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Case Nos: CR-2023-000160, CR-2023-000161, CR-2023-000162, CR-2023-000163, CR-2023-000164, CR-2023-000165 and CR-2023-000166

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

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

Date: 03/03/2023

Before:

MR JUSTICE ADAM JOHNSON

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IN THE MATTER OF LISTRAC MIDCO LIMITED
AND IN THE MATTER OF LISTRAC BIDCO LIMITED
AND IN THE MATTER OF LIFEWAYS FINANCE LIMITED
AND IN THE MATTER OF LIFEWAYS COMMUNITY CARE LIMITED
AND IN THE MATTER OF LIVING AMBITIONS LIMITED
AND IN THE MATTER OF AUTISM CARE (UK) LIMITED
AND IN THE MATTER OF VITAVIA PROPERTY MANAGEMENT LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

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Tom Smith KC, Paul Fradley and Annabelle Wang (instructed by **Willkie Farr & Gallagher (UK) LLP**) for the **Applicant Companies**

Hearing dates: 22 February 2023

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Approved Judgment

This judgment was handed down remotely at 10am on Friday 3 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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MR JUSTICE ADAM JOHNSON

Mr Justice Adam Johnson:

Introduction

1. This is an application for an order sanctioning a number of restructuring plans under Part 26A of the Companies Act 2006 (the "*CA 2006*" and the "*Plans*").

2. There are seven applicant companies (the "*Plan Companies*"). They are:

   i) Listrac Midco Limited ("*Midco*");

   ii) Listrac Bidco Limited ("*Bidco*");

   iii) Lifeways Finance Limited ("*LFL*");

   iv) Lifeways Community Care Limited ("*LCC*");

   v) Living Ambitions Limited ("*LAL*");

   vi) Autism Care (UK) Limited ("*ACUKL*"); and

   vii) Vitavia Property Management Limited ("*VML*").

3. The Plan Companies are all part of the Lifeways Group (the "*Group*"), which is a regulated provider of care services. I am told it is the leading supported living specialist in the UK and provides specialist residential, support and care services at properties throughout the UK for around 4,200 adults with complex needs, including brain injuries, physical and learning disabilities and autism. The Group has approximately 10,000 employees.

4. On 18 January 2023, Trower J made an order (the "*Convening Order*") convening meetings of certain of the Plan Companies' creditors (the "*Plan Creditors*") for the purpose of considering and, if thought fit, approving the Plans. Trower J's judgment of 23 January 2023 (the "*Convening Judgment*") is at [2023] EWHC 78 (Ch).

5. At the convening hearing, certain objections were raised by Mr Justin Tydeman, former CEO of the Group. These were dealt with by Trower J and rejected (Convening Judgment at [53]-[81]). In advance of the sanction hearing, Mr Tydeman sent a letter to the Court indicating that he did not wish to attend and make any further objection, and in fact went as far as to say that the Plan Companies need resolution and that he would not wish his personal situation to stand in the way of that outcome. He raised two particular points, though, which he invited the Court to consider in its reasoning, and I will come back to those points below.

6. The sanction hearing took place on 22 February 2023. I indicated at that hearing that I would sanction the Plans, but give written reasons later. These are those reasons. The evidence and submissions contain a lot of detail, but I will try to explain my reasons as briefly as possible. In what follows, I will refer to matters as they stood on 22 February.

The Plans

7. The Group has lending from a number of secured creditors (the *"Secured Creditors"*) under a senior facilities agreement (the *"Existing Senior Facilities Agreement"*). Over £190,000,000 is outstanding under the Existing Senior Facilities Agreement, and while the original repayment dates for various loans have been temporarily deferred, they are shortly due to expire. The Group is not able to pay the outstanding debt and absent sanction of the Plans is predicted to run out of cash by 27 February 2023.

8. The proposed restructuring, of which the Plans form part, involves the Secured Creditors agreeing both to reduce their existing secured indebtedness, save for approximately £88m (inclusive of accrued interest), and also agreeing to provide additional liquidity – *new money* – totalling £15m.

9. In return, the Secured Creditors propose to acquire ownership of the majority of the Plan Companies – in fact, all except Midco.

10. These arrangements have been referred to as the "*Lender Transaction*".

11. As to what is to happen under the Plans, the position of Midco is straightforward. It is the holder of shares in the next company down in the corporate chain, namely Bidco. Midco's directors will resolve to sell the shareholding in Bidco to the Secured Creditors. Midco is the subject of one of the Plans simply in order to allow it to be wound down on a solvent basis.

12. The position of the remaining Plan Companies is a little more complex. They each have numerous liabilities.

13. Many of such liabilities will be left alone, and are thus excluded from the Plans – for example, liabilities owed to the Group's two defined benefit pension schemes; liabilities to trade creditors; tax and employee related liabilities; and liabilities under the majority (70%) of leases of property which the Group has the benefit of.

14. Certain other liabilities, however, need to be modified or compromised, in order to make the Lender Transaction viable. These liabilities requiring special attention fall into two groups:

    i) Liabilities under certain leases entered into by four of the Plan Companies, namely LCC, LAL, ACUKL and VML (the "*Lease Liabilities*"). After a review, the particular leases in question were identified as uneconomic or otherwise problematic (see [15] below).

    ii) Various other types of unsecured creditor claims (the "*Other Unsecured Liabilities*"). I need not set them all out, but among them are certain property-related claims; claims under guarantees (including guarantees of leases) given by LFL; liabilities owed to former advisers; and claims from former senior management executives, including Mr Tydeman (referred to as "*Former Executive Management Claims*").

15. To give a little more detail about the Lease Liabilities, the relevant leases have been divided into three categories:

i) "*Class A Leases*": These are leases which the relevant Plan Company considers are uneconomic on current terms and require amendment to bring the rent in line with market rent so they can be placed on a viable footing.

ii) "*Class B1 Leases*": These are leases which the relevant Plan Company considers are uneconomic/empty/wholly unsuitable for future use even at market rents and which will be exited under the Plans.

iii) "*Class B2 Leases*": These are the same as Class B1 leases but the relevant properties (LCC is the leaseholder in each case) have been sublet to a third party. They will also be exited under the Plans. The only difference therefore with the Class B1 Leases is that those in Class B2 involve a sub-lease.

The Plans versus the Relevant Alternative

What is the relevant alternative?

16. An important part of the analysis is to compare what is expected to happen if the Plans are sanctioned with what would be expected to happen if the Plans are not sanctioned – i.e., to conduct a comparison between sanction and the *relevant alternative*.

17. As to the *relevant alternative*, I am satisfied on the evidence that in the case of LFL, LCC, LAL, ACUKL and VML, the most likely *relevant alternative* is insolvent administration, with the business and assets of those companies being sold in a pre-packaged administration sales process. In respect of Midco and Bidco, I am satisfied that the most likely *relevant alternative* is liquidation.

18. EY have conducted an exercise to analyse the recoveries for Plan Creditors under the *relevant alternative* should the Plans fail, and the Lender Transaction not be implemented. This is set out in a document called the "*Relevant Alternative Report*". The headline point is that in the *relevant alternative* (I will refer to it in the singular for convenience, though there is more than one – see above), the value break is within the secured debt. In respect of each Plan Company, the returns to unsecured Plan Creditors of whatever type would be entirely dependent on the prescribed part under s.176A of the Insolvency Act 1986. As regards the Plan Companies this is limited to £600,000 and the cap would be reached only in relation to LCC and LAL. The result, as Mr Smith KC submitted, is that the unsecured Plan Creditors are all "*out of the money*" creditors, meaning that they have no genuine economic interest in any of the Plan Companies.

What is proposed under the Plans?

19. Turning first to the Lease Liabilities, in total 27 leases are affected by the Plans – three Class A Leases and 24 Class B1 and B2 Leases. What is proposed if the Plans are sanctioned is broadly as follows:

i) Class A Leases: For the Class A Leases, there will be a reduction in the otherwise applicable contractual rent for a period of three years. This is referred to as the "*Rent Concession Period*." Rather than contractual rent, the leaseholders will instead pay a sum corresponding to the current market rent. At the end of the Rent Concession Period, the rent will be re-fixed at either the

contractual rent or the then prevailing market rent, whichever is the higher. The landlords will in any event be given the right to terminate the affected leases on 30 days' notice following the Plans becoming effective: so if any landlord thinks it can achieve a better rent elsewhere, it will be free to do so.

ii) Class B1 and B2 Leases: As regards the Class B1 and B2 Leases, the proposal is that the Leases will effectively terminate upon the relevant Plans becoming effective.

20. In each case, the landlords under the affected Leases will be entitled to make claims under the Plans in respect of their losses. So, for example, a landlord of a Class A Lease who is paid something less than the contractually agreed rent during the Rent Concession period will be entitled to make a claim under the Plans for the shortfall. Likewise, landlords of Class B1 and B2 Leases, whose leases are terminated, will be entitled to make claims in respect of their losses – i.e., in respect of lost rental income over the remainder of the relevant lease terms.

21. Under the Plans, such claims by landlords as well as the Other Unsecured Liabilities (see above at [14(ii)]) will benefit from an uplift on the amount that would otherwise have been payable in *the relevant alternative*. More precisely, the Plans contemplate that where relevant liabilities are compromised, the affected creditors will receive 110 per cent of their "*Estimated Insolvency Return*" – i.e., 10% more than in the *relevant alternative*.

What would happen in the relevant alternative?

22. The scheme of the Plans seeks to ensure that no-one is worse off – and indeed all Plan Creditors are at least marginally better off - than they would be in the *relevant alternative*. To amplify a little, the following are likely outcomes in the *relevant alternative*:

i) Lease Liabilities: First dealing with the position of the *Class A Landlords*, the *relevant alternative* is an administration sale of the leaseholder Plan Companies. Logically, the purchasers of the businesses and assets of those Plan Companies would seek to negotiate with the Class A Landlords to take an assignment (or new lease) on revised terms. This is likely to achieve substantially the same outcome as under the Plans, i.e., re-basing the rent in line with estimated current rental value. Any claims for loss (for example, for lost rent at the contract rate) would be unsecured claims against the relevant Plan Companies – as to which the best evidence is that the creditor landlords would receive only their *Estimated Insolvency Return*.

ii) As regards the Class B Landlords, again the *relevant alternative* is administration. In the case of the Class B1 and B2 Leases, however, it is safe to assume they would be surrendered by the Administrators, leaving the landlords with unsecured creditor claims for their losses, which again would generate only the *Estimated Insolvency Return*.

iii) Other Unsecured Creditors: The Other Unsecured Creditors would receive only their *Estimated Insolvency Return*.

Summary

23. The predicted returns to Plan Creditors under the competing scenarios are shown in the following tables, derived from the EY Relevant Alternative Report (and based on a "*higher case*" valuation of the Plan Companies):

SECURED CREDITORS		
	Plan (p/£)	**Relevant Alternative (p/£) (higher case)**
The Plan Companies	N/A	51.79

LANDLORDS		
	Plan (p/£)	**Relevant Alternative (p/£) (higher case)**
LCC only	0.36	0.32
LAL only	3.13	2.84
ACUKL only	0.97	0.88
VML only	0.08	0.07
LCC + LFL*	0.36 + 0.03	0.32 + 0.03
LAL +LFL	3.13 + 0.03	2.84 + 0.03
ACUKL + LFL	0.97 + 0.03	0.88 + 0.03
VML + LFL	0.08 + 0.03	0.07 + 0.03

NB: * The estimated returns in respect of LFL represent sums under guarantees of the relevant leases granted by LFL.

UNSECURED CREDITORS		
	Plan (p/£)	**Relevant Alternative (p/£) (higher case)**
Midco only	0.00000009	0.00
Bidco only	0.10	0.09
LFL only	0.03	0.03
LCC only	0.36	0.32
LAL only	3.13	2.84
ACUKL only	0.97	0.88
VML only	0.08	0.07
LCC + LFL**	0.36 + 0.03	0.31 + 0.03

NB: ** The estimated returns in respect of LFL represent returns under guarantees of relevant contracts granted by LFL

The Plan Meetings

24. In the Convening Judgment, in dealing with the issue of class composition, Trower J accepted that the Secured Creditors should form a single separate class; that the Landlord Creditors should form separate classes depending on whether they fall within Class A, B1 or B2; that the Landlord Guarantee Creditors should form separate classes depending on whether the underlying lease is in class A or B; and that there should be a single class of Other Unsecured Creditors. Since there are 7 Plan Companies, and as regards each of them a number of different classes of creditor, in total there were some 22 Plan Meetings.

25. In accordance with the Convening Order, the Plan Meetings took place on 9 February 2023. The voting results, which I have taken from the Chairperson's report, are set out in the table below:

COMPANY/CREDITOR CLASS	**% IN VALUE IN FAVOUR OF THOSE PRESENT & VOTING**	**% IN VALUE OF OVERALL CLAIMS OF THOSE ATTENDING THE PLAN MEETINGS**	**RESULT**
Listrac Midco Limited			
• Secured Creditors	100%	100%	Approved
• Other Unsecured Creditors	100%	99.99%	Approved
Listrac Bidco Limited			
• Secured Creditors	100%	100%	Approved
• Other Unsecured Creditors	100%	99.99%	Approved
Lifeways Finance Limited			
• LFL Secured Creditors	100%	100%	Approved
• LFL Other Unsecured Creditors	97.24%	75.37%	Approved
• LFL Class A Landlord Guarantee Creditors	81.35%	83.37%	Approved
• LFL Class B Landlord Guarantee Creditors	78%	97.04%	Approved
Lifeways Community Care Limited			
• LCC Secured Creditors	100%	100%	Approved
• LCC Other Unsecured Creditors	100%	99.96%	Approved
• LCC Class A Landlord Creditors	0%	48.31%	***Not approved***. 1 creditor attended: voted against the Plan
• LCC Class B1 Landlord Creditors	79.97%	87.56%	Approved

• LCC Class B2 Landlord Creditors	0%	41.79%	***Not approved***. 1 creditor attended: voted against the Plan
Living Ambitions Limited			
• LAL Secured Creditors	100%	100%	Approved
• LAL Other Unsecured Creditors	100%	8.33%	Approved
• LAL Class B1 Landlord Creditors	100%	61.43%	Approved
Autism Care (UK) Limited			
• ACUKL Secured Creditors	100%	100%	Approved
• ACUKL Other Unsecured Creditors	0%	33.33%	***Not approved***. 1 creditor attended: abstained
• ACUKL Class A Landlord Creditors	100%	100%	Approved
Vitavia Property Management Limited			
• VML Secured Creditors	100%	100%	Approved
• VML Other Unsecured Creditors	0%	20%	***Not approved***. 1 creditor attended: abstained
• VML Class B1 Landlord Creditors	No creditor attended	0%	***Not approved***. No creditor attended.

Sanction: Discussion and Conclusions

Statutory Requirements

26. The relevant statutory provisions are ss. 901F and 901G CA 2006.

Section 901F: Midco, Bidco, LAL and LFL

27. Broadly, under s. 901F CA 2006, the Court may sanction a compromise or arrangement if 75% in value of the creditors or class of creditors present and voting at a duly summoned meeting give it their approval.

28. That was the position as regards all creditor classes of Midco, Bidco, LAL and LFL: see the Table at [25] above - the relevant majority by value in respect of each class of creditor was achieved, and so the Court has power under s. 901F to sanction the Plans affecting those four companies.

Section 901G: LCC, ACUKL and VML

29. The position as regards LCC, ACUKL and VML is different. In the case of the Plan Meetings in relation to these Plan Companies, at least one creditor class dissented. In other words, the requisite majority (75% by value) was achieved only in respect of some, but not all, of the creditor classes relevant to those Plan Companies.

30. A number of points arise.

31. The first is that if the Plans are to be sanctioned in respect of LCC, ACUKL and VML, then the Court will need to be satisfied that the conditions in s.901G are met: only then will the sanction power under s.901F be exercisable, relying on the so-called *cross-class cram down* – see s.901G(2).

32. The second point is that the Plan Meetings which failed to achieve the relevant majority had only limited (or no) attendance, and in the strict sense cannot be described as having been "*meetings*" at all. This again can be seen from the Table at [25] above, which shows the following:

    i) LCC: The meetings of the LCC Class A Landlords and of the LCC Class B2 Landlords were in each case attended by only one creditor (out of a possible two), who voted against the Plan.

    ii) ACUKL: The meeting of the ACUKL Other Unsecured Creditors was attended by only one creditor (out of a possible three), who abstained.

    iii) VML: The meeting of VML Other Unsecured Creditors was attended by only one creditor (out of a possible 5), who abstained; and the meeting of the VML Class B1 Landlords was attended by no creditors (although there is only one creditor in the relevant class).

33. In Re Altitude Scaffolding [2006] BCC 904 at [18], in dealing with a scheme under Part 26 CA 2006, David Richards J took the view that a "*meeting*" logically requires the attendance of at least two persons. That is why I say that in the strict sense, the above

Plan Meetings cannot properly be described as having been meetings at all. Does that present a problem in terms of compliance with the statutory requirements?

34. I think not in this case, given that the provision relied on as providing the power to sanction the Plans is s.901G, by means of the *cross-class cram down*.

35. The whole point of the machinery under s. 901G is that the Court's sanction power is not dependent on a positive outcome (in the form of the requisite 75% majority) having been achieved across all meetings of every creditor class convened to consider the compromise in question. In fact, the opposite is true: the purpose of s. 901G is to confer a sanction power under s.901F – provided certain other conditions are fulfilled – even if there has been no agreement at one or more of the relevant meetings.

36. The precise statutory language in s. 901G(1) is as follows (my emphasis):

> "*This section applies if the compromise or arrangement is not agreed by a number representing at least 75% in value of a class of creditors or (as the case may be) of members of the company ('the dissenting class'), present and voting either in person or by proxy at the meeting summoned under section 901C.*"

37. It seems to me that that language is apt to describe the situation as regards the Plan Meetings mentioned in [32] above: in each case, the compromise or arrangement was not agreed by a 75% majority in value at the duly scheduled meetings. In my opinion, the failure to reach agreement is the relevant trigger: it does not matter how that comes about. It is irrelevant whether it is the result of a vote at a well-attended meeting which falls short, or the result of only one creditor attending and voting against, or indeed the result of no-one attending. However it comes about, there is no agreement by the required majority.

38. To put it another way, s.901G(1) exists precisely to cover the case where there is a dissenting class (or classes). Its language describes what is needed for there to be an agreement (75% majority in value of those present at a meeting), but it does not say that the only way to fail to reach agreement is to have a meeting and for the voting to fall short of the required majority. It follows that where there is a dissenting class, all that is required under s.901G(1) is that a meeting of the dissenting class has been "*summoned under section 901C*" (my emphasis added). That has happened here.

39. I think that conclusion is consistent with the policy and logic of the *cross-class cram down*. Were it otherwise, dissenting creditors could disable the operation of the *cram down* machinery simply by deciding not to attend and vote at the relevant class meeting.

40. The upshot in my opinion is that s.901G is engaged in this case even though certain of the Plan Meetings were not in fact "*meetings*" in the Re Altitude Scaffolding sense.

41. That is not the end of it, however. The next point is that, under the machinery of s. 901G, certain other conditions are required to be met in order for the sanction power to arise, precisely because not all creditor classes have agreed to the compromise or arrangement proposed. In order for the *cram-down* power to be available, two conditions – Conditions A and B – need to be met.

42. In Re Virgin Active Holdings Ltd [2022] 1 All ER (Comm) 1023 at [104], Snowden J conveniently summarised Conditions A and B as follows:

> "*Condition A: If the restructuring plan is sanctioned, would any members of the dissenting class be any worse off than they would be in the event of the relevant alternative? This is often described as the 'no worse off' test.*
>
> *Condition B: Has the restructuring plan been approved by 75% of those voting in any class that would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative?*"

43. In the present case, I am satisfied that Condition A is met, in the sense that each of the classes it is sought to *cram down* will receive at least as good an outcome under the Plans as they would under the *relevant alternative* – which in each case is an insolvent administration. That follows for the reasons already developed above at [19]-[23]. To summarise:

    i) Class A Landlords: The meeting of the LCC Class A Landlords voted against the relevant Plan. However, under the relevant Plan, there will be a reduction in rent to (effectively) the current market value; and that is what the LCC Class A Landlords could expect to achieve if LCC were placed into insolvent administration and its business and assets sold off (see [22(i)]) above. As regards any claims for loss, if the Plan is sanctioned, the landlords will receive 110% of their *Estimated Insolvency Return*, which is more than they would receive in the *relevant alternative*.

    ii) Class B1/B2 Landlords: There are two relevant meetings, i.e., of the LCC Class B2 Landlords and the VML Class B1 Landlords. Under the Plans, the relevant Leases will terminate. But that would happen anyway in an insolvent administration. As regards any losses, however, under the Plans the landlords will receive payment of 110% of their *Estimated Insolvency Return*, which is obviously a better outcome than in the *relevant alternative*, under which they would be left to claim as unsecured creditors and would receive only their *Estimated Insolvency Return* with no 10% uplift.

    iii) Other Unsecured Creditors: There are again two relevant meetings, one of the ACUKL Other Unsecured Creditors, and one of the VML Other Unsecured Creditors. The same logic applies as in (ii) above: under the Plans, such creditors will recover 110% of their *Estimated Insolvency Return*; in the *relevant alternative*, they would be left to claim as unsecured creditors with no uplift.

44. As to Condition B, this is certainly satisfied. That is because the Secured Creditors form a class in each of the Plans and in each case voted unanimously in favour. In the *relevant alternative*, they would receive 51.7p in the £, and so have a genuine economic interest in the relevant Plan Companies.

Discretion

Midco, Bidco, LFL and LAL

45. It is convenient first to deal with the Plans for Midco, Bidco, LFL and LAL – i.e., the four Plan Companies whose creditors approved the Plans by the requisite majority at the relevant Plan Meetings.

46. In such cases, the Court should apply the standard principles which govern the exercise of discretion under traditional Part 26 schemes: see Re Virgin Atlantic [2020] BCC 997, [46] and [51], and Re Gategroup [2021] BCC 549, [5]. Accordingly, in Re KCA Deutag UK Finance plc [2020] EWHC 2977 (Ch) at [16], Snowden J identified four questions for consideration in such cases:

> "*The relevant questions for the court at the sanction hearing can therefore be summarised as follows:*
>
> *(i) Has there been compliance with the statutory requirements?*
>
> *(ii) Was the class fairly represented and did the majority act in a bona fide manner and for proper purposes when voting at the class meeting?*
>
> *(iii) Is the scheme one that an intelligent and honest man, acting in respect of his interests, might reasonably approve?*
>
> *(iv) Is there some other 'blot' or defect in the scheme? In the case of a scheme with international elements there is also the question of whether the court will be acting in vain if it sanctions the scheme. This requires some consideration of whether the scheme will be recognised and given effect in other relevant jurisdictions*."

47. I will address these in turn.

48. *Compliance with statutory requirements*: I have dealt with certain aspects of this above. Two further matters arise. The first is class composition. Trower J. gave detailed reasons for the conclusions he expressed on class composition, and I see no need to revisit that analysis which I respectfully agree with. The second point is that I am also satisfied that the Plan Meetings were summoned and managed in accordance with the terms of Trower J.'s Convening Order.

49. *Representation and bona fides*: The Table at [25] above shows that the overall approval level was high among those who attended and voted at the relevant Plan Meetings: each Plan received 100% support from the Secured Creditors; the Midco, Bidco and LAL Plans also received support from 100% of the unsecured Plan Creditors; and the LFL Plan received strong majority support from the unsecured Plan Creditors.

50. Overall, the turnout for the Plan Meetings was also strong. The exception was the meeting of LAL Other Unsecured Creditors, which was attended by creditors representing only 8.33% of overall estimated claims.

51. I do not regard that as a matter of any weight, however, given the high turnout and level of approval in the other Plan Meetings, and given that the LAL Other Unsecured Creditors are *out of the money creditors*, whose non-attendance is most likely explained by an understandable lack of engagement.

52. Finally, I have seen nothing to suggest that those creditors who voted in favour of the Plans were acting otherwise than *bona fide* and for a proper purpose.

53. *Fairness*: Fairness in this context has a particular meaning. Again in Re KCA Deutag UK Finance plc [2020] EWHC 2977 (Ch), Snowden J at [28] gave useful guidance:

> "*The court simply has to be satisfied that the scheme is one that an intelligent and honest man, acting in respect of his interests, might reasonably approve. It does not mean that the court is required to form a view of whether the scheme is, in some general sense, or even in the court's own opinion, the 'fairest' or 'best' scheme.*"

54. I am entirely satisfied on this point in relation to the relevant Plans. That is because they provide a result for all classes of creditor which is better than the result likely to be achieved in the *relevant alternative*. Granted, in some cases it is only marginally better; but it is intended to be no worse, and looked at overall the Plans create an environment in which the Group is stable and its future more certain than in the case of insolvency. Each of the Plans is thus one that an intelligent and honest man, acting in his own interests, *might* reasonably approve.

55. This is a convenient point to consider the points raised by Mr Tydeman in his letter to the Court (mentioned at [5] above). To be clear, Mr Tydeman did not argue that they should lead to the request for sanction being refused, only that they give rise to "*negative consequences*" which the Court should comment on. On examination, however, neither gives rise to any serious issue in my view:

    i) The first relates to Mr Tydeman himself. He has asserted a claim against LCC for unfair dismissal, but that falls into the category of Former Executive Management Claims (see [14(ii)] above), and so is one of the Other Unsecured Liabilities which is compromised under the Plans. As to this, Mr Tydeman makes the point that in his view, the Plan Companies deliberately created a contractual dispute with him, in order to be able to bring his claim within the Plans and permit him only a limited recovery. I do not find this persuasive. Even absent any dispute, it was always open to the Plan Companies to designate Mr Tydeman as a creditor who was to fall within the scope of the Plans, as a former executive officer whose continued presence was deemed unnecessary to the ongoing success of the Group (cf. the position of the remaining employees, whose claims are among those expressly excluded from the Plans – see [13] above). So I am not persuaded that a dispute was confected simply in order to allow Mr Tydeman to be given special and less favourable treatment.

    ii) The second point relates to sums owed to certain former professional advisers to the Plan Companies. Their claims are likewise to be compromised under the Plans (see [14(ii)] above). Mr Tydeman makes the argument that if that happens, then companies facing complex financial difficulties will find it much

more difficult to obtain specialist advice and support in the future, because advisers will be very cautious about engaging with clients who may later seek to avoid paying their bills. Again, I do not find this a persuasive point. Advisers to commercial entities facing financial difficulties are well used to the fact that such assignments involve them taking a degree of credit risk: they are also well used to assessing such risk and managing it. Sometimes they do so successfully, sometimes not. In the present case, as matters have turned out, the risk has materialised for certain advisers; but I do not see why that should have the chilling effect on the availability of support and advice in other cases which Mr Tydeman suggests.

56. *Blot*: The remaining point is whether there is any blot or defect. None has been suggested and I have not identified anything which would qualify.

57. In some cases, the presence of an international element can cause complications, but that is not the case here. Each of the Plan Companies is incorporated in England, and there is no substantial connection with any other jurisdiction. The only possible exception is the fact that four LAL Class B1 Leases are subject to Scots law, but the Plan Companies have received advice that the Plans will be effective to compromise those Leases nonetheless.

LCC, ACUKL and VML

58. I then come on to LCC, ACUKL and VML, the three Plan Companies in respect of which sanction is dependent on the *cross-class cram down*.

59. Some discretionary factors obviously overlap, but it is also relevant to ask whether there has been active opposition to the Plans, and whether they represent a fair distribution of the benefits of the overall restructuring (see [67]-[70] below)

60. *Statutory requirements*: To begin with, I am satisfied that the relevant statutory requirements have been complied with (including as to class composition and as to the summoning and conduct of the relevant Plan Meetings).

61. *Representation/Bona fides*: As shown by the Table at [25] above, the Secured Creditors in each case were unanimously in favour of the Plans: and in each case the Secured Creditors present and voting represented 100% of the overall estimated claim value.

62. The position of the *unsecured* Plan Creditors is more of a mixed bag. Several points can be mentioned:

i) Some unsecured creditor classes also approved the relevant Plans by a strong majority of those present and voting, at meetings which were well attended (the LCC Other Unsecured Creditors, and the LCC Class B1 Landlord Creditors).

ii) In other cases, the turnout was low (or indeed non-existent), but there was no positive disapproval of the Plans. I have in mind the ACUKL Other Unsecured Creditors, where only one creditor attended representing 33.33% of the overall estimated claim value but abstained; the VML Other Unsecured Creditors, where only one creditor attended representing 20% of the overall estimated

claim value but abstained; and the VML Class B1 Landlord Creditors, where no creditor attended.

iii) In a third group of cases, however, the turnout was numerically low, but the vote was positively against the Plans, and moreover represented a relatively high percentage of the overall estimated claim value in the relevant class. I have in mind the LCC Class A Landlord Creditors and the LCC Class B2 Landlord Creditors: in each case there was unanimous and positive *disapproval* by those attending, and they represented (respectively) 48.31% and 41.79% of the estimated claim value of those falling within the overall class.

63. What conclusions to draw from this? None of it persuades me as a matter is discretion that the relevant Plans should not be sanctioned. As to category (ii), it is true that the turnout was low, but I do not find that at all surprising given that the relevant creditors are all *out of the money*. The low turnout, and passivity even among those who did attend (who abstained), is again consistent with such creditors simply having decided not to engage, rather than with them having any inability to do so.

64. Category (iii) is more notable, but viewed in the overall context, the fact that two *out of the money* creditors chose to appear and vote against the relevant Plans does not seem to me a point of any real weight. Given the overall voting pattern revealed by the Table at [25], it is impossible to think that they are in any way representative of a broader pattern of vigorous and positive dissent among unsecured Plan Creditors which has not been able to find a voice. On the contrary, they are an aberration. The overall pattern in fact shows much positive support for the Plans, and otherwise is one of understandable resignation by unsecured creditors having no real economic interest in the Plan Companies.

65. Again, I have seen nothing to suggest that those who voted in favour of the Plans were motivated other than by *bona fide* commercial interests.

66. *Blot*: It is also relevant that no blot on any of the Plans has been identified, and that there are no complicating international elements and no reason to think the Plans will not be effective.

67. *No Active Opposition*: I also take comfort from the fact that there has been no active opposition to the sanction of the Plans, including from Mr Tydeman. The evidence of the Plan Companies was effectively unchallenged (as to which see Re ED&F Man Holdings [2022] EWHC 687 (Ch), [39] and [56], and Re Houst [2022] BCC 1143 at [29]).

68. *Fair Distribution*: I have already expressed the view that the Plans are such that an intelligent and honest man, acting in his own interest, might approve of (above at [53]). The present is a slightly different point. A further factor in cases under s901G is whether the proposed compromise involves a fair distribution of the benefits of the restructuring (see Re DeepOcean at [62]-[65], and Re Virgin Active [256]-[300]). I am persuaded that is the case here.

69. I note that the Plans exclude certain classes of creditor, whose claims are therefore unaffected by the proposed compromise (see above at [13]). Such creditors, however, have been excluded on the basis of objective criteria and for good commercial reasons,

essentially because they are important for the continued operation of the Group. Similar arrangements were approved in the context of s.901G, both in the Virgin Atlantic decision at [64]-[67], and in the later Virgin Active case at [260]-[263].

70. As to the creditors (i.e., the Plan Creditors) whose claims *are* to be compromised, it is true that the Plans chiefly benefit the Secured Creditors, and that the position of the unsecured Plan Creditors is only marginally better than in the *relevant alternative*. That seems fair, however, since the unsecured Plan Creditors are all *out of the money* and thus have no genuine economic interest in the Plan Companies, whereas the Secured Creditors do. They are ones who are compromising their interest, and who are committing to provide the substantial ongoing funding needed for the Group to stabilise and survive. In such circumstances, I think it appropriate for them to receive the bulk of the economic value arising under the restructuring. The unsecured Plan Creditors may only be receiving a 10% uplift on their *Estimated Insolvency Return* and no more, but as Mr Smith KC put it in submissions, the uplift really is in the nature of a gift, which such creditors are doing nothing to earn. It is not an objection to the Plans to say that the gift could have been bigger, and to be fair to the unsecured Plan Creditors, none sought to say that it should have been.

Conclusion

71. For all the above reasons, I determined at the hearing on 22 February 2023 that I would sanction the proposed Plans for all seven Plan Companies, and duly made an Order to that effect.