Poundland and River Island – post-Petrofac retail restructuring plans sanctioned

Bulletin No 1146

Case: Re Poundland Limited [2025] EWHC 1822 (Ch),Thompsell J, 8 July 2025 (convening); [2025] EWHC 2755 (Ch), Sir Alastair Norris, 24 October 2025 (sanction); Re River Island Holdings Limited [2025] EWHC 2047 (Ch), Thompsell J, 11 July 2025 (convening); [2025] EWHC 2276 (Ch), Sir Alastair Norris, 4 September 2025 (sanction)

Synopsis: The High Court sanctioned restructuring plans proposed by two high street retailers with over-rented lease portfolios. In each plan, the relevant alternative was an immediate administration, with an expected short trading period in which to liquidate stock. Financial accommodation was provided in each case by existing shareholders and secured creditors; landlord classes in the main rejected the plans. The court in each case found that the opposing landlord classes were substantially better off under the plans than in the relevant alternatives. Moreover, the proposed sharing of the burden of each plan, and the allocation of benefits preserved or generated, was fair between the assenting and dissenting classes.

Topics Covered: Restructuring plans; relevant alternative; cross-class cram down; landlord lease restructuring; allocation of plan benefits; out-of-the-money creditors

Comment

These decisions reaffirm the benefit of restructuring plans for businesses wishing to reduce a substantially overrented leasehold portfolio as part of an operational turnaround plan. Applying the Court of Appeal's analysis in *Petrofac* (Technical Bulletin 1126) to evaluating the treatment of new money, the court was satisfied that new money being advanced to the plan companies by shareholders or secured creditors was not on unfavourable market terms. As such, the new money should not be characterised as a benefit accruing to them, but rather as a contribution to the restructuring which entitled them to benefit from the upside of each restructured company.

The value-sharing mechanisms under which future value generated by the restructuring first would be shared with out-of-the-money unsecured creditors before any return would be made to shareholders, contributed to the court's finding that the plans were fair. In each case, the plan company's proposed distribution was supported by a plan benefits report, setting out the contributions made by creditor classes and the allocation of benefits under the plan. These expert evidence reports have become standard practice post-*Petrofac*, albeit the inherent uncertainty of such an exercise was acknowledged by the court ("*piling assumption upon hypothesis*" and providing "*no more than a very approximate guide to horizonal comparisons*"). Nevertheless, the court found the reports of assistance in satisfying itself that neither plan contained a fundamental unfairness that, even in the absence of reasoned opposition, would lead to refusal to sanction.

The levels of creditor engagement prior to the launch of the plans was closely scrutinised following the Court of Appeal's comments in *Petrofac*. In each case, the court found engagement to be adequate. The lack of a collective landlord position, together with failed attempts by certain landlords to negotiate bilateral side-deals, persuaded the court that there was no obvious fairer plan or implementable alternative.

Facts

River Island: The plan company had an immediate liquidity shortfall of approximately £43 million and was unable to pay its debts as they fell due. Subject to the compromise of leasehold and other liabilities under the restructuring plan, a secured creditor had agreed to extend maturities under an existing facility and inject new money.

Under the terms of the plan:

- The maturity of the secured credit facility (currently due) would be extended to December 2028
- The secured creditor would provide an immediate £35m revolving credit facility (which would be increased by £5m in January 2026)

- The group's affected leasehold portfolio was separated into seven classes based on store profitability and by the level of rent reduction and other adjustments the group determined necessary to make the lease sustainable. These ranged from Class A (all rent and property costs paid in full on a monthly basis and with all dilapidation claims released), four sub-categories of Class B (graduated rent reductions of 25% to 75% during a 36-month rent concession period, the release of rent arrears and dilapidation claims), and two sub-categories of Class C (rents reduced to zero, the release of rent arrears and dilapidation claims, landlords in the second sub-category of closing stores given an additional break right in January 2026). Class B and Class C landlords would be given a break right exercisable 30 days post-effective date.

- Business rate arrears would be released and liabilities arising within six months of the post-effective date would be compromised in full.

- General unsecured creditors of property-related, accrued or contingent claims, would release all claims in full.

The consideration under the plan would comprise payment equal to 200% of the estimated return in the relevant alternative of an administration, as well as the right to participate in a Profit Share Fund, under which compromised creditors would receive further payment if the group achieved certain performance hurdles. Payments from the Profit Share Fund would be made before any future reduction in the secured credit facility or any return to shareholders. The relevant alternative was a short trading administration to realise stock.

The secured creditor, the Class B1 and Class B4 landlords, the business rate creditors, and the general unsecured creditors approved the plan. All other landlord classes (including the Class A landlords) rejected the plan.

Poundland: Facing a deteriorating cash position, the group had been sold in June 2025 to a turnaround specialist following a competitive sales process. The sale attributed no value to Poundland's equity and was dependent on a continuing dowry from the sellers, who agreed to extend and subordinate a secured term loan and to leave in place substantial unsecured loans. The purchaser provided a working capital facility with a commitment to increase its amount following a successful restructuring of the group's leasehold portfolio.

Under the terms of the plan:

- The working capital facility provided by the purchaser would be increased (from £80m to £95m) and its maturity extended by 3 years, with first-ranking priority.

- The seller's secured loan's maturity would be extended by 5 years.

- The seller's unsecured loans (approximately £244m) would be discharged and released in full in exchange for 30% of the shares in the purchaser (and therefore indirectly the group).

- The group's affected leasehold portfolio was separated into seven classes based on store profitability and by the level of rent reduction and other adjustments the group determined necessary to make the lease sustainable. These ranged from Class A (largely unimpaired other than a revised payment schedule and the compromise of all dilapidation claims), through five sub-categories of Class B (graduated rent reductions of 15% to 75% during a 36-month rent concession period, the release of rent arrears and dilapidation claims, each landlord given a break right exercisable within 90 days post-closing and the Poundland tenant a break right within 120 days following the end of the rent concession period), and two-subcategories of Class C (rents reduced to zero, the release of rent arrears and dilapidation claims, each landlord and tenant given a rolling break right following closing on 60 days' notice or terminated).

- Business rate arrears would be released and liabilities arising during the rent concession period would be compromised in full, subject to receipt of business rates payable during a notional "trade-out" period identified under the relevant alternative.

- General unsecured creditors of property-related, accrued or contingent claims would release all claims in full.

The plan provided for a 170% uplift on what each unsecured creditor would have received in the relevant alternative of an administration with a minimum payment of £500, together with the prospect of future profit share (for all except the Class A landlords) based on profit achieved above a three-year cumulative EBITDA threshold.

The plan company's financial advisers prepared a report illustrating the allocation of benefits under the plan by class measured alongside each class's respective contribution.

The working capital facility creditor class, secured loan creditor class, unsecured loans creditor class, and business rates class each voted in favour of the plan. Other than the Class B3 landlord class, each landlord creditor class and the general creditor class rejected the plan. The court was invited to exercise its discretion to cram down the dissenting classes and sanction the plan.

Decision

River Island. The court sanctioned the plan, ordering cram down of the dissenting creditor classes. The cross-class cram down gateways had been met: dissenting landlord classes were significantly better off than in the

relevant alternative of an administration, and an in-the-money assenting class had approved the plan.

The court considered the developing appellate guidance on its exercise of discretion to cram down dissenting classes, describing the purpose of the discretion as to enable the court to prevent any one class of creditor from exercising an unjustified right of veto (*Petrofac*). The judge set out eleven principles he drew from the guidance of the Court of Appeal in *Adler* (Technical Bulletin 1061), *Thames Water* (Technical Bulletin 1122) and *Petrofac* (Technical Bulletin 1126). These included:

- a fair sharing of the burden of the 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, taking into account the source of the benefits;
- the starting point for assessing the fairness of the allocation being the treatment of the dissenting class in the relevant alternative, although that was only the starting point;
- where the relevant alternative is an insolvency process, the initial expectation will be *pari passu* treatment of creditors within each insolvency class, although a plan could depart from this if justified on proper grounds; and
- the evolution of the plan as part of an assessment of whether it is a genuine attempt to formulate a fair and reasonable solution to a critical problem as opposed to an attempt to impose arbitrary compromise terms upon creditors with a view to extracting advantage in a critical situation.

No dissenting landlord appeared at the sanction hearing to oppose; one landlord had corresponded with the plan company after the creditor meetings but declined to particularise any class-specific unfairness or to advance an alternative plan. The judge observed that it was not for the plan company to argue the dissenting creditors' case. He characterised the plan as a genuine attempt to bridge a funding gap whilst an operational restructuring was effected. The differing treatment of unsecured creditors under the plan was justifiable; in the case of the landlord classes, this was based on a carefully applied rational methodology. The principal contribution came from the secured lender through a rescue funding on terms favourable to those available to the plan company in the market.

The judge queried why Class A (the least-impaired landlord class) had voted against the plan whereas a significantly more impaired class had voted in favour. He attributed the outcome to "block voting" by multi-site landlords across classes (one of which was a retail competitor of River Island). These votes appeared unrepresentative of the interests of a creditor solely within the given class as a landlord.

The plan company had commissioned a plan benefits report, which set out the percentage level of return that each class was anticipated to receive in respect of its contribution to the benefits preserved or generated by the plan. Given that some of the benefits and contributions were inherently difficult to quantify (for example, many of the compromised leases were due to terminate during the rent concession period and so the returns to landlords would vary accordingly), the judge commented that the report provided no more than a very approximate guide to evaluating the plan's 'horizonal' fairness between classes. Nonetheless, it was sufficient to demonstrate that the treatment of assenting and dissenting classes was consistent, that all landlords would receive an immediate return on their contribution, and that the secured creditor was making the most significant contribution (through the new facility) but would not recover its existing and new loans for at least 3 years (the length of the rent reduction period).

Further, even assuming healthy annualised growth, the equity value of the plan company was expected to remain negative for at least 5 years and the shareholder was obliged to set up and contribute to the Profit Share Fund during that period.

Poundland: The court sanctioned the plan, exercising its discretion to cram down the dissenting creditor classes. The cross-class cram down gateways had been met: dissenting landlord classes were significantly better off than in the relevant alternative of an administration (receiving 170% of estimated returns and access to a profit-sharing mechanism), and an in-the-money assenting class had approved the plan.

No dissenting landlord appeared at the sanction hearing. One multiple landlord had corresponded with the plan company following the convening hearing to propose an alternative restructuring plan but this amounted to no more than the landlord requesting a preferential side deal for itself without explanation of how such side deal would sit alongside the fair treatment of other creditors. The judge found it unacceptable "*to be presented with a jumble of incoherent requests for different treatment"* at the sanction hearing.

In the absence of argued opposition, the court undertook a high-level fairness review of the plan. The judge recited the same eleven principles he had articulated in *River Island* before applying them to the present plan. The benefits preserved or generated by the plan were sourced by the group's former owner (the write-off of its unsecured loans, extension of an overdraft facility and secured loan) and the new owner (increasing the working capital and provision of operational turnaround support). Any return on equity would be realised only after a challenging profit target had been reached and would be shared with the compromised creditors under the profit share arrangement. The judge concluded that there was no unfair allocation of benefit to excluded creditors or shareholders, and sanctioned the plan.