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Case No: CR-2023-005565

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

Rolls Building
Fetter Lane
London, EC4A 1NL

12 October 2023

Before:

Mrs Justice Bacon

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Between:

IN THE MATTER OF LINK FUND SOLUTIONS LIMITED
- and -
IN THE MATTER OF THE COMPANIES ACT 2006

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Felicity Toube KC, Adam Al-Attar and **Imogen Beltrami** (instructed by **Clifford Chance LLP**) for **Link Fund Solutions Limited**
Tom Smith KC and **Marcus Haywood** for the **Financial Conduct Authority**)
Charlotte Cooke for the **Investor Advocate**
George Bompas KC and **Edward Crossley** (instructed by **Leigh Day** and **Harcus Parker Ltd**) for the **Claiming Investors**
Alan Pyatt, **Graham Dickenson, Mark Bishop** and **Andy Agathangelou**, investors/ representatives of investors in person

Hearing dates: **10 and 12 October 2023**

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APPROVED JUDGMENT

MRS JUSTICE BACON:

Introduction

1. Link Fund Solutions Limited (**LFSL**) has applied to the court seeking an order convening a single meeting of creditors to consider and, if thought fit, approve a scheme of arrangement (the **Scheme**) proposed by LFSL pursuant to Part 26 of the Companies Act 2006. The application was heard two days ago on 10 October 2023. At the conclusion of that hearing I indicated that I would give judgment today.

2. The proposed Scheme amounts to a settlement between LFSL and various investors who have actual or potential claims against it, arising from LFSL's role as the authorised corporate director of the LF Equity Income Fund, previously known as the LF Woodford Equity Income Fund (the **Fund**). The Fund was launched in 2014 as the flagship fund managed by Neil Woodford's company Woodford Investment Management Limited. It collapsed in 2019, leaving investors with heavy losses, which are the subject of the claims and potential claims against LFSL. To date, claims have been issued by three large groups of investors, represented by Leigh Day, Harcus Parker Ltd and Wallace LLP respectively.

3. The Scheme is supported by the Financial Conduct Authority (**FCA**) and will be funded by the proceeds of the sale of LFSL's business and assets, together with the proceeds of various insurance policies held by LFSL, plus a contribution from LFSL's parent company, Link Administration Holdings Limited (**LAHL**).

4. The Scheme proposals are set out in detail in a witness statement from Mr Karl Midl, the managing director of LFSL. The details of the Scheme have been scrutinised by an independent Investor Advocate engaged by LFSL, Mr Joe Bannister, who is a partner at DAC Beachcroft LLP, as well as by an Investor Committee consisting of nine investors of the LF Equity Income Fund, chaired by Mr Jamie Drummond-Smith. Reports were submitted to the court by both the Investor Advocate and the chair of the Investor Committee.

5. Various aspects of LFSL's proposals are the subject of objections from the Leigh Day and Harcus Parker claimants (who I will refer to together as the **Claiming Investors**), as well as four individual investors and representatives of individual investors: Mr Alan Pyatt, Mr Graham Dickenson, Mr Mark Bishop and Mr Andy Agathangelou.

6. The objections fall into three categories. First, the investors object to the proposal to convene a single meeting of creditors, and argue that the creditors should instead be divided into two classes. Secondly, there are various objections to the process by which creditors have been and will be notified of the meeting, and the documents and information that will be provided to creditors in advance of the meeting. Thirdly, there have been specific comments on the drafting of the voting form.

7. At the outset of the hearing on 10 October, LFSL provided a schedule of proposed revisions to the voting form, following which it was agreed that I would hear submissions on the first two issues, but that the parties would continue to discuss the drafting of the voting form. At the end of the hearing, the parties agreed that there would also be further discussion between them and any other interested investors as to the process issues. The issue for determination by me in this judgment is therefore limited to the question of class composition.

8. That issue was the subject of submissions at the hearing on 10 October from Ms Toube KC for LFSL, Mr Smith KC for the FCA, Mr Bompas KC for the Claiming Investors, and Mr Pyatt and Mr Dickenson in person. Ms Cooke appeared at the hearing to set out the position of the Investor Advocate, who had addressed some of the procedural issues in his report but took a neutral position on the issue of class composition. Shortly before handing down judgment this morning, I received a written submission from Mr Bishop, which he asked me to take into account in my judgment. Mr Pyatt and Mr Agathangelou also sent in further written comments which went to the process issues, but not to the question of class composition.

Background

The suspension of the Fund

9. In 2001, LFSL was authorised by the FCA's predecessor body, the Financial Services Authority, to operate as an authorised corporate director of investment companies with variable capital incorporated under the Open-Ended Investment Companies Regulations 2001 (the **OEIC Regulations**). In that capacity, LFSL provided both fund administration and portfolio management services.

10. The Fund was incorporated under the OEIC Regulations, with LFSL as its authorised corporate director. The Fund offered investors the opportunity to purchase shares allocated into nine share classes. Its share register records 133 direct investors, behind which sit approximately 250,000 indirect investors, consisting of both institutional investors and private (i.e. retail) investors.

11. In the initial years following the Fund's launch in 2014 it generated favourable returns. From mid-2017, however, the Fund's liquidity profile deteriorated as a result of the investment decisions made by Woodford Investment Management Limited. LFSL suspended the Fund on 3 June 2019.

12. On 15 October 2019, LFSL decided to wind up the Fund, to allow for an orderly realisation of the Fund's assets and the return of funds to investors through capital distributions. The decision was approved by the FCA and winding up commenced on 18 January 2020. Since that date, the Fund has made capital distributions of around £2.56 billion to investors.

The FCA investigation

13. On 17 June 2019 the FCA notified LFSL that it was commencing an investigation into the events that led to the suspension of the Fund, and on 20 September 2022 the FCA issued a draft warning notice to LFSL.

14. That document is confidential pursuant to ss. 348 and 391 of the Financial Services and Markets Act 2000 (**FSMA**). In summary, however, it alleged that from 31 July 2018 until the Fund was suspended on 3 June 2019, LFSL failed to comply with its regulatory obligations as authorised corporate director of the Fund. In particular, LSFL failed to take adequate steps to deal with the Fund's liquidity problems, and failed to properly supervise the fund manager, Woodford Investment Management Limited. The FCA's key conclusions were that:

i) investors who left the Fund from 1 November 2018 onwards benefitted disproportionately from the sale of the most liquid assets in the Fund, compared to those who remained invested in the Fund on the suspension date (the **Suspension Date Investors**).

ii) The Suspension Date Investors were treated unfairly because they were left with a disproportionate share of less liquid assets.

iii) LFSL had consequently failed to comply with Principle 2 (requiring skill, care and diligence) and Principle 6 (requiring due regard to be paid to customers' interests) of the FCA's Principles for Businesses, from 31 July 2018 until the suspension date.

15. On the basis of those preliminary conclusions, the FCA proposed that LFSL should pay a penalty of £50 million and a restitution payment of up to £306,096,527, which was later reduced to £298,403,922 following a capital distribution by LFSL to the Suspension Date Investors.

16. On 19 April 2023 LFSL and LAHL entered into a conditional settlement agreement with the FCA, under which LFSL agreed to propose the Scheme and to take all reasonable steps to implement it, and LAHL agreed to make certain contributions into the Settlement Fund (as defined below) under the Scheme. If the Scheme is approved and sanctioned, the FCA will not enforce the proposed financial penalty of £50 million. The FCA will, however, issue a final warning notice, a decision notice and thereafter a final notice against LFSL, but LFSL will make no admission of liability, and it reserves the right to contest the FCA's conclusions if the Scheme does not proceed.

Litigation claims

17. As already noted, three groups of claims against LFSL have been issued. The Leigh Day claim was issued on behalf of 11,111 investors; the Harcus Parker claim on behalf of 1,912 investors; and the Wallace claim on behalf of 3,216 investors. The Leigh Day and Harcus Parker claims are currently stayed. The Wallace claim form has not yet been served on LFSL.

18. The Leigh Day and Harcus Parker claimants claim damages on the basis of alleged breaches by LFSL of numerous provisions of the rules in the FCA's Collective Investment Scheme Sourcebook of the FCA Handbook (the **COLL Rules**). They rely on s. 138D FSMA, under which contravention of the COLL Rules is actionable at the suit of private persons. The Wallace claims are similar, save that they make additional allegations which are not relevant for the purposes of this application.

19. LFSL disputes all the claims, and has stated that if the Scheme is not sanctioned it will defend any proceedings brought against it in relation to its role as authorised corporate director of the Fund.

Sale of LFSL's business

20. On 19 April 2023, LFSL and LAHL entered into a conditional agreement for the sale of the business and certain assets of LFSL to the Waystone Group. The sale was completed on 9 October 2023. The net sum received by LFSL as a result of the sale forms part of the Scheme's Settlement Fund (as defined below).

The Scheme

21. For the purposes of this application, an outline of the Scheme terms is sufficient.

22. The Scheme applies to all Scheme Creditors, who are defined as persons who hold a Scheme Claim as at 1 December 2023. A Scheme Claim is (in essence) any actual, potential or disputed claim that a person who had a beneficial interest in the Fund at the suspension date has or may have against LFSL in relation to the Fund, during any period up to and including 1 December 2023.

23. The Scheme will establish a fund (the **Settlement Fund**) of up to £230 million, consisting of the proceeds of sale received by LFSL, LFSL's current remaining cash and capital resources (less a sum of up to £46.5 million that will be reserved and ring-fenced to pay LFSL's costs and other liabilities), the proceeds of various insurance policies, and a contribution of approximately £60 million from LAHL. If the ring-fenced reserve is not required in full to pay LFSL's costs and other liabilities, the additional sums available will be added to the Settlement Fund.

24. Scheme Creditors will be entitled to receive a return from the Settlement Fund in proportion to their investment in the Fund. If the full reserved amount of £46.5 million is released into the Settlement Fund, the return to investors is estimated to be around 77% of the restitution figure of £298 million calculated by the FCA. If none of the reserved amount is released into the Settlement Fund, the estimated return is 61% of the restitution figure.

25. In consideration for the payments to Scheme Creditors from the Settlement Fund, Scheme Creditors are required to release LFSL together with LAHL and LAHL's other subsidiaries, as well as LFSL's officers, employees and advisors, from any claims that the creditors may have in respect of the Fund.

26. The Scheme does not place any bar on the right of Scheme Creditors to sue any third party. However, the rights of the Scheme Creditors to recover on claims against third parties will be reduced by the amount that LFSL would be liable to pay to that third party under a contribution claim. Effectively, therefore, LFSL's contribution to any third party liability is carved out of any third party claim that may be brought by a Scheme Creditor.

The alternative to the Scheme

27. As set out above, LFSL has stated that if the Scheme is not sanctioned, it will defend itself against both the FCA's conclusions and all claims against it, including the existing claims summarised above.

28. If LFSL is successful, the investors will obviously be in a far worse position than under the Scheme, as LFSL will then not be required to make any payments to them, and the investors will also have to bear the costs of any litigation and any adverse costs orders.

29. If LFSL is unsuccessful, in whole or in part, the costs of the litigation will deplete its assets available to investors. Moreover, if the compensation and/or damages awarded to investors is greater than LFSL's remaining assets, LFSL says that it is likely that it will have to enter

insolvency proceedings, the cost of which will further reduce any sums available for distribution to investors.

30. If LFSL were to enter into insolvency proceedings, some of the Scheme Creditors may be entitled to compensation from the Financial Services Compensation Scheme (**FSCS**) for up to £85,000 each, pursuant to the FCA Compensation Rules. To be eligible for compensation, there must be a "protected claim" (which includes "valid claims that are made in respect of a civil liability") brought by an eligible claimant. Private individuals and small businesses are eligible claimants under the FSCS. Institutional investors, such as pension and retirement funds, governments, central or local authorities, and large companies are not eligible.

31. It is not suggested that any of the Scheme Creditors already have any protected claims within the meaning of the FSCS rules. Rather the Claiming Investors say that if they were to succeed in their litigation against LFSL, then they would at that stage have protected claims and would be eligible claimants. Unsurprisingly, the FSCS's position is that it has not at this stage made any determination of whether the Claiming Investors' claims against LFSL would, if successful, amount to protected claims, or whether the Claiming Investors would be eligible claimants. Rather, it says that it will assess and pay claims in accordance with the relevant rules, and it will be a matter for it to determine whether any payments are or will become due.

Class analysis

Relevant principles

32. The principles relating to class composition are well-known and are not disputed in this case. The starting point is the classic statement of Bowen LJ in *Sovereign Life Assurance v Dodd* [1892] 2 QB 573, p. 583, that a class: "must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest."

33. That requires consideration of two types of rights: (i) the rights that the creditors would have if the Scheme were not implemented, which are to be released or varied under the Scheme; and (ii) the rights that the creditors will have under the Scheme if it is implemented: Chadwick LJ in *Re Hawk Insurance* [2002] BCC 300, §30.

34. An important distinction is drawn, in this regard, between the legal rights of creditors against the company, and their commercial or other interests not derived from those legal rights. The fact that individual creditors may hold different views based on their private interests not derived from their legal rights against the company is not a ground for dividing the class: Lord Millett in *Re UDL Holdings* [2002] 1 HKC 172, p. 184G–H.

35. Even when there are differences in the rights of different groups of creditors, that is not necessarily fatal to the composition of a single class. The question is whether the differences are such that, in the court's judgment, it is impossible for the creditors to consult together as a single class: Snowden J in *Re Noble Group* [2018] EWHC 2911 (Ch), [2019] BCC 349, §86.

36. For these purposes, the relevant rights are the rights of creditors "against the company" and the way those rights are affected by the Scheme. Rights against third parties, such as guarantors, are generally regarded as interests rather than rights: Zacaroli J in *Re Gategroup*

Guarantee [2021] EWHC 304 (Ch), [2021] BCC 549, §183(3). This point was emphasised by Lord Millett in *UDL*, in considering whether former employees with preferential claims in respect of unpaid wages should be placed in a different class from other creditors because of their right of recourse to an external fund in respect of their unpaid wages. His conclusion at pp.185–6 was that this was a private interest rather than a right, and hence did not justify the constitution of a separate class:

> "As former employees with preferential claims in respect of unpaid wages and other employee-related claims, the appellants do have a special interest in opposing the schemes not shared by other creditors, including other preferential creditors (if any) who are not such employees. If the company which employed them were put into liquidation, they could expect to receive ex gratia payments out of the Protection of Wages on Insolvency Fund established under the Protection of Wages on Insolvency Ordinance (Cap 180). Such payment entitles the Board by way of subrogation to payments by the liquidator. Thus the Board bears the burden of any delay in payment in place of the employee.
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> This is, however, exactly the kind of private interest, not deriving from any legal right against the company, which may properly influence a creditor to vote against the Scheme, but which does not entitle him to demand a separate meeting of himself and others in a similar position. Were he able to do so, former employees would be able to veto a scheme which enjoyed the overwhelming support of creditors, and which did not affect their status as preferential creditors at all."

37. It is clear from this passage that when reference is made in the authorities to interests that are "derived from" legal rights against the company as opposed to interests that are not so derived, the relevant question is not whether the interests of the relevant creditors are in some way "consequent upon" their legal rights as affected by the Scheme. The potential recourse of employees to the Protection of Wages on Insolvency Fund considered in *UDL* was directly consequent upon the claims of those employees against the company for unpaid wages. That was, however, regarded as a private interest of those employees, not deriving from any legal right against the company. An interest which is consequent upon or flows from a creditor's legal rights is therefore not elevated into a right which falls to be taken into account for the purposes of the class analysis.

38. Rather, the question for the court is whether the differences, or potential differences, in the position of different groups of creditors is attributable to differences in their legal rights against the company under the Scheme, and if so, whether those differences make the groups of creditors so dissimilar that it is impossible for them to consult together as a single class.

Application in the present case

39. In the present case, Ms Toube's submission for LFSL was that all Scheme Creditors have materially the same existing rights against LFSL absent the Scheme. They are all unsecured creditors of LFSL, whose rights will rank *pari passu* as unsecured claims in any liquidation which ultimately ensues from the failure of the Scheme. As to the rights conferred by the

Scheme, again the rights of the Scheme Creditors will be materially similar, namely to make a claim in the Scheme and to receive a distribution of the available assets comprised by the Settlement Fund on a *pari passu* basis. Accordingly, Ms Toube said that the court should order the convening of a single meeting of all the creditors.

40. Mr Bompas' submission (which was endorsed by Mr Pyatt and Mr Dickenson) was that the Claiming Investors and other private investors should be placed in a different class to the institutional investors.

41. In relation to these submissions, there was a preliminary point as to whether the correct comparator or counterfactual case is indeed the insolvency and liquidation of LFSL as suggested by Ms Toube. Mr Bompas suggested that the relevant comparator is in fact "years of litigation" rather than liquidation.

42. I agree that the appropriate comparator in this case is not the immediate commencement of insolvency proceedings. Ms Toube recognised that, in the first instance, the result of failure of the Scheme was likely to be the conclusion of the FCA investigation and decision-making process, and the progress of the various investor claims against LFSL. As she said (and I agree), that means that the alternative to the Scheme is a situation of considerable uncertainty and delay until those proceedings are resolved.

43. That is, moreover, not the end of the matter, because it is necessary to consider the possible outcomes of those proceedings. For investors to obtain any compensation from LFSL, either the FCA's conclusions will need to be upheld, or the investors will need to succeed (wholly or in part) in their claims against LFSL. If either the FCA conclusions are upheld, or the investors are successful in obtaining damages similar to the figure provided for in the FCA draft warning notice, there is little doubt that the insolvency and liquidation of LFSL will likely ensue. As set out above, the FCA's provisional recommendation is a restitution payment of £298 million, whereas the Settlement Fund under the Scheme, which includes a contribution from LAHL and without any penalty payment imposed by the FCA, will on the best-case scenario be only 77% of that figure. A distribution upon liquidation is, therefore, likely to be the best-case scenario for the investors if the Scheme is not approved and sanctioned. It is therefore appropriate to consider this scenario as a possible alternative outcome when assessing the rights of the creditors that are impacted by the Scheme, while also recognising that the other possible outcomes may be even less favourable to the investors and that there will in any event be a period of considerable delay and uncertainty while the litigation is progressing.

44. Turning to Mr Bompas' specific reasons for saying that the Scheme Creditors should be divided into two classes, essentially two overarching submissions were advanced.

45. The first was that the Claiming Investors and other private investors are able to bring (and in the case of the Claiming Investors have brought) claims against LFSL for breach of the COLL rules pursuant to s. 138D FSMA. Institutional investors, by contrast, cannot avail themselves of that provision and would be limited to claims against LFSL for professional negligence in tort, which would be much more difficult to establish. On that basis, Mr Bompas submitted that private investors have a far better basis for bringing claims against LFSL, which would be given up under the terms of the Scheme.

46. The argument that some creditors have a stronger claim than others has, however, repeatedly been rejected as a basis for defining different classes of creditors in relation to a scheme, even where that has an impact on the way in which the scheme will in practice be implemented for those groups of creditors. In his convening judgment in *Re Noble Group*, Snowden J noted that the claims of certain creditors were unlikely to be disputed, whereas the claims of other creditors arose under contract and tort and were strongly contested by the company. That was not, however, a relevant difference requiring the constitution of a separate class:

> "98. Although Mr Trower acknowledged that there would be greater uncertainty of outcome for some of the Other Scheme Creditors than the Finance Creditors from being required to undergo the process in the Scheme to establish their Scheme Claims, I accept his submission that this is a potential difference that does not constitute a difference of existing rights against the Company, or rights conferred under the Scheme. As he observed in a winding up, all provable claims against the insolvent company are subject to the same proof of debt process, no matter how they have arisen, ie whether they sound in contract, tort or equity, and whatever differences might exist in the potential outcome of that process.
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> 100. Accordingly, in my judgment, this is not a case in which the two groups of Scheme Creditors have any relevantly different rights against the Company, and nor are any different rights being offered to them under the Scheme, in respect of the making, determination and adjudication of their Scheme Claims. Any differences in the way in which the process bears upon some of the Other Scheme Creditors as opposed to the Finance Creditors, and any prejudice that they might claim to suffer as a consequence, is a matter that can be raised as a matter of fairness at the sanction hearing."

47. More recently, Trower J made the same point in *Re Cimolai* [2023] EWHC 1819 (Ch), §51:

> "It is not unusual in a straightforward English scheme or restructuring plan for creditors with disputed and undisputed unsecured claims all governed by English law to be put in the same class where a formal English insolvency is the appropriate comparator. In that situation, all creditors, whether their claims are disputed or undisputed, will normally have the same essential decision to make at the scheme or plan meetings. The difference between them is simply the complexity of the proving process, which will be greater for the disputed claims, but that will not normally cause an inability to consult together if the proving mechanism under the scheme or plan replaces the formal insolvency proving mechanism in a manner which affects them in the same way."

48. In the present case, under the Scheme, all Scheme Creditors will be treated in precisely the same way, whatever the basis of their actual or potential claims against LFSL. Likewise, if the Scheme is not implemented, both institutional and private investors will be able to assert claims against LFSL. While the causes of action available to those different groups of investors may be different, LFSL has made it clear that any and all claims arising from its role in the Fund will be disputed by it, whether in litigation or in the insolvency proof process. The

strength of the claims of the different groups of creditors and the availability of different causes of action for institutional and private investors respectively is therefore not a reason to place private investors in a separate class to the other Scheme Creditors.

49. Mr Bompas' second submission was that the Claiming Investors and other private investors would in most cases have the possibility of recourse to the FSCS in the event that LSFL was unable fully to meet successful claims. Institutional investors would, however, have no such recourse. He accepted that this was not a right against LFSL itself, but said that this was nevertheless relevant to the court's assessment of how the creditor classes should be constituted because for the private investors, unlike institutional investors, the counterfactual of litigation would offer the prospect of recovering their entire loss up to the FSCS's £85,000 limit.

50. That is, however, a paradigm case of a difference which is not attributable to the investor's legal rights against the company, but which is instead attributable to the potential for certain investors to have recourse to a third party. The analysis is the same as that for the employee claimants in *UDL*.

51. Mr Bompas relied on *Cimolai*, where Trower went on to find at §§50–4 (after the passage already cited above) that the ordinary unsecured creditors should be placed in a different class from litigating creditors. One of the reasons for that was that whereas the ordinary creditors would be focusing on the simple question of whether the proposed restructuring plans provided them with a better return than the relevant alternative, the litigating creditors would also, and possibly exclusively, be focusing on the impact of the restructuring plan on the conduct of the litigation by those litigating creditors, and their rights under that litigation. The litigating creditors might in particular have an incentive to procure the failure of the plan on dispute resolution grounds. In those circumstances, which Trower J described as "unusual", he considered that there was more that divided those groups of creditors then united them because their interests were, in that sense, adverse to each other.

52. The unusual circumstances of *Cimolai* do not, however, feature in the present case. There has been no suggestion by any of the parties in this case that the Scheme will impact upon the litigation rights of the institutional and private investors in any different way. On the contrary, both groups of investors will be required to release any and all claims they have against LFSL, whether actual or potential. Nor is it said that the interests of the private investors in considering whether to approve the Scheme would or might be in any sense adverse to the interests of the institutional investors, such that it would be impossible for there to be a consultation with a view to a common interest. On the contrary, for both groups of investors, the question will be whether the Scheme is likely to provide them with a better return than the alternative possible comparators, having regard to the uncertainty of outcomes if the Scheme is not approved and litigation ensues. The fact that the different groups of creditors will, in the course of that assessment, be considering potential claims based on different causes of action and with different possible routes of ultimate redress does not change that analysis.

53. Mr Bompas also referred to Hildyard J's observations in *Re Apcoa Parking Holdings* [2014] EWHC 3849 (Ch), §55, that in some cases there might be "blurred boundaries" between the rights and interests of creditors. That does not, however, take the analysis of this case any further. There may well be cases on other facts where the distinction between rights and

interests may be more difficult to draw. In the present case, however, it is clear that the difference between the investors arising from the availability of recourse to the FSCS is, as Mr Bompas accepted, not a difference in the investors' existing rights against LFSL or the rights conferred by the Scheme, but a difference arising from the extraneous factor of a third-party compensation scheme available to some but not all categories of claimants.

54. Mr Bompas also cited the comment of Snowden J in *Re Sunbird* 2020] EWHC 2860 (Ch) §23, that in assessing class constitution, the court should not simply look at the scheme in isolation but should assess it in the context of the restructuring as a whole, including any rights conferred in other agreements that are provided for under the terms of the Scheme or which are conditional upon it.

55. That comment was made in the context of consideration of the rights of one of the scheme creditors against the company, which were the subject of a separate agreement with the company which was conditional upon the scheme being sanctioned. The scheme therefore had a direct impact upon those rights against the company, which led to a material difference in treatment of the rights of the respective creditors. There is, however, no suggestion in *Sunbird* that a different class of creditors should or might be constituted on the basis of the effect of the scheme on rights of recourse to third parties, as opposed to rights against the company.

56. Mr Pyatt and Mr Dickenson did not materially add to the submissions of Mr Bompas on class composition; their submissions were essentially directed at the process issues. Before court this morning, however, I received a written submission from Mr Bishop, who urged the court to separate the private and institutional investors into different classes on the basis of the difficulties of the investors in obtaining clear information about the Scheme and the alternative scenarios. Suffice it to say that the information and communication with investors is something that has been the subject of further consideration since the hearing on 10 October and will be addressed further in this hearing as relevant. It is not, however, a matter that goes to class composition.

Conclusion

57. My conclusion is that it is appropriate for a single class meeting to be convened to consider the Scheme. It is, however, important to emphasise that while I do not consider that the differences in the interests of the private and institutional investors are such as to warrant placing them in different classes for the purposes of consideration of and voting on the Scheme, those differences are matters which can properly be brought to the attention of the court at the sanction hearing and considered at that stage as a matter which goes to the fairness of the Scheme.