Neutral Citation Number: **[2023] EWHC 2610 (Ch)**

Case No: **CR-2023-005726**

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

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

Date: **16 October 2023**

Before :

The Honourable Mr Justice Richard Smith

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IN THE MATTER OF PEOPLE'S ENERGY (SUPPLY) LIMITED (IN ADMINISTRATION)

AND IN THE MATTER OF THE COMPANIES ACT 2006

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Daniel Bayfield KC, Robin Kok (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Claimant**

Hearing dates: **16th October 2023**

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APPROVED RULING

Mr Justice Richard Smith **Monday, 16 October 2023**
(**15:07** pm)

Introduction

1. This afternoon, I heard an application by People's Energy Supply Limited ("Company"), acting by its administrators, for an order giving it permission to convene a single meeting of its proposed scheme creditors ("Scheme Creditors") to consider and, if the court thinks fit, approve a scheme of arrangement ("Scheme") under Part 26 of the Companies Act 2006 (" Act").
2. The Company and its parent, People's Energy Company Limited ("PEC"), are both in administration. The Company is incorporated in England, with PEC incorporated in Scotland. The Company was a retail energy supplier until September 2021 when Ofgem revoked its licences, with administration then following.
3. Of significance in the context of this proposed Scheme is that, prior to their administration, the Company and PEC suffered a data breach, apparently affecting 376,000 accounts relating to some 300,000 customers. It is therefore possible that 300,000 customers have claims under the General Data Protection Regulation (" GDPR") to the extent effective in the UK, with the Company and PEC both considered likely to be jointly liable. Thus far, only four such claims have actually been brought in the courts, and around a further 420 threatened. The relatively low level of claims may be explained by the need for the claimants to prove financial loss or other harm which is material and is more than *de minimis*, with distress-type only claims potentially being non-compensable.
4. Despite being in administration, the Company is now likely to be able to pay all creditors 100 pence in the pound, including data breach creditors, as a result of the recovery of significant assets, including, according to the evidence, approximately £286 million of payments under energy hedging contracts with BP Gas Marketing Limited ("BP").

5. However, although legal proceedings have been brought in respect of only four data breach claims since 2020, it may be - it is not yet known - that with the invitation of claims and creditors being told that the Company expects to be able to meet its liabilities in full, further data breach claims will be made, including possibly with the encouragement of claims management companies.
6. The rationale for the Scheme is to bring certainty in relation to the universe of claims the Company potentially faces, and to streamline the claims determination process, replacing the provisions of the Insolvency (England and Wales) Rules 2016, which require appeals to the court in respect of rejected proofs, with access to a more streamlined Scheme adjudication process. It is said that this is likely to facilitate the quicker payment of Company creditors than in the absence of the Scheme and, if there are disputes as to the validity and quantum of their claims, to give them access to that adjudication process to avoid the complexity, cost, and delay associated with court proceedings.
7. In summary, the proposed Scheme would do three things: firstly, it would set what has been described in the papers and in court today as "a hard bar date" for making claims against the Company. That has been referred to, again in the papers, as "the claims submission deadline". That will pass three months after the Scheme has become effective (if it does), and that is anticipated to be approximately six months from now.
8. Secondly, the proposed Scheme would release all creditor claims against the Company and release the data breach claims against the Company, PEC and the Company's insurer, Hiscox Insurance Company Limited (“Hiscox”), if not made by the claims submission deadline.
9. Thirdly, it would introduce a streamlined process for dealing with disputed claims at the Company's expense, with disputed claims being determined by the Scheme adjudicator, without creditors needing to instruct solicitors or incur court fees and, save in exceptional circumstances, without them being at risk of paying the costs of the Company.

10. The Scheme, it is said, also seeks to protect the interests of the Company's creditors while bringing an end to the administration and enabling the expected surplus funds to be distributed, at least more quickly than might otherwise be the case.

11. The Company proposes that all Scheme Creditors, whether or not data breach creditors, should form a single class and that they should vote in a single meeting to consider the merits of the proposed Scheme. It is consideration of that proposal in particular that falls to me today.

Background

12. Turning to the background in a little more detail, as I have said, the Company was a retail energy supplier. It was registered in England and Wales and it was licensed by Ofgem. It had no energy generation capacity of its own, and, according to the evidence, it relied entirely on PEC's purchases of electricity and gas from BP for supply to the Company's customers.

13. It also relied entirely on PEC to enable it to trade, not least by using its employees, and relying on supply contracts held by PEC for matters such as software and the leasing of business premises and insurance.

14. As I have already indicated, on 15 December 2020, the Company and PEC suffered the data breach, with the Information Commissioner's Office ("ICO") being notified the next day, the 16th, and the customers whose accounts were affected the day after that, the 17th.

15. The ICO reprimanded 'People's Energy' for its breach of the UK GDPR on 25 June 2021. That reprimand does not distinguish between the Company and PEC but, given the respective roles played by them in obtaining and processing the data compromised in the breach, the administrators have concluded that claims for such breach could be asserted against either or both of them and that they may well be jointly liable.

16. As I have also said, since December 2020, only a very small proportion of data breach creditors have apparently taken action against the Company, with only four customers starting legal

proceedings, and approximately 420 customers indicating their intention to make a claim, albeit, as I understood it, having actually undertaken no further action.

17. The remaining data breach creditors, approximately 99.8% of the 300,000 potential affected individuals, have not issued a claim or indicated an intention to do so, despite being notified of the breach. However, since the Company and PEC went into administration, the Company has had the benefit of the statutory moratorium on claims and the data breach creditors might therefore be biding their time until proofs of debt are invited by the administrators.
18. I should also add by way of background, as I think I have already indicated, PEC purchased an insurance policy with Hiscox that insured both the Company and PEC, including against corporate legal liability. There is data breach coverage of up to £1 million for indemnity and defence costs, with that aggregate sub-limit having already been eroded to the extent of £300,000.
19. By reason of the Company's and PEC's administration, and the operation of the Third Parties (Rights Against Insurers) Act 2010, any data breach creditor who wishes to assert a data breach claim must in the first instance assert it as against Hiscox. Hiscox has thus far refused to pay claims on the ground they are not valid. Data breach creditors who do wish to make a claim in the administration would be able to do so as contingent creditors but estimating the value of those relevant claims would, it is said, be very difficult at this stage.
20. The administrators have therefore negotiated a confidential commercial settlement with Hiscox such that, if the Scheme is sanctioned, Hiscox will be released from all liability to Scheme Creditors for data breach and any other claims under the corporate liability section of the policy. That is in return for a lump sum payment by Hiscox to the Company.

The Scheme

(1) Release of liabilities

21. Turning in more detail to the proposed Scheme. From the claims submission deadline, the Scheme will release, except to the extent that such claims are accepted to be valid by the Scheme's supervisors or determined to be valid by a Scheme adjudicator, the ascertained Scheme claims, as they are so defined. They comprise, firstly, the claims of all the Company's creditors against it, including data breach creditors; secondly, all data breach claims against PEC, but not other claims against PEC; and, thirdly, all data breach claims and any other claims against Hiscox arising out of the corporate liability section of the policy.
22. PEC will retain a residual liability in relation to partially paid ascertained Scheme claims comprising data breach claims for any amount not paid by the Company. In effect, if the Company is unexpectedly able to pay all of the data breach claims against it in full, creditors will remain able to assert claims as against PEC.
23. The claims will be released by operation of both the Scheme itself on its terms, if sanctioned by the court, and deeds of release, which the Scheme will authorise to be executed on behalf of the Scheme Creditors.

(2) The claims submission deadline/ adjudication

24. Turning to the deadline and the adjudication process, the proposed Scheme requires Scheme claims to be asserted by the claims submission deadline, likely to be around the end of April 2024. No claims will be able to be asserted after that deadline.
25. Scheme claims submitted by the deadline will then be assessed in the following manner: firstly, creditors will be able to submit details of their claims with supporting documentation using a claim form on an online portal.
26. Secondly, the Scheme claim will then be assessed by the Scheme supervisors.
27. Thirdly, those supervisors will then inform the creditors if they agree or disagree with their claim. If they accept the claim, it will then become an ascertained Scheme claim and will then be paid.

28. Fourthly, if the Scheme supervisors reject a claim or assign it a lower value than originally claimed, a Scheme Creditor will be able challenge the decision by referring it to the Scheme adjudicator.

29. Fifthly, the Scheme adjudicator will then assess the Scheme claim and render a decision within a target time, likely to be 28 days.

30. Sixthly, the Scheme adjudicator will consider all the information and documents provided to the Company by the creditor, with powers to request documents and attendance at meetings by the relevant parties.

31. Seventh, if no further documents or information are provided, or there is no response to a request for a meeting, the Scheme adjudicator can decide the case on the documents and information then available.

32. Eighth, the Scheme adjudicator's decision on the Scheme claim will be final and binding under the Scheme.

33. The costs incurred by the Scheme adjudicator will be Scheme costs, subject to a provision for the Scheme adjudicator to order the unsuccessful party to pay the other's costs but only in exceptional circumstances where the decision of the Scheme Creditor to pursue its claim or of the Scheme supervisors not to admit the claim is unreasonable. The supervisors shall bear their own costs and the Scheme Creditors will, likewise, bear their own.

(3) Scheme Adjudicator

34. Turning to the composition of the Scheme adjudicators, a panel will be appointed by the supervisors and they will consist of at least two individuals who, between them, have experience as a specialist data breach lawyer, in the energy sector and in commercial or contractual dispute resolution, depending upon the type of Scheme claim. The Scheme supervisors will decide which member of the panel is the most suitable to consider it and refer the disputed claim to that member.

Matters for consideration at the convening hearing

35. In terms of what I have to consider today, at this convening stage, it is not the role of the court to consider the fairness or merits of the proposed Scheme. That will arise for consideration at any future sanction hearing if the Scheme is approved by the statutory majority of creditors (see Re Telewest Communicators plc (No. 1) [2004] BCC 342 at [14]). As Mr Justice Snowden (as he then was) explained in Re Indah Kiat International Finance Co BV [2016] BCC 418 at [39], the issues generally appropriate for consideration at the convening stage are the proper class composition of the scheme meetings, together with any other essential issue which, if decided against the scheme company, would mean that the court simply had no jurisdiction or would unquestionably refuse to sanction the scheme.

36. However, the court is entitled to consider now whether there is any roadblock that would unquestionably lead the court to refuse to sanction the scheme (see Re Noble Group Limited [2019] BCC 349 at [76]).

Notification of interested parties

(1) Applicable principles

37. Turning to the question of notification of interested parties in relation to the proposed Scheme, The Chancellor's Practice Statement of 26 June 2020 provides, at [8], that the Practice Statement Letter should be distributed:-

"... in sufficient time to enable [the persons affected by the Scheme] to consider what is proposed, to take appropriate advice and, if so advised, to attend the convening hearing. What is adequate notice will depend on all the circumstances. The evidence at the convened hearing should explain the steps that have been taken to give the notification and what, if any, response the applicant has had to the notification."

38. No specific notice period is set out in the Practice Sstatement but the sufficiency of the notice period will depend on the facts of each individual case. In Re NN2 NewCo Ltd [2019] EWHC

1917 (Ch) at [22], Mr Justice Norris identified three relevant factors in deciding whether the period of notification is adequate: firstly, the complexity of the scheme; secondly, the degree of consultation with creditors prior to the launch of the scheme; and, thirdly, the urgency of the scheme having had regard to the financial distress of the company. These factors are still relevant under the new Practice Statement.

39. It is said that, today. in the majority of cases, the courts have approved a spectrum of notice periods from just under 14 days to around 21 days, albeit it has sometimes been considered that 28 days is the ideal. However, it is also said, fairly, that different considerations apply in cases involving unsophisticated creditors and consumers. In the cases to which I was referred in the skeleton argument involving financial redress claimants and other consumer creditors, notification periods of around five to eight weeks have been held to be sufficient in that consumer context.

(2) Distribution of the Practice Statement Letter

40. Turning to distribution of the Practice Statement Letter in this case, I am satisfied that the Company has complied with the Practice Statement by giving sufficient notice to persons affected by the Scheme. I say that because the evidence before the court includes a report dated 26 November 2023 by a specialist postal service provider concerning its efforts on behalf of the administrator to distribute the Practice Statement Letter, both by email and by post, as to which the letter was distributed to 297,280 identifiable creditors of the Company by sending them either an email or a letter.

41. Over 295,197 former creditors were emailed over 5th and 6 September 2023 with a high-level summary of the proposal and the full text of the letter. A paper copy of the letter was sent by post on 5 September 2023 to 283 trade and corporate creditors, and approximately 1,800 former customers with invalid email addresses. Paper copy letters were also posted to customers whose

email addresses bounced back or were returned undelivered following a seven-day period of monitored receipt of the emails that had been sent.

42. Having undertaken that exercise, the administrators estimate that 35 Sscheme Creditors out of a total population of close to the 300,000 I have indicated are unlikely to have received the letter. Accordingly, Scheme Creditors have been provided with around five weeks' notice, if one measures the time limit from 11 September, or six weeks' notice measuring it from 6 September. In my view, such notice is adequate.

(3) Content of communications to Scheme Creditors

43. Turning to the content of the communications, every email sent to the Scheme Creditors contained a high-level summary, including a summary of the Sscheme and its benefits, key timelines, a link to the Scheme portal, as well as the full text of the letter. The paper letters to the Scheme Creditors also contained the summary, log-in details to the Scheme portal, and the letter itself.

44. The requirements that a Practice Statement Letter must meet are set out in the Practice Statement at paragraph 7. In Re Provident SPV Ltd [2021] EWHC 1341 (Ch), a scheme affecting the claims of financial redress creditors, Sir Alastair Norris said of a complex Practice Statement Letter:-

"26. The Practice Statement letter itself is of daunting length, particularly having regard to the constituency to which it is addressed. But at the end it contains in a highlighted box a summary of the Scheme and the purpose of the convening hearing; and I am satisfied that the Practice Statement Letter served the purpose intended."

45. Having read the Practice Statement Letter in this case, I am satisfied that it employs appropriate summaries, is in digestible language, of manageable length, and otherwise meets the requirement of the Practice Statement, addressing as it does the promotion of the Scheme, the reasons for such promotion, the purpose and intended effect of the Scheme, the relevant Scheme

dates and class composition, including the right of Scheme Creditors to attend the hearing before me today, the right to be legally represented and to raise legal objections and the ways in which their questions, including about class composition, can be addressed, and how any concerns they may express will be conveyed to the court.

Class composition

(1) General principles

46. Turning then to class composition issues, in terms of the general principles, the Practice Statement makes clear, at [2], that it is the responsibility of the applicant - the Company - in relation to both a Part 26 scheme and a Part 26A scheme, to determine whether more than one meeting of creditors or - not relevant here - members is required by a scheme and, if so, to ensure that those meetings are properly constituted. And at [11], that:-

"In considering whether or not to make an order convening meetings of members and/or creditors (a "meetings order") the court will consider whether more than one meeting of members and/ or creditors is required and, if so, what is the appropriate composition of those meetings."

47. Separate meetings of creditors are required only if there are separate classes of creditors. The familiar authorities cited to me indicate, firstly, that a class must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.

48. Secondly, there should be consideration of both the existing rights of creditors and the rights conferred on creditors by the scheme itself, the court being focused on *rights* and not *interests*.

49. Thirdly, material differences in the rights of creditors do not necessarily fracture that class. Ultimately, the court has to look at whether there is "more to unite than to divide" the creditors.

50. Accordingly, the question of class composition is ultimately a matter of judgment on the facts of each case. I should also add that the courts have made it clear that class proliferation should be avoided where possible.

(2) Creditors of the Company

51. Turning to the Company's creditors here, there are no secured creditors, BP's former floating charge having been satisfied on 28 January 2022, and the relevant security later released. BP apart, creditors fall into broadly two categories: firstly, trade creditors; secondly, former customers, including the data breach customers.

52. The trade creditors are estimated to comprise approximately £100.1 million, made up of: (1) a £41,475,851 claim from Ofgem; (2) an expected restitutionary claim of around £33 million from British Gas, arising out of the supplier of last resort process; thirdly, £9,042,717 of claims from miscellaneous trade creditors, and £17,389,832 in liabilities in the Statement of Affairs for which claims have yet to be received.

53. As for former customers, the Company considers it unlikely to be arguable that the former customers retain any claim against the Company for their credit balances following the supplier of last resort process. The other types of former customer claims are unsecured data breach claims.

(3) The comparator

54. Turning to the relevant comparator to the Scheme in this case, this is said to be a distributing administration, or possibly liquidation, the administrators having realised substantial assets, including the BP payments, and the Company having creditors which will wish to pursue their claims. Absent the Scheme, the administrators would seek permission to make a distribution to the Company's unsecured creditors under paragraph 65(3) of Schedule B1 to the 1986 Insolvency Act.

55. In those circumstances, the administrators would set a last date for proving under Rule 14.30 of the Insolvency Rules 2016, after which the administrators would not be obliged to deal with the proofs subsequently delivered, but they may do so if they see fit (see Rule 14.32(2)). However, a relevant consideration to permission to make a distribution and the level of dividends set would be the possibility of future claims.

56. Under paragraph 65(3), a distribution must be one that is in the interests of the creditors as a whole and it must consider the adverse affects of the proposed distribution on the entitlement of others (see Re MG Rover Belux SA/NV [2007] BCC 446 at [7] and [8]). A distribution which is a prelude to the end of administration, and leaves no reserve for realistic future claims, is unlikely to satisfy this and permission is unlikely to be given.

(4) Single class of creditors

57. As to whether the court should convene a single meeting of all creditors of the Company, the starting point is that all the Scheme Creditors' pre-scheme rights - whether as trade creditors or data breach creditors - are unsecured claims, which would rank *pari passu* in the comparator.

58. Under the Scheme, the Scheme Creditors will benefit from the same set of post-scheme rights, including a right to make a claim prior to the claim submission deadline and the streamlined claim and adjudication process.

59. The Company fairly points out three matters which might be said to fracture the single class.

(i) Uncertain claims

60. Firstly, some Scheme Creditors, for example trade creditors, may have claims which are known to be valid or can be readily established. By contrast, for the reasons I have already alluded to, the data breach creditor claims differ because it is not known if their claims are valid and, if they are, their amount.

61. Despite those differences, I agree with the Company that the data breach creditors and other Scheme Creditors can still be classed together. Their rights in the comparator, proof in

administration, are the same: all have to prove their claims through the same proof process and appeal any disputed claim using the machinery in the 2016 Rules. Their rights in the Scheme are the same: all have the same rights to submit a Scheme claim and refer claims to the Scheme adjudicator, whatever their views might be on the merits of the Scheme or potential loss of access to redress through the court.

62. The view I have expressed is supported by Re Noble Group Limited [2019] BCC 349 in which the court considered a scheme with similar claim arrangements, including a bar date, involving claims, some unlikely to be disputed, and others that would be, perhaps, hotly so. In that case, Mr Justice Snowden, held that the class was not fractured. Although there would be greater uncertainty of outcome for some of the scheme creditors, that was not found to constitute a difference of existing rights against the company or rights conferred under the scheme. All provable claims against the insolvent company would be subject to the same proof of debt process, no matter how they had arisen, and whatever differences existed in the potential outcome of that process.

(ii) Claims against Hiscox

63. Turning to the second potential fracturing factor, claims as against Hiscox, the Company also again fairly pointed out that data breach creditors have claims against Hiscox by reason of their statutory third party rights against insurers, but other Scheme Creditors may not. Under the Scheme, data breach creditors would lose their right to claim against Hiscox, a solvent insurer. Moreover, the claims of data breach creditors as against the Company are contingent. As I have already noted, the claim against the Company is only enforceable if the relevant amount cannot be recovered in Hiscox.

64. As the Company says, this might fracture the single class if the comparator was an insolvent administration, where the Company had insufficient assets to pay all creditors and the available insurance was likely to pay out in full or at a higher level. However, in this case the Company is

likely to have sufficient assets to meet all claims. Accordingly, although the data breach creditors (and any other creditors with claims against Hiscox) will lose rights against that insurer, I accept that this is not a material difference in rights in the circumstances of this case where all creditors are likely to be paid in full even without the benefit of the claims against Hiscox, and the remaining coverage afforded by the policy is limited to £700,000, and has thus far largely been eroded by defence costs without any indemnity afforded to claimants.

(iii) Claims against PEC

65. Turning to the claims against PEC, the third potential for fracturing identified by the Company is that data breach claims may be asserted against the Company or PEC where other Scheme Creditor claims are against the Company only. If the Scheme goes ahead, creditors who have data breach claims might lose the opportunity to make a claim against PEC as well as the Company whereas other creditors will not lose that opportunity.

66. As to this, as I have already noted, if the Company is unexpectedly unable to meet its claims in full, data breach creditors will still be able to claim against PEC for the shortfall if their claims have become ascertained claims in the Scheme. As such, again I accept that the data breach creditors do not lose their right to claim against both companies in any meaningful way.

(iv) Conclusion on single class

67. Accordingly, although the Company was correct to bring these matters to my attention, I am satisfied that this is an appropriate case for the court to convene a single meeting of all the Company's creditors. In sum, I accept that there is more that unites the creditors than divides them as a whole.

Jurisdiction to sanction the Scheme

68. Turning to the question of jurisdiction to sanction the Scheme, as to the potential for jurisdictional questions arising now, Re Noble Group Limited [2019] BCC 349 is again incisive in explaining that the court may indicate at the convening stage if it is obvious that it has no

jurisdiction to sanction the scheme, or where there are other factors that would unquestionably lead the court to refuse to exercise its discretion to sanction the scheme. The court will also consider if there are any jurisdictional roadblocks or what is known in some of the authorities as "showstoppers" to potential sanction. That covers strict jurisdictional impediments as well as issues which would unquestionably lead the court to decline to sanction the scheme at the sanction hearing.

69. Being a company incorporated in England, I am satisfied that the Company is a “company” for the purpose of Part 26 of the Act. In terms of other matters, the scheme jurisdiction is only available if the scheme is a compromise or arrangement between a company and its creditors or any class of them (see section 895(1)(a) of the Act), the again familiar authorities emphasising that the term "arrangement" is broadly construed and requires some element of ‘give and take.’

70. Looking at matters overall, I accept that there is give and take, given the proposed replacement of the administration process with the proposed Scheme in this case.

(1) Third party releases of PEC and Hiscox

71. In this context, a scheme which seeks to release the claims of scheme creditors against third parties, as in this case, will not fail for want of jurisdiction, though the court may refuse sanction on discretionary grounds (Re Gategroup Guarantee Ltd [2021] BCC 549, a case applying in the Part 26(a) context the principles and authorities under Part 26).

72. As the authorities cited to me show, that general proposition extends to the situation arising here where there is a proposed release of a joint obligor and, albeit perhaps less commonly, of a non-party insurer released from claims against it arising as here under the Third Parties (Rights Against Insurers Act) 1930 (as to the former, see Re Syncreon Group BV [2019] EWHC 2412 (Ch) at [25], Re Noble Group Ltd [2019] BCC 349 at [24], Re E D & F Man Holdings Limited [2022] EWHC 687 (Ch) at [67]-[68] and Re Lamo Holding BV [2023] EWHC 1558 (Ch) at [46]; as to the latter, see Re T&N Ltd (No. 3) [2007] 1 All ER 851).

73. As such, I am satisfied that there is no warrant for me at this stage to raise any obvious point of jurisdiction or showstopper, the question of whether such releases should be sanctioned being a matter arising more pointedly at the sanction stage as a matter of the exercise or otherwise of the court's discretion then.

(2) International effectiveness

74. Although not referred to in oral submission, the skeleton argument also quite properly raised issues of potential international effectiveness, again being matters of discretion. I accept, again, that these are matters more appropriately deferred to the sanction hearing (see In Re ColourOz Investment 2 LLC at [57]), although I note here that the only other relevant jurisdiction in play is Scotland, as to which the Scheme, if sanctioned, will be effective there by reason of sections 899(3)-(4) of the Act.

Documentation and adequacy of the Explanatory Statement

(1) Explanatory Statement

75. Turning to the documentation and its adequacy in this case, I consider first the Scheme Explanatory Statement. The Practice Statement, at [15] requires the court to consider its adequacy and that it is in appropriate form. The court may decline to convene the scheme meeting if it detects or its attention is drawn to manifest deficiencies in the document (see Indah Kiat International Finance Co BV [2016] BCC 418 at [42]). However, the court's function is not to act by way of approval of the text of the draft.

76. In this case, I am satisfied that the draft is adequate and its form appropriate, and that it has been helpfully drafted with the data breach creditors in mind, including the summary, the events timelines, including a warning of missing the claim submission deadline, the next steps section, the introductory section, and key questions and answers section and, only then, followed by a more detailed explanation. The interests of the directors of the Company are also clearly disclosed as required by section 897(2)(b) of the Act.

77. As such, I agree that there are no manifest deficiencies in the Explanatory Statement here.

(2) Transmission of the Explanatory Statement and other Scheme documents

78. As to its distribution and the distribution of other Scheme documents, these will be posted on the Scheme portal. Moreover, those already apparently successfully e-mailed with the Practice Statement Letter will be emailed again with a link to the Scheme portal to view the Explanatory Statement, the FAQs and voting procedures. Those Scheme Creditors who were sent the letter by post will be sent a further letter, including instructions on how to access the portal, again to view the Explanatory Statement, the FAQs, and the voting process. Advertisements will also be placed about the proposed Scheme in The Sun newspaper in England and Wales, and the Herald in Scotland.

79. I am satisfied that these arrangements, the proposed timetable, and the arrangements for the meeting itself, to be held remotely from 10.30 am on 17 October 2023, are appropriate; and in the case of the latter, consistent with directions for remote meetings as approved by Mr Justice Trower in Castle Trust Direct Plc [2021] 2 BCLC 523 at [36]-[44].

Confidential exhibit

80. Finally, and turning to a different subject matter, the court is invited today to seal the confidential Hiscox settlement by directing that it not be available to non-parties, including Scheme Creditors, pursuant to CPR 5.4C(4)(d), the settlement being said to be commercially confidential. That part provides in relation to the supply of documents to a non-party from court records that:-

"The court may, on the application of a party or any person identified in a statement of case ... makes such ... order as it thinks fit."

81. In this case, the Company seeks an order confirming the non-availability of the settlement for public inspection or its non-provision to a non-party, subject to the ability of a non-party to apply on notice to the Company for its provision. The Company points out in its skeleton that

such orders have been made in other schemes and restructuring plans where confidential documents are filed (see, for example, Re ED&F Man Holdings Limited [2023] 1 BCLC 269 at [80]).

82. Whether the court should invoke these powers involves the balancing of the principles of open justice and confidentiality. That exercise was considered in a scheme context in Re Port Finance Investment Ltd [2021] BCC 632 at [28], Mr Justice Snowden noting that the lack of confidentiality in the witness statements sought in that case militated in favour of their production. In this case, however, I am satisfied that the nature of the information sought to be protected, having reviewed the annex, is confidential. Moreover, the order sought envisages that any party who wishes to inspect the settlement can still apply for permission to do so on notice to the Company, and I am satisfied that that regime does strike the appropriate balance between open justice and the legitimate interests of the Company and its insurers in this case. Accordingly, I accede to that aspect of the order.

Conclusion/ disposal

83. Having considered the evidence and the documents, including the first and, as was referred to me today, now the second witness statements of Mr Paul Berkovi, being one of the Company's joint administrators, the Practice Statement Letter, the draft Explanatory Statement and the Scheme document, and for all the reasons I have indicated, I am satisfied that it is appropriate for a single Scheme meeting to be convened to enable the Scheme Creditors to vote on, and if thought fit, approve the Scheme.

84. I therefore make the order sought in the terms of the draft as presented to me, subject, as also discussed today, to the deletion of paragraph 5(b).