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Case No: CR-2021-000548, 549 and 550

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

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

Date: Thursday 1 April 2021

Before :
MR JUSTICE SNOWDEN

- -

IN THE MATTERS OF

VIRGIN ACTIVE HOLDINGS LIMITED
VIRGIN ACTIVE LIMITED
VIRGIN ACTIVE HEALTH CLUBS LIMITED

AND IN THE MATTER OF PART 26A OF THE COMPANIES ACT 2006

- -

Tom Smith QC, Ryan Perkins and Lottie Pyper
(instructed by **Allen & Overy LLP**) for the **Applicant Companies**
Robin Dicker QC and Georgina Peters
(instructed by **Sullivan & Cromwell LLP**) for an **Ad Hoc Group of Landlords**
Richard Fisher QC (instructed by **Ince**) for **Riverside Crem 3 Limited**
Simon Passfield and Samuel Parsons
(instructed by **Browne Jacobson LLP**) for **Pure Gym Limited**
Alec McCluskey (instructed by **Wallace LLP**) for **Mr. Sol Unsdorfer**

Hearing dates: 25, 26 and 29 March 2021

- -

Approved Judgment

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10.30 a.m. on 1 April 2021.

MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

1. This is an application on behalf of Virgin Active Holdings Limited ("VAHL"), Virgin Active Limited ("VAL") and Virgin Active Health Clubs Limited ("VAHCL") (together the "Plan Companies"). The Plan Companies seek an order pursuant to section 901C of the Companies Act 2006 (the "CA 2006") convening meetings (the "Plan Meetings") of certain of their creditors (the "Plan Creditors") for the purpose of considering and, if thought fit, approving restructuring plans between each of the Plan Companies and their Plan Creditors (the "Plans").

The Plan Companies

2. The Plan Companies are part of the Virgin Active group (the "VA Group"), an international health club operator. A key holding company of the VA Group is Virgin Active Health Club Holdings Ltd ("VAHCHL"). VAHCHL's ultimate shareholders are Brait Mauritius Limited (72.10%) and Sir Richard Branson (17.85%) (the "Shareholders"). The remaining 10.05% of the shares are held by the VA Group's management and an employee benefit trust.

3. VAHCHL remains fully solvent and was recently valued at between £350 - £400 million on an adjusted enterprise value valuation. It also owns a South African business, which is not part of the planned restructuring as it has separate financing arrangements and is not in financial distress.

4. The Plan Companies are all incorporated in England and are key entities in the VA Group's Europe & Asia Pacific business sub-group (the "Group"). Virgin Active Investment Holdings Limited ("VAIHL") is the ultimate parent company of the Group. VAHL is a wholly-owned subsidiary of VAIHL and VAL and VAHCL are wholly-owned subsidiaries of VAHL. There are currently a total of 102 clubs in the Group's business located in the UK, Italy, Australia, Thailand and Singapore.

The Plan Creditors

5. The Group owes significant debts to certain "Secured Creditors" under a "Senior Facilities Agreement" which was entered into on 28 June 2017, with VAHL as the borrower and VAL and VAHCL (among others) as guarantors. There are currently eight facilities under the Senior Facilities Agreement providing financing of over £200 million, all bar one of which are fully drawn. The Senior Facilities Agreement is secured by various guarantees and security over property provided by, among others, the Plan Companies (the "Charged Property"). The Plan Companies have entered into an intercreditor agreement (the "Intercreditor Agreement") which regulates the enforcement of security over the Charged Property and the ranking and priority of certain claims. Both the Senior Facilities Agreement and the Intercreditor Agreement are governed by English law.

6. The second significant group of creditors of the Group for present purposes are the landlords under the leases of club premises in the UK (the "Landlords" and the "Leases"). There are a total of 67 Leases included within the Plans relating to 45 properties. Of these, 30 Leases have been entered into by VAL, 32 by VAHCL and 5 are joint leases. Some of the Leases are guaranteed by VAHL, some benefit from guarantees provided by other Group companies, and one is guaranteed by a company

outside the Group. The arrears of unpaid rent owed to the Landlords in respect of the Leases will amount to about £30 million by the end of May 2021. Such amounts are all unsecured.

7. The Plans do not apply to leases of club premises in other jurisdictions. Those clubs are fewer in number, are not predicted to have such large cashflow requirements and the Group has generally been able to reach consensual agreements with the landlords.

8. The third significant group of creditors of the Group for present purposes are approximately one hundred creditors who are not current Landlords in respect of Leases, but whose claims relate in various ways to properties which are or have in the past been occupied by the Group (the "General Property Creditors"). The debts owed to the General Property Creditors are all unsecured.

9. Many of the claims of General Property Creditors are contingent liabilities which relate to either authorized guarantees ("AGAs") or guarantees of authorized guarantees ("GAGAs") or covenants under privy of contract provided to landlords of properties that were assigned to third parties by the Plan Companies between 2014 and 2019. Such claims would arise if the assignee tenant was to default.

10. The definition of General Property Creditors also includes creditors with a variety of other types of claims. These creditors include the following,

i) Hammersmith and Fulham LBC, to which VAHCL has given a covenant to provide a public swimming pool at the Fulham club, which it would be unable to fulfil if the Lease of that club were to be terminated;

ii) the landlords of five leases in Spain and Portugal entered into by entities that used to be subsidiaries of VAHL who have guarantee claims. These are unsecured and are governed by either English law or the law of the country in which the relevant club is located;

iii) any of the Landlords which exercises its rights to forfeit a Lease before the voting record time under the Plans (with the result that the Landlord would no longer be a Landlord in respect of the Lease in question, but would simply be an unsecured creditor);

iv) the sub-tenants of six Leases where VAL or VAHCL has agreed to pay the shortfall between the rent and service charges payable under the relevant sub-lease and the Lease (the "Subsidised Sub-Tenants");

v) the counterparties in respect of two agreements relating to car parking for the clubs in Wandsworth and Solihull; and

vi) the manager appointed by the First Tier Tribunal to manage the Canary Riverside complex (the "Manager"). That is a mixed estate comprising both residential and commercial units, including the premises from which VAHCL operates the Canary Riverside club. The orders appointing the Manager require him to comply with the obligations of the Landlord including as to provision of services, and in that respect to be able to recoup his expenses of so acting

from service charges. The Manager contends that he is owed a substantial sum in respect of the provision of electricity and other services to VAHCL.

Excluded creditors

11. Trade creditors of VAL number about 158 and are owed a total of about £2.2 million. Those creditors and employees (many of whom are currently furloughed) are considered commercially necessary for the continuation of the Group's business. It is not proposed that amounts owing to trade creditors, tax or employee related liabilities, or any business rate liabilities are to be affected by the Plans.

12. I should also record that the Manager filed evidence and appeared by counsel (Mr. McCluskey) at the convening hearing. The Manager contended that in the event that any tenant of the Canary Riverside estate defaulted on payment of any amounts owing to him, he would have a right of indemnity against the other tenants. Mr. Smith QC who appeared for the Plan Companies did not accept that this was so, and I express no view on whether that is right or not. However, the Manager's contention did raise the issue of whether, if such other tenants were obliged to provide an indemnity to the Manager on account of the default of VAHCL, they might have rights of contribution or indemnity against VAHCL.

13. At first, Mr. Smith QC contended that any such "ricochet" claims of the other tenants would fall within the definition of General Property Creditors and would thus be compromised by the VAHCL Plan. However, it became apparent that this would potentially involve the tenants of 325 residential units and other commercial units at Canary Riverside, who had been given no notice of the Plans whatever. Mr. Smith QC then took instructions, and told me that the Plans would be amended to exclude such other tenants of Canary Riverside from the definition of General Property Creditors. He added that on the basis that such other tenants would be excluded, the Plan Companies did not intend to give notice of the Plans to them in future.

14. Whilst reserving his position in light of that indication, Mr. McCluskey told me that the Manager would likely seek directions from the First Tier Tribunal. He also indicated that the Manager might notify the other tenants of the Plans in order that they could consider whether to seek to appear at the sanction hearing in due course.

The Group's financial difficulties and the proposed Restructuring

15. The revenue of the Group is entirely driven by membership fees and associated income from ancillary services. As such, its financial position has been severely affected by the COVID-19 pandemic. Government-imposed shutdowns around the globe have forced gyms to close in all of the Group's territories. Membership payments have been suspended during such closures and many members have opted to cancel or suspend their memberships for longer periods.

16. The underlying EBITDA of the Group fell from positive £56.8 million in the year ending 31 December 2019 to negative £42.1 million in the year ending 31 December 2020 (a fall of 173.7%). The clubs in the UK have been closed throughout 2021, and by the end of February 2021, had been partially or fully closed for nine of the last twelve months. In the same period, its clubs in Italy had been partially or fully closed for eight of the last twelve months. The result for the first two months of 2021 was a

fall in underlying EBITDA from positive £6.9 million for the same two months in 2020 to negative £20.3 million (a fall of 392%).

17. This dramatic drop in revenue caused by the pandemic has put increasing pressure on the Group's cash flow position. Although the Group took a number of steps to protect its position in 2020, including accessing government support, furloughing over 95% of its UK staff, making reductions to the remuneration and number of remaining employees, and negotiating deferrals or revised payment terms with its creditors, these measures were not sufficient to enable the Group to stabilize its financial position.

18. In June 2020 further support was provided to the Group by way of an additional £25 million term loan facility under the Senior Facilities Agreement (the "Additional Facility"), a new cash injection from the Shareholders by way of an unsecured loan of £20 million (the "Shareholder Loan") and a deferral of £5 million of royalties due to the Shareholders or their affiliates under licensing arrangements in respect of the Virgin Active brand. At the same time, the Group obtained certain amendments and waivers under the Senior Facilities Agreement.

19. Notwithstanding such support, the imposition of further coronavirus restrictions forcing the closure of clubs in Italy from October 2020 and in the UK from late December 2020 required a further review of the Group's finances. In particular, it became apparent that without further funding, the Group would become cashflow insolvent in the week commencing 22 March 2021.

20. Discussions between the Group and the Shareholders during December 2020 and January 2021 resulted in a proposal for a package of support and compromises to be provided by the Shareholders and the intermediate companies in the VA Group as part of a wider restructuring (the "Restructuring"). The Restructuring includes the Plans in relation to the debts and obligations owed to the Secured Creditors, to the Landlords, and to the General Property Creditors.

21. The package to be provided by the Shareholders and their affiliates will include (i) the capitalisation of approximately £350 million owing to other members of the VA Group (including £185 million of inter-company liabilities owed to direct or indirect shareholder companies), (ii) the waiver of approximately £9.4 million and the deferral of approximately £15.4 million of liabilities under the licensing arrangements, (iii) the provision of a secured loan of £25 million from VAHCHL which itself borrowed such sum from affiliates of the Shareholders (Brait Capital International Limited and Virgin Holdings Limited) to enable the Plans to be proposed, (iv) the provision of a further loan of £20 million from the affiliates of the Shareholders to provide additional liquidity for the Group after the Plans take effect, (v) an obligation to contribute up to £6 million of equity into the Plan Companies to enable payments to be made to Landlords and General Property Creditors under the Plans, and (vi) the waiver of certain events of default.

22. The Group approached a number of key Secured Creditors with its proposals for the Restructuring in mid-February 2021. On 10 March 2021 the Group obtained the agreement of just over 80% of the Secured Creditors, who entered into a "Support Agreement" with the affiliates of the Shareholders and the Plan Companies, agreeing to support the Restructuring.

23. Having obtained such agreement from the Secured Creditors, on 10 March 2021 VAHCHL made the £25 million additional term-loan facility available to VAHL to enable the Group to propose the Plans (the "Pre-Implementation Facility") using funds made available by affiliates of the Shareholders. Such loan was secured and ranks pari passu with the other debts owed under the Senior Facilities Agreement.

24. The amount of the Pre-Implementation Facility has not solved the Group's cashflow difficulties. The most recent 13-week cashflow forecast produced by the Plan Companies shows that without the Plans taking effect, they will again be close to running out of cash at the end of May 2021. The cashflow forecast shows that cash will be £5.5 million in the week commencing 26 April 2021, and will fall to £800,000 by the end of May 2021. This forecast, however, assumes that UK clubs will reopen as expected on 12 April 2021, delivering, at the end of the month, £5.2 million of revenue principally from UK members' reactivated direct debits. If UK reopening is delayed, cash will fall to £300,000 in the last week of April and will be negative by the following week. The 13-week forecast also assumes that Italian clubs will reopen on 1 May 2021 delivering revenue of £10 million in the week commencing 10 May 2021. If, as appears increasingly likely due to the growth of the pandemic in Italy, Italian reopening is delayed, cash will be negative in the week commencing 10 May 2021 and the Group will have a liquidity shortfall the following week.

25. On the basis of the figures provided by the Plan Companies, there is a material risk that in the absence of the Restructuring, they will run out of money in the week commencing 17 May 2021. The Plan Companies are therefore proposing the Plans with a view to avoiding entering formal insolvency proceedings, and instead enabling the Group to survive the remainder of the pandemic and rebuild thereafter. The aim of the Plan Companies is that, if approved by the Plan Creditors and sanctioned by the Court, the Plans should become effective on a "Restructuring Effective Date" by the latest during the week commencing 10 May 2021.

The Relevant Alternative to the Plans

26. The evidence of the Plan Companies is that VAHCHL and its subsidiaries engaged Deloitte to explore the likely alternative scenarios if the Plans were not approved and the Restructuring not implemented. On the basis of that advice, the evidence of the directors of the Plan Companies is that the Restructuring (including the Plans) is the only viable option to rescue the Plan Companies. The evidence of the directors is that if the Plans are not approved and implemented, they would have no choice but to put the Plan Companies into administration.

27. Deloitte also modelled two scenarios for the administration of the Group. The first (Scenario 1) involves a trading administration of the Group's business in the UK for about six weeks to achieve an orderly sale of all or parts of the Group's UK business and assets, in conjunction with a sale by the VA Group of the solvent companies which operate in Italy, the Asia Pacific region and South Africa. The second (Scenario 2) is a liquidation of the Group's assets.

28. On the basis of the advice from Deloitte, the view of the Plan Companies is that Scenario 1 will achieve a better return for Plan Creditors than Scenario 2, and that it is therefore also the more likely alternative, because the Secured Creditors will have a considerable incentive to finance a trading administration to improve their recoveries.

However, even on the basis of that more optimistic scenario, Deloitte has calculated that the Secured Lenders would not receive full payment of their debts. The dividend to the unsecured creditors (including the Landlords and the General Property Creditors) from the Plan Companies would therefore be minimal, being only the statutory prescribed part of up to £800,000 in respect of each Plan Company.

29. Deloitte has calculated the estimated returns under Scenario 1 for the different groups of Plan Creditors. For the Secured Creditors, this amounts to 84.6 p/£. For the Landlords and the General Property Creditors, who are unsecured, the estimated return is very poor indeed. The exact number depends upon which Plan Company is the debtor and whether the Plan Creditor also has a claim under a guarantee against one or more of the other Plan Companies or against a solvent company inside or outside the Group. But putting aside the very limited number who have guarantee claims against a solvent company, for the most part the estimated administration return to Landlords and General Property Creditors is measured in fractions of one p/£.

30. The estimated administration return calculated by Deloitte for Landlords and General Property Creditors (the "Estimated Administration Return") forms the basis for a central feature of the Plans, namely the "Restructuring Plan Return". This is simply a sum calculated at 120% of the Estimated Administration Return. The 20% uplift is designed by the Plan Companies to provide the relevant Plan Creditors who are to receive it with a greater return they could expect to receive in respect of their claims in the most "relevant alternative" scenario to the implementation of the Plans. The Plan Companies envisage that this will engage the power of the Court under Section 901G in Part 26A of the CA 2006 to sanction the Plans and "cram down" any dissenting classes of the Landlords and the General Property Creditors, even if they do not vote in favour of the Plans.

The Plans

31. In broad outline, the treatment of the different groups of Plan Creditors under the Plans is as follows.

The Secured Lenders

32. The Secured Lenders under the Senior Facilities Agreement will extend the term of their facilities to 30 June 2025 and waive various breaches of covenant, in return for enhanced terms as to interest. The Secured Creditors will not suffer any reduction in the amounts owing to them.

The Landlords

33. Although the Landlords would all rank pari passu in respect of their claims in the separate administrations of the respective Plan Companies, the Leases have been divided into five classes (A-E) for the purpose of their treatment under the Plans. In essence, Classes A and B are the Leases which are most profitable and which the Group wishes to retain. The clubs operated at the premises covered by the Class A Leases are regarded as the most profitable and critical to the Group's survival, or as being most attractive to a potential buyer. Class B Leases represent profitable sites but which are less critical to the Group. The claims of the Landlords in respect of

these Leases are treated most favourably under the Plans. By contrast, Classes D and E Leases are sites which are loss-making which the Group does not wish to retain. All present and future claims of the Landlords in respect of these Classes are effectively eliminated in return for payment of the basic Restructuring Plan Return.

34. The allocation of Leases to Classes A-E has been done in two stages. First, the Plan Companies conducted an analysis of each leased site's operating profit for the financial year ending 31 December 2019 (after an allocation for head office costs), rounded to the nearest whole number. The Class A Leases were those sites that achieved an operating margin derived from the operating profit of at least 25 per cent; Class B Lease sites achieved an operating margin derived from the operating profit of between 10 and 25 per cent; Class C Lease sites achieved an operating margin derived from the operating profit of between 0 and 10 per cent; Class D Lease sites were operating at a loss; and Class E Lease sites comprised Leases with Subsidised Sub-tenants which the Plan Companies consider could not be made financially viable if they were to remain in occupation.

35. Secondly, the Plan Companies considered whether any particular circumstances justified reclassification of any Lease. The evidence explains that this included situations where the operating profit margin was close to the cut-off point for any class. Five adjustments were made at the second stage, including, for example, where it could be foreseen that a particular club would soon become as profitable as a higher category, or where the Plan Companies were advised that the premises in question were under-rented. In such a case it could be assumed that in an administration a purchaser of the Lease would agree to pay off any arrears in full, such that the Landlord concerned would not achieve a better return if placed in a lower Class under the Plans and its claims for arrears or rent were eliminated.

36. Under the Plans, all of the Landlords will retain the right to take steps to determine their Lease, whether by forfeiture or otherwise. This reflects the position in relation to a company voluntary arrangement in which it has been held that a landlord cannot be prevented from exercising an accrued right to forfeit the lease on the ground of the tenant's insolvency: see Discovery (Northampton) Ltd v Debenhams Retail Ltd [2020] BCC 9. Similarly, it has been held that a scheme of arrangement cannot force a landlord to accept a surrender of a lease: see Re Instant Cash Loans Ltd [2019] EWHC 2795 (Ch). The Plans therefore do not provide for the Landlords to suffer any involuntary termination or surrender of any Leases (or indeed any sub-leases).

37. If, however, a Landlord successfully forfeits or terminates a Lease before the Voting Record Date for the Plans, then the Plans provide that such Landlord will become a General Property Creditor in respect of the liabilities arising. If such action is taken after the Voting Record Date but within 33 months from the Restructuring Effective Date, then the relevant Landlord will be entitled to be paid the Restructuring Plan Return in respect of any court order obtained as a result.

38. Subject to those provisions in respect of determination of any Lease, in broad outline, the treatment of the Landlords in respect of the different Classes of Lease under the Plans is as follows.

i) Class A Landlords:

a) All rent arrears will be paid within three business days of the Restructuring Effective Date.

b) During a “Rent Concession Period” of up to three years, fixed rent due under the Lease (the “Contractual Rent”) will be paid monthly in advance.

c) At the end of the Rent Concession Period, payments will revert so that they are made in accordance with the terms of the relevant Lease.

ii) Class B Landlords:

a) All outstanding rent arrears will be released and discharged, in return for a payment of the Restructuring Plan Return.

b) During the Rent Concession Period, Contractual Rent will be paid monthly in advance.

c) At the end of the Rent Concession Period, payments will revert so that they are made in accordance with the terms of the relevant Lease.

iii) Class C Landlords:

a) All outstanding rent arrears will be released and discharged.

b) During the Rent Concession Period (which for Class C Landlords may end sooner than three years if the club in question returns to 2019 levels of profitability), Contractual Rent will be cut by 50%.

c) There will be a deferral of payments of such reduced Contractual Rent until 1 January 2022 and such rent will then be paid in 60 equal monthly instalments commencing on 1 January 2022.

d) The reduced Contractual Rent for the period from 1 January 2022 to the end of the Rent Concession Period shall be paid at monthly intervals in advance.

e) No rent shall be payable for any period during the three year period after the Restructuring Effective Date in which the relevant premises are required to be closed for any continuous period of at least 28 days as a result of any government regulation imposed in relation to COVID-19.

f) At the end of the Rent Concession Period, payments will revert so that they are made in accordance with the relevant Lease.

g) Each Class C Landlord will be entitled to terminate their Lease on 30 days' notice, provided that the Notice to Vacate is delivered within 90 days of the Restructuring Effective Date. If a Class C Landlord exercises this break right, the relevant Plan Company will pay 30 days’

worth of its Contractual Rent and rent relating to turnover (if any). If and to the extent that this payment is insufficient to provide the relevant Class C Landlord with a Restructuring Plan Return, the relevant Class C Landlord will be entitled to receive a further payment to make up the shortfall.

iv) Class D Landlords:

a) From the Restructuring Effective Date, no past, present or future rent, service charge, insurance or other liabilities will be payable and the relevant Plan Company will no longer have any obligations towards them. In exchange, each Class D Landlord will be entitled to a Restructuring Plan Return.

b) Each Class D Landlord will have a rolling break right exercisable on 30 days' notice. If a Class D Landlord serves a Notice to Vacate within six months of the Restructuring Effective Date, the relevant Plan Company will pay 30 days' worth of Contractual Rent and, to the extent that this payment is insufficient to provide the relevant Class D Landlord with a Restructuring Plan Return, they will be entitled to receive a further payment to make up the shortfall.

v) Class E Landlords:

a) From the Restructuring Effective Date, no past, present or future rent, service charge, insurance or other liabilities will be payable and the relevant Plan Company will no longer have any obligations under the Lease. In exchange, each Class E Landlord will be entitled to a Restructuring Plan Return.

b) The relevant Plan Company will pay to the relevant Class E Landlord any amounts for Contractual Rent, any amounts in respect of turnover-related rent and amounts in respect of service charge and insurance in respect of the Class E Premises received from any sub-tenant.

c) Each Class E Landlord will have a rolling break right exercisable immediately on or after the Restructuring Effective Date. This right can be exercised by serving a Notice to Vacate.

39. The Lease Guarantees given by the Plan Companies will be directly compromised and varied under the terms of the relevant Plan, in order to align the guarantee with the amended terms of the underlying Lease.

General Property Creditors

40. The Plans will compromise the claims of the General Property Creditors against the Plan Companies in return for payment of a Restructuring Plan Return.

41. One of the Subsidised Sub-Tenants, Pure Gym Limited, appeared by counsel (Mr. Passfield and Mr. Parsons) and drew attention to issues arising for their client on the drafting of the proposed Plans. Mr. Passfield's main contention was that it was unclear whether it was intended that the Plan should terminate the relevant sub-leases

in addition to compromising the contractual obligations of the Plan Companies to Pure Gym to fund the difference between the amount of the sub-lease rentals and the rentals under the relevant Lease. The point having been identified, the Plan Companies confirmed that it was not the intention that the Plans should terminate the sub-leases, and proposed various amendments to the drafting to make the position clearer. Although appearing satisfied by the proposed amendments, Mr. Passfield reserved Pure Gym's rights in relation to the effect that the Plans might have on its property rights.

Payment of Restructuring Plan Return

42. Where the Plans contemplate that a Plan Creditor will receive a Restructuring Plan Return, there are detailed provisions for submission of claims by a specified bar date between 9 and 33 months after the Restructuring Effective Date. If a relevant Plan Creditor fails to submit a Notice of Claim by the relevant bar date, they will be deemed to have waived and released their right to any Restructuring Plan Return.

43. Each Notice of Claim will be assessed by Deloitte (as "Plan Administrator") which may request further information or documentation from the relevant creditor prior to admitting the Notice of Claim in whole or in part and in the event of a dispute, providing the relevant creditor with reasons in writing as soon as reasonably practicable. A Plan Creditor whose claim is disputed may deliver a notice to the Plan Administrator within 21 days. There is then a dispute resolution mechanism involving submission of the dispute to binding determination by an independent accountant acting as expert.

44. It is intended that the Restructuring Plan Returns will be paid between one and three years after the Restructuring Effective Date. Most of these payments will be paid one year after the Restructuring Effective Date. The timetable is contended by the Plan Companies to be similar to the time that it would be likely to take before any dividend would be paid in an administration, which is anticipated to take between 18 months and two years to be paid out due to the complexity of the Group and the time it would take to complete all asset realisations.

Other provisions

45. As explained above, the Plans vary the rights of certain Landlords against certain guarantors within the VA Group. This falls within the scope of a compromise or arrangement between the Plan Companies and the Landlords, since the guarantors would otherwise have a "ricochet" claim against the relevant Plan Companies which would defeat the purpose of the Plans: see Re Gategroup Guarantee Ltd [2021] EWHC 304 (Ch) at [163], where the authorities are considered.

46. Finally, the Plans provide for a release of the professional advisers to the Plan Companies, the directors of the Plan Companies and various other persons involved in the Restructuring from any liability arising out of the negotiation and implementation of the Restructuring. Such a clause is not uncommon and can fall within the concept of a compromise or arrangement between a company and its creditors in their capacity as such: see Re Far East Capital Ltd SA [2017] EWHC 2878 (Ch) at [13]-[14] and Re Noble Group Ltd [2019] BCC 349 (sanction judgment) at [20]-[30].

Notice of the convening hearing

47. The procedure for a convening hearing under Part 26 or Part 26A of the CA 2006 is governed by the Practice Statement issued by the Chancellor of the High Court on 26 June 2020 (the "Practice Statement"). The new Practice Statement is similar to the old Practice Statement issued in 2002 (reported at [2002] 1 WLR 1345), and many of the principles outlined in the authorities under the 2002 Practice Statement remain applicable under the new Practice Statement: see Re ColourOz Investment 2 LLC [2020] BCC 926 at [39].

48. In the present case, the letter to Plan Creditors under the Practice Statement was issued on Wednesday 10 March 2021, immediately after the Support Agreement was signed with the majority of the Secured Creditors and the Pre-Implementation Facility was executed. This was two weeks in advance of the convening hearing.

49. Prior to that date, the Group's evidence is that it had focused on reaching agreement with the Secured Creditors as the senior-ranking stakeholders within the finance structure, holding security over the key assets of the Group. There was limited dialogue with some of the Landlords from February 2021, and little or no consultation with the General Property Creditors in advance of the Practice Statement letter being circulated.

50. Against that background, the Plan Companies accepted that the notice of the convening hearing was unlikely to be regarded as adequate for many Plan Creditors to be ready to advance detailed arguments on issues such as class composition or other relevant topics. I agree.

51. Given their imminent financial difficulties, the Plan Companies did not wish to see the convening hearing adjourned. They therefore accepted that the Plan Creditors should not be restricted in seeking to raise issues of class composition or jurisdiction at the sanction hearing if they wish to do so, such that the provisions of paragraph 10 of the Practice Statement should not apply to them. Given the apparent urgency of the case, I was content to adopt that course, which has also been followed in other recent cases under Part 26 and 26A where insufficient notice had been given to creditors: see e.g. Port Finance Investment Limited [2021] EWHC 378 (Ch) at [50]-[51].

52. As Mr. Smith QC acknowledged, the effect is that although I must still make a decision on the evidence and arguments before me in order to make a convening order, those decisions will not bind Plan Creditors, and the Plan Companies essentially proceed to the sanction hearing at their own risk on such issues.

The threshold conditions under Part 26A

53. The first jurisdictional issue that I have to decide at the convening hearing is whether the threshold conditions under section 901A of the CA 2006 for proposing a compromise or arrangement are satisfied: see paragraph 6c of the Practice Statement.

54. So far as material, section 901A provides as follows:

> "(1) The provisions of this Part apply where conditions A and B are met in relation to a company.

> (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).
>
> (4) In this Part ... "company" ... means any company liable to be wound up under the Insolvency Act 1986 ..."

55. The Plan Companies are incorporated in England and each is therefore liable to be wound up in England. Accordingly, each Plan Company is a "*company*" within section 901A. For the following reasons, I am also of the view that each of the threshold Conditions A and B is satisfied in the present case, and none of the Plan Creditors who appeared at the hearing suggested otherwise.

Condition A: section 901A(2)

56. As I have explained, the evidence shows that the Plan Companies have encountered financial difficulties as a result of the coronavirus pandemic that are affecting and will affect their ability to carry on business as a going concern. It is clear that Condition A is therefore satisfied.

Condition B: section 901A(3)

57. Condition B can be divided into two limbs: (i) the company must be proposing a compromise or arrangement with its creditors or any class of them; and (ii) the purpose of the compromise or arrangement must be to eliminate, reduce or prevent, or mitigate the effect of, any of the company's financial difficulties under Condition A.

58. The Plans clearly involve the requisite element of "*give and take*" to amount to a compromise or arrangement between the Plan Companies and the Plan Creditors. In particular:

    i) the Senior Facilities Agreement will be amended and extended, with a new maturity date and interest rate structure;

    ii) the obligations of the Plan Companies to the Landlords under the Leases will be varied, the extent of that variation depending on the Class to which the relevant Lease belongs; and

iii) the liabilities to General Property Creditors will be released in return for a payment of the Restructuring Plan Return.

59. As to the second limb of Condition B, there can be no doubt that the purpose of the Plans is to address the financial difficulties which the Plan Companies have encountered due to the pandemic and the resultant trading conditions in the gym and leisure industry.

Class composition

60. The next jurisdictional issue is that of class composition at the Plan Meetings: see paragraph 6a of the Practice Statement.

The legal principles

61. The principles of class composition in relation to a scheme of arrangement under Part 26 of the CA 2006 are well-known. From the legislative background and the fact that both Part 26 and 26A use the same statutory language, it is to be expected that the same principles will generally apply under Part 26A: see e.g. Re Virgin Atlantic Airways [2020] BCC 997 (convening judgment) at [44]-[48], and Re Gategroup Guarantee Ltd [2021] EWHC 304 (Ch) at [181]-[182].

62. That said, it should be appreciated that a rigid application of the approach under Part 26 may not always be appropriate in the different context of a Part 26A plan. Under Part 26, the force of the procedure to bind dissentient creditors derives from their inclusion within a class where a majority votes in favour of the scheme. By contrast, in a Part 26A plan, the power to bind dissentient creditors may also derive from the court's "cram down" power under section 901G. It follows that, whilst in relation to a Part 26 scheme it is necessary to take care about placing creditors into the same class when they have materially different rights, in relation to a Part 26A plan it may be necessary to take care not to place creditors into an artificially large number of classes in order to provide a basis for invoking the cram down power.

63. The basic principle that applies under Part 26 is that a class "must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest": see Sovereign Life Assurance v Dodd [1892] 2 QB 573 at 583 (Bowen LJ) and Re UDL Holdings Ltd [2002] 1 HKC 172 at [27] (Lord Millett NPJ).

64. As Chadwick LJ said in Re Hawk Insurance Co Ltd [2002] BCC 300 at [30]:

> "In each case the answer to that question will depend upon analysis (i) of the rights which are to be released or varied under the scheme and (ii) of the new rights (if any) which the scheme gives, by way of compromise or arrangement, to those whose rights are to be released or varied."

65. It is the legal rights of creditors or members, not their separate commercial or other interests, which determine whether they form a single class or separate classes. Conflicting interests can be taken into account when considering whether, as a matter

of discretion, to sanction the scheme or plan. See Lord Millett NPJ's judgment in Re UDL at 184-5:

> "The test is based on similarity or dissimilarity of legal rights against the company, not on similarity or dissimilarity of interests not derived from such legal rights. The fact that individuals may hold divergent views based on their own private interests not derived from their legal rights against the company is not a ground for calling separate meetings … The question is whether the rights which are to be released or varied under the scheme or the new rights which the scheme gives in their place are so different that the scheme must be treated as a compromise or arrangement with more than one class."

66. It is also clear that the rights of creditors included in a single class can be different in material respects, provided that they are not "so dissimilar as to make it impossible for them to consult together with a view to their common interest". So, for example, in Re Telewest Communications plc [2004] BCC 342 at 354, David Richards J said that:

> "… a broad approach is taken and that the differences may be material, certainly more than de minimis, without leading to separate classes."

67. The decision in Hawk demonstrates that the first element of the class analysis in relation to schemes under Part 26 requires the court to identify the substance of the relevant rights possessed by scheme creditors by reference to the counterfactual comparator to the scheme. Accordingly, where a scheme is proposed as an alternative to a formal insolvency procedure, it is necessary to identify the rights that the creditors would have in that formal insolvency proceeding. In the case of a formal insolvency, unsecured creditors would all have rights to participate in a process of proof of debts, whether their claims were present, future or contingent. Hence, as Hawk illustrated, unsecured creditors with present claims and those whose claims are merely contingent may be regarded as having sufficiently similar rights against the company for the purposes of the class analysis.

68. I consider that the concept of identifying the substance of the rights that creditors would have in the relevant counterfactual comparator is equally relevant to the question of class composition for a restructuring plan under Part 26A. Although Part 26A contains no express requirement upon the court to identify a counterfactual when determining class composition at the convening hearing, a statutory counterfactual has been introduced in relation to one of the conditions that must be satisfied before the court can exercise its (cram-down) power under section 901G to sanction a plan notwithstanding that a dissenting class has not agreed the plan. That statutory counterfactual is called the "relevant alternative" and is defined in section 901G(4) as,

> "whatever the Court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned".

69. The counterfactual comparator and the relevant alternative are clearly equivalent concepts. In practice there may, however, be a difference between the evidence available to the court when determining the question of class composition at the convening hearing, and when determining the relevant alternative for the purposes of any cram down argument at the sanction hearing. Indeed, as I shall explain, some of the Landlords who appeared at the convening hearing contended strongly that the Plan Companies and Deloitte have not identified the correct relevant alternative.

70. However, since the question of class composition will remain open to challenge at the sanction hearing, at this stage I shall simply determine the composition of the classes for the Plan Meetings on the basis of the evidence adduced by the Plan Companies. Whilst reserving their rights to contend differently at sanction, the only party who suggested that I should follow a different course to that proposed by the Plan Companies was the Manager who contended that he should be in a class of his own. I shall deal with that argument below.

The proposed classes

71. On behalf of the Plan Companies, Mr. Smith QC submitted that the Plan Creditors should be divided into the following seven classes: (i) the Secured Creditors; (ii) the General Property Creditors; (iii) the Class A Landlords; (iv) the Class B Landlords; (v) the Class C Landlords; (vi) the Class D Landlords; and (vii) the Class E Landlords.

72. There are three Plan Companies (VAL, VAHCL and VAHL). VAHL is the borrower of the Senior Facilities Agreement, and VAL and VAHCL are guarantors. It is therefore proposed that each Secured Creditor will vote on the Plans for all three Plan Companies.

73. The General Property Creditors comprise a mixture of liabilities owing by one or more of the Plan Companies. Accordingly, it is proposed that each General Property Creditor will vote on the Plan proposed by each Plan Company which is a debtor of that General Property Creditor.

74. In relation to the Landlords:

    i) In some cases, the same entity will be the Landlord in respect of a number of Leases which fall into different classes. In that case the entity will vote in respect of their claim in relation to the relevant Lease in each class.

    ii) For some Leases, VAL is the tenant; for other leases, VAHCL is the tenant. VAHL is not a tenant of any Leases, but some of the Leases are guaranteed by VAHL. It is proposed that each Landlord will vote on the Plan proposed by each Plan Company which is a debtor of that Landlord, whether as tenant or guarantor.

75. As a result, the Plan Companies propose that there should be a total of 21 Plan Meetings (seven for each Plan Company).

The Secured Creditors

76. The Secured Creditors are the lenders under the Senior Facilities Agreement. They have the same existing rights against the Plan Companies. Moreover, on the basis of the evidence currently before me, if the Plans do not become effective, then it is likely that each of the Plan Companies will enter into administration. In that case the Secured Creditors would have the same rights. They would all benefit from the same security package (which is shared between them) and would each be entitled to submit proofs of debt for any unsecured shortfall. The Secured Creditors will also have the same rights under the Plans, since the amendments to the Senior Facilities Agreement will affect all of them in the same way. I therefore accept that it is clear that the Secured Creditors should all vote in a single class.

77. It is also clear that the Secured Creditors should not vote in the same class as the other Plan Creditors. This is because the Secured Creditors are the only creditors that hold security for the liabilities owing to them and the variation of such rights under the Plans by way of amendment and extension of the Senior Facilities Agreement is radically different to the arrangements which will apply to the Landlords and the General Property Creditors.

The Landlords

78. Although there will naturally be different terms and rentals payable in respect of the individual Leases, the Landlords are all unsecured creditors in respect of their rights to payment of rent and other amounts due under the relevant Lease. All Landlords are also likely to have materially similar contractual rights to forfeit the relevant Lease (e.g. for non-payment of rent or on an insolvency event) and thereby repossess a property currently in the possession of the relevant Plan Company. If the Plans were not approved and the Plan Companies were to go into administration as the relevant counterfactual, in the event of non-payment of rent, the Landlords would each be likely to be given leave to forfeit the relevant Lease and lodge a proof of debt in the relevant administration for a claim calculated in accordance with the decision in Re Park Air Services plc [2000] 2 AC 172.

79. However, those similarities of the Landlords' existing rights against the Plan Companies are not reflected in the variation of rights to be effected under the Plans. As indicated above, under the Plans, the Leases are placed into five categories (A to E). Those categories reflect the perceived economic and strategic value of the relevant Lease to the Plan Companies, and, as explained above, the variation of rights of the Landlords effected under the Plans in respect of the different categories are therefore also materially different. Although each Landlord within a particular category will receive the same treatment under the Plans as others within that category, the different categories receive very different treatment under the Plans as regards payment of arrears and future rents.

80. Because of such differences in treatment, it is, for example, impossible to see how a Landlord in respect of a Class A or B Lease (which will continue to receive future contractual rents in full) could have a sensible discussion about the merits of the Plan with the landlord in respect of a Class D or E Lease (which will not receive any future payments of contractual rent). And the very different proposals in respect of payment in full or release of rent arrears in return for a Restructuring Plan Return as between

Class A Landlords and Class B Landlords is likely to make it impossible for Landlords in respect of those different categories of Lease to find a common interest in the terms of the Plans.

81. As indicated above, some of the Landlords (including those within the same category) benefit from guarantees provided by various Group companies. The guarantee package for each Lease is different, and there are many different permutations. Although the possession of rights against third parties does not, of itself, give rise to any difference in the Landlords' existing rights against the Plan Companies for the purposes of class composition, the terms of the Plans under which some Landlords will be required to give up additional guarantee rights of varying value could conceivably operate as a material distinction for class purposes.

82. However, I do not consider that this is so in the instant case, essentially for two reasons. The first is because where payments of the Restructuring Plan Return are to be made under the Plans, calculated by reference to the Estimated Administration Return, the latter figure is defined to include the estimated return from the estate of each guarantor of the Lease. Essentially the same deal is thus on offer to each class of Landlords; the quantum of the Estimated Administration Return will simply be tailored to reflect the guarantee package in respect of each Lease.

83. The second reason is one of practicality. To further sub-divide the five proposed Classes depending on the number of different permutations of tenants and guarantors would multiply the number of classes several times. I see no obvious purpose to such a course in circumstances in which the main issue facing most of the Landlords in deciding whether to approve the Plans relates to the overall treatment of their Leases rather than variation of the guarantees.

84. I therefore accept that it is appropriate for the Landlords to be divided into five classes reflecting the categorisation (A-E) of each Lease under the Plans.

The General Property Creditors

85. The General Property Creditors are unsecured creditors of the Plan Companies. The liabilities owing to the General Property Creditors relate (in one way or another) to a property occupied (or formerly occupied) by the Group. However, they are not Landlords and their existing rights and treatment under the Plans are very materially different from the rights and treatment of the Landlords. They should therefore not be included in a class with any Landlords.

86. The liabilities owing to the General Property Creditors arise under a range of contracts and arrangements. Many of the liabilities are guarantees (e.g. AGAs and GAGAs); these liabilities are contingent and may never crystallise. Despite the differences in origin and type of claim, the rights of the General Property Creditors against the Plan Companies in the counterfactual suggested by the Plan Companies are essentially the same. This is because in an administration, the General Property Creditors would all have the same right to submit proofs of debt and to have them valued in respect of their unsecured claims, whether present, future or contingent.

87. The fact that the General Property Creditors may have claims of different value does not involve a fundamental difference in rights which would make it impossible for

them to discuss the merits (or otherwise) of the basic proposal that is applicable to them all under the Plans, namely that their agreed or adjudicated claims should all be released in return for payment of a Restructuring Plan Return which is proportionate to their admitted or adjudicated claims.

88. For these reasons, I do not accept the argument advanced by Mr. McCluskey on behalf of the Manager. He contended that since most of the claims of the other General Property Creditors are only contingent, but the claim of the Manager is for accrued arrears, this means that the Manager should be placed into a separate class of his own. As the decision in Hawk showed, however, this is not a material difference in a situation in which the Plans are proposed as an alternative to an administration in which all claims, including contingent claims, would have to be proved and would rank equally for a dividend. It also makes no difference to a class analysis that the Manager might have rights of recoupment against third parties (the other tenants of Canary Riverside) in the event of a shortfall in payment by VAHCL. Those rights are not rights against the Plan Companies and they are not required to be surrendered under the Plans.

89. In relation to four contracts (the LBH Contract for Services, the Solihull Car Parking Agreement, the Wandsworth Car Parking Agreement and the Canary Riverside Services Arrangement involving the Manager), a slightly different regime will apply under the Plans. The Plans will release any liabilities which were due and payable under these contracts as at the Restructuring Effective Date in consideration for a payment of a Restructuring Plan Return. In addition, if the relevant Lease is terminated by the Landlord before the Final Claims Date, then all other liabilities under the corresponding contract will also be released in return for a Restructuring Plan Return.

90. This structure ensures that, if the Landlord of the relevant property does not terminate the Lease, then the corresponding services contract does not also need to be terminated. I do not think that this is a sufficiently material difference in treatment to fracture the class of General Property Creditors. The counterparties to the four contracts are actual and contingent creditors, and although potentially relating to liabilities triggered at different times, the same basic deal whereby all such liabilities are released in consideration for payment of a Restructuring Plan Return will be applied to them as to other General Property Creditors with actual or contingent claims.

The form of the Explanatory Statement

Background

91. There was considerable argument at the convening hearing over the approach that I should take to the draft Explanatory Statement provided by the Plan Companies. A number of Landlords appeared by counsel at the convening hearing and criticised the adequacy of the Explanatory Statement.

92. Those criticisms came primarily from Mr. Dicker QC who represented an “ad hoc group” of four Landlords (Aberdeen Standard Investments, The British Land Company Plc, KFIM Long Income Property Unit Trust Land and Securities Properties Ltd) (the “AHG”). The AHG (or their affiliates) are Landlords with a number of

Leases in various different classes and aggregate claims against the Group in respect of those Leases of about £4 million. One member of the AHG also holds claims as a General Property Creditor. I was also told that the four members of the AHG are supported by seven other institutional Landlords.

93. Mr. Dicker QC contended that the all Landlords required additional information that was not included in the draft Explanatory Statement. He suggested that I could either say that I would not convene the Plan Meetings unless the information was included in, or provided in some way in connection with, the Explanatory Statement; or that I could convene the Plan Meetings and order the Plan Companies to disclose the information.

94. A further Landlord, Riverside Crem 3 Limited ("Riverside"), represented by Mr. Fisher QC, supported Mr. Dicker QC's submissions and made further requests of its own. Riverside is the Landlord in respect of the Virgin Active club in Canary Riverside which has been classified as a Class B Lease. Riverside is owed about £1 million in rent arrears.

The requirements for an explanatory statement

95. Paragraphs 14 and 15 of the Practice Statement provide as follows:

> "14. Explanatory statements should be in a form and style appropriate to the circumstances of the case, including the nature of the member and/or creditor constituency, and should be as concise as the circumstances admit. In addition to complying with the provisions of section 897 … the commercial impact of the scheme must be explained and members and/or creditors must be provided with such information as is reasonably necessary to enable them to make an informed decision as to whether or not the scheme is in their interests, and on how to vote on the scheme. Where a document is incorporated into the explanatory statement by reference, readers should be directed to the material part(s) of the document.
>
> 15. The court will consider the adequacy of the explanatory statement at the convening hearing. The court may refuse to make a meetings order if it considers that the explanatory statement is not in an appropriate form. However, the court will not approve the explanatory statement at the convening hearing, and it will remain open to any person affected by the scheme to raise issues as to its adequacy at the sanction hearing."

96. So far as content is concerned, paragraph 14 summarises the pre-existing law which is to the effect that an explanatory statement must explain the commercial impact of the scheme or plan and must provide creditors with such information as is reasonably necessary to enable them to make an informed decision as to whether or not the scheme or plan is in their interests.

97. I gave some further guidance in relation to the required content of an explanatory statement in relation to a creditors' scheme in Re Sunbird Business Services Ltd [2020] Bus LR 2371 at [59]-[62]:

> "59. In the context of a scheme for creditors which is put forward as an alternative to a formal insolvency process, it is certainly conventional for the scheme company to seek to fulfil these information requirements by putting forward a detailed analysis which estimates the likely returns for scheme creditors in such an insolvency and under the scheme, together with the likely timescales for such recoveries. That is because the reasonable creditor deciding how to vote, and the court which is asked to exercise its discretion to sanction the scheme in the interests of all creditors, will at the very least require to be satisfied that all creditors are being offered a realistic prospect of receiving a greater or faster return under the scheme than they are likely to receive in the alternative if the scheme is not sanctioned: see per David Richards J in In re T & N Ltd [2005] 2 BCLC 488, para 82 and my own observations to similar effect in In re Noble Group [2019] 2 BCLC 548, para 90.
>
> 60. But that is the bare minimum. The reasonable creditor will also want to be provided with the necessary information to understand how any different groups of creditors and any other relevant stakeholders are treated under the scheme and in any wider restructuring in order that he can reach an informed view upon whether the losses which have been suffered and the available value are being appropriately allocated between stakeholder groups.
>
> 61. So, for example, if creditors which would rank equally in a formal insolvency are being differently treated under the scheme, or are being left out of the scheme altogether so that they are not being required to accept a compromise of their claims at all, this should be fully disclosed and properly explained: see Virgin Atlantic Airways Ltd [2020] EWHC 2376 (Ch) at [63].
>
> 62. Such factors will also be particularly relevant in a scheme or restructuring such as the instant case in which the existing shareholders, who would, by definition, receive nothing in a formal insolvency, are being permitted to retain a material stake in the restructured company. In such a case it is likely to be essential for the scheme company to provide a detailed statement of the underlying assumptions and valuation methodology that are said to justify such an outcome so that creditors can reasonably assess, objectively, whether the allocation of losses and the division of benefits among stakeholders is appropriate and fair."

98. It is important to appreciate that neither my judgment in Sunbird nor paragraph 15 of the Practice Direction should be taken as signifying any intention that the convening hearing should become the forum for a detailed consideration by the court of the accuracy or adequacy of the contents of the explanatory statement. Paragraph 15 makes clear that the role of the court at the convening stage is primarily to consider whether the form of the explanatory statement is appropriate, and the court does not approve the accuracy or adequacy of the explanatory statement when convening the scheme or plan meetings.

99. In most cases, therefore, as was the case in Sunbird, the appropriate time at which a challenge to the accuracy or adequacy of the explanatory statement should be made is at the sanction hearing. That said, as I explained in Indah Kiat International Finance Co BV [2016] BCC 418 at [42] it is possible that if the court at a convening hearing detects or has its attention drawn to a manifest deficiency in the draft explanatory statement, the court must be entitled, if it thinks fit, to decline to convene the scheme or plan meetings unless and until that manifest defect is corrected. But that will be a rare case.

100. In his submissions urging me to require greater information to be inserted into the Explanatory Statement at this convening stage, Mr. Dicker QC characterised schemes and plans under Part 26 and 26A as exercises in creditor democracy and stressed the importance of ensuring that full and accurate information was provided to creditors before they vote. He submitted that the sanction hearing was "not a panacea for whatever ills occur at the meetings". There is force in those points, but it must also be kept in mind that schemes under Part 26, and in particular the new plans under Part 26A, are intended by the legislature to be practical tools to achieve the restructuring and rescue of viable companies. It is therefore important that the proven efficiency of the process for schemes and plans is not undermined or thrown off course at the convening stage. Chadwick LJ indicated in Hawk at [33] that under Part 26, the safeguard against oppression by the majority is that the court is not bound by the decision of the meetings, but has a discretion whether or not to sanction a scheme. That point has similar force in relation to a plan under Part 26A, where the court retains a discretion at the sanction stage, including in particular in relation to the exercise of the "cram-down" power under section 901G.

The arguments in outline

101. The draft Explanatory Statement in the instant case is a lengthy document with detailed information as to the financial position of the Plan Companies and the estimated outcomes in what is contended to be the relevant alternative of an administration of the Group. In particular, and in obvious contrast to the explanatory statement that was found to be deficient in Sunbird, the "Relevant Alternative Report" prepared by Deloitte is appended in full to the Explanatory Statement. The Explanatory Statement also contains a detailed description of the wider Restructuring, the reasons why certain creditors have been excluded from the Restructuring, and a statement of the methodology and rationale for the treatment of the various Classes of Leases under the Plans.

102. Mr. Dicker QC nonetheless contended that the Explanatory Statement was inadequate. He contended that the additional information requested by the AHG was essential to enable all the Landlords (including his clients) to make an informed judgment on the merits (or otherwise) of the Plans for the purpose of voting at the Plan Meetings. Mr. Dicker QC also indicated that the information requested was needed by the AHG to determine whether to challenge any attempt to cram down the class in which they were placed at the sanction hearing.

103. As the background to the request for further information, Mr. Dicker QC indicated that the AHG regarded the Restructuring as being unfair and heavily weighted in favour of the Secured Creditors and the Shareholders to the disproportionate detriment of the Landlords. He submitted that this was the result of the way that the Restructuring had been negotiated between the Shareholders, the Secured Creditors and the Plan Companies to the exclusion of the Landlords. Mr. Dicker QC characterized the Restructuring as permitting the Shareholders to retain ownership of the Group, with no adjustments to their equity participations and minimal new financial investment in the Group notwithstanding the Plan Companies' acknowledgement that Shareholders would receive a nil return in an insolvency. He indicated that the AHG did not accept the Plan Companies' evidence that the immediate post-restructuring equity value of the Plan Companies would be nil. At the very least, he contended, the Shareholders would be retaining the prospect of future upside in the recovery of the Group's business, and should therefore be bearing more of the "pain" of the Group's financial difficulties.

104. Mr. Dicker QC also strongly criticised the Group and its Shareholders for not seeking to test the market to find new investors or buyers for the Plan Companies. He referred to evidence that there were a number of investment funds with an interest in the Group, mentioning, in particular, a fund belonging to The Carlyle Group Inc., which was involved in a dispute with the Group over its acquisition of a portion of the outstanding debt under the Senior Facilities Agreement and which he said had expressed an interest in providing alternative capital to the Group. Mr. Dicker QC contended the failure or unwillingness of the Group or its Shareholders to investigate such possibilities had resulted in an urgency to promote the Plans that could have been avoided.

105. Mr. Dicker QC also submitted that in the absence of having considered such options, Deloitte's determination that a trading administration was the relevant alternative to the Plans was flawed. He contended that since the Group and Deloitte had not investigated such options, the Landlords needed up-to-date and detailed information about the Group so that they could themselves test the market and make an informed assessment of what a third party investor might be willing to pay, thereby providing the Group and its stakeholders with a different relevant alternative to the Plans.

106. Mr. Dicker QC then submitted that even assuming that a trading administration was the relevant alternative, the further information was in any event necessary to check the detail of Deloitte's calculation of the amount of the Estimated Administration Returns under Scenario 1, and more broadly for Landlords to assess whether the allocation of concessions and benefits between the various stakeholder groups involved in the Restructuring (including the Shareholders) was fair. In this respect, Mr. Dicker QC also pointed out that the Secured Creditors who had been involved in

negotiations with the Plan Companies were likely to have received substantially greater information than other Plan Creditors.

107. After refining an earlier request, the AHG contended that the Plan Companies should disclose in the Explanatory Statement or otherwise make available,

i) The Excel spreadsheet referred to in Deloitte's Relevant Alternative Report as the "Entity Priority Model" or "EPM" which Deloitte used to generate the results which fed into the calculation of the Estimated Administration Returns. It was said that access to this model would enable the advisers to the AHG to audit and verify Deloitte's calculations and assumptions.

ii) The Group's latest 5 year business plan with supporting excel model and underlying assumptions, broken down on a site-by-site basis. It was contended that the Explanatory Statement contained only a high-level summary and that more detailed information would enable the Landlords to evaluate the viability of the Group and the relevant alternative.

iii) The Group's full 13-week and 12-month cashflow forecasts, including a full geographical split, details of line items and assumptions underlying the line items. It was contended that this would enable an assessment of whether the Business Plan was reasonable.

iv) The Group's historical financial statements, including full monthly management accounts, broken down site-by-site for 2019, 2020 and Q1 2021 so as to enable Landlords to assess whether the Group's forecasts and business plans are reasonable by reference to past performance. Mr. Fisher QC added that this information was particularly relevant given that the allocation of Leases to particular Classes had been made on the basis of the profitability of the site in question during 2019.

v) An aged creditor analysis broken down supplier by supplier in order to assess the liquidity needs of the Group's business.

vi) Details of the VA Group's defined benefit pension scheme and any deficit which might affect the EPM or the Group's business plan.

vii) Copies of Deloitte's engagement letter and fee arrangements.

108. Mr. Fisher QC supported these contentions and added that Riverside's particular interest in seeking more information concerned the materials that underpinned the decision to allocate particular Leases to different Classes. He said that Riverside wished to understand why its Lease had been allocated to Class B rather than Class A. He pointed out that this classification would have a significant effect in terms of Riverside's return on its £1 million of rent arrears under the Plan.

109. For the Plan Companies, Mr. Smith QC rejected the AHG's arguments and Mr. Dicker QC's criticisms of the approach of the Group to the Restructuring and of Deloitte's Relevant Alternative Report.

110. On the question of the specific information requests, Mr. Smith QC submitted that none of the information was necessary to enable a Plan Creditor to make an informed

decision on how to vote on the Plans, and nor was it practical to include it in the Explanatory Statement. He also submitted that much of the detailed material was commercially sensitive and disclosure could damage the on-going business of the Group if the Plan was approved.

111. Taking the items requested in sequence, Mr. Smith QC submitted,

i) The EPM was a work product of Deloitte used to prepare the Relevant Alternative Report, and under the terms of Deloitte's engagement, the Plan Companies had no right to it. The Relevant Alternative Report was itself detailed and contained all the information that Plan Creditors could reasonably require to understand the likely alternatives to the Plans and the level of the Estimated Administration Returns. Deloitte was nonetheless willing to meet the AHG's adviser, PwC, to answer questions concerning the EPM.

ii) The Group's detailed business plan was a highly commercially sensitive document and the business of the Group would be damaged if it were simply to be provided without restriction to Plan Creditors in, or as an appendix to, the Explanatory Statement. Recognising, however, that the business plan might be relevant to litigation over the cram-down at sanction, the Plan Companies were prepared to provide it on a restricted basis to a "confidentiality club" consisting of the legal and accountancy advisers to the AHG if suitable undertakings were given.

iii) Summary cashflow forecasts were included in the Explanatory Statement, but the Group's detailed cashflow forecasts were highly commercially sensitive and were irrelevant to the consideration by the Plan Creditors of the comparator or relevant alternative to the Plans. The short-term cashflow forecast was only relevant (if at all) to the urgency and timing of the Plans.

iv) The historical financial information from 2019 to date on a site-by-site basis was highly commercially sensitive and in particular would be damaging to the Group if available to be used by competitors or individual Landlords in subsequent rent negotiations. Due to its age and the intervening pandemic, such information was not necessary to assess the reasonableness of the Group's future forecasts and business plans.

v) The aged creditor analysis was not relevant to enable Plan Creditors to assess the Estimated Administration Returns, and was only relevant (if at all) to the urgency and timing of the Plans.

vi) Details of the pension scheme were included in the Explanatory Statement, there was no deficit in the pension scheme as at the last valuation (as disclosed in the audited accounts), and hence it could have no effect upon the Estimated Administration Returns. This could be made clear in an addition to the wording of the Explanatory Statement.

vii) The terms of engagement of Deloitte were confidential and not necessary to enable Plan Creditors to assess the Relevant Alternative Report. A statement could be included in the Explanatory Statement (for the avoidance of doubt) that such terms did not include a success fee. If required, the terms could be

made available on a confidential basis to the legal and advisers to the AHG to enable them to verify that this was so (and also to check the status of the EPM).

112. For its part, Riverside requested copies of the analysis of each of the Leases for the financial year 2019 (including allocation of head office marketing and administration costs) used to allocate the Leases to their respective Classes, together with statements of the arrears in respect of all Class A and Class B Leases (site-by-site).

113. Riverside had some further requests for clarification of the methodology used during the process of allocating Leases to Classes, which Mr. Smith QC indicated would be addressed by way of an expansion of the description in the Explanatory Statement. Mr. Fisher QC appeared to be content with that solution.

Analysis

114. I can dispose of some of the outstanding requests very shortly.

115. First, I do not see how I can refuse to convene the Plan Meetings on the basis that the EPM should be included in the Explanatory Statement if the EPM is the property of Deloitte and not available to be used in that way by the Plan Companies. Moreover I cannot see how such a detailed and undoubtedly complicated working model could easily or practically be provided as part of the Explanatory Statement. The suggestion that Deloitte would be available to answer questions in relation to the EPM from professional advisers to the AHG seems to be a far more practical solution. In the interests of equality I would expect that offer to be extended to the advisers to other Plan Creditors.

116. Secondly, and in agreement with the Plan Companies, I do not see how a detailed breakdown of aged creditors will assist a Plan Creditor to reach an informed decision on the merits of the Plans. That decision essentially involves a comparison between what Plan Creditors will receive under the Plans and what they might receive under the relevant alternative. I accept that granular details of the Group's aged creditors would only be relevant, if at all, to the question of the timing of the Plans.

117. Thirdly, I do not consider that any further disclosure of the details of the VA Group's pension plan is necessary to an assessment of the merits of the Plans. The statement that the Plan Companies propose to add to the Explanatory Statement that there is no deficit is sufficient to confirm that such pension plan will have no impact upon the outcome for Plan Creditors.

118. Fourthly, I also do not consider that it is necessary for the Explanatory Statement to go into the detailed terms of Deloitte's retainer. It will be sufficient that there is a statement that no success fee will be payable to Deloitte.

119. As to the remaining requests, I will not refuse to convene the Plan Meetings or otherwise require the Plan Companies to amend or add to the Explanatory Statement at this stage to include any of the other material requested by the AHG or Riverside. I have reached that conclusion, applying the principles that I outlined above, for the following reasons.

120. First, at this stage, I am not satisfied that such information is in principle so obviously essential to the decision to be made by Plan Creditors that it is manifest that it should be included in the Explanatory Statement. As I have indicated, the appropriate time to examine the adequacy of the Explanatory Statement in detail is at the sanction hearing.

121. Secondly, I accept that the Group's detailed five-year business plan, cashflow forecasts and historical financial information on a site-by-site basis (including that from 2019 which was used as the foundation for the allocation of Leases to classes) is material that is commercially confidential. I see a real risk that unrestricted disclosure of such information might damage the business of the Group. That would be so either if the Plans are approved and the business is on-going, facing competition from other health clubs, and negotiations over Leases with Landlords; or if the Plan Companies go into a trading administration and the administrators wish to seek buyers for the business or individual clubs (including assigning the relevant Leases).

122. To require such information to be included in the Explanatory Statement would amount to ordering its unrestricted disclosure. Although the Landlords argued that sufficient protection could be given to the Plan Companies by an order pursuant to CPR 5.4D(2) that notice should be given to the Plan Companies of any application made by a person to obtain a copy of the evidence (including the Explanatory Statement) from the Court file, that does not deal with the more fundamental point which is that the Explanatory Statement is disseminated to Plan Creditors who, without more, are not under any obligations of confidence to the Plan Companies in relation to its contents. Since I am not persuaded at this stage that the Explanatory Statement is obviously defective without it, this risk weighs strongly against requiring such information to be included.

123. Thirdly, the information sought is likely to be detailed and voluminous, and the Plan Creditors did not suggest any obvious way that such information could in practice be included in, or attached to, what is already a very detailed Explanatory Statement. I do not see how the inclusion of such information would make the document any more concise, clearer or more comprehensible.

124. Instead, it seems to me that the appropriate course to take is simply to make an order convening the Plan Meetings on the basis of the current draft Explanatory Statement.

Disclosure

125. I will, however, indicate that in anticipation of the likely arguments at the sanction hearing, the Plan Companies ought to make disclosure of the business plan in the manner that has been suggested, i.e. on the basis of confidentiality undertakings being given to the court by the (named) lawyers and accountancy advisers to the members of the AHG.

126. I also consider that disclosure ought to be given, on similar confidential terms, of the Group's cashflow forecasts as requested by the AHG. I accept that those documents are potentially relevant to the arguments that the AHG indicates it is intending to run at sanction, including those as to the availability of a different relevant alternative and as to the fairness of any cram-down.

127. I am far less convinced that historical financial information on a site-by-site basis for 2020 and 2021 when the clubs have largely been closed has the same potential relevance for the assessment of whether there is another relevant alternative, and I would not, on the basis of the present evidence, be minded to order disclosure of that information. However, I do see that the historical financial information on a site-by-site basis for 2019, which was the last normal trading year of the Group, is likely to be relevant to the arguments over the fairness of the Plans and cram-down. That data appears to have been used by the Plan Companies themselves as the foundation for their selection of the clubs that the Group most wishes to retain if the Plans are approved, or which might be most valuable in an administration, and hence for the allocation of Leases to one of the five Classes under the Plans. Such information would therefore appear to be potentially relevant both to the price that a third party might be willing to pay for the business of the Group (in whole or in part), and to assess the accuracy of Deloitte's calculation of the Estimated Administration Returns from the disposal of such clubs in an administration.

128. Although it may cover much the same ground, I also consider that the Plan Companies should provide, on the same terms as to confidentiality, the analysis of the financial information from 2019 that underpinned the allocation by the Plan Companies of Leases to the different Classes under the Plans. As Mr. Fisher QC submitted, such allocation can have significant effects upon the Landlords concerned under the Plans. Although it might be argued that such decision is in the end a question of commercial judgment for the Plan Companies as to how they wish to conduct their business in the future if the Plans are approved, I can envisage that the assent of one Class of Landlords might be used to support an argument that a dissenting Class of Landlords that fares less well under the Plans should be crammed-down. This means that the dissenting Landlords might wish to challenge the exercise that the Plan Companies have conducted and to argue that their Leases have been put into the wrong Class, and/or that their treatment relative to other Landlords in respect of different Classes of Leases under the Plans is unfair. Such issues would be potentially relevant to questions of the overall fairness of the Plans and therefore to the issue of cram-down at sanction.

129. In principle and in the interests of equality, I consider that similar disclosure should be given to the named professional advisers to any other Plan Creditor which is intending to appear at the sanction hearing and whose advisers are prepared to give such undertakings. If such disclosure is not forthcoming voluntarily, an application can be made by such Plan Creditor for a specific disclosure order that can be determined on its merits.

130. I recognize that this approach is not entirely ideal, not least because it is likely to create a situation in which the advisers to some Plan Creditors will have access to different information (albeit on a confidential basis) than others prior to the Plan Meetings. As I explained in Sunbird, unequal access to relevant information among the members of a class is generally not desirable or appropriate given that members of the class should be able to consult together on a scheme or plan with a view to their common interest.

131. In that regard, Mr. Dicker QC highlighted that it might be that after considering the advice from their advisers, his clients might wish to discuss their views with other Landlords prior to the Plan Meetings to persuade them how to vote in the Plan. He

also indicated that PwC might well wish to disclose the confidential information to potential third party funds and investors as part of the exercise of testing the market to ascertain whether there is a different relevant alternative to that relied on by Deloitte and the Plan Companies.

132. There are, I think two answers to these issues. The first is that it may well be possible for the members of the AHG to form their views as to how to vote and to have their discussions to persuade other Landlords to adopt a similar course on the basis of the summary of advice from their lawyers and accountants without the Landlords themselves having access to any of the confidential materials. Whether or not that is possible, and whether proper grounds can be made out for some relaxation of the obligations of confidence prior to the Plan Meetings will have to be considered on the merits if and when such an issue arises.

133. Secondly, so far as disclosure to third parties is concerned, it is by no means uncommon for company information to be provided in confidence to potential buyers as part of a merger and acquisition or sales process. The AHG's legal and financial advisers are doubtless well versed in such techniques and I would expect it to be possible for them to propose an appropriate regime to safeguard the information to the satisfaction of the Plan Companies and their advisers. If, however, agreement cannot be reached, again, an application for variation of the confidentiality regime to permit such disclosure can be made.

134. I should also observe that these issues arise because of the compressed timetable for the consideration of the Plans which the Plan Companies contend is driven by their urgent cashflow needs. In a less urgent case, the plan meetings could be held on the basis of the materials in the explanatory statement alone, and any applications for disclosure could be made prior to the sanction hearing in light of the results of the meetings and with specific reference to the arguments that dissenting creditors indicated they intended to make, either as to the adequacy of the explanatory statement or on discretion and cram-down.

The Plan Meetings and timetable

135. The Plan Companies seek a very tight timetable for the Plan Meetings and the filing of documents for the sanction hearing which is now estimated to take up to four days of court time and one day pre-reading. This timetable is driven by the evidence from the Plan Companies that without the Plans they will run out of money in the week commencing 17 May 2021, so that the Plans need to be approved, sanctioned and implemented in the week commencing 10 May 2021. That timetable was strenuously resisted by Mr. Dicker QC on behalf of the AHG. Mr. Fisher QC was more sanguine on behalf of Riverside (recognising that his client's objections to the Plan were likely to be more limited than those of the AHG).

The evidence on urgency

136. The evidence of the Plan Companies as to the urgency of the Group's need for the Restructuring came from Mr. Matthew Bucknall who is the CEO of the VA Group and a director of the Plan Companies. He provided two detailed witness statements explaining, in particular, the likely effect on the Group's cashflow of operations in the UK being able to resume on 12 April 2021 in accordance with the UK Government's

current plans for the relaxation of lockdown, and the clubs in Italy being unlikely to resume operations due to the recent increase in pandemic restrictions.

137. Mr. Dicker QC made a series of detailed criticisms of the Group's cashflow forecast, pointing out (i) that there might be some flexibility in respect of the use of about £39.3 million which had been listed in the cashflow as "supplier payments including capex", (ii) that the Group could seek a deferral from the Secured Creditors of £3.8 million interest due under the Senior Facilities Agreement, and that even if it defaulted, it was inherently unlikely that the Secured Creditors would take steps to enforce their security, and (iii) that the Plan Companies could seek an agreement with their landlords in the Asia and Pacific region and Italy to defer rent payments in the same way as they had generally not made rent payments in the UK.

138. Mr. Bucknall's answers to those points were essentially (i) that about 90% of the payments were essential supplier payments necessary to support ongoing trading or preserve essential goodwill, (ii) that a deferral would require the unanimous agreement of the Secured Creditors which could not be obtained and the Group could not allow the facility to go into default, and (iii) that the landlords in the Asia and Pacific region had already made significant concessions and the rents due were in respect of clubs that were open and trading. Mr. Bucknall added that if the Italian clubs did not open, the rents due would not be paid, but that any savings would be more than offset by the lack of revenue, and this would not change the overall position.

139. Mr. Bucknall also firmly rejected criticisms made by Mr. Dicker QC to the effect that the urgency of the Group's cashflow problems were of the Group's own making because (i) it had not investigated alternative sources of finance in the market, and (ii) the Pre-Implementation Facility from the Shareholders had been inadequate and should have been greater, or the Shareholders approached for more funding. Mr. Bucknall's evidence was that the Group had worked to secure funding throughout 2020 and 2021 and that the Pre-Implementation Facility was thought to be sufficient at the time it was agreed to provide liquidity to the end of May 2021. He said that the facility had been rendered inadequate to last until the end of May 2021 by the unexpected delays in opening the Italian clubs due to the recent increase in COVID-19 cases in Italy.

140. Mr. Bucknall also stated that the £25 million Pre-Implementation Facility had been the maximum secured loan that could be obtained within the existing terms of the Senior Facilities Agreement, that the unanimous consent of the Secured Creditors was required to any variation to permit further secured lending to the Group, and that it had not been possible to obtain that unanimous consent. In part that appears to be due to the dispute over entitlement to about 10% of that facility between the Group and the fund belonging to The Carlyle Group Inc to which I have referred.

141. Mr. Bucknall also highlighted that a delay in implementation of the Plans would prejudice Plan Creditors, and in particular those Class A and B Landlords who would be entitled under the Plan to receive payment of arrears (in relation to Class A) and resumption of current rent payments in full. That point found some favour with Mr. Fisher QC, who agreed that a delay in implementation of the Plans would not be in his client's interests as a Class B Landlord interested in the resumption of rental payments. Mr. Bucknall also pointed out that a delay would also prevent the Class C

and D Landlords from exercising a break right in relation to their Leases if that were their intention.

The timetable

142. Although Mr. Dicker QC's points were forcefully made, at this stage, and without detailed cross-examination, I cannot discount Mr. Bucknall's evidence as to the Group's financial position and the timescale in which it will run out of money in the absence of the Plans. There may be a material change in the Plan Companies' financial situation which would enable some greater leeway between now and then, but as things stand I have no firm evidence upon which to assume that further funding will be available or to conclude that the Group's cashflow forecasts are materially inaccurate.

143. I also have very much in mind that although the votes of Plan Creditors at the Plan Meetings are obviously of very great importance, and hence it is important that Plan Creditors be given as much time as practicable to consider the Plans before being required to vote, the situation is not entirely like that which would apply were this a scheme under Part 26 and the votes at the scheme meetings would be critical. The Secured Creditors which have signed the Support Agreement will inevitably vote in favour of the Plans, so that even if the AHG persuade other Landlords to vote against the Plans, under Part 26A there will need to be a sanction hearing in any event at which the Plan Companies will inevitably invite me to sanction the Plans using the cram down power under section 901G.

144. Accordingly, although the Plan Companies' timetable is as tight as could possibly be envisaged consistent with the need for procedural fairness to Plan Creditors, I consider that I must give directions now to enable the Plan Meetings to be held, and for there to be an effective sanction hearing, so that there is at least a possibility that the Plans can be implemented during the week commencing 10 May 2021. On the basis of the evidence before me at present, to refuse to do so would in effect deprive the Plan Companies of the opportunity to use Part 26A, and force them into administration.

145. It is also relevant that the main protagonists in this case are already engaged in the process and are well-resourced. They are advised by insolvency practitioners of high calibre who are accustomed to operating under tight timetables in commercial settings (including where offers are sought for businesses in administration); and by experienced lawyers who are accustomed to heavyweight commercial litigation and restructuring cases. Such professionals can be expected to cooperate to bring this matter to an effective sanction hearing in a short timescale.

146. I therefore intend to set a timetable for the remainder of the Plans process under which the Plan Meetings are held on Friday 16 April 2021, and evidence and written submissions will be filed during the weeks commencing Monday 19 and 26 April 2021. The sanction hearing will be fixed to commence on 29 April 2021 and will have the option of sitting on the Early May Bank Holiday on 3 May 2021.

147. I recognise that this gives Plan Creditors slightly less than the 21 days' notice of the Plan Meetings which is normally regarded as the minimum in a case of this complexity, but the AHG and Riverside are already well engaged in advocating the

views of a range of Landlords, and other General Property Creditors have similarly been engaged to date. In particular, although Mr. McCluskey was not confident that the Manager could get directions from the First Tier Tribunal in the time available, he did not resist the proposed timetable.

148. I also appreciate that time will be short for the exercise that the AHG have indicated that they intend to conduct prior to the sanction hearing, but Mr. Smith QC indicated that he saw no reason from the perspective of the Plan Companies why appropriate confidentiality undertakings could not be agreed and the relevant documents provided in short order to enable that process to commence. I trust that will be so, but there will be permission to apply if not.

The mechanics of the Plan Meetings

149. The Plan Companies propose that the Notice of Plan Meetings and the Explanatory Statement will be circulated to the Plan Creditors via a dedicated website maintained by Lucid Issuer Services ("Lucid") which has been retained as information agent by the Plan Companies. I am content that such method of distribution of the documents is used, provided that it should be backed up by notification of the availability of the documents by email to the Plan Creditors and supplemented by provision by courier of hard copies to any of the Plan Creditors for whom the Plan Companies do not have responsive email addresses.

150. In light of the COVID-19 pandemic, it is proposed that the Plan Meetings will be held "virtually" on a video conference platform. Such virtual meetings have been directed and held successfully in numerous other schemes and plans in accordance with guidance provided by Trower J in Re Castle Trust Direct plc [2020] EWHC 969 (Ch) and I am satisfied that the Plan Companies' proposals in this respect are appropriate.

Ancillary Orders

151. I will make an order pursuant to CPR 5.4D(2) that notice shall be given to the Plan Companies of any application made by a person to obtain a copy of the evidence of the Plan Companies relied on in support of the application. Such order does not prevent anyone from applying to inspect those documents in the Court file, but simply requires notice to be given to the Plan Companies of any such application which can then be determined on its merits: see Re Virgin Atlantic Airways Ltd [2020] BCC 997 (convening judgment) at [67] and Re Port Finance Investment Ltd [2021] EWHC 454 (Ch).

152. I was also told that the parties had agreed that the Plan Companies would meet the reasonable costs of the Manager and Pure Gym of preparing for and attending the convening hearings. That is entirely in accordance with normal practice. However, the Plan Companies resist a similar order being made in relation to the costs of the AHG and Riverside. I shall hear argument on any outstanding points on costs after circulating this judgment.