OUTER HOUSE, COURT OF SESSION

[2026] CSOH 57

P183/26

OPINION OF LORD LAKE

in Petition of

WALDORF CNS (I) LIMITED

Petitioner

for

Sanction of a compromise or arrangement under Part 26A of the Companies Act 2006

Petitioner: Borland KC et Roxburgh; Burness Paull LLP
Respondent: Ower KC et Breen; Office of the Advocate General
Respondent: Delibegovic Broome KC et Mitchell; Brodies LLP

5 May 2026

[1] The petitioner and the group of companies of which it is part are engaged in the business of the exploration for and recovery of oil and gas on the UK Continental Shelf. The purpose of this petition is to seek the exercise by the court of its powers under the Companies Act 2006, Part 26A, to sanction a restructuring plan entailing a scheme of compromise which will impact on sums owed to certain creditors of the petitioner. One set of creditors affected are those whose debts arise under a guarantee of obligations due under secured bonds issued by Waldorf Energy Finance plc and amended and restated over time. These creditors are referred to as the WEF Bondholders. A further group of creditors are

those with debts that arise in respect of obligations owed in terms of two bond issues;

(i) USD 53,706,770 13.00 per cent super senior bonds dated 19 July 2024; and

(ii) USD 15,000,000 13.00 per cent super senior bonds dated 27 November 2024. Again, the terms of these bonds have been amended and restated over time. Creditors under these bonds are referred to as the Super Senior Bondholders. Here too the petitioner has provided security in relation to the obligations owed under the bonds. The third principal category of debt is that owed or which may become owed to HM Revenue and Customs under the Energy Profits Levy (EPL) payable in terms of the Energy (Oil and Gas) Profits Levy Act 2022. As averred in the petition, the aggregate liability to HMRC is estimated to exceed US$85.25m. These liabilities do not fall within the category of preferential debts in a winding up. In addition, the following classes of creditor are identified in the petition:

1. Costs to advisers.
2. Intra group debts.
3. Joint venture partners of the petitioner in respect of contingent liabilities for decommissioning costs.

[2] The averments in the petition indicate that the imposition of the EPL has resulted in significant financial pressure on the petitioner. Two companies in the same group, Waldorf Energy Partners Limited ("WEPL"), the ultimate parent company, and Waldorf Production Limited ("WPL"), the petitioner's immediate parent company, were placed into administration in June 2024. A refinancing arrangement with bondholders and time to pay agreement with HMRC gave time for the Administrators to run a sale process, but it is averred that as a result of the debt profile of the petitioners and the group, no offers were received. There were then discussions with the secured creditors to achieve a financial restructuring which would compromise some of its debts in a manner which would make

a sale possible. An agreement was reached on a compromise, and proceedings were commenced in the High Court in London by Waldorf Production UK plc ("WPUK") to seek sanction of the scheme in February 2025. In August 2025, Hildyard J refused to sanction the scheme ([2025] EWHC 2181 (Ch)). Thereafter, an offer was received from a subsidiary of Harbour Energy plc to acquire from WPL and WEPL the shares held by them in their subsidiaries - including the petitioner but excluding WPL itself and Waldorf Energy Finance plc ("WEF"). The offer was subject to full and final settlement of all claims by material third party creditors (including the WEF Bondholders, the Super Senior Bondholders and HMRC) against the companies to be acquired. In November 2025, agreement to the proposal was reached on behalf of the WEF Bondholders and the Super Senior Bondholders and the material creditors of the companies to be acquired other than HMRC. The agreement provided for the consideration payable in respect of the acquisition to be allocated amongst the companies to be acquired and for the method in which the sums received by those companies are to be utilised. Thereafter, in December 2025, Chrysaor Holdings Limited, a wholly-owned subsidiary of Harbour, entered into an agreement (the SPA) with WEPL and WPL and the Administrators whereby WEPL and WPL agreed to sell, and Chrysaor agreed to purchase, the companies identified in the offer subject to the fulfilment of certain conditions including but not limited to the sanction by the court of the restructuring plan and the sanction by the High Court in London of a restructuring plan in respect of WPUK.

[3] The restructuring plan in relation to the petitioner ("the Plan") is complex but, for present purposes, its principal features are:

1. With regard to compromising debts, it addresses only the debts due to the WEF Bondholders, the Super Senior Bondholders and HMRC.

2. It has the effect that securities held by the WEF Bondholders and the Super Senior Bondholders will be released.
3. It has the effect that the liabilities under the WEF Bonds (including that of the petitioner) will be discharged and the liability to HMRC in respect of EPL will be discharged in full.
4. The trustees for the WEF Bondholders and the Super Senior Bondholders and HMRC will each receive a payment calculated in accordance with an approved methodology out of the consideration payable under the SPA.

[4] The present petition was raised on 12 February 2026 and a first hearing ("the convening hearing") was held on 16 February 2026 at which I made orders for *inter alia* intimation and service of the petition and also made orders:

- Directing the holding of meetings of three classes of creditors and stipulating the membership of the classes of creditors entitled to attend each meeting.
- Regulating the conduct of the meetings and requiring the chairperson of the meeting to report their outcome to the court.
- Appointing Brian Moore, solicitor, as a reporter to report to the court on (a) the facts and circumstances set out in the petition and (b) the regularity of the proceedings.

The order also fixed a further hearing ("the Sanction Hearing"). As it was anticipated that there would be factual issues in dispute, it was intended that at this diet I would hear the evidence of witnesses as well as hear submissions as to whether sanction should be granted. In addition to this petition, an application was made to the High Court in London by WPUK for sanction of the Plan in so far as it applied to it.

[5] The following took place in implement of the interlocutor of 16 February 2026:

- Mr Moore reported on 30 April that the petition correctly and sufficiently set out the facts and circumstances and that the proceedings have been regular.
- A meeting of the Super Senior Bondholders took place at which the Plan was unanimously approved.
- A meeting of the WEF Bondholders took place at which the Plan was approved by 98.3% of votes cast.
- A meeting attended by HMRC took place at which the Plan was rejected.

In the proceedings in England, the Plan was also rejected by HMRC but approved by more than 75% in value of the creditors voting at the meetings.

[6] It had been anticipated that HMRC would reject the Plan and the intention was to seek sanction of the Plan under Part 26A of the Companies Act 2006 in both the English and Scottish sanction proceedings. Within that Part, sections 901F and 901G are in the following terms:

> *"Section 901F*
>
> (1) If a number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 901C, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.
>
> (2) Subsection (1) is subject to—
> (a) section 901G (sanction for compromise or arrangement where one or more classes dissent), and
> (b) section 901H (moratorium debts, etc).
>
> (3) An application under this section may be made by—
> (a) the company,
> (b) any creditor or member of the company,
> (c) if the company is being wound up, the liquidator, or
> (d) if the company is in administration, the administrator.

(4) ….

(5) A compromise or arrangement sanctioned by the court is binding—
  (a) on all creditors or the class of creditors or on the members or class of members (as the case may be), and
  (b) on the company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.

(6) …

Section 901G

(1) This section applies if the compromise or arrangement is not agreed by a number representing at least 75% in value of a class of creditors or (as the case may be) of members of the company ('the dissenting class'), present and voting either in person or by proxy at the meeting summoned under section 901C.

(2) If conditions A and B are met, the fact that the dissenting class has not agreed the compromise or arrangement does not prevent the court from sanctioning it under section 901F.

(3) Condition A is that the court is satisfied that, if the compromise or arrangement were to be sanctioned under section 901F, none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative (see subsection (4)).

(4) For the purposes of this section '*the relevant alternative*' is whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned under section 901F.

(5) Condition B is that the compromise or arrangement has been agreed by a number representing 75% in value of a class of creditors or (as the case may be) of members, present and voting either in person or by proxy at the meeting summoned under section 901C, who would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative.

(6) The Secretary of State may by regulations amend this section for the purpose of—
  (a) adding to the conditions that must be met for the purposes of this section;
  (b) removing or varying any of those conditions.

(7) Regulations under subsection (6) are subject to affirmative resolution procedure."

[7] In terms of procedure, the proceedings in London were slightly ahead of the Scottish ones. The sanction hearing in England was held on 15 to 17 April 2026 before Michael Green J. The application for sanction was supported by the WEF Bondholders and the Super Senior Bondholders but opposed by HMRC. During the hearing, Michael Green J heard evidence on contested issues in addition to hearing submissions. His judgment was issued on the first morning of the Sanctions Hearing here but he was aware of the Scottish proceedings and, very helpfully, provided notice of the terms of his judgment prior to it formally being issued. He granted sanction for the Plan in relation to WPUK.

[8] The issues raised by HMRC by way of opposition in the English proceedings were the same as those raised here. In view of the detailed consideration by Michael Green J of these issues and his decision nonetheless to grant sanction, HMRC decided to withdraw their opposition to the petition here. As a result, there was no evidence led in the hearing before me and only very much shortened submissions were made. Naturally, there was considerable reliance on the conclusions that had been reached by Michael Green J in his detailed judgment. However, I was addressed on the issues that arose. At the end of the hearing I was asked to record the basis for my decision granting sanction and do so in this opinion.

[9] The first issue was whether section 901G conferred a power on a court to sanction a scheme that "crammed down" debts owed to HMRC. Although the position had changed by the time of the Sanctions Hearing, HMRC had initially contended that it did not. Michael Green J adopted the approach of Leech J in *Re Nasmyth Group Limited* [2023] EWHC 988 (Ch) when he said, "the Court should not refuse to sanction a restructuring plan under Part 26A as a matter of principle because HMRC will be crammed down if the plan is sanctioned" (para [114]) and, as HMRC is a unique type of involuntary creditor, "it is

important that the Court should scrutinise the Plan with care and should not cram down the HMRC unless there are good reasons to do so" (para [116]). Michael Green J noted arguments made for HMRC that as their decisions could only be challenged by judicial review if irrational, the same standard should be applied in relation to their decision not to approve a plan. Nonetheless, he did not consider that this removed the jurisdiction of the court to approve a plan that had been rejected by HMRC. He considered that as a matter of interpretation of Part 26A of the 2006 Act, there was no intention to exclude HMRC from its scope and that to make such an exclusion would be contrary to the "rescue culture" embodied in Part 26A. He noted that HMRC could be bound by Company Voluntary Arrangements and Individual Voluntary Arrangements and referred to the recent Scottish proceedings in *Petrofac Facilities Management Limited* [2026] CSOH 29 to note that HMRC did not submit that the CVA in issue there could not be imposed on it against its will. He noted that sanction had been given in the past to plans in which HMRC were subject to "cram down" and had not voted in favour of them (*Re Houst Limited* [2022] EWHC 1941 (Ch) and *Re Prezzo Investco Limited* [2023] EWHC 1679 (Ch)) in addition to others in which they had voted in favour. I accept and adopt the approach taken by Michael Green J. Debts owed to HMRC can competently be "crammed down" under Part 26A.

[10] The second matter on which I was addressed concerned Condition A in section 901G(3) - that "none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative." It was agreed that in the circumstances, the relevant alternative to the Plan was an insolvent liquidation of the petitioner. HMRC raised an issue in both sets of proceedings as to whether, in making the required comparison of the two sets of circumstances, regard should be had only to receipts in respect of the EPL or whether the position of overall net recoveries to the Exchequer

should be considered. If it was only the former, clearly HMRC would be better off under the Plan. The concern for HMRC was that if the Plan went ahead, tax losses would be transferred and used to reduce the liabilities of the purchasers to tax with the result that overall receipts by HMRC would fall. The answers lodged by HMRC note that the annual accounts for Harbour to 31 December 2025 refer to the proposed purchase "adding c.$900 million in value through UK tax losses."

[11] In rejecting the argument that the wider approach should be adopted, Michael Green J followed the decision of the Court of Appeal in *Saipem SPA* v *Petrofac Limited* [2025] EWCA Civ 821 in which a similar issue has arisen. There, the judgment of the court was that:

> "91. Against that background, we agree that the starting point for application of the 'no worse off' test is a comparison between the value of the existing rights which a creditor has against the plan company in the relevant alternative, and the value of the new or modified rights given under the plan in exchange for the compromise of those rights.
> 92. Where a plan compromises or releases only creditors' rights against the plan company, that is also the end point. Where, however, a plan interferes with rights of creditors against third parties, the scope of the no worse off test must extend to such rights."

Although this was sufficient to address the HMRC submissions made to him, he noted also that in the event of an insolvent liquidation, HMRC would be required to meet claims for decommissioning expenditure from WPUK's joint venture partners who would be obliged to meet these expenses (para [32]). Although he doubted that Harbour would be able to utilise all of the tax losses, he noted that even if they were, when account was taken of the decommissioning expenditure, HMRC would be better off under the Plan than under the relevant alternative. I was advised that the position here is more straightforward and that it was not necessary to take decommissioning costs into account. Even without doing so, it was apparent that the "no worse off" test was met and Condition A was satisfied.

[12] Moving to the issue of whether the Plan was fair as between the various parties, although the Court of Appeal in *Saipem* requires consideration only of the rights affected by a plan when assessing whether the "no worse off" test is satisfied, their judgment noted that any broader prejudice which a creditor might suffer as a result could be considered by the court in the exercise of its discretion as to whether to grant sanction. The overall financial consequences for HMRC could be considered in this context. Michael Green J took that approach in his decision. In relation to submissions that by cramming down debts owed to HMRC Part 26A would provide scope for abuse of the tax system, Michael Green J noted that HMRC had other statutory powers to use if it was felt that the consequences of a plan represented abusive tax avoidance.

[13] HMRC had argued that parties such as the bondholders who, unlike HMRC had made a deliberate decision to become creditors of the company, would have "priced in" risk when making their decision to lend. Under the Plan HMRC was, in effect, contributing the whole of the EPL liabilities in addition to the assets constituted by tax losses which will be transferred to Harbour. As compared to other creditors, HMRC was making a disproportionately high contribution to the Plan and getting a disproportionately low payment in return. Michael Green J characterised the HMRC position as being that Harbour ought to have paid more and agreement should have been reached whereby EPL liabilities would not have to be extinguished. The response to that in submission had been that the Plan reflected a deal that had been reached in which all stakeholders other than HMRC had participated. Michael Green J considered that this was the best guide to assessing value. As HMRC would be better off under the Plan than in the relevant alternative even when account was taken of tax losses, fairness did not require that HMRC should receive a greater share of proceeds of sale or that EPL liabilities should not be extinguished. So, although the

views of HMRC were accorded the greatest of respect and weight, the Plan, which reflected the only deal available to realise value for creditors, was fair to and in the interests of creditors. Naturally, that was a point that was emphasised to me in submissions - that the deal reflected in the Plan was one that had been hammered out by parties over an extended period and in the recognition that if sanction was to be given it would have to be shown that it was fair. Also, it was the only deal on the table. I consider this to be a significant factor indicating that it is fair.

[14] In summary, I find that Condition A and Condition B specified in section 901G are satisfied, that there has been compliance with required formalities for holding the meetings of creditors, that the Plan was approved by in excess of 75% in value of the classes of creditors affected by it other than HMRC present and voting at the meetings, and that HMRC will not be worse off under the Plan than they would be under the relevant alternative. I find also that the Plan is fair. In these circumstances I grant sanction for the Plan in terms of section 901F of the 2006 Act.