

Valuation Reports for UK Restructuring Plans Must Comply with Formal Requirements for Expert Evidence – *Chaptre Finance*

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At a Glance

In [approving](#) the restructuring plan of Chaptre Finance, the English Court criticised the expert evidence for failure to comply with formal requirements (under Part 35 of the Civil Procedure Rules).

The court accepted that the debtor faced an acute liquidity crisis and was close to collapse, and that opposing creditors faced certain budgetary and timing constraints in formulating their challenge. It nonetheless emphasised the necessity of complying with formal requirements as to expert evidence and (in general) cross-examining witnesses whose evidence is opposed.

This decision puts beyond doubt the position that Kirkland has adopted for some time (and has communicated to the wider market via specific guidance and teach-ins): all expert evidence in restructuring plan cases, including the “relevant alternative” valuation report, must comply with CPR Part 35.

This judgment also underlines the ongoing trend toward characterisation of restructuring plans as commercial litigation, in areas such as:

- case management;
- the risk of appeal and a stay pending appeal (as in *Adler*);

- settlement discussions (as in *McDermott*);
- disclosure issues (as in *Virgin Active*, among other cases); and
- security for costs (as in *Consort Healthcare*).

These areas have become highly nuanced and sophisticated; we would be happy to discuss further with interested clients.

Background

The purpose of the restructuring plan – Chaptre Finance’s second such plan – was to introduce new super-senior funding. The plan was opposed by certain creditors under one of the senior facilities (including a credit insurer that was a contingent creditor to the Group).

At the convening hearing, the plan company relied on valuation reports (with relevant alternatives evaluated on both a going concern basis and in formal administration) which did not comply with CPR Part 35. Specifically:

- there was no statement of the author’s independence, qualifications or experience; and
- there was a disclaimer stating that the report provider owed no duties to any stakeholder or the court.

Prior to the sanction hearing, the opposing creditors indicated their opposition and submitted letter commentary critiquing the plan company’s expert evidence (whilst acknowledging that the opposing experts’ letter was not an expert report). The plan company then filed additional expert reports containing a confirmation of compliance with CPR Part 35, confirming the experts’ overriding duty to the court and providing details of the experts’ relevant experience.

Judgment

Compliance with CPR Part 35

The court held that:

- although the court must have regard to timing constraints, in general, where either the plan company or objecting creditors wish to rely on the opinions of experts, their reports should comply with the requirements of CPR Part 35; these requirements should not be regarded merely as a formality;
- the plan company's original opinion evidence was flawed because it did not comply with CPR Part 35, did not identify specific authors or their expertise and "worse still" disclaimed any duty to the court (i.e., in a disavowal of experts' overriding duty under CPR 35.3);
- had the plan company not filed additional expert evidence prior to the sanction hearing, it would have struggled to satisfy the "no worse off" test (which must be satisfied when compromising a dissenting class under a restructuring plan), as the court could not properly have accepted evidence from experts who had expressly disavowed any duty to the court; and
- the opposing experts' letter was of very limited (if any) evidential value.

Cross-examination of opposing experts

The court declined to reject expert evidence (regarding the appropriate distressed sale discount) which was criticised by counsel for the opposing creditors without cross-examination of the relevant expert.

The court reiterated the rule that an objecting party should produce its own expert witness and (in general) parties are required to cross-examine the evidence of an opposing expert witness that they wish to submit should not be accepted.¹ This is partly a matter of fairness but also enables the judge to assess the evidence.

Limited budget not a justification for non-compliance

The court held that opposing creditors' decision to constrain their budget for the challenge could not justify a departure from the usual requirements concerning the early identification of contentious issues, the service of properly compliant evidence or the cross-examination of witnesses. The judge reiterated that the court has jurisdiction to make orders for the costs of opposing creditors.

* * *

Notwithstanding its criticisms of the expert evidence, the court ultimately approved the plan, in reliance on the subsequent expert evidence that did comply with CPR Part 35.

1. As the Supreme Court recently reiterated in *TUI UK Ltd v Griffiths* (2023). There may however be grounds to relax this rule or where the rule may not apply – e.g., where there is an obvious mistake on the face of the report or the report fails to comply with CPR Part 35.↩

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Suggested Reading

- 09 October 2024 Kirkland Alert European Court of Justice Rules on Centre of Main Interests: Neither Assets nor Human Resources Required
- 30 September 2024 Kirkland Alert Cineworld: Court Approves Restructuring Plans Compromising Dissenting Landlords (Despite Contractual Agreement Not to Seek Further Compromise)
- 23 September 2024 Kirkland Alert *Wirecard*: German Appeal Court Rules Shareholder Damages Claims Rank *Pari* to General Unsecured Claims

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