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Case No. CR-2022-000612

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

Rolls Building
Fetter Lane
London
EC4A 1NL

Date: Tuesday 15 March 2022

Before :

LORD JUSTICE SNOWDEN

(sitting as an additional Judge of the High Court)

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IN THE MATTER OF ALL SCHEME LTD

AND IN THE MATTER OF PART 26 OF THE COMPANIES ACT 2006

- -

Barry Isaacs QC and Adam Al-Attar (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Applicant company**
William Day instructed on behalf of the **Customer Advocate, Jonathan Yorke**

Hearing date: 8 March 2022

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Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to BAILII and the National Archives. The date and time for hand-down is deemed to be 9:30 a.m. on Tuesday 15 March 2022.

Lord Justice Snowden :

1. This is an application by ALL Scheme Limited ("SchemeCo") for directions to convene meetings in connection with two proposed (and alternative) schemes of arrangement under Part 26 of the Companies Act 2006 ("Part 26").

2. The Schemes arise out of mis-selling of loans to consumers by the group of companies headed by Amigo Holdings plc ("Holdings plc"). The group includes, in particular, its indirect trading subsidiary Amigo Loans Ltd ("ALL") and its service subsidiary company, Amigo Management Services Limited ("AMSL"). For ease of reference, where it is unnecessary to distinguish between them, I shall refer to these companies simply as "Amigo".

Background

3. ALL is a provider of "guarantor loans" in the UK. Guarantor loans are offered to those who, because of their credit histories, cannot borrow from mainstream lenders. The loans involve a second individual, typically a family member or friend with a stronger credit profile than the borrower, who guarantees the loan repayments. For ease of reference I will refer to both borrowers and guarantors as "customers". ALL has made approximately 927,000 guarantor loan agreements since 28 January 2005. Since the same date, ALL has had contractual relations with over one million customers. ALL is not currently writing new business but has about 81,000 customers with outstanding loans.

4. The need for the Schemes has arisen because ALL has received a significant number of customer complaints and claims related to its lending activities. These complaints and claims are primarily for mis-selling on the basis of the affordability of loans for both borrowers and guarantors. Consumers are entitled to seek redress for such mis-selling, including by making complaints to the Financial Ombudsman Service ("the FOS"). Such complaints and claims (whether or not made to the FOS) are defined in the documentation as "Redress Claims". ALL has not been processing complaints, and the FOS has not been progressing Redress Claims, under an informal moratorium which has been agreed with the Financial Conduct Authority ("the FCA") whilst the Schemes are being developed and promoted.

5. The amount of compensation payable if a Redress Claim is successful is typically quantified as the amount of the costs and interest the customers have paid on their loans (in the case of borrowers) or any amount paid under a guarantee (in the case of guarantors), together with interest at 8%. The average value of Redress Claims in respect of loans made by ALL is £4,600 and in respect of guarantors the average is £1,945. The scale of the potential mis-selling can be seen from the fact that the provision made by ALL for Redress Claims as at 31 December 2021 was £347.5 million.

6. Redress Claims made by way of complaint to the FOS also generate a statutory entitlement of the FOS to a fixed fee (currently £750, previously £650) for the handling of such claims. The fee is to be paid to the FOS by the regulated entity or person the subject of the complaint, irrespective of whether the complaint is upheld or not. The FOS claims to be owed about £12.5 million in fees by ALL in respect of the Redress

Claims that have already been submitted to it. This claim by the FOS is defined in the documentation as the "FOS Fee Claim".

7. There is, in addition, an on-going investigation by the FCA into Amigo's affordability assessment process which may result in a fine being imposed by the FCA on ALL. The FCA has indicated, however, that if, at the completion of its investigation, it considers that a financial penalty is appropriate, it will take into account the priority of the creditors of ALL to ensure that any fine does not have an impact upon the amounts payable to such creditors under the Schemes.

Amigo's financial position

8. Including inter-company loans payable, ALL's total liabilities as at 31 December 2021 are estimated to be £597 million and its assets are estimated to be £473 million. Consequently, ALL's net liabilities as at 31 December 2021 were £123 million. ALL is therefore balance sheet insolvent. The net position of the Amigo group is very similar.

9. In the absence of the recommencement of business following implementation of one of the Schemes, the evidence is that ALL will, in the relatively near future, run out of cash to pay its current liabilities in full, and it would in any event not be appropriate for it to make full payment to current creditors in preference to creditors who have yet to establish their claims.

10. For present purposes I am satisfied on the evidence placed before me that ALL is insolvent and that the relevant comparator to implementation of one of the Schemes is an insolvent administration of the Amigo group. The evidence also states that preparations have been made for the group to go into administration in the event that neither Scheme is approved and sanctioned.

11. In the event of such administration, the directors of ALL estimate that customer creditors with Redress Claims would be likely to receive 31p/£. The basis for this estimate has been independently reviewed by Ernst & Young LLP, who have concluded that it is reasonable.

12. In these circumstances the Schemes are proposed to customers in respect of their Redress Claims and to the FOS in respect of the FOS Fee Claim in order to provide those creditors with a better outcome than an insolvent administration of the Amigo group.

SchemeCo

13. SchemeCo is not a trading company. It is a relatively new company that has executed a deed poll to assume joint liability for the relevant liabilities of ALL, Holdings and AMSL for the sole purpose of promotion of the Schemes. SchemeCo has been used in this way because it is feared that a proposal of the Schemes by ALL itself might trigger a default under about £50 million of secured high-yield bonds issued by another group company, of which ALL is a guarantor. As I shall explain, the intended effect of involving SchemeCo in this way is that if it is released from its (assumed) joint liability by the Schemes, this will enable a mechanism to be put into place to effect a similar

release of the relevant liabilities of ALL, Holdings and AMSL, together with their directors and employees, to Scheme creditors.

The Previous Scheme

14. SchemeCo proposed an earlier scheme of arrangement in January 2021 (the "Previous Scheme"). The Previous Scheme sought to compromise Redress Claims and the FOS Fee Claim in return for a payment to customers which was estimated at only about 10p/£, and which left the ultimate shareholders of Amigo intact and unaffected even though they would have ranked for payment behind the creditors in an insolvency.

15. That Previous Scheme was approved by 95% of creditors attending and voting, whose total claims amounted to about £240 million. However, the Previous Scheme was opposed at the sanction hearing by the FCA, and in a comprehensive and penetrating judgment of 24 May 2021, Mr. Justice Miles refused to sanction it: see [2021] EWHC 1401 (Ch).

16. In essence, Mr. Justice Miles considered that he could not rely upon the affirmative vote of creditors at the scheme meetings as an indication of the fairness of the Previous Scheme because customers with Redress Claims had not been given the necessary information to enable them properly to appreciate the alternative options reasonably available to them, or to understand the basis on which they were being asked to sacrifice the great bulk of their Redress Claims, while the ultimate shareholders of Amigo were to be allowed to retain their shareholdings unaffected.

17. Mr. Justice Miles also did not accept the directors' evidence that a failure to sanction the Previous Scheme would result in the immediate administration of Amigo. He did not think that the directors had explored the prospect of a better alternative to the Previous Scheme, and in particular he observed that they had not considered a market recapitalisation to raise funds to pay creditors and/or a conversion of creditors' claims to equity.

18. Mr. Justice Miles' judgment was prescient. Amigo did not go into administration following his rejection of the Previous Scheme. Instead, it developed and has now proposed the current Schemes which now include the prospect of a market recapitalisation of Amigo which will dilute the existing shareholders of Holdings plc down to about 5% of the new expanded share capital, and which will enable a significantly increased estimated return to creditors under the Schemes of over three times that offered under the Previous Scheme.

19. Neither Scheme proposes the conversion of customer claims to equity because, having consulted with an independent committee of creditors formed since the failure of the Previous Scheme (the "ICC"), ALL believes that customer creditors with Redress Claims were unlikely to want shares in Amigo, and would rather have an enhanced cash return on their claims delivered as quickly as practicable.

20. The two Schemes are being put forward simultaneously and as alternatives to give Scheme creditors a greater range of options and to save the time and extra expense of a yet further attempt at a scheme if the preferred Scheme were not to be approved or sanctioned.

The Schemes in outline

21. The first Scheme, which is favoured by Amigo and the ICC, is the New Business Scheme ("NBS"). This envisages the resumption of the lending business of Amigo and contains two alternative outcomes, namely the "Preferred Solution" and the "Fallback Solution". The Fallback Solution will be triggered if certain conditions (the "New Business Conditions") are not met.

22. The second Scheme is the Wind-Down Scheme the ("WDS") which does not envisage the resumption of lending business by Amigo, but nonetheless aims to achieve a quicker and cheaper outcome for creditors than a formal insolvency.

23. The Schemes have various common features and some important differences.

24. Both Schemes will compromise SchemeCo's (assumed) liabilities to pay any liability in relation to a Redress Claim, together with any liability to the FOS in relation to the FOS Fee Claim. Compliance by SchemeCo and Amigo with the Schemes will be monitored by the "Scheme Supervisors", who are initially to be a partner and a director of PricewaterhouseCoopers LLP.

25. Both Schemes provide a mechanism under which, in return for the rights given by the Scheme, the Scheme Supervisors will be authorised to execute a deed (the "Deed of Release") on behalf of the Scheme creditors, releasing any claims that they have or might have against the Amigo companies and their respective directors and employees in connection with or arising out of the Redress Claims or the FOS Fee Claims.

26. Certain liabilities of Amigo have not been assumed by SchemeCo or have been excluded from the Schemes and will be paid in full outside the Schemes. These are intercompany debts, and liabilities to customers which had been agreed or finally adjudicated prior to the announcement of the intention to propose the Previous Scheme on 21 December 2020. The latter are relatively few in number and value, amounting to about £300,000.

27. Both Schemes envisage the creation of a trust fund (the "Scheme Fund") from which claims of creditors established under the Scheme will be paid a pro rata dividend. The Schemes provide a mechanism for Redress Claims to be submitted online to SchemeCo which will, in the first instance, decide whether or not to accept them. If a dispute arises, the Schemes then provide for the dispute to be referred for binding determination out-of-court by a "Scheme Adjudicator" who has not yet been appointed, but who I am given to understand is likely to be a partner with experience of financial services litigation at a leading and independent firm of solicitors, or someone of equivalent qualifications and expertise.

28. Importantly, the Schemes provide for a prohibition upon Redress Claims or FOS Fee Claims being made after a set "Bar Date" which will be six months from the effective date of the Scheme. Claims not submitted by the Bar Date will be extinguished.

29. If a Redress Claim is accepted or adjudicated in favour of the customer, Amigo will be prevented by the Schemes from pursuing any further claim to interest on the loan or from pursuing any claim against a guarantor in relation to the loan.

30. The expectation is that SchemeCo and the Scheme Adjudicator will approach the determination and quantification of Redress Claims under the Schemes in accordance with the general principles for determination and quantification of a redress claim outlined above. Accordingly, where a customer who establishes a Redress Claim under the Schemes has already repaid their loan, the amount upon which the dividend to be paid from the Scheme Fund will likely be calculated will be the amount by which the total amount paid by the customer exceeded the amount originally borrowed, together with simple interest at 8% on the payments made after the customer had repaid an amount equal to the amount originally borrowed.

31. Customers with outstanding loans will benefit from the set-off of their established Redress Claims against their outstanding liability for the amount originally borrowed. Accordingly, if a customer establishes a Redress Claim under the Schemes and has made payments to Amigo that add up to more than the amount originally borrowed, then they will receive a cash dividend from the Scheme Fund calculated on the difference. If the payments made by the customer are less than the amount originally borrowed, the payments which they made to Amigo will be credited in full to reduce the amount borrowed, leaving only the balance payable by the customer. In either case, as indicated above, no further interest will be payable on the loan.

32. The principal financial difference between the NBS and WDS is the potential amount of money available for distribution to creditors from the Scheme Fund.

33. In summary, under the NBS, it is currently projected that at least £112 million will be available, funded by:

    i) a first payment of £60 million into the Scheme Fund, no later than five business days after the NBS becomes effective;

    ii) a second payment of £37 million into the Scheme Fund no later than nine months after the NBS becomes effective;

    iii) £15 million from a recapitalisation of Amigo or such other higher amount as the directors are able to obtain from investors at the time of the rights issue (the "Top-up Amount"); and

    iv) a "Turnover Amount", which is to be calculated by reference to the amount of loan recoveries on ALL's existing loan book in excess of the sum of the first and second payments into the Scheme Fund (£97 million), after making an allowance for a "Liquidity Reserve" (currently £8.4 million) to pay Amigo's operating costs.

34. The definition of the Turnover Amount in the NBS and its description in the draft explanatory statement led to some debate at the convening hearing. The draft NBS imposed a time limit of 31 October 2023 upon the loan recoveries which could form the basis of the Turnover Amount. If unqualified, this might have led to a position in which the directors of Amigo had potentially conflicting duties (on the one hand) to maximise such recoveries for the benefit of Scheme creditors prior to the cut-off date, or (on the other hand) to leave the amounts outstanding, so that when collected after the cut-off date they would benefit Amigo in its future business. There was also no mention of this time limit in the draft explanatory statement.

35. When I raised the point, Mr. Isaacs QC pointed to a footnote in the draft NBS that suggested that the intention was to realise (or notionally realise) all of the loan book by collection or sale prior to the cut-off date. This did not (as it seemed to me) impose any obligation upon Amigo to achieve that goal and I indicated that this was a potential cause for concern, either because it could lead to disputes as to the operation of the Scheme or the role of the directors of Amigo, or because it could lead to claims that the explanatory statement had been misleading or incomplete in a material way.

36. When the point was raised, Mr. Isaacs QC indicated that consideration would be given to revising the documentation to make the position clear. After the hearing I received a revised draft NBS and draft explanatory statement which, in addition to some other clarifications, made it clear that Amigo will be under an obligation to implement a mechanism that will account for all of the value in the existing loan book by the cut-off date of 31 October 2023, and will additionally be under an obligation to take all reasonable steps, having regard to the interests of customer creditors, to ensure that the Turnover Amount is as large as possible. I am satisfied that this redrafting resolves the issues that I raised.

37. The NBS will be immediately effective, but if the New Business Conditions are not satisfied, the NBS will switch from the Preferred Solution to the Fallback Solution. The New Business Conditions are essentially that the FCA allows Amigo to restart lending within nine months of the NBS becoming effective, and that Holdings plc is recapitalised by the issue of at least 19 ordinary shares for every one existing ordinary share within one year of the NBS becoming effective.

38. The New Business Scheme will switch to the Fallback Solution if either of the New Business Conditions is not met or if Amigo cannot fund either of the first or second payments totalling £97 million, or the Top-up Amount. This will involve, amongst other steps, a cessation of any further new lending. Amigo will then pay its other costs, expenses and liabilities and fund the Scheme Fund to pay dividends to customer creditors on terms similar to the WDS.

39. Under the WDS, it is estimated that the Scheme Fund will be £95 million. This amount will be paid into the Scheme Fund over time as ALL collects its loan book in the course of winding down its business. The payments will be reduced by the expenses of the winding down and the payment of ALL's other liabilities not subject to the WDS.

40. The estimated outcomes in terms of the amount and timing of payments under the Schemes and in an administration can be summarised as follows:

	Pence per pound	Timing
Preferred Solution (New Business Scheme)	41p	Final payment likely November 2023
Fallback Solution (New Business Scheme)	Between 33 and 37p	Final payment likely May 2024
Wind-Down Scheme	33p	
Administration	31p	Initial payment likely February 2024 and a final payment in May 2024 at the earliest

The Convening Hearing

41. The convening hearing is not the occasion upon which the Court expresses any view of the merits of a scheme. Instead, the role of the Court is to determine the composition of classes for the purpose of the scheme meetings, to verify in broad terms that the explanatory statement is in a satisfactory form, and to give directions for the holding of the scheme meetings including voting. The Court may also be asked to determine whether the scheme contains any obvious defects ("roadblocks") that would inevitably lead to a refusal of sanction even if the required majorities were obtained at the scheme meetings. See generally Re Noble Group Limited [2019] 2 BCLC 505 at [61]-[63] and [74]-[76].

42. Before turning to deal with the main points in issue, I should make two preliminary observations.

43. The first is that I am satisfied on the evidence that adequate notice was given of the convening hearing to the Scheme creditors. Amigo published a letter complying with the Practice Statement [2020] 1 WLR 4493 in mid-December 2021 using the email addresses which it held for about 88% of its past and present customers. In relation to those for whom Amigo did not hold email addresses, advertisements were placed in the English and Scottish versions of the Daily Mirror and Daily Mail newspapers.

44. Amigo has also made extensive use of online publicity and social media including a dedicated website, Facebook page and YouTube channel. Several videos have been posted online explaining the Schemes and the role of the ICC.

45. The second preliminary observation follows a comment by Mr. Justice Miles in paragraph [106] of his judgment on the Previous Scheme that the customers with Redress Claims were unlikely to have had access to any legal or financial advice in

relation to the scheme and that no independent counsel had been appointed to advance arguments on their behalf about the Previous Scheme. The latter course had been taken by the scheme company in relation to a compensation scheme for potential victims of asbestos in Re T&N Limited [2007] 1 BCLC 563.

46. The position as regards Amigo has now changed. At the convening hearing, I had the assistance of Mr. Day, who appeared as counsel for Mr. Jonathan Yorke, a solicitor with experience in relation to financial services and schemes of arrangement. Mr. Yorke was appointed by Amigo after the failure of the Previous Scheme to act as an independent "Customer Advocate" with a wide remit to liaise with customers and other interested bodies, to review the materials provided by Amigo and to provide a report to the Court on any issues arising relevant to the convening hearing. I was shown Mr. Yorke's terms of engagement and I am satisfied that he was able to act independently in the interests of customers.

47. Prior to the hearing, Mr. Yorke liaised with a significant number of customers who had expressed an interest and concerns about the Schemes and the convening hearing, and he provided a report to the Court on the points arising. By these means, the process adopted by Amigo has been independently scrutinised from the perspective of customers, and the concerns and points of view of customers were conveniently organised and cogently presented. I am very grateful to Mr. Yorke and Mr. Day for their assistance.

48. I should add that the FCA, although not represented before me, has also kept an eye on the development of the Schemes and provided me with a letter explaining its current position. As I have indicated, the FCA has yet to complete its mis-selling investigation and will be required to take a decision as to whether Amigo can resume lending if the NBS is sanctioned. As was the case in relation to the Previous Scheme, the assistance which can be offered by the FCA to the Court at hearings in relation to financial services schemes of this type is to be welcomed and encouraged. In this regard the draft order convening meetings to vote on the Schemes includes agreed directions for the FCA to file evidence and appear at the sanction hearing (if so advised).

The use of SchemeCo and the Deed of Release

49. The use of a special purpose vehicle which assumes joint liability for the debts which are the real target of a scheme or plan has become a feature of an increasing number of schemes and plans in recent years. In my judgment on the convening hearing in Re Port Finance Investment Limited [2021] EWHC 378 (Ch) at [58]-[71] I considered a number of such cases including the domestic mis-selling case of Re AI Scheme Limited [2015] EWHC 1233 (Ch) and the cross-border Part 26A case of Gategroup Guarantee Limited [2021] EWHC 304 (Ch). I concluded, at [72]-[75],

> "72. The cases to which I have referred above show that the English court has been prepared (at least at first instance and without full contrary argument) to hold that there is jurisdiction to sanction a scheme where a (newly formed) English company has voluntarily assumed a liability to creditors of a different company and entered into a co-obligor or contribution deed in favour of that other company.

> 73. In doing so, the courts appear to have treated Patten LJ's comment in paragraph [65] of his judgment in Lehman Brothers [2010] Bus LR 489 that Part 26 can include releases of third parties that are "necessary in order to give effect to the arrangement proposed for the disposition of the debts and liabilities of the company to its own creditors", to be satisfied simply by the existence, as a matter of law, of a contingent liability on the part of the scheme company that has been voluntarily undertaken to the third party. Questions of the degree of artificiality of the structure, the relative lack of benefit to the scheme company, and the commercial justification for the scheme from the perspective of the third party have been treated as matters going to the exercise of the court's discretion, together with questions such as whether the scheme is an example of "good forum shopping", whether there is a high level of support for the scheme from scheme creditors, and whether the scheme is likely to be recognised in other jurisdictions.
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> 74. At this convening stage, I do not consider that I need to, or should, express my own view on whether that is a correct approach to the jurisdictional question of whether third party releases can be included in a scheme in a case such as the present….
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> 75. Instead, I consider that it will suffice to say that in light of the approach taken in the other cases to which I have referred, there is no obvious "roadblock" to the argument of the Scheme Company succeeding. The jurisdictional question can be left to be determined at sanction together with the question of whether it is appropriate to exercise the court's discretion to sanction the Scheme."

50. I approach the current Schemes in the same way. This is not a case which involves any international element of "forum shopping", and the commercial reasons for the use of SchemeCo have been made clear. Importantly, it is also the case that the releases of the Amigo companies, their directors and employees given in the Deed of Release are limited to those liabilities which arise out of or in connection with the Redress Claims and the FOS Fee Claim which are the focus of the Schemes.

51. On that basis I cannot see that there is any obvious "roadblock" which would inevitably lead the court at the sanction hearing to consider that the releases effected by the Deed of Release fall outside the proper scope of a scheme under Part 26, or to refuse to exercise its discretion to sanction such a scheme.

Class composition

52. The test for composition of classes is well-known. In essence it requires the Court to determine whether the existing rights of scheme creditors which are to be affected by the scheme and the new or modified rights which are to be given in their place are not so dissimilar that the various creditors cannot consult together in their common interest. In a case such as the present, that comparison of rights is to be judged by reference to

the rights that creditors would have in the insolvent administration that is the alternative to the Schemes: see e.g. Re Hawk Insurance Co Ltd [2001] 2 BCLC 480 (CA).

53. The existing rights to be taken into account will conventionally be those against the scheme company. However, in a case involving SchemeCo which has voluntarily assumed joint liability for the debts of the Amigo companies, in addition to the rights which are directly to be compromised under the Schemes, the equation must necessarily include the existing rights that creditors have against the Amigo companies, their directors and employees, which are to be released by the Deed of Release which the Schemes authorise to be executed on behalf of Scheme creditors.

54. In the instant case, I am satisfied that there is no sufficiently material dissimilarity of rights as to require any subdivision of the customers with Redress Claims, or the FOS in respect of its accrued FOS Fee Claim, into separate classes. All such creditors have claims that would be unsecured in an administration of Amigo, they will all be able to make equivalent claims under the Schemes, they will all be subject to the same Bar Date and adjudication process, and they will all rank *pari passu* for a distribution from the Scheme Fund or benefit from a set-off.

55. I also do not see any reason to draw a distinction between those who might assert claims against the various Amigo entities or indeed against individual directors or employees of Amigo. All Redress Claims asserted thus far and the FOS Fee Claim have been made against ALL as the lending entity. The fact that all creditors will be required to release claims that they might theoretically assert against other Amigo entities or individuals connected with them cannot be a sensible or practical basis upon which to sub-divide the class.

56. Although customers with Redress Claims are likely to be exposed to a greater risk of an adverse adjudication of their claims than the FOS which has a simple arithmetical exercise to establish its statutory entitlement to claims handling fees, I also do not think that this is a sufficient difference to warrant separating the FOS out into a class of its own. In an administration all such creditors would be required to participate in the same proof of debt process, and the determination of the Redress Claims under the Schemes is likely to follow a fairly predictable course. This is not, as I see it, a case which raises any very real difficulties of the type seen, for example, in the determination of IBNR liabilities in insurance company cases: see e.g. Sovereign Marine and General Insurance Co Limited [2007] 1 BCLC 228. It is also unlikely to be the case that the vote of the FOS will be determinative, either as to number or value of voting, but were that to be the case, it is a matter that can be taken into account on the exercise of discretion at the sanction stage.

57. Rather, the essential question for all creditors is whether to allow Amigo to resume its lending activities with the prospect of a slightly enhanced and earlier return on their established claims, or to prevent Amigo from resuming its lending activities and take what is likely to be a slightly reduced and delayed dividend in a controlled wind-down or formal administration. In that context, the fact that creditors might have different perspectives of what they wish to see happen, arising from their individual circumstances, experiences and interests, is not a matter that can go to class composition.

58. For completeness I should also record that, essentially for the same reasons given by Sir Alastair Norris in Re Provident SPV Ltd [2021] EWHC 1341 (Ch) at [32]-[33] I see no reason to distinguish between customers who are borrowers and guarantors (including those who might be able to assert a right of set-off against their existing liabilities under the loans or guarantees).

The Explanatory Statement

59. I explained the requirements of an explanatory statement and the approach of the Court at the convening hearing in Re Sunbird Business Services Ltd [2020] Bus LR 2371 at [59]-[62] (in the context of a Part 26 scheme) and in Re Virgin Active Holdings Limited [2021] EWHC 814 (Ch) at [95]-[99] (in the context of a Part 26A plan).

60. At the convening stage, the Court does not approve or give its imprimatur to the contents or accuracy of an explanatory statement. Although the Court may pick up defects or infelicities of drafting which it can draw to the attention of the proponents of the scheme or plan, it is generally concerned only to see, at a high level, that the essential elements are included which will enable creditors to take an informed view on the merits of the proposal.

61. In addition, where, as in the instant case, the general body of creditors may not be financially sophisticated or accustomed to reviewing complex legal documents, the Court is also likely to be concerned to ensure that the information is presented in a form that is concise and as comprehensible to its intended audience as possible.

62. In the latter regard, and in contrast to the complex and turgid documents which have often accompanied schemes and plans in recent years, which can serve as much to obfuscate as to reveal, it is pleasing to see that an effort has clearly been made in the instant case to produce a relatively short draft explanatory statement which is couched in plain language and contains useful "question and answer" sections, flow charts and tables to assist the reader.

63. As I have said, I cannot verify the accuracy or completeness of the draft explanatory statement, but I consider that the format is appropriate to the audience at which it is aimed. In reaching that view I am also supported by the opinion of the Customer Advocate who has reviewed the document and taken into account the views of some customers who (entirely understandably) indicated that they found the rather more formal and somewhat abbreviated Practice Statement letter difficult to understand.

64. I should add that, although it is no substitute for a clear and comprehensive explanatory statement, the proponents of the Schemes have also indicated that they intend to maintain a help-desk facility for customers in the run-up to the meetings to consider the Schemes and the sanction hearing, accessible by phone and email. The Customer Advocate has also helpfully indicated that he will remain available to assist customers to understand (but not advise upon) the proposals where appropriate.

Directions for the Scheme Meetings

65. In light of the above, I will approve an order giving SchemeCo permission to convene simultaneous meetings to consider the NBS and the WDS (the "Scheme Meetings), and to vote separately on them.

66. It has become commonplace during the COVID pandemic for such meetings to be held by remote means. Although it is anticipated that all social distancing and other restrictions which have made in-person meetings impractical in recent times will have been removed by the date selected for the Scheme Meetings in May, I was urged by Mr. Isaacs QC, with the support of Mr. Day, to order that the meetings be held entirely online. They explained that Amigo did its business online and that the vast majority of its customers would be likely to find it cheaper and more convenient to attend online rather than in person. They submitted that the incremental costs and complexity of holding a hybrid meeting would therefore not be warranted. I accept that submission and will give directions accordingly.

67. For similar reasons, the explanatory statement will be emailed and made available online rather than being sent out in hard copy, although hard copies will be made available on request. Amigo has also indicated, and I will direct, that it should advertise the Scheme Meetings in the two newspapers previously selected and via the same social media channels previously used to inform customers of the intention to promote the Schemes.

68. One specific issue arose at the hearing in relation to the voting at the Scheme Meetings. The general intention is that customers with Redress Claims will be entitled to vote the maximum amount of such claims, calculated in accordance with a formula based upon the normal quantum used to determine such claims as outlined above. Where the claim is by a borrower who has repaid their loan, the value for voting purposes will be the amount by which the total payments made exceed the amount originally borrowed, plus simple interest at 8% per annum on each payment made after the amount originally borrowed had been repaid. Where the claim is by a guarantor, the vote will be the full amount paid under the guarantee with simple interest at 8% per annum. If the claim is by a guarantor who has not been required to make a payment, the value of £1 will be attributed to that claim.

69. The particular issue arises in relation to current borrowers whose total repayments thus far do not exceed the amount that they originally borrowed. Such persons are (on any view) net debtors to ALL rather than net creditors, but they will be enfranchised by being allocated a notional vote value of £1 at the Scheme Meetings. A representative of a consumer website known as "Debt Camel", which focuses on the lending market in which Amigo operated, indicated to the Customer Advocate that she believed that this voting allocation undervalued the importance to customers with outstanding loans of having their Redress Claims determined and their liability for future interest payments eliminated under the Schemes.

70. I understand Debt Camel's comments in general terms, but I do not consider that they approach the matter with the correct comparator in mind. As indicated above, the Schemes are being put forward as an alternative to an insolvent administration. In an administration, insolvency set-off would essentially operate in the same manner as provided for in the Schemes. Assuming they could establish a successful Redress Claim, customers with outstanding loans whose payments to date do not exceed the amount that they originally borrowed would therefore remain liable to ALL for the net balance. As net debtors, they would not be able to participate in any dividends paid in the administration.

71. Since the essential question for decision is whether to approve one of the Schemes offering a potential for a greater return to creditors or to forgo that possibility and consign Amigo to a formal administration, the votes of customers should reflect the rights that they would have in the default situation of an administration. Persons who have yet to repay their original loans and who would be net debtors in such an administration should, therefore, only be entitled to a nominal vote.

Conclusion

72. For the reasons summarised above, and having received revised drafts of the Schemes and the explanatory statement which take account of matters discussed at the convening hearing, I will make an order convening the Scheme Meetings in the form discussed at the hearing.