Case No: CR-2023-001063

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Tuesday 7 March 2023

BEFORE:

MR JUSTICE LEECH

IN THE MATTER OF:

MORSES CLUB SCHEME LIMITED

MR A AL-ATTAR & MR E LUPI appeared on behalf of Morses Club Scheme Limited
MR D BAYFIELD KC appeared on behalf of the Financial Conduct Authority
MR W DAY appeared on behalf of the Customer Advocate

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

MR JUSTICE LEECH:

Introduction

1. This is an application by Morses Club Scheme Limited ("**Scheme Co**") for directions to convene a meeting of a single class of creditors in connection with a proposed scheme of arrangement (the "**Scheme**") under Part 26 of the Companies Act ("**Part 26**"). Scheme Co is a wholly owned subsidiary of Morses Club Limited ("**Morses Club**"), which is the UK's largest provider of home collected loans with 141,000 customers. The Scheme arises out of the growing number of claims brought by customers against Morses Club for redress and the compensation and fees which it has been required to pay to them under the Financial Ombudsman Scheme (the "**FOS**").

2. At the hearing of this application Scheme Co was represented by Mr Adam Al-Attar and Mr Edoardo Lupi. The Financial Conduct Authority (the "**FCA**") appeared by Mr Daniel Bayfield KC and Mr Jonathan Yorke, the Independent Customer Advocate appointed under the Scheme, appeared by Mr William Day. I am grateful to them all for their Skeleton Arguments and oral submissions. Neither the FCA nor Mr Yorke opposed the Court ordering the convening meeting to take place although the FCA's position is that it intends to oppose the approval of the Scheme at the sanction hearing. As the FCA recognises, the convening hearing is not the occasion for the court to express a view on the merits of the Scheme.

Background

3. Morses Club provides small sum, short-term, unsecured loans to customers not traditionally served by mainstream finance providers. Since 2014 it has issued between 200,000 and 500,000 loans per year apart from the period between 1 January 2022 and 2 August 2022, when it issued 91,547 loans. Typical features of Morses Club's loans are that lending primarily takes place person to person at locations which include the customer's home. Loans are provided in cash and collected by employees or agents. The term of each loan generally ranges from 39 weeks to 52 weeks and repayments are typically due weekly although some customers might agree less frequent repayment schedules. The amount of the loan typically ranges from £200 to £1,000 and the

repayment amounts are fixed and consist of the amount borrowed plus interest and so exclude any transaction costs.

4. Morses Club has also sold loans to third party debt purchasers. Between 1 April 2014 and 31 January 2023 it assigned 386,000 loans in relation to 265,000 customers to two debt purchasers. It is currently in discussions with them to enter into debt reduction agreements to ensure that the customers whose loans have been assigned are treated in the same way as those customers whose loans are currently held by Morses Club.

5. Shelby Finance Limited ("**Shelby**") is a subsidiary of Morses Club and provides online instalment loans under the trading name Dot Dot Loans. It has operated as a fully online lender since its launch in 2017. It offers short-term, three-to-six-month and nine-month loans to customers who want to borrow £100 to £1,000 and loans of £1,500 to £5,000 to customers who want to borrow more over a longer period of up to 60 months.

6. Between 1 January 2016 and 11 August 2022 Morses Club received 22,258 redress claims relating to 192,572 loans issued by it in relation to its past lending practices. It accepts that it failed to perform affordability, suitability and sustainability checks in relation to individual customers and that breaches of those requirements exposed Morses Club to claims for civil redress by those customers. Redress claims made by complaint to the FOS also generate a statutory fixed fee which is currently set at £750 but has increased from £550 since 1 January 2016. Of the 22,258 redress claims received by Morses Club in the period from 1 January 2016 to 11 August 2022, 4,751 (or 21%) were subsequently referred to the FOS, which upheld 2,950 (or 62%) rejected 1,512 (or 32%). Some are still awaiting adjudication.

7. Taking all of the redress claims both upheld internally and those subject to review by the FOS, 15,654 redress claims were upheld during the period from 1 January 2016 to 11 August 2022 resulting in Morses Club paying compensation of £24,660,855 (including balance reductions and previous write-offs) or £19,159,349 in cash payments to customers. Morses Club also paid a total of £2,181,300 in fixed fees to the FOS.

8. At a meeting of the board of directors on 22 March 2022 Morses Club resolved that it had become untenable for the business to continue paying such redress claims in full in

the ordinary course and that a scheme of arrangement was the most appropriate mechanism by which it could ensure that customers with claims in respect of redress liabilities could continue to be treated equally going forward. On 11 August 2022 (the "**Record Date**") Morses Club announced to customers and the market that it was pausing the processing of all new redress claims with immediate effect whilst it developed the Scheme. In his witness statement dated 1 March 2023 Mr Gary Marshall on behalf of Scheme Co dealt with future claims in paragraphs 99 to 100, from which I quote:

> "98. From the Record Date to 31 December 2022, Morses Club received a total of 3,789 redress claims. These claims are currently the subject of the Claims Pause and accordingly have not been processed nor paid. Morses Club estimates that the total value of these claims will be £7,252,146 ("Estimated Unpaid Claims Received"). 99. From 1 January 2023 to 31 March 2023, Morses Club estimates that it will receive 7,510 redress claims with a total value of approximately £14,374,140 ("Estimated Future Claims" and, together with the Estimated Unpaid Claims Received, the "Estimated Current Redress Liability"). Accordingly, by the end of March 2023, Morses Club estimates that it may have a total Estimated Current Redress Liability of £21,626,286. 100. It will be noted that the £21,626,286 Estimated Current Redress Liability is far in excess of the £446,360 cash available in May 2023. Furthermore, whilst Morses Club could continue to generate cash through trading BAU, the estimated cash flow forecast indicates that Morses Club would not have enough cash to pay the Estimated Current Redress Liability at any time during the period covered and further redress claims will likely be made after 31 March 2023."

9. I have quoted that passage in full because Mr Al-Attar referred me to the decision of Briggs J (as he then was) in *Re Cheyne Finance plc (In Receivership) (No 2)* [2008] 1 BCLC 741 at [56] and submitted that Morses Club is insolvent and that the relevant comparator to implementation of the Scheme is insolvent administration. I accept that submission and I am satisfied on the evidence before me and, in particular, on the evidence of Mr Marshall (which I have quoted) that Morses Club is insolvent and that insolvent administration is the relevant alternative to the Scheme.

10. I turn, therefore, to Scheme Co. It is not a trading company and does not conduct any business of its own. It was incorporated to promote and implement the Scheme. It has executed a deed poll, under which it has assumed the obligation to meet or all Redress Liabilities (as defined in the deed) incurred by Morses Club to Scheme customers and all sums due to the FOS. The reason for the Scheme to be promoted by Scheme Co

rather than by Morses Club itself is that it might trigger a default in its secured funding arrangements if Morses Club promoted the Scheme itself.

11. Mr Al-Attar took me to the deed poll (the "**Deed Poll**") and also to the deed of release to explain and make good his submission about the effect of Scheme Co assuming liability to the customers of Morses Club and the FOS in place of Morses Club. The easiest way to explain this effect is to quote from the judgment of Trower J in *Re Lecta Paper UK Ltd* [2020] EWHC 382 (Ch) at [20] and [21] in which the scheme was designed to operate in a similar way (references omitted):

> "The company and the parent are now co-issuers of the relevant debt. The scheme provides for the release and discharge of the scheme creditors' claims under the existing SSNs against not just the company, but also against the parent and all of the guarantors of the existing SSNs who are third parties for this purpose. In my judgment, it is well established that a scheme of arrangement can release claims by a creditor against a third party where such a release is necessary in order to give effect to the arrangement….As a matter of principle precisely the same approach is applicable where two companies are jointly liable as co-obligors for the same debt. If this were not to be the case, one of the principal obligors would remain liable for the entire debt, and may be entitled to claim a contribution from the scheme company, a form of ricochet claim that is capable of defeating the purpose of the scheme. Thus, it is now established that in the case of two principal debtors, a scheme proposed by one can effectively provide for a release in favour of both the principal obligors in just the same way as a scheme proposed by a principal debtor can provide for an effective release of claims against a guarantor."

12. The same process has been adopted in the present case and cases of a similar nature. Scheme Co assumes liability for the Redress Claims against Morses Club and those claim are then released under the Scheme thereby avoiding any "ricochet" claims. The Scheme is also intended to release officers and advisors and in *Re Lecta Paper* Trower J dealt with that issue at [22]:

> "The scheme also releases any claims or purported claims by the scheme creditors against a large number of third parties, including directors, legal advisors, financial advisors and various other intermediaries. This is appropriate and likely to be upheld as part of an arrangement within the meaning of the section, where, as in the present case, the release is of claims against the persons involved in

> the preparation, negotiation or implementation of the scheme itself and their legal advisors. Such provision should, of course, be fully disclosed in the Explanatory Statement, but as a matter of principle, they are well within the scope of the scheme jurisdiction."

The Scheme

13. The Scheme will apply to all customers who took out a loan between 1 April 2014 and 2 August 2022 issued by Morses Club itself or by lenders from whom Morses Club bought the loan or assumed liability for redress (whom I will call "**Customers**"). For the purposes of the Scheme a "**Redress Liability**" is a liability owed by Morses Club by SchemeCo to a Customer arising out of or in relation to the assessment of the sustainability, suitability and/or affordability of a Loan or otherwise in respect of irresponsible lending and in respect of which any Customer has made or may make a claim on or after the Record Date (which I will call a "**Scheme Claim**"). The Scheme will also apply to the fees owed by Morses Club to the FOS in relation to Redress Liabilities where such a claim is made after the Record Date (which I will call a "**FOS Fee Claim**").

14. The Scheme is to become effective on the date the court order sanctioning the Scheme is delivered to the Registrar of Companies in accordance with section 899 of the 2006 Act in the conventional way (the "**Effective Date**"). If the Scheme becomes effective, the Scheme Creditors will be required to submit their Scheme Claims to Scheme Co within six months of the Effective Date (the "**Claims Deadline**"). If a Customer (i) makes or has made a claim in respect of a Redress Liability before the Effective Date or (ii) votes on the Scheme, they will automatically have their claim submitted under the Scheme without having to separately submit a Scheme Claim. Mr Al-Attar took me to the relevant provisions of the Deed Poll and demonstrated that those claims are automatically admitted to the Scheme.

15. After the Claims Deadline has passed, however, Customers will not be permitted to submit any (or any further) Scheme Claims to SchemeCo and shall not be entitled to receive any compensation they may be due in respect of those Scheme Claims. Scheme Co will also assess all Scheme Claims which are submitted to it by the Claims Deadline and, if accepted, will inform individual Customers of the amount of compensation upon which their dividend payment will be calculated. Customers whose Scheme Claims are

rejected by Scheme Co but who are not satisfied with its determination may have their Scheme Claim referred to a scheme adjudicator as defined.

16. Finally, the Scheme also contemplates that a special compensation fund of at least £20 million (the "**Compensation Fund**") will be made available by Morses Club to SchemeCo to make payments to Scheme Creditors whose Scheme Claims are determined or adjudicated to be valid and who are entitled to receive a cash payment after any set-off or refunds. The total cash payment due to a Scheme Creditor in the Scheme is defined as their "**Ascertained Scheme Claim**".

17. The Scheme projects that the Compensation Fund will be made up of: (a) £5,000,000 to be provided by Morses Club (the "**Morses Club Funding**"); (b) at least £15,000,000 to be provided by potential investors (the "**Investors**") in exchange for 95% of Morses Club's shares (the "**Shareholder Funding**"); plus (c) the realisable value of the net assets of Morses Club and Shelby as at the Effective Date above £5 million after deducting a margin for operational liquidity, marketing costs and the costs required to implement a wind down scheme of arrangement) to the extent this amount exceed (the "**Turnover Amount**").The Scheme will effect the release of Morses Club from all Scheme Claims upon payment in full being made into the Compensation Fund trust account.

18. The Scheme also provides for certain payments to be made into what is termed the "**VREQ Trust Account**". Such a payment will be held on trust where a Customer makes a Scheme Claim after the Record Date but before the Effective Date but also makes a payment in respect of an unpaid loan after the Record Date but before the Effective Date. The relevant funds are to be paid into the VREQ Trust Account and held on trust for those Customers whom I will call the "**VREQ Customers**". Finally, the Scheme provides that where a Customer has an ascertained Scheme Claim but makes payments to Morses Club or a Debt Purchaser in respect of the relevant loan after the Effective Date, Customers will be entitled to a refund from Morses Club or the Debt Purchaser of that payment. These are defined in the Scheme as "**Scheme Refund Payments**" or "**Sold Loan Refund Payments**".

19. If Morses Club does not pay the full amount of: (a) the Morses Club Funding by 29 March 2024; (b) the Shareholder Funding by 28 June 2024; or (c) the Turnover Amount (if any) by 29 July 2024, the Scheme will terminate. The Scheme will also terminate if

the current shareh olders of Morses Club do not formally approve the issue of new shares (which is necessary in order for Morses Club to raise the Shareholder Funding) by 3 May 2024.

20. SchemeCo's estimate is that Scheme Creditors will receive a cash payment of approximately 32% of the value of their Ascertained Scheme Claims. The directors of Morses Club believe that the amounts which Scheme Creditors are expected to receive under the Scheme will be greater than that which they will receive if Morses Club were to enter into administration. Interpath Advisory ("**Interpath**") have been engaged by Morses Club to provide two reports: a valuation report and an independent review of the reasonableness of management's estimates. I was taken by Mr Al Attar to both reports as evidence in support of the following propositions: first, that an injection of equity of £15m in return for 95% of Morses Club's shares does not undervalue the Company; secondly, the attraction of the group to investors is the growth potential of Shelby; and, thirdly, that returns of 32 pence in the pound are reasonable. Interpath also consider that if it went into administration proceedings Scheme Creditors would receive approximately 5.0% of the cash they are owed. This is based on a total complaints provision of £61.8m (which is based on the assumption that only 25% of eligible Scheme Creditors will claim).

The FCA

21. By letter dated 3 March 2023, the FCA set out its detailed objections to the Scheme. As I have stated, the FCA does not oppose the application for a convening order but wishes to ensure that the court is aware of its objections at this stage and it is right that I should record them in this judgment. They they are as follows:

    (a) There is considerable uncertainty regarding the funds to pay any redress. The FCA considers the Scheme to be highly speculative and uncertain, that there is a substantial risk that funding will never materialise and that this will only become clear after a substantial period of time.

    (b) There is uncertainty regarding the level of expected dividend which is dependent upon a number of factors and assumptions.

(c) There are problems with the valuation, amount and time of the Shareholder Funding.

(d) The FCA has concerns about the claims methodology which Morses Club will adopt in determining claims although certain issues have been addressed in the last week or so.

(e) The position of Shelby raises two issues: first, the continued funding of Shelby by Morses Club will prejudice creditors and there is no potential upside for them if it performs better than expected. Secondly, Shelby was included in Interpath's valuation of the group for the purposes of its valuation.

(f) Certain categories of customers are not adequately protected.

22. Unsurprisingly, a number of those concerns fed into concerns about the documents which have been and are to be circulated to the Customers. The FCA is concerned that given the customer base of Morses Club, Customers will not read either the Explanatory Memorandum or the Scheme Documents. They are long, complicated and technical. But it is crucial that they are made aware of the key features of the Scheme and the key risks. To some extent, this concern is ameliorated by the appointment of Mr Yorke, who has performed a similar function in relation to other Schemes. But it does not alleviate the concern entirely.

The Issues

23. Mr Al-Attar and Mr Lupi identified six issues for the convening hearing. They were as follows:

(1) Notification of the convening hearing to interested parties;

(2) The use of a special purpose vehicle to facilitate the Scheme;

(3) SchemeCo's proposal for a meeting of a single class of creditors to consider and vote on the Scheme;

(4) Notice, timing and conduct of the Scheme Meeting;

(5) Documentation; and

(6) The absence of any jurisdictional road-block in this case.

(1) Notification of Interested Parties

24. I am satisfied that the period of notice given to Scheme Creditors (which ranges from 8 to 12 weeks) is sufficient for them to consider what is proposed, to take appropriate advice and, if so advised, to attend the Scheme meeting. I am also satisfied that the steps taken to inform creditors is sufficient to bring the relevant documents to their notice. Morses Club estimates there are approximately 618,000 potential Scheme Creditors but it has been able to notify 96 per cent of them through various channels.

25. The Practice Statement provides that a Practice Statement Letter ("**PSL**") shall be distributed to potential Scheme creditors. In the present case SchemeCo's representatives distributed a covering letter (the "**Cover Letter**") with a link to the full PSL by email or links to both the Cover Letter and PSL by text or both or posted it to Customers. Both documents are clearly pitched at the level of a layperson, but given the complexity of the arrangements, the terms of both documents will not have been easy to digest. Given the constituency to which they are directed and the size of the loans, it is unlikely that many Customers will take legal or financial advice. Nevertheless, both contain clear warnings from the FCA, a link to an FAQs webpage and an email address for Mr Yorke.

26. Paragraph 7 of the Practice Statement provides that it is the responsibility of the applicant to ensure that notification is given in a concise form and is communicated to all persons affected by the Scheme in a manner which is most appropriate to the circumstances of the case. Although I have articulated a number of misgivings about the communication of this complex information to Customers, I am satisfied this test is met and that both letters are sufficient for them to understand and consider what is proposed with some assistance either from Mr Yorke, as the Customer Advocate, or with the benefit of advice either formal or informal or simply by a close reading of the documents themselves.

27. The level of engagement with Mr Yorke and SchemeCo or Morses Club itself suggests that many customers have been able to understand and digest the information which they have received. Mr Day took me to those parts of Mr Yorke's report dealing with the

responses and showed me that Mr Yorke has received 598 emails and five letters directly from customers about the Scheme, most of which are positive and indicate a willingness to participate. Morses Club itself has received some 10,000 emails and 25,000 calls, and again Mr Day showed me the extract in his report which showed the sample which Mr Yorke has examined and that they are in the main also positive. I also take comfort from the fact that Mr Yorke's own view is that reasonable efforts have been made to draw the existence of the Scheme to Customers.

(2) The use of a special purpose vehicle

28. Mr Al-Attar referred me to a number of authorities which have considered schemes involving lenders facing redress claims from customers and which support the proposition that the scheme jurisdiction under Part 26 of the 2006 Act is engaged where a special purpose vehicle such as Scheme Co assumes liability for redress claims against another group company such as Morses Club. I have already quoted from the decision of Trower J in *Re Lecta Paper (UK) Ltd*, but Mr Al-Attar also referred me to a number of other authorities. In particular, I note that in *Re Provident SBV Ltd* [2021] EWHC 1341 (Ch) Sir Alastair Norris was content to rely on the fact that this course has been adopted in a number of cases: see [29]. I am content to do the same in the present case.

(3) Class Composition

29. Mr Al-Attar submitted that it is appropriate for Scheme creditors to vote in a single class including the FOS. I accept the proposition that the starting point should be a single class of creditors given that all of them (including the FOS) are being offered the same machinery and the same terms for the release of their claims. At the highest level of generality all of the creditors have a claim under the same statutory section (with the exception of the FOS).

30. Mr Al-Attar also referred me to *Re ALL Scheme Ltd (No 2)* (or, as he referred to it, *Amigo (No 2)*) [2022] EWHC 549 (Ch) where Snowden LJ, sitting as a judge of the Chancery Division, accepted the rights of customers were not sufficiently dissimilar in any material way so as to require any subdivision of customers with redress claims or the FOS in respect of its accrued fee claim into separate classes: see, in particular, [54] to [56]. Mr Al-Attar also referred me to *Re Provident SBV Ltd* for the proposition that no class issue

arises where a customer is entitled to assert a right of set-off for their redress claims against their outstanding loan balances.

31. In none of the authorities to which Mr Al-Attar referred me did the Court consider it necessary to direct a meeting of more than one class of creditors. However, in the present case two groups of creditors require separate consideration. The first group consists of VREQ Customers and Customers who are entitled to Scheme Refund Payments.

32. For the detailed reasons submitted by Mr Al-Attar and set out in his Skeleton Argument I am satisfied that the single class is not fractured by either of these groups of creditors. Their entitlement to payments out of the VREQ Trust Account or a Scheme Refund Payment is a function of the timing of the claims or payments which they have made rather than their different rights. Mr Al-Attar also referred me to *Re Nostrum Oil & Gas plc* [2022] EWHC 1646 (Ch) where Meade J held that the class was not fractured by a group of creditors who were subject to sanctions and could not receive any entitlement until or unless there ceased to be sanction. As he said, this was a function of their personal characteristics, not their rights under the scheme. In my judgment, this provides a helpful analogy.

33. The second group of creditors who require separate consideration are those Customers entitled to Sold Loan Repayments. Mr Al-Attar referred me to *Re Provident SBV Ltd* again, where Sir Alastair Norris held that the class of creditors was not fractured by a group of debtors whose loans had been assigned to third parties. In my judgment, the same reasoning applies in the present case. Morses Club intends or hopes to enter into a series of agreements with the third parties to whom they have sold loans and which may result in Sold Loan Repayments. Sir Alastair Norris held (and I accept) that this question is to be considered in the fairness assessments and at the sanction hearing rather than as a matter of class composition. For these reasons, therefore, I will direct a single meeting of all customers in the FOS as a single class.

(4) The Scheme Meeting

34. I therefore turn to the question of directions for the Scheme meeting. If I had been giving directions today, I would have been satisfied with the proposed timetable for the Scheme meeting and, in particular, the spacing of the time between notice being sent out and the

meeting itself. This will be between 8 and 12 weeks again (depending on the method of notification).

35. I am also satisfied with the methodology for valuing claims for the purpose of the Scheme meeting. The value of claims will be assessed using an automated Claims Methodology. In *Re Provident SPV Ltd* Sir Alastair Norris accepted that an automated claims methodology was sufficient to enable the scheme meeting to take place given that the weighing of multiple, unliquidated, relatively small claims presents obvious difficulties. The FCA has raised concerns about the Claims Methodology but I am informed that this concern has now been addressed.

36. But even if the Claims Methodology places no value on the Customer's Redress Claim, it will be given a value of £1 and the Customer will be entitled to vote. Given that section 899(1) requires a majority in number of creditors to approve the Scheme, this enables as many Customers with potential Redress Claims as possible to participate in the meeting and to vote even if their Redress Claims are later rejected. Turnout will be a matter for the sanction hearing. If there is a very low turnout the Court may wish to explore that further at the sanction hearing. But I accept Mr Al-Attar's submission that a class has been opened out for the widest possible number of Scheme Creditors to vote.

(5) Documentation

37. Mr Al-Attar drew my attention to one discrete issue, namely the form of authority given by Customers in their claim forms for the appointment of a proxy for the Scheme Meeting. An important note at the foot of the form states that by submitting the form a creditor authorises modifications to the Scheme provided that they do not materially adversely affect the interests of that creditor. Mr Al-Attar raised an interesting point, namely the extent to which it is open to the Court to modify the Scheme after the Scheme Meeting without refusing to sanction it altogether. In the event, it is unnecessary for me to consider this point further because I can see no reason why the authority given by Customers in their claim forms should not be effective.

38. I also raised a point about the construction of section 897 of the 2006 Act and the extent to which it permitted SchemeCo to summon the Scheme meeting by advertisement and, in particular, by sending Customers a short letter called "Meeting Advertisement" providing details of the meeting and a link to the full explanatory statement. Mr Al-Attar

submitted that on a true construction of section 897 the "and" at the end of section 897(1)(a) was disjunctive and not conjunctive and permitted SchemeCo to summon a meeting either by enclosing the Explanatory Statement or by enclosing an advertisement which states where and how creditors or members entitled to attend the meeting may obtain copies of the explanatory statement. He also pointed out that in *Amigo 2* Trower J approved the method by which the scheme company had summoned the meeting at the sanction hearing: see [2022] EWHC 1318 (Ch) at [42]. He pointed out that exactly the same form of process had been adopted in that case. I am satisfied, therefore, that it is appropriate to send out the meeting advertisement either in addition to or instead of the Explanatory Statement with a link to the statement and explaining how Customers may access it.

39. In my judgment, the meeting advertisement is a very important document and it is likely to be the subject of further modification and agreement both between Scheme Co and the FCA. For that reason, therefore, I say little more about the Scheme documentation other than it will require further consideration and that I am not prepared to make an order at this stage approving any particular documents in their current form. However, I will address at the end of this judgment how best to deal with the outstanding issues.

(6) Roadblocks

40. That leads me to the last issue for the convening meeting, namely, whether there are any jurisdictional issues or "roadblocks" which might prevent the Court from ordering the Scheme meeting to take place. Mr Bayfield, in his very helpful oral submissions, drew a distinction between three categories of cases: firstly, cases where there was a hard jurisdictional issue and the proposed scheme did not fall within the wording of the Act at all; secondly, cases where there was a blot on the scheme such as a legal issue which prevented it from taking effect at all; and thirdly, what he described as a roadblock, which was a factual or legal situation which meant that it was impossible to conceive of circumstances in which the court would approve the Scheme at the sanction meeting. I find that a very helpful classification and, with that in mind, I therefore turn to the issues which are raised.

41. The FCA has raised significant concerns about the commercial viability of the Scheme and in particular that it is dependent upon raising sufficient equity to generate the

Compensation Fund. It has also raised concerns that if the Scheme fails then Customers may be significantly worse off than if the Scheme had never been sanctioned at all. In their Skeleton Argument Mr Al-Attar and Mr Lupi address detailed argument to these issues. Mr Al-Attar also took me very carefully through the Explanatory Statement to show me that the possible downside of the Scheme has been flagged up a number of times. As he put it, there is a risk that Scheme creditors will receive a lower return in the event that the Scheme should fail after the Effective Date and it has been sanctioned than they would if the Morses Club had gone into insolvent administration immediately. I am satisfied that the Explanatory Statement, as it currently stands, does advert to these risks in a way that draws their attention to Scheme creditors.

42 They also submitted (and I accept) that it is useful in this context to consider the *Amigo 2* scheme, which was dependent on a number of conditions being met before it could be effective including the injection of new equity. At the sanction hearing Trower J drew a distinction between the legal effect of the Scheme and the future uncertainty that the commercial conditions upon which the Scheme were dependent were not met. He expressed the view that the Court had to be satisfied that there was sufficient commercial certainty that the relevant conditions would be met before it would sanction the Scheme. It seems to me that those conditions will form the battleground for the sanction hearing when it takes place in a few months' time.

43. I am satisfied that those issues do not fall within the first or second categories of Mr Bayfield's classification of roadblocks or jurisdictional objections to a creditors' scheme. So far as the third category is concerned, I accept his submission that it is possible that a failure to reach a binding agreement with potential investors to raise sufficient funds to fully fund the Compensation Fund might have been a roadblock which the Court would consider at the convening hearing. But given his concession that he has no objection to the Scheme Meeting going ahead, and he has reserved his position to argue the point at the sanction hearing, I am satisfied that this is the kind of issue which, if the parties file further evidence, may either disappear or SchemeCo may be able to overcome at the sanction hearing.

44. Put another way, I am satisfied for the purposes of the convening hearing that there is sufficient commercial certainty that the conditions will be met for me to permit the Scheme to go forward and to convene the Scheme meeting. This is an issue which will

require careful consideration of the sanction hearing but I note that in relation to the *Amigo 2* scheme Snowden LJ did not consider the commercial uncertainties to be sufficient to decline jurisdiction of the key convening hearing. I do not therefore consider the very real concerns raised by the FCA about the viability of the Scheme and its impact to be a potential roadblock at this stage.

45. It is not appropriate for me to make an order at this stage. What I propose to do is to leave it to the parties, within a timetable to be discussed, to see if they can agree the documentation and then to submit a form of order to me on the papers. If it does not prove possible within that period of time for them to agree the documentation and to agree a form of order, then I will then either deal with any outstanding issues on paper or, if the parties wish me to do so, restore the convening hearing for further argument. The form of order, therefore, that I will make this afternoon is to adjourn the convening hearing to a date to be fixed between the parties and subject to a final order, and in the meantime I will hear from the parties on the timetable going forward.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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