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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES COURT (ChD)
IN THE MATTERS OF GRAY MUNIKWA, STEVEN PAUL BLAIR, DAVE BENSON, MICHAEL ROBERT NEWMAN, SHAKIRA NATHTALI TONI MARK, PATRICIA TURNER, AIMEE LOUISE RUSHTON and EMILY DENT

The Rolls Building,
7 Rolls Buildings,
Fetter Lane,
London, EC4A ANL

Date: Friday 3 April 2020

Before :

ICC JUDGE PRENTIS

- -

Between :

ROYAL BANK OF SCOTLAND plc **Applicant**

- and –

1. GRAY MUNIKWA
2. STEVEN PAUL BLAIR
3. DAVE BENSON
4. MICHAEL ROBERT NEWMAN
5. SHAKIRA NATHTALI TONI MARK
6. PATRICIA TURNER
7. AIMEE LOUISE RUSHTON
8. EMILY DENT
9. MICHAEL SLOPER
10. CREDITFIX LIMITED
(incorporated in the Republic of Ireland with number 432293)

Respondents

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JENNIFER MEECH (instructed by **Eversheds Sutherland (International) LLP**) for the **Applicant**

CHRISTOPHER COOK (instructed directly by **the Tenth Respondent**) for the **Ninth and Tenth Respondents**
The First to Eighth Respondents did not attend and were not represented

Hearing dates: 3 March 2020

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JUDGMENT

ICC JUDGE PRENTIS:

1. On its website Creditfix Limited ("Creditfix") describes itself as the "largest Personal Insolvency company in the UK". I am told that during the year 2018 it was instructed in around 34% of new individual voluntary arrangements dealt with by the top 14 insolvency firms.

2. Within those IVAs Royal Bank of Scotland plc ("RBS") is a frequent creditor, whether under its own style or as NatWest Card Services, NatWest Current Account or NatWest Personal Loans. RBS currently deals with IVAs through Evolve Servicing Limited, wholly-owned by Eversheds Sutherland (International) LLP.

3. In his skeleton Mr Cook tells the court that Creditfix "takes a considered and industry-leading approach which has the needs of vulnerable debtors at its centre". That approach is a fixed-fee basis which I will describe below. It has been lucrative for Creditfix though the margins on each case are small, profitability depending on high levels of throughput and considerable automation. Those aspects are illustrated by these facts: RBS's complaints here are replicated in 1,098 cases whose chairman's report was received between April and mid-August 2019; and in each the supervisor, if not the chair, is the Ninth Respondent, Michael Sloper.

4. RBS does not regard Creditfix's fees equanimously. Its proxy forms in favour of the chair at the meeting considering a proposal have consistently proposed modifications to the fee structure. The modifications have equally

consistently been rejected. Moreover, notwithstanding the terms of the proxies, the chair has in each case determined that the proper course is to vote in favour of the unmodified proposal. It is that act which lies behind each of these applications under section 262(1)(b) of the *Insolvency Act 1986*.

5. The debtor respondents have played no part. While the first six applications were all issued on 30 August 2019 and were cases where RBS held more than 75% of the votes, the seventh and eighth were issued in October 2019 and are cases where RBS holds less than 75% but more than 25%. For expediency they have all been transferred to this court. RBS considered it prudent to issue the seventh and eighth as there had been an indication in correspondence that those percentages made a material difference (and, to be clear, RBS does not always have such voting power). Each application has now been compromised on the bases that there should be a further meeting at which the modified proposals are put, and that Mr Sloper and his employer, Creditfix, will reimburse the debtor for any fees drawn, save insofar as they have an entitlement to those fees under a subsequently-approved arrangement.

6. The applications are pursued, though, because RBS seeks a wider declaration

> "that Paragraph 10.17 of Creditfix's standard proposals for individual voluntary arrangements [is ineffective and] confers no authority upon the nominee in relation to any individual voluntary arrangement to disregard modifications proposed by creditor".

7. The square brackets are around words which Ms Meech has not insisted on in argument. The reference to "nominee" will be explained below.

8. It is helpful to take an example case, which for convenience is the first.

9. On 8 July 2019 Mr Sloper as nominee circulated all known creditors of Gray Munikwa with his proposal for an IVA, a covering letter, a notice of a virtual meeting for 13.45 on 25 July, proxy and proof of debt forms, and Mr Sloper's report and consent to act. Mr Munikwa was about to be 51. He worked as a warehouse operative for DHL earning a take-home average of £1,345 per month, supplemented by £400 per month from his photography. After expenditure, his surplus was £85 per month. His creditors totalled £11,048 (including a nominal £1 to HMRC) of which £8,849 (80%) was owed to RBS under three categories. His IVA was to be of the surplus £85 for 60 months, with contributions totalling £5,100. Of this, £1,900 was payable to Creditfix for the provision of Mr Sloper as nominee, and £1,750 for Mr Sloper as supervisor. The remaining £1,450 would fall for distribution among the creditors, giving 13.13p/£ as opposed to an estimated zero in bankruptcy.

10. As this indicates, the nominee's fee was to be met from realisations. From 90 days from commencement, or if later 30 days from Mr Munikwa's third contribution, dividends would be paid monthly at 30% of contributions, the balance meeting first the nominee's fee, and then the supervisor's fee which was to be "charged across the life of my arrangement on a monthly basis": paragraphs 10.3 and 11.1 of the proposal. Those fees included all disbursements. Were there other asset realisations, then by paragraph 10.7 an additional fee of 15% of those would be charged.

11. The proposal contains Mr Munikwa's purported view on these fees at paragraph 10.16:

"I consider the fixed costs model of the Nominee's Fee and Supervisor's (together with the earlier, regular distribution(s) to my creditors than would otherwise be the case) to be ultimately beneficial to creditors and myself and which achieves a lower overall cost basis and an early reduction in my overall liabilities".

12. Plainly, this is Creditfix speaking rather than Mr Munikwa. The (unspoken) comparator for the "lower overall cost basis" I take to be a model including, or comprising, variable fees.

13. There follows the paragraph in issue, 10.17, which I will quote below.

14. In accordance with rule 15.8(5) of the *Insolvency (England and Wales) Rules 2016* the blank proxy form complied with rule 16.3, including sub-rule (3)(d), in stating that "The proxy-holder is to propose or vote as instructed below (and in respect of any resolution for which no specific instruction is given, may vote or abstain at their discretion)".

15. RBS's submitted proxy, though, was in different form. It nominated the chair as the proxy-holder for the 25 July meeting "or at any adjournment of that meeting". The voting instructions were:

"To: (i) seek the Debtor's agreement to the modifications to the proposed voluntary arrangement (the "Proposal") that are attached to this proxy; and (ii) vote for the acceptance of the Proposal only if those modifications are agreed by the Debtor and included in the Proposal".

16. By the time RBS submitted proxies for Ms Rushton and Ms Dent there was an addition to that last rubric: "and to vote to reject the Proposal if the modifications (or any of them) are rejected by the Debtor".

17. The modications were in summary these:

(1) a nominee's fee of no more than £1,000; once drawn, the first dividend was to be "within 3 months of confirmation of HMRC's final claim and subsequently paid quarterly as a minimum thereafter";

(2) a supervisor's fee of "15% of all further realisations and drawn proportionally as funds are received";

(3) fees for a variation would be considered if and when a variation was proposed;

(4) no category 2 disbursements were to be charged by either nominee or supervisor;

(5) the supervisor "shall provide a fully itemised breakdown of disbursements from the first annual report";

(6) he was also "to calculate a revised Estimated Outcome Statement" to accompany the chair's report and to take account of "any changes to realisations, fees, liabilities and dividend return as a result of all modifications and claims received";

(7) no fees were to be charged for adjourning the meeting, or for early completion or termination;

(8) the "total cost of the arrangement (inclusive of Nominee fee, Supervisor fee and Disbursements) should not exceed 60% of total realisations".

18. The eighth of those was not consistently sought by RBS across these proposals.

19. RBS lodged as well its three proofs of debt, which totalled £9,536.

20. At the adjourned meeting of 5 August its were the only votes. The chair was Jennifer Macrae of Creditfix as Mr Sloper's "appointed person": rules 15.21(1)(b), 1.2(2) and 1.2(3). Her report is quite startling.

20.1 At paragraph 3 she recorded the approval of the IVA and appointment of Mr Sloper "with the following modifications agreed by the debtor": she then lists three "Disregarded Modifications", being (1), (2) and (8) above, but no agreed modifications.

20.2 At paragraph 5 she listed RBS's admitted proofs. In respect of each, under the column "Accept/ Reject" she wrote "Accept with modifications".

20.3 At paragraph 7 she wrote that the "creditors marked with a * Asterix (sic) [being each of the three proofs of debt] are those creditors where their respective proposed fee modification conflicted with that set out in the Proposal. Accordingly, any such modification has been disregarded".

21. So although Mr Munikwa did not agree RBS's modifications, or indeed any of them, the chair used RBS's proxy to vote in favour of his proposal.

22. Ms Macrae's report was accompanied by a letter of 9 August 2019 "To All Creditors" from Mr Sloper as Supervisor. He stated this:

> "Some creditors, whilst approving the IVA, also sought to modify the proposed fee structure… from that as set out in the Proposal. Had those proposed fee modification[s] been accepted the IVA would have been approved with the requisite majority but with fee modifications that conflicted and which were incompatible with the terms set out in the Proposal. Therefore, in accordance with paragraph 10.17… this has meant that some of those proposed fee modifications have been disregarded by the Chair so as to ensure the smooth running of the IVA and the fairest outcome for both creditors as a whole, and the debtor…".

23. He also wrote this:

> "I believe that by adjudicating on the proposed fee modifications received and by adopting the fee structure that was expressly set out in the Proposal, the total fees and charges made upon the IVA estate will be less than would otherwise be the case…".

24. Against what might appear an overwhelming case of material irregularity, Creditfix raises three arguments against the declaratory relief.

24.1 RBS is wrong to regard paragraph 10.17 as setting out rights: it does no more than explain how the chair and others will "adjudicate/ interpret" proposed modifications.

24.2 The RBS proxies are ambiguous.

24.3 In any event, the declaration sought is imprecise, unnecessary, and would therefore, as this is a case with potentially wide consequences, "imperil the state of the law".

25. Paragraph 10.17 is this.

"In the event that creditors seek to modify the proposed fees details in paragraph 10.1 to 10.10, the Nominee will assess those modifications in the light of the following considerations:

a) the quasi-judicial role of the Nominee;

b) the fact that the Nominee is a licenced (sic) insolvency practitioner and is required to exercise a professional degree of skill and expertise;

c) the need to ensure that the IVA has a reasonable prospect of being approved and implemented;

d) the need to ensure that all fees are fair and reasonable;

e) the need to ensure that the IVA is achievable and that a fair balance is struck between my interests and the interests of creditors;

f) the Insolvency Code of Ethics;

g) the need to ensure complete transparency and uniformity of fees;

h) my status as a vulnerable client;

i) public policy objective of providing debt relief for individuals in financial distress; and

j) the legal right of those creditors who are dissatisfied with the result of the Chairman's decision are able to challenge the decision by making an application to Court".

26. It is a bold submission that this paragraph sets out no enforceable rights when both the chair and the supervisor have relied on it as doing exactly that, so enabling the former to reject RBS's modifications and treat its proxy as a vote in favour of the proposals and the latter not to raise any issue with that course of action.

27. It is bold as well to ascribe to the paragraph the particular role of enabling an adjudication by the nominee or chair on proposed modifications (and that, curiously, as to fees only) when such an adjudicatory role is not directly referred to in the legislation, and could arise only in unusual circumstances.

28. As in the case of Mr Munikwa, the nominee and the chair need not be the same person. His proposal does not define "Nominee", but when circulated it will be known who the nominee is as that person will have provided a report. Paragraph 10.17 refers in terms to "the Nominee" assessing the modifications. Mr Cook told me that "of course" it meant "the chair" as well, and would be operative whenever it was "appropriate for there to be an adjudication". I disagree with both suggested aspects.

29. By section 257(2) it is for the nominee to "seek a decision from the debtor's creditors as to whether they approve the proposed voluntary arrangement", which by section 257(3) will be by a creditors' decision procedure. It is the nominee who under rule 8.22(2) of the *Insolvency (England and Wales) Rules 1986* delivers to each creditor notice of the decision procedure under rule 15.8;

for that purpose, the nominee is the "convenor". By rule 8.22(3)(d) the notice "must… contain a statement as to how a person entitled to vote for the proposal may propose a modification to it, and how the nominee will deal with such a proposal for a modification".

30. Mr Sloper's 8 July 2019 covering letter to all Mr Munikwa's creditors described his role as nominee as being to "ensure that, prior to or at the meeting, if any modifications are required by creditors… the debtor agrees to them and that where appropriate the creditors have consented".

31. The notice said this at (5):

> "The Proxy Form accompanying this Notice makes provision for creditors to state where they consider the Proposal should be modified. If following consideration of the Proposal you are intending to propose modifications we would ask that you confirm any proposed modifications to Jennifer Macrae in writing by 7 DAYS BEFORE THE MEETING (sic). Modifications received after 18 July 2019 may not be considered or may result in an adjournment of the meeting. On receipt of proposed modifications, the Nominee will consider with the debtor the impact on the Proposal and where necessary (and time permitting) will communicate the modifications to creditors. This will provide an opportunity for us to discuss with you whether it would be appropriate/ possible for the Proposal to be modified as requested and will help avoid the need for any adjournment of the meeting.
>
> In any event, modifications which are accepted will be notified to creditors with the Chair's report on whether the Proposal was accepted or otherwise".

32. There is no difficulty in reading the notification of modifications as being to Ms Macrae but the consequent discussions with the debtor as being by Mr Sloper as nominee. Both this paragraph and paragraph 6, "All proofs of debt, proposed modifications and proxies must be lodged with Creditfix Limited", distinguish the notification of proposed modifications and the lodging of proofs of debt, even though the proofs of debt will include the modifications. Rule 16.4(1) requires only that a proxy for a specific meeting "be delivered to the chair before the meeting". Earlier notification of the proposed modifications permits discussions between the nominee and the debtor and, as paragraph (5) says, may avert the risk of adjournment.

33. So paragraph 10.17 appears to be directed at how the nominee will deal with a proposed modification as to the proposed fees, and factors which will be considered by the nominee when discussing it with the debtor. Except that Creditfix would add that the chair was included as well, the generality of that seems not to be controversial, Mr Cook describing the paragraph as giving "a Chair/ Nominee a contractual basis with the debtor meaningfully to interpret proxies which are vague".

34. None of 10.17's ten sub-paragraphs is inconsistent with its describing a nominee's, rather than a chair's, role. By contrast, sub-paragraphs (c) (ensuring that the IVA "has a reasonable prospect of being approved and implemented"), (d) (ensuring that "all fees are fair and reasonable"), (e) (ensuring that the "IVA is achievable and that a fair balance is struck between [the debtor's] interests and the interests of creditors"), (g) (ensuring "complete transparency… of fees"), (h) (considering the debtor's status "as a vulnerable

client") and (i) (considering the "public policy objective of providing debt relief for individuals in financial distress") have no clear connection to a chair's role, and the remaining sub-paragraphs are no more than prompts as to general principles.

35. It can be objected that some of these aspects are not appropriate for consideration between a debtor and a nominee either: (g)'s "uniformity of fees" for example, or (i)'s public policy. But those are drafting failures founded on Creditfix's evangelistic belief, described in the lengthy evidence of its "Insolvency Director" David Rankin, that its fixed fee model is either the only ethically-correct model, or the most ethically-correct.

36. Pausing there, it can be seen that whether paragraph 10.17 scopes a role for, as I think, the nominee or, as Creditfix thinks additionally, the chair, it describes a function connected to rule 8.22(3)(d), being additional details to those within the notice as to "how the nominee will deal with… a proposal for a modification". I therefore reject Mr Cook's submission, belied anyway by his client's treatment of it, that it is "not an operative term, because all it does is provide considerations… which the Chair/ Nominee will consider in the event that a proxy lacks the necessary specificity".

37. Next, the treatment of paragraph 10.17 in the nominee's letter of 8 July 2019 and the notice, the chair's report and the supervisor's 9 August 2019 letter, must be placed into more statutory context.

38. At the meeting convened under section 257 to permit the creditors "to decide whether to approve the proposed voluntary arrangement" (section 258(1)), the "creditors may approve the proposed voluntary arrangement with or without

modifications, but shall not approve it with modifications unless the debtor consents to each modification" (section 258(2)). By section 258(3) modifications can include the affecting of the functions of the nominee and, subject always to the (here non-material) exclusions at (4) and (5), are unrestricted in nature, except that they can never be such as to cause the proposal to cease to be a proposal under Part VIII of the Act. Section 260 sets out the binding effect "where pursuant to section 257 the debtor's creditors decide to approve the proposed voluntary arrangement (with or without modifications)". That may be either at the original meeting or at an adjourned meeting: rule 15.23(1) permits the chair to adjourn a meeting for not more than 14 days. Whether "the debtor's proposal (with or without modifications)" is approved or rejected, the nominee is under an obligation to give notice of that to prescribed persons. By rule 15.34(6) "In a case relating to a proposed IVA (a) a decision approving a proposal or a modification is made when three-quarters or more (in value) of those responding vote in favour of it; (b) a decision is not made if more than half of the total value of creditors who are not associates of the debtor vote against it".

39. The scheme is therefore one of simple practicality: a meeting is called; creditors may put forward modifications of any sort (subject to exceptions) to the proposal; the debtor may approve those or not; the approved proposal, which may be modified, is put to creditors; they vote on it having notice of the approved modifications, which may require the original meeting to be adjourned.

40. Within this scheme, in theory a debtor could propose arrangements with conflicting modifications. In that event, and on the further assumptions that the debtor themself did not propose the order in which the modifications would be voted on, and that the nominee and/ or the chair had not been able to resolve matters with the relevant creditors, then the order of voting would be a matter for the chair: an "adjudication", if you like.

41. However, even in this scenario, which we discussed at the hearing, neither the nominee nor the chair is adjudicating on the modification itself: that is a matter first for the debtor and then, if the debtor agrees, for the creditors.

42. I add that as by section 258(3) no modification may be approved by which the proposal falls outside Part VIII, the nominee or chair must have some residual power not to allow to be put to creditors a modification which is illegal or necessarily involves illegality or, more relevantly here, which proposes fees so unreasonably low or high that the statutory policy of proper remuneration for the nominee or supervisor is not met; but neither the former nor the latter is part of Creditfix's case.

43. It follows that the notice for the 25 July meeting was correct in referring to any proposed modifications being considered with the debtor by the nominee, and also, if appropriate, with the proposing creditor; it was also correct insofar as it contemplated communicating modifications to creditors "where necessary", taking that last phrase to be when the debtor approved a modification. Further, where the proposing creditor controlled more than 75% of the votes then, unless plainly controversial, it would be permissible to provide that "in any event" creditors would be notified of accepted

modifications after the event, with the chair's report. This interpretation of the scheme is reflected in Mr Sloper's 8 July 2019 letter as well.

44. The chair's report and Mr Sloper's 9 August 2019 letter are, though, indefensible in their terms.

45. As quoted above, both the report and the letter describe the proposed modifications to fees as being "disregarded" because they "conflicted" or "were incompatible with" those set out in the proposal. The letter confirms that that action was taken in reliance on paragraph 10.17.

46. It is no bar to the statutory scheme that a proposed modification conflicts with the proposal; in most instances that will be so, although it will be a matter of degree. As to being "disregarded", that is, for the reasons already explained, outside the function of the chair.

47. At one point in his extensive evidence, Creditfix's David Rankin says this:

> "As IPs we believe that, when faced with a modification that is incompatible with the Proposal under consideration… and where all creditors otherwise approve the Proposal under consideration and agree that the debtor is deserving of having their proposal approved and the IVA put into effect, we must and do have the power to exercise discretion and professional judgment to make a decision for the benefit of the debtor and the general body of creditors".

48. There is no such power. What the nominee or chairman ought to do is to seek to discuss the modification with the debtor and the relevant creditor or

creditors. The obligation on the chair is to put the debtor's proposal, whatever that may be, modified or unmodified, to the creditors.

49. What is more, in the case of Mr Munikwa the exercise of this purported power has involved painful contortions. RBS was the only voting creditor. It voted to approve the proposal "only if [its] modifications are agreed by the Debtor and included in the Proposal". As I understand Creditfix's position, because the only modifications to the proposal were incompatible with its existing terms, and because they could therefore be disregarded, the chair was entitled to disregard anything referable to those terms, including the direction to vote for acceptance only if the modifications were agreed; and either that leaves the phrase in the voting instructions "vote for the acceptance of the Proposal", or else it leaves the vote to the residuary discretion of the chair who has, without consultation with RBS, chosen to exercise the vote in favour of the proposal which the creditor insisted should be modified.

50. The lack of merit in such a position is only increased by considering rule 16.7, which prohibits a proxy-holder with a financial interest in the estate from voting for a resolution as to remuneration, fees or expenses, unless specifically directed by the proxy-holder to vote in that way.

51. As expounded in Creditfix's evidence, over the years there have been a number of discussions and disputes with large creditors, including RBS, over its fee model in which it has total belief. Regrettably, it appears from these applications that Creditfix's position has spilled over from correspondence into its treatment of those debtors who have placed their financial futures in its care. It has caused its employees to take into account its own financial

business and beliefs when carrying out their statutory functions. Creditfix itself has no status within the proposals. Mr Sloper is its employee, but he is exercising personal and independent professional powers for the purposes conferred. While as nominee he can be involved in discussing fees with the debtor and the creditors covering both pre- and post-meeting, he cannot exercise his powers to ensure that his wishes as to fees are met.

52. Neither can the suppression of the proposed modification be justified by saying that it has resulted in lower fees: that is an irrelevant consideration, because it is a matter for the debtor and the creditors, through the voting on the proposal (modified or not), to decide what fee structure they wish to be bound by. For completeness I add that here the evidence is that RBS's proposals would result in lower fees in respect of every application except the second, Steven Paul Blair, in which they would be higher.

53. I find it notable as well that through the hundreds of paragraphs of its evidence and hundreds of pages of exhibited documents Creditfix has sought to justify its own beliefs as to fees while not dealing with the fundamentals of the particular cases. I had to ask Mr Cook whether it was its position that in respect of each of these applications the debtor had been consulted about the proposed modifications and had rejected them. On instructions, Mr Cook confirmed that was so. Yet rather than exhibit evidence of its discussions with each debtor, or even an engagement letter, Creditfix has, as in the chair's report and its accompanying letter, been fixated on fighting its own battle on the debtor's field.

54. What we come to is this. The debtor has rejected RBS's modifications. Despite clearly being told to vote in favour of the proposal "only if those modifications are agreed by the Debtor and included in the Proposal", in each case the chair has voted in favour. The justification for that is that by virtue of paragraph 10.17 the chair had the power to ignore all references to the modifications, as they proposed a fee structure different from that in the proposal mandated by Creditfix; and chose not to revert to RBS to seek any further instructions, notwithstanding that in each case its vote in favour was required in order for the proposal to be approved.

55. Plainly there has been a material irregularity; and that has been brought about by Creditfix's promotion of its own interests. It is irrelevant that Creditfix might be fully justified in its belief as to the merits of its fee structure.

56. There being no ambiguity in the obligation on the chair to vote for the proposal only if RBS's modifications were a part of it, it follows that the other arguments over ambiguity in the proxy are beside the point. I will, though, deal with them briefly.

57. Two potential types of ambiguity in the proxy remain. One of them has already been foreshadowed: the modifications proposed "have not been properly tailored to the particular fixed fee proposal being advanced by Creditfix [sic], resulting in an ambiguity that, says Creditfix, it is proper for the Chair to interpret". As Mr Cook accepted in argument, modifications are not so limited. However, he pointed to proposed modification 8 (the "total cost of the arrangement (inclusive of Nominee fee, Supervisor fee and Disbursements) should not exceed 60% of total realisations") and there being

potential ambiguity because what was contemplated to happen if a £1,000 nominee's fee had already been drawn and then there proved insufficient assets? Whether it is truly impossible for the proposal to be read as always giving effect to this modification was not followed through by either party; but, even if it were, this is an obvious case for discussions by the nominee (or chair) with RBS to point this out and seek further instruction rather than risk the proposal being voted down.

58. The second alleged ambiguity is in the voting instructions. As noted, while for the first six applications the instruction was to:

"(i) seek the Debtor's agreement to the modifications to the proposed voluntary arrangement (the "Proposal") that are attached to this proxy; and (ii) vote for the acceptance of the Proposal only if those modifications are agreed by the Debtor and included in the Proposal",

the last two added:

"and to vote to reject the Proposal if the modifications (or any of them) are rejected by the Debtor".

Without that tag, the chair as proxy-holder was arguably left with a decision whether to abstain or to vote against were the modifications not accepted.

59. This is a purely theoretical issue. Whether abstaining or voting against, where, as in each of these cases, RBS held more than 25% of the votes, the debtor could not meet rule 15.34(6) anyway. Further, in a case in which this would make a difference, the chair would be obliged to consult with RBS to seek more nuanced instructions, or risk a section 262 challenge: see

paragraphs 7.11 and 7.12 of Statement of Insolvency Practice 3, Voluntary Arrangements (April 2007).

60. Finally there is the suggestion that the declaration sought is imprecise, unnecessary, and would imperil the state of the law.

61. As Ms Meech points out, all the declaration is intended to do is to prohibit Creditfix from relying on paragraph 10.17 as justification for disregarding RBS's proposed modifications. That is what it has done, wrongly, in each of these applications. Before me it has sought to downplay the paragraph, suggesting that it just contains factors which can be borne in mind, but to resile now from its foundational basis for the rejection of the modifications is to acknowledge its insufficiency.

62. Ms Meech has drawn my attention to Mr Justice Marcus Smith's helpful compilation of principles to be applied where the court is asked to consider the exercise of its discretionary power to grant declaratory relief, in *The Bank of New York Mellon, London Branch v Essar Steel India Limited* [2018] EWHC 3177 (Ch) at [21]. Not only is there here a "real and present dispute between the parties… as to the existence or extent of a legal right", but the natural resolution of that is by making a declaration.

63. I intend to make the declaration in the following form:

> "paragraph 10.17 of Creditfix's standard proposals for individual voluntary arrangements, as scheduled hereto, confers no authority upon the nominee or the chair to disregard modifications to the proposal proposed by creditors".

64. I also intend to direct that a copy of this judgment be provided to Mr Sloper's regulatory body. The evidence is that he has caused or permitted these cases, and many others, to be conducted otherwise than in accordance with the Act and Rules; and has done so to promote his own interests and/ or the interests of his employer, Creditfix. These are significant and multiple failings which ought to be the subject of further detailed consideration.