Neutral Citation Number: [2026] EWHC 1014 (Ch)

Case No: CR-2025-008149

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
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: 05/05/2026

Before :

MR JUSTICE MICHAEL GREEN

- -

Between :

IN THE MATTER OF WALDORF PRODUCTION UK Plc

- and –
AND IN THE MATTER OF THE COMPANIES ACT 2006

- -
- -

Daniel Bayfield KC and **Charlotte Cooke** (instructed by **White & Case LLP**) for the **Plan Company**
Matthew Abraham (instructed by **Milbank LLP**) for the **Bond Trustee** and **SteerCo**
Mark Phillips KC, **Stefan Ramel** and **Samuel Parsons** (instructed by **HMRC Legal Group**) for **HMRC**

Hearing dates: 15-17th April 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 5 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE MICHAEL GREEN:

Contents

A. INTRODUCTION

1. Waldorf Production UK Plc (the "**Plan Company**") applies by way of CPR Part 8 Claim Form for the court's sanction of its restructuring plan (the "**Plan**") pursuant to Part 26A of the Companies Act 2006 ("**CA 2006**"). This is the second plan to be proposed by the Plan Company within a year, the first one ("**RP1**") having been refused sanction by Hildyard J on 19 August 2025 ([2025] EWHC 2181 (Ch)) ("***RP1 Sanction Judgment***"), and an appeal to the Supreme Court from that decision, for which permission had been given, being withdrawn on 17 December 2025 in favour of pursuing this Plan.

2. RP1 had been opposed by two unsecured creditors: Capricorn Energy plc (the "**M&A Creditor**"); and His Majesty's Revenue and Customs ("**HMRC**"). However, only HMRC opposes the Plan, the M&A Creditor and the Plan Company's secured bondholders all supporting it. The main difference between RP1 and the Plan is that there is now a buyer for the Group to which the Plan Company belongs and the Plan is about the distribution of the proceeds of sale, whereas RP1 was concerned with preparing the Plan Company and the Group for a potential future sale of the Group.

3. The proposed buyer of most of the Group is a wholly-owned subsidiary of Harbour Energy plc ("**Harbour**") a FTSE-250 oil and gas company. Pursuant to a sale and purchase agreement dated 11 December 2025 (the "**SPA**"), the Harbour subsidiary

agreed to purchase the shares of 8 companies in the Group for US$205 million less "leakage" accrued on and from 1 January 2025. Of that consideration, Harbour has allocated US$85 million to the Plan Company. It is a condition of the SPA that the Plan is sanctioned and that certain liabilities of the Group be compromised including the Plan Company's liabilities to the M&A Creditor and HMRC.

4. I held the convening hearing on 4 February 2026 and directed four meetings of creditors of the Plan Company, including one for HMRC alone. The meetings took place on 11 March 2026 in accordance with my directions and the Plan was unanimously approved at three of the meetings, but it was rejected by HMRC. The Plan Company therefore seeks an order sanctioning the Plan under s.901F CA 2006, but the court can only do so by using the cross-class cram down power in s.901G CA 2006 against HMRC.

5. HMRC's opposition to the Plan has developed from its Notice of Opposition and I will examine all its arguments below. The intriguing question at the heart of its opposition is the extent to which the very extensive tax losses within the Group, which are an asset that Harbour wishes to acquire and use to shield its profits from tax, should be taken into account for the purposes of satisfying the "no worse off" test in s.901G(3) CA 2006 and also its impact on the exercise of the court's discretion. HMRC says that it is unfair and an abuse that Harbour, which can pay the Plan Company's outstanding tax liabilities, should be able to acquire those valuable tax losses, while insisting that the Plan Company's debt to HMRC is extinguished, albeit with a payment of 14% of the debt under the Plan.

6. HMRC has suggested that the Plan should not be sanctioned if it involves the extinguishment of its debt. HMRC has contended through its counsel, Mr Mark Phillips KC, leading Mr Stefan Ramel and Mr Samuel Parsons, that the use of the tax losses by Harbour to shield its profits should be contingent on the payment of the Group's outstanding tax liabilities (the "**Contingent Payment Proposal**"). Mr Phillips KC submitted that HMRC is in a very different position to the other creditors being compromised by the Plan in that it necessarily will have a continuing relationship with the Group and Harbour and its contribution to the benefits of the restructuring in the form of the tax losses being able to be used should be recognised by the court and given effect to by the Contingent Payment Proposal.

7. The Plan Company is represented by Mr Daniel Bayfield KC, leading Ms Charlotte Cooke. He asserts on the Plan Company's behalf that there are no jurisdictional bars to the sanctioning of the Plan, that it is in the best interests of, and fair to, all the Plan Company's creditors and that HMRC is not, as a matter of fact, worse off under the Plan, even taking into account the potential use of the tax losses.

8. The Plan Company is supported by Nordic Trustee AS (the "**Bond Trustee**") as bond trustee in respect of the secured Bonds, as defined below, together with certain Bondholders known as "**SteerCo**". The Bond Trustee and SteerCo are represented by Mr Matthew Abraham, and he took on responsibility for dealing with the facts concerning the availability and likely effect of the tax losses on HMRC's and the Exchequer's overall position in relation to the Plan.

9. I heard evidence from various witnesses from the Plan Company and HMRC; and there was also expert evidence. I consider that all the factual and expert witnesses were patently honest and credible witnesses, doing their best to assist the Court. Much of

their evidence was peripheral at best to the issues that I need to decide, and it is more convenient for me first to set out the relatively uncontroversial factual background, before referring specifically and briefly to that evidence.

10. I am grateful to all counsel and their teams for efficiently managing the trial so that we could complete the evidence and submissions in the three days allotted. For reasons that will become apparent, it is necessary to produce this judgment urgently by the end of April 2026, although the recent rise in oil prices, as a result of the Middle East conflict, has eased the Group's potential liquidity crisis.

11. Given the pressures on the court's resources in relation to this Plan (and RP1), and while the trial itself was run well, I do think there should have been a more realistic and proportionate amount of documentation filed in relation to the case: the hearing bundle exceeded 7000 pages and the authorities bundle over 3000 pages. There was a sensibly sized core bundle and, inevitably and as was made clear at the outset, many of the authorities were not referred to. One day for judicial pre-reading was allocated and this limited time should have been reflected in a more realistic and agreed pre-reading list.

B. BACKGROUND FACTS

12. Some of the background leading up to the refusal of sanction to RP1 was dealt with by Hildyard J in the *RP1 Sanction Judgment*. But for convenience I will include the necessary background and context in this judgment, largely drawing on Hildyard J's judgment, and bringing it up to date with the details around the Plan.

(a) The Plan Company and the Group

13. The Plan Company is a public limited company incorporated in England and Wales. It is part of the Waldorf Group of companies (the "**Group**") that is engaged in the exploration and production of oil and gas in the United Kingdom Continental Shelf (the "**UKCS**"). The Group's key assets consist of interests held in licences granted by the United Kingdom North Sea Transition Authority (the "**NSTA**") which allow licencees to search and bore for petroleum on the UKCS seabed. The Plan Company owns a number of such interests in these licences including in relation to two of the Group's largest oil-producing assets, namely the Kraken Field and the Greater Catcher Area. The former is one of the largest subsea heavy-oil field projects in the North Sea and is considered to have exceptional longevity and reservoir quality.

14. The Plan Company is an indirect subsidiary of Waldorf Energy Partners Limited (in administration) ("**WEPL**") and Waldorf Production Limited (in administration) ("**WPL**"). The circumstances around their administration and the involvement of the administrators are described below. The Plan Company is itself the parent of Waldorf Production North Sea Limited and Waldorf Real Estate Limited ("**WREL**") (together with the Plan Company, the "**WPUK Group**").

15. The Plan Company holds its licence interests in the various oilfields jointly with other oil and gas enterprises (the "**Joint Venture Partners**"). The rights and obligations of the Plan Company and its Joint Venture Partners are set out in Joint Operating Agreements ("**JOAs**") in respect of each licence. It is also important to note that the

Plan Company is a party to Decommissioning Security Agreements ("**DSAs**") pursuant to the Petroleum Act 1998. In the case of most of its interests, the Plan Company is obliged under a DSA to set aside certain sums as security to fund the future decommissioning of the relevant oilfields when it is deemed to be approaching the end of its producing life.

16. The Plan Company originally acquired its material licence interests as part of the sale and purchase of the share capital of Capricorn North Sea Limited (now WREL) pursuant to an agreement dated 29 October 2021 entered into by WPL and Nautical Petroleum Limited (now trading as Capricorn Energy UK Limited) (the "**Capricorn SPA**"). On 2 November 2021, WPL novated its rights and obligations under the Capricorn SPA to the Plan Company. WREL then transferred its licences to the Plan Company.

17. On 19 December 2023, the Plan Company entered into a settlement agreement with, amongst others, the M&A Creditor in order to settle the amounts due and owing under the Capricorn SPA (the "**Settlement Agreement**"). As noted above, the M&A Creditor is a Plan Creditor in respect of the unpaid liabilities under the Settlement Agreement.

(b) The Secured Borrowing; the Bonds

18. The Plan Company has issued the following bonds:

(1) On 29 September 2021, 9.75% senior secured callable bonds in an original initial issue amount of US$300,000,000 due 1 October 2024 (the "**Original Bonds**"); the Original Bonds have been amended, and amended and restated, from time to time, including pursuant to an amendment and restatement agreement dated 1 July 2024 (see below);
(2) On 19 July 2024 and 27 November 2024, respectively, and by way of two separate tap issuances (together the "**Super Senior Bonds**"):
    (a) US$53,706,770 13% super senior bonds due September 2025; and
    (b) US$15,000,000 13% super senior bonds due September 2025.

(The Super Senior Bonds together with the Original Bonds are the "**Bonds**", and the holders of the beneficial interests in the Bonds are referred to as the "**Bondholders**").

19. The Original Bonds are guaranteed by the Plan Company's direct subsidiary, WREL, and benefit from security including in respect of: (i) the shares in the Plan Company held by its direct parent company, Waldorf Acquisition Co Ltd ("**WACL**"); and (ii) the Plan Company's assets, including, but not limited to, shares in its subsidiaries, its key contracts, receivables and bank accounts.

20. The Super Senior Bonds, while also benefitting from the security described in the previous paragraph, also have the benefit of security granted by and over certain other companies in the Group. They also rank in priority to all other liabilities of the relevant members of the Group, including the senior secured bonds issued by Waldorf Energy Finance plc ("**WEF**") pursuant to bond terms dated 1 March 2023 (as amended) (the "**WEF Bonds**"). Neither the Plan Company nor any other member of the WPUK Group is an obligor under the WEF Bonds.

21. As at 20 January 2026, the outstanding principal amount of the Original Bonds was US$55,021,352; and of the Super Senior Bonds was US$62,206,770.

(c) The unsecured liabilities

22. As stated above, the Plan Company has only two unsecured liabilities to third-party creditors which it seeks to compromise under the Plan. These are:

(1) An estimated liability of US$94,437,733 to HMRC arising from the Energy Profits Levy ("**EPL**") introduced by the Energy (Oil and Gas) Profits Levy Act 2022, which is a windfall tax on the profits of North Sea oil and gas companies; the Plan Company's EPL liability that it is seeking to compromise is for the financial years ended 31 December 2022; 31 December 2023; and 31 December 2024 (the "**EPL Liabilities**"); the evolution of the EPL Liabilities will be described below; and
(2) a liability to the M&A Creditor of US$29,500,000 (the "**M&A Liabilities**"), comprising:
    (a) a liability of US$22,500,000 owed to the M&A Creditor, which became due and payable on 3 January 2025, in respect of an amount owed pursuant to the Settlement Agreement; and
    (b) a liability of US$7,000,000 owed to the M&A Creditor, which became due and payable on 15 May 2025, pursuant to the Settlement Agreement on the basis that a sale transaction in respect of the transfer of the Plan Company's interest in the Columbus Field to Capricorn Energy UK Limited was not completed by 31 March 2025.

23. As at 20 January 2026, the following net intercompany liabilities were owed by the Plan Company to other entities in the Group:

(1) US$56,992,914 owed by the Plan Company to WACL; and
(2) US$451,739,400.43 owed by the Plan Company to WREL.

24. The Plan Company has certain other unsecured liabilities from time to time that are critical to the ongoing operation of the Plan Company's business, including amounts outstanding under invoices issued pursuant to the JOAs and DSAs to which it is party. These amounts will be paid in the ordinary course of business and are not affected by the Plan (or the wider restructuring of which it forms part (the "**Restructuring**")) because they are essential to the ongoing trading of the Plan Company.

(d) The Plan Company's and Group's Financial Difficulties

25. As was made clear in the Plan Company's evidence a principal cause of the Plan Company's financial difficulties was the EPL Liabilities.

26. The history and operation of EPL was explained in a witness statement of Ms Nicola Garrod dated 26 February 2026 filed on behalf of HMRC. Ms Garrod is the Oil and Gas Tax Policy and Technical team leader in the Business, Assets and International Directorate of HMRC. She was not called for cross-examination and her evidence was uncontroversial. I only need to set out a brief summary of what she said.

27. On 26 May 2022, the then Government announced the introduction of EPL with immediate effect. The relevant bill was introduced on 5 July 2022 and received Royal Assent on 14 July 2022 as the Energy (Oil and Gas) Profits Levy Act 2022. It remains

in force and the Labour Government has announced some of the details of the mechanism that will replace it in March 2030. In the financial year 2024 to 2025, the Exchequer received some £2.9 billion in EPL.

28. EPL is a tax on profits. It was introduced as an additional 25% levy on oil and gas production profits, and it was expected to end on 31 December 2025. However, in November 2022 it was announced that the levy would be increased to 35% and the sunset clause was extended to 31 March 2028. In November 2024, the rate was increased again to 38% for profits accrued after 1 November 2024 and the regime further extended to 31 March 2030.

29. EPL is aligned with corporation tax. An EPL return must be filed 12 months after the end of the relevant financial period. However, even though the return is only due 12 months after the end of the period, the EPL must be paid 9 months and one day after the end of the financial period. For example, in relation to a financial year end of 31 December 2024, the EPL must be paid by 1 October 2025, although the return does not need to be filed until 31 December 2025.

30. The Plan Company has been consistently late with its filing and payment obligations in relation to EPL. For the financial year end of 31 December 2022, the Plan Company was due to pay EPL by 1 October 2023 and to file its EPL tax return by 31 December 2023. However, it failed to do both, only filing its return on 10 June 2024.

31. Its financial position and ability to pay EPL was not helped by the declaration and payment in October 2022 of a dividend of US$76 million (the "**October 2022 Dividend**"). The October 2022 Dividend was paid to the Plan Company's immediate parent and then up through the corporate structure to the individuals who were the then ultimate shareholders of the Group.

32. The October 2022 Dividend was paid some four months after the announcement and introduction of the EPL. Hildyard J justifiably criticised its payment. Mr Paul Tanner who is the Chief Executive Officer of the Plan Company, and who has put in a witness statement and gave oral evidence before me and Hildyard J, said that the October 2022 Dividend was paid on the basis that the August 2022 Management Accounts showed distributable profits of US$250 million. However, he accepted that with the benefit of hindsight those Management Accounts, which had been reviewed by an external accountancy firm, had made material omissions, including failing to account for the Plan Company's anticipated EPL Liability. The subsequent 2022 audited accounts showed a negative figure for distributable reserves of US$362,110,000, inclusive of the payment of the October 2022 Dividend.

33. At [47] to [49] of the *RP1 Sanction Judgment*, Hildyard J explained this and clearly expressed his concerns, which I share, as to the propriety of the payment of the October 2022 Dividend at that time. He concluded however that it was beyond the proper scope of his judgment to consider this matter further. What was material was that the October 2022 Dividend further eroded the financial position of the Plan Company and deprived it of resources to meet its liabilities, including EPL, and that this was at the root of its current financial problems.

34. The Plan Company has taken on board Hildyard J's concerns and as part of the Plan, the Plan Company will assign certain claims, including those that may arise in relation

to the October 2022 Dividend to WPL, WEPL and/or the administrators who can then consider the merits of pursuing such claims for the benefit of Plan Creditors. Although the Plan Company believes that no such claims should be brought, if they were and succeeded, any proceeds would be shared rateably between HMRC, the M&A Creditor and participating Original Bondholders.

35. Mr Tanner accepted in his evidence before Hildyard J that the then directors of the Plan Company deliberately decided that it would not pay its 2022 EPL Liability on time as it could not afford to. The EPL return eventually filed for that period stated a liability of £27,548,297.25.

36. On 13 June 2024, the Plan Company made a "time-to-pay" ("**TTP**") proposal to HMRC in respect of its 2022 EPL liability. HMRC agreed the TTP on 28 June 2024, and the instalments due under the TTP were duly met ("**the June 2024 TTP**"). On 19 March 2025, HMRC opened a compliance check in respect of the Plan Company's 2022 EPL return. As at the date of HMRC's evidence in this Plan, the enquiry was on-going; and HMRC considers that the Plan Company may have understated its EPL Liability for that year by around US$2.6 million. There was some doubt expressed at the hearing as to whether there was any outstanding EPL Liability for 2022, but that is not important to resolve.

37. A further difficulty that the Plan Company faced when EPL was introduced, was that this happened after it had become subject to its obligations under the Capricorn SPA. The uplifts in EPL described above took place after the acquisition of the share capital of several licence-holding Group companies. Those acquisition agreements involved the payments of certain deferred and/or contingent consideration which was calculated without accounting for the implementation or increases to the EPL.

38. In or around May 2024, the Group's financial situation was affected by a decision of a third-party financier which provided working capital to the Group to withdraw its facilities. According to Mr Tanner, that funding had been critical to the Group's cashflow and maintenance of sufficient working capital. Despite attempts to find alternative arrangements, the Group was unable to do so and suffered liquidity losses as a result.

39. On 3 June 2024, the Plan Company and WEF failed to comply with their covenant to deliver to the Bond Trustee their annual financial statements for 2023 at the time required under the terms of the Bonds and WEF Bonds. WEF also failed to make certain amortisation and interest payments when due under the WEF Bonds, and failed to satisfy the liquidity covenant thereunder.

40. The directors of WEPL and WPL appointed administrators (the "**Administrators**") from Interpath Limited on 4 June 2024 and 12 June 2024 respectively. One of the Administrators of WPL is Mr Luke Wiseman, who gave evidence at the trial. The purpose of their appointment was to allow the Group's subsidiaries to continue trading below a stable platform and for the Administrators to conduct a sales process in respect of the shares in those subsidiaries (the "**Sales Process**").

41. In order to implement the Sales Process and following the June 2024 TTP, the Group, including the Administrators, entered into a refinancing of the Bonds and the WEF Bonds (the "**July Refinancing**"). This involved the implementation of the following:

(1) the transfer of the Original Bonds from their prior holders to SteerCo, a steering committee of holders of the WEF Bonds at that time, and the transfer of certain of the Original Bonds acquired by SteerCo to other holders of the WEF Bonds;
(2) the extension of the maturity of the Original Bonds to 2 September 2025;
(3) the deferment and rolling-up of all amortisation payments arising pursuant to the terms of the Original Bonds to the new maturity date, thereby providing the Plan Company with improved liquidity headroom;
(4) an injection of new money by SteerCo and certain other holders of the WEF Bonds of approximately US$23 million, via the issue of the Super Senior Bonds to stabilise the liquidity position of the Group (including funding payments due under the June 2024 TTP Arrangement) and establishing a stable platform to commence the Sales Process;
(5) a roll-up on a cashless basis of a certain portion of the WEF Bonds into the Super Senior Bonds;
(6) a forbearance and standstill arrangement in respect of the pre-existing Events of Default under the terms of the WEF Bonds and the agreement to certain undertakings on behalf of WEF and the guarantors pursuant to the WEF Bonds; and
(7) the entry into: (i) on 1 July 2024, an amendment and restatement agreement to effect certain amendments to the terms of the Bonds and waive all pre-existing Events of Default thereunder; and (ii) on 18 July 2024, an amendment and restatement agreement to effect certain amendments to the WEF Bonds.

42. While the July Refinancing together with the June 2024 TTP were intended to stabilise the financial position of the Group, there remained serious difficulties because of oil price fluctuations, operational issues including delays in start-ups from planned shutdowns of certain assets, and higher than anticipated DSA costs.

43. To address the latter point in relation to DSA costs, on 27 November 2024, the Plan Company lent US$15 million to Waldorf CNS (I) Limited ("**WCNS(I)**") (the "**Intra-Group Loan**"). (WCNS(I) is a Scottish company in respect of which a parallel restructuring plan is being proposed in Scotland, with the sanction hearing due to take place in May 2026, following this judgment.) In order to make the Intra-Group Loan, the Plan Company issued and subscribed for an additional tap issuance of Super Senior Bonds in the sum of US$15 million (the "**Company Super Senior Bonds**").

44. The directors of the Plan Company considered that the Intra-Group Loan was essential to prevent any destabilising effect on the Plan Company and the Group of a failure by WCNS(I) or other members of the Group to comply with their DSA obligations. Following repayments, some US$8.5 million remains outstanding in respect of the Intra-Group Loan and the Company Super Senior Bonds, but this is dealt with in the Plan and the WCNS(I) plan in Scotland. Hildyard J considered that the Intra-Group Loan further eroded the Plan Company's financial position.

45. It also became apparent that the new funds from the July Refinancing would be insufficient to pay the Plan Company's EPL Liabilities for 2023 and 2024. By that time, as Mr Tanner accepted, the Plan Company knew that its EPL Liability for 2023 would be in the region of US$47 million. It was also clear that the Plan Company's ability to

pay its 2024 EPL Liability was "*at risk*". Nevertheless, the Plan Company continued trading, including paying interest on the Bonds.

46. The Plan Company's EPL return for the financial year ended 31 December 2023 was due on 31 December 2024. It was not filed by the due date, and the EPL was not paid by 1 October 2024. On 18 March 2025, HMRC issued a revenue determination in relation to the EPL liability for the year ended 31 December 2023; that determination was for £37,890,080.41.

47. By the end of 2024 and after the initial stage of the Sales Process, the Administrators informed the Plan Company that they had received no acceptable offers and that that was due in part at least to the concerns of prospective bidders as to the overall debt profile of the Plan Company. This information from the Administrators led to the acceleration of a proposed financial restructuring that the Plan Company's legal and financial advisers had begun preparing for.

(e) RP1

48. On 5 February 2025, the Plan Company issued a Practice Statement Letter ("**PSL**") in relation to RP1. In formulating RP1, the Plan Company had negotiated with the Bondholders through SteerCo and their advisers. There was however no meaningful engagement with the Plan Company's unsecured creditors – the M&A Creditor and HMRC – the Plan Company adopting the then prevailing view that little or no weight needed to be applied to the views of such "out of the money" creditors. In fact, the Plan Company had not engaged at all with HMRC since the agreement of the June 2024 TTP. This lack of involvement of the unsecured creditors was to be the downfall of RP1.

49. The key features of RP1 were as follows:

(1) The terms of the Bonds would be amended to extend their maturity to May 2027, but to keep their current security and guarantees in place together with other amendments to provide added protection to the Bondholders;

(2) The unsecured liabilities, i.e. the M&A Creditor and HMRC, would be extinguished in full in exchange for a cash payment of 5% of the respective liabilities;

(3) Those unsecured creditors would be entitled to receive contingent upside-sharing payments in an amount *pro rata* to, and capped at, the principal amount of their Plan Claims that were being extinguished by RP1 if and to the extent that the Bondholders recovered in full; it was considered very unlikely that they would receive anything from this;

(4) The net intercompany liabilities owed by the Plan Company to WACL and WREL would be waived and released in full;

(5) Any other intra-Group claims owing by the Plan Company to be waived and released, discharged by way of set-off, and/or compromised;

(6) Any amounts outstanding under the Intra-Group Loan to be repaid in full three months prior to the maturity of the Super Senior Bonds and the remaining Company Super Senior Bonds cancelled in accordance with and subject to the terms of a voting undertaking and the terms of the Bonds, providing that the directors of WCNS(I) acting reasonably were of the opinion that such repayment could lawfully be made.

50. The purpose of RP1 was to reinvigorate the Sales Process by putting the Plan Company on a stable platform to pursue a solvent sale and to make it attractive to potential purchasers. There was no particular purchaser in the wings; nor any particular consideration identified. RP1 was to provide a "bridge" towards a potential sale of all or part of the Group. It differs from the Plan in that vital respect.

51. On 27 February 2025, the Plan Company issued the Claim Form in respect of RP1. On 5 March 2025, the convening hearing took place before Hildyard J. He gave the Plan Company permission to convene two class meetings of creditors: (i) the Bondholders; and (ii) the unsecured creditors, being the M&A Creditor and HMRC – see *Re Waldorf Production UK plc* [2025] EWHC 765 (Ch).

52. On 12 June 2025, the plan meetings were held. The requisite majority of Bondholders in favour of RP1 was obtained; but both unsecured creditors voted against it. At the sanction hearing, both the M&A Creditor and HMRC opposed sanction and Hildyard J therefore had to decide whether he should exercise the cross-class cram down power under s.901G CA 2006.

53. Prior to the sanction hearing, HMRC and the M&A Creditor made offers to the Plan Company in relation to RP1. A first offer on 16 May 2025 was to receive a cash payment of 20% of their respective claims, or for HMRC and the M&A Creditor to obtain 25% of any recoveries made by the Bondholders, in addition to the 5% cash payment that was proposed under RP1. The second offer which was made on 18 June 2025 was to receive cash of 15% of their respective claims. The Plan Company and SteerCo rejected both offers out of hand. The Plan Company now relies on the fact that HMRC was willing to accept 15% of its debt which it says is inconsistent with HMRC's approach to the Plan that its debt should not be extinguished at all.

54. The sanction hearing for RP1 was heard on 23 and 24 June 2025 and the *RP1 Sanction Judgment* was delivered on 19 August 2025. The Plan Company had suggested that it would run out of cash by the beginning of September 2025, although that obviously did not happen.

55. Two important decisions of the Court of Appeal in relation to the approach of the court to sanctioning restructuring plans using the cross-class cram down power were delivered during 2025 while RP1 was proceeding. The first was *Kington S.A.R.L and ors v Thames Water Utilities Holdings and ors* [2025] EWCA Civ 475 ("***Thames***") which was handed down on 15 April 2025, after RP1 had been launched. The second was *Saipem S.P.A. and ors v Petrofac Limited and ors* [2025] EWCA Civ 821 ("***Petrofac***"), which was handed down on 1 July 2025, after the hearing on RP1 but before Hildyard J handed down the *RP1 Sanction Judgment*. The parties made written submissions on the impact of *Petrofac* and it turned out to be influential in the *RP1 Sanction Judgment*.

56. I will look in more detail below at the judgments in *Thames* and *Petrofac* but in summary they clarified the position as to the so-called "out of the money" creditors, in particular that account needs to be taken as to the contributions of such creditors to the benefits created or preserved by the restructuring and that there needs to be genuine negotiation and engagement with such creditors in formulating a plan so that they receive a proper share of the restructuring benefits. Hildyard J concluded that the Plan Company had not "*discharged the burden on it of showing that the Plan is fair and that it is appropriate, just and equitable…to exercise the Court's discretion to sanction it*" [195]. Based on *Thames* and *Petrofac*, and despite the fact that he accepted that the jurisdictional requirements for the exercise of the cross-class cram down power were met, Hildyard J refused sanction because he was not satisfied that there had been any adequate engagement with the unsecured creditors and that RP1 provided benefits to those creditors that were commensurate with what they might reasonably and fairly have negotiated for their support had they had the opportunity to do so.

57. Even though it did not affect his decision, Hildyard J was highly critical of the October 2022 Dividend and the conduct of the then directors of the Plan Company in deliberately not paying its 2023 EPL Liability while continuing to trade without speaking to HMRC – see [196]. He was clear that in appropriate circumstances HMRC could be crammed down (HMRC had not argued then to the contrary). However, he also considered that the fact that HMRC is an "involuntary creditor" and the way the Plan Company had dealt with it were factors that the court could legitimately weigh in the balance when deciding whether to exercise its cross-class cram down power against HMRC. He referred to the views of Leech J to similar effect in *Re Nasmyth Group Limited* [2023] EWHC 988 (Ch) ("***Nasmyth***") at [113] to [117].

58. Hildyard J encouraged the parties to seek to negotiate an acceptable compromise in the light of his draft judgment, giving them extra time between circulation of the draft and its formal hand down. Furthermore, the Plan Company's directors decided that it was in the circumstances in the best interests of stakeholders to continue to trade while trying to reach an agreement with all of them. In the event however, the negotiations were unsuccessful and the *RP1 Sanction Judgment* was formally handed down.

59. Soon after the *RP1 Sanction Judgment* was handed down, Harbour made its offer to acquire some of the companies in the Group. The Plan Company therefore continued negotiations with its creditors towards a second restructuring plan in which the unsecured liabilities would be compromised and extinguished, as that was a condition of Harbour's offer. In the light of the *RP1 Sanction Judgment*, the Plan Company was duty-bound to engage with its unsecured creditors, together with the Bondholders, if it was to have any hope of having its new plan sanctioned by the court.

60. However, in parallel with those ongoing negotiations, the Plan Company also tried to keep RP1 alive and sought a certificate from Hildyard J pursuant to s.12 of the Administration of Justice Act 1969 for a leapfrog appeal to the Supreme Court against his judgment, on the basis that the Court of Appeal judgments in *Thames* and *Petrofac* were arguably wrong. On 9 September 2025, Hildyard J granted the leapfrog certificate – see his judgment at [2025] EWHC 2297 (Ch). On 22 September 2025, the Plan Company filed an application for permission to appeal to the Supreme Court and on 9 October 2025, the Supreme Court granted permission to appeal and for it to be heard on an expedited basis. A hearing of the appeal in the Supreme Court was fixed for 24 and 25 February 2026.

61. The Plan Company did not disclose to Hildyard J at the consequentials hearing on 29 August 2025 or at any time thereafter, or to the Supreme Court when it was considering permission to appeal and fixing the hearing date, that Harbour had made a non-binding indicative offer ("**NBIO**") (discussed below) and that a new plan was being negotiated. Its reasons for not saying anything were that the NBIO was, by nature, non-binding and highly confidential and there was quite a lot to sort out before it could proceed. Nevertheless, the fact is that the Supreme Court bent over backwards to accommodate the appeal on an expedited basis, even though HMRC had pointed out that the appeal would likely be academic as the Plan Company's financial position would have changed considerably by the time the Supreme Court would be able to deliver its judgment.

62. Mr Phillips KC on behalf of HMRC sought to suggest, and he put this to Mr Tanner in cross-examination, that there was something underhand in the way that Hildyard J and the Supreme Court were kept in the dark about the Harbour offer and the proposed new Plan. While I can see that it might have been better if something had been disclosed about those relevant events, and I am sure it could have been done in a way not to breach confidentiality, so that the Supreme Court could have factored it into its decisions, I do not think that there was anything Machiavellian about the non-disclosure. Furthermore, I do not consider that it is relevant to the issues that I have to decide.

63. As a result of agreement being reached with the creditors, except HMRC, and the entry into the SPA, the appeal to the Supreme Court was withdrawn on behalf of the Plan Company on 17 December 2025. The withdrawal was accepted by the Supreme Court on 19 December 2025.

(f) Harbour's offer and negotiations with Plan Creditors

64. As noted above, on 26 August 2025, Harbour made its NBIO to acquire 100% of WPL's and WEPL's shares in the Target Group (although excluding WPL and WEF) for US$205 million less leakage. HMRC was informed of the NBIO on 1 September 2025.

65. On 11 September 2025, Harbour provided a breakdown of the value it considered should be ascribed to each Target Group Company for the purposes of the SPA. The amount it was treating as allocated to the Plan Company was US$85 million. Harbour never explained the basis for arriving at that figure, although it is at the upper-end of the range in a valuation report by an independent expert, Dr Stuart Amor of FTI Consulting, that was produced for the purposes of RP1. This valuation report was not challenged by HMRC in RP1.

66. The transaction was conditional on the full and final settlement of all claims by material third-party creditors of each Target Group company, including the Plan Creditors as well as claims by the holders of the WEF Bonds and the Super Senior Bonds in respect of their claims against and security guarantees granted by the WEF Group. The "**Target Group Creditors**" also include: HMRC in respect of its claim against WCNS(I); Alpha Petroleum UK Limited ("**Shorelight**") for its claim against WPRL; and WPL and WEPL in respect of intra-group liabilities. The consideration for the purchase was intended to fund the release of the Target Group Creditors' respective claims, and in the NBIO, Harbour made clear that the distribution of the proceeds of sale would need to be discussed and agreed by the Target Group Creditors.

67. As the evidence made clear, the extinguishment of the Group's EPL Liabilities was a critical condition of Harbour. It is no secret that most oil companies, including Harbour and the Group, are vehemently opposed to the EPL and have sought ways round it. Harbour was insistent that the Group's existing EPL Liabilities needed to be extinguished before it would proceed with the deal. That is why the Plan was necessary.

68. After information about Harbour's proposed purchase pursuant to the NBIO had been shared with the Plan Creditors including HMRC in early September 2025, a period of extensive negotiations with and amongst the Target Group Creditors ensued as to how the offered consideration would be allocated. That involved, uniquely for such a plan, a two-day mediation on 16 and 17 October 2025, to which all Plan Creditors and Target Group Creditors were invited, but in respect of which HMRC was the only such Creditor not to attend. It was SteerCo's lawyers, Milbank LLP ("**Milbank**") who had put forward the initial proposal as to allocation among the Plan Creditors and who suggested the mediation. It seems to me that the use of mediation in these circumstances to find agreement among the stakeholders is to be encouraged.

69. HMRC however adopted the position that it would not participate in the mediation. Following Milbank's original letter of 19 September 2025 proposing that the unsecured creditors, HMRC and the M&A Creditor should receive 15% of the 'Restructuring Benefits' (as defined in SteerCo's accompanying methodology as being the delta between the returns under the sale to Harbour and those from a formal insolvency process) under a proposed consensual restructuring, and their letter of 2 October 2025 proposing the mediation, HMRC did respond to these and to the Plan Company's lawyers, White & Case LLP ("**White & Case**") as well.

70. In its letter of 3 October 2025, HMRC set out a detailed explanation of its position on the Harbour offer and Milbank's suggested proposal for the Plan as well as its reason for not participating in the mediation. That was principally because of its internal decision-making processes not lending themselves to be able to get immediate instructions during the course of a mediation in relation to offers and counter-offers. It would also involve a diversion of HMRC's limited resources.

71. I did not find those reasons for not attending the mediation particularly convincing. Mr Sheamie Donnelly, as the Head of HMRC's Large and Sensitive Debts Team, made a witness statement dated 27 February 2026 for these proceedings (he did not give oral evidence) in which he expanded on the reasons for not attending to include the fact that HMRC has to be mindful of setting a precedent by attending such a mediation, which may then require it, because of its duty to treat all taxpayers fairly, to attend other mediations in restructuring plans and other similar insolvency processes which could be a strain on HMRC's resources. I understand that point, but I do still think that as it was HMRC's complaint in relation to RP1 that the Plan Company had not engaged with the unsecured creditors, it was unhelpful for it then to refuse to attend a mediation in relation to the Plan, thus preventing the sort of meaningful engagement it had sought in RP1.

72. There is however a broader point that HMRC and Mr Phillips KC make about this. The proposed mediation was solely about how the consideration to be received from Harbour would be split between the Target Group Creditors. At that stage the consideration was US$205 million less "leakage", which is essentially the fees, costs and expenses incurred in relation to RP1, the Plan and the transaction with Harbour

since 1 January 2025 and which was estimated at approximately US$50 million. Therefore the "pot" that was being divided was about US$155 million. Harbour was not going to attend the mediation and HMRC's position was, and is, that Harbour or the Group should be paying a far greater proportion of the EPL Liabilities than had been suggested by Milbank. This reflects HMRC's and the Plan Company's different approaches to the Plan, with HMRC viewing it as an attempt to extinguish unwanted EPL Liabilities while taking advantage of the substantial tax losses, whereas the Plan Company seeing it as a simple division of the proceeds of sale from Harbour.

73. There was further correspondence between HMRC and White & Case and Milbank following the mediation, with HMRC reiterating, in a letter dated 23 October 2025, that Harbour would be acquiring the benefit of accumulated tax losses of US$4.5 billion which could potentially reduce Harbour's future tax liabilities by around US$924 million, which was more than four times the combined EPL Liabilities of the Plan Company and WCNS(I) of around US$172 million. SteerCo's latest offer would amount to some US$12 million to extinguish the EPL Liabilities. HMRC continued to raise these and other concerns in letters dated 29 October 2025 and 4 November 2025. I do not think it is fair for the Plan Company to say that there was no engagement from HMRC or that it did not know what its position was. HMRC was also seeking consent to contact Harbour direct.

74. There was no actual agreement between the Target Group Creditors at the mediation, but negotiations continued, and by around 6 November 2025, SteerCo, the M&A Creditor, Capricorn Energy UK Limited, Shorelight and the Administrators reached agreement in respect of the allocation of the proceeds of sale between them. This was recorded in a creditor framework term sheet (the "**Creditor Framework Term Sheet**") that reflected the terms of an agreed compromise of the Target Group Creditors' claims save for HMRC set out in a paper dated 29 October 2025 (the "**Agreed Compromise**"). The methodology behind the Agreed Compromise involved accepting Harbour's allocation to each Target Group Company.

75. HMRC was informed of the Agreed Compromise and in a letter dated 14 November 2025 explained why it would not support the Plan based on it as it considered it would be worse off than on a terminal insolvency because of the use by Harbour of the tax losses. HMRC said that the Plan would be an abuse of process given Harbour's liquidity and ability to pay the EPL Liabilities. Mr Donnelly further explained in his witness statement that HMRC viewed RP1 and the Plan as being very different, as in RP1 there was no offer on the table and there was no certainty that the Plan Company would continue to trade; whereas under the Plan, it would necessarily have to continue to trade so that Harbour would have the opportunity of using the tax losses, which is one of the main reasons for its purchase of companies in the Group. As Mr Donnelly said, from HMRC's perspective, what was allegedly the situation in RP1 that the Plan Company "*can't pay*" the full EPL Liability, had become under the Plan, a situation where it "*won't pay*" the EPL Liability despite Harbour having the resources to do so.

76. On 28 November 2025, HMRC wrote to White & Case to set out its Contingent Payment Proposal. The Plan Company has complained that this was only done after the mediation and after the Agreed Compromise. But HMRC's general position on that had been made clear in the earlier correspondence summarised above. The letter explained that HMRC was prepared to explore a framework for the payment of the EPL Liabilities whereby the liabilities would become payable as and when the restructuring benefits

contributed by HMRC to the Plan accrued to the Plan Company and/or Harbour. The Contingent Payment Proposal envisaged that HMRC would still receive the proposed payments under the Plan, but would, in addition, receive further payments towards the EPL Liabilities if and when certain contingencies occurred (for example profits being shielded by the Group's tax losses). Apart from a rejection, there has never been any substantive response to the Contingent Payment Proposal by the Plan Company or Harbour (although the Plan Company did allow HMRC to talk directly to Harbour).

77. On 11 December 2025, WEPL, WPL, the SteerCo, the M&A Creditor and the other Target Group Creditors, except for HMRC, entered into a lock-up agreement (the "**Lock-Up Agreement**") confirming their support for the transaction with Harbour and the Agreed Compromise.

78. On the same date, the Administrators and a wholly-owned subsidiary of Harbour, Chrysaor Holdings Limited (the "**Purchaser**"), entered into the SPA in respect of the Target Group. Pursuant to the SPA, WEPL and WPL through the Administrators (the "**Sellers**") agreed to sell, and the Purchaser agreed to purchase, the Target Group for the Consideration, being US$205 million less Leakage. During the course of the negotiations SteerCo, with the support of the Plan Company, managed to secure Harbour's agreement that US$30 million of the anticipated US$63 million of Leakage would be excluded from the calculation, meaning that there was an additional US$30 million of consideration, the benefit of which would accrue rateably to all Target Group Creditors including HMRC. HMRC pointed out that this shows that Harbour was prepared to negotiate after the NBIO as to the amount that it would be prepared to pay the Group. The cash consideration was therefore a net figure of US$170 million.

79. Completion under the SPA is subject to conditions precedent (the "**SPA Conditions**") (set out in clause 3.1 of the SPA) and these include:

    (1) an order sanctioning the Plan and either the expiry of the period for filing of any appeal against that order or the successful disposal of any such appeal without any alteration of the sanction order;
    (2) a sanction order being made in respect of the parallel restructuring plan for WCNS(I) in Scotland and the same conditions regarding appeal;
    (3) the execution of documents effecting the release of each Target Group Creditor's claims against each applicable Target Group Company (as applicable);
    (4) written consent being received from NSTA under the terms of each relevant licence allowing the change of control of each Target Group Company.

80. The Sellers and Purchaser are subject to "reasonable endeavours" obligations to achieve satisfaction of the SPA Conditions by either 30 April 2026; or, if the WCNS(I) restructuring plan has not been sanctioned or still has an appeal outstanding, then on the earlier of either: (i) the date falling one business day after the date on which the WCNS(I) plan is sanctioned; or (ii) the date on which a court gives a judgment refusing to sanction the WCNS(I) plan; or (iii) 31 May 2026; or (iv) such other date as may be agreed in writing between the parties to the SPA. (It is this condition that allegedly provides the urgency for this judgment, although I was informed that the sanction hearing in Scotland for WCNS(I) is listed for hearing between 5 to 8 May 2026 and on

the day I provided a draft of this judgment I was told that there had been agreed extension to the long-stop date (see [239] below).)

81. Pending completion of the SPA, the Target Group is required to run its business in the ordinary course with customary restrictions on its operations.

82. On 12 December 2025, Harbour announced its acquisition of the Target Companies. It stated that the acquisition would deliver: "*significant financial synergies*" through "*the addition of Waldorf's UK ring fence tax losses*". It identified the tax losses as: "*at YE2024, Waldorf's estimated total ring fence tax losses included those relating to corporation tax of around $2,450 million, supplementary charge of around $1,800 million and Energy Profits Levy of around $60 million*". It is clear that Harbour viewed the tax losses in the Group as one of the main reasons for entering into the SPA. In its announcement of its financial results for the year ended 31 December 2025, Harbour said that the acquisition would add "*c.$900 million in value through UK tax losses*."

(g) The Plan

83. Despite the length and complexity of the Plan documents, including the Explanatory Statement, the key points are relatively straightforward. There are only three Plan Creditors: the Bondholders; the M&A Creditor; and HMRC in respect of the EPL Liabilities. Their claims against the Plan Company will be extinguished and released under the Plan upon payment of the sums calculated using the methodology of the Agreed Compromise. As is common in plans where the company will continue to trade, all trade creditors who are essential for the survival of the business are outside the Plan and are not Plan Creditors. They will be paid in the ordinary course of business. HMRC has complained that it should be treated the same as them as it too has an ongoing relationship with the Plan Company and the payment of the EPL Liabilities is similarly "essential".

84. The Plan will become effective on the payment of the consideration and completion occurring under the SPA (the "**Restructuring Effective Date**"). On that date, the consideration received by the Plan Company will be paid to the Plan Creditors in accordance with the Agreed Compromise and all the liabilities to the Plan Creditors will be released and extinguished in full, together with the security and guarantees from other companies in the Group on the Bonds. All net intercompany claims against the Plan Company will be waived and released in full. And certain potential claims in respect of antecedent transactions, such as the October 2022 Dividend will be assigned to WPL, WEPL and/or the Administrators and the Plan Creditors will have the right to benefit in any recoveries in respect of the same.

85. The estimated outcomes for the Plan Creditors are as follows:

(1) The Super Senior Bondholders will receive 41.5% of the nominal value of their claims from the Plan Company; however if everything goes through and the Plan is sanctioned, the Super Senior Bondholders will actually receive 100% of their claims because they will recover from other Group entities who gave security – they would in any event receive the full value of their claims in the Relevant Alternative;

(2) The Original Bondholders will receive 62.3% of the nominal value of their claims;

(3) The M&A Creditor will receive 14% of the nominal value of its claim; and

(4) HMRC will receive 14% of the nominal value of the EPL Liabilities.

86. In the Plan Company's reply evidence, the Plan Company is proposing a "**true-up mechanism**" to take account of the fact that the precise value of the EPL Liabilities is not known. The true-up mechanism adjusts the amount to be received by HMRC if the EPL Liabilities turn out to be higher than the sum used to calculate the amount HMRC is due to receive under the Plan.

87. According to the written evidence of Ms Jennifer Beattie from HMRC (her evidence was unchallenged), on 22 December 2025 (after the agreement of the SPA), the Plan Company filed very late its EPL return for the year ended 31 December 2023. According to the return (as twice amended), the amount of EPL due by the Plan Company for that period is US$47,120,104 (that is £37,889,606). On 23 February 2026, HMRC opened a compliance check into the Plan Company's 2023 EPL return. That enquiry is ongoing, and HMRC is therefore unable to state a final figure for the Plan Company's 2023 EPL liability. In early April 2026, HMRC also set off c £1.4m of VAT repayments otherwise due to the Plan Company against its 2023 EPL liability.

88. The Plan Company's EPL return for the year ended 31 December 2024 was due on 31 December 2025, with the tax payment due on 1 October 2025. However the Plan Company has not yet filed its EPL return for the 2024 year. On 20 January 2026, HMRC issued a revenue determination for that year in the sum of £25.6 million. As Ms Beattie explained, that determination is in fact for an incorrect figure; the amount of EPL should be £19,474,502. For the purposes of the Plan, HMRC is content to use that latter figure.

89. Therefore, according to HMRC, the Plan Company's outstanding EPL Liabilities for the purposes of the Plan, calculated, with interest, to the final day of this sanction hearing less the set-off of the VAT repayment, total £69,858,617.13 (or US$93,680,405.57), meaning that for the relevant years covered by the Plan, the figures are as follows:

(1) For the financial year ended 31 December 2022: £2,546,344.15.
(2) For the financial year ended 31 December 2023: £47,408,362.28.
(3) For the financial year ended 31 December 2024: £19,903,910.70.

90. The true-up mechanism was not asked for by HMRC. Instead it has been offered by the Plan Company, presumably in conjunction with Harbour, as the way it will work is that any extra to be received by HMRC will not affect the payments under the Plan to the other Plan Creditors. It will be a continuing obligation of the Plan Company which will then be under the indirect ownership of Harbour.

91. Mr Phillips KC submitted that the true-up mechanism shows that there is still scope for negotiation of a better deal from Harbour and that a modification along the lines of the Contingent Payment Proposal should not be out of the question. The Plan Company however says that any payment under the true-up mechanism is likely to be immaterial but it was trying to be fair to HMRC.

C. THE EVIDENCE

92. As I have said above, there was much written evidence that was adduced by the parties, including experts reports and there was limited cross-examination of some of the factual witnesses and all three experts. This was largely uncontroversial and I will refer to it as necessary in the course of considering the parties' submissions.

93. The Plan Company's witnesses were as follows:

(1) Mr Tom Hughes, who is the Chief Financial Officer of the Plan Company, having only been appointed to that position on 15 May 2025, during the course of RP1. Mr Hughes was cross-examined on the negotiations with Plan Creditors, the terms of the Plan and the deal with Harbour and generally about the Group's financial situation.

(2) Mr Paul Tanner, who is the Chief Executive Officer of the Plan Company, having been appointed to that role at the same time as Mr Hughes was to his role. Mr Tanner had given oral evidence before Hildyard J in RP1 and he was only briefly cross-examined as to the Supreme Court appeal and the effect of the increase in the price of Brent crude oil.

(3) Mr Luke Wiseman, who is one of the Administrators and a Managing Director at Interpath Limited, was cross-examined on: the availability of the tax losses; the costs of selling the two Group companies with the most significant tax losses as going concerns, namely Waldorf Petroleum Resources Limited ("**WPRL**") and Waldorf Operations Limited ("**WOL**"); and whether the Administrators would agree to the removal of the extinguishment of the EPL Liabilities from the Plan. Mr Phillips KC sought to suggest that Mr Wiseman was at times straying from his role as an independent Administrator and arguing the case for the Plan Company. I do not think that was so, and consider that I can rely on Mr Wiseman's experience as an Insolvency Practitioner and to trust that he would only act in what he would consider to be the best interests of creditors.

94. The Plan Company's expert witnesses were as follows:

(1) Ms Lisa Rickelton, a licensed UK insolvency practitioner and Senior Managing Director at FTI Consulting LLP. Her expert evidence is concerned with the most likely Relevant Alternative should the Plan fail and to estimate the outcome to Plan Creditors should the Plan be sanctioned. Mr Phillips KC made the bold submission that her evidence was wholly unsatisfactory in particular as to how the proceeds of sale of companies in the Relevant Alternative would be dealt with. I do not think that criticism was justified and Ms Rickelton was making a perfectly sensible point, albeit that it perhaps should have been stated more clearly in her report.

(2) Mr Derek Leith was a Chartered Certified Accountant and Chartered Tax Advisor, specialising in corporate tax in particular in relation to the oil and gas sector until his retirement in 2023. He has impressive experience in this field and he was instructed to provide a report in relation to HMRC's contentions as to the availability of the tax losses and their likely utilisation so as to assess whether the

Exchequer would be worse off under the Plan as compared to the Relevant Alternative.

95. HMRC adduced witness statements from:

(1) Ms Nicola Garrod, who I have already referred to above as providing an uncontroversial history and explanation of EPL.

(2) Ms Jennifer Beattie, whose evidence I have also referred to above in relation to the Plan Company's liabilities and failures to pay EPL.

(3) Mr Sheamie Donnelly, whose evidence I have also referred to above was unable to give oral evidence, and so his deputy, Mr Dave Walsh, stepped in at the last minute to do so on Mr Donnelly's behalf.

(4) Mr Dave Walsh therefore adopted Mr Donnelly's witness statement which explained HMRC's approach to the Plan and its opposition thereto. Mr Walsh was actually the author of the Contingent Payment Proposal. Mr Walsh was cross-examined by Ms Cooke as to the change in approach of HMRC between RP1 and the Plan, and its approach to the mediation and negotiations with the Plan Company.

(5) Mr Scott McFarlane is an Oil and Gas Corporation Tax Specialist within HMRC's Large Business directorate. His evidence was concerned with the availability and utilisation of tax losses in the event of the sale to Harbour going ahead, together with the relief on decommissioning expenditure. Mr McFarlane was cross-examined by Mr Abraham where his evidence in such respects was challenged by reference principally to the expert evidence of Mr Leith.

96. HMRC called one expert witness, Mr Christopher Drewe, who is a Chartered Accountant and a partner of Forvis Mazars LLP. Mr Drewe specialises in providing expert opinions on valuation and accountancy-related issues. In providing his expert evidence, Mr Drewe was clear that he is not a tax expert, but his instructions were to take into account the impact of the tax losses being utilised on HMRC's estimated returns under the Plan and under two different scenarios for the Relevant Alternative. Mr Drewe was cross-examined by Mr Bayfield KC principally on the assumptions he had made as to the potential utilisation of the tax losses by Harbour.

D. THE RELEVANT ALTERNATIVE

97. The key concept for the purpose of considering the exercise of the cross-class cram down power is that of the "**Relevant Alternative**". It is defined in s.901G(4) CA 2006 as "*whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned*".

98. In *Re CB&I UK Limited* [2024] EWHC 398 (Ch), [2024] BCC 551, [89] to [92], I attempted to summarise the principles as to determining the Relevant Alternative. These were referred to by Hildyard J in the *RP1 Sanction Judgment* with apparent

approval. I do not need to set these out here because the Relevant Alternative in this case is not disputed.

99. As explained by Mr Hughes on behalf of the directors of the Plan Company and by Ms Rickelton in her expert analysis, the Relevant Alternative, if the Plan is not sanctioned, is likely to be that the Plan Company and most of the rest of the Group would go into an insolvency process and its business would cease. Indeed HMRC itself has said that if the Plan is not sanctioned it would petition to wind up the Plan Company.

100. In the event of such an insolvency, the assets would be realised so far as possible for the benefit of the secured creditors, that is the Bondholders, and the unsecured creditors would receive only the prescribed part (pursuant to s.176A of the Insolvency Act 1986). Ms Rickelton opined that WPRL and WOL, the companies in the Group with the most valuable tax losses (valued at c. US$813 million), would be likely sold as going concerns.

101. Even though HMRC accepts that the Relevant Alternative would include the sale as going concerns of WPRL and WOL so as to realise the value of their tax losses (this is why Harbour wishes to buy them under the SPA and would probably want to do the same if the Plan is not sanctioned, at reduced consideration), I am not sure that it has fully appreciated the implications of that in relation to the Exchequer's net return. It means that those tax losses will be used to shield the purchaser's profits from tax and so HMRC will suffer that "loss", if it is a loss, in both the Relevant Alternative and under the Plan. I will look later in this judgment at how that plays out in terms of the figures.

102. Ms Rickelton further noted that there are no alternative viable offers to Harbour's for the Plan Company as a going concern and that given its long-term future cash-flow forecast, there would not be available any further material funding for the Plan Company from, say, the Bondholders. The only way it can therefore avoid a formal insolvency process would be by way of the Plan and the SPA. Without the Plan and the SPA, the Plan Company is plainly insolvent and unable to meet its liabilities.

103. Ms Rickelton estimated the outcome for the Plan Creditors in the Relevant Alternative on the basis that WPRL and WOL are sold as going concerns:

(1) Super Senior Bondholders will receive 100% of the nominal value of their claims, assuming recoveries from other Group entities (it would be 19.5% of their claims from the Plan Company alone);

(2) The Original Bondholders will receive 46.7% of the nominal value of their claims, assuming recoveries from other Group entities (it would be 44.3% of their claims from the Plan Company alone);

(3) The M&A Creditor will receive up to 0.1% of the nominal value of its claim; and

(4) HMRC will receive up to 0.1% of the value of its claim to the EPL Liabilities.

104. The amount of the prescribed part for the unsecured creditors is estimated to be a maximum of £800,000, to be shared rateably amongst them all, including the unsecured creditors who were not Plan Creditors, such as essential trade creditors.

105. The difference in value for the Original Bondholders is between US$38.1 million under the Plan and US$28.6 million in the Relevant Alternative. As the Super Senior Bondholders will receive 100% of their claims (US$59.7 million) in any event, I questioned why it was in the interests of the Bondholders for over US$60 million to be spent on getting this Plan (and pursuing RP1) through. Mr Bayfield KC insisted that the Bondholders wanted the certainty that the deal with Harbour and the Plan would bring and that it was best to avoid a messy insolvency process if at all possible in the interests of the creditors as a whole.

106. Therefore, ignoring HMRC's point on the tax losses, it is clear that all the Plan Creditors are better off under the Plan than the Relevant Alternative. The parties' respective experts agreed this.

E. THE LEGAL PRINCIPLES FOR SANCTIONING A RESTRUCTURING PLAN

107. Before turning to the particular status of HMRC both generally and in relation to the Plan, it is important to have in mind the principles concerning the court's power to sanction, in particular when it is being asked to exercise the cross-class cram down power in s.901G CA 2006.

108. Mr Phillips KC referred me back to s.901A CA 2006 for the statutory purposes of a Part 26A plan. The two Conditions for the application of Part 26A are:

> "(2) Condition A is that the 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.
>
> (3) Condition B is that –
>
> (a) a compromise or arrangement is proposed between the company and -
>
> (i) its creditors, or any class of them, or
>
> (ii) its members, or any class of them, and
>
> (b) the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties mentioned in subsection (2)."

109. I was satisfied at the convening hearing that both Conditions were satisfied and that there was jurisdiction to proceed with the Plan. That is not challenged by HMRC. Mr Phillips KC drew my attention to the purposes of a plan as set out in s.901A(3)(b) CA 2006 to support his thesis that a distinction should be made between: a "terminal" plan where the company will not continue to trade but the plan will result in higher returns to creditors – this "reduces" or "mitigates" the financial difficulties; and a "rescue" plan

where the purpose is to enable the company to continue to trade as a going concern. Such a case could be within any of the four purposes set out in s.901A(3)(b).

110. An example of a terminal plan was that in *Re AGPS Bondco Plc* [2024] EWCA Civ 24 ("***Adler***"), the first of the trilogy, as Hildyard J called them, of recent Court of Appeal cases dealing with Part 26A plans, the other two being *Thames* and *Petrofac*. In *Adler* it was found to have been unfair to have treated a dissenting class differently under the plan from other creditors that would have ranked equally in an insolvency distribution. This was further explained in *Thames*, and I will look at that below.

111. But the requirements for sanction where the cross-class cram down power is invoked are different to where it is not. Where s.901G is not engaged, the well-established four-stage test for the sanction of Part 26 schemes of arrangement, as set out by David Richards J, as he then was, in *Re Telewest Communications plc (No. 2)* [2005] 1 BCLC 772 at [20] to [22], applies – see [122]-[128] of *Adler*, per Snowden LJ.

112. Section 901G CA 2006 materially provides as follows:

> "(1) This section applies if the compromise or arrangement is not agreed by a number representing at least 75% in value of a class of creditors or (as the case may be) of members of the company ("the dissenting class"), present and voting either in person or by proxy at the meeting summoned under section 901C.
>
> (2) If conditions A and B are met, the fact that the dissenting class has not agreed the compromise or arrangement does not prevent the court from sanctioning it under section 901F.
>
> (3) Condition A is that the court is satisfied that, if the compromise or arrangement were to be sanctioned under section 901F, none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative (see subsection (4)).
>
> (4) For the purposes of this section "the relevant alternative" is whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned under section 901F.
>
> (5) Condition B is that the compromise or arrangement has been agreed by a number representing 75% in value of a class of creditors or (as the case may be) of members, present and voting either in person or by proxy at the meeting summoned under section 901C, who would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative."

113. There is no issue with Condition B in this case. But HMRC says that the Plan Company cannot satisfy Condition A because of the tax losses that will be used by Harbour if the Plan is sanctioned and will make HMRC worse off overall under the Plan than it would be in the Relevant Alternative.

114. Even if Conditions A and B are met and there is jurisdiction to exercise the cross-class cram down power, the court still needs to be satisfied that it is fair in all the circumstances to exercise its discretion to cram down the dissenting class, in this case, HMRC. If Condition A is met, and HMRC is no worse off within the meaning of

s.901G(3) CA 2006, it may still be relevant on discretion to look at whether HMRC is worse off in a wider sense than is prescribed for under s.901G(3).

115. The trilogy of Court of Appeal cases brought about a change in approach to the so-called out of the money creditors. *Adler* was considered further in *Thames,* particularly for the principles in respect of the treatment of creditors within the same class differently. Mr Bayfield KC emphasised that in this Plan, HMRC and the M&A Creditor would be treated the same in the Relevant Alternative, and they are proposed to be treated the same under the Plan. He said that the fact that the M&A Creditor has assented to and supported the Plan is a strong indicator that unsecured creditors are being treated fairly under the Plan.

116. Mr Phillips KC's distinction between "terminal" and "rescue" plans and perhaps different tests of fairness as a result, derives some support from *Thames*. At [96] and [97], the judgment of the court stated as follows:

> "96. Third, it is important not to divorce guidance in an earlier decision from the circumstances of that case. Restructuring plans can be used in a variety of situations and can be structured in many ways. To take three examples: they might be used (as in *Adler*) as an alternative to a formal distribution process in liquidation or administration; or (as in *Virgin Active*) as a means of restructuring a balance sheet (for example by swapping debt for equity) in order to enable the company to continue to trade as a going concern with a reduced debt burden; or (as in this case) simply as a mechanism to avoid a formal insolvency process now, so as to buy time to enable a further, substantive, restructuring to be implemented in the future.
>
> 97. Guidance developed in the context, say, of a distributing restructuring plan may not read across directly to a plan designed only as an interim measure."

117. As to the discretion in a cram down case, the Court of Appeal made clear that the principles from *Adler* require the court to look beyond the no worse off condition and to determine whether any differential treatment of different classes of creditors can be justified.

> "103. In any case where the cross-class cram-down power is engaged, however, the Court cannot simply apply the rationality test (i.e. the third of the above principles summarised in *Re Noble Group*) either (i) as regards voting within the dissenting class, or (ii) as regards the overall vote across different classes: §129. The logic that drives the rationality test in a scheme of arrangement – that a majority of those who share materially the same rights against the debtor are in the best position to consider their own commercial interests – is lacking when the question is whether to impose the plan on one or more of the classes which have *not* approved the plan by the requisite majority: §125 to §127 and §140 to §141.
>
> 104. Nor is it sufficient to establish that a dissenting class is no worse off under the plan than in the relevant alternative (the so-called "vertical

> comparator" test borrowed from CVAs). That is a necessary requirement for the exercise of the cross-class cram-down power, embodied in Condition A in s.901G(3) of the 2006 Act, but is clearly not in itself sufficient to justify the exercise of the power: §153."

118. The cases considering the exercise of discretion at first instance had adopted the term "restructuring surplus" in order to assess the respective contributions of the different classes of creditor and what would be their fair share of the restructuring. The Court of Appeal in *Thames* suggested that a better term would be the "*benefits preserved or generated by the restructuring*" because those benefits would not necessarily always be "*something of quantifiable value*" – see [117].

119. The Court of Appeal then dealt with the out of the money creditors issue by disapproving the interpretation of Snowden J's, as he then was, judgment in *Re Virgin Active Holdings Ltd* [2021] EWHC 1246 (Ch), [2022] 2 BCLC 62 ("***Virgin Active***") at [249], that out of the money creditors did not need to be taken account of in considering a fair distribution of the benefits preserved or generated by a plan. Even though there is not such an issue in relation to the Plan (as this was the reason RP1 foundered) it is important still to bear well in mind the general statement of principle in [149] of *Thames*:

> "149. As a matter of principle, we reject the rigid approach suggested by the Plan Company. While it may well be right in some cases to conclude that the fact that a dissenting class would be out of the money in the relevant alternative is a sufficient justification to exclude them from whatever benefit the restructuring preserves or generates, that will not necessarily always be so. As we have already noted, and in agreement with the submissions of Mr Thornton on this point, there are myriad reasons why a company might be suffering financial difficulties, and why a plan may be proposed, and a variety of structures that it might adopt. The nature of the benefits preserved or generated by a plan and the extent to which a fair distribution of those benefits will require consideration to be given to those who would be out of the money in the relevant alternative are likely to vary accordingly."

120. In *Petrofac*, there were two grounds of appeal: (i) the trial judge's application of the no worse off test in Condition A in s.901G(3) CA 2006, the appellants contending for a wider consideration of the position of the dissenting class under the plan and the relevant alternative; and (ii) as to the judge's exercise of discretion and whether the benefits preserved or generated by the plans were being fairly shared between the plan creditors – see [69]. I will deal with (i) in section F(2) below when I deal with the no worse off condition. The Court of Appeal rejected this ground of appeal.

121. As to (ii) however, the appeal was allowed. The Court of Appeal (Snowden and Zacaroli LJJ, and Sir Christopher Floyd) in a joint judgment, built on *Thames* and expressly rejected the principle that out of the money creditors in the relevant alternative could simply be provided with a *de minimis* amount that just about satisfied the jurisdictional requirement that the plan amounted to a "compromise or arrangement" – see [111] – [117]. Mr Phillips KC pointed out that at [109] the Court of Appeal seemed to recognise the distinction between a "terminal" and "rescue" plan.

122. In determining the fair allocation of the benefits of the restructuring including to the out of the money creditors, the Court of Appeal in *Petrofac* stressed the purpose of the cross-class cram down power and the need for the Plan Company and the assenting classes of creditors to engage and negotiate with the dissenting class so as to arrive at a fair, just and equitable outcome that the court could sanction. At [130] – [131], the judgment stated:

> "130. In these circumstances, absent recourse to Part 26A, if a class of creditors who would expect to receive a distribution from the realisation of assets in the liquidation wished to obtain the additional benefit of the preservation of the company itself and the value of its business as a going concern, free of the claims of the other creditors, they would have to negotiate with the company and with the classes of out of the money creditors for the latter to give up their claims. That would inevitably require a genuine commercial compromise by all parties.
>
> 131. Prior to the enactment of Part 26A, a scheme of arrangement under Part 26 provided a means by which such a negotiated deal could be implemented without having to get unanimity among all affected creditors. But the terms of the deal would have to be good enough to attract a sufficient assenting majority in each of the classes of creditors, including those who would have been out of the money in the liquidation alternative. As was made clear by the legislative history to which reference was made in *Adler* at §259 to §270, the primary purpose of the introduction of the cross-class cram down power under Part 26A was to allow the Court, in an appropriate case, to override the absence of assent in each class and thereby to prevent any one or more classes of creditors from exercising an unjustified right of veto. The cross-class cram down power was not designed as a tool to enable assenting classes to appropriate to themselves an inequitable share of the benefits of the restructuring. The Court's discretion to refuse to sanction a plan would in such circumstances clearly be engaged (c.f. the Explanatory Notes to Part 26A, at §192, where it is pointed out that the Court may refuse to sanction a plan, even if the section 901G conditions are met, if it would not be just and equitable to do so)."

The Court of Appeal concluded its judgment with the following summary at [191]:

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

123. Hildyard J in the *RP1 Sanction Judgment* applied this approach in refusing sanction. He has also had occasion since then to apply the principles when considering the exercise of the court's discretion in *Re Chandlers Building Supplies Holdings Limited* [2025] EWHC 2678 (Ch) and *Re Argo Blockchain plc* [2025] EWHC 3395 (Ch). In the latter case, Hildyard J adopted with approval the 11 guiding principles that Sir Alastair Norris derived from *Adler*, *Thames* and *Petrofac* in *Re River Island Holdings Limited* [2025] EWHC 2276 (Ch) at [43]. I too consider that to be a helpful checklist, while also

recognising that every plan is different in many respects and particular regard needs to be paid to the specific circumstances and dynamics of the plan in question.

F. HMRC's OBJECTIONS TO THE PLAN

124. HMRC relies heavily on its constitutional mandate to collect and manage taxes. It says that it has a wide managerial discretion in the exercise of its powers to recover tax and the court should not lightly interfere in the exercise of its powers where it has made a rational decision to reject the Plan.

125. In its Notice of Opposition dated 27 February 2026, HMRC put forward two jurisdictional objections to the sanctioning of the Plan, and three discretionary grounds. They can be summarised as follows:

(1) HMRC's status and constitutional mandate to recover the payment of taxes, where it has rationally resolved to vote against a plan, means the court "*is unable to sanction the restructuring plan or impose a cross-class cram down on HMRC*" and/or the court should not do so because it would be "*to impose on HMRC a 'compromise or arrangement' which HMRC has rejected and/or could not accept*".

(2) The no worse off test - Condition A in s.901G(3) CA 2006 – is not met "*because the overall net recoveries to the Exchequer in the event of RP2 will be lower in the relevant alternative, and so HMRC will be worse off in RP2*."

(3) The Plan is an abuse of process because its principal purpose is to use Part 26A to extinguish the EPL Liabilities providing Harbour with "*an opportunistic windfall*" that has the effect of avoiding tax which it can afford to pay.

(4) The Plan is not fair in that it does not recognise that HMRC's contribution to the benefits preserved or generated by the restructuring include the tax losses that will be acquired by Harbour and the payment of 14% of the EPL Liabilities, approx. US$12 million, is not, in the circumstances a fair allocation to HMRC of the restructuring benefits. It also complains about the lack of engagement on HMRC's Contingent Payment Proposal.

(5) The Plan Company's present position is the consequence of financial decisions it made, including paying the October 2022 Dividend and continuing to trade despite not being able to pay its 2023 EPL Liabilities and not seeking to negotiate a TTP arrangement with HMRC. Instead it has incurred costs and fees of over US$60 million in pursuing both RP1 and the Plan and the court should refuse to sanction the Plan as a result.

126. While these grounds of objection were all, to a greater or lesser degree, pursued at the hearing, it was clear that Mr Phillips KC was putting at the fore of HMRC's case that the Plan could be sanctioned subject to the removal of the extinguishment of the EPL Liabilities and the adoption of the Contingent Payment Proposal. He submitted that I could impose the Contingent Payment Proposal on the Plan Creditors, the Plan

Company and, effectively, Harbour as well, as the price for sanctioning the Plan. He referred to [132] of *Nasmyth* where Leech J said that if he would have sanctioned the plan and crammed down HMRC's debts, it would have been on condition that certain TTP arrangements were agreed with HMRC. But that was always seen as a necessary part of the plan succeeding, and the failure to agree such TTP arrangements before sanction meant that there was a "roadblock" that prevented sanction being given. In other words, it was really part of the plan in that case and so the imposition of a condition to such effect did not change anything in relation to the other stakeholders. It would have enabled the plan to be effective.

127. In this case, I find it difficult to see how I could impose such a fundamental change to the Plan as signed up to by all the other Plan Creditors, and which was the result of careful and detailed negotiations. Mr Phillips KC suggested that HMRC's proposed modification did not affect the other Plan Creditors or Harbour, because they will receive the same under the Plan. But it would be a radically new plan in which the EPL Liabilities are not extinguished whereas the other Plan Creditors, including the M&A Creditor which in reality is in the same class as HMRC, will continue to have their debts extinguished. I do not think it would be right or fair for the court to interfere in the commercial compromise embodied in the Plan in that way.

128. I will now turn to deal with HMRC's grounds of objection in turn.

(1) No jurisdiction to cram down HMRC

129. This is the first time that HMRC has run the argument in such absolute terms that if it has rejected a plan on a rational basis, its constitutional status and function means that the court cannot override its dissent and cram it down. Realistically, Mr Phillips KC recognised both in HMRC's skeleton argument and in his oral submissions that "*it is unlikely that the court does not have jurisdiction to cram down HMRC in any circumstance*." But he did persist in arguing that where HMRC has reasonably concluded that it should not support a plan, the court should have particular regard to its conclusion and the reasons for it, and should be slow to force HMRC to be bound to the plan.

130. I am in little doubt that there is no jurisdictional bar to the court exercising its cross-class cram down power against HMRC, even where HMRC has rationally decided to oppose a plan. If it were otherwise, HMRC would have an effective veto against restructuring plans and I do not see that that could possibly have been the legislative intent behind the introduction of Part 26A; nor would it be consistent with the rescue culture embodied within this area of law and current company and insolvency law generally.

131. By the same token, I agree with Leech J in *Nasmyth* that while "*the Court should not refuse to sanction a restructuring plan under Part 26A as a matter of principle because HMRC will be crammed down if the plan is sanctioned*" [114], HMRC is a unique type of involuntary creditor and "*it is important that the Court should scrutinise the Plan with care and should not cram down the HMRC unless there are good reasons to do so*" [116]. Leech J went on to say that if he had sanctioned the plan it would have been relevant to consider whether "*it will give a green light to companies to use Part 26A to cram down their unpaid tax bills*" and that "*Part 26A could easily be used as an instrument of abuse*." I similarly will bear those factors in mind.

132. Accordingly, I will deal with the parties' arguments briefly below.

(a) HMRC's status as a public body

133. This was at the heart of Mr Phillips KC's submissions. Relying on s.1 of the Taxes Management Act 1970 and cases such as *IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 (HL) and *R (Davies) v Revenue and Customs Commissioners* [2011] UKSC 47, per Lord Wilson JSC at [26], Mr Phillips KC said, uncontroversially, that HMRC's central function of responsibility for the collection and management of tax entails the duty to act in a way in which it considers it is most likely to achieve the best net returns to the Exchequer. HMRC's discretion to make concessions in relation to particular cases can be exercised with a view to obtaining overall for the Exchequer the highest net practicable returns. In doing so it cannot go outside the guardrails set by Parliament, such as extending an allowance to a new class of taxpayers.

134. HMRC's decision-making in this regard and exercise of discretion in relation to the collection of taxes can only really be challenged by way of judicial review and that means, to succeed, it would have to be shown that HMRC acted illegally, irrationally (in the *Wednesbury* unreasonableness sense) or in a procedurally improper way.

135. Mr Phillips KC submitted that no such challenge to HMRC's decision to reject the Plan in this case could possibly be made. HMRC decided, consistent with its statutory duty, that it could not agree to the Plan which it saw as a private deal between the Plan Company's commercial creditors that involved the removal of an unwanted tax liability. He said that in the case of a terminal plan, HMRC could make the rational choice to accept the higher return under the plan than it would receive in an insolvency. But where, as here, it is a rescue plan, HMRC has to take account of the fact that there will be an ongoing relationship with the Plan Company and there are wider considerations in play, such as the availability of the tax losses and the ability of Harbour and the Group after the Plan is sanctioned to be able to pay all the EPL Liabilities.

136. I can see that the decision that HMRC rationally has come to and the reasons for it should be accorded great weight in considering whether the court should exercise its discretion to cram HMRC down. In my view Adam Johnson J in *Re Great Annual Savings Company Limited* [2023] EWHC 1141 (Ch) ("***GAS***") [138] was right to say that "*given its critical public function as the collector of taxes, I think HMRC's views deserve considerable weight*." But I cannot accept (like, I imagine, Adam Johnson J in *GAS* and Leech J in *Nasmyth,* if it had been submitted to them) that the court has no jurisdiction to consider exercising its discretion because of HMRC's status as a public body carrying out a critical constitutional function.

(b) No legislative carve-out for HMRC

137. The assumption that HMRC is subject to Part 26A including the cross-class cram down power probably stems from the fact that it is not expressly excluded from its scope. Part 26A does not state that HMRC's consent is a necessary precondition for the court's sanction.

138. It is well established that the Crown, including its emanations, such as HMRC, is bound by a statute either by express words or by necessary implication. As explained by Lady Hale PSC in *R (on the application of Black) v Secretary of State for Justice* [2018] AC 215 at [36], this is a rule of statutory interpretation. She went on to indicate that a necessary implication may arise if "*one very important purpose of the Act would have been frustrated*" without the Crown being bound.

139. Mr Bayfield KC referred to the Explanatory Notes to the Corporate Insolvency and Governance Act 2020 ("**CIGA**"), which introduced Part 26A, and which say as follows:

> "...Part 26 of the Companies Act 2006, which provides for schemes of arrangement, can be used to effect a company rescue. The new Part 26A restructuring plan regime has been largely modelled on Part 26 schemes. As the Companies Act 2006 provisions implicitly bind the Crown, any arrangement or reconstruction agreed and implemented under new Part 26A will also necessarily be binding on the Crown."

140. It must have been the intention of Parliament to include the Crown within the new Part 26A in its capacity as a creditor. Sections 901A and 901F CA 2006 envisage the compromise or arrangement proposed by the company to be with all the company's "creditors or any class of them". It would make no sense for HMRC, as a creditor of most companies in financial difficulties, to be excluded from Part 26A.

(c) HMRC's position in CVAs and IVAs

141. There seems little doubt that HMRC can be bound to Company Voluntary Arrangements ("**CVAs**") and Individual Voluntary Arrangements ("**IVAs**") even where it votes against them. HMRC has accepted this.

142. In relation to CVAs, it can be seen that where Parliament wanted to exclude a particular type of creditor, it did so expressly. By s.4(3) of the Insolvency Act 1986 ("**IA 1986**"), the rights of secured creditors can only be affected by a CVA with their consent. And s.4(4) IA 1986 protects preferential debts but says nothing about HMRC's non-preferential debts. Parliament did not distinguish between any type of debt under Part 26A.

143. HMRC accepts that it can be outvoted in a CVA or IVA and therefore, in effect, crammed down by the 75% majority of assenting creditors. HMRC is able to challenge a CVA under s.6 IA 1986 on the grounds of unfair prejudice. But while the court will consider HMRC's arguments carefully, the company does not have to show that HMRC's decision to oppose the CVA was irrational. In other words, the fact that a rational approach has been adopted by HMRC does not mean that the court is bound to find unfair prejudice.

144. That can be seen from *Inland Revenue v Wimbledon Football Club Limited* [2004] EWHC 1020 (Ch) and [2004] EWCA Civ 655 in which the Inland Revenue challenged a CVA under s.6 IA 1986 arguing that it was unfair that the "football creditors" should be paid 100p/£ whilst the Inland Revenue as a preferential creditor would receive only 30p/£. Lightman J dismissed the application because he held that the differential treatment was commercially necessary to avoid a liquidation and the non-preferential

creditors were to be paid from third-party funds. He considered that the Inland Revenue had a principled objection to the football creditors' rule and their priority but that if he had upheld the objection, it would have brought down "*the whole edifice and secure a nil return for all concerned.*" Lightman J was upheld on appeal, with Neuberger LJ, as he then was, supporting the commercial reality approach over the Inland Revenue's principled objection and also rejecting any floodgates argument.

145. Mr Phillips KC submitted that it is not possible to read across principles from other regimes such as CVAs and IVAs to Part 26A because there are different tests involved and Part 26A is the only one to have a cross-class cram down power. I agree that one has to be careful in doing so, but I think it is instructive to look at other regimes, particularly when considering the question of jurisdiction. While there is not a cram down power under CVAs, there is power to bind a dissenting minority, including HMRC, and the test of fairness under a Part 26A plan should not be vastly different to the unfair prejudice test under a challenge to a CVA.

146. In fact, HMRC has recently challenged a CVA put forward by *Petrofac Facilities Management Limited* [2026] CSOH 29 in the Scottish Courts. It appears that HMRC did not submit that the CVA could not be imposed on HMRC against its will.

147. That position is similar, I suppose, to where HMRC is a dissenting member of an assenting class in either a Part 26 scheme or a Part 26A plan. It is then effectively crammed down by the requisite 75% majority of its class voting in favour. The court could still refuse to sanction such a scheme or plan, but that will be on the basis that there is no dissenting class requiring to be crammed down.

(d) HMRC's approach to other restructuring plans

148. As I said above, this is the first time that HMRC has submitted that a restructuring plan cannot be sanctioned if it has rationally voted against it. There are many previous cases where the cross-class cram down power has been applied against HMRC. As I have explained above, in *Nasmyth* and *GAS*, the plans were not sanctioned largely because of HMRC's objections, but there was no suggestion in either that there was no jurisdiction to cram down HMRC (Leech J in *Nasmyth* accepted that there was jurisdiction).

149. There are other cases where HMRC has been crammed down:

(1) In *Re Houst Limited* [2022] EWHC 1941 (Ch), Zacaroli J, as he then was, sanctioned a plan that HMRC had voted against requiring the exercise of the cross-class cram down power;

(2) *Re Prezzo Investco Limited* [2023] EWHC 1679 (Ch) in which Richard Smith J recorded that HMRC had accepted that he had jurisdiction to cram it down. Mr Phillips KC submitted that this case adopted the pre-*Thames* and *Petrofac* approach to out of the money creditors and therefore is not a good guide to current thinking.

150. HMRC has also voted in favour of various plans: see *Re Fitness First Clubs Limited* [2023] EWHC 1699 (Ch); *Re Revolution Bars Limited* [2024] EWHC 2949 (Ch); *Re Enzen Global Limited* [2025] EWHC 852 (Ch); *Re Outside-Clinic Limited* [2025]

EWHC 875 (Ch); and *Re DSTDTB Limited* [2025] EWHC 2366 (Ch). In relation to the first two HMRC was being paid in full, albeit that the payments were being rescheduled. The latter three HMRC consented to a reduced debt but Mr Phillips KC submitted that they tell one nothing about how the court should exercise its power to cram down. It is also fair to say that HMRC is entitled to evolve its position in the light of experience.

151. It should also be noted that HMRC did not argue in RP1 that it could not be crammed down – see [196(3)] of the *RP1 Sanction Judgment*.

(e) Contrary to the rescue culture

152. Mr Bayfield KC finally sought to argue more broadly that HMRC's new position runs counter to the rescue culture that is to be found in much of England's current insolvency and company law. Restructuring plans and the introduction of Part 26A are a further manifestation of this effort to enable businesses to survive financial difficulties and continue trading. Snowden LJ referred to this purpose in [250] and [251] of *Adler*, also quoting from what he had said in [249] of *Virgin Active*.

153. I agree with Mr Bayfield KC that a jurisdictional bar to sanctioning a plan unless HMRC consents would significantly undermine the rescue culture and purpose of Part 26A. The court will take into account the views of a dissenting creditor in deciding whether to exercise its discretion in favour of a plan and its power of cram down. But the court should not be bound to accept HMRC's views as to the plan, even if wholly rational, as that would prevent the court taking account of the overall fairness, desirability and commerciality of the plan considered in the round including by paying special attention to HMRC's position.

(f) Conclusion on this objection

154. In the circumstances, for the reasons set out above, I reject HMRC's contention that its status, together with its allegedly rational objections to the Plan, mean that the court does not have jurisdiction to sanction the Plan using the cross-class cram down power.

(2) The no worse off test

155. The no worse off test in s.901G(3) CA 2006 requires a comparison to be made between what the creditor would receive under the plan and what it would receive in the Relevant Alternative. It is clear and accepted that if one is simply looking at the EPL Liabilities, that HMRC will be no worse off under the Plan, as it will be receiving 14% of the EPL Liabilities for 2022 to 2024, whereas in the Relevant Alternative, it will only receive its share of the prescribed part which is estimated at 0.1% of those EPL Liabilities.

156. HMRC's argument on the no worse off test is therefore wholly dependent on the comparison not being limited to the EPL Liabilities, but rather the overall net recoveries to the Exchequer, in particular the availability and utilisation of the Group's tax losses by Harbour. HMRC says that it will be worse off under the Plan because the tax losses will be utilised by Harbour setting them off against its profits, thus reducing HMRC's tax recoveries from the Group. HMRC says the burden is on the Plan Company to demonstrate that it will not be worse off than in the Relevant Alternative and that it has not managed to do so.

157. There are two broad matters to consider in this respect:

> (1) whether, as a matter of law, the tax losses and the wider effect on the Exchequer are relevant to the no worse off test in s.901G(3) CA 2006;
>
> (2) even if they are relevant, whether, as a matter of fact, HMRC is no worse off under the Plan than in the Relevant Alternative.

158. The facts to be determined for the purposes of the second issue will also be relevant to the court's consideration of its discretion, in the event that the legal issue is decided against HMRC.

(1) Are the tax losses relevant to the no worse off test?

159. In my judgment, the position is relatively clear and it was confirmed by the Court of Appeal in *Petrofac*. As this is a jurisdictional condition, it seems to me that there needs to be clarity as to what is being valued under the Plan as compared with the Relevant Alternative. That means that the test must be confined to the creditor's existing rights as a creditor that are being compromised by the plan, including associated rights such as in relation to enforcement of any security for the debt or of any third party guarantee that is also being compromised by the plan. However, any wider rights, interests or liabilities that are not being compromised by the plan are, in my view, outwith the scope of the no worse off condition.

160. In *Petrofac*, the Court of Appeal had to consider whether, in relation to the no worse off test, regard could be had not only to the direct financial value of certain creditors' claims against the plan companies under the plan and the relevant alternative but also to certain consequential benefits that might accrue to those creditors in the relevant alternative. In that case, the appellants were competitors of the plan companies and would therefore benefit from them going into liquidation, as they would be able to profit from the future business that they might thereby win. The Court of Appeal firmly rejected that argument, holding that such matters were not to be considered in the no worse off test.

161. In [79] the Court of Appeal set out the basic principle:

> "We have no doubt that the judge was correct to find that Condition A was satisfied on the facts of this case, although our reasoning differs from that of the judge. In summary, as explained in this section, the court is required to determine the financial value which a creditor's existing rights would likely have in the relevant alternative, and to compare it with the financial value of the new or modified rights which the plan offers in return for the compromise of those existing rights. The scope of that enquiry is primarily concerned with the financial value of rights of the creditor against the plan company, but where a plan compromises or releases other rights of the creditor, it extends to those other rights. In the instant case, the loss of a competitive advantage upon sanction of the Plans is clearly beyond the scope of that test."

162. The Court of Appeal then continued at [85] as follows:

> "The comparison required by section 901G(3) is between the outcome for the creditor under the "compromise or arrangement" and in the relevant alternative. This suggests that, at least as a starting point, there should be a correlation between the scope of the no worse off test and the scope of the compromise or arrangement."

163. The Court of Appeal approved what Trower J had stated in *Re DeepOcean 1 UK Limited* [2021] EWHC 138 (Ch) at [34]-[35] that it "*is a broad concept and appears to contemplate the need to take into account the impact of the restructuring plan on all incidents of the liability to the creditor concerned, including matters such as timing and the security of any covenant to pay*". Mr Phillips KC appeared to suggest that such "*incidents*" could extend to the tax losses as against HMRC, but it seems to me that Trower J was careful to limit them to the specific liability that was being compromised under the plan.

164. The Court of Appeal then considered Adam Johnson J's judgment in *GAS,* as he there had to deal with the plan company's contention that HMRC would be better off under the plan because it would collect future tax revenues that would only arise if the company continued to trade. Those revenues would be lost if the company was liquidated. The Court of Appeal endorsed Adam Johnson J's rejection of that argument, on the basis that HMRC would likely recover those tax revenues anyway from the employees' new employments and the business being conducted by some other company. They also agreed that the focus needed to be on a creditor's rights and not any wider interests that may be affected – see [89] – [90].

165. The Court of Appeal really summarised its conclusions on the no worse off test in the following paragraphs:

> "91. Against that background, we agree that the starting point for application of the "no worse off" test is a comparison between the value of the existing rights which a creditor has against the plan company in the relevant alternative, and the value of the new or modified rights given under the plan in exchange for the compromise of those rights.
> 92. Where a plan compromises or releases only creditors' rights against the plan company, that is also the end point. Where, however, a plan interferes with rights of creditors against third parties, the scope of the no worse off test must extend to such rights."

After referring to the position of guarantees, they being the best example of rights being compromised that can also be taken into account in the no worse off test, the Court of Appeal said:

> "97. An approach which focusses on the valuation of rights affected by the plan is also preferable, in our judgment, to some form of remoteness test as adopted by the judge. There is no basis in the wording of the statute for such an approach, and the judge did not explain how a concept of remoteness would be applied to decide what would fall "in" for consideration and what would fall "out".
>
> 98. We do, however, agree with the judge that any broader prejudice that a creditor contends it would suffer as a consequence of a plan being sanctioned

which is not encompassed in the valuation of its rights, goes to the issue of discretion."

166. In my view, the Court of Appeal has plainly ruled out any wider consideration of the no worse off test to take into account the tax losses that HMRC may have to give relief from if the Plan is sanctioned. They are not part of the existing rights that are being compromised by the Plan and therefore I do not think they are relevant to the no worse off condition.

(2) As a matter of fact, is HMRC worse off under the Plan because of the tax losses?

(a) Introduction

167. Despite my conclusion on the law as to the relevance of the tax losses to the no worse off test, it is still important that I address whether HMRC or the Exchequer would in fact be worse off under the Plan as a result of the utilisation of the tax losses by Harbour. Even if my conclusions on the facts do not affect the no worse off test, they might be relevant to whether the Plan is fair and whether I should exercise my discretion in favour of sanction.

168. HMRC relies on Mr McFarlane's evidence in which he explained the way oil and gas companies are taxed and the use that can be made of tax losses and other reliefs. It also has the expert evidence of Mr Drewe, although he accepted that he was not a tax expert and he had had to rely on certain assumptions as to how the tax regime worked, derived from Mr McFarlane's evidence, in order to provide his valuation of the available tax losses and reliefs.

169. Against that evidence, the Plan Company had the evidence of Mr Leith, who is a tax expert in this field. Mr Leith concluded that it was unlikely that Harbour would be able to utilise fully the tax reliefs that it was acquiring and that HMRC would actually be worse off in the Relevant Alternative, even after taking account of the tax losses.

170. Mr Abraham took the lead on this issue on behalf of both his clients and the Plan Company, and he made helpful oral submissions in the light of the evidence, in particular the effect of the experts' joint statement dated 2 April 2026 and challenging HMRC's assumption that there would be 100% utilisation. Curiously, Mr Phillips KC chose not directly to address this issue in any detail, being content to rely on the fact that Harbour had publicly stated that it was purchasing the Group partly so that it could obtain and use the US$900 million of tax losses to set off against its profits.

(b) The relevant tax regime

171. Oil and gas companies with licences from the NSTA are subject to what is known as the "ring fence" tax regime for corporation tax ("**CT**") purposes. Under that regime, a company's oil and gas exploration and production activities ("**extraction activities**") are treated as a separate trade from any other trading activities that the company may be undertaking. The extraction activities are taxed under the "ring fence" Corporation Tax ("**RFCT**") rules.

172. RFCT is essentially the same as general CT, save that: (i) RFCT charges trading profits from extraction activities at a higher rate of 30% as opposed to the current 25% charged for non-ring fence activities; and (ii) there are slightly different rules for capital allowances and treatment of losses and group relief. In addition, there is a Supplementary Charge ("**SC**") which is an additional tax of 10% on ring fence trading profits from extraction activities. It is calculated on the same basis as RFCT, and then adjusted such that no deductions are allowed for financing costs (e.g., the costs of debt finance) and there is a scheme of investment allowances which can be used to reduce profits subject to the SC.

173. A company that has incurred ring fenced trading losses can set-off those losses against subsequent profits it makes from ring fenced trading in future years. Mr McFarlane explained in his witness statement that: "*It is common for all businesses, from sole traders to large businesses, to organise their activities to ensure the maximum benefit can be obtained for any expenses, allowances or available reliefs, including losses*"; and that in the oil and gas sector: "*This active management often consists of the transfer of oil licence interests within groups – moving interests in profitable licences to companies with losses brought forward, or interests in licences likely to incur losses to companies likely to incur future profits*".

174. There are rules and restrictions in relation to the transfer of an interest in an oil licence to take advantage of tax losses. In general, a transfer of an interest in an oil licence will be a transfer of (part) trade under common ownership to which Chapter 1 of Part 22 of the Corporation Tax Act 2010 ("**CTA10**") applies. This operates to effect a continuity of tax treatment where both companies are under common ownership. In effect, the transferee company can claim capital allowances and utilise the losses as if it had always carried out the transferred trade.

175. Part 14 of CTA10 sets out certain restrictions on the use of losses where there is a change of company ownership. In summary, Part 14 applies where there has been a change in ownership of a company and either Condition A or Condition B of Part 14 is met. Condition A restricts trading loss relief if a "*major change in the nature or conduct*" of a trade occurs within a five-year period, beginning no more than three years before the change in ownership. Condition B restricts trading loss relief in circumstances in which before the change, the scale of the activities of the trade carried on by the company has "*...become small or negligible...*" and after the change in ownership there is a significant revival of the trade. The consequence of meeting either Condition A or Condition B is that there are restrictions on the use of: (i) the carried-forward trading losses against future profits following the change in ownership; or (ii) any losses being carried back from latter periods after the change in ownership to periods prior to the change.

176. HMRC also has available to it other routes to challenge the use of tax losses as an abuse. There are Targeted Anti-Avoidance Rules ("**TAARS**") aimed specifically at countering tax avoidance in relation to the exploitation of carried-forward loss relief rules. And there is the General Anti-Abuse Rule ("**GAAR**") to counteract more generally tax arrangements that are considered abusive.

177. HMRC does not generally give advance clearance as to whether or not a transaction or structuring is subject to the restrictions in Part 14 CTA10. Mr McFarlane confirmed in

his witness statement that in any case such as this HMRC will "*consider all facts and circumstances and challenge if appropriate*".

178. It is also relevant to consider decommissioning relief, both as to its availability to the Group and Harbour and also in relation to the Exchequer's potential liability in such respect in the Relevant Alternative.

179. For RFCT and SC purposes, tax relief for decommissioning expenditure is given through the use of capital allowances. It is part of Mr Drewe's assumptions that Harbour will be able to use 100% of these forecast future losses from decommissioning expenditure.

180. Decommissioning Relief Deeds ("**DRDs**") are contracts entered into between UK oil and gas companies and HM Treasury. DRDs are intended to give companies and financiers certainty as to the basis on which tax relief will be available for decommissioning, enabling security to be given or received net of tax relief.

181. Under a DRD, HM Treasury will pay a "Difference Payment" to a company which is party to a DRD in the circumstances set out in clause 5 thereof. Essentially, this occurs when the amount of tax relief obtained in respect of decommissioning expenditure is less than the "Reference Amount", calculated in accordance with Schedule 1 of the DRD. The Reference Amount differs depending on whether the claim is for "Ordinary" or "Imposition" "Decommissioning Expenditure". For Imposition Decommissioning Expenditure (i.e. that incurred by a company in the event of default of another member of the field group), the Reference Amount for RFCT is the expenditure multiplied by 30% and, for SC, it is the expenditure multiplied by 20%. Thus, the Exchequer's maximum exposure to Imposition Decommissioning Expenditure is 50% of such expenditure.

182. According to Mr Leith, and I accept, there are no circumstances in which the Exchequer's exposure is less than 50% where a valid Difference Payment claim for Imposition Decommissioning Expenditure is made. A party bearing Imposition Decommissioning Expenditure will usually have the 50% relief given partly via its own tax capacity and partly through claiming a Difference Payment under the DRD. Where the party has no capacity to get tax relief for the Imposition Decommissioning Expenditure, the Difference Payment claimable via the DRD will be the entire 50%. Either way the Exchequer ultimately bears 50%. This was not disputed by HMRC.

183. Mr Drewe took full account of this cost to the Exchequer in the event of the Relevant Alternative. He calculated the amount to be US$375 million and that figure entered his analysis of the net financial gain/loss to the Exchequer under the Plan as compared to the Relevant Alternative.

(c) HMRC's position on the tax losses

184. Apart from making the broad brush point that Harbour will be purchasing the Group partly for its tax losses and has said in its accounts that it expects to be able to use the full US$900 million of tax losses, it is important to focus on what Mr Drewe and Mr McFarlane have said and whether it is likely and will mean that the Exchequer is worse off overall under the Plan.

185. The first point to have in mind is that HMRC have accepted that the Relevant Alternative will involve the sale of WPRL and WOL, both of which have the bulk of the Group's tax losses. Mr Drewe had prepared his assessments of the net financial gain/loss to the Exchequer on two different bases: (i) on the assumption that WPRL and WOL are not sold as going concerns in the Relevant Alternative – this gave a net loss to the Exchequer of US$825 million; and (ii) on the assumption that WPRL and WOL are sold as going concerns in the Relevant Alternative – this gave a net loss to the Exchequer of US$33.2 million. This makes a dramatic difference, and as (ii) has the correct assumption, HMRC must accept that figure.

186. But that is just the starting point. HMRC has also accepted that it is appropriate to adjust the tax losses available within WCNS(I) as a result of HMRC not accepting the tax treatment on what has been called the Catcher FPSO lease. The details are not important as the effect has been agreed by the experts in their joint statement. Once the further adjustment to Mr Drewe's figures is made to reflect the appropriate treatment of the FPSO lease, his estimated net loss to the Exchequer under the Plan has come down to US$17.9 million. That is the high point of HMRC's case but it assumes 100% utilisation of the tax losses by Harbour.

187. I should add that Mr Drewe fairly took into account the fact that in relation to the EPL Liabilities, it is only the 2022 to 2024 EPL Liabilities that are being compromised by the Plan. That means that in the Relevant Alternative, HMRC will not recover anything in relation to 2025 and 2026 EPL Liabilities, whereas it would do under the Plan.

188. Mr Phillips KC in his closing submissions seemed to be suggesting that I could simply look at the position of the Plan Company and whether the Exchequer was worse off under the Plan than the Relevant Alternative taking account of only the Plan Company's available tax losses. He referred to a figure of US$288 million for the Plan Company's tax losses that could be utilised by Harbour. But that is a gross figure of the tax losses upon which tax relief of 40% might be obtained. The correct figure would be US$82 million for the tax relief. In any event I do not think it is appropriate to try and assess that figure when HMRC has presented its case, and Mr Drewe his evidence, on the basis that, because Harbour is buying most of the Group to take advantage of the US$900 million of tax losses, the relevant net gain/loss to the Exchequer must be assessed in relation to the whole Group.

(d) The likely actual utilisation of tax losses

189. Mr Drewe referred in his report to the two types of tax losses that were in play:

> (1) the UK ring fence tax losses accumulated as at 1 January 2026 which he called the "Valuation Date Tax Losses"; these are the US$900 million that Harbour was talking about and hoping to acquire; and
>
> (2) forecast tax losses that are expected to be generated in the future, which he called the "Forecast Tax Losses"; these have been far less talked about and they constitute the anticipated tax relief that would be given in relation to the Group's decommissioning expenditure on current assets.

190. Mr Abraham called these the two "buckets" of tax losses. The assumption that HMRC and Mr Drewe made was that Harbour would be able to utilise 100% of both buckets,

meaning an effective rate of tax relief at 40% for both. However, Mr Abraham submitted that Mr McFarlane had accepted that it would not be possible to utilise 100% of both buckets of tax losses.

191. As to the Valuation Date Tax Losses, Mr McFarlane's written evidence stated that Harbour would be able "*to utilise c. US$500m of losses per year*" and that based on Harbour's size and recent financial results it would be reasonable for Mr Drewe to assume that. Mr Leith disagreed with that assumption in his report on the basis that: (i) HMRC had reserved its rights to challenge the use of the tax losses via the various anti-avoidance rules; (ii) it is not practical to set things up by moving assets around to achieve a perfect alignment between profit making assets and existing and future losses so as to be able fully to utilise the losses; and (iii) he questioned whether Harbour had sufficiently profitable assets to absorb all of the Group's losses. When this was put to Mr McFarlane by Mr Abraham in cross-examination, he accepted that there were "*challenges*" to being able to utilise fully those tax losses.

192. As to the second bucket of Forecast Tax Losses, Mr Drewe, again based on Mr McFarlane's evidence, assumed that tax relief on the decommissioning of the Group's legacy assets would be at the full rate of 40%. Mr Leith said that this was not possible for various reasons.

193. First, current year losses created by decommissioning expenditure must be relieved against total income before they can be carried back. Some non-ring fenced income, such as interest income is taxable at the non-RFCT rate currently at 25%. So if Harbour is forced to use the losses against such income, the effective rate of relief would come down.

194. Second, the losses may displace the investment allowance which would have the effect of forfeiting some or all of the SC benefit of the loss. This would result in the tax relief rate tending downwards towards the RFCT rate of 30%. That rate would further trend downwards if the loss was set against total profits, including non-ring fence income such as interest income, which would only obtain tax relief at 25%.

195. Mr McFarlane accepted these points in cross-examination and agreed that it was therefore likely that there could not be full utilisation of the tax losses.

196. As a result, Ms Rickelton in her second report provided a sensitivity analysis on the potential impact on Mr Drewe's figures for the net gain/loss to the Exchequer under the Plan as opposed to the Relevant Alternative of the differing levels of tax relief that could realistically be achieved based on Mr Leith's conclusions. The main point emphasised by Mr Abraham was that the evidence showed that, even if Harbour was able to utilise 100% of the first bucket, that would necessarily mean that it would not be able to utilise 100% of the second bucket. That was simply not possible and Mr McFarlane seemed to accept that.

197. The sensitivity analysis tables were set out and agreed in the experts' joint report. The relevant table shows the percentage utilisation of both buckets and the impact of there being less than 100% utilisation of either or both buckets. HMRC's case that the Exchequer would suffer a net loss of US$17.9 million will only happen if there has been 100% utilisation of both buckets of tax losses. But if the utilisation of Forecast Tax Losses is reduced by just 10%, i.e. an effective tax relief rate of 36%, as opposed

to 40%, the Exchequer is better off under the Plan by US$3 million. All other scenarios, except 90% utilisation of bucket one losses and 100% utilisation of bucket two (a very unlikely outcome), show that the Exchequer would actually be better off under the Plan than in the Relevant Alternative.

(e) Conclusion on the facts

198. In my judgment, based on Mr Leith's evidence, and indeed Mr McFarlane accepting this in cross-examination, it is not a reasonable assumption to make that Harbour would be able to utilise 100% of both the current tax losses of the Group and the future tax losses arising out of decommissioning expenditure. It is likely that at least one of those two buckets of tax losses would be utilised as to 90% or lower. In that event, the agreed figures show, taking into account all the receipts and losses to the Exchequer discussed above, that the Exchequer will not be worse off under the Plan. Indeed, it will likely be better off under the Plan than the Relevant Alternative.

199. In the circumstances, and if it were relevant as a matter of law to take into account the overall gain or loss to the Exchequer, I would have found that the Exchequer/HMRC are no worse off under the Plan than the Relevant Alternative. I will consider these factual findings further in the context of the exercise of my discretion to sanction the Plan.

(3) Alleged Abuse of Process

200. The basis for HMRC's allegation that the Plan is an abuse of process is quite difficult to discern. HMRC is understandably concerned that the Plan is being pursued at the behest of Harbour because it wants to acquire the Group, together with the valuable tax losses, but it does not want to pay the Plan Company's EPL Liabilities. HMRC seems to consider that Harbour is using the Plan to avoid tax, when it could easily afford to pay it and the court should not endorse a plan that seeks to extinguish a tax liability for no good reason. That is why HMRC says that Harbour will receive an "*opportunistic windfall*" from the SPA and the Plan.

201. However, that is to look at the matter purely from Harbour's perspective. Mr Bayfield KC accepted that the only reason for the Plan was to extinguish the EPL Liabilities. If there were no EPL Liabilities, the transaction with Harbour could have been completed without the Plan, as all other creditors had consented to the compromise of their debts. The fact that the SPA is conditional on the Plan being sanctioned and therefore the extinguishment of the EPL Liabilities does not mean that Harbour is dictating events. Rather, the Plan is the only way that the Plan Company and the Plan Creditors could realise value from the sale of the companies in the Group and achieve a better outcome for them than in the Relevant Alternative.

202. The offer from Harbour was by far the highest offer received for the Group. It is the only credible deal available. Mr Wiseman explained in his evidence that the Administrators' previous competitive Sales Process for the Group had not yielded an offer that was anywhere near to the value of Harbour's offer. The Plan Creditors, including the M&A Creditor, seem to think that there could not be any better offer arising. As the Plan Company itself is not worth anything, any purchaser would only

consider buying it if the non-essential debts were removed from the balance sheet so far as possible. It is not surprising that Harbour is only prepared to purchase the Plan Company, along with the other companies in the Group, without their EPL Liabilities. It made its offer on that basis as it was perfectly entitled to do.

203. The only question really is whether the Plan treats HMRC fairly or not. Simply because the Plan Company is seeking to cram down the EPL Liabilities cannot make it an abuse, as that would always be the case for any plan that sought to compromise a tax liability.

204. To the extent that the Plan is being used as a form of abusive tax avoidance, HMRC has within its armoury the ability to challenge the use of the tax losses by Harbour, whether under Part 14 of CTA10 or the TAARs or the GAAR. It is not appropriate for such issues to be raised by way of objection to the sanction of the Plan when there are other more appropriate routes of challenge, should that be HMRC's view. Furthermore, the use and transfer of tax losses is commonplace in the oil and gas sector, and there is nothing inherently abusive about it.

205. In any event, as I have discussed in the previous section, the extent to which Harbour will actually be able to utilise the tax losses is unclear. The oil and gas industry is highly volatile, as we have seen in recent weeks, and financial results can fluctuate widely. It would be very difficult to predict Harbour's future performance and whether it will have the profits to set against the acquired tax losses. In fact, Harbour will be assuming the Group's decommissioning liabilities which in the Relevant Alternative would have to be met as to 50% by the Exchequer. I have concluded that HMRC is actually better off under the Plan than in the Relevant Alternative.

206. The Administrators and the Plan Company concluded that the deal with Harbour was the only and best deal on the table and that it was in the best interests of the Group's creditors to enter into it. HMRC is sufficiently protected by the jurisdictional requirements of Part 26A including the cross-class cram down power and that the Plan Company has to persuade the court that the Plan is fair in all the circumstances so as to justify sanction being granted. I do not think there is any real basis for alleging that the Plan constitutes an abuse of process and I reject that objection.

(4) Is the Plan fair?

207. Fairness and the exercise of the court's discretion have always seemed to me to be the real heart of HMRC's objections to the Plan. When I first read into the case, I believed that there was a very significant point of principle that HMRC had raised as to whether the preservation and sale of valuable tax losses as assets of the Group should be treated as a contribution by HMRC to the benefits preserved or generated by the Plan. While I did not think that the point went to jurisdiction (as I have found above), I did think that it was likely to be a matter that should be taken into account in assessing the fairness of the Plan. That would be particularly so if HMRC or the Exchequer would be substantially worse off under the Plan than in the Relevant Alternative.

208. However, as Mr Bayfield KC submitted in his reply submissions, that core case of HMRC has had the rug pulled from under it by the failure to challenge Mr Abraham's analysis of the factual and expert evidence that showed that the Exchequer will actually

be better off under the Plan than the Relevant Alternative. In the Relevant Alternative, HMRC will get next to nothing for the EPL Liabilities (including for 2025 and 2026), the Exchequer will have to assume 50% of decommissioning expenses, and the tax losses in WPRL and WOL of US$830 million will likely be used to some extent. Under the Plan, HMRC will receive its dividend of 14% of the EPL Liabilities for 2022 to 2024, the full EPL Liabilities for 2025 and 2026 and it will not be liable for decommissioning expenses. The tax losses will be available to be used by Harbour and the Group to shield profits, but my conclusion is that, overall, HMRC will be better off under the Plan.

209. That being so, where does it leave HMRC's arguments as to fairness? Its position seems to be that in the circumstances of this case, HMRC should be treated differently to the other unsecured creditor, and should not have the EPL Liabilities extinguished. In other words, because this is a "rescue" case where there will be an ongoing relationship with the Group and Harbour, and where HMRC has contributed to the restructuring by preserving, and still being on the hook for, the tax losses, HMRC should be paid the EPL Liabilities in full, albeit giving the Group time to pay under the Contingent Payment Proposal. Mr Phillips KC submitted that such an outcome can easily be achieved by the court sanctioning the Plan but removing the extinguishment of the EPL Liabilities.

210. But if the Plan is fair to all the Plan Creditors including HMRC and all the Plan Creditors including HMRC are better off under the Plan than the Relevant Alternative, even taking into account the use of tax losses by Harbour and the Group, there seems to me to be no good reason to depart from the commercial deal reached by the Plan Creditors (without HMRC) that enables the SPA to be completed and the receipt of the consideration from Harbour. The Plan divides the allocated consideration to the Plan Company of US$85 million pursuant to the Creditor Framework Term Sheet and the Agreed Compromise between the Plan Creditors, and treats HMRC equally with the other unsecured creditor, the M&A Creditor. HMRC does not say that that in itself is unfair. What it is really saying is that Harbour should have paid more and there should be a renegotiation with it so that it would agree to cover the EPL Liabilities, perhaps pursuant to a TTP arrangement of the sort envisaged by the Contingent Payment Proposal.

211. Mr Drewe calculated an "Investment Value" of the Target Group and the Plan Company to Harbour, after taking into account the utilisation of the tax losses, the estimated value of the synergies that would arise and the decommissioning liabilities being assumed by Harbour. He concluded that the Investment Value to Harbour of the Target Group companies is US$863 million, and of the Plan Company alone, US$144 million. However, as he recognised in cross-examination, the Investment Value is how a purchasing company might assess internally the potential value of an acquisition. In making an offer, the purchaser needs to factor in the risk of that Investment Value not being achieved and its required level of return on its investment. Mr Drewe assumed a 100% utilisation of the tax losses, for example, whereas I have found that that is unlikely to be achieved and no doubt that would have been a factor in Harbour making its NBIO of US$205 million less Leakage.

212. In any event, the M&A process was conducted in the real world and the Administrators and other commercial stakeholders all believe that Harbour's offer is the best price available in the market for the Group. The Administrators have a duty to take reasonable

steps to obtain a proper price for assets under their control and to act in the best interests of creditors. I consider that that is a better guide to assessing the value of the deal with Harbour, than the Investment Value found by Mr Drewe.

213. I also think it is significant that the M&A Creditor is not only satisfied that its dividend under the Plan is fair, but also that the consideration being received by the Group is commercially reasonable. On 20 March 2026, the M&A Creditor wrote to the Plan Company in detail explaining why it supports the Plan. In comparing this with its opposition to RP1 it said as follows:

> "The Harbour offer represents a superior outcome as compared to the First Restructuring Plan…In Capricorn's view, the Transaction seems unlikely to be replicated or bettered by any alternative process and as such, the Transaction represents the only feasible opportunity for Capricorn to obtain a return on their claims which is superior to the relevant alternative."

214. Mr Phillips KC suggested that, as with the true-up mechanism and the substantial reduction in Leakage costs by US$30 million, there is scope for renegotiating with Harbour. Both of those changes had to be agreed to by Harbour, the latter amounting to an increase in the consideration being paid, presumably because Harbour was very keen to proceed with the deal and for the Plan to be sanctioned. But renegotiating with Harbour to try to get it to agree to pay the EPL Liabilities, even under the Contingent Payment Proposal, would completely overturn the basis of Harbour's offer and the SPA. It would also risk losing the deal, which would be highly prejudicial to all the other stakeholders.

215. A number of arguments were raised on both sides in relation to fairness, but to a certain extent they fall away without the overarching point that HMRC or the Exchequer will be worse off under the Plan. As I indicated above, I am sympathetic to HMRC's broad argument that, in this case, the availability of valuable tax losses is something that can be taken into account in considering the fairness of the Plan. I was not attracted to Mr Bayfield KC's position that the tax losses, being an asset of the Plan Company and the other companies in the Group being sold, are irrelevant to discretion.

216. I should explain why that is so. Mr Bayfield KC argued that the relief that is given to companies when prior trading losses are set against trading profits, does not mean that HMRC is relinquishing any legal or other rights to receive the tax that would otherwise be due on those profits. The use of the relief in that way merely gives effect to the operation of tax law, and does not amount to a loss suffered by the Exchequer. Furthermore, the use of tax losses reflects the fact that tax is charged annually but a company's profits are assessed cumulatively over a number of years with tax being appropriately charged on its overall net profits. As such, Mr Bayfield KC said that the preservation and transfer of those tax losses, if allowed, cannot be regarded as part of HMRC's "contribution" to the restructuring, for which it should receive a greater benefit.

217. In my view, the wider implications and purpose of the Plan are important. There is no doubt that the very valuable tax losses within the Group are one of the main reasons why Harbour wishes to purchase those companies with the tax losses. It is necessary for those companies, including the Plan Company, to continue trading in order that Harbour can take advantage of their tax losses by transferring to them profitable assets

that can be set off against those losses. Assuming that can be done, and the arrangements for transfer are not challenged by HMRC, the result will be that Harbour will pay substantially less tax to the Exchequer than it otherwise would.

218. The consideration from Harbour is only being received because Harbour wants to be able to use the tax losses that it is acquiring. The tax losses are therefore intimately bound up with the deal and the Plan. The Plan is necessary to enable the Plan Company to continue to trade so that Harbour can use its tax losses. And the Plan Creditors are only able to receive their part of the consideration from Harbour because of the existence and potential use of the tax losses.

219. I therefore think that it would be unrealistic and unfair not to consider the impact of the use of those tax losses on HMRC and the Exchequer. If, as a result of the Plan being sanctioned, HMRC and the Exchequer were left in a materially worse financial position than they would be in the Relevant Alternative because of the use of the tax losses, the court needs to consider whether that is a fair and just outcome of the restructuring. It does not matter that HMRC is bound by law to allow prior tax losses to be set against profits. The Plan is dependent on the preservation and use of tax losses and the effect of doing so cannot be ignored.

220. Mr Phillips KC put HMRC's case on the basis that, as this is a rescue, not a terminal case, the fair distribution of the benefits of the restructuring should reflect that it is only HMRC amongst the Plan Creditors which will have an ongoing relationship with the Plan Company. Indeed, that ongoing relationship is essential for the benefit of the tax losses to be realised. The other Plan Creditors will have no ongoing relationship with the Plan Company. For them, this is effectively a terminal plan.

221. I understand all those points and I do not think that it is strictly necessary to define the preservation of the tax losses as a "contribution" by HMRC to the restructuring benefits. I do not see why the tax losses in this case should not be considered a "*benefit preserved or generated by the restructuring*" as the Court of Appeal put it in [117] of *Thames*. Mr Bayfield KC said that the benefit of the restructuring was the consideration to be received from Harbour, not what Harbour was getting by way of benefit from the tax losses. But that seems to me to be too narrow a view. The consideration from Harbour could only have been achieved by preserving the tax losses and allowing the Plan Company to continue to trade. That has an obvious effect on HMRC.

222. But as I have found, even taking account of that effect of the tax losses on HMRC, it still remains better off under the Plan than in the Relevant Alternative. It cannot therefore be argued that because of the tax losses, either that HMRC should receive a greater share of the pot of money being distributed by the Plan or that the EPL Liabilities should not be extinguished. Even if I had found that HMRC/the Exchequer would be left worse off under the Plan by the utilisation of the tax losses, it would still have been a difficult question as to how that should be reflected in the Plan. That is probably due to the fact that there is no real correlation between the EPL Liabilities being compromised by the Plan and any net loss suffered by the Exchequer as a result of the relief gained by Harbour from the acquired tax losses. As Mr Bayfield KC rightly submitted, HMRC could not object to a plan that involved the transfer and use of tax losses, unless it is a plan creditor for some other unrelated tax liability.

223. I do not need to resolve that issue. Mr Phillips KC submitted that I do not need to go so far as to refuse sanction for the Plan. Rather I should allow the parties time to renegotiate along the lines of the Contingent Payment Proposal, perhaps involving Harbour, and see where it ends up. He also suggested that I could sanction the Plan on condition that the EPL Liabilities are not extinguished. He referred to Leech J's alternative approach in [138] of *Nasmyth*, and Hildyard J's decision to delay the handing down of the *RP1 Sanction Judgment* to give time to the parties to negotiate. I do not think that these suggestions are realistic or practical. But as I have said I do not need to decide what I might have done had I found HMRC to have been worse off overall under the Plan.

224. In relation to fairness, HMRC has also complained of a lack of engagement by the Plan Company to try to reach a compromise with HMRC. This was one of the main reasons why RP1 foundered, with Hildyard J following the clear direction from the Court of Appeal in *Petrofac*, and finding that there had not been negotiation with the unsecured creditors who were considered to be out of the money creditors. The Plan Company clearly learnt from that and did seek to engage extensively with all Plan Creditors, and indeed all creditors of the Target Group, and that included a two-day mediation on 16 and 17 October 2025, which HMRC refused to attend. It is, in my view, inappropriate for HMRC to suggest that there has been any failure by the Plan Company to attempt to engage with HMRC. If anything, the accusation could more properly go in the other direction.

225. What HMRC is really complaining about is the lack of engagement with its Contingent Payment Proposal and from Harbour. That Proposal was only made on 28 November 2025, after the mediation and the Agreed Compromise. It gave no details as to how it might work. It was effectively an offer of a TTP arrangement which left the Plan Company liable for the full amount of the EPL Liabilities and would mean that Harbour would necessarily pay far less for the Group or even walk away from the deal. Harbour through its solicitors Clifford Chance LLP stated in a letter to HMRC dated 2 February 2026 that: "*Harbour's agreement to proceed with the Proposed Acquisition is solely on the basis of the terms set out in the SPA, including satisfaction of this condition*", that is the extinguishment of the EPL Liabilities through the Plan.

226. I understand that HMRC considers itself to be in a quite separate category to other unsecured creditors, in that it is an involuntary creditor with no ability to negotiate the terms of its relationship with a taxpaying company. Understandably it does not like the fact that it is treated as a non-essential creditor and will likely be crammed down in any plan or CVA or similar process where that is possible. It considers that it should be treated more like the essential trade creditors who are outside the Plan and who need to be paid in order for the Plan Company to continue trading.

227. It can perhaps be seen as hard-nosed to treat HMRC like any other unsecured creditor that is not essential to pay in order to keep the business going. But that is the reality and Parliament has not granted it any preferential status in relation to Part 26A plans. HMRC has shown itself willing to agree to accept a compromise of its debts in some previous plans and CVAs and they were not necessarily terminal cases where the ongoing relationship would come to an end. There was a somewhat cavalier approach by the Plan Company to its EPL Liabilities in the past but I do not think that can properly affect whether the Plan now treats HMRC fairly, by comparison with the other Plan Creditors and in the particular circumstances of this case.

228. As I have said above, I consider that HMRC's status and its views on the fairness of the Plan, including its belief that the Plan is being used by Harbour to avoid paying tax, should be accorded the greatest of respect and weight. But its views and belief have to be subject to scrutiny so as to test if they are well-founded or not. In determining the fairness of the Plan, I must look at the position in the round taking into account how the Plan Company and its creditors are affected by the Plan and whether there has been a fair allocation of the benefits of the restructuring.

229. In my judgment, the Plan, which has come about because of the best and only deal available to the Group to realise value for creditors, provides for the distribution of that consideration from Harbour pursuant to the heavily-negotiated Agreed Compromise between the Plan Company and its commercial creditors. There is no logical reason why HMRC should be treated differently to the other unsecured creditor which has agreed to the Plan. Accordingly, and as HMRC is not prejudiced by the Plan in relation to the availability of the tax losses to Harbour, I consider that it is fair to, and indeed in the best interests of, all the Plan Creditors.

(5) The causes of the Plan Company's present position

230. It is probably clear from what I have said above that HMRC's fifth objection to the Plan based on its past conduct does not affect the fairness of the Plan. True it is that, as Hildyard J noted at [61] and [196] of the *RP1 Sanction Judgment*, the payment of the October 2022 Dividend contributed to the Plan Company's liquidity problems, ultimately requiring it to promote two restructuring plans. Furthermore, the Plan Company took a less than satisfactory approach to the payment of its EPL Liabilities, deciding not to pay them, despite continuing to trade and to pay interest say to the Bondholders.

231. In relation to the October 2022 Dividend, any claims in respect of it, in the event of sanction being granted, will be assigned to WPL, WEPL and/or the Administrators who can decide whether to pursue such claims for the benefit of the Plan Creditors (except the Super Senior Bondholders which recover 100% of their claims in any event). Save for HMRC, all the Plan Creditors have agreed this proposed course. In particular the M&A Creditor who had raised this as an objection to RP1, is now satisfied that this is an appropriate way to deal with the issues arising out of the October 2022 Dividend.

232. Insofar as HMRC is suggesting that there was something amiss in the Plan Company continuing to trade following the hand down of the *RP1 Sanction Judgment*, I do not think there is any real issue here. The NBIO from Harbour was received very shortly thereafter, no action was being taken by either the Joint Venture Partners or Plan Creditors, and there was still the possibility of going to the Supreme Court with permission to leapfrog appeal being given. The decision to continue trading was not directed at the Plan Company's EPL Liabilities or any other liabilities; it was to try to achieve a better outcome for all the stakeholders, including HMRC. Any additional EPL Liabilities accruing out of that continued trading would not be compromised by the Plan anyway.

233. HMRC also complains about the amount of money that has been spent in proposing both RP1 and the Plan. This is now well over US$62 million. This was also a concern

of mine, considering that the Original Bondholders were only some US$10 million better off under the Plan and the Super Senior Bondholders would be getting 100% in the Relevant Alternative. Mr Bayfield KC said that it was in their interests to be paid now with the certain deal with Harbour and that the only way to secure that deal was by pursuing the Plan in the interests of all the Plan Creditors. He also referred to the Leakage adjustment agreed to by Harbour which basically meant that Harbour was contributing US$30 million towards those costs. While that may look as though this was being done purely for Harbour's benefit, given the financial position of the Plan Company and the fact that probably quite a large amount of those costs have been incurred as a result of the opposition to the two Plans, I do not think it can be said that this was so unreasonable as to be a factor that weighed against sanction being granted. If anything, it might be a factor pointing towards sanction, assuming that the Plan is a fair one.

234. I therefore reject this objection. While not condoning the way that the Plan Company behaved in the past, perhaps leading to its current predicament, I bear also in mind that the Plan Creditors cannot be held responsible for that and if the Plan is not sanctioned because of that, they will be penalised and be worse off.

G. CONCLUSION

235. For the reasons set out above, I reject all of HMRC's objections to the sanction of the Plan. There is jurisdiction under Part 26A and in particular s.901G CA 2006 to exercise the cross-class cram down power against HMRC and I propose to do so. I consider that in all the circumstances the Plan is fair to all the Plan Creditors and that it is in their best interests that it does proceed.

236. Mr Phillips KC suggested that a result of sanctioning this Plan would be the opening of the floodgates to Part 26A being used to extinguish unwanted tax liabilities to make private M&A deals more attractive to buyers, such as Harbour in this case. I do not see that. Any company putting forward a restructuring plan that seeks to cram down HMRC will have to satisfy the jurisdictional hurdles in Part 26A as well as demonstrating that the plan, including its treatment of HMRC, is fair. The court will continue to scrutinise carefully the particular circumstances around any plan and will exercise its discretion at the sanction hearing in accordance with the principles now established in recent authorities. I am not ruling out HMRC from arguing that in any future case it has not been treated fairly and that its objections should be upheld.

237. There is one further issue raised by the Plan Company as to whether the Plan will be internationally effective. The Plan Company has filed independent expert evidence on Norwegian Law from Professor Hans Marthinussen, which appears to be uncontested. That evidence shows that the Bonds, which are governed by Norwegian law, will be discharged upon sanction of the Plan by a written resolution process of the Bondholders and that this will be effective under Norwegian law to release the Bonds.

238. In all the circumstances, I will sanction the Plan.

239. I am circulating this as a draft judgment on 30 April 2026 in accordance with the Plan Company's wishes and to comply with the time limits in the SPA. Just before

circulation, I heard from the Plan Company's solicitors, White & Case, that Harbour had agreed an extension to the long-stop date in the SPA to 31 May 2026. Be that as it may, I am also mindful of the fact that the hearing in Scotland in relation to the parallel plan of WCNS(I) is being heard from 5 May 2026 and my judgment will no doubt impact on that. I would therefore hope that the judgment can be handed down before that hearing starts. If there are consequential matters that I need to deal with at a hearing, this will have to be arranged in the usual way.