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TG Jones' UK Restructuring Plans: Observations on Equity Retention and Cross-Class Cramdown in 'Landlord Plans'

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At a Glance

The English Court yesterday handed down its full reasons[1] for approving mid-market restructuring plans proposed by TG Jones, the high street retailer formerly trading as WH Smith.

British Land landlords initially opposed the plans; following significant modifications to the plans, British Land adopted a largely neutral position.

In considering the exercise of its discretion to "cram down" dissenting classes (principally landlords), the court:

- approved the plans only after significant scrutiny of the retention of equity by the existing shareholder, warning that cross-class cramdown must not become "an engine of abuse" when creditors' interests diverge as sharply as they did here;
- assessed creditors' relative contributions to the plan by reference to their estimated recoveries in the relevant alternative (a value-destructive administration) rather than merely the nominal value of their claims — while making allowance for the point that the compromise of debt which is out-of-the-money may nevertheless contribute in some way to the restructuring;
- preferred the view that rent deferrals should not be treated as equivalent to "new money" when considering creditors' contributions, though did not decide this point; and

- was concerned as to whether the plans would achieve their stated objectives but ultimately concluded it sufficed that the plans had a “reasonable prospect” of doing so — coming close to imposing a “viability” or “feasibility” test.[2]

The court closed with a warning to the market on unrealistic timetables — a reminder that, whatever the commercial pressures, timetables must allow time for the court to consider its decision, especially in cross-class cramdown cases.

Overall, whilst the judgment continues in a similar vein to previous restructuring plans compromising landlords, it emphasises the significant scrutiny such plans must face, especially where the existing shareholder is to retain equity. The significant modifications to the plans — in response to British Land’s objections — illustrate a constructive process following launch of the plans, which the court considered resulted in “fairer plans.”

Background: TG Jones’ ultimate owner, Modella Capital, acquired the WH Smith high street business in 2025. Two companies proposed restructuring plans: HSL, the primary operating company, and its indirect parent RHL, the tenant of all but two stores. The group faced a significant funding shortfall. Despite the modifications, eleven creditor classes did not approve the plans.[3]

Judgment: The court held as follows.

Class composition on landlord plans: The court followed the approach in previous restructuring plans involving landlords, with landlord creditor classes constituted by reference to rent reductions under the plan and refurbishment costs. It noted an “oddness” inherent in the practice of categorising landlord creditor classes according to the plan company’s own assessments of site profitability (which then result in different “rights out”), rather than by reference to creditors’ defined legal rights as is conventional outside landlord plans. However, there was no sufficient reason to depart from the well-trodden approach.

Justification for equity retention: Modella retained its full equity stake in the group. The court recorded its concern and initial scepticism, but nonetheless upheld the retention of equity on the basis that:

- there was no sufficient basis to gainsay the valuation of post-restructuring equity, especially absent a challenge;
- Modella’s contribution (including £25 million of new money plus £6.4 million of impaired secured debt written off despite being recoverable in full in the Relevant

Alternative) considerably exceeded its share of the identified benefits under the plan;

- the provision of new money remains a much more valuable contribution than the release of an unsecured claim;
- this was not a case in which the shareholder would receive a windfall from being allowed to retain its equity, especially given (a) undertakings to reinvest certain profits to, e.g., renovate stores and service debt and (b) a prohibition on shareholder distributions during the rent concession period;
- 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 there was no other viable (or unviable) proposal on the table; and
- the equity carried real execution risk alongside its potential upside; retention of equity was a price of Modella's support, which was necessary for the continuation of the business.

Cross-class cramdown where interests differ: The court applied the approach confirmed by the Court of Appeal's trilogy of restructuring plan decisions (Adler, Thames Water and Petrofac). It expressed its concern as to whether it is fair to use cross-class cramdown powers where the interests of assenting creditors differ so radically from those of the dissenting creditors (in particular, dissenting landlord creditors). It noted the court must consider such plans carefully "lest Part 26A become an engine of abuse." Ultimately, it approved the cramdown notwithstanding the different interests of the assenting and dissenting creditors, given the "shared and reasonable objective of avoiding an imminent and value-destructive relevant alternative."

Rent deferrals not equivalent to "new money": British Land's primary case, advanced notwithstanding the wider settlement, was that rent deferrals should 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 — including because the landlords could instead have exercised their termination rights. Counsel for the plan companies instead characterised this as a deferral of an existing obligation, on which landlords would only receive pence in the pound in the alternative scenario to the plan — which could not carry the same weighting as new money. The court did not decide the point, which was not decisive in this case. However, it indicated that it preferred the plan companies' analysis; 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.

Basis for valuing creditors' "contributions": The judge confirmed the approach he adopted in Poundstretcher: creditors' contributions to a restructuring (for the purpose of evaluating "fairness" of a cross-class cramdown) should be valued by reference to their estimated recovery in the relevant alternative, whilst making allowance for the fact that — per the Court of Appeal's decision in Petrofac — the compromise of even "out of the money" claims may contribute towards the restructuring benefits. This so-called "two-phase relevant alternative" approach is preferable to the so-called "nominal" basis, under which creditors' contributions would be valued by reference to the nominal amounts of their claims, ignoring the likely return on those claims in the relevant alternative. Differential treatment between the unsecured creditor classes was sufficiently justified on the facts.

Plan evolution: British Land unsuccessfully sought to adjourn the convening hearing to allow further negotiations; the court instead gave directions for a "parallel process" involving a continuing negotiation alongside preparation for the plan meetings and sanction hearing. As noted, material modifications to the plans were agreed with British Land (for the benefit of the plan creditors generally, rather than solely in respect of its own sites), which then withdrew its opposition. The modifications included:

- the deferral (instead of the extinguishment) of Year 1 rent reductions, and the creation of security in respect of the sums deferred;
- undertakings to reinvest 75% of the Year 1 rent reductions in the group's business and to use all commercially reasonable endeavours to carry out capital expenditure in line with the business plan;
- increased entitlement of eligible creditors to a profit-sharing arrangement (based on cumulative reported EBITDA in 2027-2029);
- modifications to dilapidations arrangements; and
- the waiver of substantial licence fees to use the newly minted name "TG Jones" (the original inclusion of which the court found "smack[ed] of self-interest").

The judge welcomed the waiver of the IP licence fee as suggesting that the directors recognised their responsibility to act in the interests of their companies rather than shareholders, whilst noting the concern prompted him to take more time for sceptical review of the plans. Overall, the modifications "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."

"Reasonable prospect" of success: The court was conscious of the headwinds confronting UK retailers, the plan companies' recent trading difficulties, the "high level of execution risk" under the plans and that some of the "turnaround aspirations" might strike a sceptic as "more in the nature of generic aspirations than concrete grounds for confidence in a successful outcome." It recorded its concern as to whether the restructuring plans had a sufficient prospect of achieving their purpose; the court should not act in vain, and "still less should it impose immediate and aggressive discounts and present creditors … with invidious choices … in pursuit of an avowed objective which seems to it most likely or bound to fail."

However, the court accepted the plan companies' argument that the court did not have to be satisfied that the plans would achieve their purpose: "it is sufficient if the Court accepts that the plans have a reasonable prospect of doing so." The fact that no stakeholder had objected on the grounds of futility supported this and the court was "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."

Objection from business rates creditor: The only creditor objection to survive to the sanction hearing came from St Albans City and District Council, a business rates creditor. The Council argued the Plans involved an unfair allocation of the burdens and benefits of the restructuring, lacked agreement from elected Council members (which the Council's constitution required before writing off business rates liabilities), gave HSL an unfair advantage over other local retailers, and would cost the public purse. The court rejected each point: the first had already been addressed in the general fairness analysis; the second rested on a misunderstanding, since a sanctioned plan took effect by statute regardless of internal governance requirements; the third might have been a real effect but did not weigh heavily against sanction; and the fourth, even if true, had to be weighed against other consequences of the relevant alternative, including job losses.

Timetable: The court closed with a pointed message to the market on process: expectations of an immediate decision are misplaced for a complex plan requiring cross-class cramdown: "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." It indicated a Practice Statement might be required to formalise this point; in the interim, the court urged plan companies and their advisers to frame the timetables for their applications accordingly.

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1. This full judgment follows Hildyard J's summary of reasons for approving the plans on 1 July.↩

2. Similarly, the European Preventive Restructuring Framework Directive provides that courts may "refuse to confirm a restructuring plan where that plan would not have a reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business" — art. 10(3).↩

3. Namely the class of general creditors in HSL's plan and 10 of RHL's 16 classes (including all landlord classes, bar Class A1 landlords).↩

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