Neutral Citation Number: [2021] EWHC 911 (Ch)

Case No: CR-2021-000548, 549 and 550

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice
Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 16 April 2021

Before :
MR JUSTICE SNOWDEN
- -
IN THE MATTERS OF

VIRGIN ACTIVE HOLDINGS LIMITED
VIRGIN ACTIVE LIMITED
VIRGIN ACTIVE HEALTH CLUBS LIMITED

AND IN THE MATTER OF PART 26A OF THE COMPANIES ACT 2006
- -
Tom Smith QC, Ryan Perkins and Lottie Pyper
(instructed by **Allen & Overy LLP**) for the **Applicant Companies**
Robin Dicker QC and Georgina Peters
(instructed by **Sullivan & Cromwell LLP**) for an **Ad Hoc Group of Landlords**
Richard Fisher QC (instructed by **Ince**) for **Riverside Crem 3 Limited**
Simon Passfield and Samuel Parsons
(instructed by **Browne Jacobson LLP**) for **Pure Gym Limited**
Alec McCluskey (instructed by **Wallace LLP**) for **Mr. Sol Unsdorfer**

Hearing date: 1 April 2021
- -

Approved Judgment

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is 10 a.m. on Friday 16 April 2021.

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MR JUSTICE SNOWDEN

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1. On 1 April 2021 I handed down a judgment explaining my decision to convene class meetings of creditors for each of the three Virgin Active companies which are seeking the approval of creditors and the sanction of the court to plans pursuant to Part 26A of the Companies Act 2006: see [2021] EWHC 814 (Ch) (the "Convening Judgment"). I shall use the same abbreviations herein as in that judgment.

2. Following the handing down of the Convening Judgment I heard arguments on costs from leading counsel on behalf of the Plan Companies, the AHG and Riverside. The Plan Companies had earlier reached agreement to pay the costs of Pure Gym and the Manager of Canary Riverside (Mr. Sol Unsdorfer), which had been claimed in the sum of about £32,000 and £39,000 respectively. The Plan Companies accepted that Pure Gym and the Manager had appeared and made helpful observations, mainly about the scope and drafting of the Plans, and that they should be paid their costs.

3. The AHG and Riverside also sought payment of their costs in relation to the Convening Hearing by the Plan Companies. Their costs were materially greater in amount than the costs of Pure Gym and the Manager. The AHG claimed that their costs of the convening hearing were about £735,000 plus VAT, and Riverside claimed about £82,000. The Plan Companies rejected that request, contending that they should not be required to pay the costs of the AHG and Riverside as a matter of principle, and that the decision on costs should in any event be deferred until after the sanction hearing.

The arguments in outline

4. Mr. Dicker QC, who appeared on behalf of the AHG, contended,

> "The normal and long-standing practice of the court, in proceedings such as these, is to order the successful applicant to pay the costs of creditors if their arguments were of assistance to the court, whether at the convening hearing or the sanction hearing, and to do so even if their arguments were ultimately unsuccessful."

5. Mr. Dicker QC submitted that this practice exists because the court does not view Part 26 schemes as adversarial litigation, and hence the normal principles on costs under CPR 44 are inappropriate. In particular, he contended, where a scheme is proposed for an insolvent or likely insolvent company, the company is seeking the assistance of the court, and the directors are obliged to regard the interests of creditors as paramount when formulating the scheme. On that basis, he submitted, the application to the court has more in common with an application to the court by trustees for the benefit of beneficiaries under the first category of case discussed in Re Buckton [1907] 2 Ch 406 at 413-417.

6. Mr. Dicker QC submitted that such principles were even more relevant to plans under Part 26A. He pointed out that under Part 26, the rejection of a scheme by a class of creditors would mean that it could not be sanctioned, and hence any creditor opposing sanction would be objecting in spite of the approval of the class of which it was a member. He contrasted that with plans under Part 26A, which have the added feature that even if a class of creditors rejects a plan because they do not consider it to be in

their best interests, the court might nevertheless be asked to sanction the plan under Section 901G. Mr. Dicker QC contended that such "cram down" was a more extreme interference with the rights of creditors at the instigation of the insolvent company, and hence there was even less reason why members of a dissenting class of creditors should be liable to bear their own costs of a process in which their rights could be altered in that way without their consent.

7. On the facts of the instant case, Mr. Dicker QC referred to the relative lack of prior engagement by the Plan Companies with the Landlords, the abbreviated timetable proposed by the Plan Companies, the fact that the Plan Companies did not make available the evidence in relation to the Plans until shortly before the Convening Hearing, and the fact that they did not indicate that they did not intend to rely on paragraph 10 of the Practice Statement as regards decisions taken at the Convening Hearing until service of Skeleton Arguments. He submitted that in these circumstances it had been entirely reasonable for the AHG to prepare for and attend the Convening Hearing and to raise their concerns over the process and the Plans.

8. Mr. Dicker QC also contended that even though the AHG might not have succeeded in obtaining any significant alterations to the Explanatory Statement or a materially longer timetable for the court process, they had raised matters of genuine concern and substance in both respects. He submitted that the AHG had succeeded in obtaining the provision of some additional information from the Plan Companies (on a confidential basis) that would enable them better to understand the treatment they were being offered under the Plans, and which might be relevant to arguments on class composition, on general discretion, or on cram-down, all of which were still available at sanction.

9. Mr. Dicker QC further contended that even though it was his clients' current intention to appear at sanction and oppose the Plans, I could and should form a view about the entitlement of his clients to the costs they had incurred in relation to the Convening Hearing and make an order now rather than wait until after the sanction hearing.

10. Mr. Fisher QC endorsed those submissions, and emphasised that Riverside's main concern was to understand why its Lease had been placed into Class B. He added that it was particularly appropriate that his client should receive its costs now, because (in contrast to the AHG's current intention) it had not yet decided whether to appear at sanction and oppose the Plans. He submitted that Riverside therefore had more in common with Pure Gym and the Manager who had been paid their costs to date.

11. For the Plan Companies, Mr. Smith QC denied that there was an established practice that creditors who appeared on scheme hearings under Part 26 could expect to be paid their costs irrespective of the outcome. Although he accepted that creditors who conducted themselves reasonably and raised sensible points could generally expect not to be subjected to adverse costs orders, he contended that the authorities indicated that the question of whether, and in what circumstances, an opposing creditor should be paid its costs by a scheme company was entirely a matter for the exercise of discretion by the court on a case by case basis.

12. Mr. Smith QC further submitted that it would significantly reduce the intended utility of Part 26A plans as a restructuring tool for companies in financial difficulties (including SMEs), if the plan company automatically had to pay the costs of any creditors who chose to appear and raised arguable points, but who ultimately failed in

their opposition. He contended that this was especially so in a case where the opposition to a plan to address the company's financial difficulties came from a dissenting class of creditors who would be receiving more under the plan than in the relevant alternative, but who engaged in what he described as "hostile litigation" in their own commercial interests against the broader interests of the company and the assenting classes of creditors. He submitted that, if Re Buckton had any relevance, such a case fell into the third category of cases in which a litigant could not expect to be paid its costs from the trust fund.

13. Mr. Smith QC also submitted that where, as in the instant case, the court could see that it was inevitable that there would be a sanction hearing because a majority of one class of Plan Creditors had already committed to vote in favour of the Plans, it would be logical and far better for the court to leave the exercise of discretion on costs until sanction. At that stage, he suggested, all the circumstances of the case would be apparent and it would, in particular, be known what role had in fact been played, and what assistance had been given to the court by the opposing creditors.

14. On the facts, Mr. Smith QC disputed that there had been any inappropriate lack of engagement by the Plan Companies with the AHG or Riverside. He submitted that the AHG and Riverside did not challenge the classes proposed by the Plan Companies at the convening hearing; they had failed to establish that the Explanatory Statement was deficient so that the Plan Meetings should not be convened; and they had failed to obtain any material extension of the timetable proposed by the Plan Companies.

15. Although Mr. Smith QC accepted that the AHG and Riverside had succeeded in obtaining (subject to confidentiality obligations) what he described as "limited" further information concerning the Plan Companies and the allocation of particular Leases to different classes, he contended that such information appeared to be primarily relevant to arguments that the AHG and Riverside might wish to raise in opposition to the Plans at sanction, and hence the costs of the AHG and Riverside having appeared to obtain that information ought to be dealt with as part of the overall costs at the sanction stage.

Costs in scheme cases

16. Mr. Dicker QC's submission as to the practice of the court on costs on a Part 26 scheme of arrangement was based upon paragraph 16-245 in *Buckley on the Companies Acts*, which states,

> "Where opposition to the sanction by the court of a scheme of arrangement fails, but was not frivolous, it is the practice of the court on application under this section to order the successful applicant to pay the costs of the unsuccessful opposing creditors or members if their arguments were of assistance to the court; or alternatively to make an [sic] order as to costs. Ultimately the award of costs is a matter for the discretion of the court."

It is obvious from the context, and the authority cited in support (Imperial Tobacco Group, unreported, 11 February 1969), that the penultimate sentence contains a typographical error and should read, "or alternatively to make no order as to costs".

17. The earlier authorities cited in support of that summary, and a number of other scheme cases over the following years, were considered by Warren J in Re Peninsular and Oriental Steam Navigation Co. [2006] EWHC 3279 (Ch), [2007] Bus LR 554 ("P&O"). A takeover scheme had been opposed by a third party which had acquired a very small number of units of deferred stock in the target company after the scheme had been announced. It had then appeared to oppose the scheme on both technical grounds relating to the scheme process and grounds that related to how the takeover might affect its own business but which did not concern its interests as a stockholder in the target company.

18. After a review of the earlier decisions, Warren J concluded, at [38],

> "That completes the review of the authorities. What they establish is that the courts do not, as a rule, make costs orders against objecting shareholders or creditors (in, respectively, shareholders' and creditors' schemes) when their objections are not frivolous and have been of assistance to the court. Sometimes no order for costs is made, sometimes an order is made in favour of the objector. There is no established principle that this treatment, which differs from the ordinary rule in litigation that costs usually follow the event, applies to other objectors … The matter, however, remains in all cases at the discretion of the court."

19. Warren J also went on to explain, at [47],

> "For my part, I decline to elevate to some great principle of public policy the idea that, save in exceptional cases, objectors must, in order to ensure proper scrutiny of a scheme, always be immune from the normal costs rules provided only that their objections are genuine and not frivolous. It seems to me that, as in any other litigation, the courts are perfectly capable of deciding, on a case by case basis, what the justice of the case demands in relation to costs."

20. Shortly thereafter, in Royal & Sun Alliance v British Engine [2006] EWHC 2947 (Ch), David Richards J considered the authorities in relation to Part 26 schemes when considering the issue of costs on a portfolio transfer scheme under Part VII of the Financial Services and Markets Act 2000. David Richards J stated, at paragraph [22], that a different approach was required for applications in relation to Part 26 schemes and Part VII schemes than in ordinary litigation, and then explained that view as follows,

> "23. In ordinary litigation, a claimant seeks a remedy against a defendant in respect of a past or threatened act, alleged to be in breach of the claimant's enforceable rights. In a case of the relevant applications under the Companies Acts and the 2000 Act, it is the applicant which is invoking a statutory procedure which will, certainly in the case of a scheme of arrangement or business transfer, generally involve a change in the legal rights of members and/or creditors of the applicant. The statutory

> procedure enables such changes to be made binding on members or creditors without their consent or, indeed, against their wishes. The statutory procedures include a number of provisions for the protection of such members or creditors. Common to them is the requirement to apply to the court for sanction and to satisfy the court that in terms of both jurisdiction and discretion it is appropriate to make the order. Persons affected by the order, particularly members or creditors in the case of a scheme of arrangement and policyholders in the case of a transfer of insurance business, are entitled to appear on the application for sanction. As has been observed by the court in a number of the cases, this enables matters of proper concern to be fully ventilated before the court and, even if the court is satisfied that sanction should be given, the evidence and submissions of opposing creditors or members may well assist the court in its scrutiny of the proposal."

21. David Richards J then referred to Warren J's decision in P&O. He expressed the view that Warren J's comments in paragraph [47] of his judgment were directed at objectors who were not directly affected by the scheme rather than members or creditors who raised reasonable points in opposition to the scheme. David Richards J then expressly considered and rejected a submission that, even on a Part VII transfer scheme, there should be a principle or rule of practice that a costs order should be made in favour of an objector unless there was a counterbalancing factor which indicated that no order for costs should be made. He stated, at [31],

> "I do not consider that [such] principle is established by the authorities or that the additional particular features of transfers under the 2000 Act would justify the creation of such a principle in the case of such transfers. Although [counsel] submitted that, in each of the cases in which no order as to costs had been made, there could be discerned some special feature which led the court to depart from the basic approach of an order in favour of the objector, I do not consider that the decisions can be explained in that way. The court has looked at all the relevant circumstances in each case and decided, against that background, on the appropriate order."

22. The most recent detailed consideration of the issue of costs in relation to a Part 26 scheme was that of Norris J in Re Inmarsat plc [2020] EWHC 776 (Ch). That was a case in which certain shareholders (the "Objectors") had raised issues in opposition to a takeover scheme, which the Judge found were designed to elicit an increased offer from the bidder. The Objectors had then withdrawn their opposition on the morning of the sanction hearing when it became apparent that an enhanced offer would not be forthcoming. The Objectors sought payment of their costs on the basis that the points they had raised were legitimate, and the scheme company sought an adverse costs order against the Objectors of dealing with the points that they had raised but withdrawn.

23. At paragraph [8]-[11], Norris J indicated that he agreed with the point made by David Richards J in Royal & Sun Alliance that the "general rule" on costs under CPR 44.2 would ordinarily have no application to Part 8 proceedings seeking the court's approval

of a scheme on the basis that such proceedings seek the approval of the Court, not a remedy against another "party". However, he expressly reserved the position in relation to individual applications within such proceedings. Norris J then endorsed the decision of Warren J in P&O to the effect that the rules that had emerged pre-CPR on scheme costs should still act as "guidelines not straitjackets".

24. Norris J then also referred, at paragraphs [12]-[16] to dicta of Hildyard J in Re Stronghold Insurance Company [2018] EWHC 2909 (Ch) and dicta of my own in Re Ophir Energy plc [2019] EWHC 1278 (Ch) as follows,

> "12. [The practice described in paragraph 16-245 of *Buckley*] was recently commented upon by Hildyard J in Re Stronghold Insurance at paras [142]-[145]. The judge noted that on applications to convene scheme meetings there was a growing tendency for opposing creditors to trail generic points in opposition without explanation, elaboration or evidential base with the expressed expectation of returning to these points at the sanction stage; and then not to be represented at the sanction hearing. The effect of this was to increase the burden on the court. Hildyard J continued (at [145]):-
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> > "In case this reluctance or disinclination [to appear at the court sanction hearing] is the result of concerns that attendance may trigger some exposure to costs, I would wish to make clear my understanding (and certainly my own practice) that, unless the objections are wholly improper or irrelevant, obviously collaterally motivated, or sprung on the scheme company without affording proper opportunity for their discussion, there is very little likelihood of any adverse order for costs at that stage; and indeed there will usually be a real prospect of the relevant creditor recovering its reasonable costs of helpful and focused representation, fairly outlined in good time before the convening hearing to their proper consideration, on the class issues raised."
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> 13. This observation was endorsed by Snowden J in Re Ophir Energy who said (at para [39]):-
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> > "It is worth re-iterating that parties who have genuine issues to raise as to the adequacy of the information provided to members or creditors should not be deterred from appearing at a sanction hearing by concerns over costs."
>
> 14. Based upon those comments [counsel on behalf of the Objectors] submitted that the Court had extended an open invitation to those who have genuine objections to a scheme to fully engage with the process, to instruct solicitors and Counsel and to appear at Court; and that objectors had been so invited on

> the basis that (i) that they would not be facing an adverse costs order and (ii) that there was a very real prospect of them getting an order in their favour.
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> 15. The point of the observations of Hildyard and Snowden JJ (which I wholly endorse) was to emphasise that if objections are to made to a scheme then they should be fully articulated and properly argued and defended, and that the Court should not be left to assess, unassisted, the weight of (sometimes vague) criticisms in correspondence when called upon to scrutinise the scheme at the sanction stage. Neither of those experienced scheme judges would have intended their words to be taken as an encouragement to objection itself, or as providing a "tick box" list which (if met) would result in a particular order thereby introducing rigidity into the undoubted discretion as to costs (going beyond a "guideline"). I do not think that they intended to depart from the view expressed by Warren J in P&O at [47]:-
>
> > "I decline to elevate to some great principle of public policy the idea that, save in exceptional cases, objectors must, in order to ensure proper scrutiny of a scheme, always be immune from the normal costs rules provided that their objections are genuine and not frivolous. It seems to me that, as in any other litigation, the courts are perfectly capable of deciding on a case by case basis, what the justice of the case demands in relation to costs".
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> 16. That remark reflects the fact that a balance has to be struck between assisting the Court to discharge its scrutiny function on the one hand and on the other encouraging objection in the knowledge that the costs of doing so will be defrayed by others."

25. In the result in Inmarsat, Norris J made no order as to costs. The core of his reasoning was explained in the following parts of paragraph [24] of his judgment,

> "(e) It does not follow that all shareholders must be treated the same when the discretion as to costs comes to be exercised. The justice of the case may well indicate that an established investor or creditor caught up in the crossfire of a takeover or a restructuring should be treated differently as regards costs from a speculator or "opportunity investor" who deliberately chooses to put himself in the firing line by acquiring equity in an anticipated or actual bid situation or debt in a company in distress. But caution is required in drawing such distinctions because it is rare that there are "bright lines" dividing one category from another.
>
> …

> (i) This is not a case in which objection with the aim of increasing Bidco's offer should rewarded by the costs of doing so being defrayed by Inmarsat. The Objectors cannot be labelled "speculators". But they were in the business of exploiting opportunities and they must bear the costs of seeking to achieve their commercial objective.
>
> (j) But on balance this is not a case in which they should pay Inmarsat's costs. On the one hand, no encouragement should be given to objections the substantial effect of which is to add significantly to scheme costs whilst contributing little to the scrutiny of what is (from the standpoint of an ordinary shareholder) a fundamentally sound scheme: adding to scheme costs in that way will only tend to depress scheme consideration. On the other hand, whilst plainly Inmarsat could not engage on an individual basis with the Objectors it could, in response to wider rumblings, have made an early market announcement conveying the information about its treatment of the Ligado contract later contained in its evidence; and that would have removed that ground for criticism and strengthened the case for an adverse costs order."

26. There is no suggestion that the AHG or Riverside are "speculators or opportunistic investors" of the type mentioned by Norris J. It is also plainly not possible to read directly across in all respects from a takeover scheme such as Inmarsat to a Part 26A plan such as the present. However, in the same way as Norris J regarded factors such as the background to the involvement of the Objectors, their commercial objectives in opposing, and the extent to which they had contributed in real terms to the court's scrutiny of, a scheme that was strongly supported by other shareholders, were all relevant to his decision, similar factors could be relevant to a decision on costs under Part 26A.

27. The final authority to which I should refer is Re Noble Group [2019] BCC 349. In the course of a lengthy convening judgment I considered the possible effect on class composition of the payment of substantial fees to some, but not all scheme creditors. I indicated, at paragraph [152], that when assessing the materiality of the fees in question,

> "…the Court is unlikely to be much assisted by self-serving assertions by the creditors who have negotiated to receive the fees in question that they regard them as immaterial to their own decision whether or not to support the scheme. The Court is likely to be more interested in argument from creditors who do not stand to receive the additional payments. That emphasises the importance of ensuring that all creditors receive the Practice Statement in good time, and it is worth reiterating that creditors who attend to raise legitimate points in a constructive manner at a convening hearing can expect to receive their reasonable costs irrespective of the outcome, rather than being discouraged from attending by concern over exposure to adverse costs orders. "

28. As Mr. Smith QC rightly observed, my comment that creditors who attend a convening hearing to raise legitimate points in a constructive manner *can expect* to receive their reasonable costs irrespective of the outcome, was *obiter*. It was also not the result of my having been referred to any relevant authority or adverse argument on the point. In light of the more extensive analysis in the other cases to which I have referred, I readily accept that my comment overstated the approach of the court.

29. Instead, on the basis of the authorities to which I have referred, it seems to me that the following principles can be stated in relation to scheme cases under Part 26,

    i) In all cases the issue of costs is in the discretion of the court.

    ii) The general rule in relation to costs under CPR 44.2 will ordinarily have no application to an application under Part 8 seeking an order convening scheme meetings or sanctioning a scheme, because the company seeks the approval of the court, not a remedy or relief against another party.

    iii) That is not necessarily the case (and hence the general rule under the CPR may apply) in respect of individual applications made within scheme proceedings.

    iv) In determining the appropriate order to make in relation to costs in scheme proceedings, relevant considerations may include,

        a) that members or creditors should not be deterred from raising genuine issues relating to a scheme in a timely and appropriate manner by concerns over exposure to adverse costs orders;

        b) that ordering the company to pay the reasonable costs of members or creditors who appear may enable matters of proper concern to be fully ventilated before the court, thereby assisting the court in its scrutiny of the proposals; and

        c) that the court should not encourage members or creditors to object in the belief that the costs of objecting will be defrayed by someone else.

    v) The court does not generally make adverse costs orders against objecting members or creditors when their objections (though unsuccessful) are not frivolous and have been of assistance to the court in its scrutiny of the scheme. But the court may make such an adverse costs order if the circumstances justify that order.

    vi) There is no principle or presumption that the court will order the scheme company to pay the costs of an opposing member or creditor whose objections to a scheme have been unsuccessful. It may do so if the objections have not been frivolous and have assisted the court; or it may make no order as to costs. The decision in each case will depend on all the circumstances.

<u>The approach in the instant case</u>

30. I have spent some time considering the authorities in relation to scheme cases under Part 26 because all parties accepted that they are likely to provide at least a starting point for the consideration by the court of the appropriate principles to apply to costs in relation to

restructuring plans under Part 26A. I have also done so because I consider that it is appropriate that I should indicate, in advance of any further significant sums being expended in preparation for the sanction hearing, that for the reasons I have outlined, I do not accept that there is a principle in scheme cases for the payment of the costs of opposing creditors in the terms for which Mr. Dicker QC contended. Rather, I accept Mr. Smith QC's submission that the court's discretion is more open-ended, and will be exercised on a case-by-case basis in light of all the circumstances.

31. I should also make clear, however, that I have not determined that the end point of the analysis in relation to costs under Part 26A will necessarily be the same as under Part 26. At this stage I have formed no view on the more extensive arguments advanced by the parties in that respect. The reason for that is because I also accept Mr. Smith QC's submission that I should not make an order now in relation to the costs of the AHG and Riverside of the Convening Hearing, but should instead reserve the question of those costs until after the sanction hearing.

32. I have reached that conclusion primarily because I accept the submission that the decision on costs is highly fact-sensitive and I will be better placed after the sanction hearing to assess matters such as the nature of the role that the AHG and/or Riverside have played in relation to the Plans, the manner and extent to which they have assisted the court in its scrutiny of the Plans, and the overall justice of ordering the Plan Companies to bear their costs having regard to the interests and support (or otherwise) of other stakeholders for the Plans.

33. In addition, as is apparent from the Convening Judgment, the Convening Hearing was something of a hybrid affair. Some of the matters usually considered at a convening hearing (e.g. class composition) were determined on the basis that due to the short notice of the Convening Hearing, they remain open at sanction. A good deal of the Convening Hearing was also occupied by requests by both the AHG and Riverside that further information should be provided by the Plan Companies, either by being included in or appended to the Explanatory Statement, or by way of disclosure with an eye to arguments that might be made at the sanction hearing.

34. It is unclear at this stage whether the information disclosed may prove relevant to the class question (e.g. because it casts doubt on the counterfactual comparator or the method by which the Plan Companies allocated Leases to particular classes), to the adequacy of the Explanatory Statement, to the general exercise of discretion, or to questions of whether the court should sanction the Plans notwithstanding their effect upon various dissenting classes (or some combination of the above). The possibility of the disclosed information being relevant to a number of different arguments reinforces my view that I will be in a better position after such arguments have been ventilated at the sanction hearing to assess the justification and utility (or otherwise) of the AHG and Riverside seeking such information at the Convening Hearing.

35. These factors relating to the provision of information and the potential for that information to be relevant to arguments yet to be had on the Plans also serve to distinguish the position of the AHG and Riverside from the more limited roles played by Pure Gym and the Manager at the Convening Hearing. Their contribution related to discrete issues concerning the scope and drafting of the Plans to be put to Plan Creditors, and I do not consider it inappropriate for their more modest costs to have been dealt with separately.

36. I shall accordingly reserve the question of the costs claimed by the AHG and Riverside in relation to the Convening Hearing until the sanction hearing. If the AHG or (more likely) Riverside were to decide not to take any active role at the sanction hearing, they can renew their applications in respect of the costs of the Convening Hearing after the decision on the Plans.