



# Milbank Insights

## Financial Restructuring Practice

### *Re Waldorf Production UK plc – Lessons Learned from Waldorf’s Second Chance*

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By Nicholas Dunstone, Mona Vaswani and Ollie Winters



## **Re Waldorf Production UK plc – Lessons Learned from Waldorf’s Second Chance**

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Milbank LLP advised a steering committee of bondholders (“SteerCo”) and the bond trustee in connection with a restructuring plan proposed by Waldorf Production UK plc (“WPUK”), which was sanctioned by the High Court of England and Wales on May 5, 2026 (the “Plan”). The Plan was approved following a three-day sanction hearing, which took place April 15-17, 2026, before Mr. Justice Michael Green and was contested by His Majesty’s Revenue and Customs (“HMRC”) in its capacity as a dissenting creditor of WPUK. Milbank instructed Matthew Abraham (who appeared at the sanction hearing) and Tom Smith KC on the matter.

Green J declined HMRC’s application for permission to appeal the judgment to the Court of Appeal at a consequential hearing on May 22, 2026. An *ex tempore* judgment was given in which Green J comprehensively rejected each of HMRC’s grounds of appeal, which focused principally (both in written and oral submissions) on the Court’s exercise of discretion. In particular, Green J held that there was no real prospect of the Court of Appeal overturning the decision as HMRC had failed to identify an error of law or any factor that the Court should not have taken into account, or did not take into account.

HMRC is entitled to seek permission to appeal the judgment directly from the Court of Appeal.

The Plan is one of the first contested restructuring plans to be sanctioned following the Court of Appeal’s judgment in *Petrofac* in July 2025. Milbank took on a key role advising SteerCo in the matter, including formulating a complex allocation structure which formed the basis of the Plan and through cross-examination and submissions at the sanction hearing, which were cited with approval by Green J. The judgment contains a number of key findings, including:

- The Court has jurisdiction to cram down HMRC (notwithstanding its special status).
- The “no worse off” test under s. 901G3 CA 2006 was satisfied and should not take into account broader considerations by reference to collection of future tax as was argued by HMRC.
- The plan was “fair” for purposes of exercising the Court’s discretion, particularly by reference to the negotiations between stakeholders (including the first use of mediation in a restructuring plan context (as proposed by Milbank)), and the allocation of the benefits of the restructuring between the plan creditors.

The judgment places significant weight on the factual finding by the Court that HMRC’s overall position was improved by sanction of the Plan compared to the relevant alternative, an issue on which SteerCo led cross-examination and submissions. Whilst the judgment remains subject to appeal, there are several key takeaways to consider.

In this *Client Insight*, Nicholas Dunstone, Mona Vaswani and Ollie Winters (who led the Milbank team advising SteerCo on this matter) examine the judgment and its broader implications on restructuring plans going forward.

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### **Introduction**

The Plan forms part of a broader restructuring intended to deliver a sale of the Waldorf Production Group (the “Group”) to a subsidiary of Harbour Energy plc for \$205 million, subject to customary “leakage” adjustments (the “Transaction”). The

terms of the Transaction require release of the claims of the material creditors of the Group (the “Target Group Creditors”)<sup>1</sup> in exchange for a share of the consideration provided by Harbour, to be implemented through a contractual restructuring alongside the Plan and a restructuring plan proposed by Waldorf CNS(I) Limited (“WCNS(I)”) before the Scottish Court of Session (the “Scottish Plan”).<sup>2</sup>

## Background

The holding companies of the Group entered into administration in June 2024. Following a liability management exercise to refinance certain of the secured bonds of the Group and provide new money to WPUK to allow it to continue trading as a going concern, the administrators commenced a sale process for the Group. However, no deliverable offers were received for WPUK or the Group as a whole.

As a result, in early 2025, WPUK proposed a prior restructuring plan that sought to facilitate a successful sale by (1) amending and extending the Bonds and (2) compromising its two material unsecured creditors (HMRC and Capricorn Energy) for a payment equal to 5% of the nominal value of their claims and upside sharing rights in the event the Bonds were repaid in full (“RP1”). Following a two-day contested sanction hearing where both unsecured creditors opposed RP1, Hildyard J declined to sanction RP1 on the basis that WPUK had failed to negotiate with the unsecured creditors and had not discharged its burden of proof to show that the allocation of the benefit of the restructuring was “fair.”

The RP1 judgment came after the Court of Appeal handed down judgment in *Petrofac* (although the sanction hearing for RP1 occurred prior to hand down), which confirmed that the previous approach to “out of the money” creditors under restructuring plans was no longer applicable, and the burden of proving the fairness of the allocation of the benefits of the restructuring lies with the plan company. Following hand down of the judgment in RP1, WPUK obtained a “leapfrog” certificate, enabling a direct appeal to the UK Supreme Court. A hearing before the UK Supreme Court was set for February 2026 but ultimately withdrawn after WPUK opted to pursue the Transaction.

## The Transaction

In August 2025, Harbour provided a non-binding indicative offer (NBO) which required settlement of the Target Group Creditor claims in full and expressly stated that allocation of the consideration was to be agreed between the Target Group Creditors. As a result, accelerated negotiations occurred from September–October 2025 between Target Group Creditors (with assistance from the Group and excluding HMRC), including a two-day mediation proposed by Milbank on behalf of SteerCo. Following the mediation and subsequent negotiations, commercial agreement was reached between the Target Group Creditors (excluding HMRC) in November 2025, and a lock-up agreement and SPA were signed in December 2025.

The allocation of consideration is set out in a detailed methodology which includes the mechanics by which the consideration is (1) allocated across the different Group entities; and (2) split between the relevant Target Group Creditors at each Group entity (including WPUK), by reference to, among other things, the relative ranking of each claim, the contributions to the restructuring by each creditor and the complexity of the capital structure across the Group. The methodology was first proposed by SteerCo in an initial restructuring proposal to the Target Group Creditors, and subsequently refined following the mediation, principally to reflect a pro rata sharing of the benefits of the restructuring between the relevant Target Group Creditors in proportion to the nominal value of their claim, with the other key structural components remaining consistent. While not discussed at length in the judgment due to the nature of HMRC’s objections, the methodology represents one of the most sophisticated allocation structures put forward in a restructuring plan and reflects the importance of determining creditor recoveries by reference to substantive fairness considerations, following the judgments in *Thames Water* and *Petrofac*.

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<sup>1</sup> The Target Group Creditors comprise holders of three sets of secured Bonds issued and guaranteed across the Group, HMRC in respect of unsecured EPL liabilities owed by WPUK and WCNS(I), Capricorn Energy and Alpha Petroleum in respect of unsecured M&A liabilities, and certain intragroup liabilities owed to the administrators of the holding companies.

<sup>2</sup> The Scottish Plan was sanctioned by the Scottish Court of Session on May 6, 2026 after HMRC dropped its opposition to the Scottish Plan. A written judgment is expected in due course.

## Plan Creditors

Creditor Class	Claim Value <sup>3</sup> (Ranking)	Outcome in the Relevant Alternative	Recovery Under the Plan	Voting in the Plan
Super Senior Bondholders	\$55M <i>In respect of first ranking secured debt with first ranking collateral granted across the Group</i>	100%	41.5% 100% through the Transaction as a whole	100% in favor
Original Bondholders	\$62.2M <i>In respect of first ranking secured debt with first ranking collateral granted by WPUK</i>	46.7%	63%	100% in favor
Capricorn Energy	\$29.5M <i>In respect of unsecured liabilities owed under an SPA</i>	0.1%	14%	100% in favor
HMRC	\$94.5M <i>In respect of unsecured non-preferential EPL liabilities</i>	0.1%	14%	100% against

## Relevant Alternative

It was accepted that if the Plan was not sanctioned, WPUK and certain other Group companies would enter into insolvency processes. WPUK also put forward evidence that a sale of certain other Group companies to Harbour or another third party would be achieved in the relevant alternative, as the requisite commercial agreement to facilitate these sales between the applicable Target Group Creditors (which crucially did not include HMRC) had already been reached.

If the Transaction completes, Harbour will be able to access certain tax relief as a result of acquiring the Group. This tax relief is split into two “buckets”: (1) up to 40% relief on existing trading losses in Group companies (including WPUK), which can be used to offset future tax (also referred to as “tax losses”), and (2) up to 40% relief on future decommissioning expenditure (also referred to as “decommissioning relief”). It was accepted that in an insolvency, the Exchequer bears 50% of future decommissioning expenditure (also referred to as “imposition decommissioning”), and HMRC would also not receive payment of 2025 and 2026 EPL which was not intended to be compromised by the Plan. Therefore, a factual assessment of the holistic impact of Transaction on the Exchequer required broad assessment of various factors as opposed to a narrow assessment of creditor recoveries.

## HMRC’s Objections

HMRC ran a number of objections to the Plan on jurisdiction and discretion:

- Jurisdiction to cram HMRC:** The Court does not have the power to cram it down where it rationally votes against a Plan (although it recognised that “it is unlikely that the court does not have jurisdiction to cram down HMRC in any circumstance”). This was the first instance HMRC ran such an argument.
- “No worse off”:** (1) as a matter of law, the tax relief available to Harbour under the Transaction was relevant to the “no worse off” determination; and (2) as a matter of fact, the Exchequer was worse off under the Plan than in the relevant alternative.

<sup>3</sup> All plan claims are indicative only. Final creditor claims for the purposes of calculating each creditor’s final entitlement are determined at closing to include all accrued and unpaid interest.

3. **Abuse of process:** The Plan amounted to an “abuse of process” in circumstances where Harbour has the necessary means to pay the EPL liabilities in full and would amount to effective tax avoidance.
4. **Unfair allocation of benefits:** The allocation methodology did not account for the impact of the tax losses on HMRC’s overall position (which it contended were a “contribution to the restructuring”). In circumstances where HMRC had made a contingent payment proposal to WPUK and Harbour to have the EPL liabilities paid over a number of years as and when Harbour utilised the tax losses (the “CCP”), a fair outcome would be for the Court to remove compromise of the EPL liabilities from the Plan to allow negotiation of the CCP, which would see HMRC paid in full (albeit on a contingent basis across a longer period).
5. **Conduct of WPUK:** WPUK’s conduct, especially payment of a \$76 million dividend in October 2022 (criticised by Hildyard J in the RP1 judgment) and the incurrence of \$62 million in professional fees, militated against sanction of the Plan.

The Court rejected each of these arguments in turn.

## ***Jurisdiction to Cram Down HMRC***

The Court confirmed it has jurisdiction to cram down HMRC. Whilst it is accepted that the Court should act with care when cramming down HMRC in light of its public function and involuntary creditor status, and afford its views great weight (see *GAS, Nasmyth*), this does not amount to giving HMRC an effective veto against a restructuring plan, especially in the absence of any clear Parliamentary intention to provide one.<sup>4</sup> Furthermore, there has been an established practice of HMRC being bound by prior restructuring plans and Company Voluntary Arrangements (CVAs) it has opposed on policy grounds<sup>5</sup>, and the Court held that there is a clear read across the two processes. The existence of an effective veto would also stand in contrast to the rescue culture Part 26A intends to promote.

The Court will continue to carefully scrutinize any cramdown of HMRC and will not do so without good reason. Whilst this judgment should not prevent HMRC from continuing to argue in the future that it has been treated unfairly, this will require a substantive assessment of the facts before the Court at the time, rather than an assumption by the Court that it cannot exercise its discretion to cram down HMRC.

## ***The “No Worse Off” Test***

### **The legal scope of the “no worse off” test**

The Court of Appeal held in *Petrofac* that the scope of the “no worse off” test is confined to assessment of the value of a creditor’s existing rights being compromised in the relevant alternative, compared to the value being given in respect of those rights under the Plan. Beyond this, “any wider rights, interests or liabilities that are not being compromised by the plan are, in my view, outwith the scope of the no worse off condition.”

The Court confirmed that the broader impact of the tax relief available to Harbour in the event the Transaction completes falls outside the scope of the test. As “no worse off” is a jurisdictional condition, there needs to be clarity as to the scope of assessment, and in this instance, future tax relief could not be said to form part of the existing rights being compromised by the Plan (in respect of which it was accepted that HMRC would receive a greater return than they would in the relevant alternative).

### **As a matter of fact, what is the impact of the Transaction on the Exchequer?**

HMRC sought to argue that the transfer of \$900 million of tax losses held by the Group clearly outweighed the impact on HMRC in the relevant alternative (being the loss of any payment of EPL and the assumption of imposition decommissioning), relying in part to public statements by Harbour that they were acquiring \$900 million of tax losses.

In the first instance, the evidence before the Court made clear that even if WPUK were to enter into an insolvency, the sale of other Group entities with approximately \$825 million of tax losses would complete; therefore, the \$900 million was a red herring. When the position was assessed with relation to the Group entities that would actually enter insolvency (thereby losing the ability to access their tax losses), in respect of the overall impact of the tax losses and decommissioning relief,

<sup>4</sup> The Explanatory Notes to CIGA 2020 state that “as the Companies Act 2006 provisions implicitly bind the Crown, any arrangement or reconstruction agreed and implemented under new Part 26A will also necessarily be binding on the Crown.”

<sup>5</sup> See *HMRC vs Portsmouth City Football Club*; *Inland Revenue vs Wimbledon Football Club Ltd*

as set against lost EPL and the assumption of imposition decommissioning, the net impact on the Exchequer was estimated to be \$17.9 million.

HMRC put forward evidence that in the event the Transaction completed, Harbour would utilise 100% of the available tax losses and decommissioning expenditure (giving rise to the net figure of \$17.9 million). In opposition to this, WPUK put forward expert evidence showing that (1) 100% utilisation of either bucket of tax relief was not likely; and (2) if 100% utilisation of one bucket was achieved, the rate of utilisation of the other bucket was highly likely to decrease. In cross-examination by Matthew Abraham (on behalf of SteerCo), HMRC's witness accepted these points; in fact, the likely position was that utilisation of both buckets of tax losses would trend towards 90% or lower. As a result, HMRC would likely be better off under the Transaction than in the relevant alternative (90% utilisation of both buckets of tax losses giving rise to a net gain of \$3 million to HMRC, which further increases as the rate of utilisation reduces).

## ***Abuse of Process***

The fact that Harbour could pay the EPL liabilities in full was not a relevant consideration. The Transaction represented the best value achievable in the circumstances (as shown by the previous failed sale process) and it was clear that, absent a compromise of the EPL liabilities, WPUK would not be an attractive target for any purchaser. Furthermore, whether Harbour would be able to utilise the full value of the available tax relief remains highly uncertain and HMRC has significant powers to investigate and challenge abusive transactions. In circumstances where these powers are retained and HMRC is, as a matter of fact, better off under the Transaction, the Plan could not be said to be an abuse of process.

## ***Unfair Allocation of Benefits***

Whilst the overall impact of the Transaction on HMRC and the Exchequer does not fall within the “no worse off” test, it is plainly relevant to the exercise of discretion. The Court held that the impact of the tax losses is relevant to an assessment of whether the Plan is fair given they constitute a “benefit preserved...by the restructuring” and are, in large part, why Harbour is acquiring the Group. However, in circumstances where HMRC is better off under the Transaction, there “is no logical reason” why HMRC should be entitled to a larger share of the consideration in addition to the benefits that accrue to it from avoiding the relevant alternative. Whilst it was not necessary to consider whether they could be defined as a “contribution” by HMRC, if HMRC had clearly been worse off as a result of the Transaction, the exercise of discretion would have been made more difficult by determining how this fact could fairly be reflected in the allocation of the consideration. As such, the finding that HMRC is better off under the Plan is central to the exercise of discretion to sanction in this case (although the fact that a creditor is better off under a plan than in the relevant alternative as a matter of fact is not determinative of the Court's exercise of discretion).

In respect of HMRC's complaint that WPUK (and Harbour) failed to engage with the CCP, the Court noted that the offer of a CCP was made after the mediation and commercial terms had been reached between the other Target Group Creditors. Further, where Harbour had expressly rejected a CCP, to refuse to sanction the Plan or otherwise carve-out the EPL liabilities was unrealistic in circumstances where a commercial deal had been heavily negotiated and the price offered was fair by reference to the prior sale process; in fact, this would be more likely to overturn the whole deal to the detriment of all other stakeholders. This is made clearer by the fact that WPUK would be unable to discharge the EPL liabilities on its own account.

## ***Conduct of WPUK***

Whilst not condoning the prior conduct of WPUK, the Court recognised that the plan creditors could not be held responsible for its actions, and refusal to sanction on this basis would unfairly penalize them as a result.

## **Key Takeaways**

The judgment is a welcome step forwards in the Part 26A jurisdiction, following the judgments of the Court of Appeal in *Thames Water* and *Petrofac*, which confirmed that the prior approach to “out of the money” creditors under *Virgin Active* is no longer applicable. Whilst much of the judgment focuses on specific issues relevant to HMRC and its special status, and the particular impact of the Transaction on the future payment of tax, there are a number of key takeaways when considering the viability of restructuring plans (particularly where cross-class cramdown is likely to be required).

## **Negotiation**

The importance of negotiation was emphasised in *Petrofac* where cross-class cramdown should be engaged to overcome creditors unreasonably holding out for a better deal where there “has been a genuine attempt to formulate and negotiate a reasonable compromise between all stakeholders.” Although Hildyard J stopped short of recognizing negotiation as a jurisdictional pre-condition in his RP1 judgment, it is clear that parties are expected to negotiate prior to the launch of a restructuring plan (with the new Practice Statement requiring the plan company to provide details of engagement between parties at the convening hearing). In this case, the Court was critical of HMRC’s refusal to engage with the Target Group Creditors, especially given its complaints as to lack of engagement in RP1, noting that WPUK “clearly learnt from [RP1] and did seek to engage extensively with.... all Target Group [Creditors].” Creditors who intend to oppose a plan should therefore be aware that failure to negotiate cuts both ways, and failure to engage will weaken their case in opposition.

Furthermore, the Court appeared to draw comfort from the extent to which the Transaction was heavily negotiated by all parties, stating that the Plan “provides for the distribution of that consideration from Harbour pursuant to the heavily negotiated Agreed Compromise” and noting the significance of Capricorn Energy’s support for the Plan, having opposed RP1. Accordingly, the Court may look to negotiations as a benchmark for determining if an outlying dissenting creditor’s demands are unreasonable when set against those of the other parties.

## **Mediation**

In light of the importance to negotiate, the Court endorsed Milbank’s pioneering proposal for the parties to engage in mediation to facilitate agreement of commercial terms, stating that “the use of mediation in these circumstances to find agreement among the stakeholders is to be encouraged.” Whilst use of mediation is untested in restructuring plans, its ability to facilitate structured negotiations may see its popularity grow in circumstances where parties not only need to reach agreement in limited time, but also demonstrate to the Court that a bona fide attempt has been made to negotiate reasonably.

There are limitations to the suitability of mediation in the restructuring plan context, principally that it is usually conducted on a “without prejudice” and confidential basis, and therefore the contents of the mediation itself cannot then be referred to in open proceedings. However, steps can be taken to assist the Court in gauging the impact of mediation on negotiations, for example, by requiring or encouraging “open” offers to be made immediately before and after mediation to demonstrate how the parties’ respective positions have moved.

## **Substantive Fairness Considerations**

Following *Petrofac* and judgment in RP1, it is clear that the exercise of discretion is closely linked to the assessment of whether the plan provides for a fair allocation of the benefits of the restructuring, as determined by reference to the contributions made by the creditors. In this case, it was argued specifically by HMRC that its ongoing relationship with WPUK following completion of the Transaction (by virtue of future taxes to be paid) meant that the Plan was a “rescue” plan as opposed to a “terminal” plan for all other Target Group Creditors (by virtue of their claims being fully and finally released), and that this distinction should be reflected through differential treatment (for example, through agreement of a CCP).

However, the Court’s finding that HMRC is better off under the Plan effectively meant HMRC “had the rug pulled from under it” when making these submissions; this reflects a focus on the substantive aspects of fairness. In circumstances where, as a matter of fact, HMRC benefits substantially from avoiding the relevant alternative, it could not rely on a technical distinction in the nature of the Plan to justify materially better treatment.

The focus of the judgment on the factual findings also emphasises the importance of rigorous cross-examination and expert evidence within the exercise of discretion in addition to the “no worse off” test. In this case, Matthew Abraham (on behalf of SteerCo) led cross-examination and submissions in respect of the factual assessment of the impact of the Plan; the Court noted that HMRC chose “not to directly address this issue in any detail,” with the finding of fact then being significant in the overall exercise of discretion. Increasingly, the Court may not be deferential to assertions of fact made by the parties (especially in relation to its exercise of discretion) without appropriate interrogation and scrutiny.

## **Commercial Pragmatism**

The judgment demonstrates the Court’s willingness to recognise commercial negotiations and the reality of distressed situations in its exercise of discretion. In particular, the Court rejected arguments by HMRC that “Investment Value” (being

the potential value of the Group to Harbour once acquired) was a suitable proxy for the true value of the Group, stating that the M&A process leading to the Transaction was “conducted in the real world” and the fairness of the value offered by Harbour is best assessed by reference to the views of the creditors and administrators, who all viewed it as the best price reasonably obtainable in the circumstances.

Whilst the Court of Appeal has been clear that commercial negotiations alone are insufficient to demonstrate that a price is “fair” in the circumstances (in *Petrofac*, in relation to the pricing of new money), the prior sale process and support of the other Target Group Creditors was clearly significant in the Court’s finding that the value offered by Harbour was the best available in the circumstances. As such, the Court confirms it will be wary to interfere in commercial negotiations, stating “I do not think it would be right or fair for the court to interfere in the commercial compromise embodied in the Plan in that way,” when asked by HMRC to facilitate further negotiation of the CCP by removing compromise of the EPL from the Plan. Furthermore, the extent of evidence put before the Court as to the sale price has clear read across to the importance of substantive fairness; unlike in *Petrofac*, where the plan company failed to demonstrate that the pricing of the new money was on market terms (to the ultimate downfall of the plan), the Court was left in little doubt here that the price was the best reasonably obtainable in the circumstances.

More broadly, the Court was clearly cognisant that the Transaction represented the best outcome for creditors in the practical reality of the Group and that this should carry weight in the exercise of discretion (for example, when set against the prior conduct of WPUK). Whilst parties must continue to actively consider substantive fairness considerations when formulating a compromise, the judgment demonstrates that the Court will be mindful of the commercial context to a plan, especially where it represents a pragmatic solution for all creditors to obtain an increased recovery.

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