Neutral Citation Number: [2024] EWHC 2475 (Ch)

Case No: CR-2024-004918
Case No: CR-2024-005592
Case No: CR-2024-005617

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 30/09/2024

Before :
MR JUSTICE MILES

IN THE MATTER OF CINE-UK LIMITED
AND IN THE MATTER OF CINEWORLD CINEMAS LIMITED
AND IN THE MATTER OF CINEWORLD CINEMA PROPERTIES LIMITED
AND IN THE MATTER OF CINEWORLD ESTATES LIMITED

And Between :

UK COMMERCIAL PROPERTY FINANCE HOLDINGS LIMITED

Claimant

- and -
(1) CINE-UK LIMITED
(2) CINEWORLD ESTATES LIMITED

Defendants

And Between :

THE CROWN ESTATE COMMISSIONERS

Claimant

- and -
(1) CINE-UK LIMITED
(2) CINEWORLD ESTATES LIMITED

Defendants

- -

Tom Smith KC, Henry Phillips and Annabelle Wang (instructed by **Kirkland and Ellis LLP**) for the **Plan Companies/Defendants**
Ben Shaw KC (instructed by **RLS Solicitors Limited and Cripps LLP**) for **the Objecting creditors/Claimants**

Hearing date: 26 September 2024

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Approved Judgment

Mr Justice Miles :

Introduction

1. Cine-UK Limited ("CUKL"), Cineworld Cinemas Limited ("CWCL"), Cineworld Cinema Properties Limited ("CCPL") and Cineworld Estates Limited ("CWEL"), (together, the "Plan Companies") seek orders pursuant to sections 901F and 901G of the Companies Act 2006 sanctioning four restructuring plans (the "Plans") between each of the Plan Companies and certain of their creditors (the "Plan Creditors"). This judgment adopts some defined terms used in the Plan documentation; where relevant the definition is given below.

2. The Plan Companies are part of a group of companies (the "Group"), which operate cinemas in ten countries, including in the US and the UK.

3. The Group's UK cinemas are operated under the "Cineworld" brand and the "Picturehouse" brand (the "UK Group"). The Plans mainly concern the "Cineworld" cinemas of the UK Group.

4. The business of the Group was severely adversely impacted by the Covid-19 pandemic and government restrictions. This resulted in the Group undertaking a reorganisation under Chapter 11 of the US Bankruptcy Code in 2023. The Chapter 11 plan provided some liquidity and headroom in relation to the Group's financial indebtedness, but did not address the UK Group's lease liabilities in respect of its cinema sites.

5. A significant number of the UK Group's leases are described in the evidence as "over-rented" (that is, the contractual rent is in excess of market rent). This factor, together with difficult trading conditions arising from the screen actors' and writers' strikes in 2023, has resulted in the UK Group continuing to suffer severe financial difficulties.

6. The Plan Companies' case is that if the Plans are not sanctioned, the Plan Companies will have insufficient funds to meet their payment obligations to creditors including, materially, their quarterly rent, service charge and insurance payments of £16.7 million (and total obligations of £19.1 million) due on 29 September 2024. Their case is that, if the Plans are not sanctioned, the most likely outcome is that the Plan Companies' directors will have to place the companies into administration. They say that in that event it is most likely that some of the business and assets of the UK Group would be sold by way of a pre-packaged sale to US companies of the Group or to the Group's secured lenders.

7. The Plan Companies say that this is the "relevant alternative" for the purposes of the Act. They also say that this would result in a worse outcome for each class of Plan Creditors than that proposed under the Plans.

8. The Plans have five main features: (i) compromising and releasing the Plan Companies' secured loan obligations to the US Group in exchange for warrants for shares in the Plan Companies, and releasing the Plan Companies' unsecured intercompany liabilities, (ii) recapitalising the UK Group through £16 million of new equity funding from the Plan Companies' indirect parent company to fund the UK Group's immediate liquidity needs, with further funding of up to £35 million available to fund capital expenditure on the satisfaction of certain conditions, (iii) amending and extending time

for payment in respect of the Plan Companies' obligations to their secondary secured lenders, (iv) restructuring the Plan Companies' portfolio of leases, and (v) compromising and releasing the Plan Companies' unsecured property and business rates liabilities.

9. The landlord-related provisions of the Plans follow the model used in a number of other plans including *Re Virgin Active Holdings Ltd* [2021] EWHC 1246 (Ch), *Re Listrac Midco Ltd* [2023] EWHC 460 (Ch) and *Re Fitness First Clubs Ltd* [2023] EWHC 1699 (Ch).

10. The convening hearing took place on 28 August 2024 before Edwin Johnson J, who made an order granting the Plan Companies permission to convene thirty-one meetings of Plan Creditors.

11. The Plan meetings took place on 18 September 2024. Each of the Plans was approved by over 75% in value of those voting at the meetings of two classes of creditors: the Intercompany Lender class and the Term Loan Lender class. In addition:

    (a) the CUKL Plan was approved by the requisite majorities of the CUKL General Property Creditors and the CUKL Business Rates Creditors;

    (b) the CWCL Plan was approved by the requisite majorities of CWCL Business Rates Creditors; and

    (c) the CCPL Plan was approved by the requisite majority of the Class B Landlord Creditors.

12. The requisite majority was not obtained at the other class meetings.

13. The Plan Companies now seek an order sanctioning the Plans under section 901F of the 2006 Act, including an order for cross-class cram down of the dissenting classes under section 901G.

14. The Plan Companies' position is that: (i) the statutory conditions for cross-class cram down are satisfied; (ii) the dissenting creditors are "out of the money" in the relevant alternative, save in two very limited respects, and their views therefore carry very little or no weight; and (iii) the Plans are fair to all classes, and there is no or no good reason why the Plans should not be sanctioned. The Plan Companies say that the Plans are necessary to save the Plan Companies from an insolvent administration, in which Plan Creditors would be materially worse off, and represent a fair distribution of the benefits of the Plans.

15. There were no opposing creditors at the convening hearing.

16. There has been correspondence with a number of creditors concerning the Plans. The Plan Companies have been able to reach consensual resolutions with a number of Landlord Creditors who have raised particular issues.

17. There are however two creditors who have very recently issued applications for injunctive relief against two of the Plan Companies at the sanction hearing:

(a) UK Commercial Property Finance Holdings Limited ("UKCP") issued an application for an injunction on 20 September 2024. The application arises from two side letters provided to UKCP in respect of the renegotiations of CUKL's lease of a property in Swindon and CWEL's lease of a property in Glasgow. In the side letters CUKL and CWEL agreed that, in the event that they proposed a restructuring plan, they would not seek to make further amendments to UK Commercial Properties' leases in respect of those two premises.

(b) The Crown Estate Commissioners ("the Crown Estate") issued proceedings on 25 September 2024 concerning leases in Newcastle upon Tyne and Harlow, Essex the terms of which were renegotiated in September 2023. In a Side Letter dated 27 September 2023 CUKL and CWCL undertook for the period of three years not to seek further to compromise the relevant leases by way of a restructuring plan.

18. UKCP and the Crown Estate ("the Objectors") contend that by promoting a restructuring plan which seeks to compromise liabilities under or by reference to the relevant Leases the Plan Companies have breached these undertakings. They seek injunctions to remove the relevant Leases from the Plans.

19. The evidence in support of the sanction application consists of:

(a) the first and second witness statements of Roei Kaufman. Mr Kaufman is a director of the Plan Companies. His first statement sets out the relevant background to the Plans. His second statement updates the court on matters since the convening hearing;

(b) the second witness statement of Katie Lacey of the information agent describes the steps taken to distribute the Explanatory Statement and related documentation to Plan Creditors following the convening hearing;

(c) the first statement of John Curry, a director of US Group companies;

(d) the first statement of James Watson; and

(e) the first witness statement of Simon Granger.

20. There was separate evidence in relation to the Objectors' applications for injunctions which I shall refer to below.

Factual background

The Plan Companies and the wider Group

21. The Plan Companies are each incorporated in England and Wales and are the primary tenant entities within the UK Group.

22. The Group also operates a substantial number of cinemas in the United States under the "Regal Cinemas" brand (the "US Group"). As already explained, the US Group underwent a Chapter 11 plan of reorganisation in 2022 and 2023. The Chapter 11 plan did not address the UK Group's lease portfolio. The Plan Companies say the lease portfolio is "over-rented" in the sense already explained.

23. The Plan Companies are guarantors of the Group's principal financing arrangements, comprising: (a) a loan of about US$1.6 bn (the "Term Loan") made pursuant to a New York law governed agreement, the principal borrower of which is Crown UK Holdco Limited; and (b) a revolving credit facility of US$250 million (the "RCF", together with the Term Loan, the "Senior Facilities"), the principal borrowers of which are Crown UK Holdco Limited and Crown Finance US Inc.

24. The Plan Companies' business is deeply unprofitable, and they have insufficient liquidity to meet their upcoming quarterly rent, service charge and insurance, and other obligations totalling £19.1 million due in September 2024.

25. The UK Group has been reliant on the US Group for liquidity since at least July 2023 and has been unable to meet its obligations from its own operations. The US Group provided c.US$65 million in unsecured funding to the UK Group between July 2023 and 30 June 2024, to enable the UK Group to pay inter alia its Covid-19 related rent arrears and professional fees, and capital expenditure payments. The US Group has explained that it is not willing to continue to support the UK Group in the absence of a comprehensive restructuring.

26. The US Group provided bridging funding of £19 million required for the UK Group to meet its quarterly rental obligations due in June 2024 (the "New Intercompany Loan") on a first-priority basis but only on the condition that the UK Group pursue a restructuring. That facility matures on 1 October 2024.

Background to the proposed restructuring

27. The Group has in recent years engaged in attempts to negotiate consensual rent solutions with landlords, including landlords of the Plan Companies. Before the Group's emergence from the Chapter 11 Plan, management of the UK Group negotiated 18 consensual deals with landlords, which resulted in savings of approximately £4.9 million per annum across its lease portfolio (which savings have been factored into the UK Group's financial forecasts).

28. More recently, the Plan Companies also reached agreement with one landlord, Aviva Life & Pensions UK Limited ("Aviva") in respect of three sites, as a result of which it has not included those leases in the restructuring. A similar agreement was very recently reached with M&G.

29. There remained a substantial number of sites where it was not practicable to reach a consensual agreement with the relevant landlord.

30. Consensual agreements were reached with the Objectors in 2023. However, unlike the position with the recent deals with Aviva and M&G, the Plan Companies have included them in the Plans. Their position is addressed separately below.

31. The Group has also actively considered a sale of the shares in the UK Group to a new investor. AlixPartners UK LLP ("AlixPartners") was engaged to conduct a marketing process which commenced in May 2024. A number of potential buyers were contacted. No indicative bids were received and there are no extant discussions with interested parties.

32. I am satisfied by the evidence (to which there was no challenge) that if the Plans are not sanctioned, the Plan Companies will have insufficient liquidity to meet their quarterly obligations due in September 2024. The shortfall will be large – some £19m odd. The group cashflow shows that this will not be a temporary dip but that the shortfall will get worse. The evidence about the Plan Companies' inability to pay their debts as they fall due is supported by the opinion of AlixPartners.

33. If the Plans do not proceed, this will also trigger a default under the New Intercompany Loan (which in any event matures on 1 October 2024). That will, in turn, trigger cross-defaults under the Term Loan.

The relevant alternative

34. I am satisfied that in such circumstances, the Plan Companies' directors are likely to have to place the Plan Companies into insolvent administration, in which it is most likely that the valuable business and assets of the Plan Companies would be sold. It is most likely that, in the absence of a competing and deliverable offer being obtained in an accelerated marketing process, the US Group would acquire the assets by way of a partial credit bid of the New Intercompany Loan liabilities and additional cash payments or, if the US Group does not have sufficient available resources to fund the acquisition, certain of the Term Loan Lenders would acquire the assets of the Plan Companies by way of a credit bid of the Term Loan liabilities. I am satisfied on the evidence that this is the relevant alternative for the purposes of the Part 26A of the Act.

Further funding under the Plans

35. If the Plans are sanctioned, the Intercompany Lender has agreed to provide (i) £16 million of new equity funding to the Plan Companies on or before 29 September 2024, and (ii) a further amount of up to £35 million for the purpose of funding capital expenditure, subject to certain conditions concerning the financial position of the UK Group. The directors anticipate that the costs savings generated through the Plans and the new funding will enable the Plan Companies and UK Group to continue operating as a going concern.

Returns under the Plans

36. The Plan Companies have obtained a report from AlixPartners to assess the likely returns to the Plan Creditors in the relevant alternative. This relies in turn on valuations carried out by Grant Thornton. AlixPartners' report concludes that the only source of recovery for unsecured Plan Creditors in the relevant alternative of the CUKL Plan and the CWCL Plan is the "prescribed part" (as defined in the Insolvency Act) which is capped at £800,000. No or only de minimis assets are expected to be available for distribution to unsecured Plan Creditors in the relevant alternative administrations of CCPL and CWEL.

37. The Plans have been designed to ensure that Plan Creditors are no worse off than in the relevant alternative, as Plan Creditors are entitled to a payment of the higher of 150% of the amount they would get in an administration (called the Estimated Insolvency Return) or £1,000. The "floor" of £1,000 operates to ensure that unsecured Plan Creditors of CCPL and CWEL receive some payment under the Plans. I shall say more below about the treatment of the various classes of Plan Creditors.

Support agreement

38. In advance of the convening hearing, the Plan Companies entered into a restructuring support agreement (the "Restructuring Support Agreement") with the Intercompany Lender and approximately 75.2% of the Term Loan Lenders by value, pursuant to which the relevant lenders committed to forbear from taking any action with respect to any default that may arise as a consequence of the Plan Companies launching the Plans, as well as to vote in favour of the Plans and to enter into the documentation necessary to implement the Plans. No consent or other fees are payable under the Restructuring Support Agreement.

Plan Creditors and excluded creditors

39. The Plan Creditors comprise: first, the Intercompany Lender: in respect of (i) the New Intercompany Loan of some £19m, in respect of which it has first-ranking security over the assets of the UK Group, and (ii) its unsecured liabilities pursuant to intercompany loans in the sum of c.£64.8 million. The Intercompany Lender voted in favour of each of the Plans in a single class in respect of its secured liabilities under the New Intercompany Loan and unsecured liabilities under the Other Intercompany Loans. The unsecured liabilities were included in this class to avoid any suggestion that they would dilute the other unsecured liabilities.

40. Second, the Term Loan Lenders: in respect of their liabilities under the Term Loan, in respect of which they have second-ranking security over the assets of the UK Group. The Term Loan Lenders also voted in favour of each of the Plans.

41. Third, Landlords under various leases entered into by the Plan Companies. The Lease Liabilities have been divided into four categories following an assessment of the Plan Companies' lease portfolio, using objective criteria. This was based on advice from CBRE. The categories are as follows:

(a) Class A Leases: These are commercially viable on current lease terms. The Class A Leases are not included in the Plans as no amendments are necessary or required by the Plan Companies. There are 38 Class A Leases.

(b) Class B Leases: These are uneconomic on current terms and are over-rented relative to market rates, but which would be rendered viable by bringing the rent into line with present estimated rental values or "ERV". There are 33 Class B Leases.

(c) Class C Leases: These are uneconomic on current terms and require a more substantial rent reduction in order to place the sites on a viable footing. The Class C Leases are sub-divided under the Plans into two sub-classes comprising (i) 10 Class C1 Leases, which will have rent amended to a turnover rent, and (ii) 6 Class C2 Leases which will have rent amended to £0.

(d) Class D Leases: These are commercially unviable and under the Plans the Plan Companies will be released from all liabilities under them. The Class D Leases are sub-divided under the Plans into three sub-classes comprising (i) 6 Class D1 Leases, which will be exited under the Plans, (ii) 3 Class D2 Leases, which relate to non-trading, vacant sites in respect of which the Plan Companies will be released from all liabilities under the Plans, and (iii) 2 Class D3 Leases, which relate to sites which CUKL has sub-let to sub-tenants, in respect of which CUKL will be released from all liabilities under the CUKL Plan.

42. Fourth, seventeen of the Leases to be compromised by the Plans are guaranteed by other Group entities. These have been placed into five classes of "Guaranteed Landlord Creditors" (Class B, Class C1, Class C2, Class D1 and Class D2 Guaranteed Landlord Creditors).

43. Fifth, the Plan Companies' other unsecured liabilities. These comprise two classes:

(a) General Property Creditors: which are creditors with a claim against the Plan Companies in respect of general unsecured property liabilities.

(b) Business Rates Creditors: which are local authorities with business rates claims against the Plan Companies.

44. The Plans exclude certain liabilities, which are not to be compromised:

(a) The Lenders under the Revolving Credit Facility: the RCF is secured over the assets of the Group including by an all-asset debenture granted by UK incorporated loan parties dated 31 July 2023. The lenders of the RCF are not included in the Plans because, although they are not anticipated to make any recovery in the relevant alternative with respect to the collateral over the UK Group's assets, they would likely recover in full by virtue of their security in respect of the wider Group.

(b) Class A Leases: as set out above, there are a total of 38 Class A Leases which are commercially viable on current lease terms. As such, it is not necessary or required to compromise these leases through the Plans. If the Plan Company had attempted to compromise the claims of the Class A Landlords, then those landlords would have been likely to forfeit the relevant leases and re-let the premises to a new tenant (given that they are profitable and viable sites). I am satisfied that to include them would have undermined the Plan Companies' business and defeated the purpose of the Plans.

(c) The Aviva Compromise Leases: as set out above, CUKL and CWCL have negotiated a consensual rent compromise with one landlord, Aviva in respect of 3 sites (1 Class A Lease, 1 Class B Lease and 1 Class C Lease). The relevant sites will be commercially viable as a result and will not be compromised under the Plans. A similar deal was recently reached with M&G as landlord.

(d) Head Office Lease: the lease of the Cineworld Group's head office building has not been included in the Plans as it does not relate to a cinema site and is of central importance to the continued operation of the business of the Cineworld Group.

(e) Liabilities owed to trade creditors: liabilities to trade creditors are not compromised under the Plans as the continued supply of goods and services by trade creditors is critical to the continued day-to-day operation of the business of the Cineworld Group.

(f) Liabilities owed to customers: liabilities to customers, principally in respect of the "Unlimited" program, are not included in the Plans as the Plan Companies reasonably consider that compromising liabilities to customers would damage the brand and the business of the Cineworld Group, and the wider Group.

(g) Liabilities to employees: liabilities to employees, which include pension contributions as well as salary payments, are not included under the Plans as the employees are critical to the ongoing business of the Cineworld Group, and the Plan Companies reasonably consider that compromising these liabilities would likely cause the employees to withdraw their services.

(h) Tax liabilities owed to HMRC: the Plan Companies do not have any material outstanding liabilities to HMRC. However, to the extent there are any such liabilities owed to HMRC due in the ordinary course of business, it is anticipated that those liabilities would be discharged in full in the relevant alternative.

Treatment of Plan Creditors

45. Under the Plans, the Plan Companies' secured liabilities of £19m odd to the US Group will be released in full in exchange for warrants for shares in the Plan Companies, which will entitle the Intercompany Lenders to subscribe for shares in each Plan Company from the Restructuring Effective Time until the date falling one year from that time. This loan is therefore being equitized. The unsecured intercompany loans (of £64.8m) will be released in full in exchange for payment of the higher of 150% of the Estimated Insolvency Return or £1,000 in respect of those liabilities. However, the US Group has agreed to waive this entitlement.

46. Under the Plans, the Term Loan will be amended to (i) extend the PIK election under the Term Loan Agreement by six months to 31 July 2025, and (ii) extend the maturity of the Term Loan by six months to 31 January 2029. In return for the Term Loan Lenders agreeing to the amendments to the Term Loan, the Plan Companies have agreed to extend the existing call protection provisions for a period of four months. The purpose of the amendments to the Term Loan Credit Agreement is to provide the Plan Companies with some additional breathing space and to assist with easing liquidity pressures.

47. The treatment of the Lease Liabilities is set out in the Explanatory Statement. It is complex and I shall not set out the full treatment here. Depending on the Class of landlord, there are provisions relating to the amounts of rent, the payment of arrears, and break clauses. Specifically, in exchange for the compromises of future rent under the Leases, Landlord Creditors are given a break right (or, in the case of the Class C1 and Class C2 Landlord Creditors, a number of break rights, to reflect the more onerous amendments being made to the terms of their Leases) under the Plans which entitles them to terminate the Lease. This has become customary in plans which seek to compromise lease liabilities. The break right operates to mitigate any unfairness resulting from the rent reductions, by giving Landlord Creditors a choice as to whether to be bound by them.

48. In respect of the Guaranteed Landlord Creditors, the Plans will modify the relevant landlord's claims against the guarantor(s) to reflect the terms of the amended Leases to prevent "ricochet" claims against the Plan Companies, which would defeat the purpose

of the Plan. The potential recoveries from guarantors have been taken into account in designing the Plans to ensure that all creditors are no worse off; the Guaranteed Landlord Creditors will receive a payment in the sum of the aggregate of 150% of their Estimated Insolvency Return in the administration or liquidation of the Plan Company tenant and the relevant guarantor.

49. The Plans will also compromise the claims of the Other Unsecured Plan Creditors against the Plan Companies:

(a) General Property Creditors: in respect of these liabilities, the Plan Companies will be released from their obligations in exchange for a payment of the higher of 150% of their Estimated Insolvency Return or £1000.

(b) Business Rates Creditors: in respect of these creditors (i) business rates arrears in respect of all Leases to be compromised by the Plans will be released in full, and (ii) business rates for the current ratings year in respect of the premises rented pursuant to the Class C Leases and Class D Leases will be released in full, in each case in exchange for payment of the higher of 150% of their Estimated Insolvency Return or £1000. The Plan Companies will also pay to the Business Rates Creditors in respect of premises under the Class C1 Leases, the Class C2 Leases and Class D1 Leases an amount equal to the relevant Plan Company's liability for business rates for a period of 30 days commencing on the Restructuring Effective Date, to reflect the fact that in the relevant alternative the administrators would likely remain in occupation of these premises for a 30 day period to undertake strip out works and thereby remain liable for business rates for that period.

The convening hearing and other procedural steps

50. As already explained, the convening hearing took place on 28 August 2024 before Edwin Johnson J. He concluded that:

(a) Each of the Plan Companies was a "company" for the purposes of Part 26A.

(b) Condition A (that the relevant Plan company has encountered or is likely to encounter financial difficulties that are affecting or will or may affect its ability to carry on business as a going concern) was satisfied on the facts.

(c) The Plans are compromises or arrangements within the meaning of the Act.

(d) The remaining requirement of Condition B (that the purpose of the compromise or arrangement must be to eliminate reduce or prevent or mitigate the effect of any of the financial difficulties) was satisfied on the facts.

(e) There were no jurisdictional roadblocks to the Plans.

(f) Plan Creditors should be divided into up to 14 classes for each Plan Company.

(g) The rights of the Objectors under the side letters did not fracture the classes of Lease to which they would otherwise belong.

51. The Explanatory Statement and related documentation (the "Plan Documentation") were duly made available to Plan Creditors on 28 August 2024.

52. As already noted, in accordance with the Convening Order, the Plan Meetings took place on 18 September 2024.

53. There were various amendments to the Plans to address issues that had been raised in relation to the strip out works that Plan Companies could properly undertake in the event that a Lease was determined, including under the Plans. This arose from correspondence between the Plan Companies and various creditors. The Plans were amended accordingly in advance of the Plan Meetings.

54. In addition, the Plan Companies have agreed a resolution with a creditor called Waterfront on mutually acceptable terms. Under this resolution (which is contingent on sanctioning of the Plans) the Parties have agreed to execute a deed of variation amending the terms of the Waterfront Leases. Second, the Plan Companies have undertaken to modify the CUKL Plan to remove references to the Waterfront Landlords (the "Modifications") and the relevant Leases and have agreed to seek sanction of the CUKL as modified. Mr Kaufman has explained the commercial reasons why the Plan Companies consider that the settlement is appropriate and in the best interests of Plan Creditors at [80] of Kaufman 2. I am satisfied that those reasons constitute a good reason for the amendments.

55. The Court has an inherent jurisdiction to effect amendments to a Part 26A plan, after it has been voted upon, but before it has been sanctioned: *Equitable Life Assurance Society* [2002] BCC 319 at [102]; *Re AON Plc* [2020] EWHC 1003 (Ch) at [17]-[18]; and *Re Plusholding* [2024] EWHC 828 (Ch) [19]-[20]. In the present case, both the voting forms and the poll cards provided to creditors stated that "Any vote in favour of the Plan Company's Restructuring Plan will be a vote in favour of the Restructuring Plan subject to any modifications proposed by the Plan Company and approved by the Court". Assuming sanction of the Plans is otherwise justified, it would be appropriate to sanction them with the proposed modifications. They are substantially the same as the Plans as voted on and the modification would not impose different Plans on the consenting creditors. I am satisfied that their assent is not undermined or called into question by reason of the modification.

The position of the Objectors

56. The Objectors' Leases have been included within the Plans and the Plan Companies seek the sanction of the court with them included. The Objectors seek injunctions to remove these Leases from the Plans relying on their contractual rights contained in the side letters.

57. The Plan Companies say that the rights under the side letters are themselves capable of being compromised by the Plans and they invite the court to address them as part of the sanction exercise. The Objectors say that there is a prior question whether their claims should have been included in the restructuring process at all and that this needs to be decided first. I shall address these arguments below. It is convenient, for ease of exposition, to address the conditions for sanction of a plan generally first and then separately address the Objectors. By taking this approach, I am not pre-empting the issue of the logical order in which to address the arguments.

The power to sanction the Plans

58. Section 901F contains the power to sanction a restructuring plan. It is subject to section 901G which provides that the Court may exercise its power to sanction a plan under section 901F notwithstanding that the arrangement has not been approved by the requisite majority in each meeting of creditors, provided that conditions A and B are met. The Plan Companies seek to rely on section 901G in the present case to cram down the dissenting classes.

59. In *Re Virgin Active* at [104], Snowden J outlined a three stage approach for such cases: (a) satisfaction of the "no worse off" test (Condition A), (b) has the plan been approved by at least one class? (Condition B), and (c) in all the circumstances should the Court exercise its discretion to sanction the restructuring plan?

Conditions A and B

60. The no worse off test requires the court to identify the relevant alternative: i.e. "whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned".

61. In this regard, the views of the directors are to be given weight.

62. In the present case, there is no challenge to the relevant alternative being an insolvent administration of the Plan Companies. I am satisfied that the Plan Companies' evidence is cogent and rational:

    (a) The Plan Companies are currently experiencing acute financial difficulties. Their business is, among other things, deeply unprofitable (given the number of unprofitable leases in their portfolio).

    (b) The Plan Companies are, and have been for some time, reliant on the financial support of the US Group to continue trading. But the US Group is no longer willing to continue to support the UK Group's unprofitable business.

    (c) The Plan Companies will very shortly run out of cash, and will have insufficient cash to pay: (i) their quarterly rent, service charge and insurance obligations of £16.7 million, (and total obligations of £19.1 million) fall due on 29 September 2024; (ii) the New Intercompany Loan matures on 1 October 2024; and (iii) the Term Loan, will become immediately due and payable upon a cross-default triggered by a default under or the maturity of the New Intercompany Loan.

    (d) In those circumstances, the directors are most likely to have to place the Plan Companies into administration if the Plans fail.

    (e) The US Group and the Term Loan Lenders have expressly confirmed that they would bid for the valuable assets and business of the Plan Companies in a pre-packaged sales process.

63. I am also satisfied that under the Plans none of the classes of creditors would be worse off than in the relevant alternative. As already explained, the Plans have been specifically designed to ensure that Plan Creditors are no worse off in the relevant alternative, by payment of the higher of 150% of their Estimated Insolvency Return or

£1,000. Guaranteed Landlord Creditors will receive the aggregate of their estimated return in the administration of the relevant Plan Company and the administration or liquidation of the relevant guarantor. The return to Plan Creditors in the relevant alternative has been modelled by AlixPartners and that analysis shows that each class of creditor (and each creditor within each class) is better off under the Plans.

64. I am satisfied next that Condition B under section 901G is met. Each of the Intercompany Lender and the Term Loan Lenders have voted in favour of the Plans and are "in the money" in the relevant alternative.

65. There has been no challenge to the inclusion of these classes by the Court at the convening hearing. I am satisfied that there has been no artificiality in the formulation of these classes of creditor. First, The Intercompany Lender is equitizing its secured lending and is waiving its right under the unsecured part of the Intercompany Loans. Second, the Term Loan Lenders' rights under the Term Loan will be subject to the amendments detailed above, in order to provide the Plan Companies with breathing space and assist with easing liquidity pressures, in exchange for which the Plan Companies have agreed to extend the call protection under the Term Loan.

Discretion

66. I turn to the third limb, discretion. The Court has a general discretion to decide whether or not to sanction a restructuring plan. As noted by the Court of Appeal in *Re AGPS BondCo Plc* [2024] EWCA Civ 24 (*"AGPS"*) at [105], the statute itself gives little guidance on the factors that are relevant when the Court is exercising this discretion.

67. In respect of the assenting classes, it is well-established that the court will apply the principles that are applied in schemes of arrangements. However, the established approach requires radical modification where a dissenting class has voted against a restructuring plan or has failed to vote in favour by the required 75% majority, and the plan company seeks to rely upon section 901G to persuade the court to impose the plan upon the dissenting class: *AGPS* at [118].

68. In deciding whether to sanction a restructuring plan as against a dissenting class, it is relevant to consider whether the dissenting class is "out of the money". When the dissenting creditor is "in the money" in the relevant alternative, the focus will be on the "horizontal comparison" between the members of the dissenting class and members of other classes of creditors to ensure that: (i) those with similar rights in the relevant alternative are treated equally; and (ii) where there is a departure from equal treatment, that departure is justified. As part of this analysis, the court will consider whether an alternative (or "fairer") plan is available: *AGPS* at [118]-[186].

69. However, when the dissenting creditor is "out of the money" in the relevant alternative, its view about the fairness of the plan or complaints about the distribution of the benefits of the restructuring "should not weigh heavily or at all in the decision of the court as to whether to exercise the power to sanction the plan and cram them down": *Re Virgin Active* at [249] cited with approval in *AGPS* at [251]-[252].

70. In the present case, the Plan Companies have complied with the statutory requirements and the terms of the Convening Order. There is no reason to believe that the members of the assenting classes acted anything other than bona fide and for proper purposes; I

see no reason to differ from the majority votes in favour of the Plans at the respective Plan Meetings of the Intercompany Lender and the Term Loan Lenders. The Plans are ones that an intelligent and honest person might reasonably approve.

71. In respect of the dissenting classes, the Plan Companies' position is that (a) the statutory conditions for cross-class cram down are satisfied, (b) the dissenting creditors are "out of the money" in the relevant alternative, save in two very limited respects, and their views ought thus to be given little or no weight; and (c) there is no or no good reason why the Plans should not be sanctioned. The Plans are fair and are necessary to save the Plan Companies from insolvent administration, in which Plan Creditors would be worse off.

72. I accept the submission that in the present case, the dissenting classes are "out of the money", save in two minor respects.

73. The first is that the dissenting classes in the CUKL Plan and the CWCL Plan would be entitled to a de minimis share of the prescribed part, which reaches its maximum sum of £800,000 (to be shared between all unsecured creditors) in each case. The same was true in *Re Virgin Active*, but Snowden J nonetheless considered that the unsecured creditors were "out of the money" ([53] and [100]). There would be no prescribed parts in the relevant alternative administrations for either CWEL or CCPL. That has led to the introduction of the "floor" of £1,000 in respect of consideration for unsecured Plan Creditors under the Plans.

74. The second qualification is that certain of the Landlord Creditors in the dissenting classes would receive payments of contractual rent and other amounts for a short period of 90 days or 30 days in the relevant alternative, being the period in which the Plan Companies would remain in occupation pending assignment of the Lease to a third party purchaser (in respect of Class B Leases) or pending strip out works being undertaken by the administrators (in respect of Class C1, C2 and D1 Leases). These payments would be modest in amount. To the extent that these payments mean that any members of the dissenting classes are not entirely "out of the money", I am satisfied that little weight is to be given to their views: see Trower J said in *Re ED&F Man Holdings Ltd* [2022] EWHC 687 (Ch) at [58].

75. Apart from the Objectors, no creditor appeared at the sanction hearing to contest their treatment as set out in the Plans. Subject to the separate issues concerning the Objectors, which are addressed below, I am satisfied that the Plans are fair in their treatment of creditors:

(a) Under the Plans, each of the unsecured creditors will receive the higher of 150% of its Estimated Insolvency Return or £1,000 in respect of its allowed claim against the respective Plan Company. The Guaranteed Landlord Creditors will receive a payment in the sum of the aggregate of 150% of their Estimated Insolvency Return in the administration or liquidation of the Plan Company tenant and the relevant guarantor. I am satisfied that this allocation of benefits is appropriate and fair in circumstances where the unsecured creditors are substantially out of the money.

(b) As explained above, different classes of Landlord Creditors are being treated differently under the Plans. Such differential treatment of landlords under restructuring plans of this type "has become commonplace in plans involving lease liabilities": *Re Fitness First* at [37(3)] and *Re Virgin Active* at [265]. But Landlord Creditors whose Leases have been categorised into the same class(es) according to their likely treatment in the relevant alternative will have their Leases compromised in the same manner under the Plans. I am satisfied that this accords with the general principle that creditors who have the same rights as one another, assessed by reference to their rights in the relevant alternative, must be treated in the same manner in a restructuring plan, unless there is a good reason or proper basis for a departure: *AGPS* at [159]-[166], per Snowden LJ (discussed further below).

(c) There is nothing inherently unfair in a Part 26A plan proposing long-term modifications to leases. As Zacaroli J held in *Lazari Properties 2 Ltd v New Look Retailers Ltd* [2021] EWHC 1209 (Ch) at [218] ff, the answer in such situations is provided by the inclusion of a break right to affected landlords, provided that the terms offered upon exercise of that break right are at least as beneficial as in the relevant alternative to the plan. Under the Plans all Landlord Creditors are given a break-right. The Plans do not therefore compel any landlord to be bound by the terms of an amended lease unless they elect to do so, by choosing not to exercise their break right.

(d) The Plans do exclude certain creditors, such as liabilities under the Class A Leases, the Head Office liabilities and liabilities to trade creditors and employees. It is acceptable to afford advantageous treatment to certain creditors where "the continued supply of goods or services by those creditors is regarded as essential for the beneficial continuation of the company's business under the plan": *AGPS* at [170]. I am satisfied that there are good commercial reasons for the exclusion of these creditors from the scope of the Plans.

(e) I am satisfied that the retention of equity in the Group by its existing shareholders (the "Shareholders") is justified. First, the indirect parent of the Plan Companies, Crown UK HoldCo, is providing new equity funding which will enable the UK Group to continue as a going concern. The Shareholders are therefore providing new value to the Plan Companies as a quid pro quo, which justifies their retention of the equity. In any event as *AGPS* shows at [249]-[252] it is for the creditors who are in the money to decide on the destination of the equity in the group.

76. I conclude that (subject to the separate issues concerning the Objecting Creditors) the Court should exercise its discretion in favour of sanctioning the Plans. There are also potential questions of the substantial effect of the plans internationally and whether there are any blots on the plans, to which I return below.

The position of the Objectors

77. UKCP's application for an injunction was supported by the first and second witness statements of Mr David Rodger. The Plan Companies relied in response on the first Witness Statement of Kevin Frost and the third Witness Statement of Mr Kaufman. The Crown Estate's application was supported by the witness statement of Mr Bourne, their solicitor.

78. At the hearing I allowed the cross-examination of Mr Kaufman by counsel for the Objectors. I shall make findings about his evidence below. I found Mr Kaufman to be an honest witness who did his best to assist the court.

79. The proposed Plans include the following:

(a) a CUKL Class D1 Lease of the Swindon (Regent Circus) site, where the Landlord is UKCP;

(b) a CWEL Class C2 Guaranteed Lease of the Glasgow (Renfrew Street) site, where the Landlord is UKCP;

(c) a CWCL Class B Lease of the Harlow Queensgate site, where the Landlord is the Crown Estate; and

(d) a CUKL General Property liability in respect of the Newcastle site, where the Landlord is also the Crown Estate. The tenant of the Newcastle site is not a Plan Company, and the Lease is not being altered under the Plans. However, CUKL has provided a guarantee of the tenant company's liabilities under that Lease. That liability of CUKL has been included in the CUKL Plan.

80. Each of these liabilities arose out of renegotiations in 2023.

81. Under the original Swindon Lease between UKCP and CUKL annual rent was payable at the rate of £247,000 p.a., payable quarterly, and subject to a review every 5 years. There was an annual uplift. The initial term was 25 years (extending to 5 February 2040). Service charges were charged to the tenant. CUKL had no right to break the lease before the expiry of the term.

82. Under the original Glasgow Lease annual rent was initially payable at the rate of £1,020,000 from October 2001 subject to review every 5 years. The rent was increased to £1,548,500 under a variation registered on 21 December 2016. The initial term was 35 years to 6 September 2036. Service charges were also charged to the tenant. CWEL had no right to break the lease before expiry of the term.

83. At the request of CUKL and CWEL, UKCP agreed substantial rent reductions and other concessions with CUKL and CWEL in July and August 2023. These were documented in a Deed of Variation in respect of the Swindon Lease and a Minute of Variation in respect of the Glasgow Lease and side letters dated 31 July 2023 and 4 August 2023 respectively.

84. By the Deed of Variation in respect of the Swindon Lease and the Minute of Variation in respect of the Glasgow Lease, the tenant's obligations to pay fixed rent was replaced with an obligation to pay "Base Rent", and "Turnover Rent", which would depend on customer admissions. CUKL's obligation to pay annual rent was replaced with an obligation to pay Base Rent of just £100,000 per year and Turnover Rent of £1 for every admission above 150,000 admissions per year. CWEL's obligation to pay annual rent of £1,548,500 was replaced with an obligation to pay Base Rent of just £1,000,000 plus Turnover Rent of £1 for every admission above 800,000 admissions per year. The tenant was granted a new break right which would be exercisable on six months' notice on or after 1 June 2026. This break right would only be exercisable if average

admissions in the previous three years were less than 150,000 per year in respect of the Swindon Premises and less than 675,000 per year in respect of the Glasgow Premises. UKCP also agreed to cap the annual service charge.

85. UKCP also agreed in the side letters to compromise its claims in respect of rent arrears. The rent arrears under the Swindon Lease were £237,453.45. UKCP agreed to waive all but £26,102.87 of these arrears and further agreed that that remaining balance would be paid in 36 monthly instalments. The rent arrears under the Glasgow Lease were £707,511.15. UKCP agreed that they could be repaid in 36 monthly instalments.

86. In consideration for entering into the Deeds of Variation and side letters, the tenants agreed that if they entered into a Restructuring Plan, then "as part of that… RP" they would "not seek to compromise further the principal yearly rent or other terms of the Lease" and instead the Lease and the Premises would be "placed in the A/Green/Good/Keep category with no further amendments".

87. The Restructuring Plans will impose substantial, additional impairments on UKCP beyond those which it agreed contractually. Under the Restructuring Plans, UKCP will receive 30 days' contractual rent (i.e. the existing rent, as reduced by the July/August 2023 variations of the Leases). UKCP will receive no rent thereafter. The tenants' past and future liabilities will be released in full in exchange for the "Property Liability Payment" (in practice, the 'floor value' of £1,000). This means that the UKCP will lose, among other things, its right to receive rent arrears as agreed under the side letters.

88. Even if (counterfactually, assuming no Plans) the tenants were to have discontinued trading under from the premises (so that there would be no turnover rent) and were to exercise on 6 months' notice break-clauses in June 2026 UKCP would still be entitled to base rent for 26 months. In that event in respect of the Swindon Lease, UKCP would receive over £235,000 and, in respect of the Glasgow Lease, would receive just under £2,700,000 in base rent and rent arrears. But if the Restructuring Plans were to be sanctioned on terms that include the Leases, UKCP will receive just £8,333.33 in respect of the Swindon Lease and £83,333.33 in respect of the Glasgow Lease (Base Rent for one month), together with Property Liability Payments compromising the entirety of the Landlord's claims.

89. Turning to the Crown Estate leases, CUKL and CWCL negotiated in 2023 with the Crown Estate, as guarantor and tenant, respectively, variations to the Newcastle Leases which favoured CUKL and CWCL. The parties agreed to the Agreed Terms set out in the Schedule to a side letter dated 27 September 2023. By those terms, the rent was varied under the Newcastle Leases, to include a 'base rent' of £791,000 per annum, and a 'turnover rent' of 12% of Gross Sales above £4.5 million per annum. The service charge became subject to a cap of £455,000 per annum.

90. By clause 7, CUKL and CWCL agreed and undertook that in consideration for entering into the letter and agreeing to the Agreed Terms, "if during the period of 3 years from the date of this letter we or the Guarantor enter into a CVA or RP [*sc. a restructuring plan*]… then as part of that CVA or RP … we will not seek to compromise further the Leases, including the principal yearly rent (and any turnover rent) or any other terms of the Leases or compromise further the Arrears save, in each case, as set out in the Agreed Terms." The "Leases" for this purpose included the Harlow Lease though there was no variation to that it at that time.

91. By clause 8, the Crown Estate agreed (inter alia) not to "take any action or steps to forfeit or otherwise terminate the Leases" whether directly, or as a result of any CVA, Restructuring Plan, or insolvency procedure.

92. Clause 21 provided that CUKL (as Guarantor) also consented to the terms of the letter.

93. Under the Plans the tenant under the Newcastle Leases, Newcastle Cinema 2 Limited (a Jersey entity), is not affected, because it is not a Plan Company. But under the guarantee of the Newcastle Leases, the Crown Estate would either receive 150% of the 'Compromised Property Liability Creditor's Relevant Alternative Return'; or the 'floor value' of £1,000.

94. As regards the Harlow lease, the Crown Estate as a putative Class B Landlord Creditor, would be entitled under the Plans to receive (i) 90 days of rent at its contractual rate; (ii) an 'Amended Class B Rent' (i.e., an ERV Rent) during the Rent Concession Period; (iii) all rent review clauses would be rendered unenforceable; and (iv) all arrears will be compromised or released. Hence the Harlow Lease would be substantially varied, in circumstances where (in return for the negotiation over the Newcastle Leases) CWCL agreed that it would not seek to impair those terms.

95. In his evidence Mr Rodger said that if it had been suggested to him that UKCP's leases could be included in a future restructuring plan he would have ceased negotiations. He also said that whether or not the Plan Companies knew that there was going to be a restructuring plan at the time of the negotiations, it appears to him to be extremely sharp practice of them now to be including UKCP's leases in the Plans.

96. Mr Kaufman, a director of each of the Plan Companies and Vice-President of Finance of then Cineworld Group, gave evidence that at the time of the negotiations with UKCP it was not anticipated that the restructuring plans would become necessary. He said that the financial position of the UK Group had worsened since the UKCP side letters were negotiated and that the issues underlying the deterioration were not anticipated at that time. He referred to four specific factors: (a) the impact of the script writers' strike between May 2023 and September 2023. This had reduced the pipeline of new releases and therefore cinema attendances. This was continuing to impact 2024 screenings; (b) the increase in the national wage by approx. 9.8% in April 2024, which has impacted payroll; (c) forecast admissions in Glasgow at the time were 5.3% higher than has turned out to be the case and (d) the post-Covid bounce back had not recovered as expected.

97. Counsel for the Objectors cross-examined Mr Kaufman. Mr Kaufman confirmed that the same four factors applied in the case of the Crown Estate leases as to the UKPC leases. It was not suggested to Mr Kaufman that Cineworld had already decided that it would carry out a restructuring plan at the date of the side letters. It was however suggested to him that the specific features of the business identified in his evidence were known to be issues at the time of the side letters and that it was entirely foreseeable that the business would deteriorate further. Counsel also said that in relation to the Glasgow lease the parties had catered for the prospect of lower attendances by agreeing a turnover rent. Mr Kaufman said that he did not think that the plans were a possibility at the time of the side letters.

98. I make the following factual findings. First, Cineworld obviously knew about the actors' and writers' strikes at the dates of the side letters. It was foreseeable that the pipeline of films would be affected. However I accept Mr Kaufman's evidence that Cineworld somewhat underestimated the impact of the strikes would have on the pipeline. Second, an increase in the national living wage was foreseeable. However I accept that the actual rise was somewhat higher than anticipated. No specific evidence was given on the materiality of this factor. Third, Glasgow attendances have been 5.3% lower than anticipated. Though this may been reflected through lower turnover rent, there is likely to have been some impact on the business. Fourth, no figures have been provided about the anticipated bounce back from Covid and the materiality of this factor cannot be assessed.

99. Overall I accept that the trading performance of the UK Group has deteriorated over the last year or so and that this deterioration has been greater than was being projected at the time of the side letters. At the time of the side letters, it was foreseeable that the UK Group might need to seek a restructuring through a court sanctioned plan, but Cineworld anticipated that they would be able to avoid the need for this by agreeing consensual reductions in rents. They hoped that the reductions would be enough. They turned out not to be. The UK Group therefore started to explore a possible restructuring plan in the course of 2024 and engaged professional advisers to assist it.

100. Mr Kaufman also stated in his third statement that if the Objectors' Leases were to be removed from the Restructuring Plans the incremental impact on forecast EBITDA would not render the Plans unviable and the turnround plans of the companies could still be achieved.

101. Counsel for the Objectors clarified that he was not contending that the Plan Companies were acting in bad faith in the sense that a decision had already been made to promote the Plans at the time of the negotiations leading to the side letters.

Timing of the objections

102. The existence of the side letters was addressed in correspondence before the convening hearing. The solicitors then acting for the Objectors wrote to the Plan Companies saying that the relevant Leases should not be included in the Plans.

103. The side letters were also specifically addressed at the convening hearing. The Court at that hearing was satisfied that it had jurisdiction under Part 26A to compromise the rights under the side letters, and that their existence did not alter the Plan Companies' proposed composition of creditor classes.

104. UKCP and the Crown Estate had notice of the convening hearing and did not attend to raise any objection to the inclusion of the relevant properties in the Plans or their treatment under the Plans. Neither of the Objectors has explained why they did not raise their objections at that stage.

105. UKCP voted against the relevant Plans. The Crown Estate did not vote. The evidence shows that CUKL entered into similar side letters with two further Landlords but who each voted in favour of the CUKL Plan.

Summary of the parties' principal submissions

106. The Objectors submitted in summary as follows:

(a) It is self-evident that the Leases should never have been included in the Plans, because that was exactly (and expressly) what CWUK and CWEL agreed. Put shortly, these landlords bargained not to be exposed to the Part 26A jurisdiction at all.

(b) The approach of the Plan Companies, which treats the side letters as capable of compromise, is flawed. Questions as to which class the Objectors ought to be placed in or the fairness of cramming down the landlords simply do not arise in their case.

(c) The Court should grant an injunction on general principles. The side letters contain a negative covenant, supported by substantial consideration in the form of the rent and other concessions granted by the Objectors.

(d) The Courts routinely enforce negative covenants by way of injunctions. This Court should do so in this case. The equitable principle is long-established. As it is described in Chitty (35th ed.) at 31–075:

> "Where a contract is negative in nature, or contains an express negative stipulation, breach of it may be restrained by injunction. In such cases an injunction is normally granted as a matter of course, so that the fact that "damages would be an adequate remedy … is not generally a relevant consideration where the injunction restrains the breach of a negative covenant."

(e) This principle is illustrated by *Doherty v Allman* (1878) 3 App Cas 709, 720, *Hampstead and Suburban Properties v Diomedous* [1969] 1 Ch 248 and *Araci v Fallon* [2011] EWCA Civ 668 at [33] and [39]. Equity will routinely enforce a negative covenant given for valuable consideration absent special circumstances, which may include the considerations of public policy. The burden is on the party resisting performance to show special circumstances.

(f) Where the covenant is negative questions of adequacy of damages and balance of convenience have little if any role. But here, in any event, damages would not be an adequate remedy in the event that the relevant leases are included in the Plan as the effect of the Plans is to compromise the Objectors' claims.

(g) There is no public policy or other objection to giving effect to Landlord's specifically enforceable right to exclusion. In this regard, it is open to a debtor company to choose the creditors with whom it wishes to propose a scheme of arrangement under Part 26 CA 2006 or a restructuring plan under Part 26A CA 2006; a company is not obliged to include all creditors within a scheme or plan: *Re PT Garuda* [2001] EWCA Civ 1696 at [51]; and *Re Virgin Active* at [259]-[265]. Here, as already explained, other creditors like Aviva, were excluded from the Restructuring Plans on the grounds that CUKL and another plan company "negotiated a consensual rent compromise."

(h) If it is open to a debtor to exclude a creditor there can equally be no objection to a debtor company bargaining in advance to exclude a particular creditor.

(i) There is nothing in the argument that the policy underlying Part 26A CA 2006 is to foster rescue culture. There is no presumption in favour of sanction of a restructuring plan: *Consort Healthcare (Thameside) plc v Thameside and Glossop Integrated Care NHS Foundation Trust* [2024] EWHC 1702 (Ch) at [11] per Richards J. And a decision to injunct CUKL and CWEL from breaching the side letters will not harm the rescue culture. On the contrary, by granting an injunction, the Court will encourage restructuring by providing debtors and creditors with the confidence to strike private compromises.

(j) If (contrary to their primary position) the Objectors were to be included in the Plans, Mr Kaufman's admission that the Plans were viable without the Objectors' Leases shows that the relevant alternative are Plans excluding those Leases rather than Plans including them.

107. The Plan Companies submitted in summary as follows:

(a) That the applications for injunctions have been made too late. The Objectors knew about the Plan Companies' intention to include them in the Plans even before the Practice Direction Letter and certainly before the convening hearing. The Plans have proceeded through the convening hearing and the meetings, and it was only at the last moment that the Objectors have issued their applications. If and to the extent that the Court considers that the Objectors should be heard at all the arguments should be addressed as part of the sanction process under the Plans.

(b) Any issues in relation to the side letters are ones of jurisdiction (i.e. can rights under the side letters be compromised under Part 26A), class composition (i.e. does the existence of the side letters mean that the Objectors ought to be placed in a different class from other Landlords) and discretion/fairness (i.e. is it appropriate in all the circumstances for the Objectors' rights under the side letters to be compromised under the Plans).

(c) The first two issues (jurisdiction and class composition) have already been determined by Edwin Johnson J at the convening hearing. The Objectors did not appear at that hearing, even though the point had been raised previously. No explanation has been offered for the failure to raise the Objections. Under the Practice Direction, the Court should therefore treat the issues as effectively having been decided. But in any event the decision of Edwin Johnson J was correct for the reasons he gave.

(d) As to the court's discretion, the Plan Companies' position is that it is fair for the Plans to treat all similarly performing Leases in the same manner by reference to what would happen in the relevant alternative, notwithstanding the existence of the side letters. Indeed a departure from this treatment would not be justified and the Objectors would be treated preferentially as compared with other members of their classes (and indeed could be treated better than some members of "better" classes). This would involve an inadmissible infraction of the pari passu principle which informs the proper approach to restructuring plans in cases where the relevant alternative is an insolvent administration.

(e) The cases concerning the equitable jurisdiction to grant injunctions do not assist because the court will not enforce a contract where there is good reason not to do so, or (to the extent this is different) where to do so is contrary to public policy. Here there is good reason not to enforce the side letters, namely, that under obligations in the side letters are capable of compromise under the Plans (assuming that sanction is otherwise appropriate). Alternatively, it would be contrary to public policy to enforce the side letters as this would undermine the principle of pari distribution under the plans, which are being promoted pursuant to a statutory scheme in the interests of all the creditors, as an alternative to formal insolvency proceedings.

Discussion and decision

108. It is helpful to start with some general considerations about restructuring plans under Part 26A.

109. Part 26A of the Companies Act 2006 introduced a new regime to facilitate the rescue of struggling companies. As Snowden LJ pointed out in *AGPS*, restructuring plans share some of the characteristics of schemes of arrangement under Part 26. But there are important differences. One of the threshold conditions in section 901 A is that the company has encountered or is likely to encounter financial difficulties affecting its ability to carry on business as a going concern. Another is that the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of any of those financial difficulties. The jurisdiction does not arise unless these conditions are met: healthy companies cannot seek a compromise of their debts under Part 26A simply because it might be in their commercial interests to do so.

110. Restructuring plans are routinely proposed where the relevant alternative is an insolvent administration or liquidation. The purpose of the plan is to improve the outcome, often by enabling the company to carry on as a going concern. In *Re Gategroup Guarantee Ltd* [2021] EWHC 304 (Ch), Zacaroli J held that such plans are within the bankruptcy exception to the Lugano convention. At [100] to [102] he said:

> "100. In my judgment, proceedings designed to enable a company in financial difficulties to reach a composition or arrangement (to use the words in the bankruptcy exclusion) with its creditors involves the same peculiar feature as a straightforward bankruptcy or winding-up. The need for the composition or arrangement arises from the company's inability to satisfy the claims of all its creditors. There is inherently competition between the company's creditors, requiring a collective solution that is fair to all. As I have noted above, it is an unresolved issue in the scheme jurisdiction whether a creditor is to be treated as being "sued" by an application to sanction a scheme. In any event, rules which allocate jurisdiction by reference to the domicile of each creditor, or the legal nature of each creditor's claim, or by reference to bi-lateral contractual provisions with different creditors, are as inapposite and

> impractical in the context of Pt 26A proceedings, which are premised on the financial difficulties of the company, as they are for traditional insolvency proceedings.
>
> "101. One of the arguments advanced … is that a Pt 26A plan is materially indistinguishable from a scheme, so the conclusion reached in the authorities to date that a scheme is not within the bankruptcy exclusion in the RBR or Lugano Convention should apply equally to a plan."
>
> "102. I disagree. Threshold Conditions A and B make a significant difference. I consider in more detail below, in considering the scope of the Insolvency Regulation, the impact of the fact that the Threshold Conditions do not require the company to be actually insolvent. In the context of construing the bankruptcy exclusion in the Lugano Convention by reference to its purpose as I have identified above, however, I consider that Threshold Conditions A and B are sufficient to position Pt 26A within that purpose. It is the fact that the company has encountered, or is likely to encounter, financial difficulties that will or may affect its ability to carry on business as a going concern and the fact that any plan must be one that seeks to eliminate, reduce or prevent, or mitigate the effect of those financial difficulties which means that the potential for competition between creditors is engaged and requires a collective solution.""

111. In *AGPS* Snowden LJ explained that when assessing fairness and discretion under Part 26A plans where the relevant alternative is an insolvent administration, the pari passu principle should prima facie be applied to the distribution of the benefits of the plan (or "the restructuring surplus"), using the outcome in the relevant alternative as a reference point. Creditors who would be treated alike in the relevant alternative should be treated alike under the plan unless there is some justification or good reasons for the departure: see [70], [159], and [165]-[166].

112. Snowden LJ gave some (non-exhaustive) illustrations of matters that might constitute a good reason or justification for such a departure at [167]-[170]. The preferential treatment of some creditors (compared to the outcome in the relevant alternative) or the exclusion from the plan of others might well be justified in those case. The shared feature of these examples is that the preferential treatment or exclusion is likely to facilitate or promote the plan (by e.g. enabling the company to continue in business). It also appears from these passages that the exclusion of a creditor or class of creditors from a plan without a proper justification may well render the plan unfair to those creditors are who included within it who would be in a similar position in the relevant alternative.

113. At [171] Snowden LJ also drew the comparison with other insolvency proceedings (administration) where a departure from the pari passu principle has been recognised because it enables the administrators to carry out their functions, or facilitates the achievement the purposes of the administration preferential or serves the interests of the creditors as a whole.

114. I note in passing that *AGPS* was a case where there was to be an orderly wind down of the business under the plan (see [164]). However Snowden LJ's analysis is not restricted to that case. In [166] he referred to *Re Houst* [2022] EWHC 1941 (Ch), a case where a turnaround plan was proposed, and in para 170 he referred to *Virgin Active* another such case. It appears to me that the features which engage the pari passu principle are, first, that the threshold Conditions A and B have been satisfied and, second, that the relevant alternative is an insolvency process. As Snowden LJ explained, the outcomes in the relevant alternative then become an important reference point (albeit not a determinative one) for the purposes of analysing the fairness of the plan.

115. Where the statutory preconditions for a restructuring plan and the relevant alternative is a formal insolvency, there is potentially a serious tension between the equitable jurisdiction to enforce a negative covenant to exclude particular creditors and the application of the pari passu principle. Restructuring plans of the present kind are a form of collective proceeding for the benefit of the creditors as a whole and are an aspect of insolvency law. The pari passu principle is a fundamental principle of insolvency law and embodies a public policy (indeed public policy was one of the justifications of the decision in *British Eagle International Airlines Ltd v Cie Nationale Air France* [1975] 1 WLR 758). In my judgment the court will be slow to enforce agreements which operate to undermine this policy. Indeed fidelity to the pari passu principle will often justify plan companies in acting contrary to previous undertakings not to include debts within a restructuring. I am unable to accept the arguments of the Objectors that, in this context, the answer is found in the general proposition that equity enforces negative stipulations almost as a matter of right or course.

116. The restructuring plan procedure is a statutory one. The legislature has decided that there is a public interest in facilitating the rescue of struggling companies through reconstructions, assuming of course that the statutory pre-conditions are met and the court, in the exercise of its discretion, thinks fit. Counsel for the Objectors argued that there is no presumption in favour of sanction of a particular scheme and relied on *Consort Healthcare* at [11]. Richards J was saying there no more than that each case turns on its facts. In the same paragraph he accepted that Part 26A was enacted to enable companies in financial distress to propose restructuring plans. In my view the purpose of the legislation is to facilitate restructurings because this is often a better outcome for the creditors as a whole than the alternative. It appears to me that if a plan would otherwise be sanctioned, a simple and unqualified appeal to the equitable jurisdiction to enforce a promise to exclude a particular creditor would have to give appropriate weight to the public policy in favour of rescuing struggling companies (as well as the public policy embodied in the pari passu principle referred to above).

117. Against this legal background, I turn in more detail to the arguments of the parties.

118. I start with the timing point. There is much force in the submission of the Plan Companies that the Objecting Creditors have left it very late in the day to make their applications. They have known that the relevant leases were being included in the Plans but have done nothing until the eve of the sanction hearing. This is contrary to the principles of efficient and effective case management. It led to the last minute flurry of proceedings, evidence and arguments. Moreover there was a convening hearing at which the points could have been raised. The Practice Direction shows that where an objecting party who has had adequate notice does not appear at the convening hearing it should provide a good explanation if it wishes to run the same points later. I accept

that the injunction application was not considered at the convening hearing but no reason has been given to explain why the Objectors should not have appeared at that stage. This is not merely a formal point. The Plans have proceeded on the footing that the relevant leases are part of them, and the companies have modelled the outcomes on that basis.

119. Despite these points I have decided that I should address the merits of the Objectors' submissions. The issues they raise are important ones and the Plan Companies did not suggest that they were unable to address them, or that an adjournment was needed. Moreover Mr Kaufman accepted that the Plans could proceed even if the Court were to find in the Objectors' favour.

120. Nonetheless, the stance taken by the Objectors is not without consequences. The Plan Companies have in fact included the relevant leases within the Plans and the Objectors were included in those entitled to vote at the meetings. It follows that the Plan Companies are able to argue (subject to any points about jurisdiction and class composition) that the court is procedurally able to consider the plan with those parties included.

121. I turn to the applications for injunctions. The Objecting Creditors put equity's insistence on the performance of promises front and centre of their submissions. To recap, they rely on the principle that, absent special circumstances, equity will specifically enforce negative stipulations and will not restrict a party to its claim for damages or compensation. I have already set out the relevant principles, which were not in issue.

122. The Plan Companies say that the application for an injunction, as well as being too late, adds nothing at all of the considerations relevant to an injunction can be addressed within the sanction application.

123. The Objectors argue that this is wrong. The side letters were expressly designed to prevent the relevant leases being included in the plan at all and the entire process commenced and pursued by the Plan Companies constitutes a breach of those terms.

124. I prefer the submissions of the Plan Companies. First, I agree that the negative covenants in this case are capable of being compromised as part of the Plans, depending on the court's discretion. If they are compromised, there will be nothing to enforce. The court should therefore determine whether the plans (including the relevant Leases) should be sanctioned. If it decides that they should be, there is no room for an injunction. If it decides that plans should only be sanctioned with the relevant Leases being excluded, there would be no need for an injunction. In reaching that decision, the court should take account of the existence of the side agreements and their terms. So the factors that would go to an injunction can be considered under the auspices of the sanction application.

125. Second, for reasons already given above, where the threshold conditions for a plan designed to avoid a formal insolvency are satisfied and the pari passu principle is engaged, any application to enforce the contract to exclude relevant creditors will generally have to give way to that principle. Putting it another way, the court has to consider whether the enforcement of the promise would infringe the public policy embodied in the pari passu principle; and that requires the court to decide whether the contract represents a good reason or proper justification for excluding the relevant

creditors from the plan. That is in essence the same exercise the court has to undertake when considering fairness under the plan jurisdiction.

126. In this regard, I am unable to accept the Objectors' submission, at least in unqualified form, that the exclusion or inclusion of creditors from a restructuring plan is a simple or unqualified choice for the company. As [170] of *AGPS* shows the exclusion of creditors from a restructuring plan (at least where the relevant alternative is insolvency) without good reason or proper justification may well render it unfair to the creditors who are included. Putting it another way, questions of fairness in restructuring plans are not concerned with the relationship between the company and individual creditors: fairness in this context is primarily a matter of relative treatment of the creditors as between themselves (with like to be treated as like as the default position).

127. The Objectors argued that it was wrong to assess the dispute through the lens of Part 26A. They accepted that the provisions of Part 26A allow compromises of contractual rights generally, but said that the promise in this case was specifically one not to invoke those provisions – this is the special feature of this case. The Court should not allow that bargain to be ignored.

128. However this argument gives too little weight to some key features of the restructuring plan regime. Part 26A was enacted to enable companies in financial difficulty which may affect their ability to continue as going concerns to compromise the claims of creditors in order to seek to eliminate, reduce or prevent those difficulties. In other words to allow the rescue of distressed companies without the need for formal insolvency processes (such as administrations or liquidations).

129. For these reasons the principles in *Doherty v Allman* cannot be applied as if this were merely a inter partes dispute between the company and the Objectors. The collective nature of the proceedings adds an important additional dimension: the interest of the creditors generally in eliminating or mitigating the financial difficulties which are or may be affecting its ability to carry on business as a going concern. The default requirement (given that the relevant alternative is insolvency) is that creditors be treated in accordance with the pari passu principle.

130. It appears to me that, in light of this added, collective, dimension, the right legal framework for consideration of the issues raised by the Objectors is that advanced by the Plan Companies: namely, whether there is jurisdiction to compromise the obligations in the side letters, whether they give rise to class issues, and fairness or (more accurately) the exercise of the court's discretion. In short, the Objectors are not entitled to an injunction effectively as a matter of right.

131. As regards jurisdiction and class composition, the Plan Companies repeat that neither Crown Estate nor UK Commercial Property appeared at the convening hearing to contest the Court's jurisdiction to compromise their rights under their side letters or to suggest they gave rise to any class issue. This is despite the fact that they had notice of the hearing and had corresponded with the Plan Companies concerning the side letters in advance of it. As explained at [10] of the Practice Statement, while creditors are able to appear and raise objections based on jurisdiction or class composition at the sanction hearing "the court will expect them to show good reason why they did not raise the issue at an earlier stage". No such reason has been given.

132. In any event I am satisfied that Edwin Johnson J was right in determining that: (a) there is jurisdiction under Part 26A to modify the Objectors' rights under the side letters; and (b) the side letters did not create any class issues.

133. As to jurisdiction:

(a) To fall within the scope of a "compromise or arrangement" under Part 26A, the compromise or arrangement must be one between a company and its creditors which deals with their rights as debtor and creditor: *Re Gategroup* at [158] per Zacaroli J. (citing the judgment of Patten LJ in *In re Lehman Brothers International (Europe) (in administration) (No 2)* [2009] EWCA Civ 1161).

(b) As noted by David Richards J in *Re T&N (No 4)* [2007] EWHC 1447 (Ch) at [45], "… whatever the precise meaning of a compromise or arrangement, it must be proposed with creditors or members of a company. It is implicit that it must be made with them in their capacity as creditors or members and that it must at least concern their position as creditors or members of the company."

(c) Since a key purpose of schemes of arrangement and restructuring plans is to encourage arrangements with creditors and facilitate financial rehabilitations, it has been held that "as wide a meaning as possible should be given to "creditors"": *Re T&N* [2006] 1 WLR 1728 at [40].

(d) Accordingly, to be a "creditor" for the purposes of the Part 26A jurisdiction "one has to have a current or contingent claim for damages or equitable compensation against the company, either of which is sufficient to render the claimant a creditor at least in that respect": *Re LBIE (No 2)* at [58], per Patten LJ.

(e) Here each of the Objectors has a contingent claim in damages for breach of the relevant terms of the side letters. They are therefore "creditors" of the relevant Plan Companies under the relevant provisions of Part 26A.

(f) Alternatively, the covenants in the side letters are ancillary to the renegotiated commercial terms agreed by the Objectors in 2023 and the Plans are seeking to compromise them as part of the compromise of those commercial terms.

(g) As such, I conclude that the relevant rights under the side letters are capable of being compromised under the Plans.

134. Turning to class composition:

(a) The principles of class composition are well-known and were recently summarised by Snowden LJ in *AGPS* at [109]-[114].

(b) The assessment of similarity or dissimilarity of rights depends on an analysis of the existing rights which are to be released or varied under the Plans (or "rights in") and the rights which the Plans give by way of compromise or arrangement (or "rights out"). Where, as here, a restructuring plan is being proposed as an alternative to a formal insolvency procedure, the assessment of "rights in" requires the court to identify the rights that creditors would have in that insolvency proceedings, rather than then rights that they would have if the company were to carry on its business in the ordinary course: AGPS BondCo at [111]. The Court does not assess this question by reference to the rights of creditors against the company as a going concern.

(c) In the relevant alternative the Objectors would be in the same position as other Landlords or General Property Creditors within the same class in respect of their Leases.

(d) The rights granted under the side letters would be immaterial in the relevant alternative. They also have the same “rights out” as the Plans treat them in the same way as the remaining Landlords and General Property Creditors in their respective classes.

135. There was a point taken by the Objectors at the hearing, namely, that the relevant alternative to the Plans is not the administration of the companies but is, rather, a plan with them excluded. This is based on Mr Kaufman’s acceptance that the Plans could viably proceed without the Objectors. It was not foreshadowed before the hearing. I am unable to accept this argument. The relevant alternative is what would happen to the companies absent the proposed plans. The plans include all the creditors including the Objectors. The alternative is an administration. It would lead to absurdity if any particular creditor could say to the court that the alternative to the plan proposed by a company is the same plan with that particular creditor excluded. It would indeed on one view mean that a company with multiple creditors could never persuade the court that insolvency was the relevant alternative.

136. That leaves fairness and discretion. The Objectors say that the court should refuse to approve the plans with them included in it. That would be wrong as the Court would thereby be endorsing and giving effect to a deliberate breach of contract by the Plan Companies. It appears to me that that is over-simplistic. As I have explained above, fairness in this context engages the pari passu principle. It follows that the court must consider whether the terms of the side letters justify the exclusion of the Objectors’ leases, having regard the position in which they and other landlords would be in the relevant alternative.

137. On that approach, if the Objectors were to be excluded, they would be placed in a significantly better position compared to the other landlords of sites falling within the same categories. Counsel for the Objectors indeed submitted that their complaint was that by being placed into the plans they were in a materially worse position than they would otherwise have been in. I have summarised the commercial impact above. There would be a prima facie infraction of the pari passu principle of equality of treatment.

138. It is indeed quite possible (though I heard no submissions specifically on the point) that in at least some respects they would be in a better position than landlords in more favourable classes than the Objectors themselves. Whether that is actually the position here on the facts, the consequence of the Objectors’ arguments is that promises of the kind found in the side letters are to be upheld by excluding the relevant Leases from any plan – however formulated. They say that is the way of giving effect to such promises and that equity should do so as a matter of course. But that would mean that a creditor, A, who has the benefit of a promise to be excluded from a restructuring plan would be able to insist on its enforcement even if it meant that creditor came out whole while the claims of all the other creditors of the company were compromised, including

those which would do proportionately better than A's claim in the relevant alternative. Hence not only would A do better than other creditors with like claims in the relevant alternative; they would even leapfrog creditors with better outcomes in such alternative.

139. The Objectors submitted that there was a crucial difference between, on the one hand the contractual promises of the Plan Companies contained in leases or other agreements, such as the promise to pay rent and, on the other hand, the specific agreements in the side letters not to include the Leases in a RP at all. I am unable to accept that this difference in the object of the two types of promise has a decisive consequence. The side letters are ancillary to the renegotiated Leases entered by the Objectors: if enforced they would insulate those Leases from non-consensual compromises through a plan. But the consequence of enforcing them would be that the Objectors would be in a very significantly better position commercially than they would have been in the relevant alternative. The Objectors say that is just what the Plan Companies have agreed. But in that event they would also be in a significantly better position than the other creditors who are objectively in the same classes as the Objectors' Leases. They would be treated preferentially by reason of a contractual provision which was entered before the common misfortune, the UK Group's insolvency, which has fallen on all of the creditors of the Company.

140. This leads to the question whether there is a good reason or proper justification for excluding the Objectors' leases from the plans. The Objectors submitted that the side letters were themselves a good reason or proper justification. I am unable to accept this. As already explained the feature of the cases where there may be a good reasons or justification for the exclusion of some creditors (which would give them a preferential position by reference to the position they would have had in the relevant alternative) is that it would facilitate or enhance the prospects of a successful restructuring, in the interests of the collective. Indeed, as explained above, this is the reason for the special treatment in the present case of the head office lease, or employees or customers. There is no such feature here. Excluding these particular landlords would not facilitate or improve the prospects of success of the restructuring plan. The side letters contain promises made in the past (before the formulation of the Plans) and to give effect to them would not facilitate enhance the prospects of the plan succeeding, any more than giving effect in their original forms to the historical promises made to creditors in the Leases generally would do so.

141. I also note that there is no evidence in this case that the other creditors were responsible for the side letters or can be regarded as having unfairly benefited at the expense of the Objectors. Nor is there any case of bad faith on the part of the Plan Companies.

142. The Objectors submitted that the enforcement by the court of the promises in the side letters would send a salutary signal in favour of consensual bilateral renegotiations and that this was to be encouraged as it might avoid the need for expensive restructurings. There is some force in this point. However I do not consider that the impact a judgment might have on other situations should have an impact on the question whether the enforcement of the agreements in this case would improve the prospects for the creditors in this case.

143. The Objectors also submitted that the renegotiations that took place 2023 can be regarded as part of the wider restructuring. These negotiations took place at a time when the Group was already in some financial difficulties. Covid had struck and the

screenwriters and actors strike had started (indeed had finished by September 2023). It was always foreseeable that things would get worse. The renegotiations can therefore be seen as part of the wider package, but the Plan Companies should not be allowed a second bite of the restructuring cherry. I am unable to accept this submission. The 2023 renegotiations were indeed to the advantage of the Plan Companies. But they did not achieve what was needed to stave off the cashflow shortfall those companies now face. The Plan Companies now face imminent administration, absent the plans. I am satisfied on the evidence that the Plans were developed in the course of 2024 in response to the worsening financial predicament of the UK Group. The losses now sought to be imposed on all creditors arise from that common misfortune. The question is how the losses should fall on the creditors as a whole and this is a matter of fairness as between them. The Objectors may well feel aggrieved about the way the Plan Companies, having done a deal with them so recently, are now seeking deeper cuts, but the procedure now invoked is the statutory, collective one, designed to stave off insolvency; this is not to be characterised as a conventional dispute between the Objectors and the companies themselves.

144. For these reasons, I reject the applications for injunctions. There is jurisdiction for the Court to approve the Plans, including to compromise the side letters. I also conclude in the exercise of the court's discretion that the Plans should be sanctioned, notwithstanding the terms of the side letters.

Substantial Effect

145. The Court has to be satisfied that it is not acting in vain in sanctioning the Plans. As to this:

(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 has therefore 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] 2151 (Ch) 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].

146. In the present case, the vast majority of the Leases and related liabilities to be compromised under the Plans are governed by English law and relate to properties situated in England.

147. Eight of the Leases relate to properties situated in Scotland which are governed by Scots law. The Plan Companies have received an Opinion from Scottish Counsel, Susan Ower K.C, confirming that the Plans will be effective to compromise those leases under Scottish law. There is no challenge to that and it appears to me rational and supportable.

148. One of the claims compromised by the Plans is an Irish law guarantee (the "Irish Guarantee") given by CWCL in respect of a lease of premises situated in the Republic of Ireland. The lease itself is not held by any of the Plan Companies and is not included in the Plans, but the Irish Guarantee is. The Plan Companies have adduced evidence of Irish Law from Mr Donald, a partner of Arthur Cox LLP, and head of their Restructuring & Insolvency Practice Group. His view is that, while it is more likely than not that the Courts of Ireland would not grant an order recognising the effectiveness of the compromise of the Irish Guarantee, the Plans would "nevertheless have a real prospect of having substantial effect in Ireland" because CWCL has no assets in Ireland or any other EU member state against which a judgment from the Irish Court could be levied, enforced or executed; any judgment obtained against CWCL in Ireland would not be enforceable in England in circumstances where the CWCL Plan has been sanctioned by the Court; and the High Court of Ireland would more likely than not refuse to make an order for the winding up of CWCL on any petition presented by the landlord of the Irish Lease.

149. There has been correspondence with lawyers acting for the relevant Plan Creditor, GLA Ireland No.1 Sarl ("GLA"). I have read the correspondence and have concluded that for the reasons given by Mr Donald there is a real prospect of the Plans having substantial effect in Ireland. GLA has not put in any evidence to challenge the evidence of Mr Donald.

150. For completeness, the Term Loan Credit Agreement is also governed by New York law. The Plan Companies do not have any assets in the US and do not presently intend to apply for recognition of the Plans in New York. However, the Plan Companies have received advice that the Plans will be effective there.

No Blot or Defect in the Plans

151. I am satisfied that there are no blots or defects in the Plans in the sense of a technical or legal defect in the scheme.

Conclusions

152. I decline to grant the injunctions sought by the Objectors.

153. I shall sanction the Plans.