RESTRUCTURING PLANS UPDATE – KEY DEVELOPMENTS

Over the course of summer 2025, the UK restructuring landscape has undergone a series of notable developments, with the courts being busy with several restructuring plans ("**RP**s") and publishing a revised court Practice Statement on schemes of arrangement and RPs. This briefing provides an overview of the key judgments, themes, and judicial commentary that have shaped the market in recent months. With retailers in particular facing challenging economic conditions, we expect to see retailers continuing to use RPs to address both operational and financial liabilities.

Key issues

- Revised Court Practice Statement on schemes and Restructuring Plans now published
- Need for stakeholders to: (i) engage effectively and on a timely basis with creditors; and (ii) demonstrate the fair allocation of restructuring benefits among all parties involved
- Out of the money creditors cannot be ignored
- Retailers continue to battle headwinds and further retail RPs are expected

REVISED PRACTICE STATEMENT

On 18 September 2025, the court released a revised Practice Statement governing RPs and schemes of arrangement to be effective for convening hearings listed on or after 1 January 2026. The revised Practice Statement seeks to promote early identification of issues, efficient case management, and enhanced transparency, in particular, ensuring that creditors affected by RPs are engaged at an early stage and have sufficient information to consider the proposed compromise.

Whilst the revised Practice Statement will assist in procedural efficiencies, it ought not affect the ability of parties to make use of the RP or scheme process. For most parties acting reasonably and in a timely fashion, there will be no real change to the approach.

Key updates include:

- **Issuing proceedings**: Applicants must now issue a claim form before the court allocates a hearing date.
- **Listing note:** A detailed listing note must accompany the claim form, outlining hearing time estimates, an indicative timetable, and any factors giving rise to urgency or contested issues.
- **Early issue identification**: Applicants must identify, ahead of the convening hearing, any issues that could lead the court to refuse sanction.
- **Evidence and timelines**: Applicant's evidence must be filed and available to creditors/members at least 14 days before the convening hearing, with objectors required to identify objections at least 7 days prior. This means

valuation, the "relevant alternative", and any restructuring benefits reports must be substantially complete two weeks before the first court hearing.

- **Explanatory Statement:** The explanatory statement must be concise, commercially focused, and include a summary of terms, with clear guidance on accessing annexed or referenced documents. It should be in final form at the convening hearing.
- **Case management:** The court is empowered to give detailed case management directions, including for expert evidence, disclosure, and costs.

We generally welcome these changes, particularly the emphasis on early issue identification, clear communication, and proportionate case management. However, as we had noted in our response to the consultation, requiring a claim form to be issued before arranging court hearings could trigger events of default under finance documents and market disclosure obligations. In addition, the increased publicity has the potential to create further instability, albeit the revised Practice Statement is subject to court rules allowing for restricted access and anonymisation where appropriate, which may help to mitigate such concerns. These are all issues which will require careful management by the company and its advisors, and appropriate support from its stakeholders.

The themes of the revised Practice Statement are clearly derived from how the case law has been developing. In the remainder of the briefing, we consider how these themes are already being played out in the courts, alongside the more substantive legal issues regarding the treatment of out of the money creditors and fair allocation of the benefits of the restructuring.

SUMMER 2025 JUDGMENTS

The UK courts were highly active in restructuring matters this summer, with several decisions impacting the RP landscape. At the start of July, the Court of Appeal in *Petrofac* [2025] EWCA Civ 821 set the scene for the increased scrutiny in cross-class cramdown cases, as it unanimously rejected a plan that had previously been sanctioned by the lower court. That case reiterated the message from the Court of Appeal in *Thames Water* [2025] EWCA Civ 475, that creditors which would be 'out of the money' in the relevant alternative to the plan could not simply be ignored, and that their interests and contribution to the restructuring ought to be considered when allocating the benefits of the restructuring under the plan. *Petrofac* was the subject of an application for permission to appeal to the Supreme Court, but that the appeal is not to proceed. Taking their lead from the Court of Appeal judgment in *Petrofac*, *Thames Water* and *Adler* [2024] EWCA Civ 24, cases that followed have included *Waldorf* [2025] EWHC 2181 (Ch), *River Island* [2025] EWHC 2276 (Ch), *Poundland* [2025] EWHC 1822 (Ch), and *Madagascar Oil* [2025] EWHC 2129 (Ch). TheRP in *Waldorf* was not sanctioned but has been granted a leapfrog certificate by the High Court to appeal to the Supreme Court. The application for permission to appeal was filed with the Supreme Court on 23 September 2025. Until any appeal is considered, the guidance provided by the Court of Appeal in each of *Petrofac*, *Thames Water* and *Adler* remains binding on subsequent cases. Following those appeal decisions, the most recent cases provide some key takeaways for debtors and creditors alike which we have summarised below:

DEBTOR	CREDITOR CLASSES	AIMS OF RP	SANCTION OBTAINED	CRAM DOWN UTILISED
WALDORF PRODUCTION UK PLC	Secured bondholders, unsecured creditors	Extend liquidity runway and avoid insolvency	X	✓ *(attempted)*
MADAGASCAR OIL LIMITED	Two unsecured creditor classes	Restart operations, inject new funding, prevent ricochet claims	✓	✓
RIVER ISLAND HOLDINGS LIMITED	Secured lender, landlords, business rates, unsecured creditors	Avoid administration, restructure leases, inject capital	✓	✓
POUNDLAND LIMITED	Landlords, financial creditors, business rates, general creditors	Avoid administration, close stores, restructure debt	✓	✓

KEY THEMES

CREDITOR ENGAGEMENT AND CROSS CLASS CRAMDOWN

Recent decisions have made it clear that courts now expect companies proposing RPs to tender evidence of meaningful creditor engagement prior to commencing proceedings. Consideration of creditor engagement forms part of the assessment of whether the court should exercise its discretion to sanction the plan. This is also an aspect reflected in the recently published revised Practice Statement (see further above). The extent of creditor engagement required will vary according to the nature of the creditors.

Lack of creditor engagement by the debtor was a key reason the court refused to sanction the RP proposed in *Waldorf*. In that case, the plan company proceeded on the basis that they were not required to engage with the business' largest unsecured creditor because they were "under water" in the relevant alternative, and, consistent with the position pre-*Thames Water*, "under water" creditors need only be offered a de minimis amount. Whilst there is no clear-cut test as to when this threshold is met, the court sent a clear signal that a creditor cannot simply be ignored on the basis that it is out-of-the-money.

The court has noted that the absence of genuine attempts to negotiate with all of a company's stakeholders places the court in a more difficult position when seeking to assess fairness more generally, which may contribute to the failure of an RP. In *Poundland*, the plan company did seek to engage with a number of its largest creditors but, given the urgency of the application and the resultant short timeframe in which such discussions were held, the court expressly preserved the ability of plan creditors to make representations at sanction. Ultimately the plan was sanctioned on 26 August 2025, cramming down eight landlord classes and the general class of creditors.

On the other side of the coin, a lack of engagement with the court by dissenting creditors may lead to them being crammed down. In *River Island*, the plan company launched an RP seeking to reorganise its leasehold stores portfolio, with the plan company organising ten separate creditors' meetings to consider and vote on the proposals (of which seven were various classes of landlords). The RP provided for differential treatment between the parties, the RP, however, received approval from a range of classes including the secured creditor, two of the landlord classes, business rates creditors, and general creditors. A key landlord had been in contact with the company following issuance of the Practice Statement Letter, but despite being invited to state its objections to the plan following the meetings at which it voted against the plan, it declined to do so. The court stated that, in the absence of any evidence from the dissenting creditor as to its reasons for voting against the RP, "the plan company, bearing the burden of persuading the Court that the restructuring plan should be approved, cannot be expected to argue the case for the dissenting creditors". The court in River Island was unable to ascertain why, given the dissenting creditor was better off under the plan than in the relevant alternative, the RP would not benefit the company's creditors as a whole given the plan was based on a "carefully applied rational methodology". It follows from this guidance that debtors should continue to engage with their creditor(s), and creditors should continue to engage with their debtor(s), where possible.

Cross-class cramdown was also used in *Madagascar Oil*. The plan company launched an RP relating to only two creditors, with the assenting creditor being the plan company's shareholder and the provider of new money. Notwithstanding that the two creditors ranked *pari passu* as unsecured creditors, the RP provided for differential treatment between the parties on the basis that the shareholder was agreeing to provide new money, with the dissenting creditor being crammed down (or 'crammed across'). Taking its lead from the Court of Appeal's approach in *Petrofac*, the court stated that "the proper use of the cross-class cram down power is to enable a plan to be sanctioned against the opposition of those unreasonably holding out for a better deal, where there has been a genuine attempt to formulate and negotiate a reasonable compromise between all stakeholders." It is notable that there were not, on the facts, any credible alternatives to the RP in that case, including in relation to the provision of alternative sources of funding. The case also reflects the principle that different treatment of creditors of the same rank is possible as long as it can be justified (see further below).

FAIRNESS OR FAIR VALUE?

A critical question as to fairness continues to be: "what value should assenting creditors give to dissenting creditors in order for a plan to be considered "fair"?". The *River Island* judgment encapsulated this by stating that "[t]he 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".

The consideration that should be given to out-of-the-money creditors remains a point of contention. The position in *Virgin Active* [2021] EWHC 814 (Ch), as developed in the decisions that followed, was that the views of dissenting out-of-the-money creditors carried little or no weight, and *de minimis* payments to such out-of-the-money creditors were permissible as long as they offered more than under the relevant alternative. However, following the rejection of this principle in *Waldorf*, debtor companies can no longer assume a restructuring plan will be considered fair at sanction largely because it benefits those that would be 'in-the-money' in the relevant alternative (provided that the out-of-the-money creditors are no worse off).This marks a shift from earlier decisions that largely excluded such creditors from the value created by restructuring.

As noted above, Waldorf has, however, applied directly to the Supreme Court for permission to appeal the decision which saw its RP rejected. The primary basis of Waldorf's appeal is the court's rejection of the above-mentioned views in *Virgin Active*. The outcome of any appeal at the Supreme Court level would therefore have important implications for creditors and debtors alike in how compromises with out-of-the-money creditors ought to be approached.

In assessing the "fairness" of creditor treatment in an RP, the court appears keen to recognise, in particular, the benefits created by creditors providing new money in circumstances where no one else in the market is willing to do so on similar terms. The provision of such new money can justify differential treatment to similarly situated creditors (see *River Island, Poundland*). However, even where new money is provided, the court will be seeking to ensure that the cram down mechanism is not being used as a tool to provide 'in the money' creditors with an inequitable share of the restructuring benefits at the expense of the 'out of the money' creditors, and market testing will be critical to this aspect of the fairness analysis. Indeed, in *Madagascar* Oil, it was noted that "the Company bears the burden of showing that the returns on new money are either equivalent to that which could be obtained in the market (and hence not a benefit of the restructuring), or justifying the fair allocation of those benefits".

COSTS

The courts have also clarified the approach to costs in RP cases. While dissenting creditors who assist the court at first instance may recover their costs, this does not generally extend to appeals. For example, in *Thames Water*, unsuccessful objecting creditors were ordered to pay the costs of the appeal, while in *Petrofac*, successful appellants were awarded their costs. Parties should be aware that pursuing contested appeals carries significant cost risks.

PRESSURE POINTS – RETAIL

River Island and *Poundland* are the latest in a long line of retail RPs to come before the courts. The uptick in the number of retail businesses seeking rescue via RPs and other restructuring processes is understandable against the background of economic conditions in the UK of persistent high inflation, increased labour costs from National Insurance and minimum wage increases, higher business rates, and increased cyber security costs, among others. Alongside increased costs, retailers are grappling with a decline in consumer spending, as households seek to increase savings and reduce expenditure, particularly on discretionary items. As a result, retailers selling non-essential goods, such as electronics, fashion, and entertainment products have experience reduced revenue alongside increased costs, further straining margins.

In proposing a RP, boards of retail businesses are encouraged to undertake a detailed analysis of the retail operation in order to ascertain the commercial viability of the stores and the investment required to effect a turnaround. *River Island* notes that the methodology is relatively settled, with store profitability remaining the primary metric, to be benchmarked against store location, forecasted and adjusted for any special factors. In sanctioning a RP, it will be important for the court to see such methodology has been conscientiously applied.

Both River Island and Poundland came to the courts with very limited liquidity, facing imminent closure but for the imposition of the RPs proposed. *Poundland* is perhaps distinct in that the RP was developed as a result of negotiations between its previous and new shareholders and its urgency was a result of the late sale to the new shareholder. In the end, it is notable that all of the landlords and general unsecured classes rejected the RP, whilst the financial creditors and business rates classes approved the RP.

For more on how the case development and revised Practice Statement may affect the approach to RPs, or to discuss the practical implications and other options available, please get in touch with our team.

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