Neutral Citation Number: [2026] EWHC 2079 (Ch)

Case No: CR-2026-002241, CR-2026-002874

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

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

Date: 5 August 2026

**Before** :

**Mr Justice Hildyard**

- - - - - - - - - - - - - - - - - - - - -

**In the matter of TG Jones High Street Limited**

**And in the matter of TG Jones Retail Holdings Limited**

**And in the matter of the Companies Act 2006**

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Tom Smith KC, Ryan Perkins and Jon Colclough (**instructed by **Slaughter and May)** for the **Plan Companies**
**Ben Shaw KC (**instructed by **Hogan and Lovells International LLP)** for the **BL Landlords**
**David Adams** for the **St Albans City and District Council**

Hearing date: 29 June 2026
Summary of Reasons: 1 July 2026

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

This judgment was handed down remotely at 10.30am on 5 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.............................

MR JUSTICE HILDYARD

## Mr Justice Hildyard:

### *Scope of this judgment*

1. This judgment elaborates my reasons for concluding that the Court should sanction two restructuring plans (the "HSL Plan" and the "RHL Plan", together, the "Plans") proposed pursuant to Part 26A of the Companies Act 2006 ("Part 26A" and "CA 2006") by the applicants, TG Jones High Street Limited ("HSL") and TG Jones Retail Holdings Limited ("RHL") (together, the "Plan Companies"). The Plans set out the terms of arrangements between the Plan Companies and certain of their creditors (the "Plan Creditors") which are intended to enable the Plan Companies to continue in business.

2. On 1st July 2026, in light of what Counsel for the Plan Companies described as the enormous urgency of the matter, but after a short adjournment to enable me to review the evidence filed and a transcript of the hearing, I provided a Summary of Reasons for sanctioning the Plans, the citation for which is [2026] EWHC 1798 (Ch), and which, for convenience, is appended to this fuller judgment. In that Summary, I indicated that I would, if any party considered this would be of assistance, provide a fuller judgment elaborating on my approach and conclusions. The British Land Company plc landlords ("the BL Landlords") have requested me to provide this fuller judgment, which they consider may be of significance in this developing area (especially in the context of what are becoming known as "landlord plans").

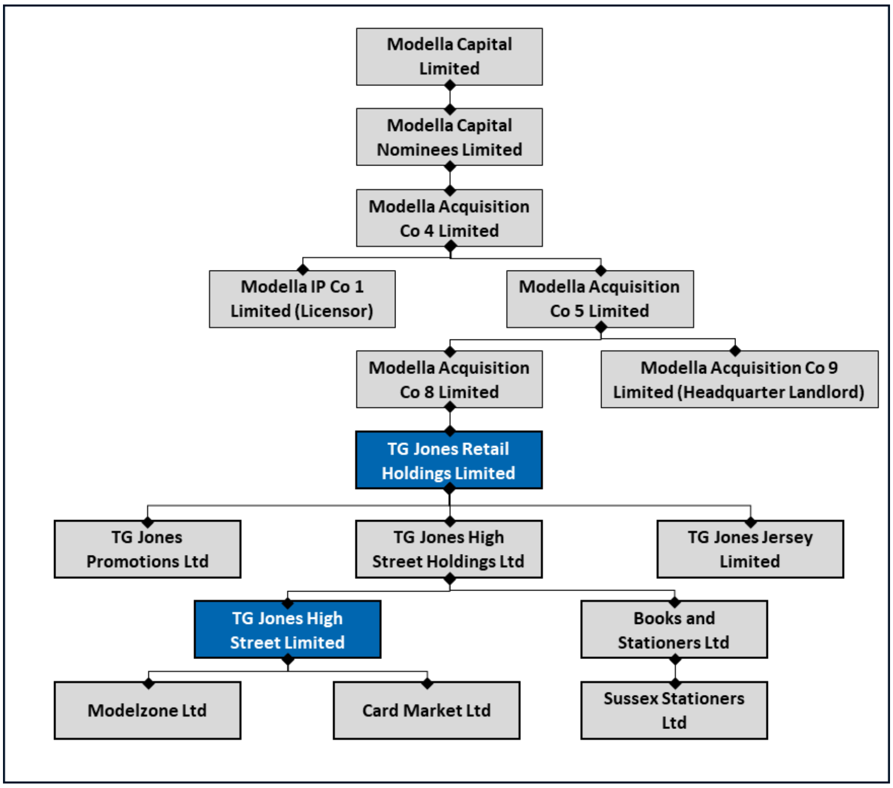
### *Background*

*The group*

3. The Plan Companies' ultimate holding company, Modella Capital Limited ("Modella"), acquired the high street business of WH Smith PLC in 2025. The Plan Companies, which were called WH Smith High Street Limited (in the case of HSL) and WH Smith Retail Holdings Limited (in the case of RHL), now carry on that business trading under the name 'TG Jones'.

4. The WH Smith business was founded in the 18th century and has long been well known for operating a chain of stores selling, among other things, stationery, gifts and books. However, the Plan Companies are unable to use the WH Smith name. The high street stores had to be re-branded. That is because when it sold its high street business to Modella, WH Smith PLC did not sell its travel business or sell its trading name, and it continues to operate stores in the travel business (especially in service and railway stations and airports) under the trading name 'WH Smith'.

5. Since the acquisition of the high street business, the structure of the group is as shown below (with the Plan Companies in the blue boxes):




6. As can be seen:

(1) HSL is towards the bottom of the corporate structure and is the primary operating company of the TG Jones business. It is the primary debtor in respect of what might be called the day-to-day trading activities of the business.

(2) HSL is indirectly (via TG Jones High Street Holdings Limited) solely owned by RHL. Save for leases of the Isle of Man and Jersey stores, RHL is the tenant in respect of the leases of the stores.

(3) RHL is indirectly solely owned by the holding company of the Modella group, a company called Modella Capital Limited (described in the Explanatory Statement as "the Modella Creditor").

*Financial difficulties*

7. As is well known, the UK retail sector has faced serious trading difficulties in recent years. The problems facing the sector have their roots in macroeconomic factors such as high inflation, the shift to online shopping, reduced consumer spending, higher labour costs and increased taxes.

8. However, the business carried on by the Plan Companies has had particular problems, including what their Chief Financial Officer, Ms Joanne Molloy, has described as "*a significant lack of in-store investment*" prior to Modella's acquisition. In other words, the previous owners allowed many of the stores to operate for many years without being refitted/refurbished.

9. As set out in the table below, the Plan Companies have been incurring significant losses for a considerable period of time:

| | FY20 | FY21 | FY22 | FY23 | FY24 |
|---|---|---|---|---|---|
| | | | | | |
| **HSL** | | | | | |
| Income | £414.8m | £413.3m | £419.8m | £418.6m | £403.8m |
| EBITDA | (£81.1m) | (£22.2m) | £70.6m | £29.8m | (£124.3m) |
| Profit/(loss) before tax | (£113.4m) | (£80.4m) | £20.7m | (£17.3m) | (£172.3m) |
| | | | | | |
| **RHL** | | | | | |
| Income | £181.6m | £160.2m | £191.7m | £218.5m | £221.5m |
| EBITDA | (£42.4m) | (£8.1m) | (£39.0m) | (£97.8m) | £179.7m |
| Profit/(loss) | (£49.2m) | (£12.5m) | (£40.8m) | (£97.8m) | (£243.1m) |

10. Since the 2025 re-branding to TG Jones, the financial position of the Plan Companies has deteriorated further: for example, there has been a 12% like for like reduction in sales.

11. As a result, the Plan Companies' cashflow position became severely constrained. The Plan Companies were forecast to run out of cash in April 2026 but managed to survive by, amongst other things, deferring payment of various liabilities, including by entering a 'time to pay' arrangement with HMRC in respect of £8.4m of tax arrears.

12. Further, the Plan Companies asked the Modella Creditor to advance funds totalling £10m under a loan facility agreement with the Modella Creditor (the "Modella Facility Agreement") to enable the Plan Companies to meet their short-term funding requirements. The Modella Creditor agreed to provide the necessary short-term funding; it was stated in the evidence that without this funding, it is almost certain that the Plan Companies would have entered into an insolvency process during the course of April 2026.

13. The present cashflow position has been described in some detail in his witness statements in support of the Plans by the Plan Companies' Chief Executive Officer, Alex Willson. He explained that by the end of May 2026 the Plan Companies' liquidity position remained critical, and management was required to manage the position of creditors very carefully in order to keep the businesses operating, persuade Supply Creditors not to withdraw supply or impose an intolerable tightening of credit terms, and to persuade Business Rates creditors to step back from commencing enforcement actions, which has been a developing threat also.

14. Further, the Plan Companies faced the prospect of default under their lending facilities, their principal secured borrowing being a secured asset backed lending facility granted by Aurelius Finance Company Limited (the "ABL Creditor") dated 5 May 2026 (the "ABL Facility") under which an event of default would arise if the Plans were not sanctioned by 29 June 2026 (subject to a 10-business day grace period). The Plan Companies' other secured borrowing under a facility agreement with the Modella Creditor provided for an event of default if the Plans had not been sanctioned by 31 July 2026.

15. The upshot, put shortly, is that the Plan Companies would have run out of cash and (according to the evidence) could not have survived without the Plans being sanctioned in very short order indeed.

*The Plan Creditors*

16. In broad terms, the Plans encompassed four constituencies of Plan Creditors.

*Secured Creditors*

17. First, as at the date of the Sanction Hearing there were three secured creditors:

(1) The "ABL Creditor", under the ABL Facility dated 5 May 2026. HSL is the borrower and RHL is a guarantor. The amount drawn under the ABL Facility is approximately £23.5m.[1]

(2) The second-ranking secured creditor is the Modella Creditor. The Modella Creditor is owed approximately £13.3m (plus interest) comprising the following sums:

(a) Sums due under the Modella Facility Agreement. The amount drawn under the Modella Facility is £10m. HSL is the borrower and RHL is a guarantor.

(b) Approximately £3.3m owed by HSL and RHL as guarantors in respect of a "make-whole" provision in a 2025 facility made available to a company described in the Explanatory Statement as "MidCo" (the "Make-whole Liabilities").

(3) Modella IP Co 1 Limited (the "Licensor"), which owns the "TG Jones" intellectual property rights and is owed approximately £3.1m in unpaid licence fees from HSL. The Licensor enjoys the same second-ranking security as the Modella Creditor. The Licensor has never received any licence fees from HSL, and substantial changes to the licence will be made by the Plans (see below).

(For completeness, there is another entity called the "Assigned Loan Creditor" which enjoys the same second-ranking security as the Modella Creditor and the Licensor but has agreed to be treated as an unsecured creditor so as to maximise value for other Plan Creditors. The position of the Assigned Loan Creditor is discussed below.)

*The Post Office Creditor*

18. Second, there is Post Office Limited (the "Post Office"). Certain TG Jones stores contain Post Office branches pursuant to the "Post Office Contracts" between HSL and the Post Office. In the event that a TG Jones store is closed, and a Post Office branch is therefore also required to close, HSL may become liable to the Post Office as a result. The commercial relationship between HSL and the Post Office is an important one, as is discussed further below.

*The Landlord Creditors*

19. Third, there are the Landlord Creditors. The Landlord Creditors are the landlords of the properties from which TG Jones operates stores (and its headquarters). The Landlord

[1] References in this judgment to debt figures are to the figures as at 18 May 2026.

Creditors are all creditors of RHL except for the "Headquarter Landlord", which, as I refer to below, is a Modella entity and creditor of HSL.

20. As a preliminary matter, a substantial number (91) of leases (the "Excluded Leases") will not be compromised by the Plans (and the corresponding landlords do not, therefore, constitute "Landlord Creditors" within the meaning of the Plans). The Excluded Leases are the best sites within the TG Jones estate; they typically do not require renovation/refitting and are typically rented on terms that are highly favourable to the Plan Companies. As a matter of terminology, the Excluded Leases might have been described as "Class A" leases (as they were in the recent *Re Iguanas Holdings Limited* [2026] EWHC 1229 (Ch) restructuring and other cases which I return to consider later), but the term "Excluded Leases" has been adopted in the Plans because their proponents consider this reflects more accurately the fact that these leases will not be compromised by the Plans at all. The Excluded Leases are considered in further detail below.

21. The Landlord Creditors (i.e. the landlords whose rights will be compromised by the Plans) have been divided into the following 11 classes, adopting criteria very similar to those adopted in relation to another recent restructuring in *Re Poundstretcher* [2026] EWHC 1438 (Ch) (which I also return to consider further later)[2]:

(1) Class A1 Leases relate to sites that are forecast to make a sustainable EBITDA contribution in the 2026 financial year ("FY26") and which are not over-rented (in the sense that the contractual rent is not greater than the current market rent for the relevant stores). There are a total of 87 Class A1 Leases in respect of 86 stores (the difference arising because some stores have more than one lease). These landlords are the "Class A1 Landlords". Although the Class A1 Leases are not over-rented, the relevant sites are typically in need of renovation/refitting and do not represent the very best of the TG Jones estate (in contrast to the Excluded Leases).

(2) Class A2 Leases relate to sites that are forecast to make a sustainable EBITDA contribution in FY26 but which are over-rented (in the sense that the contractual rent is greater than the current market rent) by more than 5%. There are a total of 46 Class A2 Leases in respect of 44 stores. These are the "Class A2 Landlords".

(3) Class B1 Leases relate to sites that require a 15% rent reduction in order to: (i) allow the stores to make a sustainable EBITDA contribution in FY26; and (ii) ensure they are not over-rented by more than 5% (the "rental objective"). There are a total of 23 Class B1 Leases in respect of 19 stores. These are the "Class B1 Landlords".

(4) Class B2 Leases require a 25% rent reduction in order to achieve the rental objective. There are a total of 20 Class B2 Leases in respect of 18 stores. These are the "Class B2 Landlords".

---

2 This judgment relates to the Sanction Hearing. I also provided a judgment after the convening hearing ([2026] EWHC 1321) (Ch), but all subsequent references to *Re Poundstretcher* are to the Sanctions Hearing judgment in that matter.

(5) Class B3 Leases require a 35% rent reduction in order to achieve the rental objective. There are a total of 18 Class B3 Leases in respect of 14 stores. These are the "Class B3 Landlords".

(6) Class B4 Leases require a 50% rent reduction in order to achieve the rental objective. There are a total of 34 Class B4 Leases in respect of 32 stores. These are the "Class B4 Landlords".

(7) Class B5 Leases require a 75% rent reduction in order to achieve the rental objective. There are a total of 34 Class B5 Leases in respect of 32 stores. These are the "Class B5 Landlords".

(8) Class C1 Leases relate to sites that would not make a sustainable EBITDA contribution in FY26 even with a 75% rent reduction, but would make a positive EBITDA contribution on nil rent. There are a total of 122 Class C1 Leases in respect of 111 stores. These are the "Class C1 Landlords".

(9) Class C2 Leases relate to sites that would not make a positive EBITDA contribution in FY26 even with nil rent. There are a total of seven Class C2 Leases in respect of six stores plus three other leases of property. These are the "Class C2 Landlords".

(10) Remediation Leases relate to sites where there are significant near-term remediation costs which render the leases uneconomical. There are two Remediation Leases in respect of two stores. These are the "Remediation Lease Landlords".

(11) HSL is the tenant in respect of the business headquarters in Swindon, which is leased from a Modella company called Modella Acquisition Co 9 Limited (the "Headquarter Landlord"). The property was acquired by Modella Acquisition Co 9 Limited as part of the broader acquisition of the WH Smith business. The Headquarter Landlord is owed £1.9m in unpaid rent from HSL.

*Unsecured Creditors*

22. Fourth, there are unsecured creditors. They comprise:

(1) "Core Supply Creditors", who are suppliers that the Plan Companies have analysed as being core to the business.

(2) "Non-Core Supply Creditors", who are suppliers that the Plan Companies have analysed as being non-core to the business (because the supply or service is optional or could be replaced with minimal disruption). The Non-Core Supply Creditors are all in the HSL Plan as RHL has no Non-Core Supply Creditors.

(3) "Business Rates Creditors", who are local authorities in their capacity as the billing authority. Although RHL is the tenant in respect of the leases, HSL is the occupier of the premises and therefore liable for business rates. Accordingly, the Business Rates Creditors all sit within the HSL Plan.

(4) "General Creditors", who are unsecured creditors of the Plan Companies that are owed sums for, among other things, licences associated with leases that are likely to be terminated following the sanction of the Plans. They also include "Exit Supply Creditors", who are suppliers of goods or services that the Plan Companies have analysed as being no longer active or required for the operation of the business.

(5) The "Assigned Loan Creditor", who is a private individual and who is the assignee of certain debts owed by RHL and guaranteed by HSL. The Assigned Loan Creditor is owed approximately £7.8m. The Assigned Loan Creditor does in fact enjoy the same second-ranking security as the Modella Creditor and the Licensor but, as explained above, has agreed to be treated as an unsecured creditor.

***The Relevant Alternative***

23. It is a fundamental part of any consideration of a restructuring plan to consider what *"the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned"*: see section 901G(4) of the CA 2006.

24. In reaching its view, the Court will consider the assessment of the Plan Companies' management, and now almost invariably, an assessment by an independent expert.

25. In this case, the directors of the Plan Companies have concluded that if the Plans are not sanctioned: (i) there will be insufficient liquidity to continue trading; and (ii) they will have no choice but to place the Plan Companies into administration under Schedule B1 to the Insolvency Act 1986 ("IA 1986"). This is because there is projected to be a funding shortfall of £17.8m by 29 June 2026, rising to £26.3m by 3 August 2026.

26. The directors engaged FTI Consulting LLP ("FTI") to provide an expert report on the issue, and Lindsay Hallam, a licensed UK insolvency practitioner and Senior Managing Director of FTI, has prepared such a report dated 18 May 2026 ("the Relevant Alternative Report") accordingly, Ms Hallam, as instructed by the Plan Companies' solicitors (Slaughter and May) has (a) evaluated the liquidity position and the likelihood (and timescale) of the Plan Companies becoming insolvent if the Plans fail, (b) considered the most likely alternative should the Plans fail to be implemented (the "Relevant Alternative") and what it would entail, (c) estimated the likely values to be realised from the Plan Companies' business and assets in any insolvency proceedings, the total realisations likely to be available to creditors in those proceedings and the estimated returns to each Plan Creditor class, (d) compared the estimated recoveries under the Restructuring Plans and those in the Relevant Alternative she has identified and (e) provided an opinion as to whether the Plans satisfy condition A in section 901G of the 2006 Act, which is that the Plan Creditors would not be *"worse off"* under the Restructuring Plans than in the Relevant Alternative.

27. The Relevant Alternative Report stated that if the Plans were to fail (a) the Plan Companies would be likely to be cash flow insolvent immediately after that failure and unlikely to obtain credit to enable the business to continue; (b) a sale of the business was neither likely to be achieved, nor could such a sale even if achieved, be expected to deliver maximum value for creditors; in such circumstances, (c) the Relevant

Alternative would be a *"trading administration of the Plan Companies to liquidate stock on hand and a piecemeal realisation of the TGJ Group's remaining assets including trade receivables, fixtures and fittings and equipment"*.

28. Based on independent valuation of the TGJ Group's inventory and fixtures and fittings, and estimated recoveries from other assets, trade receivables and cash, less estimated associated costs in such an administration, realised values available would amount to approximately £64.9 million (to meet total claims of £143.7 million). However, given the different security rights enjoyed by different Plan Creditors, the level of return would vary significantly between classes. The ABL Creditor and the Modella Creditor would, for example, recover 100p in the £. The Post Office and the Non-Core Suppliers would recover only 3.1p in the £. The recoveries for the Landlord Creditors vary from 15.3p in the £ (Class A1 and A2 Landlords) to 6.3p in the £ (Class C1 and C2 Landlords).

| **Creditor Class** | **Claim amount (£'000)** | **RA return (£'000)** | **RA return (p/£)** |
|---|---|---|---|
| | | | |
| ABL Creditor | 29,523 | 29,761 | 100.0 |
| Licensor | 3,803 | 4,468 | 100.0 |
| Modella Creditor | 16,235 | 16,235 | 100.0 |
| Class A1 and A2 Landlords | 16,371 | 2,512 | 15.3 |
| Class B1-B5 Landlords | 24,366 | 2,987 | 12.3 |
| Class C1 and C2 Landlords | 17,308 | 1,085 | 6.3 |
| Remediation Landlords | 382 | 50 | 13.1 |
| Headquarter Landlord | 2,142 | 228 | 10.6 |
| Post Office | 1,886 | 59 | 3.1 |
| Core Suppliers | 9,393 | 4,294 | 45.7 |
| Non-Core Suppliers | 1,105 | 35 | 3.1 |
| Business Rates Creditors | 5,300 | 2,297 | 43.3 |
| Assigned Loan Creditor | 7,816 | 589 | 7.5 |
| General Creditors | 8,090 | 329 | 4.1 |
| | | | |
| **TOTAL** | **143,720** | **64,929** | |

29. There is no challenge to the Plan Companies' evidence on the Relevant Alternative.

30. I accept that, in the case of both Plan Companies, the Relevant Alternative is a value-destructive administration involving piece-meal and accelerated/ distressed sales of stock. I shall address (d) and (e) in paragraph [26] above, which involve a comparison with the returns under the Plans, after considering the effect of the Plans.

***The Plans***

(1) *The Business Plan*

31. The purpose of the Plans is not only to deal with the immediate liquidity issues, but also to generate the investment required in order to sustain the business going forward. If the Plans are sanctioned, and the Plan Companies are saved from insolvent administration, the management team will seek to deliver the Plan Companies' business plan ("the Business Plan"), which is discussed in detail in Mr Willson's third witness statement, alongside a detailed explanation of the cashflow forecasts.

32. The Business Plan takes a three-year horizon so as to align with the "Rent Concession Period" under the Plans (see below). The first three years after the sanction of the Plan are described as Year 1, Year 2 and Year 3 respectively.

33. Under the Business Plan, the Plan Companies forecast that, as a result of certain Landlord Creditors exercising termination rights in respect of their stores, the business will operate from a reduced footprint of 302 stores going forward. The table below summarises the forecast financial performance over the three-year period:

| | **Year 1** | **Year 2** | **Year 3** |
|---|---|---|---|
| | | | |
| **Turnover** | £238m | £238m | £257m |
| **Costs** | £215m | £225m | £232m |
| **EBITDA** | £23m | £13m | £25m |
| **Depreciation** | £10m | £10m | £10m |
| **EBIT** | £13m | £3m | £15m |

34. Two things to note about these numbers are:

(1) the "Costs" figures do not include the deferral of up to £9.1m[3] of rent in Year 1 that will be repayable by the Plan Companies after the end of Year 3. This element of the Plans is discussed further below; and

(2) in accordance with normal accounting principles, the EBITDA and EBIT figures do not take account of approximately £40m of expenditure that the Plan Companies will incur, including capital expenditure ("capex") of £32.4m. In other words, the Plan Companies need to use £40m of available EBITDA over the three-year period in order to pay for essential expenditure.

35. Mr Willson's third witness statement provides a detailed breakdown of the £32.4 million of proposed capex, and exhibits a useful summary explaining the costing. The capex relates to physical infrastructure (including new WiFi networks, tills and self-

[3] The precise number depends on how many relevant Landlord Creditors opt to terminate their leases.

check outs); software (including new order management systems and improvements in the customer data platform); store refits; works to maintain existing Post Office concessions and to open new concessions; the installation of updated security systems; electrical testing, fire safety systems, and asbestos correction; and many other items of a similar nature.

36. The proposed capex is principally designed to correct the historical under-investment in the TG Jones estate. Many WH Smith stores were left by the previous owners in a poor condition, which has put real pressure on the business. To ensure that the business is viable in the future, substantial capex will need to be spent. One of the central purposes of the Plans is to put the Plan Companies into a position where they have the ability to make the required capex investments. Under the terms of the Plans, the Plan Companies will undertake to use all commercially reasonable endeavours to carry out the capital expenditure contemplated by the business plan.

37. As to the Business Plan's achievability or prospects of success (see and contrast my concerns in this regard in *Re Poundstretcher* [2026] EWHC 1438 (Ch) at [199] to [202]):

(1) Mr Willson has recognised in his evidence that "turning around a business is not straightforward"; but in confirming that "the management team considers that the Business Plan is realistic and can be successfully implemented" he put forward five main reasons for their view, in substance as follows:

(a) If the Plans are sanctioned, the business will have access to cash to invest in essential refurbishment and restoration of the enterprise;

(b) The Plans will result in the rationalisation of the leasehold estate and removal of uneconomic stores, and this in turn should result in central costs and logistics costs being substantially reduced to align with the reduced size of the estate; [p318, p422]

(c) With investment, it should be possible to extend the number and attractiveness of areas for Post Office, Toys "R" Us and Hobbycraft (for each of which the Plan Companies have concessions) and to enhance cross-selling opportunities; [p421 para 33 and p425 para 42]

(d) The businesses will have an invigorated team with *"significant experience in retail businesses"* which should have the expertise to execute turnaround strategies, including improvements in the targeting of products to fit the store experience, and which will be coupled with improvements in IT and new order management, buying, allocation and replenishment systems [p424 para (D)] to *"deliver business insights"*;

(e) More generally, according to Mr Willson, *"the Business Plan is a "back to basics" plan which essentially concentrates on getting the right product to the right stores at the appropriate time and improving customer service throughout the store estate."*

(2) A "sensitised" version of the Business Plan is considered as part of a Valuation Report prepared by Alexis Anaman (also of FTI, the "Valuation Report"). The relevant "sensitivities" are designed to reflect the fact that certain aspects of the Business Plan could prove to be overly optimistic (as is not unusual). On the sensitised version of the Business Plan, the business is projected to generate substantial EBITDA for each year of the Rent Concession Period (even on the more conservative assumptions considered in the Valuation Report). Mr Anaman adopts this sensitised version together with the Business Plan as originally formulated as a reasonable basis for determining the post-restructuring enterprise value of the business.

(2) *The Excess Cumulative EBITDA Entitlement*

38. An important feature of the Plans is the Excess Cumulative EBITDA Entitlement. The Excess Cumulative EBITDA Entitlement is a profit-sharing arrangement and is modelled on the deal sanctioned by Sir Alastair Norris in *Re Poundland Limited* [2025] EWHC 2755 (Ch) at [33] (albeit the terms are significantly more favourable to the Plan Creditors in the present case).

39. If cumulative reported EBITDA in the financial years 2027-2029 exceeds £40m, then eligible creditors shall be entitled to 50% of the excess. The trigger has been set at £40m because of the Plan Companies' need, as explained above, to fund expenditure of approximately that amount. This approach was accepted in *Re Poundland* at [34]: "*Of the target cumulative EBITDA it is estimated that £75 million will be required for operational reinvestment. That provides a threshold for the calculation…*"

40. The provision of the Excess Cumulative EBITDA Entitlement means that if the turnaround is successful and the business performs well, then the creditors will (in addition to the benefits they are otherwise receiving through the Plans) additionally share in the upside. The Plan Companies believe that this is the largest EBITDA share in any similar plan to date. No Modella entity is entitled to participate.

41. The Excess Cumulative EBITDA Entitlement is, in essence, a form of equity participation. Shares in a company enable a shareholder to share in any dividend declared if and to the extent there is any profit flowing to the balance sheet. In comparison, the Excess Cumulative EBITDA Entitlement is, as the name suggests, a share of earnings calculated *before* the deduction of interest, taxes, depreciation and amortisation. To that extent, it is superior to a conventional equity interest.

42. The Excess Cumulative EBITDA Entitlement will be payable within 60 days of the Plan Companies filing their FY29 annual accounts at Companies House. In order to pay the EBITDA share, the Plan Companies will need to extend or refinance the ABL Facility and the Modella Facility (which mature around the same time). It is obviously not possible to put those arrangements in place more than three years in advance – and in any event if there is excess EBITDA to pay to Plan Creditors then the Plan Companies will plainly be in a very much improved financial position. As Mr Willson explains in his third witness statement:

> "*…The Plan Companies expect Modella, as ultimate shareholder, to extend the maturity on the Modella Facility Agreement. The Plan Companies also expect it will be possible to agree an extension to the ABL Facility or, based on the forecast*

*financial position of the Plan Companies by the end of June 2029, to have viable options to refinance the ABL Facility. The maturity of the ABL Facility being three years away is well outside any standard timeline for considering refinancing options, however, so no discussions have yet taken place with the ABL Creditor.*"

43. The Plan Companies have also agreed to introduce various "*guardrails*" to protect the eligible creditors from any possible abuse of the spirit of the profit share arrangement. These anti-avoidance provisions were not included in previous cases, but the Plan Companies consider that it is important to provide contractual protection against any suggestion that the profit share arrangement could be evaded.

44. Relatedly, the Plans are also structured to prevent any leakage of value to Modella during the Rent Concession Period. In addition to a prohibition on the payment of dividends to Modella, the Plan Companies have agreed not to pay any interest in cash to Modella prior to maturity.

(3) *Treatment of the secured creditors*

45. In their application to the secured creditors (the ABL Creditor, the Modella Creditor and the Licensor), the purpose of the Plans, is to: (a) increase the amount of cash available in the business to support the turnaround process; and (b) stabilise the Plan Companies' cashflow position by extending the maturity dates of the relevant facilities.

46. As to the ABL Creditor:

(1) Under the terms of the ABL Facility, if the Plans are sanctioned then: (i) the facility limit will be increased from £35m to £40m; and (ii) the maturity date will be extended from 31 December 2026 to 30 June 2029.

(2) The ABL Creditor will waive various rights it has in respect of the licence agreement between HSL and the Licensor.

47. As to the Modella Creditor:

(1) The Modella Facility Agreement will be amended to allow for the provision of the £15m "New Money Term Loan". The New Money Term Loan is regarded by management as essential to the future viability of the TG Jones business as it ensures that the Plan Companies have enough cash during trading cycles (retail being a cyclical business); and it will be drawn when the business needs the cash. During periods when more cash is available in the business it will not be drawn at all but operates as essential available liquidity. The cashflow forecast under the management's original version of the Business Plan indicates peak drawings of £6.99m in early July 2028. Under the "sensitised" version of the Business Plan, the cashflow forecast indicates peak drawings of £11.59m also in early July 2028. The Allocation of Benefits Reports allocate £7.9m as the value of the contribution in this regard[4].

[4] It actually makes no difference to the Allocation of Benefits Report whether the New Money Term Loan is valued as a contribution of £0, £7.9m or £15m. That is because, whatever the value of the contribution, the methodology allocates an equivalent benefit to the Modella Creditor on the assumption that the loan will be repaid.

(2) As explained in the Debt Report prepared by Emma Lister, a Managing Director of FTI and an ACCA Chartered Accountant with particular experience in advising management on structuring and refinancing debt facilities to support turnaround strategies, it is unlikely that anyone other than the Modella Creditor would have been willing to provide an equivalent amount of new money to the TG Jones group (and nobody has come forward during these heavily publicised proceedings). Ms Lister considers that even if third party funding could unexpectedly have been obtained, the terms offered by the Modella Creditor are better (from the perspective of the TG Jones group) than any terms that could reasonably have been obtained in the market. A notable feature of the New Money Term Loan is that it ranks behind the ABL Facility and is therefore exposed to a much higher degree of credit risk than a third party lender would be likely to accept.

(3) In addition, the Plan Companies' obligations in respect of the Make-whole Liabilities of £3.3m will be released and discharged for no consideration even though the debt would be recovered in full in the Relevant Alternative. This is only possible because the Modella Creditor is a Modella entity. Modella supports the Plans and is willing to forego receiving any consideration so that the Plans succeed.

(4) Finally, the maturity date of the Modella Facility Agreement will be extended from 31 December 2026 to 30 June 2029 (in respect of both the existing Modella Facility which was advanced in April 2026 and the New Money Term Loan).

48. As to the Licensor:

(1) The £3.1m debt that HSL owes to the Licensor will be released and discharged for no consideration even though the debt would be recovered in full in the Relevant Alternative. Again, this is only possible because the Licensor is a Modella entity and Modella supports the Plans.

(2) During the "Rent Concession Period" (as defined below), HSL's obligation to pay licence fees will be reduced to nil. It is to be noted in this context that although Ms Molloy (as CFO of the Plan Companies) states in her third witness statement that the fees payable under the Licence Agreement were determined by reference to an independent valuation of the licensed intellectual property carried out by Metis Partners, no such fees have ever been paid. (I express some doubt about the fees later in this judgment.)

(4) *Treatment of the Post Office*

49. The purpose of the Plans, so far as they concern the Post Office, is to ensure that the important commercial relationship between HSL and the Post Office continues; and that HSL is not exposed to potentially significant liabilities in the event that any Landlord Creditors exercise their right to break a lease under the Plans in respect of stores where there is a Post Office branch.

50. Specifically:

(1) The Post Office Contracts will be varied so that if a Landlord Creditor exercises its right to terminate, HSL will be released from any liabilities owed to the Post Office in respect of that TG Jones store.

(2) The Post Office will waive any termination rights it would otherwise have under the Post Office Contracts.

(3) In exchange, the Post Office will receive: (i) 170% of its estimated Relevant Alternative return; and (ii) if the relevant conditions are triggered, the Excess Cumulative EBITDA Entitlement.

(5) *Treatment of the Landlord Creditors*

51. At the heart of the Plans is the treatment of certain Landlord Creditors, reflecting the perceived need for the Plan Companies to rationalise the leasehold estate in circumstances where a very large number of sites are "over-rented", and most require renovation/refitting. The Plan Companies consider that many are uneconomical on current terms, and a number of sites would be uneconomical even if the rent were reduced to nil.

52. In respect of the Headquarter Landlord, the £1.9m debt that HSL owes will be released and discharged for no consideration. (As with the licence fees and the Make-whole Liabilities, this term has been agreed by Modella and reflects Modella's wish for the Plans to succeed.) Further, the Headquarter Landlord will grant HSL what is called the "New Headquarter Lease" on arm's length market terms under which the contractual rent will be reduced by 75% during Year 1 of the Rent Concession Period. The Headquarter Landlord will not, unlike certain unconnected Landlord Creditors, benefit from the deferral of Year 1 rent.

53. In respect of the unconnected Landlord Creditors (and putting to one side the Class C2 Landlords and the Remediation Lease Landlords, who are discussed separately below), the most important feature is the "Rent Concession Period". This is a period of three years from what is called the "Restructuring Effective Date" (the date when the restructuring takes effect). During the Rent Concession Period, the Landlord Creditors will receive reduced rent (the amount of the reduction depending on the profitability/viability of the relevant stores). The table below summarises how each class of Landlord Creditor (other than the Class C2 and the Remediation Lease Landlords) is to be treated:

| Class | % of contractual rent | | | Rent arrears | Dilapidations |
|---|---|---|---|---|---|
| | Year 1 | Years 2 & 3 | After RCP | | |
| | | | | | |
| A1 | 25% + deferred payment | 100% | 100% | Not compromised | Compromised if landlord forfeits |
| A2 | 25% + deferred payment | 105% of market rent | 100% | Not compromised | Compromised if landlord forfeits |
| B1 | 25% + deferred payment | 85% | 100% | Compromised in full | Compromised if lease terminates |
| B2 | 25% + deferred payment | 75% | 100% | Compromised in full | Compromised if lease terminates |
| B3 | 25% + deferred payment | 65% | 100% | Compromised in full | Compromised if lease terminates |
| B4 | 25% + deferred payment | 50% | 100% | Compromised in full | Compromised if lease terminates |
| B5 | 0% | 25% | 100% | Compromised in full | Compromised if lease terminates |
| C1 | 0% | 0% | 100% | Compromised in full | Compromised if lease terminates |

54. As can be seen in the table, the rent payable in Year 1 (other than to the Class C1 Landlords) will be reduced by 75%. However, the difference between the 75% reduction and what the relevant Landlord Creditor will receive in Years 2 and 3 will, provided the landlord does not terminate, be deferred and not written off. For example, the Class A1 Landlords will receive 25% of rent in Year 1 and the remaining 75% (the deferred amount) after the end of Year 3. The Class B2 Landlords will receive 25% of rent in Year 1 and an additional 50% (the deferred amount) after the end of Year 3.

55. The total amount of deferred rent depends on how many landlords terminate, but if none does it would be £9.1m. This will be payable (less any Excess Cumulative EBITDA Entitlement) by the Plan Companies to the relevant Landlord Creditors within 60 days of the Plan Companies filing their FY29 annual accounts at Companies House, and the debt is to be secured in the meantime.

56. As with the Excess Cumulative EBITDA Entitlement, in order to pay the deferred rent, the Plan Companies will need to extend or refinance the ABL Facility and the Modella Facility (for which, see above). The Plan Companies will also grant security to the relevant Landlord Creditors in respect of the debt. The reasons advanced for this approach are as follows:

(1) The Plan Companies are adamant that on any view, there needs to be a significant reduction in the Plan Companies' current overall rental burden. There is no dispute that the Plan Companies are insolvent and the Plan Companies, with the benefit of expert advice, have concluded that the relevant

alternative is insolvent administration. The Plan Companies need to be free from their immediate, severe cashflow constraints in order to be able to stabilise and invest in the business.

(2) The primary method of reducing the rental burden (so far as concerns the Class A and B Landlord Creditors) is the Year 2 and 3 reductions, which are designed so that stores make a sustainable EBITDA contribution and are not over-rented by more than 5%. This is the "rental objective" described above.

(3) However, the Year 2 and 3 reductions would not, if also applied to Year 1, give the Plan Companies the cashflow space they need to restore financial stability and make the necessary investment in the estate. A further Year 1 reduction is therefore necessary.

(4) The 75% Year 1 reduction reflects the fact that, in the Relevant Alternative, each Landlord Creditor would be subject to a combined rent-free and void period of at least 9 months (i.e. 75% of a year), and likely much longer. This conclusion is based on the advice of an independent firm called TW Keil (see paragraph 8.19 of Part A of the Explanatory Statement). Accordingly, the 75% rent reduction in Year 1 mirrors the minimum impact of the projected rent-free and void periods applicable to the premises in the Relevant Alternative (and following the exercise of break rights under the Plans).

(5) The difference between the 75% Year 1 rent reduction and what the relevant Landlord Creditor will receive in Years 2 and 3 will be deferred and not written off. It will be payable after the end of Year 3, and the relevant Landlord Creditors will receive security in respect of it. This is presented as ensuring that the relevant Landlord Creditors are receiving a materially better deal (i.e. deferral of the rent they would lose in the Relevant Alternative due to a rent-free and void period of at least 9 months) than they would in the Relevant Alternative.

(6) Further, as has become commonplace in Landlord Plans of this type, each Landlord Creditor is given the right to terminate their lease. If any Landlord Creditor considers that it can obtain a better deal than what is being offered under the Plans, it can terminate. In practice, that means it is likely that TG Jones stores will only continue to operate where the relevant Landlord Creditor considers it is unable to re-let the property for greater sums than it would receive through the Plans.

57. In addition to the deferral of Year 1 rent for the Class A1 to B4 Landlord Creditors, the Class A1 to C1 Landlord Creditors will be compensated by receipt of: (i) an amount ranging between two and nine weeks of contractual rent (to replicate the rental income they would receive from RHL in the Relevant Alternative of administration); (ii) the greater of 170% of their estimated Relevant Alternative return and £500 (less any sums received under the Plans); and (iii) if the relevant conditions are triggered, the Excess Cumulative EBITDA Entitlement.

58. The Class C2 Landlords and the Remediation Lease Landlords are dealt with differently, reflecting the fact that the leases are uneconomical no matter how much the rent is reduced (and even if it is reduced to nil). As to this:

(1) These leases cannot simply be terminated by the Plans without the consent of the affected landlords. It has been made clear in the case law that a tenant is unable to impose a surrender of a lease through a restructuring plan or scheme of arrangement (because a surrender would alter the proprietary landlord/tenant, as opposed to the non-proprietary debtor/creditor, relationship): see *Re Instant Cash Loans Ltd* [2019] EWHC 2795 (Ch) at [11]-[25] per Zacaroli J. (as he then was).

(2) However, it *is* possible to compromise any pecuniary claim under such a lease, including future rent. Indeed, there is authority to support the reduction of future rent to zero, provided that the landlord is granted a rolling break right: see *Re Lazari Properties 2 Ltd v New Look Retailers Ltd* [2021] Bus LR 915 at [238]-[239] per Zacaroli J. The Plan Companies submit that this has, indeed, become conventional in these types of "landlord Plans".

(3) The Plans therefore follow what the Plan Companies present as being the usual practice of: (a) compromising all past and future liabilities under the Class C2 Leases and the Remediation Leases save for service charges and insurance; and (b) providing those landlords with a rolling break right. The relevant landlords may not immediately choose to break the leases (even though they will not be paid rent) because to do so would expose them to business rates and potentially other liabilities as occupier. In exchange, the Class C2 Landlords and the Remediation Lease Landlords will receive: (i) 170% of their estimated Relevant Alternative return (less any sums received under the Plans); and (ii) if the relevant conditions are triggered, the Excess Cumulative EBITDA Entitlement. In addition, the Remediation Lease Landlords will receive six weeks of contractual rent to replicate the rental income they would receive from RHL in the Relevant Alternative of administration.

59. RHL will also be granted an exit right (enabling RHL to terminate the payment covenants under the lease, but without actually terminating the lease itself, in line with *Re Instant Cash Loans Ltd*) which arises at the end of the Rent Concession Period for the Class B1-B5 Leases. There is no exit right for the Class A1-A2 Leases (save where a Landlord Creditor has terminated a lease of another part of the relevant store).

(6) *Treatment of the unsecured creditors*

60. It is proposed that the unsecured creditors (the Core Supply Creditors, the Non-Core Supply Creditors, the Business Rates Creditors, the Assigned Loan Creditor and the General Creditors) will be dealt with as follows:

(1) The Core Supply Creditors will be paid in full across 12 equal monthly instalments, the first instalment falling due six months after the Restructuring Effective Date. The Core Supply Creditors will be given the option to terminate the relevant supply contract. If they do not exercise that right, the Core Supply Creditors will waive any termination right they might otherwise have by virtue of the Plans.

(2) The Non-Core Supply Creditors will be paid 50% of what is due to them across 36 equal monthly instalments, the first instalment falling due six months after the Restructuring Effective Date. The balance of 50% will be released and

discharged. The Non-Core Supply Creditors will be given the option to terminate the relevant supply contract. If they do not exercise that right, Non-Core Supply Creditors will waive any termination right they might otherwise have by virtue of the Plans.

(3) The Business Rates Creditors will be paid normal business rates for a period of 0-9 weeks after the Restructuring Effective Date to replicate the relevant period of occupation by HSL in the Relevant Alternative of administration. From that date until the end of the current ratings year (31 March 2027), HSL will be released and discharged from business rates. In exchange, the Business Rates Creditors will receive: (i) 170% of their estimated Relevant Alternative return (less any sums received under the Plans); and (ii) if the relevant conditions are triggered, the Excess Cumulative EBITDA Entitlement. For the avoidance of doubt, rates falling due *after* the end of the current ratings year are not compromised by the Plans.

(4) The Assigned Loan Creditor's debt of £7.8m will be released and discharged in exchange for: (i) 170% of their estimated Relevant Alternative return (treated as an unsecured claim); and (ii) if the relevant conditions are triggered, the Excess Cumulative EBITDA Entitlement.

(5) In respect of the General Creditors, the Plan Companies will be released and discharged from their liabilities in exchange for: (i) 170% of their estimated Relevant Alternative return; and (ii) if the relevant conditions are triggered, the Excess Cumulative EBITDA Entitlement.

(7) *Excluded creditors*

61. Certain creditors of the Plan Companies will be excluded from the Plans. These are as follows:

(1) Certain "Intra-Group Liabilities", which will be waived or released or capitalised for no consideration outside the Plans.

(2) 91 "Excluded Leases" which have been excluded because they are already rented on favourable terms, because sums may be due to the Plan Companies in respect of them, because the lease is critical (and offering a break right through the Plans may significantly damage the business) or because the lease is governed by Guernsey or Manx law (and the cost of procuring the recognition of the Plans in those jurisdictions would be disproportionate).

(3) The "Excluded Supply Contracts", which are business critical supply contracts or supply contracts where less than £500 is owed. In respect of the *de minimis* debts, any benefit from compromising them would be outweighed by the costs of doing so: compare *Re Virgin Atlantic Airways Ltd* [2020] BCC 997 at [65]-[67] (sanction judgment) per Snowden J.

(4) The Plan Companies' liabilities to employees. The employees are critical to the success of the business, and it is conventional to exclude them from the scope of a restructuring: see *Re AGPS Bondco plc* [2024] Bus LR 745 at [170] per Snowden LJ.

(5) The Plan Companies' liabilities to HMRC. The Plan Companies wish to preserve their relationship with HMRC for obvious commercial and reputational reasons. In the present case, a consensual "time to pay" arrangement has been agreed with HMRC such that there is no need to impose a cramdown on HMRC under the Plans.

62. There is no challenge to any of these exclusions, and the Plan Companies rely on the fact that similar exclusions have been held to be justified in other cases: see e.g. *Re AGPS Bondco plc* at [170] per Snowden LJ and my own decision in *Re Poundstretcher* at [56]-[59].

(8) *Changes to the Plans since the convening hearing*

63. The summary of the terms of the Plans set out above reflects the terms that were before the Court at the Sanction Hearing (and the terms on which the Plan Creditors voted at the Plan Meetings). Those terms differ in certain respects from the draft Plans that were before the Court at the convening hearing, because the Plan Companies agreed some changes to the Plans after that hearing in light of objections to the Plans as originally formulated and presented.

64. In summary, the changes were as follows:

(1) The deferral of certain Year 1 rent reductions for the Class A1 to B4 Landlord Creditors:

(a) As originally proposed, the 75% rent reduction in Year 1 was to be a full rent reduction with no deferral. Under the final version of the Plans, the difference between the 75% Year 1 reduction and what the relevant Landlord Creditor will receive in Years 2 and 3 ("the Rent Deferral Amounts", as defined in the Second Supplement to the Explanatory Statement) will be deferred and not written off. The relevant Landlord Creditors will be granted security in respect of this debt ("the Rent Deferral Security" as also defined in the Second Supplement to the Explanatory Statement).

(b) This change was made after the Plan Companies received the evidence of the BL Landlords for the Sanction Hearing indicating that they would be agreeable to the Plans if, among other things, they contained such a term.

(2) A substantial increase in the Excess Cumulative EBITDA Entitlement:

(a) As originally proposed, the Excess Cumulative EBITDA Entitlement was to be: (i) 12.5% of cumulative EBITDA over £47.5m if EBITDA was between £47.5m and £64.2m; and (ii) 25% of cumulative EBITDA over £47.5m if EBITDA was over £64.2m. Under the final version of the Plans, the Excess Cumulative EBITDA Entitlement is <u>50%</u> of cumulative EBITDA over a reduced figure of £40m. To give a worked example, under the original form of the Plans if cumulative EBITDA was £59m, then eligible creditors would receive £1.438m. Under the final version of the Plans, they will receive £9.5m.

(b) This earnings share is generous in comparison to other 'Landlord Plans' to date. The relevant percentage in *Re Poundland* was up to 25%. The relevant percentage in *Re Poundstretcher* was 12.5%-25%. The relevant percentage in the recent *Re Iguanas Holdings* restructuring was also 12.5%-25%.

(c) As noted above, the Plan Companies have also agreed to introduce various "*guardrails*" to protect the eligible creditors from any possible abuse of the spirit of the profit share arrangement, together with a covenant not to pay any interest in cash to Modella prior to maturity and to use all commercially reasonable endeavours to carry out the capital expenditure contemplated by the Business Plan.

(3) The retention of dilapidations claims from non-terminating Class C1 Landlord Creditors. As originally proposed, dilapidations claims from Class C1 Landlord Creditors were to be compromised in full. Under the final version of the Plans, such claims will no longer be compromised if the landlord does not exercise a right to terminate the lease prior to the end of the Rent Concession Period. This change was in response to a specific objection raised by the BL Landlords.

(4) The reduction of licence fees to nil during the Rent Concession Period. As originally proposed, HSL's obligation to pay licence fees to the Licensor was to be reduced by 50% during the Rent Concession Period. Under the final version of the Plans, that obligation has been reduced to nil. This change was also in response to a specific request made by the BL Landlords. The effect of this change is to remove £4.1m of returns that the Licensor would, under the original Plans, have received from the Plan Companies.

(9) *Returns to Plan Creditors through the Plans*

65. The Relevant Alternative Report contains the expert evidence assessing what the Plan Creditors: (i) would expect to receive in the Relevant Alternative; and (ii) what they will receive through the Plans.

66. The Relevant Alternative Report is dated 18 May 2026 and was prepared <u>before</u> material modifications to the Plans later agreed with the BL Landlords (see paragraphs [86] to [87] below). It therefore shows: (i) higher returns to Modella than Modella will in fact receive through the Plans; and (ii) lower returns to non-Modella Plan Creditors (save for the ABL Creditor and the Core and Non-Core Supply Creditors whose position has not changed) than they will in fact receive. The Plan Companies' justification for not updating the expert evidence is that the position of every creditor other than Modella entities is *improved* as a result of the changes (or neutral in the case of the ABL Creditor and the Core and Non-Core Supply Creditors); and Modella itself supports the Plans and has voted in favour.

67. The table set out below is based on the expert evidence in the Relevant Alternative Report. It is to be noted that:

(1) The table does not include any Excess Cumulative EBITDA Entitlement on the basis that (as the Relevant Alternative Report states) "*it is contingent on a*

*successful turnaround*". The additional amount that would be payable under the Business Plan is £9.2m.

(2) The table includes a £4.1m return to the Licensor reflecting licence fees it would have received during the Rent Concession Period under the Plans as originally formulated. In fact, the Licensor will now receive £0 through the Plans following the changes.

(3) The table does not include the additional £9.1m of returns that relevant Landlord Creditors will receive as a result of the deferral of Year 1 rent reductions.

(4) The table does not include the additional returns that Class C1 Landlord Creditors will receive as a result of the fact that dilapidations claims will no longer be compromised if the landlord does not exercise a right to terminate the lease prior to the end of the Rent Concession Period:

| **Creditor Class** | **Claim amount (£'000)** | **Relevant alternative** | | **Plans** | |
|---|---|---|---|---|---|
| | | **Return (£'000)** | **Return (p/£)** | **Return (£'000)** | **Return (p/£)** |
| | | | | | |
| ABL Creditor | 29,523 | 29,761 | 100.0 | 30,250 | 100.0 |
| Licensor | 3,803 | 4,468 | 100.0 | 4,111 | 100.0 |
| Modella Creditor | 16,235 | 16,235 | 100.0 | 28,739 | 100.0 |
| Class A1 and A2 Landlords | 16,371 | 2,512 | 15.3 | 16,487 | 100.0 |
| Class B1-B5 Landlords | 24,366 | 2,987 | 12.3 | 12,790 | 52.5 |
| Class C1 and C2 Landlords | 17,308 | 1,085 | 6.3 | 2,474 | 14.3 |
| Remediation Landlords | 382 | 50 | 13.1 | 62 | 16.2 |
| Headquarter Landlord | 2,142 | 228 | 10.6 | 4,725 | 100.0 |
| Post Office | 1,886 | 59 | 3.1 | 100 | 5.3 |
| Core Suppliers | 9,393 | 4,294 | 45.7 | 13,391 | 100.0 |
| Non-Core Suppliers | 1,105 | 35 | 3.1 | 553 | 50.0 |
| Business Rates Creditors | 5,300 | 2,297 | 43.3 | 2,532 | 47.8 |
| Assigned Loan Creditor | 7,816 | 589 | 7.5 | 1,001 | 12.8 |
| General Creditors | 8,090 | 329 | 4.1 | 560 | 6.9 |
| | | | | | |
| **TOTAL** | **143,720** | **64,929** | **n/a** | **117,775** | **n/a** |

68. On that basis, all Plan Creditors will be significantly better off if the Plans are sanctioned. The following points should be noted about the way in which the analysis has been carried out by Ms Hallam, the relevant expert:

    (1) Ms Hallam has analysed returns as a percentage of a creditor's claim in the Relevant Alternative. This is to enable an easier comparison of recoveries (a) under the Plans and (b) in the Relevant Alternative for the purposes of the "no worse off" test. For Landlord Creditors, the landlord's claim in the Relevant Alternative would (in broad terms) be the difference between: (i) what the landlord would have obtained from the tenant (RHL) during the period of the lease if the tenant had paid all contractual sums due under the lease; and (ii) what the landlord is likely to obtain during the same period, including by way of re-letting the property to a new tenant and taking account of any void period. This is often known as a *Park Air* damages claim, after *Re Park Air Services plc* [2000] 2 AC 172.

    (2) That is why the table above shows Class A1 and A2 Landlords as recovering 100% under the Plans even though the Class A2 Landlords face some rent reductions – if the Plans are sanctioned they will receive more from the Plan Companies (even taking account of the reduced rent during the Rent Concession Period) than the value of the claim they would submit in the Relevant Alternative. The same applies to the Headquarter Landlord. This is the conventional way of presenting return figures in restructuring plans involving landlords.

(10) *Treatment of the ultimate shareholder*

69. An important feature of the Plans, and one which requires close scrutiny, is that Modella Acquisition Co 8 Limited will remain the ultimate shareholder of the TG Jones group.

70. The Plan Companies' evidence, which no Plan Creditor has sought to challenge, is that it is simply not practicable for a very large number of landlords, suppliers and local authorities to be granted illiquid equity in an unlisted company such as RHL. The Plan Companies also stress the following:

    (1) Even prior to the withdrawal of their opposition, the BL Landlords appeared to have accepted that it would not be appropriate to distribute equity to hundreds of Plan Creditors.

    (2) No other Plan Creditor has objected to the Plans on the basis that the equity is to be retained by Modella Acquisition Co 8 Limited.

71. In any event, the Plan Companies contend that this retention of the equity is justified by the very significant contributions to the restructuring that have been and will be made by the Modella group. In summary:

    (1) The Make-whole Liabilities of £3.3m owed by the Plan Companies to the Modella Creditor will be released and discharged for no consideration, despite the fact that: (i) such liabilities are secured and rank ahead of all landlord and other unsecured claims; and (ii) the unchallenged expert evidence is that the Modella Creditor would recover its £3.3m in full in the Relevant Alternative.

(2) The secured debt of £3.1m owed to the Licensor (a Modella entity) will also be released and discharged for no consideration. Again, the unchallenged expert evidence is that the Licensor would recover its £3.1m in full in the Relevant Alternative. Further, during the Rent Concession Period, HSL's obligations to pay licence fees will be reduced to nil.

(3) The Modella Creditor Agreement advanced £10m of new money under the Modella Facility in April 2026 in anticipation of the Plans and to enable the Plan Companies to bridge to the Plans and complete the plan process. Modella also agreed to provide parent company guarantees to essential suppliers while the Plans progressed through the court process.

(4) The Modella Creditor agreed to make available £15m of new money under the New Money Term Loan upon the Plans receiving sanction.

(5) The maturity date of the Modella Facility Agreement will be extended from 31 December 2026 to 30 June 2029, which is essential to stabilise the Plan Companies' cashflow position.

(6) The debt of £1.9m owed to the Headquarter Landlord (a Modella entity) will also be released and discharged for no consideration. The Headquarter Landlord will be subject to a 75% rent reduction for the first year of the Rent Concession Period without any rent deferral.

72. Further, although Modella Acquisition Co 8 Limited will remain the ultimate shareholder of the TG Jones group, that equity interest will be subject to the EBITDA-sharing arrangement (i.e. the Excess Cumulative EBITDA Entitlement) whereby other Plan Creditors may be entitled to receive payments linked to EBITDA between 2027 and 2029. Thus, in economic terms, and although Modella Acquisition Co 8 Limited will remain the ultimate shareholder of the TG Jones group, its return will be reduced because the Plan Creditors will receive payments linked to the performance of the TG Jones group during the Rent Concession Period.

73. In addition, the Plan Companies maintain that this is not a case in which the shareholder (Modella) will receive any substantial windfall from being allowed to retain its equity:

(1) The balance of any profits that are *not* used to pay the Excess Cumulative EBITDA Entitlement will largely be used to renovate the stores, service debt, pay taxes and meet other operational costs. Indeed, shareholder distributions are prohibited during the Rent Concession Period. In addition, the Plan Companies have agreed not to pay any interest in cash to the Modella Creditor prior to maturity.

(2) The Valuation Report values the post-restructuring equity within the range of nil to £3 million. The Valuation Report was prepared before the post-convening changes to the Plans. As explained, the changes include the increase in the Excess Cumulative EBITDA Entitlement and the incurring of an additional debt of £9.1m (representing the deferral of Year 1 rent reductions for certain Landlord Creditors). On a conventional valuation approach, if a company incurs an additional debt of £9.1m that reduces the value of the equity in the company

by £9.1m. As a result, if the post-restructuring equity is worth anything at all, it can only be worth a very small amount.

74. Of the various contributions that Modella is making, the two most significant are as follows:

(1) The first is that it is writing off £6.4m of debt (£3.3m of Make-whole Liabilities owed to the Modella Creditor and £3.1m of licence fees owed to the Licensor) that it would recover in full in the Relevant Alternative.

(2) The second is the provision of the £10m Modella Facility Agreement and the £15m New Money Term Loan: this new money is considered essential to implement the turnaround business plan. The provision of new money is an established justification for allowing a shareholder to retain its equity (since the shareholder is treated as if it bought back into the equity by providing new money), and an injection of new money is generally regarded as a much more valuable contribution than the release of an unsecured claim: see *Re Virgin Active Holdings Ltd* [2021] EWHC 1246 (Ch) at [282] per Snowden J; *Re Houst Ltd* [2022] BCC 1143 at [31] per Zacaroli J; and *Re AGPS* at [167] per Snowden LJ. As I observed in *Re Chandlers Building Supplies Holdings Limited* [2025] EWHC 2678 (Ch) at [47]:

> "new money is a far more important contribution than the writing off an existing unsecured debt which may, in the circumstances, be entirely under water."

And see also *Re Poundstretcher* at [170]*ff*.

(3) Having regard to the decision of the Court of Appeal in *Re Petrofac Ltd and another* [2026] Bus LR 1 at [165]-[167] the Plan Companies have obtained an expert report ("the Debt Report") to assess the terms and pricing of the New Money Term Loan. The Debt Report confirms that: (a) it is unlikely that anyone other than the Modella Creditor would have been willing to make available an equivalent amount of new money to the TG Jones group; and (b) even if third party funding could unexpectedly have been obtained, the terms offered by the Modella Creditor are better (from the perspective of the TG Jones group) than any terms that could reasonably have been achieved in the market. Further and in any event, there is no challenge to the terms of the new money in this case.

(4) The £10m Modella Facility Agreement was provided in the context of the current restructuring process in order to ensure that the Plan Companies could continue trading until the Sanction Hearing. The Plan Companies submit that to that extent, the Modella Facility Agreement forms part and parcel of the restructuring process and is commercially equivalent to new money. The maturity of the Modella Facility Agreement will be extended by the Plans so as to ensure that the Plan Companies continue to have access to the funds and do not need to repay them.

(5) In any event, even if the contribution relating to the Modella Facility Agreement were to be disregarded, the provision of the £15m New Money Term Loan is considered by the Plan Companies to be an essential source of additional new money which will only be made available upon the sanction of the Plans.

D. *Procedural background*

75. The following details of the procedural background are taken from the Plan Companies' skeleton argument.

76. The claim forms were issued on 18 March 2026 (HSL) and 10 April 2026 (RHL). Listings notes were filed on the same day as the claim forms were issued. A Practice Statement Letter ("PSL") was sent to the Plan Creditors on 6 May 2026.

77. The convening hearing took place on 3 June 2026 before Marcus Smith J who was satisfied that he had jurisdiction to convene the Plan Meetings on the terms sought. The BL Landlords' application to adjourn the convening hearing to allow further negotiations to take place was dismissed on the basis that: (i) the Plans were genuinely urgent in light of the Plan Companies' immediate liquidity need; (ii) the Judge was satisfied that sufficient consultation had taken place in advance of the convening hearing; and (iii) if there were further negotiations, they could run in parallel with preparation for the Sanction Hearing. The latter point is particularly significant, since Marcus Smith J gave directions for a "parallel process" involving a continuing negotiation alongside the preparation for the Plan Meetings and the Sanction Hearing.

78. Although the BL Landlords stated at the convening hearing that they did not act as the formal representative of the Plan Creditors, they made clear that the changes they would try to negotiate and agree with the Plan Companies would be for the benefit of the Plan Creditors generally (other than Modella) rather than solely in respect of the BL Landlords' own sites.

79. By the Convening Order:

(1) The BL Landlords' adjournment application was dismissed: paragraph 1 of the order.

(2) As soon as reasonably practicable after the convening hearing, the Plan Companies were to send out "*the Plan Documentation*": paragraph 7 of the order.

(3) Any person wishing to challenge the Plans was to file and serve a list of objections by 4.30pm on 10 June 2026: paragraph 20(f) of the order.

(4) Any material changes were to be communicated to Plan Creditors by 4pm on 16 June 2026: paragraph 21 of the order.

(5) Any person wishing to challenge the Plans was to file and serve evidence (limited to objections raised previously) by 4.30pm on 18 June 2026: paragraph 20(g) of the order.

(6) The Plan Companies were to file reply evidence by 4.30pm on 25 June 2026: paragraph 20(h) of the order.

(7) The Plan Meetings were to be held on 24 and 25 June 2026. In respect of the RHL Plan, there were to be 16 meetings of Plan Creditors. In respect of the HSL Plan, there were to be 10 meetings of Plan Creditors: see paragraphs 2-6 of the order.

(8) There was to be a two-day sanction hearing on 29 and 30 June 2026: paragraph 19 of the order.

***Objections and consequent modifications***

*Objections*

80. Taking a broad view of what was required to "*file and serve*" a list of objections, the Plan Companies received the following objections prior to the deadline of 10 June 2026:

(1) The BL Landlords' notice of objection dated 27 May 2026. The details of what the BL Landlords objected to (prior to withdrawing their objections) is considered further below.

(2) An email objection from DavRoz Property Limited, the landlord of a Class C1 premises in Clevedon. The email complained about the 100% rent reduction imposed on Class C1 leases, stating that "*[t]he proposal effectively requires us to provide occupation of the premises free of charge notwithstanding that the tenant remains in possession and continues to derive commercial benefit from the premises*". This was a misunderstanding. Although (as explained above) the Plan Companies are precluded by authority from terminating unviable leases, they have, in light of the reduction of rent to £0, given the Class C1 Landlords a rolling right to terminate. There is no requirement for DavRoz Property Limited to provide occupation. It can terminate immediately if it wishes. Alternatively, it can terminate in (for example) six months' time once it has identified a new tenant if it wishes to avoid liability for business rates in the meantime. The Plan Companies emphasised that the treatment of the Class C1 Landlords is conceived to be identical to the treatment of similar landlords in other plans.

(3) Various email objections on behalf of the Williams and Brooke Retirement Scheme, the landlord of a Class C1 premises in Newquay, including an allegation of wrongful trading.

*Negotiations with BL*

81. In the days following the convening hearing, negotiations between the Plan Companies and the BL Landlords continued in earnest. In the course of this, there were meetings and detailed exchanges (by email especially) pursuant to which proposals and counterproposals were made. In his third witness statement, Mr Willson explained that, as they had indicated at the convening hearing, the BL Landlords did not seek modifications in respect of their own sites alone but sought modifications for the benefit of the Plan Creditors (other than Modella) generally.

82. As a result of these negotiations, on 16 June 2026, the Plan Companies distributed a supplementary Explanatory Statement explaining various changes that it was proposing to make that were beneficial to nearly all Plan Creditors except for Modella. The changes communicated on 16 June 2026 were: (i) an increase in the Excess Cumulative EBITDA Entitlement to 50% and a reduction in the trigger to £40m cumulative EBITDA; (ii) the retention of dilapidations claims for non-terminating Class C1 Landlord Creditors; and (iii) the reduction of licence fees payable to the Licensor during the Rent Concession Period to nil.

83. On 18 June 2026, the BL Landlords filed their evidence in opposition in the form of the third statement of Mr Grose (head of Retail Leasing & Logistics at BL). No expert evidence was filed by the BL Landlords. No evidence (either factual or expert) was filed by any other Plan Creditor.

84. In paragraph 9.5 of his third witness statement, Mr Grose, on behalf of the BL Landlords, put forward a basis for resolution of the points of difference which had been identified, (albeit on a basis stated to be 'without prejudice' to the BL Landlords' primary position that the 75% rent reductions proposed in respect of Class A and B landlords in year one should be removed as being unjustified and unfair).

85. The Plan Companies considered that Mr Grose's proposal offered a way forward for agreed modifications to secure at least the BL Landlords' agreement not to vote against the Plans, and in effect their neutrality at the Sanction Hearing.

*Agreed modifications to the Plans*

86. On 23 June 2026, the BL Landlords reached a settlement with the Plan Companies under which the BL Landlords agreed not to vote against the Restructuring Plans. Further, the BL Landlords agreed not to make submissions at the Sanction Hearing, save that they reserved the right to make submissions that the differential treatment afforded to Class A and B Landlords, relative to other impaired creditors under the modified Restructuring Plans, was justified.

87. The modifications negotiated and agreed were, in summary:

(1) the deferral (instead of the extinguishment) of Year 1 rent reductions for certain Landlord Creditors, and the creation of security in respect of the sums deferred;

(2) modification of the entitlement of eligible creditors to receive a share of the Cumulative Recovery EBITDA, increasing it to 50% of Cumulative Recovery EBITDA above £40 million, instead of (i) 12.5% if Cumulative Recovery EBITDA was more than £47.5 million but no more than £64.2 million and (ii) 25% if Cumulative Recovery EBITDA was more than £64.2 million.

(3) Modification of the arrangements regarding dilapidations claims in respect of Class C1 premises so as to treat such claims in respect of Class C1 Premises in the same way as dilapidations claims in respect of Class B Premises: as modified, such claims will only be compromised if the relevant Class C1 Lease is terminated, and if the Plan Companies continue to trade from the relevant Class C1 Premises following the expiry of the Rent Concession Period, dilapidations claims will not be compromised. Under the Restructuring Plans,

as originally formulated, dilapidations for Class C1 Leases were compromised in full. This was to be the case even if RHL had opted to continue trading after the end of the Rent Concession Period at the full contractual rent.

(4) The Plan Companies' agreement to give certain undertakings to protect eligible creditors' share of Cumulative Recovery Period EBITDA, including:

(a) an undertaking to reinvest in the TGJ Group's business an amount equal to the 75% rent reductions imposed on Class A and B1-B4 Landlords in the First Year (£9.1 million); and

(b) an undertaking that the Plan Companies will use all commercially reasonable endeavours to carry out capital expenditure in line with the Business Plan.

88. On the morning of 23 June 2026, the Plan Companies distributed a second supplementary Explanatory Statement containing certain additional changes, and in particular (i) the deferral (rather than extinguishment) of Year 1 rent reductions for certain Landlord Creditors, and (ii) the creation of security in respect of that deferral.

89. The Plan Companies acknowledge that the second supplemental Explanatory Statement was circulated after the date in paragraph 21 of the Convening Order. However, the changes made by the second supplemental Explanatory Statement make the Plans more favourable or were neutral to the Plan Creditors (other than Modella). This point is addressed in further detail below.

***The Plan Meetings***

90. The next major procedural step was the Plan Meetings on 24 and 25 June 2026. The table below sets out the details of the votes at the Plan Meetings:

| Class | Number voting | Turnout by value (%) | For | | Against | |
|---|---|---|---|---|---|---|
| | | | Votes | Value (%) | Votes | Value (%) |
| | | | | | | |
| **HSL Plan** | | | | | | |
| ABL Creditor | 1 | 100% | 1 | 100% | 0 | 0% |
| Licensor | 1 | 100% | 1 | 100% | 0 | 0% |
| Modella Creditor | 1 | 100% | 1 | 100% | 0 | 0% |
| Headquarter Landlord | 1 | 100% | 1 | 100% | 0 | 0% |
| Post Office | 1 | 100% | 1 | 100% | 0 | 0% |
| Core Supply Creditors | 35 | 57% | 33 | 99% | 2 | 1% |
| Non-Core Supply Creditors | 6 | 12% | 4 | 90% | 2 | 10% |
| Assigned Loan Creditor | 1 | 100% | 1 | 100% | 0 | 0% |
| General Creditors | 14 | 12% | 7 | 34% | 7 | 66% |
| Business Rates Creditors | 19 | 4% | 11 | 72% | 8 | 28% |
| | | | | | | |
| **RHL Plan** | | | | | | |
| ABL Creditor | 1 | 100% | 1 | 100% | 0 | 0% |
| Licensor | 1 | 100% | 1 | 100% | 0 | 0% |
| Modella Creditor | 1 | 100% | 1 | 100% | 0 | 0% |
| Class A1 Landlords | 35 | 41% | 30 | 81% | 5 | 19% |

| | | | | | | |
|---|---|---|---|---|---|---|
| Class A2 Landlords | 18 | 61% | 14 | 55% | 4 | 45% |
| Class B1 Landlords | 8 | 38% | 3 | 41% | 5 | 59% |
| Class B2 Landlords | 4 | 7% | 2 | 57% | 2 | 43% |
| Class B3 Landlords | 4 | 26% | 0 | 0% | 4 | 100% |
| Class B4 Landlords | 8 | 18% | 3 | 14% | 5 | 86% |
| Class B5 Landlords | 14 | 59% | 6 | 63% | 8 | 37% |
| Class C1 Landlords | 38 | 49% | 20 | 65% | 18 | 35% |
| Class C2 Landlords | 0 | 0% | 0 | 0% | 0 | 0% |
| Remediation Lease Landlords | 0 | 0% | 0 | 0% | 0 | 0% |
| Core Supply Creditors | 1 | 1% | 1 | 100% | 0 | 0% |
| Assigned Loan Creditor | 1 | 100% | 1 | 100% | 0 | 0% |
| General Creditors | 2 | 4% | 1 | 25% | 1 | 75% |

91. As can be seen from the table above:

(1) At the HSL Plan Meetings, the Plans were approved by more than 75% by value of those voting in all classes except for the General Creditors and the Business Rates Creditors. Although the vote was not quite at the 75% threshold, 72% of the Business Rates Creditors voted in favour.

(2) Putting to one side the Landlord Creditors (who are considered in the next sub-paragraph), at the RHL Plan Meetings, the Plans were approved by more than 75% by value of the ABL Creditor, the Licensor, the Modella Creditor, the Core Supply Creditors and the Assigned Loan Creditor. Only 25% by value of the General Creditors voted in favour of the Plans but this was on a turnout of only two.

(3) As to the Landlord Creditors, the Plans were approved by more than 75% of the Class A1 Landlord Creditors. There was less than 75% support among the other Landlord Creditor classes, but simple majorities were obtained amongst the Class A2 (55%), Class B2 (57%), Class B5 (63%) and Class C1 (65%) Landlord Creditors. The vote in favour was substantially less than 50% at the meetings of the Class B1 (41%), Class B3 (0% on a turnout of four) and Class B4 (14%) Landlord Creditors. No creditors voted at the meetings of the Class C2 and Remediation Lease Landlord Creditors.

***Relevant legal principles at the Sanction Hearing***

92. Since the Plans were not approved with the relevant statutory majority by (a) one class of HSL Plan Creditors (the HSL General Creditors) and (b) ten classes of RHL Plan Creditors (including all the RHL Landlord Creditors, except A1 Landlords), the Plan Companies need and seek the exercise by the Court of its "cross-class cramdown" power pursuant to Part 26A.

93. This power to bind classes of creditor to a plan which they have voted against is subject to strict conditions, as well as (ultimately) scrutiny of the fairness of its exercise by the Court which is ultimately in its discretion.

94. The principles determining the application of the provisions of Part 26A have been reviewed in a trilogy of cases in the Court of Appeal, namely, *Re AGPS Bondco Plc ("Adler")* [2024] EWCA Civ 24; *Re Thames Water Utilities Holdings Ltd ("Thames Water")* [2025] EWCA Civ 475 and *Saipem S.p.A v Petrofac Ltd ("Petrofac")* [2025]

EWCA Civ 821. Cases at first instance applying these principles in "Landlord cases" include most recently and relevantly my own decisions in *Iguanas Holdings* and *Poundstretcher*, in the latter of which (especially) the circumstances and the plan proposed to rescue the company from its financial predicament were fairly analogous to the present case.

95. These cases make clear that when being asked (as it is in this case) to exercise its "cross-class cramdown" power, the Court will take the following approach:

(1) In respect of both assenting and dissenting classes, the Court will consider: (i) whether the provisions of the statute have been complied with (including questions of jurisdiction, class composition and the adequacy of the explanatory statement); and (ii) whether there is any "blot" or defect in the plan.

(2) In respect of the assenting classes, the Court will consider: (i) whether the class was fairly represented by the meeting; (ii) whether the majority were coercing the minority; and (iii) whether the plan is a fair plan which a creditor could reasonably approve.

(3) In respect of the dissenting classes, the Court will (after satisfying itself that the dissenting creditors are "*no worse off*" and that the plan has been approved by a class with a "*genuine economic interest*") consider whether the benefits of the restructuring are being fairly distributed between the plan creditors. This is a more demanding question than in respect of an assenting class (where the Court will be slow to differ from the outcome of the meeting). As Snowden LJ said in *Adler* at [160]:

> "*[160] ...As a matter of principle, when the court exercises its discretion to impose a plan upon a dissenting class, it subjects that class to an enforced compromise or arrangement of their rights in order to achieve a result which the assenting classes of creditors consider to be to their commercial advantage. In my judgment, that exercise of a judicial discretion to alter the rights of a dissenting class for the perceived benefit of the assenting classes necessarily requires the court to inquire how the value sought to be preserved or generated by the restructuring plan, over and above the relevant alternative, is to be allocated between those different creditor groups.*"

96. These three stages are addressed below.

***First stage: compliance with the statutory provisions***

97. The first stage entails a review of whether the primary statutory preconditions applicable to any scheme or plan (whether a scheme under Part 26 or a plan under Part 26A) are satisfied, whether the class meetings directed by the convening order were appropriately constituted and what the result of those meetings was.

*Primary jurisdictional conditions*

98. At the convening hearing, Marcus Smith J was satisfied that there was no issue concerning the primary jurisdictional conditions:

(1) The first condition is that the Plan Companies are "companies" liable to be wound up under the IA 1986 and that the Plan Creditors are "creditors": section 901A(1), (3) and (4) of the CA 2006. This condition is plainly satisfied.

(2) The second condition is that the Plan Companies have encountered or are likely to encounter financial difficulties that are affecting or will or may affect their ability to carry on business as a going concern: section 901A(2) CA 2006. This is "Condition A" and is obviously satisfied given that the Plan Companies are on the verge of insolvent administration.

(3) The third condition is that what is proposed under the Plans amounts to a "*compromise or arrangement*". This requires "*some element of "give and take" between a company and the scheme creditors*": *Re E D & F Man Holdings Ltd* [2023] 1 BCLC 269 at [55]. On any view, the Plans have the requisite element of "*give and take*" between each Plan Company and each class of the Plan Creditors.

(4) The fourth condition is that the purpose of the compromise or arrangement proposed is to eliminate, reduce or prevent or mitigate the effect of any of the financial difficulties: section 901A(3) of the CA 2006. This is "Condition B" and is again obviously satisfied. The purpose of the Plans is to save the Plan Companies from what has been identified as the Relevant Alternative, which is insolvent administration.

*Class composition*

99. The essential principles of class composition are very well established by the authorities: see, for example *Adler* at [109]-[110] per Snowden LJ.

100. The established approach is that "if a judge has heard full argument at the convening hearing and has decided on the appropriate constitution of classes, it is not ordinarily appropriate for a different judge at the sanction hearing to take a different view of his own motion in the absence of any creditor appearing to contend that the classes were not correctly constituted": *Re Ambatovy Minerals SA* [2025] EWHC 279 (Ch) at [68].

101. What might be regarded as an anomaly in the case of "Landlord Plans" is that it has become usual to constitute classes of landlord creditors by reference to relative economic performance of the plan company's business at the various premises concerned. Accordingly, in the present case, Landlord Creditors are classified for this purpose according to (a) what (if any) rent reduction would result in the business conducted by the Plan Companies from those premises contributing positively to EBITDA, and (usually) (b) the state of the premises and the costs of its refurbishment to bring it to as standard to optimise trading from them. This contrasts with the usual criteria applied in determining class composition, which involves and depends on an analysis of the rights and obligations of the parties *inter se.*

102. There is an oddness in this practice of categorising landlord creditor classes according to the relevant plan company's own assessments of the performance of its own business at the relevant premises, rather than according to the relevant landlord creditor's defined rights and interests. However, the categorisation criteria adopted reflect those used in a number of recent restructuring plans, including *Re Virgin Active Holdings Limited*

[2021] EWHC 814 (Ch) (*per* Snowden J at the convening stage) and [2021] EWHC 1246 (Ch) (*per* Snowden J at the sanction stage); *Re Listrac Midco Limited* [2023] EWHC 78 (Ch) at [12] *per* Trower J; *Re Poundland Limited* at [21] *per* Sir Alastair Norris; and *Re Poundstretcher* at [45]. I see no sufficient reason to depart from this well-trodden approach. I am satisfied, as Marcus Smith J must have been, that the classes have been properly constituted, and I note that there has been no suggestion from any Plan Creditor to the contrary.

103. It is also a statutory precondition, and the Court must be satisfied, that there was appropriate communication of the material necessary to enable each Plan Creditor to make an informed decision on the questions at issue. In particular, the explanatory material must be *"sufficient to enable the creditors to make an informed decision whether to accept the risks inherent in the scheme in place of the risks inherent in* [the Relevant Alternative]*"*: *per* Sir Alastair Norris at [37(a)] in *Re Amicus Finance Plc (in administration)* [2022] Bus LR 86. The central document is the Explanatory Statement (and, in this case, its two supplements). Here, the Explanatory Statement includes (*inter alia*) the Relevant Alternative Report, the Allocation of Benefits Report, the Valuation Report and the Debt Report.

104. Subject to one point that I must address, since it reflects a point of objection, I consider that these documents are detailed, clear and comprehensive; together they are, in my view, sufficient to inform the Plan Creditors in determining how to vote on the Plans.

105. The one point I have had particularly to consider in the context of the adequacy of the notice and information supplied to Plan Creditor, and which I referred to at paragraph [8] of my *"Summary of Reasons"* dated 1st July 2026, is whether the fact that the modifications to the Plans to which I have already referred were not agreed and accordingly were not notified to Plan Creditors until the day before the 16 class meetings directed by the Convening Order took place (and thus well after the date specified in it as the last date for any changes) presents a jurisdictional or other impediment.

106. For the reasons summarised in paragraph [10] of my Summary of Reasons, I was persuaded that this late notification of modifications and non-compliance with the timetable established by the Convening Order is not a bar to my exercise of jurisdiction. To repeat what I said previously, this is in summary because:

> *"There can be no serious suggestion that a Plan Creditor who previously supported the Plans (prior to 23 June 2026) would have been persuaded to vote against the Plans because they did not like the fact that certain Plan Creditors were to receive more at the expense of Modella qua shareholder."*

107. Further, and for the same reason, I accepted the argument that there would be no point in running the meetings again; and further, such a delay would have been catastrophic in light of imminent defaults if the Plans were not sanctioned. I have also taken comfort from the fact that no Plan Creditor suggested an adjournment.

*No potential "blots"*

108. A "blot" is a somewhat quaint word (which has frequently been deployed since its use by Morgan J in *Re TDG plc* [2009] 1 BCLC 445 at [29]) but is "generally thought to

refer to some technical or legal defect in the scheme, for example, that it does not work according to its own terms, or that it would infringe some mandatory provision of law": *Re Noble Group Ltd* (sanction judgment) at [77] *per* Snowden J.

109. Subject to one point, there is no cross-border issue (whether as to recognition or enforcement) nor any reason to suppose that the Court would be acting in vain. The Plan Companies are incorporated in England and the majority of the leases concern properties in England and Wales and governed by English law. The caveat relates to 39 leases governed by Scots law in respect of the Plan Companies' Scottish operations. To that extent, there is a limited cross-border but intra-UK issue. However, it is well established that a Part 26A plan will be given effect throughout the UK (since the CA 2006 is an Act of Parliament binding on the entire Union). As I said in *Re Iguanas Holdings* at [19]:

> "*Sometimes at convening hearings a potential roadblock to the exercise of the jurisdiction is identified in the form of some uncertainty whether the plan may not be recognised or enforced in any relevant foreign jurisdiction. Here there is no such problem, except what might be a footnote in a sense that there is a single lease property in Glasgow which is governed by Scots law. However, Mr Perkins has referred me to the case of Phillips v Allan (1828) 108 ER 1120, which is now I think nearly 200 years old, demonstrating that, as one would expect in an English insolvency process of this kind it is automatically recognised and enforced across the border*."

110. For completeness, the Plan Companies have obtained a letter from Burness Paull LLP which confirms that the Plans will be recognised in Scotland.

111. There is no suggestion from any Plan Creditor, or any other person, that there are any 'blots' that might prohibit the Court from sanctioning the Plans.

*Conclusion on the first stage*

112. In these circumstances, I have been satisfied that the primary statutory preconditions to the exercise of the Court's jurisdiction have been fulfilled. There are, however, additional conditions to be satisfied where (as here) the Court's cross-class cramdown jurisdiction is invoked to impose the Plans on dissenting classes. I address these later.

***The second stage: the assenting classes***

113. As I noted in *Poundstretcher* (at [124] of my judgment), as regards the assenting classes, the Court is being invited to do substantially the same as in the context of assenting classes under a Part 26 scheme, and the statutory provisions and the test adopted by the Court reflect this. Thus, in *Thames*, the Court of Appeal stated as follows (at [100] *ff*):

> "*100. Where there is no cross-class cram down, the principles established in the context of schemes of arrangement remain applicable ([115] to [117]). Those were summarised by Snowden J in Re Noble Group (No.2) Ltd [2019] 2 BCLC 548 at [17] as follows:*

*"(i) At the first stage, the court must consider whether the provisions of the statute have been complied with. This will include questions of class composition and whether the statutory majorities were obtained and whether an adequate explanatory statement was distributed to creditors.*

*(ii) At the second stage, the court must consider whether the class was fairly represented by the meeting and whether the majority were coercing the minority in order to promote interests adverse to the class whom they purported to represent.*

*(iii) At the third stage, the court must consider whether the scheme is a fair scheme which a creditor could reasonably approve. Importantly, it must be appreciated that the court is not concerned to decide whether the scheme is the only fair scheme or even the "best" scheme.*

*(iv) at the fourth stage, the court must consider whether there is any "blot" or defect in the scheme that would, for example, make it unlawful or in any other way inoperable*."

114. In *Adler* at [128], the Court of Appeal confirmed that these principles should still be applied under Part 26A *within an assenting class* as the basis for the exercise of discretion to impose the plan on the dissenting minority within that class.

115. I have already addressed issue (i) in the passage from the Court of Appeal's judgment in *Adler* quoted in [110] above.

116. The table below sets out the detail of the turnout and approval percentages in the assenting classes:

| Class | Turnout by value (%) | Vote in favour (%) |
|---|---|---|
| | | |
| **HSL Plan** | | |
| ABL Creditor | 100% | 100% |
| Licensor | 100% | 100% |
| Modella Creditor | 100% | 100% |
| Headquarter Landlord | 100% | 100% |
| Post Office | 100% | 100% |
| Core Supply Creditors | 57% | 99% |
| Non-Core Supply Creditors | 12% | 90% |
| Assigned Loan Creditor | 100% | 100% |
| | | |
| **RHL Plan** | | |
| ABL Creditor | 100% | 100% |
| Licensor | 100% | 100% |
| Modella Creditor | 100% | 100% |
| Class A1 Landlords | 41% | 81% |
| Core Supply Creditors | 1% | 100% |
| Assigned Loan Creditor | 100% | 100% |

117. I accept the Plan Companies' submission that, on the whole, the turnout in the assenting classes was relatively strong. It is true that there was a low or very low turnout in some classes. However, this is commonplace in Part 26A plans which involve landlords, rating authorities and other general unsecured property creditors, often as a result of the simple indifference: see e.g. *Re Poundland* at [42]-[43] and *Re River Island Holdings Ltd* [2025] EWHC 2276 (Ch) at [34(iii)]. There is no reason to suspect that the low turnout in certain classes can be attributed to any notification failure: on the contrary, it is clear that exhaustive steps were taken to circulate the documents to all Plan Creditors.

118. There is no suggestion of any coercion of the minority by the majority, nor that any Plan Creditor that voted in favour did so other than in their own interests as a member of that class. That is hardly surprising given the significantly improved outcomes for the assenting Plan Creditors under the Plans (other than Modella and the ABL Creditor who receive a more marginal uplift) as compared to the Relevant Alternative.

119. As to whether an intelligent and honest person might reasonably approve the Plans, the key principles were summarised by David Richards J in *Re Telewest Communications (No 2) Ltd* [2005] 1 BCLC 772 at [20] to [22]:

> "*[20] The classic formulation of the principles which guide the court in considering whether to sanction a scheme was set out by Plowman J in Re National Bank Ltd [1966] 1 WLR 819 at 829 by reference to a passage in Buckley on the Companies Acts (13th edn, 1957) p 409, which has been approved and applied by the courts on many subsequent occasions:*
>
> > *"In exercising its power of sanction the court will see, first, that the provisions of the statute have been complied with; secondly, that the class was fairly represented by those who attended the meeting and that the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent, and thirdly, that the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve.*
> >
> > *The court does not sit merely to see that the majority are acting bona fide and thereupon to register the decision of the meeting; but at the same time the court will be slow to differ from the meeting, unless either the class has not been properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the scheme."*
>
> *[21] This formulation in particular recognises and balances two important factors. First, in deciding to sanction a scheme under s425, which has the effect of binding members or creditors who have voted against the scheme or abstained as well as those who voted in its favour, the court must be satisfied that it is a fair scheme. It must be a scheme that "an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve". That test also makes clear that the scheme proposed need not be the only fair scheme or even, in the court's view, the*

> *best scheme. Necessarily there may be reasonable differences of view on these issues.*
>
> *[22] The second factor recognised by the above-cited passage is that in commercial matters members or creditors are much better judges of their own interests than the courts. Subject to the qualifications set out in the second paragraph, the court "will be slow to differ from the meeting.*"

120. There can be no suggestion that the members of the assenting classes could not reasonably have approved the Plans. The Plans save the Plan Companies from insolvent administration and deliver substantially better outcomes to the assenting classes as compared to the Relevant Alternative.

121. In short, in each case the Plans are, in my judgment, such as an intelligent and honest person, acting in his/her own interest might reasonably approve.

***The third stage: the dissenting classes***

(1) *The statutorily prescribed "no worse off" and "genuine economic interest" tests*

122. To invoke the 'cross-class cramdown' jurisdiction pursuant to section 901G CA 2006, the Plan Companies need to show that: (i) if the Plans were to be sanctioned, none of the members of the dissenting classes would be any *"worse off"* as compared to the Relevant Alternative; and (ii) the Plans have been approved by 75% by value of a class with a genuine economic interest in the Plan Companies. The relevant alternative is "*whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned*": section 901G(4) CA 2006.

123. As to this:

(1) I have accepted that the Relevant Alternative is insolvent administration in which the Plan Creditors would be likely to receive approximately the value shown in the Relevant Alternative Report and reproduced above. Under the Plans, the Plan Creditors will receive the (higher) value shown on the same page of the report and also reproduced above. Indeed, satisfying the "no worse off" test is inherent in the design of the Plans and the use of the 170% relevant alternative payment. I commented on a similar design in *Re Chandlers Building Supplies Holdings Ltd* (at [19]):

> "I shall deal with each condition in turn. Condition A, the no worse off test, seems to me to be satisfied in this case. It seems to me clear that all of the Unsecured Plan Creditors will be better off under the Plans than they would be in what I have accepted to be the relevant alternative. Indeed, as Mr Smith submitted, this is, in a sense, a logical consequence of the design of the Plans, which secures an additional benefit, I think 175%, over and above what they would receive in the administration or liquidation. It follows that by reference to this uplift, that not only would the relevant creditors be no worse off but they will be better off than they would be in the relevant alternative. That conclusion has been supported by the unchallenged expert evidence produced by a very experienced insolvency practitioner and I accept that evidence."

(2) The Plans have been approved by the assenting classes. The assenting classes would receive value in the Relevant Alternative and therefore they have a genuine economic interest in the Plan Companies.

(2) *Discretion: relevant legal principles*

124. It is now clear (from, for example, the passage in Snowden LJ's judgment in *Adler* at [160] (quoted at paragraph [95(3)] above)) that, when undertaking the exercise of a judicial discretion to alter (cram down) the rights of a dissenting class for the perceived benefit of the assenting classes, the Court must inquire

> "how the value sought to be preserved or generated by the restructuring plan, over and above the relevant alternative, is to be allocated between those different creditor groups".

125. It has been confirmed by the Court of Appeal decision in *Petrofac* at [111]-[117] that, notwithstanding any contrary suggestion at [266] in *Re Virgin Active Holdings Limited* in the early days of what was at that time a new jurisdiction under Part 26A, "out of the money" creditors are not to be ignored and paid *de minimis* amounts simply because they would receive nothing in the relevant alternative.

126. As I had earlier suggested in *Re Ambatovy* at [118]:

> "the general requirement to consider whether there has been a fair distribution of the restructuring surplus is to be treated as overriding and will necessarily take into account, albeit in overall terms, the treatment of the dissenting class."

127. In *Re River Island Holdings Ltd* at [43], Sir Alastair Norris provided a helpful summary of the position which has been reached in light of the "trilogy" of Court of Appeal cases on the sanctioning of restructuring plans. That summary was endorsed by Michael Green J in *Re Waldorf Production UK plc* [2026] EWHC 1014 (Ch) as a "*helpful checklist*" (at [123]):

> "The principles I intend to apply are these:
>
> (1) There must be a fair sharing of the burden of the restructuring plan amongst those whose rights are compromised and a fair allocation of its benefits (the value preserved or generated by the plan) to and between them.
>
> (2) The assenting classes will have made their own judgment upon that question, and the concern of the Court is to look at it from the perspective of the dissenting classes and to ask why the compromise approved by the assenting classes should be imposed upon them.
>
> (3) The burden lies upon the plan company to persuade the Court that there is a fair sharing of the burdens and of the benefits even if no objectors appear at the sanction hearing.
>
> (4) The starting point (but only the starting point) is the treatment of the dissenting class in the relevant alternative.
>
> (5) Where the relevant alternative is an insolvency process the initial expectation will be pari passu treatment of creditors within each insolvency class.

(6) Differential treatment within an insolvency class is permissible if justified on proper grounds.

(7) When considering whether the treatment of a class or any differential treatment within a class is "fair" the primary focus of the Court is upon their interests qua creditor.

(8) When considering the sharing of the burdens and the benefits the Court is not confined to a consideration of the restructuring plan itself but is entitled to stand back and consider also the effect of the restructuring plan on those who are not parties to the compromises (such as creditors outside the scope of the plan or shareholders).

(9) When considering the sharing of the burdens and the benefits the Court is entitled to take into account the source of the benefits (how the value is preserved or generated by the plan).

(10) When assessing the burdens and benefits the court is concerned with the substance not the form: the provision of new money on terms more advantageous to the provider than would be required by a lender in the market is in reality a benefit conferred on the provider rather than a contribution to the cost of the plan.

(11) The Court will have regard to the evolution of the restructuring plan and will seek to assess whether it is a genuine attempt to formulate a fair and reasonable solution to a critical problem or an attempt to impose arbitrary compromise terms upon creditors with a view to extracting advantage in a critical situation."

128. Particularly at that last stage, another relevant factor is whether, and to what extent, the plan will make the creditors better off than they would otherwise be. This is similar to the statutory "no worse off" test under section 901G, but it is also a point of broader relevance to the exercise of discretion. As I put it in *Poundstretcher* at [196]:

> "*That latter point also brings me back to the statutory litmus test of fairness: the comparison with the Relevant Alternative. Having accepted (as I have) that the Relevant Alternative is insolvent administration, and that this is fairly imminent if the Plan is not sanctioned, and having accepted also that the differential treatment as between the Creditor classes is not unfair, the statutory test supports sanction of the Plan*."

129. In addition, it is of real significance whether there is any opposition to the plan(s) at the Sanction Hearing, particularly in light of the low risk of any adverse costs order; and see also *Re Listrac Midco* [2023] Bus LR 920 at [67] per Adam Johnson J., *Re E D & F Man Holdings Ltd* [2022] EWHC 687 (Ch) at [56] per Trower J. and *Re Houst Ltd* [2022] BCC 1143 at [28] per Zacaroli J. (as he then was).

*The Plan Companies' submissions in support of cramdown: their "ten key points"*

130. The Plan Companies advanced *"ten key points"* in support of their submission that, notwithstanding the number of dissenting classes, the Court should exercise its cross-class cramdown powers and impose the Plans on all the Plan Creditors. Many of these points relied on analogies with, in particular, *Chandlers Building Supplies, Poundland,*

*Poundstretcher* and *Iguanas Holdings*. I set out these points below, largely as they were advanced in the Plan Companies' skeleton argument.

131. Thus, for example, the Plan Companies' first *"key point"* was that the terms of the Plans are (save for the fact that certain Year 1 rent is deferred) near-identical to, and in important respects compare favourably with, a series of restructuring plans that have been sanctioned recently by the Court. The treatment of the Landlord Creditors (granting break rights, implementing rent reductions by reference to the rental objective, reducing rent under totally uneconomic leases to nil) is substantially the same as in, for example, *Re Poundland*, *Re Poundstretcher* and *Re Iguanas Holdings*. The treatment of Business Rates Creditors (extinguishment of the liabilities for the current rating year in exchange for an uplift on the Relevant Alternative) and suppliers is essentially the same as in those cases. The 170% Relevant Alternative return payable to various Plan Creditors is the same, or almost the same, as in *Re Poundland* (170%) and *Re Poundstretcher* (175%) and *Re Chandlers Building Supplies Holdings Ltd* (175%). In fact, the main difference in this case is that the Excess Cumulative EBITDA Entitlement is very much greater (50%) than in the previous cases. As explained above, the Plan Companies believe that this is the largest profit share in any retail plan to date.

132. The second of the Plan Companies' *"key points"* is their submission that the benefits of the restructuring are being fairly shared between the Plan Creditors. In this regard they rely on two reports on the *'Allocation of Benefits'* ("the Allocation of Benefits Reports") by Lindsay Hallam of FTI.

133. In these Allocation of Benefits Reports (the second of which (a *'Supplemental Allocation of Benefits Report'* dated 25 June 2026) was prepared to assess the effect of the negotiated modifications I have earlier described) the approach taken by the expert in the Allocation of Benefits Reports is, they submit, substantially the methodology which I approved in *Re Poundstretcher* at [170]-[174] with one additional feature. The additional feature is that even claims that are largely "out of the money", claims are treated as contributing on a *pro rata* basis to the post-restructuring equity value as explained at page 10 of the Allocation of Benefits Report. The result is that, as compared to the analyses made available to the Court in other cases, the "out of the money" creditors are recorded as having made a greater contribution.

134. Subject to the caveat that the figures in it (which are rounding up the more precise figures set out in the Supplemental Allocation of Benefits Report) assume that the threshold for the Excess Cumulative EBITDA payment is reached[5], the table below summarises the exercise undertaken by the expert and is commended by the Plan Companies as showing that the benefits are being fairly shared:

5 There is an additional complexity or variable to be considered in this case. To cover the possibility that the threshold for payment of the Excess Cumulative EBITDA payment may not be reached (and in the Valuation Report prepared by Mr Anaman (see paragraph [37] above) he has noted a *"high level of execution risk"* relating to the turnaround and thus in this regard), Ms Hallam has also considered and presented revised figures to reflect what would be the position in that case and thus where no such payment is made. I consider this in my assessment of fairness in paragraphs [182] to [188] below.

| | Contribution | | Benefits | | Variance |
|---|---|---|---|---|---|
| | £ | % | £ | % | |
| | | | | | |
| ABL Creditor | £29.8m | 40.0% | £30.6m | 23.6% | (16.5%) |
| Modella | £28.9m | 38.9% | £33.5m | 25.8% | (13.1%) |
| Assigned Loan Creditor | £0.7m | 1.0% | £2.8m | 2.1% | 1.2% |
| Class A Landlords | £2.8m | 3.7% | £19.7m | 15.2% | 11.4% |
| Class B Landlords | £3.4m | 4.6% | £17.1m | 13.2% | 8.6% |
| Class C Landlords | £1.4m | 1.9% | £4.4m | 3.4% | 1.5% |
| Remediation Landlords | £0.06m | 0.1% | £0.08m | 0.1% | (0.0%) |
| Post Office | £0.09m | 0.1% | £0.1m | 0.1% | (0.0%) |
| Core Suppliers | £4.4m | 5.9% | £13.4m | 10.3% | 4.4% |
| Non-Core Suppliers | £0.06m | 0.1% | £0.6m | 0.4% | 0.4% |
| Business Rate Creditors | £2.4m | 3.2% | £5.2m | 4.0% | 0.8% |
| General Creditors | £0.5m | 0.6% | £2.4m | 1.8% | 1.2% |

135. Thirdly, the Plan Companies submit that it is clear that Modella will make a genuine and substantial contribution to the restructuring in the form of the writing off of liabilities that would be paid in full in the Relevant Alternative and the provision of new money. They also contend that the additional benefits received by it under the restructuring (i.e. over and above repayment of the Modella Facility and the New Money Term Loan) are very modest (equity of low or no value in circumstances where it would be impracticable for the equity to be given to any other Plan Creditor). Indeed, Modella is receiving comparatively less of the benefit than nearly all other Plan Creditors.

136. Their fourth point, which is related to the Plan Companies' third point above, is that the Plans include the Excess Cumulative EBITDA Entitlement that, by reference to other recently sanctioned retail restructuring plans, is (in their words) *"highly generous"* to Plan Creditors. As explained above, the Excess Cumulative EBITDA Entitlement is put forward as a form of superior equity participation (it is paid out of EBITDA rather than bottom line profits that are taken onto the balance sheet) and has been set at a level to give Plan Creditors a real and significant stake (50%) in any upside.

137. Fifthly, the Plan Companies place emphasis on the fact that (in contrast to the first *Waldorf* plan, for which sanction was refused, see *In re Waldorf Production UK plc* [2026] Bus LR 37; [2025] EWHC 2181 (Ch)) the Plans reflect a genuine process of negotiation and consultation. As to this:

(1) The PSL was circulated to the Plan Creditors on 6 May 2026, i.e. 4 weeks before the convening hearing.

(2) The Plan Companies hosted "town hall" meetings on 7 May 2026 (pre-convening) and 17 June 2026 (post-convening). The first was attended by 249 Plan Creditors, including 132 Landlord Creditors (and three managing agents), eight Business Rates Creditors, 108 Supply Creditors and Modella. The second

was attended by 199 Plan Creditors, including 88 Landlord Creditors (and 10 managing agents), six Business Rates Creditors and 94 Supply Creditors.

(3) Prior to the convening hearing, the Plan Companies pro-actively communicated with a great many Plan Creditors. That process continued after the convening hearing. Further, Teneo (as Information Agent) has received and responded to a total of 278 enquiries.

(4) It is clear from the evidence that since the convening hearing: (i) serious negotiations have taken place with the BL Landlords, acting to improve (for nearly all Plan Creditors save for Modella) the terms on offer; (ii) the Plan Companies have listened carefully to what has been asked; and (iii) the Plan Companies have persuaded Modella to agree to significant changes being made to the Plans as a result.

(5) In short, the Plans are "a genuine attempt to formulate a fair and reasonable solution to a critical problem", and not an "attempt to impose arbitrary compromise terms upon creditors with a view to extracting advantage in a critical situation" (to adopt the language used by Sir Alastair Norris in *Re Poundland*).

138. Sixth, and related to their fifth point, the Plan Companies contend that the effect of the negotiations is not only improved terms for all Plan Creditors except for Modella (and the ABL Creditor and the Core and Non-Core Supply Creditors, which are not affected) but also that the Plans are not formally opposed by any Plan Creditor. That is a matter of very real significance at the Sanction Hearing. As a result, there is substantial support across the various classes. In respect of the HSL Plan, all classes voted in favour except for the General Creditors and the Business Rates Creditors – and amongst the Business Rates Creditors, 72% voted in favour. In respect of the RHL Plan, six classes voted in favour (and two classes did not vote at all). Even among the dissenting classes there was over 50% support from the Class A2 (55%), B2 (57%), B5 (63%) and C1 (65%) Landlord Creditors.

139. Seventh, it is submitted that although the Plans afford different treatment to different classes of unsecured Plan Creditors, there is a good justification for such differential treatment. The position is suggested to be essentially the same as in *Re Poundland*, where Sir Alastair Norris said at [65]-[66]:

> "*The dissenting classes are all unsecured creditors. In an asset-realising administration they would rank pari passu. Under the restructuring plan within the category of unsecured creditors there is differential treatment. All do better than in the relevant alternative, but the degree of adjustment of their rights varies as does the compensation for that adjustment (because that compensation reflects their respective returns in the relevant alternative).*
>
> *The differential treatment within the landlord class has an established and rational basis; those who have in the past made and will in the future make the greatest contribution to the preservation and success of the ongoing Poundland business benefit more than those whose properties are over-rented and have contributed to the present crisis. Nor is this differential treatment imposed upon*

*an unwilling landlord: each has a "break right" enabling market opportunities to be exploited*."

140. I had put the point in a broadly similar way in *Re Chandlers Building Supplies Holdings Ltd* at [40]:

> "*In the usual way, the Landlord Creditors have been placed into different categories by reference to the profitability of the relevant leased premises. The authorities establish that this is a fair way to treat landlords. It is unnecessary to decide whether the new terms of the leases set out in the Plans are better or worse than the Plans that might be available in the market, which might be a very difficult task. This was explained in the case of see Lazari Properties 2 Ltd v New Look Retailers Ltd [2021] Bus LR 915 at paragraphs 238 and 239 in the decision of Zacaroli J (as he then was) which is set out under paragraph 100 of the skeleton argument:*
>
>> *"Finally, I should deal with the contention that in certain respects, the reduced rent under the CVA was below market rates. At an earlier stage in the proceedings, the applicants sought to argue that this was true of turnover rent payable generally to Category B Landlords. In the absence of any expert evidence as to market value, however, that was abandoned save in respect of a very small sub-category of Category B1 Landlords (in which a cap is placed on the turnover rent). In relation to Category C Landlords, it is accepted that the reduction of rent to nil, after the notice period, must have the effect of reducing it below market rates.*
>>
>> *In relation to rent falling due after the date the landlords could have terminated, however, the answer to the alleged unfairness lies—for the reasons given above—in the right to terminate. For the reasons already given, I do not accept that Norris J in Debenhams [2020] BCC 9 laid down a principle that modifications to a lease could not reduce the rent below market rates, certainly insofar as the period after the lease could have been terminated is concerned.'"*"

141. The Plan Companies rely on that analysis as particularly relevant to the position of the Class C and Remediation Lease Landlords (whose rent will be reduced to zero). The treatment of these landlords is justifiable because they have a rolling break right and can take back their premises at any time (or not, if they have no new tenant and do not want to be exposed to business rates).

142. Eighth, although some creditors are excluded from the Plan, there is a good justification for excluding them for the reasons explained above. Indeed, it has never been suggested that there is anything unfair about this.

143. The ninth key point advanced is that no Plan Creditor has put forward any form of alternative deal which the Court might need to compare to the Plans. That is unsurprising, since the Plans allow the Landlord Creditors to take their properties back if they wish to do so (and provides for an enhanced dividend to be paid on unsecured claims plus a profit share for non-terminating landlords); and gives all Plan Creditors an enhanced return as compared to the Relevant Alternative. There is no other deal on the table, even in theory, let alone in practice. The Plan Companies urge that the Plans

represent the only available way to save the business of the Plan Companies and allow one of the few remaining national high street businesses to continue.

144. Tenth, the Plan Companies stress that the Plans will make the Plan Creditors very considerably better off than they would be in the Relevant Alternative (which would involve an inevitable collapse into insolvency proceedings in which the unsecured creditors would receive a very poor recovery – effectively a nil recovery). Whilst satisfying the "no worse off" test is of course not sufficient of itself, it is of obvious relevance to assessing the overall fairness of what is proposed and to deciding whether the Plans should be sanctioned by the Court: see *Re Poundstretcher* at [196].

***My assessment of whether to sanction the Plans***

145. I have already determined three key issues.

146. First, I have already explained in paragraphs [99] to [113] above my decision that the primary jurisdictional preconditions to the giving of sanction of the Plans described and discussed are plainly satisfied.

147. Secondly, I have been satisfied that the class meetings were properly constituted in accordance with the accepted norms in 'Landlord Plans' of this kind: see paragraphs [101] to [104] above, notwithstanding what I have described (in paragraph [103]) as an "anomaly" common to such plans in categorising creditors for class constitution purposes.

148. Thirdly, I have also already accepted – and this inevitably must inform every stage of my assessment - that the Relevant Alternative is a value-destructive administration of each of the Plan Companies involving piece-meal and accelerated/distressed sales of stock at inevitably discounted prices.

149. I can also determine without great elaboration two further issues, as follows.

150. One is that I am satisfied that the basis on which certain creditors of the Plan Companies have been excluded from the Plans ("the Excluded Creditors", see paragraphs [61] and [62] above) is rational and in line with established practice.

151. The other is that I am also satisfied that the additional jurisdictional requirements which section 901G stipulates (see section 901G(2) to (5)) as preconditions to the Court's exercise of its cross-class cramdown jurisdiction have been fulfilled. In particular:

(1) as to Condition A in section 901G(3), I am satisfied that none of the dissenting classes would be *"worse off"* under the Plans than they would be in the Relevant Alternative;

(2) as to Condition B in section 901G(5), I am satisfied that the Plans have validly been agreed by a number representing 75% of a class of creditors having a *"genuine economic interest in the company, in the event of the relevant alternative."*

152. The remaining material issues to be determined in those circumstances require more elaborate treatment. These are (a) the fairness of exercising the cross-class cramdown powers conferred under section 901G CA 2006 to impose the Plans on dissenting

creditors, especially where the interests of the assenting creditors (and especially the Landlord Creditors) differ so radically from those of the dissenting creditors, and where the existing shareholder retains its equity interest; and (b) whether there are sufficient prospects of the Plans being effective to satisfy the Court that it would not be acting in vain or imposing a Plan on dissenting creditors for no sufficient prospect of a successful longer-term outcome. The latter factor is, in my view, of especial relevance and concern given that in certain instances the Landlord Creditors are being required to accept short term sacrifices for longer term gain.

153. I turn to address these issues under the following headings and having regard to the *"helpful checklist"* provided in *Re River Island Holdings Ltd* and applied in *Poundland*:

(1) The development and evolution of the Plans.

(2) The contributions made by, and the source and allocation of benefits to, the Plan Creditors.

(3) The sufficiency of any justification for departing from the starting point or *"initial expectation"* (*per* Sir Alastair Norris at [53(5)] in *Poundland*) of *pari passu* treatment of creditors within each insolvency class.

(4) Relevant continuing objections to the Plans.

(5) The prospect of the Plans attaining their stated objectives (including any issue as to their recognition and enforcement in other jurisdictions).

*(A) Development and evolution of the Plans*

154. In the first (unsuccessful) *Waldorf Production UK plc* plan (see paragraph [138] above), I concluded that in none of the trilogy of Court of Appeal cases, including *Petrofac*, was there established to be a precondition of pre-plan negotiations with the dissenting creditors. Nevertheless, the Court must be satisfied that, as far as practicable, the plan company has sought to *"formulate and negotiate a reasonable compromise between all stakeholders"* with the objective of achieving by the plan(s) for which its sanction is sought *"the appropriate allocation of...benefit preserved or generated by the restructuring"* see *Petrofac* at [191]. In conducting this part of its assessment, the Court is likely to be assisted by evidence of the evolution of the plan in question and any history of its negotiation, and in particular, any light they show as to its true objectives and the real objectives of those promoting it.

155. As Sir Alastair Norris put it in *Poundland* at [53(11)]:

> "The Court will have regard to the evolution of the restructuring plan and will seek to assess whether it is a genuine attempt to formulate a fair and reasonable solution to a critical problem or an attempt to impose arbitrary compromise terms upon creditors with a view to extracting advantage in a critical situation."

156. As is implicit in my acceptance that the Relevant Alternative is an insolvent administration and that by the time of the Sanction Hearing that would be forced on the Plan Companies within a very short timescale indeed, I accept the submission by the Plan Companies that the Plans are a response to a critical problem and reflect a genuine

process of negotiation and consultation with a view to its resolution involving the meetings and negotiations summarised in paragraph [138] above.

157. The fact that that process was constructive in exposing certain elements of the Plans as initially proposed which were very likely to suggest to a dispassionate observer a lack of objectivity and self-interest on the part of its proponents has caused me hesitation but has not, on balance, caused me fundamental doubt as to their true ultimate objective.

158. An example of a feature which I found disturbing (as did the BL Landlords) concerned a provision included in the original acquisition of the Plan Companies by Modella that HSL should acquire and pay a Modella entity substantial licence fees for a non-exclusive licence to use the newly-minted name "TG Jones". It appears to be the case that the sums due under this provision have not actually been paid in cash, and that Plans as originally proposed provided for the accrued sums due to be written off. Nevertheless, under the Plans as originally proposed, HSL was required to continue to pay 50% of such licence fees even during the Rent Concession Period. I agree with the BL Landlords that the name appears to have had no goodwill attached to it and that the fees bear the stamp of a means of extracting value for the benefit of the ultimate equity owner. I also agree that the requirement in the Plans as originally proposed smacks of self-interest. Such self-interest undermines confidence in the proponents of the Plans.

159. Their agreement, as part of their accommodation with the BL Landlords, that no such licence fees should be payable during the Rent Concession Period is much to be welcomed and suggests a greater realism, and perhaps recognition of responsibility as directors to act in the interests of their companies rather than equity shareholders, on the part of the Plan Companies' directors. It has remained, however, one of the concerns which prompted me to take more time for sceptical review (and see further below).

160. Another feature of the Plans as originally proposed which was of concern to the BL Landlords, with good reason (as it seems to me), was the omission of any clear and definite obligation on the part of the Plan Companies to invest sums or savings generated from the rent reductions proposed in the urgent refurbishment of retained properties. Another element of the modifications eventually agreed has been the inclusion of

(1) an undertaking to reinvest in the TGJ Group's business an amount equal to the 75% rent reductions imposed on Class A and B1-B4 Landlords in the First Year (£9.1 million); and

(2) an undertaking that the Plan Companies will use all commercially reasonable endeavours to carry out capital expenditure in line with the Business Plan.

161. Again, the Plan Companies' willingness to provide and record the requested undertakings has been constructive, and perhaps also demonstrative of a realistic appreciation that they reflect and give effect to the representations made to Plan Creditors in the Explanatory Statements and the Business Plan. Even if the omissions in this regard from the original proposals were concerning, the ultimate resolution supports a conclusion not only that the process of negotiation has resulted in improvement but that, redirected by the BL Landlords, the Plan Companies have co-operated in the evolution of the Plans in a way that I have ultimately concluded supports, rather than tells against, their sanction.

162. More generally, I have no doubt that the other modifications negotiated by the BL Landlords as summarised in paragraphs [86] to [89] above, have demonstrated a constructive process and resulted in fairer Plans, better balanced between the immediate requirements of the Plan Companies and the longer term interests of the Plan Creditors.

163. I return to discuss certain of these modifications at greater length in the next section of this judgment. For the present it suffices by way of conclusion to note that, in the light of them, I have concluded that the Plans as modified have been put forward as a genuine attempt to formulate a *"fair and reasonable solution to a critical problem"*, and not an "*attempt to impose arbitrary compromise terms…with a view to extracting advantage in a critical situation"* (adopting the language in Sir Alastair Norris's judgment in *Poundland).*

*(B) Assessment of the contributions made by, and the source and allocation of benefits to, the Plan Creditors.*

164. As reflected in sub-paragraph (3) of Sir Alastair Norris's summary of the principles to be applied in *River Island*, the burden lies on the Plan Companies to persuade the Court that

> "there is a fair sharing of the burdens and of the benefits even if no objectors appear at the sanction hearing."

165. This was the principal focus of the BL Landlords' objections to the Plans as originally proposed. Their formal Notice of Objection stated as follows at paragraph 10:

> *"The BL Landlords will contend at the Sanction Hearing that, even if the jurisdictional requirements for sanction of the Plan and conditions for cramming-down classes of Landlord Creditors under s 901G CA 2006 are satisfied, the Court should reject the Plan on discretionary grounds. The Plan involves a wholly unfair allocation of the burdens and benefits of the restructuring: the Landlord Creditors will be required to finance most of the turnaround of the Business through rent reductions; but they will receive no more than 3% of the likely upside. In contrast, the Plan Companies;' private equity owner, Modella, will receive 97% of that upside."*

166. Although I shall also have to consider the position of other dissenting classes, and subject to some disagreement on the actual figures, that objection seems to me most succinctly to encapsulate the primary issue to be considered as regards the dissenting Landlord Creditor classes.

167. Amongst the matters I must consider in the particular factual circumstances as they have developed in this case is the extent to which the important improvements negotiated by the BL Landlords (see paragraphs [86] to [89] above), and which have persuaded them to withdraw their opposition to the Plans and adopt a neutral position (except on the different issue as to differential treatment, discussed later), sufficiently redress any previous imbalance between burden and benefit, or, put another way, between (on the one hand) contributions made or demanded to secure the continuation of business and (on the other hand) returns to relevant stakeholders under the Plans. I must also consider, however, whether the modifications introduced a difficulty in providing for differential treatment of Class A and B1 to B4 Landlord Creditors.

168. In accordance with the decisions of the Court of Appeal in *Adler, Thames Water* and *Petrofac* I address these issues by reference to two inter-related questions (and see [158] in *Poundstretcher*):

    (1) Can the differences in the treatment of different classes of creditors *inter se* be justified?

    (2) Are the benefits preserved or generated by the Plans fairly allocated between the Plan Creditors (and Modella)?

*The 'horizontal comparison' and justification for departure from 'pari passu' treatment*

169. The starting point in this context is to consider whether the Plans as modified are fair as between the various Landlord Creditors and other unsecured creditors *inter se.* This is often referred to as the *"horizontal comparison".*

170. I have already described how the various Landlord Creditors, categorised and placed in classes according to the Plan Companies' assessment of the contribution (or not) of the various premises to EBITDA (see paragraph [101] above), are to be treated under the Plans (see paragraphs [51] to [57] above as regards all but the C2 and Remediation Lease Landlords and paragraph [58] as regards the latter).

171. Since the dissenting Landlord Creditors, though in different classes for the purposes of the Plans, are all unsecured creditors, and as such would be in the same class in an insolvency, that treatment obviously represents a departure from the *"initial expectation"*, where the relevant alternative is (as the Relevant Alternative is here) an insolvency process, that there will be *pari passu* treatment of creditors within each insolvency class (see paragraph 43(3) of the judgment in *River Island*).

172. However, I have concluded that neither the approach adopted in categorising the various Landlord Creditors nor the treatment of them *inter se* is unfair.

173. I would add that that is so notwithstanding the differential treatment of Class A and B1 to B4 Landlord Creditors compared to other Landlord Creditors, which could be said to have been increased by the agreed modifications to the Plans which provided for them (but not other Landlord Creditors) to be repaid (by the Plan Companies) the Rent Deferral Amounts and to be granted the Rent Deferral Security to secure repayment (see paragraph [64(1)(a)] above). Put simply, that is because any differences in treatment are sufficiently justified. Such differential treatment has become commonplace: and see *Poundstretcher* at [162] and the cases and observations there cited.

174. In this regard, I should note that, although they reached the same conclusion, the Plan Companies and the BL Landlords put forward different justifying reasons. The Plan Companies relied on the different nature of the premises concerned (some being far more productive than others): as Mr Smith put it in his oral submissions: *"…those are the better sites and there is a positive benefit to the company from the landlords of those sites not terminating their leases."* The BL Landlords did not (as I understood their argument) demur from this; but they contended as their primary position (which they had reserved the right to, and did, press at the Sanction Hearing), that the strongest justification is that the rent deferral is to be treated as, in effect, the introduction of 'new

money' advanced by Class A and B1-B4 Landlords to finance the turnaround of the Plan Companies' business and should be valued for these purposes accordingly and so given "pound for pound" weight, justifying differential treatment. The BL Landlords have invited me to determine the validity of the analogy suggested since, though it is not determinative in this case, it may be of significance in future plans.

175. I discuss the latter justification (that preferred by the BL Landlords) at greater length later. But since it is not disputed, and is in any event my view that either analysis would suffice to justify the differential treatment in question, I need not consider the validity of the BL Landlord's more particular position at this stage. More generally, I agree with the analysis in *Re Poundland* at [65] to [66] as quoted in paragraph [140] above, which is in line with my own in *Re Chandlers Building Supplies* (see paragraph [141] above).

176. I have also concluded, on the same basis (that is to say, by reference to the differences in their comparative importance or *"criticality"* (as Mr Hallam describes it)) to the Plan Companies (as is implicit in their designation as Core, Non-Core and General Creditors) that the differential treatment of other unsecured Plan Creditors *inter se* (and indeed in comparison to Landlord Creditors) is not unfair either, and the departure from the starting point of *pari passu* treatment of creditors in the same class for insolvency purposes is justified.

*Are the benefits preserved or generated by the Plans fairly allocated between the Plan Creditors (and Modella)?*

177. As in *Poundstretcher*, in determining whether there is a fair allocation of the benefits preserved or generated by the restructurings under the Plans ("the Restructuring Benefits") it is necessary to identify and quantify three principal elements:

(1) The overall benefits created or preserved by the restructuring;

(2) The contributions made each group of creditors; and

(3) The benefits received by each group of creditors.

178. The assessment of the value of contributions made explicitly or implicitly by the various stakeholder constituencies comprising the Plan Creditors is perhaps the most difficult aspect of the exercise required of the Court in assessing overall fairness.

179. Of particular importance in this regard is an assessment of the contributions made and to be made by the dissenting classes in comparison to that made by assenting classes, and especially, by Modella, which retains its equity shareholding.

180. As I sought to explain in *Poundstretcher* at [170]-[174]:

> "*[170] Of these elements, the most difficult to value is the second [a reference to contribution]. As to this, there are two possible approaches:*
>
> > *(1) The first is to value the contributions by reference to the nominal amounts of the claims of the creditors being compromised, ignoring the likely return on those claims in the relevant alternative;*

> *(2) The second is to value the contributions by reference to the amounts of the estimated recovery on such claims in the relevant alternative, whilst making allowance for the fact that (as per Petrofac) the compromise of even "out of the money" claims may contribute towards the restructuring benefits.*

*[171] In the present case, FRP have analysed both approaches (called the "nominal basis" and the "two-phase Relevant Alternative basis"). The Plan Company submits that the Plan is demonstrably fair whichever approach is adopted.*

*[172] However, as Mr Smith submitted, the problem with the first approach is that it presents all contributions as having equal weight. It does not differentiate between the provision of new money and the compromise of an existing claim. Equally, in relation to the compromise of existing claims, it does not differentiate to reflect the different priority of claims in the Relevant Alternative. On this approach, the provision of £10 million of new money is treated as the same contribution as the compromise of an unsecured claim of £10 million which would receive no recovery in the relevant alternative. However, as noted by Snowden J in Re Virgin Active at [282], the writing-off of existing impaired claims cannot properly be equated with the contribution made by the provision of new money:*

> *"There is, in my judgment, a considerable difference between waiver of liabilities already contracted for and which would be worthless in a formal insolvency, and new monies which will, if the Plans are sanctioned, be made available to finance future operations"*

*[173] In Re Chandlers Building Supplies Limited [2025] EWHC 2678 at [47] I noted as follows:*

> *"... the Plan benefits are shared in the following proportions: 85.6% to the Secured Plan Creditors and 14.4% to the Unsecured Creditors. This means that the Unsecured Plan Creditors will receive considerably more than their pro rata share of the benefit of the restructuring when measured against the nominal values of the parties' contributions. If the benefit of the restructuring had been shared by reference to the nominal value of the parties' contributions in the forms of claim written off or new money advanced, then the Secured Plan Creditors would have received a 95.9% share of the benefit and the Unsecured Plan Creditors would have received a share of only 4.1%. In addition, the nominal values do not reflect the fact that the Secured Plan Creditors' claims rank in priority to the Unsecured Plan Creditors' claims and that new money is a far more important contribution than the writing off an existing unsecured debt which may, in the circumstances, be entirely under water."*

*[174] In the circumstances, I agree with Mr Smith that the better and more commercially realistic approach is to value the compromise of existing claims by reference to the estimated recovery on those claims in the Relevant Alternative (and to value new money at face value). In relation to the compromise of existing claims this reflects what the relevant creditor is actually giving up. Further, this reflects the fact that the position in the Relevant Alternative is recognised to be the starting point in the analysis: see paragraph [156(4)] above.*"

181. Both of the Allocation of Benefits Reports have been prepared on what Mr Smith (on behalf of the Plan Companies) described as *"the Relevant Alternative approach"* which I preferred and adopted in *Poundstretcher* (as explained in paragraph [180] above). I remain of the view that this is the appropriate approach, provided (as Mr Smith emphasised in urging that approach in his oral submissions in this case) *"…you make allowance for the point the Court of Appeal made in Re Thames Water and Re Petrofac Ltd that the compromise of debt which is out of the money in the Relevant Alternative may nevertheless contribute in some way to the restructuring"*.

182. As noted in footnote 5 to paragraph [134] above, there is an additional complexity or variable to be considered in this case. To cover the possibility that the threshold for payment of the Excess Cumulative EBITDA payment may not be reached (and in the Valuation Report prepared by Mr Anaman (see paragraph [37(2)] above) he has noted a *"high level of execution risk"* relating to the turnaround and thus in this regard), Ms Hallam has presented *"two scenarios in* [her] *analysis, one where the Plan Companies achieve the required EBITDA threshold and the Excess Cumulative EBITDA payment is made to Eligible Creditors, and another where it is not and no such payment is made."*

183. To illustrate the differences resulting in these two "scenarios" in the Allocation of Benefits Reports, Ms Hallam has (in her Supplemental Allocation of Benefits Report) prepared a table which also shows (in columns 3 and 4) what she assesses are or would be *"the Plan Contribution by each Plan Creditor party and the proportion of the estimated financial Plan Benefits"* in each of the two "scenarios". This table is set out below[6]:

| Allocation of Benefits Summary | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Plan Creditor Party | Plan Contribution | | (i) Plan Benefits (excl. Cumulative EBITDA) | | | (ii) Plan Benefits (incl. Cumulative EBITDA) | | |
| £'000 / % | Total contribution | Total contribution % | Plan Benefits | Plan benefit % | Variance to Contribution % | Plan Benefits | Plan benefit % | Variance to Contribution % |
| ABL Creditor | 29,761 | 40.0% | 30,589 | 25.1% | (14.9%) | 30,589 | 23.4% | (16.7%) |
| Modella | 28,885 | 38.9% | 33,464 | 27.5% | (11.4%) | 33,464 | 25.6% | (13.3%) |
| Assigned Loan Creditor | 725 | 1.0% | 1,001 | 0.8% | (0.2%) | 2,775 | 2.1% | 1.1% |
| Landlord Creditors (Classes A1 and A2) | 2,772 | 3.7% | 20,770 | 17.1% | 13.3% | 20,770 | 15.9% | 12.1% |
| Landlord Creditors (Classes B1 to B5) | 3,389 | 4.6% | 16,200 | 13.3% | 8.8% | 17,109 | 13.1% | 8.5% |
| Landlord Creditors (Classes C1 and C2) | 1,391 | 1.9% | 2,474 | 2.0% | 0.2% | 4,402 | 3.4% | 1.5% |
| Remediation landlord creditors | 56 | 0.1% | 62 | 0.1% | (0.0%) | 81 | 0.1% | (0.0%) |
| Post Office | 93 | 0.1% | 100 | 0.1% | (0.0%) | 107 | 0.1% | (0.0%) |
| Core Suppliers | 4,390 | 5.9% | 13,391 | 11.0% | 5.1% | 13,391 | 10.2% | 4.3% |
| Non-core Suppliers | 55 | 0.1% | 553 | 0.5% | 0.4% | 553 | 0.4% | 0.3% |
| Business Rate Creditors | 2,353 | 3.2% | 2,532 | 2.1% | (1.1%) | 5,205 | 4.0% | 0.8% |
| General Creditors | 475 | 0.6% | 560 | 0.5% | (0.2%) | 2,396 | 1.8% | 1.2% |
| **TOTAL** | **74,345** | **100.0%** | **121,694** | **100.0%** | - | **130,839** | **100.0%** | - |

**Notes:** (a) A direct comparison of the contribution in this Allocation of Benefits Report and the claims figure in the Comparator Report will not result in matching figures. This is because the contribution made by each creditor is dependent on not just their claim within the Relevant Alternative, but also what they receive through the Relevant Alternative, and any new money injection made. (b) "Plan Benefits (excl. Cumulative EBITDA)" presented above and in the following slides includes the full amount of deferred rental payments, before any set-off against excess cumulative EBITDA. Where set-off applies the excess cumulative EBITDA included in "Plan Benefits (incl. Cumulative EBITDA)" has been reduced. (c) ABL Plan Benefits above are calculated based on Management's sensitised cashflow forecast. **Sources:** (1) Comparator Report 16

184. In making these assessments, Ms Hallam has:

(1) considered (a) new committed obligations (and attributed to them a pound for pound value), (b) Relevant Alternative returns (giving what she describes as *"proportionate weight to 'in-the-money' debt"*), (c) value created by foregoing 'out-of-the-money' claims, and (d) *"other contributions that are non-quantifiable"* (such as (by way of example only), in the case of Modella, dividend waivers and the three-year maturity extension of the Modella Facility;

6 From which the simpler table in paragraph [135] above, which does not show the "second scenario", is derived.

in the case of the Landlord Creditors, the benefit of break rights; and in the case of Suppliers, new break rights);

(2) not included any benefits beyond the three-year Rent Concession Period unless otherwise stated, to align with the turnaround period for the business;

(3) warned that the analysis is necessarily based on a range of estimates and assumptions, and cannot numerically factor in contributions and benefits that are non-financial in nature.

185. Ms Hallam's conclusions pursuant to this approach are, in summary, that in both scenarios:

(1) *"The ABL Creditor makes the largest contribution to the Plans relative to the benefit derived and Modella makes the second largest contribution. The financial contribution for both parties is higher than their share of the benefits."*

(2) *"Relative to their Plan Contributions, Class A and B Landlords receive the largest Plan Benefits, reflecting their status as most strategically important sites generating post-RP sustainable EBITDA to support the wider business. Class C Landlords receive a Plan Benefit broadly in line with their Plan Contribution reflecting the site under performance."*

(3) *"Relative to their Plan Contribution, Core Suppliers receive a higher benefit than Non-Core Suppliers and General Creditors, reflecting their criticality to the business. The Business Rate Creditors and the Post Office have a lower share of quantified benefits, but both have unquantified benefits from the TGJ Group continuing to trade."*

186. As I noted at [168] in *Poundstretcher*, echoing the observations of Sir Alastair Norris in *Poundland* at [72] (and as Ms Hallam herself appears to have recognised), such reports have *"inherent limitations"* and although typically presented to give an appearance of scientific or mathematical proof, must necessarily be based on assumptions which are subjective or variable. That said, such reports can provide a useful guide in determining, even if ultimately subjectively, whether benefits preserved or generated by the relevant plan are fairly allocated between different groups of creditors. In this case, I have found it of considerable assistance.

187. I do not think it is necessary for me to be satisfied as to the exact figures summarised in the tables. What is realistic for me is to assess the issues in the round with the "directional" assistance of Ms Hallam's overall assessments as summarised in paragraph [185]. I am satisfied in the round that her overall assessments are reasonable, and that the distribution of benefits under the Plans to the various classes of Plan Creditors is fair in comparison to their several contributions.

188. In reaching that conclusion, I confirm that, notwithstanding the BL Landlords' withdrawal of their objections in light of the negotiated modifications, I have taken into account further possible objections to sanction, as follows.

*Modella's retention of its equity interest*

189. The first is a concern which I should acknowledge I had after my initial reading, and which was one of the reasons why I delayed my decision following the conclusion of the Sanction Hearing. This is whether the valuation of Modella Acquisition Co 8 Limited's equity interest is reasonable, and in any event, whether its retention of that interest in full is fair given the treatment of the Plan Companies' creditors.

190. I have already set out in paragraphs [69] to [74] above the Plan Companies' analysis of the treatment of that interest and their justification of its retention. I have considered these matters with particular care, given both my instinctive concern and my recognition that the Plan Companies' position in this regard should be taken to reflect the position of Modella Acquisition Co 8 Limited (as their controlling parent). However, I have concluded that:

(1) Notwithstanding my initial scepticism (fuelled by the very substantial discrepancy between the valuation of nil to \$3 million and the headline price that Modella originally agreed to pay) and a background concern lest this is in the nature of a "loan to own" exercise, I have no sufficient basis for gainsaying the valuation of nil to £3 million placed on the equity interest in the Valuation Report. The Valuation Report has been prepared in accordance with the strict requirements of CPR 35. It (a) does not appear to me to be internally inconsistent or patently flawed; (b) has not been challenged by any stakeholder; and (c) was prepared before the agreed modifications, which I accept would logically reduce the valuation. I also take into account the *"high level of execution risk"* relating to the turnaround identified in the Valuation Report.

(2) The contributions made by Modella are very significant and the Allocation of Benefits Reports provide coherent support for the assessment that its share of the identified and quantified Plan Benefits is considerably less than the value of its contributions.

(3) As explained above, the provision of new money is an established justification for allowing a shareholder to retain its equity, and an injection of new money is generally regarded as a much more valuable contribution than the release of an unsecured claim.

(4) There is substance in the contention that, (a) especially having regard to the undertakings required by the BL Landlords to ensure that the balance of any profits that are *not* used to pay the Excess Cumulative EBITDA Entitlement will largely be used to renovate the stores, service debt, pay taxes and meet other operational costs, and (b) the agreed prohibition against any shareholder distributions during the Rent Concession Period, this is not a case in which the shareholder will receive a windfall from being allowed to retain its equity.

(5) There is also some general force in the argument that it would be impracticable for a very large number of landlords, suppliers and local authorities to be granted illiquid equity in an unlisted company such as RHL; and I have noted that nobody has suggested that this is a viable solution. There is no other viable (or unviable) proposal on the table. The only reason for Modella to support the Plans

and to make the very significant contributions described above is its retention of the equity.

(6) This has all the hallmarks of an adventurous equity play. My instinct is that the upside potential may well be greater than £3 million; but the execution risk is very considerable. It is, in the round, another example of what may be more generally implicit in the comparison with the relevant alternative: there can be strength in weakness. The Relevant Alternative will eventuate if Modella is denied the incentive. Retention of equity is a price of their support which is necessary for the continuation of the business. I have concluded that, on the whole, the price is justified and proportionate.

191. Another concern that I have had, and which I summarised at paragraph 8(2) of my Summary of Reasons, is whether it is fair to use cross-class cramdown powers to impose the Plans on dissenting creditors (and in particular, dissenting Landlord Creditors) at the instance (and using the anvil of) assenting creditors where their interests differ so radically from those of the dissenting creditors.

192. This is a feature characteristic of this type of 'Landlord Plan' which is one of the reasons that the Court must consider such plans so carefully lest Part 26A become an engine of abuse (and private equity power play). As I noted also in my Summary of Reasons (at paragraph 9) such plans "explore the outer reaches of a potentially draconian jurisdiction to which there must be, and which must be kept, within some bounds." As in the case of a 'comparator' in the context of Part 26 schemes of arrangement, the 'Relevant Alternative' is not a simple solvent of all concerns.

193. Ultimately, however, the choice (once again) may be the lesser of two evils. If satisfied that the jurisdictional conditions have been fulfilled; that a detailed assessment of what would happen if the plan fails has been undertaken and appears credible and consistent so that the identification of the relevant alternative is robust; and that a coherent, reasoned and balanced analysis of the fairness, both of the contributions made to secure the objective of the plan and of the fair sharing of the identified envisaged benefits of the restructuring, appears on balance to be persuasive that a fair balance has been struck, the Court would have to have more concrete reason to refuse sanction than a lingering feeling of some discomfort.

194. In short, after anxious and careful review, I have concluded that the cross-class cramdown of the dissenting classes in this case, at the instance of assenting creditors with different interests but the shared and reasonable objective of avoiding an imminent and value-destructive Relevant Alternative, should be enabled.

*Objections on behalf of St Albans District Council*

195. In reaching my conclusions, I confirm that I have also taken account of the representations made on behalf of a Business Rates creditor, St Albans City and District Council ("St Albans DC"), both in writing (on 26th June 2026) and orally (at the Sanction Hearing on 29th June 2026) through one of its officers, Mr David Adams (whom I permitted to address the Court, given that the Plan Companies did not object). I have noted that St Albans DC abstained from voting at its class meeting.

196. In summary, St Albans DC's position was that (a) the Court *"should reject the Plan on discretionary grounds as it involves an unfair allocation of the burdens and benefits of the restructuring"*; (b) under its constitution any 'write off' of Business Rate liabilities required the agreement of elected members of the Council, including the provision in the Plans for the unconditional release of Business Rates, which had not been given; (c) the release from Business Rates would give HSL a significant and unfair advantage over other retail establishments in the St Albans District and is unfair; and (d) the Plans would result in loss to the public purse and should not be permitted. Mr Adams focused his short oral submissions on that last point.

197. I have already addressed the objection summarised at (a) in the preceding paragraph ([196]). Point (b) is based on a misunderstanding: if sanctioned, the Plans take effect by law notwithstanding the provisions of St Albans DC's own constitutional arrangements. Point (c) may be an effect, but is not an effect weighing strongly against sanction. Similarly, point (d) may be true, but has to be weighed against other more general or amorphous factors, including (for example) the loss of jobs that would be the inevitable result of the Relevant Alternative.

198. In short, none of these points of objection has persuaded me against sanction.

*Further discussion of BL Landlords' case that their contribution is 'new money'*

199. I shall now return to the interesting but not (in this case) determinative submission made by Mr Shaw KC on behalf of the BL Landlords as to what he described orally as *"the [un]fairness of the treatment of the year one reductions beyond years two and three"*, or in other words, the value to be ascribed to a particular form of Landlord contribution. He urged me to decide this as *"a point of principle which is important to my clients in relation to this plan, but I anticipate probably in relation to future plans too."*

200. More particularly, this submission was initially to the effect that the Court should (to quote his skeleton argument) *"treat future rent reductions as substantial contributions which are equivalent to new money"* but later (at the stage of oral submissions at the Sanction Hearing itself) was confined to the narrower proposition that in this case, the Rent Deferral Amounts should be so treated.

201. The point, as thus confined, focused and was premised on the fact, which Mr Shaw took to be apparent from the Plan Companies' own case, that the relevant reductions *"are more than is needed to achieve sustainable EBITDA in the relevant store, and…are more than is needed to bring the rent down…to the market rent"*. On that basis, and given the right of the Landlords to terminate their leases, Mr Shaw submitted that:

> *"…the existence of the termination right strengthens my argument that the landlords are contributing new money. Just as Modella has chosen to advance the new money loan of 15 million, the plan…puts Class A Class B1 to B4 landlords to an election. They can choose to get off the bus or they can choose to stay on. If they choose to stay on, the contribution that they are making is more than is needed to plug the drain to the company's financial performance. The years two and three rent reductions are all that is needed to plug the drain…The additional rent reductions in year one are a contribution to cash flow. And I say that that is just as much new money as an injection of cash…*

> *It's a choice being made by the relevant landlords to invest in the business, and they should get their investment back…it is that additional element which justifies…the security and the repayment in year three."*

202. In confining his case to the Rent Deferral Amounts, Mr Shaw acknowledged that the premise (that the Deferral Amount was in excess of what was required as explained above) was an unusual one, and probably restricted to the position such as in the Plans (which he submitted was unprecedented) which provide for rent reductions not just in respect of properties that are over-rented (either in the sense of being surplus to requirement or as being on terms above a sustainable rent), but also in respect of properties which, as Mr Shaw put it, *"on the Plan Companies' own case make a sustainable contribution to EBITDA and are at market rent or below."*

203. It was on this basis that he sought to distinguish contrary authority to the treatment he urged (such as *Lazari Properties 2 Ltd and others v New Look Retailers Ltd and others* [2021] EWHC 1209 (Ch) (which in fact concerned a corporate CVA)). He went further in the case of certain comments by Snowden J in *Virgin Active* which he suggested could not stand in light of the trilogy of Court of Appeal decisions to which I have referred previously and which overruled the assumption in cases before then that 'out of the money' creditors could simply be ignored because there is no unfairness in being deprived of that to which you have no entitlement in the applicable relevant alternative.

204. The key proposition emerging from cases such as the *Lazari Properties* case which Mr Shaw had to confront was expressed in that case by Zacaroli J (as he then was) as follows (at [220] to [221]):

> "[220] …the loss of future rent is not forced upon the landlords by the CVA, but is the consequence of the company's insolvency….
>
> [221]…the reduction in rent and modified terms are not forced on Compromised Landlords: the inability to pay full rent is the consequence of New Look's insolvency and the reduction in rent and other modifications only apply if the relevant Compromised Landlord does not opt to terminate its lease."

205. As I understood, Mr Shaw's suggested answer to this was, in summary, that on the particular facts of the present case (and possibly in cases to come) the Rent Deferral Amount should not be regarded as a consequence of insolvency, but as a voluntary making available of an additional amount beyond what is needed to avoid insolvency and thus as a contribution to cash flow.

206. Mr Smith's response, also in summary, was that this was an attempt to introduce a distinction between the Rent Deferral Amount and the other rent reductions, and does not hold water: he dismissed it as a *"distinction without a difference"*, primarily on the ground that (as he went on to explain in his oral submission in reply):

> *"It obviously isn't a loan. It's not new cash coming in that's advanced: it is a deferral of an obligation that already exists on which they would only receive pence in the pound in the alternative scenario to the plan, and it simply cannot carry the same weighting."*

207. As I have emphasised, I do not consider the point decisive in this case. My reluctance to reach a definitive view to provide guidance in other contexts is the greater in light of the narrowness of the point and its confinement to particular factual circumstances which have not arisen previously and may not arise again. All I would say, with diffidence, is although Mr Shaw put his point attractively, it seems to me that Mr Smith has the better of the argument, and is supported by what Zacaroli J said in *Lazari Properties*: a compromise of an existing right because of its greatly diminished value in the relevant alternative is not to be equated with the making available of new money on market terms.

***Have the Plans sufficient prospect of attaining their stated objectives?***

208. Lastly, before recording my conclusion and making certain further observations as to the practice of the Court, I have had to stand back from the detail and consider whether the Plans have a sufficient prospect of achieving their purpose. It is trite that the Court should not act in vain; and still less should it impose immediate and aggressive discounts and present creditors (and in particular the dissenting Landlord Creditors) with invidious choices (whether to exercise termination rights or break clauses) in pursuit of an avowed objective which seems to it most likely or bound to fail.

209. As I noted in my Summary of Reasons (see paragraphs 8(5) and 10(5)) this caused me real concern in this case, given the headwinds presently confronting retail businesses in the UK and the Plan Companies' recent trading difficulties which reflect them.

210. I have considered carefully Mr Willson's evidence (in his third witness statement) which provides an "overview of the Business' forecast performance" and explains more fully the assumptions on which the Business Plan is based, the expenditure envisaged (including capex investment to improve deteriorated retail outlets) and why management though recognising that *"turning around a business is not straightforward"* nevertheless *"considers that the Business Plan is realistic and can be successfully implemented"*. I have summarised the evidence in paragraph 10(5) of my Summary of Reasons.

211. Suffice it here to say that despite the inherent uncertainties, the express recognition (by the Valuation expert in particular) of the *"high level of execution risk"* and my concern (also expressed in my Summary of Reasons) that some of the *"turnaround aspirations"* might strike the sceptic as more in the nature of generic aspirations than concrete grounds for confidence in a successful outcome, I do not consider that I should refuse sanction on this ground.

212. I have accepted Mr Smith's submission that the Court does not have to be satisfied that the Plans will achieve their purpose: it is sufficient if the Court accepts that the Plans have a reasonable prospect of doing so. The fact that neither the BL Landlords nor any other stakeholder has objected on the grounds of futility or the like supports me accepting this.

213. Further, and as I stated in my Summary of Reasons, I do not consider that I have the experience or expertise to discount management's view. I am neither an economist nor a retail business expert; and I consider that I am entitled to assume that Modella and management must have sufficient faith in success to hazard further money, time and effort on bringing the turnaround plans to fruition.

## *Conclusion and general observations*

### *Conclusion*

214. For all these reasons, which elaborate on my thinking as reflected in my Summary of Reasons, I concluded that the Plans were not unfair and should be sanctioned. I made Orders accordingly, on 1st July 2026.

215. I have been much comforted in that conclusion by the fact that in the end the negotiations with the BL Landlords resulted in materially modified and more satisfactory Plans and the withdrawal of the objections which otherwise would might well have tipped the balance against giving sanction.

### *General observations*

216. The course I took in reserving my decision at the end of the hearing for two days from 3:39pm when the hearing concluded to 10:30am on Wednesday 1st July appeared to cause some consternation amid dire warnings of the *"extreme urgency"* and the risk of the Plan Companies' imminent collapse.

217. In this case, I accept that by the time of the hearing (which was fixed to be heard over two days, on Monday 29th June and Tuesday 30th June), the matter had indeed become very urgent. As explained in paragraph [14] above, the ABL Facility stipulated a default date of 29th June 2026 (although a 10-day grace period had been agreed) and the Modella Facility provided for an event of default if sanction for the Plans had not been obtained by 21 July 2026. Further, there was the background threat of creditor enforcement actions.

218. I was, of course, aware of these default dates and general risks when I determined that I should reserve my decision for a short time. As I saw it, both the agreed grace period and the date stipulated by the Modella Creditor plainly envisaged the possibility of some limited slippage; and although the risk of enforcement could not altogether be excluded, it was, to my mind, unlikely to eventuate whilst I considered my decision, given the likely reaction of the Court to such a step and the apparent inadvisability of triggering the Relevant Alternative.

219. In the event, after urgent provision (at my request) of the transcript of the hearing and further review in the course of Monday night and Tuesday of the voluminous and detailed evidence (including the complex expert reports) I was able to provide a decision and my summary of my reasons at 10:30am on Wednesday, 1st July. The Court is mindful of the great commercial pressures which a plan company may be under, and also of the fact that the utility of Part 26A in the perception of the market both here and abroad depends on efficient process and speedy and reliable resolution of plans brought pursuant to its provisions.

220. However, as had been emphasised time and again, the Court's function is dispositive and not ministerial. There must be time provided for in a plan timetable for the Court to assimilate the often dense and complex material and oral argument which is characteristic of such plans if the Court is properly to fulfil that function.

221. I am concerned that, despite frequent emphasis of this, the reaction to the short deferral of my decision in this case may indicate that there has developed amongst the market and professionals dealing with schemes and plans an expectation that the Court will give its decision immediately at the end of the hearing.

222. That expectation may not be inappropriate, and indeed is, in my experience, the usual practice, in the case of simple or commonplace scheme such as 'Transfer schemes' to facilitate a takeover involving nothing exceptional or out of the ordinary, and where the Court has been provided in good time with a skeleton argument and the evidence. However, I consider that it is misplaced in the case of a complex scheme or plan, and particularly where the Court's cross-class cramdown jurisdiction is sought to be invoked.

223. Such Part 26A plans and some Part 26 schemes can be very detailed and complex. As in this case, they may involve difficult or controversial legal analysis, as the plethora of authorities cited before me illustrates. The parties and their advisers will have worked on the matter for months; but the Court has very little time to read in advance; and the problems are the greater where (as here) the judge for the sanction hearing did not deal with the convening hearing. An expectation of an immediate decision in such a case, and indeed in any case of complexity, is misplaced. In this case, it was especially inappropriate.

224. The complexity of the matter should by now be obvious. Furthermore, whilst the Court would not wish to discourage even late negotiation (as took place here) if thereby a better and more consensual plan can result (as it did here), the consequence was that the timetable that Marcus Smith J had stipulated was not fulfilled, and the Court had very little time before the hearing to process the documents provided and the skeleton argument providing an initial explanation of them.

225. In short, whatever may be the commercial pressures, the Court must have time responsibly to discharge its function and properly exercise its discretion. An expectation of an immediate decision is inconsistent with that in cases of complexity, and I consider in most cases involving cross-class cramdown. If some sudden business failure for want of adequate time-planning is to be avoided, plan companies and their advisers must factor in an appropriate period for the Court's consideration, though that will, wherever possible, be undertaken with great urgency. It may be that a Practice Statement will be required to bring these points home with more general application and formality. In the meantime, I consider and suggest that all concerned in these plans and schemes should take note and frame the timetables for their applications accordingly.