A&O SHEARMAN

Not just another *drop in the ocean*

THAMES WATER AND DEVELOPMENTS IN RESTRUCTURINGS PLANS SINCE ADLER

On 15 April 2025, the Court of Appeal handed down its reasons[1] for dismissing the various appeals made against the sanction of the Thames Water restructuring plan by Mr. Justice Leech in February 2025[2]. This marks only the second occasion on which the Court of Appeal has considered issues relating to restructuring plans—the first of course being the Court of Appeal's decision in Adler in January 2024[3]. In the time between the Adler and Thames Water appeal judgments, we have seen several key developments in the restructuring plan space which have (in most cases!) helped clarify the practice and scope of restructuring plans, but which also highlight the increasingly contentious nature of such processes and the difficult task of the court to adjudicate between competing interests. This therefore seems like a good opportunity to check in on the post-Adler and post-Thames state of restructuring plans and what the landscape now looks like after a tumultuous year (and a bit).

[1] Kington S.à.r.l., Thames Water and other v Thames Water Utilities Holdings and others [2025] EWCA Civ 475
[2] Re Thames Water Utilities Holdings Limited [2025] EWHC 338
[3] Re AGPS Bondco Plc [2024] EWCA Civ 24

Views from *the bench*

The Thames Water appeal judgment set out some important (and interesting) overarching comments on what the court's approach should be when considering restructuring plans that come before it:

The role of the court is to work out how best to exercise its discretion on the facts of the case before it and the evidence presented, guided (as appropriate) by any relevant principles identified in previous cases.

When considering guidance from previous cases, it is important to recognise that:

- such guidance may not, where the matter has been uncontested, have been tested by adversarial argument; and
- restructuring plans can be used and structured in a multitude of different ways – for example, to carry out a comprehensive balance sheet restructuring via a debt for equity swap, as an alternative to an asset distribution process in a formal insolvency process, or (as was the case with the Thames Water plan) to provide a stable platform to allow the company to develop a longer term solution.

- As such, any guidance set out in respect of a restructuring plan used in a particular scenario or to effect a particular outcome may not be directly applicable to, or may be applied in different ways in, a restructuring plan that is used in a different context.

The developments and judicial opinions mentioned below in this briefing should therefore be read in the context of these comments.

All's fair in love and war *(and restructuring plans...?)*

The concept of "fairness" runs through restructuring plans and courts have been called upon to determine whether a proposed restructuring plan will result in an essentially "fair" outcome for affected creditors.

WHAT IS THE TRUE RELEVANT ALTERNATIVE?

The concept of the "relevant alternative"—the scenario that the court considers most likely (but not necessarily certainly) to occur if the restructuring plan is not sanctioned—goes to the fundamental question of whether the "restructuring surplus" (see below) is in fact being allocated in a fair way. Courts will look to the anticipated recoveries of creditors in the relevant alternative and compare them to what is proposed to be granted to them under the plan to ensure that creditors would be "no worse off" in the relevant alternative than under the plan. Unsurprisingly therefore, the question of what exactly the relevant alternative is has been raised a number of times. As noted in the Enzen sanction judgment[4], generally speaking the directors of a company (with the benefit of expert evidence) are usually best placed to identify what would most likely happen if a restructuring plan fails, and the court will accept that evidence if it is rational and there is no other reason to doubt it. However, where there is conflicting evidence as to the most likely alternative outcome, the courts will have to weigh the options available.

In the Aggregate restructuring plan[5], the dissenting creditor had proposed that the relevant alternative was not a formal insolvency (as argued by the company) but was instead a Luxembourg restructuring process on terms proposed by the creditor. However, the court considered that the Luxembourg alternative was in fact unworkable for a variety of reasons (not least that the senior creditors had given notice of enforcement to the company conditional only on the court refusing to sanction the plan) and therefore preferred the company's suggestion of formal insolvency as the most likely relevant alternative.

On Thames Water, an ad hoc group of Class B creditors had proposed their own rival restructuring plan (with modified economic terms to the company's own plan) which they argued would represent the true relevant alternative to the company's own plan. This argument was based on the assumptions that if the company's plan were to fail there would be sufficient time to implement the Class B plan, and that the Class A creditors (who largely supported the company's original plan) would switch their support to the Class B plan rather than risk the company's entry into special water administration ("SAR") proceedings. However, the judge instead found that it was reasonable for the directors of Thames Water to conclude that the relevant alternative was a SAR based on, amongst other matters, concerns that the rival restructuring plan was not implementable in the time available. An additional dynamic of interest was the indication by an ad hoc group of the Class A creditors that should the Class B alternative plan be pursued, they would propose a third restructuring plan, essentially on the same terms of the company's own plan, which they would most likely support over the Class B ad hoc group's plan if there were sufficient time to implement it (thereby avoiding a "whomever goes last wins" type outcome).

[4] Citation not yet available, but the judgment can be read here.
[5] Re Project Lietzenburger Straße Holdco S.à.r.l. [2024] EWHC 468

ALLOCATION OF THE "RESTRUCTURING SURPLUS"

The "restructuring surplus" (or the slightly less catchy "benefits preserved or generated by the restructuring", as preferred by the Court of Appeal on Thames Water) essentially comprises the benefits made available under a restructuring plan which would not otherwise be available in the relevant alternative. How it gets allocated and to whom is often a point of contention.

This question has arisen on a number of post-Adler restructuring plans, particularly with regards to whether it is acceptable for shareholders to retain any equity in a business despite being out of the money. When considering the horizontal comparator in the context of cross class cram down (essentially, the position of the dissenting class as compared to the position of other classes if the restructuring plan were approved), the starting position is that if creditors would be treated *pari passu* in the relevant alternative (e.g., a formal insolvency), such creditors should also be treated *pari passu* under the plan. However, there is no absolute priority rule applicable to restructuring plans, and a departure from *pari passu* treatment is permissible provided it is justified on a proper basis[6] and/or where in-the-money creditors have elected to "gift" portions of the restructuring surplus (which is essentially their own money as economic owners of the business) to other classes of creditor as part of the overall deal.

In each of the Ambatovy[7], Sino-Ocean[8] and Enzen restructuring plans, shareholders have been permitted to retain at least a portion of their equity despite being out of the money with the following justifications:

- In Ambatovy, the shareholders were the only ones willing to provide the required new funding—the judge in this case noted that if an unconnected third party had provided all the new money and received 100% of the equity in return, there "could be no possible cause for complaint", and applied the same principle to where existing shareholders were providing the funding instead.
- In Sino-Ocean, the plan saw the company's existing shareholders retain equity (albeit on a diluted basis) by adducing expert evidence that, unless its two largest institutional shareholders (Chinese state-owned entities) were permitted to retain equity holdings of a certain level, the company would cease to be considered a state-owned entity, and would lose certain market advantages (such as potentially lower interest rates). Without such advantages, the company's evidence showed that the returns for all classes of creditor would be less than their returns under the plan, even if creditors themselves were to receive a greater proportion of the equity.
- In Enzen, the shareholders retained their interests (albeit also diluted by a new synthetic instrument to be issued under the plan). However, the shareholders were also the existing secured creditors of the company (having taken control of the business via an earlier enforcement process) and their decision on how to allocate the restructuring surplus (which they were essentially generating through a deleveraging, equitisation, and provision of new money) was considered "highly significant".

Thames Water saw another interesting take on the restructuring surplus debate—that there was in fact no restructuring surplus at all generated by the restructuring plan due to its "interim" nature (i.e., its purpose was to create a stable bridge towards a more holistic transaction to be carried out via a second restructuring plan), and therefore there was no need to consider the horizontal comparison. The Court of Appeal however rejected this argument—considering that, whilst somewhat intangible, the benefit from the "interim" restructuring plan was essentially the bridge itself, of preserving Thames Water as a going concern for a period of time to enable it to seek further value as part of the proposed second restructuring plan. This constituted a relevant benefit for the purposes of considering the horizontal comparison.

[6] Re AGPS Bondco Plc [2024] EWCA Civ 24
[7] Re Ambatovy Minerals Societe Anonyme and Dynatec Madagascar Societe Anonyme [2025] EWHC 279
[8] Re Sino-Ocean Group Holding Limited [2025] EWHC 205

OUT OF MONEY, OUT OF MIND?

The Court of Appeal in Thames Water has provided some additional clarity on the statement made by Lord Justice Snowden in the Virgin Active sanction judgment[9] and cited in the Adler appeal that the fact that out-of-the-money creditors have voted against the plan "should not weigh heavily or at all in the decision of the court as to whether to exercise its power to sanction the plan and cram them down".

Whilst the fact of opposition to a plan by out-of-the-money creditors itself should have little to no weight on the court's decision to exercise cram down or not, the Court of Appeal in Thames Water has said that this does not mean that the court should not consider the treatment of such creditors at all in assessing the distribution of the restructuring surplus, and there is no "hard-edged rule" that no account at all should be given to out-of-the-money creditors receiving no more than *de minimis* consideration. This may be appropriate in some cases, but with the scope of restructuring plans and what they can do being so wide, the nature of the benefits and whether a fair distribution requires a payment of more than a simple *de minimis* amount to out-of-the-money creditors will vary depending on the particular situation and proposal.

Interestingly, this guidance was anticipated (to an extent) in the earlier judgment of Mr. Justice Hildyard in Ambatovy, who opined that even where the objections of a dissenting creditor are to be given little weight, there remains an overriding duty on the court to consider whether there has been a fair distribution of the restructuring surplus, with the "essential question" (as quoted[10] by Lord Justice Snowden in Adler with approval) being whether any class of creditor is getting "too good a deal".

EQUAL TREATMENT

The Class B dissenting creditors in Thames Water had argued that the Class A creditors were obtaining certain beneficial rights which were not available to the Class B Creditors – being that (a) at least two thirds of both the new money lenders and the Class A creditors were required to lock up to a recapitalisation transaction by 30 June 2025 as a condition to the draw down of certain tranches of the new money (which the Class B dissenting creditors claimed amounted to a veto right over the shape of the future holistic restructuring) (the "June Release Condition"), and (b) certain information rights were made available to the Class A creditors but not the Class B creditors (the "Information Rights").

In respect of the June Release Condition, the Court of Appeal opined that this condition essentially replicated the existing legal rights of the Class A creditors (as the more senior lenders) already had over any future restructuring proposal. In respect of the Information Rights notwithstanding any enhanced information rights for the Class A creditors, for the court to be able to sanction any second holistic restructuring plan the company should seek to demonstrate that it has communicated fairly with all plan creditors throughout the restructuring process. As such, neither the June Release Condition nor the Information Rights amounted to such an unfair advantage for the Class A creditors that the court should refuse to sanction the plan.

[9] Re Virgin Active Holdings Limited and others [2021] EWHC 1246

[10] Quoted from Professor Sarah Paterson's paper "Judicial Discretion in Part 26A Restructuring Plan Procedures" (January 24, 2024), which was itself quoting Mr. Justice Mann in Bluebrook Limited [2009] EWHC 2114

"ARTIFICIALITY" OR OTHERWISE OF A CRAMMING CLASS

Given the ability for assenting classes of creditors to cram down dissenting classes within a restructuring plan, there have been concerns around class "artificiality"—that a company will seek to engineer the creation of at least one class of creditors that will support the proposal and whose votes can be used to cram down dissenting classes, even where it is not strictly necessary under class composition rules for such creditors to sit within their own separate class. To quote Lord Justice Zacaroli from his High Court days: "...attempts artificially to create an in-the-money class for the purposes of providing an anchor to activate the cross-class cram down power should be resisted, particularly where such a claim is not impaired by the plan"[11].

This issue was considered in both the Ambatovy and Sino-Ocean sanction judgments. In Ambatovy, the cramming (and only in-the-money) class was made up of the plan companies' shareholders in their capacities as super senior creditors, with such super senior funding having been injected relatively shortly before the plan was promulgated. The sensitivity was heightened in this case as the plans allowed the shareholders to retain all of their existing equity despite being heavily out of the money (see above). The judge held that the super senior class had not been artificially created on the basis that (a) the new money provided by shareholders was required by the companies to continue operating; (b) only the shareholders were willing to provide the funding (with the senior lenders having also been given the opportunity to participate); and (c) given the poor financial state of the companies at the time, it was understandable for the new money to be injected on a super senior basis.

In Sino-Ocean, there were four classes of creditors—one comprising lenders under Hong Kong law governed loans, and three comprising holders of English law governed instruments. The inclusion of the Hong Kong lenders within the plan was challenged as unjustified on the basis that they were also subject to a parallel Hong Kong scheme of arrangement which would be sufficient to compromise them. However, the judge held that there was "nothing artificial" with their inclusion in the English restructuring plan (with the Hong Kong lenders clearly affected by the wider restructuring transaction) and to find otherwise would prevent multi-national companies from using the restructuring plan to "deal holistically" with their different classes of creditors.

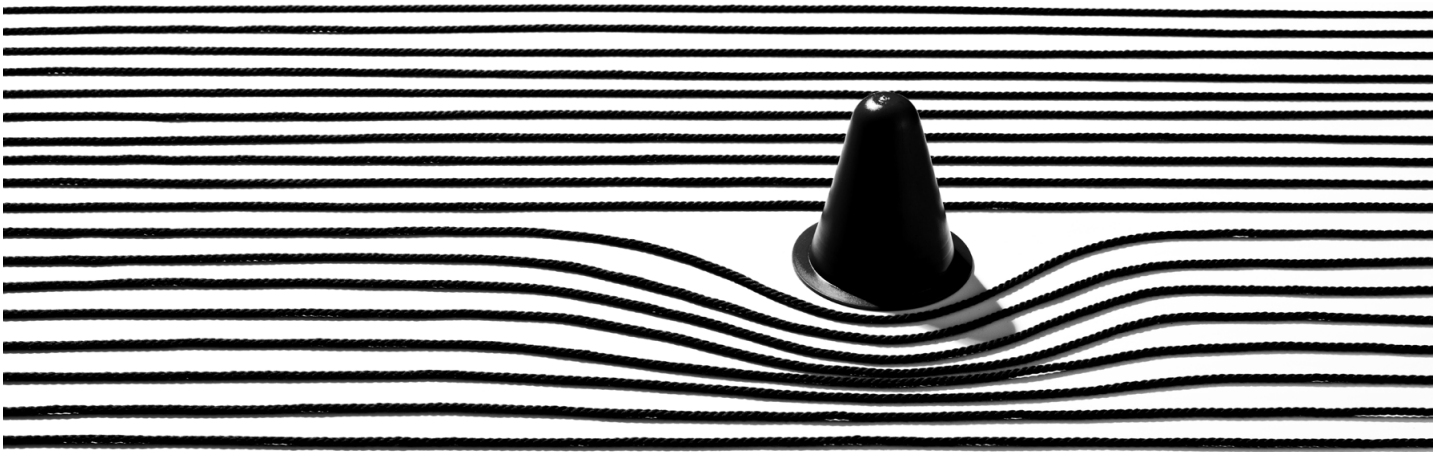
CONSIDERATION OF PUBLIC AND OTHER THIRD PARTY INTERESTS

Thames Water involved a consideration of the extent to which courts can take the "public interest" into account when considering plans that involve companies providing essential services to consumers. In this case, counsel for Charlie Maynard MP (who acted as a representative of consumer interests) had argued that the public interest would be better served by Thames Water being placed into a SAR rather than proceed with the company's restructuring plan, suggesting (amongst other things) that the company could potentially avoid certain fees and costs in respect of the required new money if such funds were instead provided by the government within the SAR.

The Court of Appeal took a fairly narrow view of their ability to consider the public interest arguments—noting that the court's involvement when considering fairness was generally limited to considerations of fairness as between the parties to the plan itself. In the case of Thames Water, the government and the regulator OfWat were "the guardians of the public interest", and they had elected to allow the company to pursue a private sector restructuring.

That said, when considering whether to sanction a restructuring plan, the court will consider whether there is a "blot" on the plan—a somewhat nebulous concept but can be taken to mean "some technical or legal defect"[12] or something that would make a plan "unlawful or in any other way inoperable"[13]. The Court of Appeal held that in some limited circumstances, it is possible to take account of the interests of third parties outside of the scope of the plan when deciding if such a blot existed. For example, if the restructuring plan for Thames Water would result in it breaching its regulatory obligations, this could constitute such a blot. That said, the Court of Appeal also held that the costs the company has borne and will bear under the restructuring plan did not constitute a blot that would justify a refusal to sanction the plan, noting that Mr. Justice Leech was entitled to find that the overall costs of the proposed restructuring under the plan were at least equal to the potential negative consequences of a SAR. The Court of Appeal also agreed with the view of Mr. Justice Leech that the Class A creditors would likely have to write off a portion of their debt in order for Thames Water to be able to attract new equity investment, and therefore it was the creditors of Thames Water (rather than the customers) who would mostly likely bear the costs of the new financing in practice.

[11] Re Houst [2022] EWHC 1941
[12] Re Co-Operative Bank Plc [2017] EWHC 2269
[13] Re Noble Group Ltd [2018] EWHC 3092



In the crosshairs—what can restructuring plans now do *(or not do)?*

The post-Adler period has seen restructuring plans used to deploy novel solutions, as well as the introduction of clarifications around the scope of what can be done under or included within a plan.

A PROMISE IS A PROMISE (OR IS IT)?

Companies are generally free to select the creditors it may wish to bring within the scope of a restructuring plan[14], although any exclusion of creditors must be justified by good commercial reasons. For example, the claims of trade creditors, critical suppliers, employees etc. are often excluded from restructuring plans as it may be commercially undesirable or detrimental to seek to compromise such claims.

But is a previous promise not to include a particular creditor within the scope of any future restructuring plan a sufficiently good reason to exclude them from any such future plan? In the Cineworld restructuring plan[15], certain landlords were included within the scope of the plan despite Cineworld having previously undertaken (in the context of previous lease renegotiations) that it would not seek to compromise those leases further by way of a restructuring plan. Despite the objections of these landlords, the court sanctioned the restructuring plan including those leases.

The judge noted that negative covenants (such as the undertakings in question in the Cineworld case) were found to be themselves capable of being compromised by restructuring plans—the agreement not to seek to compromise the leases were ancillary to the lease terms themselves and could therefore be compromised as a part of a compromise of those lease terms.

Additionally, the judge found that where the *pari passu* principle had been engaged and absent a good reason or justification to the contrary, any application to enforce a contract to exclude relevant creditors generally must give way to that principle. In this case, had the objecting landlords been excluded from the scope of the plan, they would have been in a significantly better position compared with landlords in similar commercial positions who were being compromised by the plan (which would have led to an unfair outcome for those included landlords), and the undertakings were not a sufficiently good reason to justify such differential treatment. This of course contrasts with cases like Ambatovy, Enzen and Sino-Ocean mentioned above where the company was able to demonstrate a reasonable justification for departing from the *pari passu* principle.

[14] SEA Assets Ltd v PT Garuda Indonesia [2001] EWCA 1696, cited in Re Virgin Active Holdings Limited and others [2021] EWHC 1246
[15] Re Cine-UK Limited and others [2024] EWHC 2475

CRAMMING ACROSS BORDERS

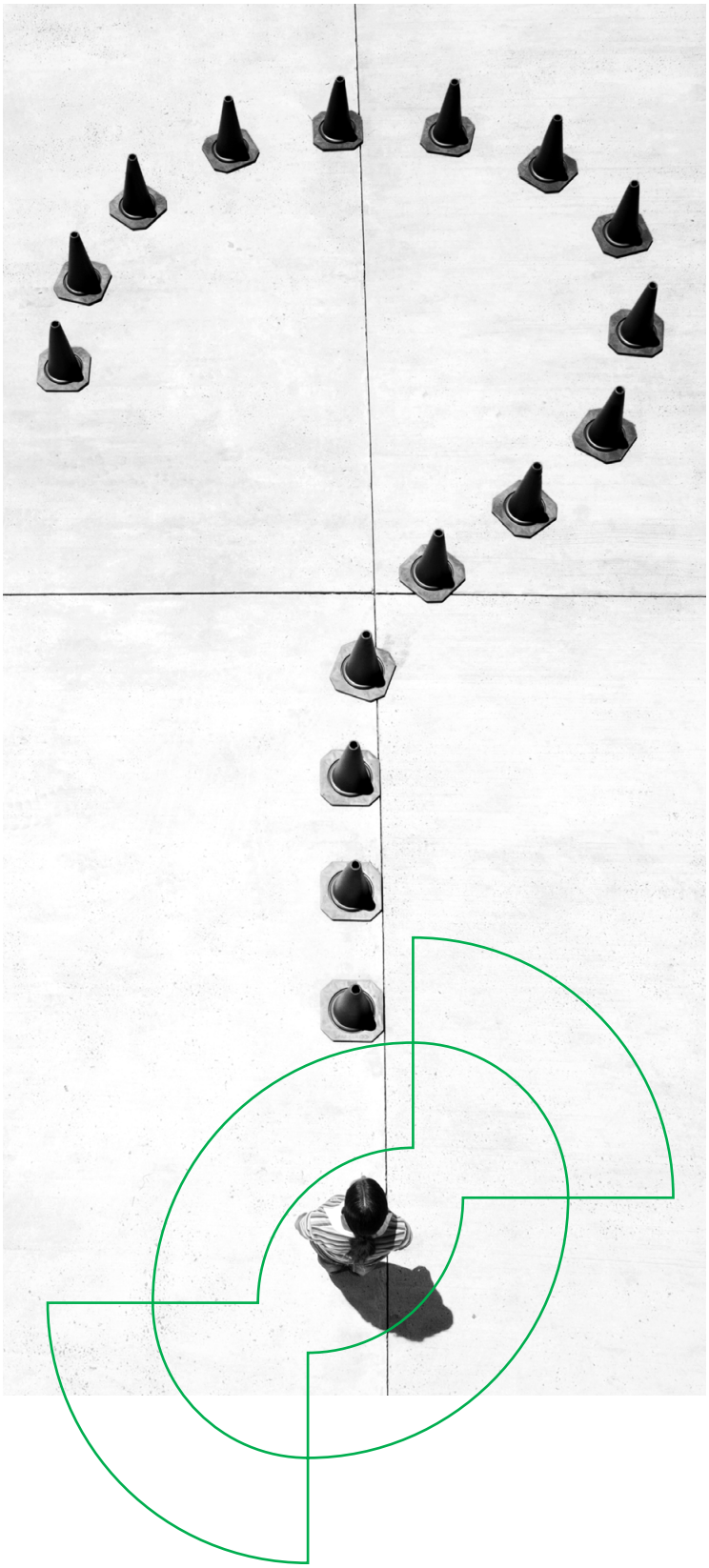
The application of cross class cram down powers by the court in sanctioning Sino-Ocean could perhaps really be described as a "cram across"—i.e., imposing the plan on dissenting classes based on the consent of ostensibly *pari passu* classes of in-the-money creditors (albeit with different levels of guarantee coverage). Sino-Ocean also represents the first time a restructuring plan has been sanctioned where a cramming class of creditors is comprised only of lenders of foreign law-governed debt.

SCOPE OF THIRD PARTY RELEASES

As part of its original restructuring plan, Thames Water had set out a relatively usual set of releases of liability in respect of the conduct of various persons in relation to the restructuring but who were not directly party to the restructuring plan (such as the directors of Thames Water and its professional advisers). Despite claims from the dissenting creditors at first instance that these releases were inappropriate in the context on an interim plan, they remained in their original form until the Court of Appeal, as part of their order dismissing the appeals, required the releases to be amended so as to exclude any claims that a special administrator or other insolvency practitioner subsequently appointed to Thames Water may have against the directors and the advisers.

General releases of directors and advisers from any claims that may arise from the preparation, negotiation or implementation of a restructuring plan have usually been justified in the past on the basis that such releases are necessary to give effect to the relevant arrangement[16], particularly where there have been no allegations or claims that the directors have breached any of their duties and there has been adequate disclosure[17]. However, the Court of Appeal believed that a release of claims the company itself (and any insolvency practitioner subsequently appointed to the company) may have against its own directors and advisers could not be justified on this ground and were not necessary to enable the plan (being an interim plan) to be implemented. With the carve-out to the releases only applying if Thames Water does subsequently enter a SAR or other form of insolvency process, the Court of Appeal considered that the directors and advisers were adequately protected from the risk of disruptive claims being pursued against them as they prepared for the second restructuring plan.

Interestingly, this carve out approach was followed voluntarily by the plan company (i.e., without it being required by the court) at the second convening hearing for the Speciality Steel restructuring plan[18], with the company pre-emptively amending its proposed form of deed of release to carve out claims of any subsequently appointed insolvency practitioners against their directors or advisers.



[16] Re Lehman Bros (No2) [2009] EWCA Civ 1161
[17] Re Matalan Finance plc [2020] EWHC 2345
[18] Judgment not yet available

Can't we all just get along? Are restructuring plans *becoming more akin to commercial litigation?*

Since Adler we have seen a number of (sometimes heavily) contested restructuring plans, which have caused delays to proceedings and costs to mount. With restructuring plans seemingly becoming increasingly fractious, courts have taken a harder line with regards to practice and procedure.

INTERESTING THEORY—BUT WHERE'S THE EVIDENCE?

The judgments sanctioning the Chaptre Finance[19] restructuring plan and the DS Smith plc scheme of arrangement[20] (the latter of which included comments expressed to be applicable to restructuring plans used to facilitate reconstructions) both emphasised the importance of expert evidence complying with the requirements of Part 35 of the Civil Procedure Rules (particularly valuation and outcome reports and recognition opinions from foreign law experts) and, in the case of Chaptre Finance, that the court will place commensurately greater value and reliance on evidence that does comply with Part 35 as against any evidence which does not.

Part 35 requires, amongst other things, expert reports to include details of the expert's qualifications, confirmation of the expert's compliance with their duty to the court and a statement of truth.

SECURITY FOR COSTS

The court for the first time in a restructuring plan granted a security for costs order in favour of a dissenting creditor following the convening of meetings to consider a plan put forward by Consort Healthcare[21]. Whilst both parties to the dispute agreed that the court had jurisdiction to grant such a costs order, the company argued that restructuring plans should be seen as "fundamentally different" to ordinary commercial litigation given that restructuring plans are designed to assist companies in financial difficulty in seeking to resolve that difficulty. The judge acknowledged that there were indeed differences but these were "relatively slender" in this particular case, with the plan arising essentially out of an adversarial contractual dispute between the company and the dissenting creditor.

The court will need to consider the extent to which any request for security for costs could "stifle" the restructuring plan and tip the company into an outcome that was detrimental to all concerned. In the Consort Healthcare case, the company was actually ultimately unable to pay the required amounts as security for costs, and stayed its restructuring plan before ultimately reaching a settlement with the dissenting party.

Despite the above, it must be noted that the circumstances of the Consort Healthcare case were somewhat unusual, and costs orders of any nature in restructuring plans remain very rare. The court does not as a rule want to discourage parties from raising genuine issues in an appropriate manner for fear of exposure to an adverse costs order, but neither will it give carte blanche to dissenting creditors to raise spurious points and seek cost protection for doing so. That said, the dissenting parties in Chaptre Finance had cited budgetary constraints as justifying their failure to comply with Part 35, and the court pointed out that it had jurisdiction to make orders for the costs of opposing creditors (including pre-emptively)—which may make it difficult for parties who wish to object to restructuring plans in a limited way only in a bid to save costs to justify their failure to "step up to the plate".

[19] Re Chaptre Finance Plc [2024] EWHC 2908
[20] Re DS Smith Plc [2025] EWHC 696
[21] Consort Healthcare (Tameside) Plc v Tameside and Glossop Integrated Care NHS Foundation Trust [2024] EWHC 1702

MORE HASTE, LESS SPEED

The courts have increasingly expressed exasperation at being required to deal with voluminous amounts of materials and manage contested hearings at speed in order to process a restructuring plan before the company falls off a financial cliff edge. This concern extends not just to the courts themselves but also to opposing creditors who also have to digest the information before being able to adequately formulate any objections. This theme has been addressed in several cases, including the Adler appeal and both the sanction and appeal stages on Thames Water.

Urgency is of course somewhat in the nature of restructuring plans given that one of the conditions for the court to approve a restructuring plan is that the company has already encountered, or is likely to encounter, financial difficulties that are affecting or may affect its ability to carry on its business as a going concern. In those circumstances, a company may not have the luxury of sufficient time to conform perfectly to best practice. As such, despite the objections noted above, even in cases of delinquency courts have been reluctant to pull the plug on the process. In the judgment in respect of the first convening hearing of the proposed Speciality Steel restructuring plan[22], Mr. Justice Hildyard criticised the plan company for not engaging with creditors before bringing its plan to court, which gave rise to the possibility of amendments to the plan post-convening, but nevertheless agreed to give permission to the company to convene its meetings of creditors on the basis of the arguments from all parties (supporting and dissenting alike) that failure to do so would result in an immediate insolvency[23].

On the other hand, the courts have pushed back where they have felt able to do so. Mr. Justice Marcus Smith, having noted the urgency of the matter at hand, nonetheless ordered an adjournment of Petrofac's convening hearing over concerns that, amongst other things, retail shareholders whose securities claims were proposed to be compromised by the plan may not have received adequate notification of the proposed plan. Once these issues were addressed, the convening order was granted at a subsequent hearing[24].

DISCLOSURE OF ADDITIONAL INFORMATION

In contrast to those cases where creditors have been on the receiving end of possibly too much information, in other cases creditors have sought specific disclosure of additional information from companies to assist them with making an informed decision on the proposed restructuring plan. At a judgment focused on disclosure requests made by a creditor in the context of the Superdry restructuring plan[25], Sir Alastair Norris noted that when considering requests for additional disclosure, the courts will seek to balance (a) the need for companies to provide such information as is reasonably necessary to enable creditors to make an informed decision as to whether the proposal is in their interests and whether values and losses are being fairly apportioned, against (b) ensuring that the level of disclosure is not so burdensome on the company as to distract from the progressing of the proposal (given the usual context of financial distress).

[22] Re Speciality Steel UK Ltd [2024] EWHC 3355
[23] N.B. following further negotiations with its creditors, Speciality Steel relaunched a revised restructuring plan proposal and received permission from the court to convene meetings in respect of the revised plan.
[24] Re Petrofac Limited and another [2025] EWHC 859
[25] Re C-Retail Limited [2024] EWHC 1194

HMRC

In contrast to the somewhat more contentious issues highlighted above, the Enzen restructuring plan saw HMRC (who originally sought to oppose the plan at the convening stage) switch to support the plan following further negotiations with the company. This represented the first occasion on which HMRC has actively participated in the negotiation and promulgation of a plan which it has then supported, which marks a change to how HMRC has previously approached a potential compromise under a restructuring plan.

THE FUTURE

Despite an increasing number of contested restructuring plans since Adler (Thames Water being a high profile example), it is important to note that most challenges have in fact been unsuccessful, with most disputed restructuring plans going on to be sanctioned by the courts. As the jurisprudence and guidance continues to develop, rules of best practice and procedure will likewise develop which will further assist practitioners in promulgating robust and effective restructuring plans, which remain an attractive proposition for companies considering financial and operational restructurings.

On which note, we understand that the judiciary is currently in the process of drafting a new practice statement which is expected to specifically address case management in the context of contested restructuring plans with a view to creating a more orderly process for ensuring adequate disclosure and time for a full hearing of the relevant issues. Watch this space!