

# Waldorf: English Court Approves Second Restructuring Plan, Despite HMRC Opposition

5 MAY 2026

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# At a Glance

The English High Court today (5 May 2026) handed down its [judgment](#) approving the restructuring plan of Waldorf Production plc, despite opposition from the UK tax authority, HMRC.

The plan facilitates a \$205 million sale of Waldorf to Harbour Energy (a listed oil and gas company), conditional upon the full settlement of Waldorf's existing debts via the plan.

In parallel, the Scottish Court today approved a restructuring plan in respect of a Scottish company in Waldorf's group, with a reasoned judgment to follow.

This decision follows the court's refusal to sanction a previous restructuring plan proposed by Waldorf (**RP1**) — see our [Alert](#), August 2025.<sup>1</sup>

**HMRC may seek permission to appeal; we expect that any such appeal would most likely be heard directly by the Supreme Court.**

This decision marks the first cramdown of HMRC following the Court of Appeal's trilogy of restructuring plan judgments (*Adler*, *Thames Water* and *Petrofac*), with the focus on the fair allocation of benefits of the restructuring.

HMRC raised various jurisdictional, statutory and discretionary objections to the plan, essentially arguing that:

- ▶ **Tax Losses:** the very extensive tax losses within Waldorf group, which were an asset that Harbour wished to acquire and use to shield its profits from tax, should be taken into account for the purposes of the "no worse off" test and as a matter of the court's discretion; and
- ▶ **Unfairness / Abuse of Process:** it was unfair and an abuse that Harbour — which could pay the plan company's outstanding c.\$94 million tax liabilities under the Energy Profits Levy regime<sup>2</sup> (the **EPL Liabilities**) — be able to acquire those valuable tax losses, while insisting that the EPL Liabilities be extinguished (albeit with a payment of 14% of the debt under the plan), and that the restructuring plan regime was being used to avoid a lawful tax liability.

Rejecting all of HMRC's objections, the court held:

- ▶ **Compromise of HMRC:** there is no jurisdictional bar to the court exercising its cross-class cramdown power against HMRC, even where HMRC has rationally decided to oppose a plan; HMRC's opposition is to be accorded great weight, but it does not have a veto;
- ▶ **No Worse Off Test:** HMRC would be better off under the plan than in the relevant alternative; Harbour's utilisation of tax losses was not part of the existing rights being compromised by the plan and was therefore not relevant to the statutory no worse off condition to binding a dissenting class; and
- ▶ **Fairness:** while recognising that the tax losses were intimately bound up with the deal, the losses were not necessarily a "contribution" from HMRC; they could instead be considered "benefits preserved or generated by the restructuring". In all the circumstances, it was fair to approve the plan, notwithstanding HMRC's objections (including as to the plan company's past conduct).

**Mediation:** This was the first UK restructuring plan to involve mediation. The mediation successfully resolved the opposition of Capricorn, an unsecured creditor in respect of an M&A settlement claim which had opposed RP1 along with HMRC. HMRC declined to participate in the mediation; the court was unconvinced by its reasons for doing so (see further [here](#)).

See Key Takeaways on next page.

**"It can perhaps be seen as hard-nosed to treat HMRC like any other unsecured creditor that is not essential to pay in order to keep the business going. But that is the reality and Parliament has not granted it any preferential status in relation to Part 26A plans."**

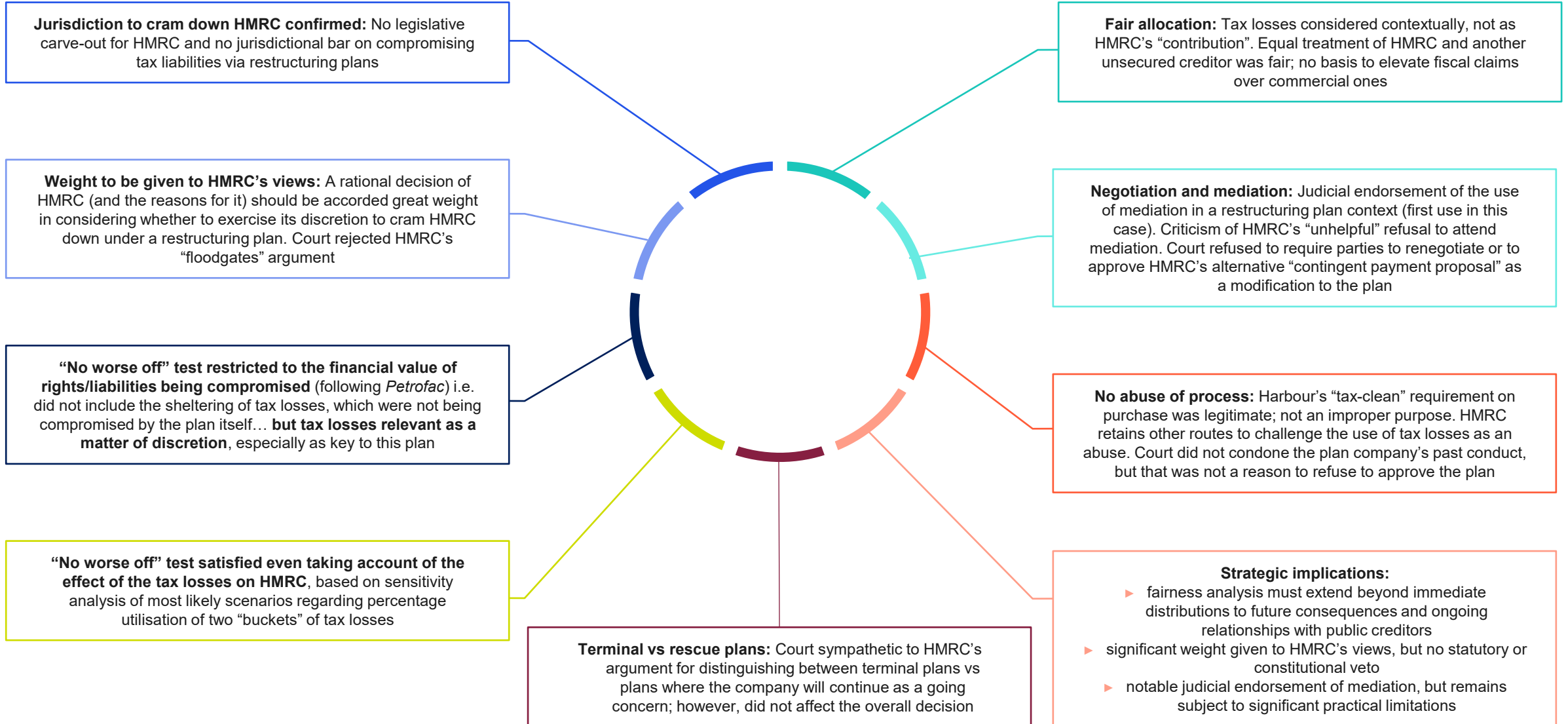
**"HMRC's status and its views on the fairness of the Plan... should be accorded the greatest of respect and weight. But its views and belief have to be subject to scrutiny so as to test if they are well-founded or not."**

**"There is no logical reason why HMRC should be treated differently to the other unsecured creditor which has agreed to the Plan."**

Extracts from [judgment](#), 5 May 2026

1. The Supreme Court granted Waldorf permission for a 'leapfrog' appeal (i.e., without being heard by the Court of Appeal); however, Waldorf withdrew that appeal in favour of pursuing a sale to Harbour in conjunction with this second restructuring plan.  
2. The EPL regime represents a windfall tax on the profits of North Sea oil and gas companies.

# Key Takeaways



# Jurisdiction and Status of HMRC as Creditor

## HMRC's Argument

HMRC essentially argued that its status and constitutional mandate to recover the payment of taxes, where it has rationally resolved to vote against a plan, means the court “is unable to sanction the restructuring plan or impose a cross-class cram down on HMRC” or should decline to do so because it would be “to impose on HMRC a ‘compromise or arrangement’ which HMRC has rejected and/or could not accept”.

In particular, HMRC argued that:

- ▶ HMRC is an involuntary, non-commercial creditor, charged with statutory duties and with no ability to negotiate the terms of its relationship;
- ▶ HMRC's central function of responsibility for the collection of tax entails the duty to act in a way it considers is most likely to achieve the best net returns to the Exchequer;
- ▶ in exercising its discretion to make concessions in particular cases, HMRC cannot go outside the guardrails set by Parliament: it has no discretion to release tax that is indisputably due and owing;
- ▶ HMRC's decision-making in this regard can only be challenged by way of judicial review;
- ▶ when exercising its power to cram down HMRC, the court should have regard to the fact that HMRC is a public body; and
- ▶ there is a contrast between:
  - a terminal restructuring plan – in which HMRC may exercise its power to approve a plan that results in a greater return than in the relevant alternative (exercising its management powers to make a rational choice between a lower or higher return); and
  - a plan in which (as here) the relevant entity continues to trade (and is being purchased by a market player with substantial liquidity), in which HMRC's relationship with the company is continuing and therefore wider considerations come into play. Here, the proposed sale would entitle Harbour to utilise tax losses in Waldorf to shield its profits and reduce tax payable by c.\$900 million (according to a public statement in Harbour's accounts); HMRC argued the benefit of shielding the tax losses was four times the burden of the EPL payable.

## Court's Judgment

- ▶ The court rejected HMRC's constitutional argument: there is no jurisdictional bar to the court exercising its cross-class cram down power against HMRC, even where HMRC has rationally decided to oppose a plan.
  - *“If it were otherwise, HMRC would have an effective veto against restructuring plans and I do not see that that could possibly have been the legislative intent behind the introduction of Part 26A; nor would it be consistent with the rescue culture embodied within this area of law and current company and insolvency law generally.”*
- ▶ The decision that HMRC rationally had come to (and the reasons for it) should be accorded great weight in considering whether the court should exercise its discretion to cram HMRC down. However, that does not mean the Court has no jurisdiction to consider exercising its discretion because of HMRC's status as a public body carrying out a critical constitutional function (in particular, given the lack of a legislative carve-out for HMRC).
- ▶ This is the third case in which HMRC has been crammed down, following *Houst* and *Prezzo*.
  - In *Nasmyth* and *Great Annual Savings*, the plans were not sanctioned, largely owing to HMRC's objections.
  - HMRC has also voted in favour of various restructuring plans in the mid-market.<sup>1</sup>

# The “No Worse Off” Test

## HMRC’s Argument

It was common ground that if one simply looked at the EPL Liabilities, then HMRC would be no worse off under the plan (14% recovery) than in the relevant alternative (estimated 0.1% recovery).

HMRC’s argument therefore depended on the comparison not being limited to the EPL Liabilities, but rather the overall net recoveries to the Exchequer.

HMRC asserted that the statutory “no worse off” test<sup>1</sup> was not met because its overall net recoveries in RP2 would be \$22 million lower than in the relevant alternative of insolvency proceedings, given Harbour’s intended offsetting of \$900 million tax losses (i.e. offsetting ring-fenced trading losses against future profits following RP2 and thereby reducing HMRC’s tax recoveries from the group).

## Court’s Judgment

### 1. Were the tax losses relevant to the no worse off test?

- ▶ The no worse off test is a jurisdictional condition; there must be clarity as to what is being valued under the plan as compared with the relevant alternative.
- ▶ Following the Court of Appeal’s judgment in *Petrofac*, the court held that:
  - the test must be confined to the creditor’s existing rights as a creditor that are being compromised by the plan;
  - “any wider rights, interests or liabilities that are not being compromised by the plan are... outwith the scope of the no worse off condition”; and
  - the Court of Appeal has plainly ruled out any wider consideration of the no worse off test to take into account the tax losses from which HMRC might have to give relief if the plan were sanctioned: “they are not part of the existing rights that are being compromised by the plan and therefore I do not think they are relevant to the no worse off condition”.
- ▶ Accordingly, on the evidence, the plan satisfied the no worse off test.

### 2. As a matter of fact, would HMRC be worse off under the plan because of the tax losses?

- ▶ The court considered this question notwithstanding its finding that the no worse off test was satisfied, given the potential relevance for fairness considerations as a matter of discretion.
- ▶ The court held that the correct net loss to the Exchequer would be much lower (given an assumption that the two group companies with the greatest tax losses would be sold as going concerns in the relevant alternative and certain other factors).
- ▶ Based on the evidence, it was not a reasonable assumption to make that Harbour would be able to utilise 100% of the group’s current tax losses and the future tax losses arising out of certain decommissioning expenditure. The court accepted a joint expert statement indicating realistic use of the tax losses would be <90%.
- ▶ Taking everything into account, HMRC would likely be better off under the plan than the relevant alternative.

# No Abuse of Process; Fairness, Negotiation and Engagement

## HMRC's Argument

### Abuse of Process:

HMRC argued that:

- ▶ the plan was an abuse of process because its principal purpose was to use Part 26A to extinguish the EPL Liabilities, providing Harbour with “an opportunistic windfall” that had the effect of avoiding tax which it could afford to pay – i.e. this was a case of “won’t pay” rather than “can’t pay”; and
- ▶ the court should not endorse a plan that seeks to extinguish a tax liability for no good reason. (The plan company accepted that the only reason for the plan was to extinguish the EPL Liabilities; absent the EPL Liabilities, the sale to Harbour could have been completed without the plan, as all other creditors had consented to the compromise of their debts.)

## Court's Judgment

Holding that the basis for HMRC's allegation that the plan was an abuse of process was “quite difficult to discern”, the court held that:

- ▶ the offer from Harbour was the only credible deal available and it was not surprising that Harbour was only prepared to purchase Waldorf without the EPL Liabilities;
- ▶ the only question really was whether the plan treated HMRC fairly or not, as considered below; “*simply because the plan company is seeking to cram down the EPL Liabilities cannot make it an abuse, as that would always be the case for any plan that sought to compromise a tax liability*”; and
- ▶ accordingly, the court rejected the objection that the plan constituted an abuse of process.

## Was the Plan Fair? Framework for Decision-Making<sup>1</sup>

- ▶ HMRC argued that a distinction should be made between (a) a “terminal” plan where the company will not continue to trade but the plan will result in higher returns to creditors (as in *Adler*) and (b) a “rescue” plan where the purpose is to enable the company to continue to trade as a going concern.<sup>2</sup>
- ▶ HMRC complained of a lack of engagement by the plan company to try to reach a compromise with HMRC (which was a key reason why RP1 failed).
- ▶ HMRC asked the court to allow the parties time to renegotiate the terms of the plan – potentially based on an alternate proposal made by HMRC based on contingent payments (see next page) – or to sanction the plan on the condition that the EPL Liabilities be not extinguished.

The court observed that the fairness and the exercise of its discretion had always seemed to be the real heart of HMRC's objections to the plan. However, HMRC's core case had “had the rug pulled from under it” by the failure to challenge the plan company's analysis of the factual and expert evidence that showed HMRC would actually be better off under the plan than in the relevant alternative. The court held that:

- ▶ there was no good reason to depart from the commercial deal reached by the plan creditors (without HMRC) that enabled the sale to Harbour to be completed; and
- ▶ renegotiating with Harbour to try to get it to pay the EPL Liabilities would completely overturn the basis of Harbour's offer and would risk losing the deal, which would be highly prejudicial to all the other stakeholders.

(continued on next page)

1. The principles from the Court of Appeal's decision in *Adler* require the court to look beyond the “no worse off” condition and to determine whether any differential treatment of different classes of creditors can be justified. The focus is on the fair allocation of the benefits preserved or generated by the restructuring (per the Court of Appeal in *Thames Water*).

2. As the Court of Appeal noted in *Thames Water*, “guidance developed in the context, say, of a distributing restructuring plan may not read across directly to a plan designed only as an interim measure”. The above distinction between “terminal” and “rescue” plans appears to have been recognised by the Court of Appeal in *Petrofac*.

# No Abuse of Process; Fairness, Negotiation and Engagement (cont.)

## Was the Plan Fair? Framework for Decision-Making: the Court's Judgment (*continued*)

- ▶ The court was sympathetic to HMRC's argument that the availability of valuable tax losses could be taken into account in considering fairness of the plan. The wider implications and purpose of the plan were important.
- ▶ The plan was dependent on the preservation and use of tax losses. It would be "unrealistic and unfair" not to consider the impact of the use of those tax losses upon HMRC and the Exchequer. The sale consideration was only available because Harbour intended to acquire and utilise Waldorf's tax losses; accordingly, the tax losses were intimately bound up with the deal.
- ▶ The court held that:
  - it was not strictly necessary to define the preservation of the tax losses as a "contribution" by HMRC to the benefits of the restructuring; instead, the tax losses could be considered a "benefit preserved or generated by the restructuring";
  - it could not be argued that, because of the tax losses, either HMRC should receive a greater share of the consideration from Harbour or that the EPL Liabilities should not be extinguished;
  - HMRC's suggestions that the court should allow parties time to renegotiate, or sanction the plan subject to a condition that the EPL Liabilities be not extinguished, were not realistic nor practical as they would require a fundamental re-trade of the sale and purchase agreement and jeopardise completion;
  - although it could perhaps be seen as "hard-nosed" to treat HMRC like any other non-essential unsecured creditor, "that is the reality and Parliament has not granted it any preferential status in relation to Part 26A plans";
  - although HMRC's status and its views on fairness of the plan should be accorded the greatest respect and weight, it was nonetheless fair to approve the plan;
  - HMRC's objections based on the plan company's past conduct<sup>1</sup> did not affect the fairness of the plan; and
  - money spent in proposing RP1 and the plan was not so unreasonable as to be a factor against sanction.
- ▶ **Accordingly, the court sanctioned the plan.**

### Engagement and Mediation

- ▶ As noted, HMRC declined to participate in a mediation between the plan company and plan creditors as to how the consideration from Harbour's proposed \$205 million purchase<sup>2</sup> should be divided between plan creditors. This was principally because:
  - its internal decision-making processes do not lend themselves to getting immediate instructions on offers and counter-offers during the course of a mediation;
  - it must be mindful of setting a precedent by attending such a mediation (which might then require it to attend other mediations in restructuring plans); and
  - participation in mediation would involve a diversion of HMRC's limited resources.
- ▶ The court accepted these were genuine institutional considerations but "did not find those reasons for not attending the mediation particularly convincing": "as it was HMRC's complaint in relation to RP1 that the plan company had not engaged with the unsecured creditors, it was unhelpful for it then to refuse to attend a mediation in relation to the plan, thus preventing the sort of meaningful engagement it had sought in RP1".
- ▶ After the mediation, HMRC proposed its own "**contingent payment proposal**" for the EPL Liabilities, which would become payable as and when the restructuring benefits "contributed" by HMRC to the plan accrued – i.e., effectively an offer of a Time To Pay arrangement.
  - HMRC submitted that the plan could be sanctioned subject to the adoption of this proposal, with the extinguishment of the EPL Liabilities removed from the plan.
  - However, the court found it difficult to see how it could impose such a fundamental change to the plan: "*it would be a radically new plan in which the EPL Liabilities are not extinguished whereas the other Plan Creditors, including the M&A Creditor which in reality is in the same class as HMRC, will continue to have their debts extinguished. I do not think it would be right or fair for the court to interfere in the commercial compromise embodied in the Plan in that way.*"

# Annex: Background, Terms of and Voting on the Second Plan

- ▶ **Plan Company:** Waldorf Production UK plc – NB parallel Scottish plan approved in relation to Scottish company, Waldorf CNS (I) Ltd
- ▶ **Purpose of Plan:** To enable the group to be sold to Harbour Energy free of certain liabilities via a share purchase agreement signed in December 2025. The purchase was conditional on the sanctioning of the restructuring plan and either the expiry of the period for appeal, or the successful disposal of any such appeal.
- ▶ **Relevant Alternative (not disputed):** Formal insolvency proceedings in respect of the plan company. Two members of the group (with the most valuable tax losses) would likely be sold as going concerns. HMRC would assume 50% of decommissioning exposure under decommissioning relief deeds.<sup>1</sup>
- ▶ **Near-term History:** As noted, the court refused to sanction the plan company's first plan in August 2025 (see our *Alert*); the plan company obtained permission for a 'leapfrog' appeal to the Supreme Court.
- ▶ Pending the appeal, Harbour Energy made a non-binding indicative offer to acquire most of the Waldorf group for \$205 million, conditional on full and final settlement of all claims by material third party creditors.
- ▶ The plan company withdrew its appeal and launched this second restructuring plan to release the relevant liabilities, replacing RP1.

CREDITOR CLASSES <sup>2</sup>	TREATMENT UNDER PLAN – CASH PAYMENTS FUNDED OUT OF NET PURCHASE CONSIDERATION	ESTIMATED RECOVERY IN RELEVANT ALTERNATIVE	APPROVALS
<b>1 Super Senior Bondholders</b>  <i>Secured; c.\$62 million outstanding; matured in September 2025</i>	41.5% of nominal value of claims (with total 100% recovery from other Group entities)	100%	100%
<b>2 Original Bondholders</b>  <i>Secured; c.\$55 million outstanding; matured in September 2025</i>	62% of nominal value of claims	46.7%	100%
<b>3 M&amp;A creditor, Capricorn Energy plc</b>  <i>Unsecured creditor in respect of c.\$30 million M&amp;A liabilities<sup>3</sup></i>	14% of nominal value of claim	0.1%	100%
<b>4 HMRC</b>  <i>In respect of unsecured (non-preferential) EPL liabilities totalling c.\$94 million</i>	14% of nominal value of claim	0.1%	Rejected

1. Contracts between UK oil and gas companies and HM Treasury, intended to give companies and financiers certainty as to the basis on which tax relief will be available for decommissioning.  
2. As is common in restructuring plans where the company will continue to trade, all trade creditors who are considered "essential" to the survival of the business were left outside the plan.  
3. Capricorn opposed the first restructuring plan but – following mediation – voted in favour of this second plan.