2026.

    (3) The Fortress Funds are unwilling to continue to provide funding absent a restructuring.

    (4) The Plan Company has also received (and, I understand, is continuing to receive) a significant number of demands in respect of unpaid arrears of business rates. Absent funding to pay the outstanding business rates, or a compromise of

the arrears under the Plan, the Plan Company is at risk of local authorities undertaking enforcement action. Whilst the Plan Company has obtained the agreement of 28 local authorities, representing 41 Premises, to stay or adjourn existing enforcement action, these are temporary measures and a longer-term solution is required.

(5) With an unprofitable business and insufficient liquidity, unless the restructuring is successful, the Plan Company will be unable to meet its obligations in June 2026, which increase substantially in July 2026, and its directors have concluded that they would have to place the Plan Company into administration, to enable its stock, intellectual property and chattels to be sold.

Turnaround Business Plan

26. In light of its financial difficulties, the Plan Company has prepared the Turnaround Business Plan (alongside Teneo, whom the Plan Company engaged as financial advisors) with the aim of avoiding administration and restoring the Group to profitability.

27. The Plan Company has not provided a copy of this; Mr Smith told me that there was no formal plan as such. But he described the Turnaround Business Plan as involving shifting the product mix of the Plan Company to include more well-known household brands instead of tertiary or unbranded goods, transitioning certain product lines sourced via domestic import to direct Far East sourcing, rebate improvements and increasing "grey" buying, and optimising the Plan Company's store portfolio, by opening stores on a selective basis in locations with higher footfall, alongside modernising the Plan Company's existing estate.

C. The restructuring proposed by the Plan

28. As indicated above, the Plan has five basic features: (i) amending the first ranking ABL Facility and second ranking Shareholder Loan Agreement, (ii) enabling the Plan Company to access £4.5 million of funding from the SLA Lender under Facility A of the SLA Facility to implement the Turnaround Business Plan, (iii) compromising and releasing in full the Plan Company's liabilities to the Intercompany Lender, (iv) restructuring the Plan Company's portfolio of leases, and (v) compromising and releasing the Plan Company's business rates liabilities and other unsecured liabilities.

The ABL Facility

29. The amount available to the Plan Company under the ABL Facility is broadly based on the value of the Plan Company's inventory, less a reserve amount.

30. As well as being secured by a first ranking debenture and supplemental fixed charge the ABL Facility also has the benefit of a guarantee and first-ranking security granted by PLL, CF PS Bidco and subsidiaries of the Plan Company.

31. Pursuant to the Plan, the ABL Facility will be amended to enable the Plan Company to benefit from an increase in the value of eligible inventory, which is anticipated to increase the borrowing availability under the ABL Facility by c.£400,000. Consent fees totalling £450,000 due to the ABL Lender will also be deferred to six months after the Restructuring Effective Date to ease the Plan Company's cash flow pressures.

32. All existing events of default up to and including the Restructuring Effective Date will also be waived and certain financial covenants will be amended to ensure the Plan Company can comply with them going forward. A new "over advance" facility with a ceiling of £1 million will also be made available under the ABL Facility for 6 months following the Restructuring Effective Date, although this facility is not currently expected to be utilised.

The Shareholder Loan Agreement

33. The Shareholder Loan Agreement is secured by way of a second ranking debenture, behind the ABL Facility.

34. Pursuant to the Plan, the maturity date under the Shareholder Loan Agreement will be extended from 31 December 2026 to 30 June 2029, and the availability period in respect of Facility A will be extended from 10 July 2026 to 30 May 2029. The interest rate under the Shareholder Loan Agreement will remain at zero until the extended maturity date. The amendments are calculated to ensure that the Plan Company has sufficient liquidity to implement the Turnaround Business Plan.

35. The Plan Company has engaged FRP to prepare a report (the "Debt Report") identifying the market terms for a comparable second lien facility entered into on an arm's length basis. FRP's view is that "*on an arm's length basis, the Plan Company would likely command a drawn Facility margin of SONIA plus 16.01% to 17.01%".* FRP estimates that, on that basis, the interest forgone by the SLA Lender under the Plan over the extended Facility A availability period is £16.2m.

36. The SLA Lender will "gift" its entitlement to receive consideration under the Plan to PLL, which will retain the equity in the Plan Company.

The Intercompany Loans

37. The Intercompany Loans (totalling approximately £8.9m) are unsecured liabilities owed by the Plan Company to its indirect parent company, CF BS Bidco.

38. Pursuant to the Plan, the Intercompany Loans will be released and compromised in full. The Intercompany Lender will forgo any return under the Plan and will "gift" its entitlement to receive consideration to PLL, which will retain the equity in the Plan Company.

Leases

39. The overwhelming majority of the Leases concern sites leased by the Plan Company in the UK, with 35 Leases concerning sites in Scotland (of which 4 are excluded from the Plan) and 19 Leases concerning sites in Northern Ireland (of which 5 are excluded from the Plan).

40. The Leases are all unsecured, save that certain Scottish Leases may benefit from a landlord's hypothec under Scots law, which may give rise to a secured claim in respect of unpaid rent.

41. Three Leases are guaranteed by PLL and those Lease guarantees will be amended, varied or discharged in accordance with the compromises under the Plan.

42. In February 2026, the Plan Company's management team undertook a review of its Leases, relying on the financial information for each store and a report produced by

CBRE analysing the estimated market rental values in respect of the Plan Company's lease portfolio.

43. The management team analysed the level of store contribution required for each store to cover a portion of the central costs and overheads of the Plan Company (estimated to be c.£15 million in FY26), using store gross profit less store payroll, rent, rates, service charge and directly attributable store costs.

44. Following this review, the Leases have been divided into six categories. Broadly, these categories reflect the relative profit-earning capacity of the premises to which the category relates. In summary:

    (1) First, the Leases categorised as Class A (together, the "Class A Leases") are forecast to make a sustainable EBITDA contribution on current lease terms or which are strategically important to the Group due to the location of the store. They are further divided into Class A1 Leases, Class A2 Leases and the Class A2 Guaranteed Lease. The Class A1 Leases are already on monthly rent payment terms, whereas the Class A2 Leases and the Class A2 Guaranteed Lease are on contractual quarterly rent payment terms. The Class A2 Guaranteed Lease has the benefit of a guarantee from PLL. There are 135 Class A Leases.

    (2) Second, Leases categorised as Class B (together, the "Class B Leases") require rent reductions in order for those Leases to make a sustainable EBITDA contribution in FY26. They are further divided into the Class B1, Class B1 Guaranteed, Class B2 and Class B3 Leases, depending on the extent of the rent reductions required to make a sustainable EBITDA contribution[1]. There is one Landlord Creditor of a Class B1 Lease (i.e. the Class B1 Guaranteed Lease) with the benefit of a guarantee from PLL (the "Class B1 Guaranteed Landlord", together with all Landlord Creditors of Class B Leases, the "Class B Landlords".) There are 55 Class B Leases.

    (3) Third, Leases categorised as Class C will not make a sustainable EBITDA contribution in FY26 even with a rent reduction or 75%, or Leases in respect of Premises where the Plan Company is no longer trading from, and pursuant to which the Plan Company will be released from all liabilities under the Plan. They are further divided to include Class C Leases and the Class C Guaranteed Lease. The Landlord Creditor of the Class C Guaranteed Lease has the benefit of a guarantee from PLL (the "Class C Guaranteed Landlord"). There are 46 Class C Leases and one Class C Guaranteed Lease.

45. The categorisation criteria of the Leases reflect those used in the recently sanctioned restructuring plan in *Re Poundland Ltd* [2025] EWHC 2755 (Ch) at [21], per Sir Alastair Norris. Substantially similar criteria have been used in other Part 26A restructuring plans, including in *Re Virgin Active Holdings Limited* [2021] EWHC 814 (Ch) (convening) at [33]-[35], per Snowden J (as he then was); [2021] EWHC 1246 (Ch) (sanction) at [59]-[64] per Snowden J; in *Re Listrac Midco Limited* [2023] EWHC 78 (Ch) at [12], per Trower J; in *Re Fitness First Clubs* [2023] EWHC 1699 (Ch) at [37(3)], per Michael Green J; and in *In re Cine-UK Ltd* [2024] EWHC 2475 (Ch) at [41].

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[1] The Class B1 Leases require rent reductions of 25%, the Class B2 Leases require rent reductions of 50% and the Class B3 Leases require a rent reduction of 75%.

Treatment of the Leases under the Plan

46. The treatment of each class of Lease is the lynch-pin of the Plan and is set out in detail in the Explanatory Statement at paragraphs 2.1 to 2.28 of Part B.

47. A common feature for all classes of Lease is the entitlement of Landlord Creditors to receive a "Compromised Property Liability Payment" in exchange for the compromises under the Plan.

48. The Compromised Property Liability Payment will be calculated by reference to the Landlord Creditor's unsecured claim against the Plan Company and is to be in an amount equal to 175% of the returns which the relevant Landlord Creditor is estimated to receive in the Relevant Alternative, plus contractual rent, insurance and service charge payments for respective periods of 84 days (for Class A1/A2/A2 Guaranteed Leases to the extent a Class A1/A2/A2 Guaranteed Landlord takes steps to determine its Lease prior to the expiry of its term (a "Landlord Determination Action")), 28 days (for Class B Leases) or 14 days (for Class C/ C Guaranteed Leases). This is to reflect the fact the Landlord Creditors would be likely to be paid these sums for this period in the Relevant Alternative (see below), as the administrators would be expected to remain in occupation for this period to realise the Plan Company's inventory through store closing sales.

49. The Compromised Property Liability Payment Landlord Creditors (and other Compromised Property Liability Creditors) will be required to submit a notice of claim by a final claims date falling 37 months after the Restructuring Effective Date, failing which the Plan Creditor will be deemed to have waived and released its right to receive any Compromised Property Liability Payment. The inclusion of final claims dates by which creditors must submit the required documentation to be entitled to scheme consideration is a conventional feature of schemes of arrangement: see *Re Lehman Brothers International Europe* [2019] Bus LR 1012 at [31]. It is submitted that the 37-month bar date provides ample time for Plan Creditors to submit a notice of claim in the present case.[2]

50. As to Leases categorised as Class A:

    (1) The Class A1 Leases will be unaffected by the Plan, save where a Class A1 Landlord takes Landlord Determination Action. Any associated monetary claim (including any claim for dilapidations) will be compromised under the Plan in exchange for the Compromised Property Liability Payment.

    (2) The Class A2 Leases and the Class A2 Guaranteed Lease will have their payment terms amended from quarterly to monthly but will otherwise be unaffected by the Plan. Any Class A2 Landlord which takes Landlord Determination Action will be treated the same as a Class A1 Landlord who does the same.

51. As to Class B Leases:

    (1) Future rent obligations will be varied for a period of the earlier of 3 years commencing on the 'Restructuring Effective Date' (which is expected to take place on or around 4 June 2026) or until the relevant Lease expires or is

[2] By way of comparison, a bar date of between 9 and 33 months was used in *Re Virgin Active Holdings Limited* [2021] EWHC 1246 (Ch) (sanction), at [69].

determined (the "Rent Concession Period"). During the Rent Concession Period, the Class B Leases will have their rent reduced by 25% (Class B1/ Class B1 Guaranteed), 50% (Class B2) or 75% (Class B3). The amended rent will be payable monthly and contractual service charges and insurance will be paid in full for the period of occupation by the Plan Company under the relevant Lease. After the Rent Concession Period, payments under the relevant Leases will revert so that they are made in accordance with the existing terms of the relevant Leases.

(2) Dilapidations claims under the Class B Leases will be compromised in full if the Lease terminates during or at the end of the Rent Concession Period.

(3) Rent arrears (if any) will be released and discharged in full, except in the case of "Rates Inclusive Leases" (where business rates are paid directly to the Landlord Creditor as part of the rent payment and the compromise of arrears may give rise to a right to forfeit the Lease). To date, all amounts falling due under the Class B Leases have been paid in full, including under the Rates Inclusive Leases, and there are not anticipated to be any, or any material, rent arrears.

(4) Each Class B Landlord will be given an option to serve a notice of termination within 60 days from the Restructuring Effective Date. If the break right is exercised and the Lease terminated, the Plan Company's obligations as to past, present and future rent, service charge, insurance and other liabilities will be compromised in full. Any resulting dilapidations claims will also be compromised and released in full.

(5) The Plan Company will also have the right to serve a notice to exit the Class B Premises in respect of a Class B Lease or a Class B1 Guaranteed Lease, offering to relinquish its right of occupation on the third anniversary of the day before the Restructuring Effective Date on giving not less than 120 days' notice[3]. On and from the expiry of the notice period, the Plan Company's obligations and liabilities pursuant to the Class B Lease will end, and any sums payable under the Lease will be compromised and released in full.

(6) In exchange for the compromises to the Class B Leases, each Class B Landlord will be entitled to receive the Compromised Property Liability Payment.

(7) In addition, each Class B Landlords will be entitled to an "Excess Cumulative EBITDA Entitlement". This is payable if the Plan Company's EBITDA exceeds £24.75 million in the period from the first day of FY27 to the last day of FY29, being 75% of the cumulative EBITDA expected to be achieved in the turnaround business plan in this period. If EBITDA exceeds £24.75 million but is less than £33 million, the payments will be a pro rata share of 12.5% of the "excess" EBITDA. If EBITDA exceeds £33 million, the payments will be a pro rata share of 25% of the "excess" EBITDA. These payments are designed to ensure that

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[3] For the avoidance of doubt, a right of this nature, comprising an offer from the Plan Company to surrender the relevant lease (without requiring landlords to accept such offer), does not constitute an interference with landlords' property rights, and is within the scope of the Part 26A jurisdiction: see *Re New Look Retailers Limited* [2021] EWHC 1209 (Ch) at [278]-[282] per Zacaroli J. (as he then was), with which I agree.

compromised Plan Creditors are entitled to benefit from the future performance of the Plan Company.

52. As to the Class C Landlords and the Class C Guaranteed Landlords:

(1) Rent in respect of the Class C Leases and the Class C Guaranteed Lease will be reduced to nil. Dilapidation claims will also be compromised and released in full. Contractual insurance and service charge will continue to be payable in accordance with the terms of the Lease.

(2) Rent arrears (if any) will be released and discharged in full, except in the case of "Rates Inclusive Leases" (where business rates are paid directly to the Landlord Creditor as part of the rent payment and the compromise of arrears may give rise to a right to forfeit the Lease). To date, all amounts falling due under the Class C Leases and the Class C Guaranteed Lease have been paid in full, including under the Rates Inclusive Leases and there are not anticipated to be any, or any material, rent arrears.

(3) The Class C Landlord and the Class C Guaranteed Landlord Creditor will be given a rolling break right from the Restructuring Effective Date. The Plan Company will have the right to serve a notice to exit akin to its right in respect of the Class B Leases, save that the Plan Company will only be required to give 30 days' notice in respect of the Class C Leases.

(4) In exchange for these compromises, the Class C Landlords and the Class C Guaranteed Landlord will be entitled to a Compromised Property Liability Payment.

(5) They will also be entitled to receive the Excess Cumulative EBITDA Entitlement (see [51(7)] above).

53. Three of the Leases to be compromised by the Plan (categorised under Class A2, Class B1 and Class C) are guaranteed by PLL (the "PLL Guaranteed Leases"). The Plan will modify the relevant landlord's claims against the guarantor to reflect the terms of the amended Leases in order to prevent "*ricochet*" claims against the Plan Company and to maintain the existing capital structure of the group.

54. The value of Guaranteed Landlord Creditors' claims against PLL is in issue. It is the main focus of the Opposing Creditors' objections to the Plan. They have contended that it is of significance and value to them, especially since they relied on it in deciding to acquire the properties concerned, and because their bankers and other lenders have relied on it. However, the Plan Company contends that the PLL guarantee no longer has any real value because the Guaranteed Landlord Creditors are highly unlikely to make any recoveries from PLL in the event that the Plan is not sanctioned. The Plan Company contends also that the PLL has been taken into account in designing the Plan to ensure that all creditors are no '*worse off*'; the Guaranteed Landlord Creditors will receive a payment in the sum of the aggregate of 175% of their Estimated Administration Return in the administration of the Plan Company and PLL. I return to this dispute about the release of the PLL Guarantee later.

General Creditors and Business Rates Creditors

55. The Plan will also compromise the claims of the following unsecured creditors:

(1) General Creditors: these are creditors with a claim against the Plan Company in respect of general unsecured liabilities, which include claims in respect of forfeited leases, general property leases (including expiring leases, exiting leases and agreements for lease), holdover leases, alongside certain specific liabilities[4] and contingent indemnity claims (by the Former Owner Guarantors – see below). The General Liabilities are set out in full in the Explanatory Statement. In respect of these liabilities, the Plan Company will be released from their obligations in exchange for the Compromised Property Liability Payment (i.e. 175% of the returns which the General Creditor is estimated to receive in the Relevant Alternative). General Creditors will also be entitled to receive the Excess Cumulative EBITDA Entitlement.

(2) Business Rates Creditors: these are local authorities with business rates claims against the Plan Company. In respect of these creditors (i) business rates arrears in respect of all Leases to be compromised by the Plan will be released in full (save for Rates Inclusive Leases where business rates are paid as part of contractual rent), and (ii) business rates incurred during the "Rates Concession Period" will also be compromised under the Plan (save in respect of the Class A1 Leases and the Class A2 Leases which are "Rates Inclusive Leases"). The Rates Concession Period is the period in which business rates would not be paid in the Relevant Alternative following store closures, ending on the earlier of March 2027 (being the end of the current business rates year[5]) or the end of the "Estimated Void Period" (being the period in which CBRE estimated the premises would be unoccupied following the vacation of the Plan Company in the Relevant Alternative). In each case, Business Rates Creditors will be entitled to payment of (a) 175% of their Estimated Administration Return, (b) the amount which would be payable in respect of business rates during the period in which the administrators would trade the Plan Company in the Relevant Alternative administration, and (c) the estimated amount of business rates the creditor would have obtained after the Estimated Void Period in the Relevant Alternative. Business Rates Creditors will also be entitled to receive the Excess Cumulative EBITDA Entitlement.

Liabilities not included in the Restructuring Plan

56. Some of the Plan Company's leases and other liabilities are not included in the Restructuring Plan.

57. Such a carve-out has become common-place. There is no requirement to include all of a company's creditors or members in a restructuring plan: a company is entitled to decide which creditors are included in a scheme or plan: *Re Virgin Atlantic Airways Ltd*

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4 These include actual and contingent liabilities associated with non-critical supplier contracts, potential litigation claims and disputes and employment related disputes and employment tribunal claims, as identified in Part 2 of Schedule 2 to the Restructuring Plan.

5 Business rates payable in respect of an entire rating year are a contingent liability to which the Plan Company is subject from the beginning of the rating year, such that the rating authorities are creditors in respect of the entire year's rates: see *Kaye v South Oxfordshire District Council* [2013] EWHC 4165 (Ch) at [55]; *Re Fitness First Clubs Ltd ibid,* at [48].

[2020] BCC 997 (sanction judgment) at [58] and [60] per Snowden J (citing *Re PT Garuda* [2001] EWCA Civ 1696 at [51] per Peter Gibson LJ); *Re Virgin Active* (sanction judgment) at [259] to [265] per Snowden J.

58. However, the Court will assess the justification for the exclusion of any particular creditor as part of the exercise of discretion at the sanction hearing (*ibid*).

59. In the present case, the liabilities excluded from the Plan are in summary:

    (1) Excluded Leases: 67 Leases have been excluded from the Plan on the basis that the Plan Company does not consider it necessary or appropriate to include them. The Plan Company's evidence explains the reasons in some detail; but in broad summary, this is either because the leases are on a nil rent or a contractual Turnover Rent; or because the lease is due to expire prior to or shortly after the Sanction Hearing; or because the Plan Company has reached a satisfactory arrangement with the relevant landlord. For completeness I note also that the Lease in relation to the Distribution Centre/Head Office, where PLL rather than the Plan Company is the tenant, is not included in the Restructuring Plan.

    (2) Guarantees by Former Owner Guarantors: there are 13 Leases which benefit from guarantees from the former owner of the Plan Company (Crown Crest Group Limited) and one of its subsidiaries (Instore Limited) (the "Former Owner Guarantors"). These Lease guarantees will not be compromised under the Plan, as the Plan Company does not know whether the Former Owner Guarantors have the means to satisfy the guarantee claims. However, any indemnity claims by the Former Owner Guarantors against the Plan Company will be compromised under the Plan.

    (3) Trade creditors: liabilities to trade creditors will not be compromised under the Plan as the continued supply of goods and services by trade creditors is essential for continuation of the Plan Company's business.

    (4) Employees: liabilities to employees (save for certain "Specific Liabilities" in relation to potential or actual employment-related disputes or employment tribunal claims) will not be compromised by the Plan as the employees are critical to the ongoing business of the Plan Company, and the Plan Company considers that compromising these liabilities would likely cause employees to withdraw their services.

    (5) HMRC: the liabilities owed to HMRC in respect of the time-to-pay arrangement described above are anticipated to be paid in full in the Relevant Alternative, so are excluded on that basis.

Allocation of the equity

60. Upon and following implementation of the Plan, the existing shareholder of the Plan Company, PLL, will remain the sole shareholder of the Plan Company. In light of the sacrifice to be visited on other creditors, and especially Landlords, this benefit must be assessed and its retention justified.

61. The justification offered is that the retention by PLL of its existing stake reflects what the Plan Company's Chief Executive Officer (Mr Andrew Atkinson) describes in his first witness statement as the *"very significant contribution that it and the Fortress Funds are making to the Restructuring Plan and the go-forward position of the Group,*

which is critical to the Plan Company's cashflow and the implementation of the Turnaround Business Plan." He instances the following:

(1) committed and uncommitted funding under the SLA Facility at a zero per cent interest rate, which will be extended under the Plan to 30 June 2029;

(2) the irrevocable and unconditional compromise, release and discharge of the Intercompany Loans for nil consideration; and

(3) what he describes as "*the expertise and experience that the Fortress Funds bring to the Group…which will help to drive the achievement of the Turnaround Business Plan."*

62. The SLA Lender and the Intercompany Lender, which are both entities owned by the Fortress Funds, are each "gifting" their contribution to the Plan to PLL, in exchange for which PLL will retain the equity in the Plan Company.

63. I shall come on later to assess the value of these contributions when discussing the fairness of the Plan; for the present suffice it to say that the nominal amount of the Intercompany Loans is some £8.9 million and (as stated in [37] above) FRP estimates that the interest forgone by the SLA Lender under the Plan over the extended Facility A availability period is £16.2m.

64. As to the value of the equity to be retained (against which the value of the contributions must be compared), the Plan Company has engaged FRP to prepare a report (the "Equity Valuation and Sale Value Report") opining on the estimated value of the Plan Company's equity if the Plan is sanctioned. FRP's independent expert view is that, if the Plan is sanctioned, the Plan Company's equity is likely to be worth between £0 and £4 million.

65. It is also envisaged that the Plan Company's management team will be provided with an opportunity to participate in an equity-based management incentive plan (the "MIP"), pursuant to which they will be invited to acquire incentive shares in a Group holding company.

D. The 'Relevant Alternative' to the Plan

66. As I will elaborate in section [G] below, a central pillar of the architecture of Part 26A, against which any plan must be tested, is the 'Relevant Alternative' – that is to say, what would be likely to happen to the relevant plan company if the plan fails.

67. In this case, the assessment of the Plan Company's board of directors is that if the Plan fails, the Plan Company will be unable to meet its funding requirements in June 2026, which will substantially increase in July 2026, as it will be unable to draw on the remainder of Facility A, which is conditional on the Plan being sanctioned. If the Plan is not sanctioned by 10 July 2026 an event of default will occur under the SLA Facility which would also trigger cross-defaults under the ABL Facility, entitling the ABL Lender to accelerate all amounts outstanding thereunder.

68. The board of the Plan Company engaged FRP to prepare a report (the "Relevant Alternative Report") identifying what is likely to happen if the Plan is unsuccessful. The directors have considered FRP's analysis in detail and concluded that, due to the Plan Company's deteriorating liquidity position, the only viable option if the Plan is not sanctioned would be to place the Plan Company into administration. The directors have

concluded, based on discussions with the ABL Lender, the SLA Lender and the Fortress Funds, that it is highly unlikely that the Plan Company could obtain a sufficient liquidity injection to meet its funding needs to avoid administration.

69. The Relevant Alternative Report sets out FRP's analysis of the likely results if the Plan Company enters administration and estimates the returns for Plan Creditors in those scenarios. FRP explain that they do not consider alternative scenarios such as a refinancing, a further CVA or a solvent going concern sale to be feasible, given the very limited funding which would be available to the Plan Company if the Plan fails. FRP's analysis shows that a liquidation of the stock is likely to produce a better recovery for the Plan Creditors than an accelerated sale of certain of the Plan Company's positively performing stores.

70. Accordingly, in the Relevant Alternative of an administration, the board of the Plan Company considers that the most likely outcome is that the administrators would continue trading the business for a limited period while available liquidity is used to support operations and the sale of the stock, intellectual property and chattels, with the support of specialist retail agents. The administrators would also commence an accelerated sales process to establish interest in the business, or the business and assets of the Plan Company, although no sale is expected to be achieved.

71. The Opposing Creditors do not challenge the Plan Company's assessment of the Relevant Alternative.

Estimated outcomes for Plan Creditors in the Relevant Alternative

72. FRP has calculated the estimated returns for different categories of Plan Creditors in the Relevant Alternative. The estimated returns are as follows:

	Return (p/£)	
	Restructuring Plan[6]	**Relevant Alternative**
ABL Lender	100	100
SLA Lender	100	18.03
Intercompany Lender	nil	0.54
Class A1 Landlords	95.68	7.08
Class A2 Landlords	114.12	9.10
Class A2 Guaranteed Landlord	98.39	8.46
Class B1 Landlords	31.47	3.04
Class B1 Guaranteed Landlord	47.98	2.41

[6] Certain returns are greater than 100 p/£ due to the claim being calculated on the *Park Air Services* basis and therefore mitigated by future rental income prospects.

Class B2 Landlords	28.12	3.07
Class B3 Landlords	21.35	3.02
Class C Landlords	7.50	1.78
Class C Guaranteed Landlord	6.52	1.69
General Creditors	0.95	0.54
Business Rates Creditors	57.34	35.11

73. The 'Restructuring Plan' returns set out in the table above represent the average return to Plan Creditors within each class; the actual return figures for each Plan Creditor may differ. However, the Plan has been specifically designed to ensure that all creditors (other than the ABL Lender, the SLA Lender and the Intercompany Lender) are paid more under the Plan than they would receive in the Relevant Alternative. This is primarily achieved by paying Plan Creditors 175% of their "Estimated Administration Return", being the amount which that creditor would receive in the Relevant Alternative administration of the Plan Company. A similar mechanism has been used in other plans, including *Re Virgin Active Holdings* [2021] EWHC 814 (Ch) (convening) at [30] per Snowden J, *Re Listrac Midco Ltd* [2023] EWHC 460 (Ch) (sanction) at [21], per Adam Johnson J, *Re Fitness First Clubs* [2023] EWHC 1699 (Ch) at [98], per Michael Green J, *In re Cine-UK Ltd* [2024] EWHC 2475 (Ch) at [37], per Miles J and *Re Poundland Ltd* [2025] EWHC 2755 (Ch) at [47], per Sir Alastair Norris.

74. The estimated returns include, in the case of the Guaranteed Landlord Creditors, their estimated returns from PLL under their guarantees. FRP have also provided a "Supplemental RA Report" to consider what would be the effect on PLL in the event that the Plan Company enters into administration. They have concluded that it is likely that PLL would also enter into administration. This is because PLL would be unable to meet its guarantee liabilities under the defaulted ABL Facility and SLA Facility. It would also be unable service its rental liabilities under the head office lease (in respect of which PLL is the tenant) without either external funding or funds being upstreamed from the Plan Company.

75. As explained in the Supplemental RA Report, this is because PLL's assets comprise its shareholding in the Plan Company (which will be worthless in the event that the Plan Company enters into administration) and other miscellaneous assets estimated to realise £110,000. FRP estimates that the costs associated with an administration of PLL would exceed the estimated realisations. PLL has in any event granted security in respect of its guarantee liabilities under the ABL Facility and SLA Facility such that even if there were distributable realisations, they would be paid to the SLA Lender in priority to Guaranteed Landlord Creditors.

76. The returns to Plan Creditors are also subject to a £500 "floor", which will operate to ensure that unsecured Plan Creditors receive a more than *de minimis* payment, and thus ensure that there is an "arrangement" between the Plan Company and the unsecured Plan Creditors under the Plan: see *Re AGPS BondCo* [2024] EWCA Civ 24 at [265]-[278], per Snowden LJ.

E. The Convening Hearing and the distribution of Plan Documentation

Convening of the 14 classes

77. At the Convening Hearing, I accepted the Plan Company's proposals as to class composition and made the Convening Order, permitting the Plan Company to convene 14 meetings of Scheme Creditors to be held via video conference on 26 May 2026.

78. These 14 class meetings comprised:

(1) the ABL Lender;
(2) the SLA Lender;
(3) the Intercompany Lender;
(4) the Class A1 Landlords;
(5) the Class A2 Landlords;
(6) the Class A2 Guaranteed Landlord;
(7) the Class B1 Landlords;
(8) the Class B1 Guaranteed Landlord;
(9) the Class B2 Landlords;
(10) the Class B3 Landlords;
(11) the Class C Landlords;
(12) the Class C Guaranteed Landlord;
(13) the General Creditors; and
(14) the Business Rates Creditors.

Distribution of Plan documents

79. As required by paragraphs 5 and 6 of the Convening Order, and as explained in the evidence of Mr Gavin Maher ("Mr Maher") of the Plan Company's financial advisers and Information Agent, Teneo Financial Advisory Limited ("Teneo"):

(1) The notice of Plan Meetings (containing minor amendments directed by the Court), the Proxy Forms, the Explanatory Statement and Plan (the "Plan Documentation") were made available to Plan Creditors on 7 May 2026, by way of upload to the Plan Website.

(2) On 7 May 2026, notice was given by the Information Agent to all Plan Creditors known to the Plan Company that the Plan Documentation could be accessed via the Plan Website.

(3) On 13 May 2026, hard copies of the Plan Documentation were sent by recorded delivery to each Plan Creditor at the addresses for the Plan Creditors in the Plan Company's records.

80. Of the 606 Plan Creditors identified by the Plan Company: (a) 531 were contacted by both post and email; (b) 59 were contacted by email only and (c) 16 were contacted by post only. In relation to Plan Creditors contacted by email, no failed delivery or bounce-back notifications were received. In relation to Plan Creditors contacted by post, Mr Maher's evidence is that confirmation of delivery was received in relation to each Plan Creditor.

Modifications to the Plan

81. In his witness statement made on 20 May 2026 on behalf of GPDL and GPPL, Sir Iqbal Sacranie raised concerns that the existing 30-day notice period for the exercise of Landlord termination rights could result in Class B and Class C / C Guaranteed Landlords being *'worse off'* under the Plan than in the Relevant Alternative.

82. In particular, he suggested that:

    (1) In the Relevant Alternative:

        (a) Class B and C Landlords would receive payment of full contractual rent, insurance and service charge for the period during which their premises are used for the benefit of the administration. That has been estimated to be 28 days in the case of Class B Leases and 14 days in the case of Class C Leases and the Class C Guaranteed Lease (see the Relevant Alternative Report at p.36); and

        (b) after that trading period, Class B and C Landlords could forfeit the leases and obtain market rent from a new tenant.

    (2) Under the Plan, a Class B or C Landlord who immediately exercised their termination right (with a 30-day notice period) would:

        (a) Receive payment of full contractual rent, insurance and service charge for the 28 /14-day period of beneficial occupation by an administrator; and

        (b) be subjected to 2/16 days of compromised rent for the remainder of the 30-day notice period before being able to forfeit their leases and obtain market rent from a new tenant[7].

    (3) In those circumstances, landlords would be subjected to a period of compromised rent under the Plan which they would not be subjected to in the Relevant Alternative.

83. Following service of this evidence, on 22 May 2026, and to address this particular concern, the Plan Company proposed amendments to the Plan to shorten the notice period for Class B and Class C / C Guaranteed Landlords to exercise their break rights

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[7] While this is the economic effect of the Plan, the way it works as a matter of drafting is as follows. First, Landlord creditors are entitled to receive payment of compromised rent for the "Rent Concession Period", which begins on the Restructuring Effective Date and ends *inter alia* on the date on which the lease is determined. That means that compromised rent is technically payable to an exiting landlord during the entirety of the 30-day notice period. Second, Landlord creditors are also entitled to receive the Compromised Property Liability Payment under clause 28 of the Plan. That payment is calculated as the "Restructuring Plan Return" accordance with Schedule 10 and: (a) includes an amount equal to contractual rent, insurance and service charge for the period of beneficial occupation of the premises by an administrator (see item "B" of the Restructuring Plan Return) but (b) subtracts amounts received under the Restructuring Plan (see item "C" of the Restructuring Plan Return). Third, the overall effect of this is that a landlord creditor who immediately exercises its termination right will receive (a) compromised rent for the entire 30 day notice period; plus (b) the difference between compromised rent and contractual rent, insurance and service charge during the 28/14 day period of beneficial occupation of the premises by an administrator. Fourth, in economic terms, this is equivalent to an exiting Landlord receiving payment of full contractual rent, insurance and service charge for the 28/14 day period of beneficial occupation plus compromised rent for the remainder of the 2/16 days' notice period.

under the Plan (the "Notice Period Modifications"). In particular, the notice periods for the exercise of landlord break rights were shortened to 28 days for Class B Landlords and 14 days for Class C Landlords and the Class C Guaranteed Landlord. Further, in the case of Class C Leases and the Class C Guaranteed Lease the Plan Company has a discretion as to extend the notice period for a further 14 days, but it is required to pay full contractual rent for any extension period to ensure that the Class C / C Guaranteed Landlord are not prejudiced by the extension.

84. The Notice Period Modifications therefore address the concern raised by the Opposing Creditors by ensuring that Landlord Creditors can either recover their leases under the Plan no later than the date on which they would be anticipated to recover them in the Relevant Alternative or (in the case of Class C Leases) receive full contractual rent for the duration of any extended notice period.

85. Plan Creditors were notified of the Notice Period Modifications on the 22 May 2026 by way of a notice explaining the nature of the changes, and an updated version of the Explanatory Statement and the Plan circulated to Plan Creditors via the Plan Website and email. At the same time, Plan Creditors were notified of certain non-material clarificatory amendments to the Plan and Explanatory Statement. I have seen a redlined version of the changes to the Plan and Explanatory Statement since the Convening Hearing to show these amendments.

86. I am told that no Plan Creditor has contacted the Plan Company or Teneo to suggest that they were unable properly to consider these modifications and amendments prior to the Plan Meetings.

Engagement with Plan Creditors following the Convening Hearing

87. Mr Atkinson has explained that the Plan Company and Teneo made substantial efforts to engage with and Landlord Creditors in advance of the Convening Hearing. In summary:

    (1) Following distribution of the PSL on 31 March 2026, Teneo invited all Landlord Creditors and Business Rates Creditors to attend a townhall meeting on 1 April 2026 (held by video conference). At that meeting the Plan Company and Teneo outlined the proposal and reasons for the Plan. A total of 60 Landlord Creditors or their property agents, representing 56 Leases, and 2 Business Rates Creditors representing 4 sites, joined the townhall meeting.

    (2) Teneo also invited the British Property Federation to a meeting to discuss the Plan, which would have enabled the terms of the Plan to be explained to its members, but that offer was declined. The Plan Company also contacted 11 property "groups" or their respective property agents with the largest number of Leases (representing 30 Landlord Creditors with 59 Leases) to arrange meetings to explain the terms of the Plan. 6 of the property groups responded and attended the meetings, representing 23 Landlord Creditors and 37 Leases. The remaining 5 property groups declined the offer of a meeting.

    (3) The Plan Company's management team also had ad-hoc discussions with a further 50 Landlord Creditors in respect of 52 Leases. At the time of the Convening Hearing, the Plan Company's management team or Teneo had engaged with Landlord Creditors in respect of 44 per cent of Class A Leases, 36

per cent of Class B Leases, 44 per cent of Class C/ Class C Guaranteed Leases and 55 per cent of Excluded Leases.

(4) The Plan Company has also had ad-hoc discussions with certain Business Rates Creditors, who are largely supportive of the Plan and willing to postpone any actions in respect of unpaid business rates. As explained above, the Plan Company has obtained the agreement of 20 local authorities, representing 34 premises, to temporarily stay or adjourn existing enforcement action.

88. The Plan Company and Teneo have continued to engage with Plan Creditors following the Convening Hearing and seek to respond to any queries or concerns raised. As at 21 May 2026, Teneo has answered queries from 117 Landlord Creditors, 30 Business Rates Creditors and 3 General Creditors, although a substantial portion of those queries concerned administrative matters such as providing a letter of authority, changing contact information, or providing proxy forms.

89. Aside from GPPL and GPDL and RCGU Properties Ltd no other Plan Creditor chose to appear at the sanction hearing.

F. The Plan Meetings

Access to the Plan Meetings

90. At the Convening Hearing, I requested that certain amendments be made to the notice of Plan Meetings to make it clear that Plan Creditors could contact the Information Agent to obtain the link to access the virtual Plan Meetings, or if they had any issue accessing the Plan meeting or any other query in relation to attending or voting at the Plan meeting. These amendments were duly made in an amended Notice of Plan Meetings.

91. Teneo received correspondence from 92 Plan Creditors via email with queries relating to access to the relevant Plan Meetings, including submissions of proxy forms and identification documents. Teneo responded to each of these queries promptly, to enable Plan Creditors to access and attend the relevant Plan Meetings. Mr Smith confirmed to me that the Plan Company is not aware that any Plan Creditor had any difficulty accessing any Plan Meeting.

92. Prior to the Plan Meetings, on 22 May 2026, Teneo also sent by email to each Plan Creditor who had submitted a proxy form and identification documents by the voting instruction deadline, (i) the access details to the relevant Plan meeting, (ii) information on how to use the video conference system and (iii) how to vote at the Plan Meetings (the "Voting Instruction Email").

93. A further 5 Plan Creditors submitted their proxy forms and identification documents after the voting instruction deadline, and the Voting Instruction Email was also sent to those Plan Creditors to enable them to attend and participate at the relevant Plan Meetings.

The Plan Meetings

94. In accordance with the Convening Order, the Plan Meetings took place by way of video conference on 26 May 2026.

95. The details of the votes cast at the Plan Meetings are set out in the Chairperson's Report and are summarised in the table below:

Meeting	**Creditors present and voting (in person or in proxy)**	**Votes in favour**	**Approved / Not Approved**
ABL Lender	1 of 1	100% in value 100% number	**Approved**
SLA Lender	1 of 1	100% in value 100% in number	**Approved**
Intercompany Lender	1 of 1	100% in value 100% in number	**Approved**
Class A1 Landlords	29 of 86	100% in value 100% in number	**Approved**
Class A2 Landlords	12 of 42	100% in value 100% in number	**Approved**
Class A2 Guaranteed Landlord	0 of 1	0%	Not Approved
Class B1 Landlords	4 of 22	34% in value 25% in number	Not Approved
Class B1 Guaranteed Landlord	1 of 1	0%	Not Approved
Class B2 Landlords	4 of 12	61% in value 75% in number	Not Approved
Class B3 Landlords	8 of 18	70% in value 62% in number	Not Approved
Class C Landlords	13 of 43	81% in value 69% in number	**Approved**
Class C Guaranteed Landlord	1 of 1	0%	Not Approved
General Creditors	6 of 55	88% in value 83% in number	**Approved**
Business Rates Creditors	9 of 197	96% in value 89% in number	**Approved**

96. As noted in the Chairperson's Report, in relation to each of the Class B1 Landlords and Class B2 Landlords, only one Plan Creditor or their proxy (other than the Chairperson) or their representative, was in attendance, in addition to the Chairperson (acting as proxy for two or more Plan Creditors). Similarly, in relation to the Class A2 Guaranteed Landlord, the sole creditor did not attend the meeting. In a recent case, namely *Re Argo Blockchain Plc* [2025] EWHC 3395 (Ch), I determined that the restricted meaning attributed to "meeting" by David Richards J in a case concerning Part 26, namely *Re Altitude Scaffolding Ltd* [2007] 1 BCLC 199 at [18], applied also in the context of Part 26 (see my judgment at [76] to [86]) to the effect that to constitute a "meeting" two or more individuals must be present. I felt unable to adopt the less restrictive approach of Lord Baird in the Scottish case of *Re Dobbies Garden Cenmtres Ltd* [2024] CSOH 111 at [115].

97. Nevertheless, I agree that this does not prevent section 901G from being engaged in relation to those classes. That is because all that is required under the express terms of section 901G is that a meeting of a dissenting class has been "***summoned*** *under section 901C"* (emphasis added): see *Re Argo Blockchain Plc* [*supra*], following *Re Listrac Midco Ltd* [2023] Bus.L.R 920 (sanction) at [34]-[40], *per* Adam Johnson J and *Re Chaptre Finance Plc* [2024] EWHC 2908 (Ch) at [92] *per* Miles J. (as he then was).

98. Accordingly, the Plan was approved by 8 classes of creditors and was not approved by the required statutory majority in 6 classes of creditors.

99. Until the introduction of Part 26A that would, of course, have signified the failure of the proposal. However, Part 26A now empowers the Court, subject to satisfaction of further jurisdictional preconditions and a careful assessment of the fairness of the exercise of such a power, to approve a plan notwithstanding the dissent of one or more classes, provided that there is at least one assenting class with a genuine economic interest in the plan company in the "relevant alternative".

100. In those circumstances, notwithstanding the objections of 6 classes of creditors, the Plan Company invites the Court to sanction the Plan in the exercise of its cross-class cramdown powers under s.901G CA 2006.

G. Legal Framework

101. Section 901F of the CA 2006 provides as follows:

> "*(1) If a number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 901C, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.*
>
> *(2) Subsection (1) is subject to … section 901G …*"

102. Section 901G is entitled "*sanction for compromise or arrangement where one or more classes dissent*". So far as material, section 901G provides as follows:

> "*(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.*
>
> *(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)).*
>
> *(4) For the purposes of this section "the relevant alternative" is whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned under section 901F.*
>
> *(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*."

103. The "*relevant alternative"* is defined by section 901G(4):

> "*(4) For the purposes of this section "the relevant alternative" is whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned under section 901F"*

104. Thus, for the Court to exercise its power to sanction a plan under section 901F notwithstanding that the arrangement has not been approved by the requisite majority in every meeting of creditors, Section 901G stipulates that the Court must be satisfied that none of the members of the dissenting class(es) would be "*any 'worse off'"* than in the relevant alternative (Condition A); and there is an assenting class that has "*a genuine economic interest in the company in the event of the relevant alternative"* (Condition B).

105. I turn to consider the application of these provisions, the principles determining their application, and the case law guiding the Court's exercise of its overriding discretion (and especially the trilogy of cases in the Court of Appeal where the principles have been considered, namely, *Re AGPS Bondco Plc ("Adler"*) [2024] EWCA Civ 24; *Re Thames Water Utilities Holdings Ltd* ("*Thames*") [2025] EWCA Civ 475 and *Saipem S.p.A v Petrofac Ltd* ("*Petrofac"*) [2025] EWCA Civ 821.

106. In doing so, I address first, the provisions and principles which apply to the sanction of every plan (or scheme); secondly, the principles the Court should apply when sanctioning the Plan in relation to the *assenting* classes; and thirdly, the specific principles applicable when cross-class cramdown is sought under section 901G in relation to the (in this case, six) *dissenting* classes.

Statutory preconditions applicable to every scheme or plan

107. The Court's review at this stage of compliance with statutory preconditions common to both Part 26 and Part 26A is informed but not concluded by the review undertaken at the relevant convening hearing, and of course must extend to determining whether the relevant convening order has been complied with.

108. In *Re KCA Deutag UK Finance Plc* [2020] EWHC 2977 (Ch) at [18] Snowden J identified the following elements of the required review at the sanction hearing:

> "*(i) Have the classes been properly constituted; (ii) was there compliance with the terms of the convening order (including in particular whether the scheme creditors received an adequate explanatory statement); and (iii) were the statutory majorities obtained?"*

109. I have reviewed the composition of the 14 class meetings directed by my Convening Order (and further described in paragraphs [77] to [78] above), and also the detailed explanation of the basis on which the Plan Company proposed those classes set out in detail in the Practice Statement Letter sent out some 37 days before the Convening Hearing (and see paragraphs [11] to [14] and [21] of my convening judgment at [2026] EWHC 1321 (Ch)).

110. In this type of case, where the plan proposed almost inevitably proposes different rights and thus differential treatment under the plan for different leases, but where it would defeat the utility of Part 26 and Part 26A and the object of the plan for every differently treated lease to be in a separate class, there is a potential issue as to categorisation of the various leases for class constitution purposes.

111. The Court's approach is to assess whether objective and consistent criteria have been adopted in determining the categorisation and differential treatment suggested. To adopt Sir Alastair Norris's judgment (sitting in retirement) in *re Poundland Limited* [2025] EWHC 2755 (Ch) at [66], the Court must be satisfied that the "differential

treatment within the landlord class has an established and rational basis." In this case, indeed, the basis of categorisation (see paragraph [12] to [14] of my Convening Judgment) is very similar to that in *re Poundland*, which the judge described as follows (at [66]):

> *"…those who have in the past made and will in the future make the greatest contribution to the preservation and success of the ongoing… business benefit more than those whose properties are over rented and have contributed to the present crisis no is this differential treatment imposed upon an unwilling landlord: each has a 'break right' enabling market opportunities to be exploited."*

112. Although, as part of their final adumbration of their objections to the Plan, GPDL and GPPL queried GPPL's categorisation as a Class C Guaranteed Landlord (in respect of which a rent reduction to nil was and is proposed because the leased premises have been forecast not to make a sustainable EBITDA contribution even with a 75% rent reduction). The query was based on an alleged lack of information whereby to test that forecast, and was satisfied by the later provision of further information, and withdrawn. I have carefully considered in that context the further evidence provided in the third witness statement of Andrew Atkinson on behalf of the Plan Company providing more specific and granular particulars of the criteria applied in determining the categorisation of the Opposing Creditors' leases. Suffice it to say that I am satisfied in that regard.

113. No cogent argument having been made against the basis of categorisation, and each category having been placed into a separate class meeting, I see no reason to reach any different conclusion on the issue of class composition than the view I expressed in my Convening Judgment. In other words, I am satisfied, now as then, that the classes have been properly constituted.

114. I am also satisfied that, with the amendments I proposed, the arrangements for each class meeting were satisfactory and complied with.

115. As to the material provided to inform those voting, I am satisfied that there was an appropriate communication of the material necessary to enable each Plan Creditor to take an informed decision upon the question at issue.

116. The central document is the Explanatory Statement. The extent of the Court's enquiry in relation to an explanatory statement was described in these terms in *Re Amicus Finance Plc (in administration)* [2022] Bus LR 86 *per* Sir Alastair Norris at [37(a)]:

> *"…But the touchstone is not whether the fullest specific information reasonably obtainable was included in the Explanatory Statement: it is whether what was provided was sufficient to enable the creditors to make an informed decision whether to accept the risks inherent in the scheme in place of the risks inherent in a liquidation. In my judgment, the Explanatory Statement enabled that to be done".*

117. I have already noted the query GPDL and GPPL raised (but ultimately withdrew) about the sufficiency of the information provided to enable interrogation of the EBITDA figures and other criteria applied in categorising their Leases. I should perhaps add that I accept Mr Smith's argument that the fact that that more detailed explanation was not included in the Explanatory Statement does not, in my judgment, mean that it was defective.

118. The Opposing Creditors also raised (and persisted with) an objection that neither the Explanatory Statement nor the Relevant Alternative Report contained a proper explanation as to the basis on which the Plan Company had determined that no value should be attributed to the benefit of guarantees given in respect of their Leases by PLL. This aspect of their concerns seems to me to be of more material significance in the context of determining whether they would be *'worse off'* under the Plan than in the Relevant Alternative, and I shall have to return to the issue in more detail in that context. Focusing for the present, however, on the question of whether the lack of detail was such as to cause the Opposing Creditors to lack information they needed to form an informed assessment as to how they should vote, the Plan Company acknowledges that, prior to the provision (on 27 May 2026) of the Supplemental RA Report the analysis they had offered was *"light",* but maintains that it was sufficient for these purposes because the position was *"obvious"*. That, Mr Smith submitted,

> *"is simply because: (a) PLL's principal assets comprise its shareholding in the Plan Company, and (b) those assets are fully charged in favour of the ABL Lender and the SLA Lender. In those circumstances, the nil return to unsecured creditors of PLL in the Relevant Alternative is an obvious consequence of Plan Company entering into insolvent administration."*

119. I think this should have been explained; but I do not consider this to lead to the conclusion that the Opposing Creditors were deprived of information necessary for the purpose of voting. The guaranteed Leases were each in a separate class, and each such class dissented. Fuller explanation might have dissolved concern and forestalled complaint; but it is not realistic to think it would have made any difference to their vote. As I have said, the issue really is as to the *"no 'worse off'"* test: and see paragraphs [134] to [145] below.

120. In the round, I consider that the information provided to each creditor was sufficient to enable them to take an informed decision whether or not to approve the Plan.

121. In addition to the elements identified by Snowden J as requiring review (see paragraph [108] above), the Court must also determine whether there is any reason to depart from the provisional conclusion reached at the Convening hearing that there are no features which could be said to give rise to a "blot" or defect in the Plan, and that the Court would not be "acting in vain." The latter issue raises the question of international effectiveness which is addressed separately in section [K] below. For the present, suffice it to say, I have detected no "blot", nor any impediment of the same nature which was not apparent at the Convening Hearing and/or which now stands in the way of sanction.

122. I turn next to consider separately first the principles which apply to the sanction of every plan (or scheme) and which the Court should apply when sanctioning the Plan in relation to the *assenting* classes; and *secondly*, the specific principles applicable when sanction is sought under section 901G in relation to the *dissenting* classes.

123. The fundamental difference between the approach of the Court is that in the former case (of assenting creditors) the Court is, in effect, determining whether the statutory conditions intended to ensure a properly informed vote at duly constituted meetings have been satisfied, and if so, whether is any reason not to follow the view expressed by the majority as to where their economic interests lie; whereas in the latter case, the Court must be satisfied that it has jurisdiction to override the views of the dissenting

creditors and force on them, at the instance of another class with (*ex hypothesi*) different interests a plan with which they have expressed their disagreement.

H. Sanction vis-à-vis the assenting classes

124. As regards the assenting classes, the Court is being invited to do substantially the same as in the context of assenting classes under a Part 26 scheme, and the statutory provisions and the test adopted by the Court reflect this. Thus, in *Thames*, the Court of Appeal stated as follows (at [100] *ff*):

> "*100. Where there is no cross-class cram down, the principles established in the context of schemes of arrangement remain applicable ([115] to [117]). Those were summarised by Snowden J in Re Noble Group (No.2) Ltd [2019] 2 BCLC 548 at [17] 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 and 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 interests 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, for example, make it unlawful or in any other way inoperable*."

125. In *Adler* at [128], the Court of Appeal confirmed that these principles should still be applied under Part 26A *within an assenting class* as the basis for the exercise of discretion to impose the plan on the dissenting minority within that class.

126. In the present case, in my judgment, the conditions for sanctioning the Plan *vis-à-vis* the assenting classes are clearly satisfied.

Fair representation of the Plan Meetings

127. The assenting classes were fairly represented at the Plan Meetings:

(1) The three classes of financial creditors, namely the ABL Lender, the SLA Lender and the Intercompany Lender were comprised of a single creditor, and turnout in those classes was 100%.

(2) There was also a reasonably good turnout in number in three more of the assenting classes: the A1 Landlords (44%), the A2 Landlords (34%) and the C Landlords (38%).

(3) Turnout in relation to the remaining assenting classes (the General Creditors and the Business Rates Creditors) was less strong (15% and 4% respectively). This is likely to be the result of a decision not to engage in light of their relatively small returns in the Relevant Alternative rather than the result of any impediment to engagement (as has been recognised in other plans: see *Re DeepOcean 1 UK Limited* [2021] EWHC 183 (Ch), at [55]; in *Re Listrac Midco Limited* [2023] EWHC 460 (Ch), at [63]; and *Re Fitness First* [2023] EWHC 1699 (Ch) at [58]).

(4) I do not detect anything to suggest that any of the assenting classes were motivated other than by *bona fide* commercial interests and in accordance with the interests of the class.

Fairness in relation to the assenting classes

128. In *Adler* (at [122]-[123]), the Court of Appeal described the fairness test to be applied as regards an assenting class by reference to the rationality test in *Re Telewest Communications Plc (No 2)* [2005] 1 BCLC 772 at [20]-[22] per David Richards J**,** observing that "*[a]lmost invariably"* the fairness test is answered by the very fact of the vote in favour at each class meeting:

> *"…As David Richards J explained in Telewest at [21], under Part 26 the question of whether it is "fair" to impose a scheme upon the dissenting minority within a class is answered by applying a limited rationality test to the majority vote within that class. The court does not impose its own view of the commercial merits of the scheme, but asks as more limited question in relation to each class of whether the compromise or arrangement embodied in the scheme is one that "an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve.*
>
> *Almost invariably, under Part 26 this question is answered by the very fact of the vote in favour at each class meeting. The confidence that the court reposes in the decision of each class meeting in such circumstances is reinforced by the fact that the decision in favour of the scheme is the decision of an enhanced majority of 75% in value, rather than a simply majority, of those who voted at the class meeting. Moreover, the greater the majority in favour at the class meeting, the greater the confidence that the court can have that the scheme is in the interests of the class in question"*

129. I accept that the evidence shows that the Plan is fair in relation to the assenting classes:

(1) In relation to the ABL Lender, SLA Lender and Intercompany Lender there is no question of the Court being asked to impose the Plan upon a dissenting minority within the class (since the Plan was approved by 100% of the members of those classes).

(2) The Plan is in any event fair in respect of those classes. The ABL Lender and SLA Lender have, respectively, first and second ranking security. In particular, the ABL Lender will be paid in full in the Relevant Alternative, and this return is preserved under the Plan. The Intercompany Loans will be released and compromised in full in exchange for no consideration, but that is at the election of the Intercompany Lender who has chosen to "gift" its contribution to PLL.

(3) The Plan is also fair in respect of the remaining assenting classes. It provides a result that is significantly better for Class A1, Class A2 and Class C Landlords than the likely recoveries in the Relevant Alternative. It also provides a materially improved outcome for the General Creditors and the Business Rates Creditors.

130. The Plan is therefore one that an intelligent and honest man, acting in his own interests, might reasonably approve. Applying the test in *Telewest* as affirmed to be applicable in this context by the Court of Appeal in *Adler*, there can be no doubt that it is fair to sanction the Plan in relation to the assenting classes.

I. *Sanction under 901g in relation to dissenting classes*

131. As I emphasised in *Re Waldorf Production UK Plc* [2025] EWHC 2181 (Ch) at [136], the exercise of the Court's discretion is more complex in the context of a cross-class cramdown. This is partly because the consequences may be appreciably more severe, and partly because the Court does not have the comfort of the views of a majority of the class: on the contrary it is faced with the fact that the dissenting class do not consider their interests well-served by the relevant plan.

132. Where the Court is asked to sanction a plan in reliance on the cross-class cram down power, three questions must be considered by the Court (*Re Virgin Active Holdings* [2021] EWHC 1246 (Ch) *per* Snowden J at [104]; and *Re Houst Ltd* [2022] BCC 1143 *per* Zacaroli J at [13]):

(1) Condition A: If the restructuring plan is sanctioned, would any members of the dissenting class be any '*worse off*' than they would be in the event of the relevant alternative? This is often described as the *"no 'worse off'"* test.

(2) Condition B: Has the plan been approved by 75% of those 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?

(3) General Discretion: in all the circumstances, should the Court exercise its discretion to sanction the restructuring plan?

133. Those three questions are addressed in the following paragraphs. The points of opposition raised by the Opposing Creditors are addressed separately in Section J below.

Condition A: the "no 'worse off'" test

134. The *"no 'worse off'"* test requires a comparison between the value of the existing rights which a creditor has against the plan company in the relevant alternative, and the value of the new or modified rights given under the plan: *Petrofac* at [92]; *Re Waldorf Productions (No.2)* [2026] EWHC 1014 at [159]. The outcome for the dissenting creditors is to be assessed primarily by reference to the anticipated returns on their claims, but not exclusively so: *Virgin Active per* Snowden J at [106].

135. Also in *Re Virgin Active* at [106], Snowden J described a three-step process for 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 whether the outcome and consequences for the members of the dissenting classes if the Plans are sanctioned"*

136. In identifying the relevant alternative, the Court accepts that the plan company's directors are normally in the best position to identify what will happen if the scheme or plan fails: see e.g. *Re E D & F Man Holdings Ltd* [2022] EWHC 687 (Ch) (sanction) at [39]; *Re Prezzo Investco Ltd* [2023] EWHC 1679 (Ch) at [59]; *Re Fitness First* [2023] EWHC 1699 (Ch) at [63]; *Re Ambatovy Minerals SA* [2025] EWHC 279 (Ch) at [78].

137. In the present case, as I have already noted, there is no challenge to the Plan Company's determination that, in this case, the Relevant Alternative is an insolvent administration of the Plan Company and PLL.

138. The expert evidence clearly shows that recoveries for all dissenting creditors are higher under the Plan than in the Relevant Alternative: see the table at [72] above. That evidence has not been challenged, except that the Opposing Creditors have not accepted that it has sufficiently been demonstrated that the value of the PLL Guarantee is nil, and they contend (as I discuss later in more detail) that if the PLL Guarantee does have value they may be *'worse off*' under the Plan.

139. Dealing first with the Plan Creditors other than the Opposing Creditors, the Plan has been specifically designed to ensure that it confers rights on the Landlord Creditors, General Creditors and Business Rates Creditors that reflect their rights in the Relevant Alternative and provides an uplift on any dividend which they would receive in the Relevant Alternative.

140. In particular:

(1) All unsecured claims will be compromised in exchange for an uplifted dividend payment.

(2) Landlord Creditors whose leases will be subject to modifications during the Rent Concession Period will be able to forfeit or terminate their lease such that they are not compelled to accept the new, modified terms of the Leases.

(3) The dissenting classes will receive a return which includes the Compromised Property Liability Payment, as well as the right to the contingent "upside sharing" payment in the form of the Excess Cumulative EBITDA Entitlement. This is similar to the upside sharing mechanic adopted in the *Poundland* restructuring plan (see [2025] EWHC 2755 (Ch) at [43]).

(4) For Landlord Creditors, the Compromised Property Liability Payment is calculated by ensuring that the Landlord receives: (i) contractual rent equal to the number of weeks that the premises would likely be occupied in the Relevant Alternative (in which case, such rent would be paid in full during the period of occupation) and (ii) a cash payment equal to 175% of the estimated return the Landlord Creditor would receive by way of dividend in the Relevant Alternative, plus (iii) the amount (if any) needed to top up the amount resulting from (i) and (ii) to the floor of £500 (less amounts received under the Plan).

(5) All Landlord Creditors retain any right to take steps to terminate the Lease conferred by the terms of the Lease itself, whether by forfeiture, irritancy or otherwise. Class B Landlords are given a break right enabling them to terminate their Lease, exercisable within 60 days of the Restructuring Effective Date. The Class C / C Guaranteed Landlords are given a rolling break right from the Restructuring Effective Date.

141. As explained in paragraphs [83] to [84] above, pursuant to the Notice Period Modifications, the Plan Company modified the notice periods for the Class B Landlords break right, such that it is exercisable on 28 days' notice, and for the Class C / C Guaranteed Landlords' break right, such that it is exercisable on 14 days' notice. Those modifications ensure that Landlord Creditors are not prejudiced by the notice period for the exercise of Landlord termination rights.

Opposing Creditors' contention that they would be 'worse off'

142. However, as indicated above, the Opposing Creditors, as Guaranteed Landlord Creditors, submitted that, in their particular case, the Plan Company had not established that they were not *'worse off'* under the Plan. They will receive the aggregate of their estimated return in the administration of the Plan Company and the administration or liquidation of PLL, but this is calculated on the basis that the PLL Guarantees are estimated in the Supplemental RA Report to have nil value. Similar structures have been used in most or all of the previous Part 26A cases involving landlords: see e.g. *Re Revolution Bars Ltd* [2024] EWHC 2949 (Ch) *per* Richards J at [23]-[26].

143. The Opposing Creditors' argument on this has three facets, of which the third seems to me to more directly concern the Opposing Creditors' further argument that the provisions of the Plan for release of the PLL Guarantee is unfair:

(1) They complain that the Explanatory Statement and the Relevant Alternative Report provided no estimated outcome statement for PLL as guarantor, nor any explanation why (as is the case) the Expected Returns for the guaranteed landlords are *lower* than those for the equivalent non-guaranteed classes, which (they submit) is a *"counterintuitive result"*. They acknowledge that the Supplemental Relevant Alternative Report prepared by FRP and produced by the Plan Company on 26 May 2026 (and thus only shortly before the sanction hearing) explained the position taken; but make the point in their admirably concise skeleton argument that *"disclosure of material valuation evidence at such a late stage materially limits the ability of the affected creditors to assess and respond to the analysis before sanction."*

(2) They maintain further that even the late evidence *"remains untested"* and the premise of the Plan Company's approach that the PLL Guarantees have a nil value cannot safely be taken to be established. They submit that *"the Court should be slow to conclude that Condition A is satisfied"* in the case of their Guaranteed Leases.

(3) The PLL Guarantee was (and remains) of fundamental importance to them, not least in terms of the reliance placed on it by their lenders. Its release for nil value means that they are *'worse off'* under the Plan, and is in any event both unfair and easily avoidable by a discrete amendment to the Plan which they propose and submit should be required.

144. As to the first two points, I have already noted in the context of my consideration whether Plan Creditors were in a position to make an informed voting choice that I consider an earlier and fuller explanation should have been provided of the assessment that the PLL Guarantee was of nil value: see paragraphs [119] and [120] above. However, as in that context, I am not persuaded that the Opposing Creditors have demonstrated the conclusion that they suggest, which is in this context that they would be *'worse off'* under the Plan. The simple reality which lies behind the Plan Company's conclusion that the PLL Guarantee adds no value (see paragraph [119] above) remains.

145. I address that last point when considering to overall fairness and whether any amendment to the Plan should be required. However, I am satisfied that Condition A under section 901G(3) is met in relation to each class of dissenting creditor.

Condition B: the "genuine economic interest" test

146. The next step is to consider whether the plan in question has been approved by 75% of those 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 (being "Condition B" under section 901G(5)). This condition is plainly satisfied in the present case.

147. Each of the ABL Lender and the SLA Lender have voted in favour of the Plan and are "in the money" in the Relevant Alternative.

148. For comprehensiveness, I note that the fact that the ABL Lender and the SLA Lender formally agreed to support the Plan by way of the "Second ABL Consent Letter" and the "SLA Support Letter" in advance of the Plan Meetings is not an impediment to their being the assenting class or classes for the purposes of section 901G. In *Re Houst* [2022] BCC 1143, Zacaroli J held (at [20]) that the mere fact that 100% of a class supports a plan is not a reason to prevent the exercise of cramdown, where the class is "*undoubtedly adversely affected by the Company's insolvency and is substantially impaired under the plan"*. He also held that, for this purpose, it makes no difference as a matter of jurisdiction whether there is only one creditor within the class. There has been no challenge to the inclusion of these classes by any creditor and, for the reasons addressed below, their treatment under the Plan relative to the dissenting creditors is fair.

149. Further, the Plan was in any event also approved by the Class A1 Landlords, the Class A2 Landlords, the Class C Landlords, the General Creditors and the Business Rates Creditors who would respectively receive returns of 7.08p/£, 9.10p/£, 1.78p/£, 0.54p/£ and 35.11p/£ in the Relevant Alternative. They are therefore also assenting classes who would receive payment in the Relevant Alternative for the purposes of Condition B.

Discretion: Applicable legal principles in cross-class cramdown

150. As regards the exercise of discretion when cross-class cramdown is sought, the applicable legal principles are different from those laid down in *Re Telewest*: see the summary in *Thames* at [105]-[111]. In particular, the question whether the plan is "fair" in relation to the dissenting classes is not simply answered by the rationality test: *Adler* [125]-[127] and [140]-[141].

151. In *Adler* at [159] – [161], the Court of Appeal held that a key issue for the exercise of the discretion is a "horizontal comparison" to see whether the plan provides for differences in treatment of different classes of creditor *inter se*, and if so, whether those

differences are justified. This requires the Court to determine whether the Plan involves a fair distribution of the benefits of the restructuring:

> *"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 that an obvious reference point for this exercise must be the position of the creditors in the relevant alternative.*
>
> *160. ...As a matter of principle, when the court exercises its discretion to impose a plan upon a dissenting class, it subjects that class to an enforced compromise or arrangement of their rights in order to achieve a result that the assenting class of creditors consider to be to their commercial advantage. In my judgment, that exercise of judicial discretion to alter the rights of a dissenting class for the perceived benefit of the assenting classes necessarily requires the court to 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'..."*

152. In *Adler* at [167]-[172], the Court gave examples which might justify giving a class of creditors a proportionately enhanced share of the benefits of the restructuring. In particular:

> *"167. In my judgment, it is neither possible nor advisable to attempt to prescribe an exhaustive list of the criteria that might qualify. However, to give one obvious example, it is likely to be justifiable that creditors who provide some additional benefit or accommodation to assist the achievement of the purposes of the restructuring in the interests of creditors as a whole, should be entitled to receive some priority or a proportionately enhanced share of the benefits. That would give effect to the legislative intention that Part 26A plans should be a practical and effective restructuring tool. It was also the point made by Zacaroli J in Houst at para 31, referring to what Trower J had said in DeepOcean at para 64.*
>
> *168. So, for example, it has been considered justifiable that creditors who provide new money to facilitate a restructuring should be entitled to receive full repayment of that new money under a plan in priority to the pre-existing creditors. The new money avoids an immediate cashflow insolvency and provides a breathing space for the debtor company to carry out the restructuring in the interests of creditors generally."*

153. In both *Thames Water* and *Petrofac*, the Court of Appeal had to consider "*the extent to which a plan can reward the providers of new money"* (see *Petrofac* at [110]). The Court of Appeal in *Petrofac* made the following general observations in relation to the provision of new money, drawing a distinction between new money provided from independent third parties following a competitive process and new money provided by existing creditors (at [118]-[122]):

> "*118.* ***The continuation of a business as a going concern will often depend upon the company being able to access new funding****. From first principles, new money which is made available to a post-restructured company can be analysed in various ways, depending on the circumstances. In some cases, the purpose of the restructuring is to remove sufficient of the company's debt burden, so that it is better able to access new funding at more advantageous rates in the market. In such a case, the new money does not in itself form part of the plan.*
>
> *119. In other cases, such as the instant case, the restructuring itself includes new money being committed so that it is available to the restructured company immediately following sanction of the plan.* ***If the new money is provided from independent third parties following a competitive process in the market, then the proper analysis is that the returns for the providers of new money are simply a cost of the restructuring****. It is also well established that those providing new money to facilitate a plan in such circumstances should be entitled to receive full repayment of that money under a plan in priority to pre-existing plan creditors: see Adler at §168.*
>
> *120.* ***A similar analysis applies, in our view, where existing creditors of the company are invited to participate in lending the new money. If the returns to such creditors are equivalent to what it would cost the company to obtain the funding in the market, the provision of new money should be regarded primarily as a cost of, as opposed to part of the benefit arising from, the restructuring.***
>
> *121. If, however, the returns offered to those providing new money are such that it costs materially in excess of that which could be obtained in the market, and existing creditors are invited to participate in the new money, then the excess cost is better analysed as a benefit conferred by the restructuring.*
>
> *122. Since it is the plan company that seeks the exercise of the Court's discretion under section 901G , the burden of showing that the returns on new money are either equivalent to that which could be obtained in the market (and hence not a benefit of the restructuring), or justifying the fair allocation of those benefits must rest with the plan company.*"
>
> (emphasis added).

154. The Court of Appeal in *Petrofac* then summarised its approach to the appropriate treatment of new money (echoing what was said in *Adler* at [168]), as follows (at [136]):

> "*We have dealt with the provision of new money as a matter of principle above. As we have said, we accept that* ***those providing new money to facilitate a restructuring can properly expect to be repaid that money in priority to the existing indebtedness of the company. That also clearly applies to the return on the new money, insofar as that return reflects the price for new money that would be obtainable in a competitive market****. But whether, and if so, to what extent, the providers of new money should also be entitled to share – above and beyond market rates for such funding – in the benefits generated by the restructuring is dependent on the facts of each case...*"

155. The Court of Appeal went on to observe in *Petrofac* that, where there has not been a competitive funding process involving third parties, the company could discharge its burden of showing the returns on the new money provided by existing creditors are on competitive terms by adducing "*evidence from a market expert as to the range of prices that debt or equity might have been obtained by the restructured Group*" or by "*evidence of market testing*" (see [166]-[167]).

156. The key principles which can be derived from these Court of Appeal cases were summarised by Sir Alastair Norris in *Re River Island Holdings Limited* [2025] EWHC 2276 (Ch), (at [43]). I gratefully adopted that summary in *Re Argo Blockchain* (at [138]) as, more recently, did Michael Green J in *Re Waldorf Production Uk Plc (No 2)* [2026] EWHC 1014 (Ch) as a "helpful checklist" (at [123]):

> *"(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.*
>
> *(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."

157. In respect of the evolution of the plan, I concluded in *Re Waldorf Production UK plc* [2025] EWHC 2181(Ch) that there is no "jurisdictional pre-condition" to undertake pre-plan negotiations and has accepted that negotiations may not be possible or realistic. However, the Court will wish to be satisfied of the plan company's proper engagement with stakeholders where it is it is possible and the more so where it is an obviously available step: *Re Argo Blockchain Plc* [2025] EWHC 3395 (Ch) at [137(3)] (citing also *Re Poundland Ltd* [2025] EWHC 2755 (Ch)). In this case, I consider that the engagement with Plan Creditors and other constituencies affected has been sufficient and satisfactory.

158. More generally, I agree with Mr Smith that, at least in the case such as this of a plan intended to enable the plan company to continue business into the future (rather than a more temporary expedient preparing it for some insolvency process in the not very distant future) the decisions in *Adler*, *Thames* and *Petrofac* require the Court to consider the following two inter-related questions when deciding whether to exercise its cross-class cramdown power:

(1) Does the plan provide for differences in treatment of different classes of creditors *inter se* and, if so, can those differences be justified?

(2) Are the benefits preserved or generated by the plan fairly allocated as between different groups of creditors?

159. I turn to consider each of these in turn.

Does the Plan provide for differential treatment of different classes of creditors inter se and, if so, can those differences be justified?

160. As explained above, the starting point to assess fairness in relation to the dissenting classes is the position of those classes in the relevant alternative. The Court will assess, by reference to the relevant alternative, whether there is differential treatment within an insolvency class, and if so, whether it is justified on proper grounds.

161. The secured financial creditors (the ABL Lender and the SLA Lender) are treated differently from all the unsecured creditors. This reflects the difference in the ranking of their claims, and the priority which these secured creditors would be paid in the Relevant Alternative relative to unsecured Plan Creditors. By reason of that security, the ABL Lender would receive 100p/£ in the Relevant Alternative and the SLA Lender would receive 18.03p/£ in the Relevant Alternative (as compared with the general unsecured creditor return of 0.54p/£).

162. The fact that the leases held by different classes of Landlord Creditors will be subject to different modifications depending on their profitability, contribution to the business and strategic importance is not objectionable in the circumstances. Such differential treatment "*has become commonplace in plans involving lease liabilities"*: *Re Fitness*

First [2023] EWHC 1699 (Ch) at [37(3)]. In *Virgin Active* at [265], Snowden J held that such "*differential treatment was explained by reference to the profitability and commercial importance that the Plan Companies attached to the clubs operating from the properties subject to the different Leases and to the desire of the Plan Companies to eliminate contingent liabilities arising in connection with those Leases and other historical leases"*. The treatment of Landlord Creditors in this regard mirrors the plan in *Re Poundland* [2025] EWHC 2755 (Ch) where Sir Alastair Norris accepted that the differential treatment of landlords had an *"established and rational"* basis (at [66]).

163. Further, the differential treatment is not imposed on unwilling landlords. Each landlord can terminate the lease and re-let the premises if it wishes to do so. I accept that it is now well-established that the existence of termination rights such as those provided under the Plan provides a sufficient justification for long-term modifications to a lease: see *Lazari Properties 2 Ltd v New Look Retailers Ltd* [2021] Bus L.R. 915 at [218*ff*] (in the CVA context).

164. The differential treatment of the Business Rates Creditors only arises by virtue of the payment of the amount which the Business Rates Creditors would receive in business rates during (a) the period in which the administrators would trade the Plan Company in the Relevant Alternative administration, and (b) after the Estimated Void Period in the Relevant Alternative (see paragraph [55(2)] above).

165. There are otherwise no substantive differences in the treatment of the Landlord Creditors, General Creditors, and Business Rates Creditors. To the extent that the Plan compromises any claims these Plan Creditors have against the Plan Company, they will receive a Compromised Property Liability Payment and may be entitled to an Excess Cumulative EBITDA Payment. The differential treatment of the Intercompany Lender only arises because it has elected to forgo receipt of those benefits.

166. As explained above, certain of the Plan Company's creditors are excluded from the Plan. I am satisfied that the basis of exclusion is justified and not unfair.

Are the benefits preserved or generated by the Plan fairly allocated as between different groups of creditors?

167. As explained above, one of the fundamental issues for the Court to consider at the sanction stage is whether there is a fair allocation of the benefits preserved or generated by the restructuring (the "Restructuring Benefits").

168. This is a matter of some complexity and ultimately overall judement; but I am assisted in this by an expert report from Geoff Rowley of FRP (the "Allocation of Benefits Report") which provides a detailed assessment of the allocation of the Restructuring Benefits. Such reports have become fairly usual in the light of *Petrofac*, although I agree with the observations of Sir Alastair Norris in *Poundland* at [72] to the effect that there are *"inherent limitations"* in the exercise. I would add that despite the appearance of scientific or mathematical proof these reports typically seek to convey, such a report is based on assumptions which the Court must scrutinise and the ultimate judgement to be made is multi-factorial and to some extent subjective.

169. The Allocation of Benefits Report is based on identifying and quantifying three principal elements:

(1) The overall benefits created or preserved by the restructuring;

(2) The contributions made by each group of creditors; and

(3) The benefits received by each group of creditors.

170. Of these elements, the most difficult to value is the second. As to this, there are two possible approaches:

(1) The first is to value the contributions by reference to the nominal amounts of the claims of the creditors being compromised, ignoring the likely return on those claims in the relevant alternative;

(2) The second is to value the contributions by reference to the amounts of the estimated recovery on such claims in the relevant alternative, whilst making allowance for the fact that (as per Petrofac) the compromise of even "out of the money" claims may contribute towards the restructuring benefits.

171. In the present case, FRP have analysed both approaches (called the "nominal basis" and the "two-phase Relevant Alternative basis"). The Plan Company submits that the Plan is demonstrably fair whichever approach is adopted.

172. However, as Mr Smith submitted, the problem with the first approach is that it presents all contributions as having equal weight. It does not differentiate between the provision of new money and the compromise of an existing claim. Equally, in relation to the compromise of existing claims, it does not differentiate to reflect the different priority of claims in the Relevant Alternative. On this approach, the provision of £10 million of new money is treated as the same contribution as the compromise of an unsecured claim of £10 million which would receive no recovery in the relevant alternative. However, as noted by Snowden J in *Re Virgin Active* at [282], the writing-off of existing impaired claims cannot properly be equated with the contribution made by the provision of new money:

> "*There is, in my judgment, a considerable difference between waiver of liabilities already contracted for and which would be worthless in a formal insolvency, and new monies which will, if the Plans are sanctioned, be made available to finance future operations"*

173. In *Re Chandlers Building Supplies Limited* [2025] EWHC 2678 at [47] I noted as follows:

> "*... the Plan benefits are shared in the following proportions: 85.6% to the Secured Plan Creditors and 14.4% to the Unsecured Creditors. This means that the Unsecured Plan Creditors will receive considerably more than their pro rata share of the benefit of the restructuring when measured against the nominal values of the parties' contributions. If the benefit of the restructuring had been shared by reference to the nominal value of the parties' contributions in the forms of claim written off or new money advanced, then the Secured Plan Creditors would have received a 95.9% share of the benefit and the Unsecured Plan Creditors would have received a share of only 4.1%.* ***In addition, the nominal values do not reflect the fact that the Secured Plan Creditors' claims rank in priority to the Unsecured Plan Creditors' claims and that 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.***" (emphasis added)

174. In the circumstances, I agree with Mr Smith that the better and more commercially realistic approach is to value the compromise of existing claims by reference to the estimated recovery on those claims in the Relevant Alternative (and to value new money at face value). In relation to the compromise of existing claims this reflects what the relevant creditor is actually giving up. Further, this reflects the fact that the position in the Relevant Alternative is recognised to be the starting point in the analysis: see paragraph [156(4)] above.

175. The caveat to this is that, as is clear from *Petrofac*, some allowance must be made for the fact that the compromise of claims which would receive no recovery in the relevant alternative (and which are therefore "out of the money") may nevertheless still be said to make some contribution to the Restructuring Benefits.

176. The way in which FRP have approached this in the present case is to analyse the contribution made by way of the compromise of existing claims by reference to the recoveries in the Relevant Alternative (dealing with Phase 1). Then, as a cross-check, they have also looked at the relative contributions made by existing creditors by way of the compromise of the "out of the money" part of their claims (dealing with Phase 2).

What are the benefits of the Restructuring?

177. On FRP's two-phase analysis, FRP has identified the benefits of the restructuring as primarily comprising the preservation and repayment of existing claims under the Plan, limited to the three-year rent concession period. The financial benefits of the restructuring total £84,606,000 and are made up of:[8]

    (1) Plan Creditors' claims which are preserved under the terms of the Plan (i.e. until the end of the three-year rent concession period). This includes:

        (a) Rent, service charge, insurance received under the Plan during the estimated void and incentive periods which would occur in the Relevant Alternative (circ. £25.96 million).

        (b) The preservation of dilapidations claims and avoidance of rates payments under the Plan (circ. £26.8 million).

        (c) Compromised Liability Payments made to Business Rates Creditors and General Creditors under the Plan (circ. £1.64 million).

        (d) Preservation and repayment of sums advanced under the SLA Facility to date (£15.5 million).

        (e) Preservation and repayment of sums advanced under the ABL Facility to date (circ. £10.7 million).

    (2) The post-restructuring equity value. As noted above, FRP has prepared the Equity Valuation and Sale Value Report to assess the day one equity value in the Plan Company in the event that the Plan is sanctioned. FRP ascribes an equity value to the Plan Company of £0-4 million. The Allocation of Benefits Report takes the mid-point of that valuation (i.e. £2 million) in its assessment of the benefits of the restructuring.

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[8] For a detailed account, see Appendix E to the Allocation of Benefits Report.

178. On a nominal basis, the "benefits" of the restructuring total £89,536,000.[9] The difference from the Relevant Alternative approach is that the "benefits" under the nominal approach include the additional £400,000 funding provided by the ABL Lender under the ABL Facility as amended under the Plan, and the additional funding of £4.5 million provided by the SLA Lender under Facility A. These amounts are not included in the Relevant Alternative approach, as that funding is a loan to a profitable, cash generative company which is assumed to be fully recoverable.

179. The other key benefit of the Plan identified in the Allocation of Benefits Report is that it allows the Plan Company to continue trading whilst it seeks to implement the Turnaround Business Plan, enabling it to meet its obligations to Plan Creditors, as applicable, from the operational cashflows during the restructuring period and thereafter.

180. While the Excess Cumulative EBITDA Entitlement would provide additional benefits to eligible Plan Creditors, these have not been included in the Allocation of Benefits Report as a quantifiable benefit, as they are contingent on the Plan Company's future performance[10]. It is nevertheless a relevant benefit.

What are the contributions to the restructuring?

181. On the Relevant Alternative approach, FRP has identified the contributions to the restructuring as totalling £52,885,000. Those contributions comprise[11]:

    (1) The provision of funding by the ABL Lender under the ABL Facility to date (£10.7 million).

    (2) The provision of funding by the SLA Lender to date (£15.5 million).

    (3) Interest forgone on the SLA Facility in the three-year post-Plan sanction period (circ. £16.2 million).

    (4) The value of returns which the Intercompany lender would receive in the Relevant Alternative (c. £48,000).

    (5) The value of returns which Class A1/A2/A2 Guaranteed Landlords would receive in the Relevant Alternative (circ. £3.6 million).

    (6) The value of the returns which Class B and C Landlords would receive in the Relevant Alternative (circ. £767,000).

    (7) The value of the returns which Business Rates Creditors would receive in the Relevant Alternative, and the amount of business rates arrears owed to Business Rates Creditors (circ. £5.97m). The Plan Company has not been paying its business rates due to cash flow constraints, and the arrears are therefore treated as funding "contributed" to enable the Plan to take place.

    (8) The value of the returns which General Creditors would receive in the Relevant Alternative (circ. £38,000).

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9 For a detailed account, see Appendix D to the Allocation of Benefits Report.
10 Allocation of Benefits Report at p.13.
11 For a detailed account, see Appendix E of the Allocation of Benefits Repot.

182. As can be seen from the above, when looked at through the lens of the Relevant Alternative, the greatest contributions to the restructuring are made by the ABL Lender, the SLA Lender and the Business Rates Creditors.

183. For completeness, on a nominal basis, FRP identifies that the total "contributions" are c.£90,886,000. On the nominal approach the "contribution" of the ABL Lender is the additional £400,000 funding provided by the ABL Lender under the ABL Facility as amended by the Plan. Fortress/PLL's "contribution" includes the sums which comprise its contributions on the Relevant Alternative approach, but also include the additional funding provided by the SLA Lender under Facility A in the sum of £4.5 million and the nominal amount of the Intercompany Loans (£8.9 million). The Class B and Class C / C Guaranteed Landlords' "contributions" comprise the nominal value of their rent and dilapidation claims. The Business Rates Creditors' and General Creditors' "contributions" are also the nominal value of their claims compromised under the Plan.

What is the variance between % contributions and % benefits for each group of stakeholder?

184. The Allocation of Benefits Report compares the proportionate financial contributions of each stakeholder with their proportionate financial benefits. By way of summary, the variance (on the "two-phase Relevant Alternative" approach) is as follows:

Plan Creditor	**Variance between % contribution and % share of benefits**
ABL Lender	(8)%
Fortress/PLL	(39%)
Class A1/A2/A2 Guaranteed Landlords	50%
Class B1/ B1 Guaranteed Landlords s	3%
Class B2 Landlords	1%
Class B3 Landlords	1%
Class C/ C Guaranteed Landlords	1%
Business Rates Creditors	(8%)
General Creditors	0%

Is the distribution of the benefits of the Restructuring fair?

185. The ABL Lender's proportionate contribution (20.3%) exceeds its proportionate contribution (12.7%). It is submitted for the Plan Company that this is fair and appropriate:

(1) The Allocation of Benefits Report identifies the "contribution" made by the ABL Lender as being the contribution of the funding provided under the ABL Facility to date. The corresponding "benefit" received by the ABL Lender is the preservation and repayment of this funding. The ABL Lender's benefit as a proportion of its contribution is therefore 100%, as it will recover the funding provided under the ABL Facility either way. The £400,000 of additional funding provided by the ABL Lender under the Plan is not treated as a contribution or a benefit on this approach, as it is a loan made to a solvent and profitable company post-Plan.

(2) The treatment of the ABL Lender is also fair on the nominal approach, which treats the contribution of the ABL Lender as being the £400,000 of additional

funding made available pursuant to the Plan, by the increase in the value of the eligible inventory under the ABL Facility, and treats the benefit received by the ABL as the repayment of the £400,000 of additional funding and receipt of interest on the entire ABL Facility during the three year post-sanction period, assessed as c.£3.43 million. As to this:

(a) It is well-established that those providing new money to facilitate a restructuring on market terms should be entitled to receive payment in full of that money under a plan in priority to pre-existing plan creditors: See *Petrofac* at [119]; *Adler* at [168]. The provision of new money in those circumstances is simply a cost of, as opposed to a benefit delivered by, the restructuring.

(b) The payment of interest on the ABL Facility simply reflects the fact that the ABL Lender's claims are fully secured and cannot be compromised without the ABL Lender's consent. In those circumstances, the servicing of the ABL Lender's debt should again properly be viewed as a cost to the Plan Company of implementing the restructuring as opposed to a benefit delivered by it.

186. "Fortress's / PLL's" proportionate contributions (60%) exceeds its proportionate benefits (20.7%). As to this:

(1) The Allocation of Benefits Report treats "Fortress's" contributions as being contributions made by Plan Creditors under the ultimate control of the Fortress Funds. These are the SLA Lender and the Intercompany Lender.

(2) Insofar as the SLA Lender is concerned:

(a) The Allocation of Benefits Report, on both the nominal and Relevant Alternative approach, identifies the provision of £15.5m of funding to date, which has enabled the Plan to take place as part of its "contribution". The Report identifies the "benefits" received by the SLA Lender as including the repayment of that funding. That repayment is entirely justified for the reasons outlined above: those providing new money to facilitate a restructuring can properly be expected to be repaid that money in priority to the existing indebtedness of the company as a "cost" of the restructuring. The nominal approach also takes into account the provision of the remaining £4.5 million of Facility A as a "contribution" made by the SLA Lender and the repayment of that funding as a "benefit".

(b) The Allocation of Benefits Report also identifies the foregoing of circ. £16.2 million of interest on the SLA Facility as a "contribution" by the SLA Lender, on both the nominal and the Relevant Alternative approach. This is because under the Plan, interest under the SLA Facilities will remain at zero until the extended maturity date of 30 May 2029 whereas, according to the Debt Report, if it had been entered into on market terms, £16.2m of interest would have been charged.

(c) As noted in *Petrofac* at [136], the principle that a new money provider is entitled to be repaid in priority to other creditors "*also clearly applies to the return on the new money insofar as that return reflects the price for*

new money that would be available in the competitive market". In the present case, the SLA Lender would have been entitled to charge and receive payment of circ. £16.2 million of market-rate interest on the SLA Facility as a "cost" of the restructuring. The SLA Lender would also have been justified in receiving the equity in the Plan Company (with a day - one mid-point valuation of between £2 million) in lieu of charging and receiving market rate interest.

(d) Instead of doing so, the SLA Lender has effectively (and, in my view, permissibly) "gifted" that entitlement to PLL in order to maintain the existing equity structure: see *Re Argo Blockchain Plc* [2025] EWHC 3395 at [170]. The Allocation of Benefits Report, on both bases, therefore identifies retention by PLL of its equity in the Plan Company as a benefit corresponding to the contributions made by the SLA Lender. I accept Mr Smith's submission that this is justified, given the reasonably small day one equity value when compared to the value of market-rate interest forgone by the SLA Lender.

(3) Insofar as the Intercompany Lender is concerned, on the Relevant Alternative approach the "contribution" of the Intercompany Lender is the *de minimis* anticipated return on the Intercompany Loans in the Relevant Alternative. On a nominal basis, the Allocation of Benefits Report identifies the Intercompany Lender's "contributions" to the restructuring as comprising the compromise of the Intercompany Loans (with a nominal value of circ. £8.94m). The Intercompany Lender is not receiving any payment or return under the restructuring and has also agreed to "gift" the value of its entitlements under the Plan to PLL in order to maintain the existing equity structure. Those entitlements have not been valued, and nor is it necessary to do so since PLL's retention of equity is already more than justified by reference to the SLA Lender's contributions to the restructuring.

187. The Class A1/A2/A2 Guaranteed Landlords' proportionate benefit (56.6%) exceeds their proportionate nominal contributions (6.9%). Again, the Plan Company submits that this is fair and appropriate:

(1) Class A Leases are forecast to make sustainable EBITDA contributions on current lease terms, or are otherwise strategically important to the Group due to the location of the store. Since those Leases are not modified by the Plan, the Allocation of Benefits Report proceeds on the basis that the relevant landlords make no financial contribution to the restructuring.

(2) However, the commercial reality is that a material part of the benefits of the restructuring are generated from the Class A Leases. Those sites make a significant contribution to EBITDA and it is necessary for the Plan Company to continue trading from them in order to return to profitability and make payments to other Plan Creditors from its operational cash flow.

188. The Class B Landlords' proportionate benefits (3% (B1/ B1 Guaranteed), 1.2% (B2), 1.5% (B3)) exceed their proportionate nominal contributions (0.4% (B1/ B1 Guaranteed), 0.2% (B2), 0.3% (B3)). It is submitted that the Class B Landlords' less beneficial treatment relative to the Class A1/A2/A2 Guaranteed Landlords is fair and appropriate since it reflects the fact that these sites are unable to make a sustainable

contribution to EBITDA without their lease terms being compromised. The Class B Landlords' less beneficial treatment relative to the Business Rates Creditors is also fair and appropriate, as the Business Rates Creditors make a materially greater contribution to the restructuring. Notably, the Class B Landlords receive comparable or more beneficial treatment under the Plan relative to Class C Landlords and the General Creditors. This is logical and fair given that their leases (as amended under the Plan), are forecast to make a positive contribution to EBITDA (unlike those of the Class C / C Guaranteed Landlords).

189. The Class C Landlords, Business Rates Creditors and General Creditors voted in favour of the Plan. As such it is submitted that the Court can be satisfied that – from their perspective – the allocation of the Restructuring Surplus is fair.

General considerations and conclusion as to fairness of the allocation of benefit

190. Neither the unbundling of the various constituent elements by reference to which case law and experience suggests fairness may be assessed, nor the support of expert evidence (which can appear to offer a scientific solution where in reality an ultimately subjective answer must be given), should be a substitute for the overall evaluation required to be made by the Court in the overall exercise of its discretion.

191. As to this, however, I am persuaded in the round that the allocation of benefits under the Plan in the present case is not unfair or unreasonable. The different parties are making different contributions and are all receiving some share of the benefits of the restructuring (including by way of the Excess Cumulative EBITDA Entitlement). The Plan Company has obtained expert assistance in the difficult task of allocating benefit, and I am satisfied that the allocation proposed is within what is inevitably a spectrum of potentially fair results and takes sufficient account in an understandable way of the nature of the contributions being made, and the positions of the parties in the Relevant Alternative.

Other matters relevant to overall fairness

192. Returning to the issue of overall fairness, I should address some matters which have caused me pause for thought. One is the fact that, of the Landlord Creditors other than the three Class A Landlords who will not suffer any reduction in rent or other material adverse effect, only the Class C Landlord class has approved the Plan. I note that Sir Alastair Norris felt the same sort of concern when confronted with a not dissimilar (though starker[12]) position in *Poundland*, see [67] of his judgment).

193. In assessing this, I have had to take into account the reality that the support of the 'financial creditors' is not surprising, nor is that of the Class A Landlords. Indeed, I might have been more reluctant to cram down Landlord Creditors at their behest had all the other Landlord Categories been against the Plan. However, in addition to the fact that there has been little sustained opposition to the Plan except from the two Opposing Creditors (and Mr Langton's client), two matters have appeared to be significant and to offer some reassurance.

194. Most obvious of these is the fact that I consider that the approval of the Class C Landlord class is a real reassurance. They face 100% reduction of rent, but nevertheless

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[12] In *Poundland*, all but one of the landlord classes voted (or is treated as voting) against the plan, and it was in effect the category of financial creditors who sought to "cram down".

approved the Plan by a solid majority of 81% in value and 69% in number (on a turnout of 13 out of 43). A second source of comfort is that although only 34% in value and 25% in number of Class B1 Landlords supported the Plan, 61% in value and 75% in number of the Class B2 Landlords and 70% in value and 62% in number of the Class B3 Landlords supported the Plan. Thus, in those two Landlord classes, although the statutory majorities were not achieved, there was a substantial vote in favour. Further, two of the other classes were single member classes where the sole member was from the relevant Opposing Creditor.

195. To test what reassurance these matter offer, I have also considered further whether the fact that the Class C Landlords voted in favour is, conversely, suggestive of some differential unfairness or other reason for declining to cram down other Landlord classes. I have concluded that it is not. It seems implicit that the view they, as a class, have taken is that the Compromised Property Payment (together with an Excess Cumulative EBITDA Entitlement, if any eventuates) is attractive, given their present entitlement, and of course the substantial discount on their entitlements that they would face in the Relevant Alternative.

196. That latter point also brings me back to the statutory litmus test of fairness: the comparison with the Relevant Alternative. Having accepted (as I have) that the Relevant Alternative is insolvent administration, and that this is fairly imminent if the Plan is not sanctioned, and having accepted also that the differential treatment as between the Creditor classes is not unfair, the statutory test supports sanction of the Plan.

197. A more general point has also concerned me. This is whether the Plan has a sufficient prospect of achieving its objective, particularly in light of the failure of an earlier CVA which was intended, by reducing the rentals, to achieve profitable trading, as does the present Plan. There is an inherent danger, made more plausible by the failure of the CVA, that the Plan will prove to be in vain, may be used to maximise the financial creditors return whilst sacrificing the Landlords (to a greater or lesser extent according to their categorisation) and in the meantime, the Landlords will be denied full (or in some cases, any) rent.

198. Mr Langton, whom I permitted to appear for RCGU Properties Ltd despite it having provided no notice, evidence or skeleton argument, made in somewhat unspecific terms the general point that the Plan would fail as the CVA had failed, and it was best not to prolong the agony, especially given that the Plan was (as he described it) "biased" and that it is his client's "feeling" that it is unfair.

199. However unspecifically advanced, I have had some concern whether the antecedent failure of the CVA, and the other market difficulties which have contributed to that and are still continuing, does indicate some real reason to doubt the real prospect of the Plan succeeding. I raised this with Mr Smith, noting also that although a Turnaround Business Plan has been described and commended to me, there is no formal written evidence of it (beyond the description given in the Plan Company's evidence), nor of any projections or worked analysis of its likely effect.

200. The description given of the Turnaround Business Plan in Mr Andrew Atkinson's first witness statement explain in broad terms what it involves, in addition (of course) to the principal improvement inherent in the Plan of focusing on premises from which trading is sustainable, as follows:

(1) A *"product and range re-set"*, which will entail extending the product range offered to more well-known household brands, instead of its present range of predominantly tertiary or unbranded goods. Mr Atkinson has told me that over 500 new branded products have already *"been rolled out across the store estate"*, but he has not provided any figures to demonstrate its success.

(2) *"Gross margin improvement",* the strategy being *"to drive profitability from transitioning certain product lines sourced via domestic import to direct Far East sourcing, rebate improvements, increased scale of 'grey' buying, which involves purchasing good through alternative channels outside the usual distribution network at a lower price, and focusing on growing higher margin products"* and

(3) *"store portfolio optimisation",* which it is said is to be sought and achieved by focusing, not so much (as at present) on opening stores and building business in locations with high footfall, but more on taking over identified units vacated by Wilko and Poundland *"to capture established footfall in retail parks and shopping centre"* whilst at the same time closing loss-making stores *"that did not fit with its strategic model."*

201. This, I feel bound to say, has struck me as lacking the detail and particularity I would expect. In the end, it seemed to me, and Mr Smith did not really correct me on this, that I am in effect being invited to rely on the fact that financially experienced and successful entities like the Fortress Funds do not spend the considerable amount of time and money on a plan of this nature as a false feast, nor do they forego interest and extend loans to failing businesses unless they see some realistic prospect of profit from successful recovery. The further comfort he offered was that I need not conclude such recovery is close to being guaranteed: only that it has a reasonable prospect. This is not a ringing endorsement.

202. However, and again in light of the Relevant Alternative, I have sought to assess whether there are sufficiently cogent indications that the proponents of the Plan are in this for some short term advantage which might be had from re-packaging the Plan Company, having rid it of onerous lease obligations, that I should, in effect, discount their stated objectives of a successful rescue and assume a different agenda. I have ultimately concluded that, given also the support of (even though short of a statutory majority) Class B and C Landlords, I should accept that there is a realistic prospect of the Plan achieving its objectives and should not assume undisclosed collateral purposes. Given the uncertainties and equivocation I have felt, I would expect future restructuring plans to be more specific as to how the relevant plan's objectives are to be achieved.

203. Before expressing my final conclusion, however, I turn to consider certain other objections put forward by the Opposing Creditors.

J. The Opposing Creditors' further points

204. I have already discussed the concerns expressed by the Opposing Creditors in relation to the suggested inadequacy of the information provided (especially about the PLL Guarantee and the basis for it being valued at nil), and their suggestion that they might be *'worse off'* in the Relevant Alternative. My focus now is on a point that ultimately Sir Iqbal Sacranie placed at the forefront as his principal argument.

205. Sir Iqbal submitted, if I may say so, very ably, concisely and politely, that (a) the *"wholesale compromise"* of the Opposing Creditors' guarantees against PLL *"is more intrusive than is necessary or proportionate"* and (b) furthermore, that *"the Restructuring Plan itself, at Clause 20.5, demonstrates a less intrusive mechanism for materially comparable third-party guarantees: the guarantees…are expressly preserved – not compromised, released or otherwise affected, while the risk of ricochet claims is met by releasing only the guarantor's own indemnity, contribution or subrogation claim against the Plan Company."*

206. He invited the Court, if it is to sanction the Plan at all, to do so subject to the amendment he proposes. This is that Clause 20 be modified so that the Opposing Creditors' guarantee rights against PLL are not compromised, released or otherwise affected, and that in lieu thereof any right of PLL to claim indemnity, contribution or subrogation from the Plan Company arising out of those guarantees be released, as provided for in respect of the guarantees presently the subject of Clause 20.5.

207. This is a neat but, I have concluded, flawed proposal. The flaw is in equivalating the guarantees which are the subject of Clause 20.5 of the Plan, where the obligor is an entity outside the Group, with the PLL Guarantee where the obligor is within the Group (and, in fact, the Plan Company's parent) and is also the tenant of the Group distribution centre and head office. In the first case, there is neither need nor justification to release the guarantor save as regards any onward ("ricochet") indemnity claim against a Group entity. By contrast, in the second case, the guarantor (PLL) is part of the capital structure and any call on it would have a direct effect and potentially diminishes, indeed undermines, the compromise intended to be effected by the Plan. That is of especial concern in the particular circumstances because PLL is a holding company and does not possess any material assets other than its shareholding in the Plan Company. The value of any claim against PLL under the PLL Guarantees, and the ability of PLL to satisfy any guarantee obligation, are therefore intrinsically linked to the value and financial position of the Plan Company.

208. For good measure, Mr Smith also referred me to the decision of Michael Green J in *Re Fitness First Clubs Limited* [2023] EWHC 1699 (Ch), which was also mentioned in the Plan Company's skeleton argument and which he suggested offered a very close and helpful analogy. In that case, the judge explained the position as follows:

> "*(1) [it was] said that it was obvious that any claims against Maddox which it is unable to pay must be compromised to ensure that the Group is not at risk of an uncompromised claim against an insolvent parent which (at lowest) could result in enforcement action being taken against Maddox. Of itself, he said this is a sufficient commercial reason for the guarantee to be compromised.*
>
> …
>
> *(3) any such demand or enforcement action against Maddox could also undermine the basis on which the Group is intended to operate post-restructuring as well as posing a risk to the Company's ability to continue as a going concern. That is because: (i) as the sole shareholder in the Company, Maddox is integral to the corporate structure of the Group post-restructuring being the entity in which the shareholders hold their shareholdings in the Group and the sole shareholder of the Company; and (ii) critically, if Maddox were to enter administration then it is likely that an office holder would seek*

> *to try and realise any value in its principal asset, namely its shareholding in the Company, which would at the lowest seriously destabilise the Group.*
>
> *(4) in the light of the proximity of the connection between the Company and its parent, which is commercially dependent on the Company to generate revenue would simply not be commercially justifiable nor make any commercial sense to allow two Plan Creditors to retain their uncompromised guarantee claims against the insolvent parent (and might otherwise give rise to complaint by other Plan Creditors that they would be receiving favourable treatment under the Plan which is not justified by the financial position of Maddox).*"

209. In any event, the support to be provided by the Fortress Funds as part of the Plan, including the remaining £4.5 million of funding to be made available under Facility A of the SLA Facility, is conditional upon the terms of the Plan, which include the compromise of the PLL Guaranteed Leases. Fortress has confirmed that it would not support a restructuring which left the guarantee claims against PLL outstanding.

210. I cannot, therefore, accept the Opposing Creditors' suggestion that Clause 20.5 of the Plan be amended as they have proposed.

211. I have addressed already the point floated by Mr Langton of RCGU Properties Ltd as to whether the Plan is likely to achieve its stated objective (see paragraphs [189] to [202] above). For comprehensiveness, I confirm that I do not consider any of the somewhat amorphous points he advanced tells against sanction of the Plan.

212. Certain other Plan Creditors indicated concern about the Plan in correspondence, but after the Plan Company had replied to address the points made did not pursue any objection. Mr Smith explained the content of the correspondence in his skeleton argument, and I confirm I have considered the exchanges detailed; but I do not think it necessary to rehearse any of those matters in this judgment, given that none of the Plan Creditors concerned appears to have wished to pursue the matter.

K. *Substantial effectiveness in Scotland and Northern Ireland*

213. The last matter I must address arises from the fact that although the vast majority of the Leases and related liabilities to be compromised under the Plan are governed by English law and relate to properties situated in England, there are 31 Leases which relate to premises in Scotland and are governed by Scots law and 14 Leases which relate to premises in Northern Ireland and are governed by Northern Irish law. Where a plan is intended to take effect outside of England and Wales, the Court needs to be satisfied that it is likely to have effect in the 'foreign' jurisdiction and that it is not acting in vain in sanctioning the Plan. That, as it seems to me, is particularly important where the Plan would affect real property, which is a matter for the *lex situs*.

214. The relevant principles were summarised by Miles J in *Re Cine-UK Ltd* [2024] EWHC 2475 (Ch) at [145]:

> "*(a) In practice, this requirement that the Court will need to be satisfied that the Plans will have "substantial effect" and will achieve their purpose Re Magyar Telecom BV [2014] B.C.C. 448 at [16], per David Richards J.*

> *(b) Where a restructuring plan involves the compromise of rights governed by foreign law, Court will therefore need to consider whether the effectiveness of the Plans in the relevant foreign jurisdictions in which the company has liabilities or assets: Sompo Japan Insurance Inc v Transfercom Ltd [2007] EWHC 146 (Ch) at [18]-26].*
>
> *(c) The English court does not need certainty as to the position under foreign law, but it does require some credible evidence that it will not be acting in vain: Van Gansewinkel Groep BV [2015] Bus.L.R. 1046 at [71]. Such credible evidence must show that the Plans "at least will have a real prospect, of having substantial effect": Codere Finance 2 (UK) ltd [2020] EWHC 2683 at [34].*
>
> *(d) Further, the Court will only be acting in vain if it can be shown that the exercise of the jurisdiction to sanction the Plans would serve no discernible purpose at all: Sompo Japan at [20].*"

215. The Plan Company has obtained legal opinions on Scots law from Michael Thomson, an experienced Solicitor and a partner and the head of the Restructuring and Insolvency practice at Burness Paull LLP, and on Northern Irish law from Lindsay Harten, who holds the role of Counsel and leads the restructuring and insolvency team at Davidson McDonnell Limited. These expert opinions respectively confirm that the Plan would be likely to have substantial effect in Scotland and Northern Ireland and would be recognised by the courts of those jurisdictions if recognition is sought.

216. The essential reasoning, in each case, is that Part 26A is a UK Act of Parliament binding in Scotland and Northern Ireland. A restructuring plan sanctioned under Part 26A would therefore automatically be recognised and given effect by the Scottish and Northern Irish Courts.

217. I accept this evidence.

L. *Conclusion*

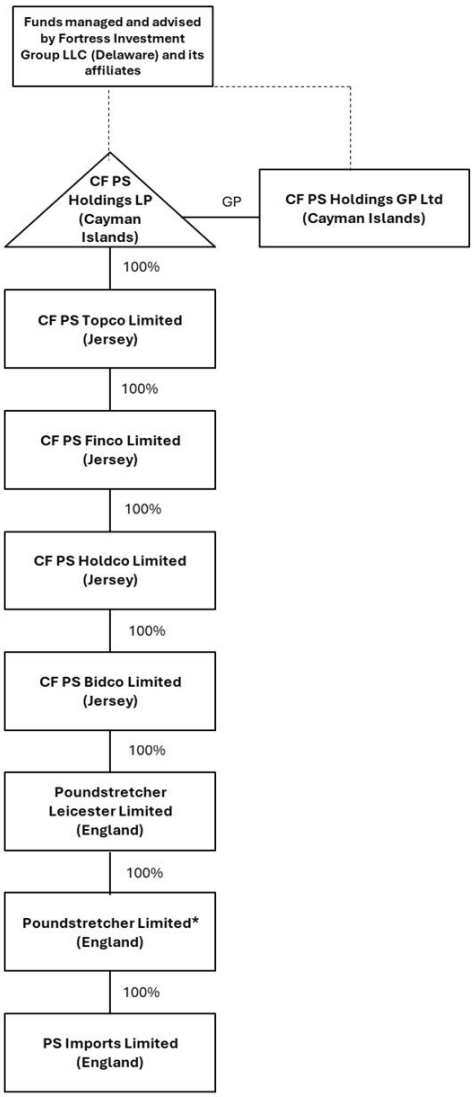
218. Plans such as this which depend in the event on the Court overriding the views of a number of Landlord classes and imposing on them terms which they reject require sceptical and especially detailed review. The Court's cross-class cramdown jurisdiction can be salutary, but it is exceptional and its exercise must be carefully justified.

219. I have had concerns and reservations about this Plan which I have sought to identify and resolve in this judgment.

220. In the end, however, I have been persuaded that in the round, the Plan is fair and should be sanctioned by the Court. I shall invite Counsel to identify any unusual provisions in it; but subject to that I shall make an order in the terms of the draft sanction order, as amended to reflect the participation of the Opposing Creditors (by Sir Iqbal Sacranie) and RCGU Properties Ltd (by Mr Stephen Langton).

Annex A

Simplified ownership structure



* Plan Company