

**THE HIGH COURT
COURT 16**

[2022] IEHC 270
RECORD NO. 2022/25COS

IN THE MATTER OF MALLINCKRODT PUBLIC LIMITED COMPANY

AND

IN THE MATTER OF PART 10 OF THE COMPANIES ACT 2014

**EX TEMPORE JUDGMENT DELIVERED BY MR. JUSTICE QUINN ON WEDNESDAY, 27TH
APRIL 2022**

APPEARANCES

FOR THE DIRECTORS OF MALLINCKRODT PLC:

MR. BRIAN KENNEDY SC , MR. STEPHEN WALSH BL

INSTRUCTED BY: ARTHUR COX SOLICITORS

FOR MR. MICHAEL McATEER: MS. KELLEY SMITH SC, MR. JOHN LAVELLE BL

INSTRUCTED BY: A&L GOODBODY SOLICITORS

FOR THE FIRST LIEN AGENT: MS. BARBARA GALVIN, EVERSHERDS

FOR THE GOVERNMENTAL PLAINTIFF

AD HOC COMMITTEE: MR. RUAIRI RYNN, WILLIAM FRY

FOR THE AD HOC FIRST LIEN

LENDER GROUP: MR. MICHAEL MURPHY, McCANN FITZGERALD

**FOR AD HOC COMMITTEE OF GUARANTEED UNSECURED NOTEHOLDERS:MR. DECLAN
MURPHY BL**

INSTRUCTED BY: MATHESON

FOR AVON HOLDINGS AND ATTESTOR: MR. LYNDON MacCANN SC

INSTRUCTED BY: DENTONS IRELAND

FOR THE REVENUE COMMISSIONERS: MR. CUNNINGHAM

INSTRUCTED BY: REVENUE SOLICITORS

FOR THE US DEPT. OF JUSTICE: MR. NIALL Ó hUIGINN BL

INSTRUCTED BY: WALKERS SOLICITORS

FOR THE SECOND LIEN NOTEHOLDERS: MR. GAVIN SIMONS, AMOSS

**FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS: MR. ROBIN McDONNELL,
MAPLES**

**FOR THE OFFICIAL COMMITTEE OF OPIOID RELATED CREDITORS: MS. JUDITH
RIORDAN, MASON HAYES & CURRAN**

**FOR THE GUARANTEED UNSECURED NOTES INDENTURE TRUSTEE: MR. CIARAN LEWIS
SC**

INSTRUCTED BY: DILLON EUSTACE

PROCEEDINGS COMMENCED ON WEDNESDAY, 27TH APRIL 2022, AS FOLLOWS

MR. JUSTICE QUINN DELIVERED JUDGMENT EX TEMPORE, AS FOLLOWS

1. MR. JUSTICE QUINN: This is my judgment on the application of the Examiner, Mr. McAteer, pursuant to section 541(3) of the Companies Act 2014 for confirmation of his proposals for a scheme of arrangement between Mallinckrodt plc and its members and creditors.
2. On the 14th of February, the directors of the Company petitioned for the appointment of an examiner and the Court appointed Mr. McAteer Interim Examiner. The petition was

heard on the 28th of February and, on that occasion, the appointment of Mr. McAteer was confirmed.

3. On the 22nd of March, I delivered a reserved judgment summarising the reasons why the Court was satisfied to appoint the Examiner. No party had objected to the appointment of the Examiner or to the jurisdiction of the Court in respect of these proceedings. I do not propose to repeat any of the detail contained in that judgment, but in it I considered the financial, legal and trading background to the presentation of the petition, and I referred to the proceedings in relation to the Company and approximately 60 of its subsidiaries which had been commenced in the Delaware Bankruptcy Court pursuant to Chapter 11 of the US Bankruptcy Code on the 12th of October 2020. Those proceedings related not only to the Company, which is the subject of this application, but also its subsidiaries trading in several jurisdictions.
4. I noted in that judgment that on the 3rd of February 2022, Mr. Justice Dorsey had delivered his ruling, finding that the Plan before him, which was the Fourth Amended Plan of Reorganisation for the Company and its subsidiaries, satisfied the requirements of the US Bankruptcy Code. He made that finding at the conclusion of a hearing which lasted for 16 days, at which witnesses gave evidence and experts gave evidence, and I will be referring in a little more detail to Judge Dorsey's findings later.
5. On the 2nd of March, the Bankruptcy Court issued the order confirming the Plan, with what were described in that order as "Technical Modifications" from the Fourth Amended Plan, and the order was given immediate effect.
6. A number of appeals are pending from the rulings of Judge Dorsey, but a stay on orders that he made has been refused. An appeal was brought against his refusal of a stay in relation to the Confirmation Order and that appeal in relation to the refusal of the stay has been refused by the District Court in Delaware.
7. The Plan before Judge Dorsey identified no less than 23 conditions precedent to the Effective Date of the Plan, and I will be returning to those conditions in more detail. The important point at the outset to note is Condition 11, which is to the effect that, as a precondition to the coming into effect of the Plan, that the High Court of Ireland should make a confirmation order in respect of a scheme proposed by an examiner pursuant to Part 10 of the Companies Act 2014, such scheme to be based on and consistent, in all respects, with the Plan and substantially in the form of a draft scheme of arrangement, which was included in the Plan Supplement and was annexed to the petition before this Court for the appointment of an examiner. It was also a condition that that scheme should have become effective in accordance with its terms or would become effective concurrently with the effectiveness of the Plan.
8. Correspondingly, the Examiner's proposals for a scheme now before this Court provide at section 5 that the Scheme will take effect and become binding on the effective Date of the Plan. The Effective Date for the scheme is defined in the proposals before me as the time

and date when all of the conditions precedent specified in Article VIII of the Plan have been satisfied or waived.

The Act

9. The application is made pursuant to section 541 of the Act and I have been referred to the key elements of that section, which are that the jurisdiction of this Court to confirm a proposal for a scheme of arrangement arises where

"...at least one class of creditors whose interests or claims would be impaired by implementation of the proposals has accepted the proposals, and.

(b) *the court is satisfied that—*

(i) *the proposals are fair and equitable in relation to any class of members or creditors that has not accepted the proposals and whose interests or claims would be impaired by implementation, and*

(ii) *the proposals are not unfairly prejudicial to the interests of any interested party."*

10. Section 543 governs objections to confirmation by the Court of proposals. It identifies grounds such as material irregularity or acceptance of proposals by improper means and, importantly, a ground, namely, that "the proposals unfairly prejudice the interests of the objector."

11. Section 543 has not been invoked by any party in the hearing before me. Nonetheless, the onus is on the Examiner to satisfy the conditions identified in section 541(3), namely, that the Scheme is fair and equitable and not unfairly prejudicial to the interests of any party.

Representation

12. Before I turn to the substance of the proposals, it is relevant to note that of those who participated at the confirmation hearing yesterday, only one party objected to or opposed confirmation of the proposals. That was Avon Holdings LLC and Attestor Limited, which are related companies represented by Mr. MacCann S.C.. I refer to these parties as Acthar Claimants. One party expressed neutrality, namely the Guaranteed Unsecured Note Indenture Trustee.

13. All of the other parties who participated indicated their support for confirmation of the Scheme. They included the Company, the Revenue Commissioners, the holders of Guaranteed Unsecured Notes, the holders of First Lien Term Loans, the First Lien Collateral Agent, the Second Lien Senior Secured Notes, the Official Committee of Unsecured Creditors, the Official Committee of Opioid Related Claimants and the Future Claims Representative. Counsel for the Federal Acthar Claimants indicated that it was not opposing the confirmation of the Scheme.

14. Mr. Rynn, solicitor, appeared on behalf of the Governmental Plaintiff Ad Hoc Committee. This Committee comprises seven US states and the Plaintiffs' Executive Committee. This party had on previous occasions in this Court indicated its support for confirmation of the

proposals. It has at all times indicated its support for the Chapter 11 Plan, for the proposals before this Court and for the restructuring as a whole, and it did not indicate in the hearing yesterday that it was withdrawing this support. Its only objection was to the hearing proceeding yesterday in the light of unresolved issues which it described concerning its part in the satisfaction of certain of the conditions precedent. I will come back to that issue in more detail when I am dealing with the materiality of the conditions. But this party did not voice opposition to the confirmation of the proposals.

The Acthar Claimants

15. Mr. MacCann on behalf of Avon and Attestor, who I will refer to as the Acthar Claimants, indicated that his clients were owed almost \$3 billion, of which \$2.6 billion related to pre-petition claims and a sum of \$265 million represented post-petition or “administrative claims” as they are described under the Plan. He indicated that there were three of the rulings made by Judge Dorsey in the course of the Chapter 11 proceedings to which he had objected and in respect of which he has filed appeals.
16. Firstly, Judge Dorsey had denied the admission of the pre-petition claim that was essentially a proof of debt claim. Secondly, Judge Dorsey denied the admission of administrative claims, being claims arising after the presentation of the Chapter 11 petition in August 2020. Thirdly, the Acthar Claimants have lodged an appeal against the order confirming the Plan. Mr. MacCann did not invite this Court to re visit those rulings in themselves. He has lodged his appeals and has fairly said that he will be pursuing them in the relevant appeal courts in the ordinary course under US law, but he says the following: That with the exception of the specific treatment of shareholders and of preferential creditors, the proposals in their treatment of all other creditors is entirely referential; that although the Scheme states that certain creditors are not impaired by it and other creditors are impaired by it, that all of the creditors, apart from Revenue and the preferential creditors receive their treatment as far as concerns dividends or other form of return not under the provisions of the proposals, but under the terms of the Plan. He says that the Scheme says no more than that those creditors will receive what they are to receive under the terms of the Plan and otherwise goes on to provide simply that on payment or provision in accordance with the terms of the Plan, their claims are fully discharged, distinguished and settled.
17. The Acthar Claimants regard the Plan as unfair and inequitable which is why they voted against the Plan and voted against the Scheme here. Mr. MacCann says that because the Scheme does not in itself provide for any specific treatment other than by reference, it, in effect, cannot be considered as a stand alone scheme.
18. When the Court was giving directions in relation to this hearing on the 8th of April, it was indicated that a modification of the proposals would be sought by the Acthar Claimants. The Court fixed a timetable for the delivery of affidavits and legal submissions between that date and the confirmation hearing. Acthar were directed, by agreement, to deliver their affidavit evidence, if any, by the 12th of April and legal submissions by the 22nd of April, thereby enabling the Examiner and the Company or any other party to reply before the hearing on the 26th of April. No such affidavit or submissions were delivered. Acthar

confirmed in correspondence through their solicitors, Dentons, and in court yesterday that they were not seeking to introduce any evidence, which would include, obviously, any evidence to rebut the evidence put forward by the Examiner, or to make any legal submissions. They stated simply that they intended to oppose confirmation of the Scheme and invited this Court in its discretion to take that opposition into account when considering whether the Examiner had made out the proofs required for confirmation.

19. It was acknowledged that this was a very narrow ground of opposition. Mr. MacCann indicated that although he wasn't adducing any evidence or legal submissions, he says that because of the onus which rests on the Examiner under the section, the Court must satisfy itself that the proposals are fair and equitable. That proposition is correct. But, again, he says that because the proposals on their face are silent as to the treatment of creditors except by reference to their treatment in the Plan, this Court has to satisfy itself that the Plan itself is not unfairly prejudicial to any interested party, including the Acthar Claimants. His submission is that this Court should not simply "rubber stamp" the decision of Judge Dorsey. He says that when comparing the treatment of creditors, because they are dealt with under the terms of the Plan, the fairness and equity or any lack of fairness and equity has to be examined by reference to the substance of the Plan and not the bare provisions of the proposed scheme now before this Court. He acknowledged that he was not inviting this Court to conduct or re visit the substantive fairness hearing undertaken by Judge Dorsey, but simply that the Court should not simply rubber stamp that and it must itself be satisfied that the Irish law test in section 541 has been met.
20. In response to further exchanges in court, it was submitted on behalf of the Acthar Claimants that one of the questions which was troubling them concerned the class treatment, namely, the classification of creditors. It was said that there has been created a large number of classes, who, from a liquidation perspective, would all be regarded as equally ranking unsecured creditors. It was acknowledged that the genesis of the claims may be different as between the classes. Some are trade creditors, others are unsecured bondholders, others what were referred to by counsel as "price gouging" claimants. It was said that these are all fundamentally unsecured claims, but that they are being treated in a fashion whereby they participate in different pots of money and I will be coming to the Plan in a moment and that this could result in a different percentage dividend for one group of unsecured creditors as against other unsecured creditors. The submission is that this is a form of discrimination. It is acknowledged that this question arose before Judge Dorsey. Mr. MacCann submits that this amounts to an unfair treatment or cannot be shown to be fair and equitable as far as the Irish test is concerned. He says that the class in which the Acthar Claimants have been placed, which limits them to participation in an identified pot and I will come to the detail of that is a form of discrimination as against other creditors who are also unsecured.
21. Despite counsel having said that there would be no evidence or legal submissions proffered on these issues, there is no doubt that this argument as to discrimination is a legal submission by Acthar. No advance submissions were made as directed by the court

on 8 April 2022. It also seems to me, that if one were to examine this point as a ground of objection, it would be necessary to hear evidence. It took a 16 day hearing before Judge Dorsey to examine these issues, and the very manner in which classes have been established was examined by Judge Dorsey. I have not been invited to and it would not be appropriate to conduct a similar hearing in relation to a plan which has already been considered in the proper forum, namely the court in Delaware.

22. Mr. MacCann added that although he was not endorsing the findings of Judge Dorsey and, of course, he is appealing those he was not saying anything adverse in respect of what Judge Dorsey had said. He said that his instructions on this were very limited and he had nothing more to say about Judge Dorsey's Opinion in the course of this hearing. He acknowledged that that, therefore, was now under appeal and ultimately a "US law fight".
23. The Examiner says that to the extent that different classes are formed and receive different treatment, that is a consequence of the Chapter 11 Plan, rather than the proposals, and that the effect of the proposals is, in general, merely to confirm the treatment of each class in the manner set out in the Plan and to provide as a matter of Irish law for the discharge of their claims. The submission continues that there is in fact no unfair difference in treatment for different classes of creditors under the Chapter 11 Plan, and it is said that the question of the fairness of treatment as between different classes has been considered as part of the US Confirmation Order and that the US Bankruptcy Court, having rejected the objections and, in particular, the claims that the Plan unfairly discriminated, that that should be the end of the matter. This amounts to a submission that this court should perform only a "rubber stamping" exercise of the analysis performed by Judge Dorsey. He conducted a 16 day hearing, he heard witnesses, and there is no suggestion that a comparable hearing has been proposed here. To have such a hearing on fundamentally the same issues would, of course, be inappropriate where the appropriate forum has been invoked and no party has made any suggestion that Delaware was not the appropriate forum in which to hear those issues, even in relation to the Company, which is the first named debtor in the Chapter 11 proceedings.

Conclusion on the Acthar Submission

24. There are good reasons why the scheme is proposed for confirmation by this Court in respect of the Company. This is the appropriate forum for the treatment of shareholders and for provisions which will affect the share capital of the Company. But even with those good reasons, it is unusual that, apart from the treatment of preferential creditors, all of the provisions for the treatment of creditors are contained in the proposals only by reference to the Plan. I do not say that that is in any way improper or, in the unusual circumstances of this case, inappropriate. The claims in many cases are against multiple companies in the group and the parent company was not necessarily an obligor or a debtor in respect of each and every one of the claims treated in the Plan. But a scheme which is entirely referential as far as the treatment of creditors is concerned is unusual and this Court must consider whether it has sufficient evidence before it to determine

whether the Examiner has discharged the onus of establishing that the proposals are fair and equitable and not unfairly prejudicial to any interested party.

25. In conducting this exercise, it seems to me that a significant part of the evidence is to be found in the Opinion of Judge Dorsey. In the judgment which I delivered on the 22nd of March, I indicated that those were findings of a court of law which was competent and whose jurisdiction to consider a Plan for the Company was not contested and which this Court was entitled to take into account in relation to the appointment of the Examiner. Likewise, the court should take those findings into account on this application.

Principles Applying to Section 541

26. The tests to be applied, are set out, helpfully, in the submissions that have been filed by the Examiner and are not disputed. They are considered in judgments in *Re Antigen Holdings* [2001] 4 IR 600, *Re Traffic Group* [2008] 3 IR 253, *Re McInerney Homes* [2011] IEHC 4; [2011] IESC 31, *Re SIAC Construction* [2014] IESC 25 and the judgment in *Re Arctic Aviation Assets* [2021] IEHC 272.

27. It is clear from *Re McInerney Homes*, that the burden of proof rests on the Examiner. It is also clear that flexibility is an important element of the application of the test, even in assessing the question of whether the proposals are fair and equitable. In *Re McInerney Homes*, Mr. Justice O'Donnell said that:

"The Act of 1990..." as it then was "...appears to invite a Court to exercise its general sense of whether, in the round, any particular proposal is unfair or unfairly prejudicial to any interested party, subject to the significant qualification that the test is posed in the negative: The Court cannot confirm the scheme unless it is satisfied that the proposals are not unfairly prejudicial to any interested party."

28. A comparison between the outcome for creditors under the Scheme of Arrangement and the likely outcome under relevant counterfactual scenarios in this case, a potential liquidation is a key feature of the analysis. I will be coming later to the Examiner's report in relation to that subject and what he and the Company have said in relation to this.

29. In *Re McInerney Homes*, Mr. Justice Clarke said that:

"...Given that the backdrop to an examinership is that a company is insolvent, it seems to me that very significant weight indeed needs to be attached to what would be likely to be the outcome of the alternative to examinership, whether it be liquidation, receivership or a simple withering of the company without any formal insolvency process."

In the same case Mr. Justice O'Donnell agreed that this was "a vital test" in assessing the fairness of a scheme of arrangement.

30. I will be returning, as I said, to the report and the evidence, but the submission here and I am satisfied that it is borne out by the evidence is that if this company were to

enter into insolvent liquidation, there would be no dividend for preferential creditors, unsecured creditors or members.

31. In relation to the question of comparison of the treatment of other creditors or as between creditors, in *Re SIAC Construction*, Mr. Justice Fennelly said the following:

"Whether a set of proposals is unfairly prejudicial to any particular interested party will involve a comparison of the treatment of that party with any similarly situated interested party. The court will also take account of any aspects of either party's individual position which places it at either an advantage or disadvantage. The court will take account of the totality of the circumstances. The interests of each creditor will depend on its setting."

32. Other relevant factors are a consideration of the outcome for shareholders. I will come to that later because it is clear that on a liquidation, there would be no return to the shareholders of this group of companies, in any event.

33. As for the support of creditors – again, the evidence from the Examiner's report is that there is overwhelming support for these proposals by creditors in accordance with the voting which took place on the 4th of April and I will be coming to those figures. And I have been referred to this feature of confirmation of schemes which is discussed in the judgment in *Re Arctic Aviation Assets* and also by Mr. Justice Barnville in *Re Ballantyne* [2019] IEHC 407, where he approved a statement in a judgment in *Re Ocean Rig UDW* that:

"Members and creditors are normally the best judges of what is in their commercial interest and are in a better place than the court to decide where their best interests lie."

34. The preservation of employment has always been at the fore of the Court's consideration. It is often referenced in the context of discretion, but it has been elevated in a number of the cases to one of the dominant features of a consideration of the question of whether it is appropriate to confirm a scheme of arrangement. In *Re Traffic Group*, Mr. Justice Clarke said that:

"...a court should lean in favour of approving a scheme where the enterprise, or a significant portion of it, and the jobs or a significant portion of them, are likely to be saved."

The proposals

35. It is not appropriate for this Court to simply apply a "rubber stamp" approach and it is necessary, therefore, to consider the terms of the proposals themselves. I have received comprehensive submissions from the Examiner and his report pursuant to section 534, but limited submissions in relation to the treatment of individual categories of creditors. It is necessary therefore to look both at the contents of the proposals and the referenced plan and the evidence of Mr. Welch on behalf of the Company in his affidavit verifying the

petition, sworn 9th of February where he describes comprehensively the intended financial treatment of each class of creditors under the terms of the Plan.

36. Turning to the proposals and taking account of the information of Mr. Welch in that initial affidavit of the 9th of February, which I understand to be still current information in terms of its description of the Plan, the first piece to note about the proposals is the treatment of members :

"The members shall receive no distribution on account of the Existing Shares under this Scheme or under the Plan. On the Effective Date, the Existing Shares and all and any rights attaching or relating thereto will be cancelled.

The Examiner shall be entitled, as of the Effective Date, to execute on behalf of the Company and/ or the board of Directors all documentation necessary in connection with the cancellation of the Existing Shares..."

The proposals then identify the classes of creditors and I'm going to briefly look at those because it is here that we can consider how each class has been treated and the financial outcome for those creditors.

Financial creditors

37. A number of the claims of creditors are described as not being impaired or at least not impaired by this Scheme. These include what are referred to as "other secured claims" and the First Lien Revolving Credit Facility Claims. In relation to these "financial debts", the essence of the Plan is that for those which are not to be impaired, there is either reinstatement of existing facilities, or, in certain cases for example, with the 2004 and 2005 First Lien Term Loan claims that the Company may elect to replace them with what are referred to as New Take Back Loans corresponding to the original loans. There will be a participation pro rata in relation to these new loans and potentially a cash payment. The First Lien Notes are also described as not being impaired and they are being substituted with "replacement notes" not impairing the original status of those creditors.
38. The holder of Second Lien Notes, will receive a pro rata share of New Second Lien Notes and a cash payment.
39. The first category of financial creditor to be substantially impaired is the Guaranteed Unsecured Notes. They are being restructured so that they will receive a share of what are referred to as Take Back Second Lien Notes. And, very importantly in terms of the fundamentals of the proposals, they will receive between them by way of a debt for equity conversion 100% of the New Mallinckrodt Ordinary Shares, subject to provisions elsewhere in the proposals for dilution on account of "Opioid Warrants" and a Management Incentive Plan.

The General Unsecured Claims Trust

40. The next group comprises classes who will participate in what is referred to as the General Unsecured Claims Trust, which is subdivided into a series of "pots".

41. The Acthar claims will receive a pro rata share of a fixed amount of \$7.5 million and a certain cash amount from the General Unsecured Claims Trust. The Generic Price Fixing Claims, will participate for a pro rata share of an amount of \$8 million. The Asbestos Claims will participate pro rata in a fixed amount or pot of \$18 million. Environmental Claims will participate in a defined pot pro rata of \$23.65 million.
42. A class of Other General Unsecured Claims will participate in a fixed pot of \$23.65 million. I understand that to be the same amount that is referred to for the Environmental Claims.
43. The 4.75% Unsecured Notes will participate pro rata in a fixed portion of \$56,991,000, with the possibility of an additional cash payment.
44. Each of these references to "additional cash payments" provides that the claimants may receive such amount of additional cash as may be necessary to comply with the provisions of the US Bankruptcy Code, which appears to be a protection against objection by reference to the fairness test in the context of the confirmation of the plan in Delaware.
45. For the class of Trade Claims there is a distinction in terms of the treatment of trade creditors between those who have voted to accept the Plan and have agreed to maintain what are referred to as "favourable trade terms" who will participate for a pro rata share of a pot of \$50 million and those who have not voted in favour of the Plan and who have not agreed to maintain "favourable trade terms". The latter will participate in the fund of \$23.65 million referred to earlier. This particular distinction of treatment would be unusual in a purely Irish law domestic scheme. But that does not mean that it is not fair and equitable, and no objection has been made in this court on this basis, a factor this court must take into account.

Opioid Claims

46. There is a series of classes referred to collectively as the "Opioid Claims". They are different types of claims arising from the design, production, promotion, marketing and distribution of opioid products. They include certain claims directly associated with opioid and claims by parties who have suffered indirect losses. The class include State Opioid Claims, the Municipal Opioid Claims, the Tribe Opioid Claims, US Government Opioid Claims, Third Party Payers, Hospital Opioid Claims, Rate Payer Claims and others. The Plan provides that a series of sub trusts will be established all under one master distribution trust referred to as the Opioid MDT II, into which over a period of seven years payments will be made by the companies totalling \$1.725 billion.
47. The mechanics for the operation of this trust are described in Mr. Welch's verifying affidavit. There are three elements: There is the cash amount of \$1.725m, which will be paid into that trust over a period of time; secondly, there is a provision whereby this trust may exercise warrants for a sum of up to 19.99% of the shareholding of the Company; and, thirdly, a provision for the transfer into this trust of the benefit of future claims against certain third parties. The evolution of this trust is the result of a long process of negotiation and participation by relevant representative committees, all with a view to

bringing a measure of finality to otherwise potentially open ended litigation. If it's not full finality, at least there is a process which will assist in resolving the claims of institutions and the direct claims of victims in respect of Opioid Related Claims. The objective of this structure is to avoid what would otherwise be "a race to the court" in the pursuit of such claims. Instead the plan places on an orderly footing the set aside of significant amounts to settle these claims. The plan refers to a suite of agreements and documents being entered into to establish the trust and sub-trusts and to govern their funding, administration and distribution into the future.

Other classes

48. Settled Federal and State Acthar Claims are claims by a number of State bodies which will participate in the proceeds of a settlement which was negotiated over a number of years, whereby over a period of seven years a total sum of \$245 million will be set aside for the settlement of these claims.
49. The Scheme provides for the extinction of intercompany claims, and subordinated claims. Unexercised Equity Interests, which are sometimes characterised in other cases as creditor claims, will be extinguished and cancelled and the holders of any such claims will have no claim whatsoever against the Company.

The Acthar objection and opinion of Judge Dorsey

50. Apart from the general and uncontroversial proposition that the onus is on the examiner to prove that the proposals are fair and equitable, the only question which has been specifically identified to me by Acthar, a point made only in a very concise and limited submission, is the question of classification of creditors. This was considered in some detail by Judge Dorsey in section 5 of his Opinion and it is not necessary for me to repeat that in detail. But it's clear from an examination of that Opinion that many of the tests with which this Court is familiar were applied. In relation to the particular question of the allegation of discrimination and that creditors whose claims might otherwise sound at the same level namely, unsecured creditors have been treated to participate in separate pots which would yield a different dividend, Judge Dorsey examined extensive case law, principally US law related to the question of unfair discrimination. He observed that while a comparison between the recoveries between a preferred class and a dissenting class may be a preferred method, it is not the only acceptable approach. And he identified the fact that claims of equal priority may have separate origins and recoveries may be based on agreements with different level of lenders and others.
51. In relation to the absolute priority test and the application of pro rata principles, Judge Dorsey referred to case law of the Third Circuit to the effect that the Court should start by adding up all proposed plan distributions from the debtor's estate and divide by the number of creditors sharing the same priority, and he then said the following:

"This approach is relatively easy when there is a single debtor, and all similarly situated creditors have claims against that single debtor. The analysis becomes more complicated in a case like this one where there are more than 60 debtor

entities with a complex financial structure, creditors that have claims against different debtor entities, and there is no substantive consolidation."

52. He referred to the example of Class 5 Guaranteed Unsecured Noteholders, whose claims are against almost all of the debtors in the corporate structure, and yet certain other classes of creditors, including some of the Acthar Claimants, may have claims against only one or two debtor companies.
53. He examined the different forms of waterfall analysis that were presented in evidence by the Company reflecting the fact that not all claimants have claims against the same debtors and that the value of claims against debtors within the group will differ. The essence of his ruling on this question is that flexibility is a feature of these schemes, provided there is a rational basis for the different treatments. And that flexibility in terms of the overall sense of fairness of the application of the Scheme is exactly what Mr. Justice O'Donnell was describing in *Re McInerney* and Mr. Justice Fennelly in *Re SIAC*.
54. It is not unusual in a scheme of arrangement under the Act that classes are formed which at first pass would appear to be indistinguishable in their ranking, especially among unsecured creditors. But as is fairly acknowledged by counsel for Acthar, the different genesis or origin of the claim frequently informs the classification of creditors in schemes of arrangement in this Court.
55. Judge Dorsey identified a concept of what he referred to as "pre bankruptcy expectations" of parties as a potential ground for different treatment. I have not seen this particular analysis applied or put in quite that way here, but I have no doubt that the different origins of claims can be a basis for different treatment achieving balance in the scheme, or, as in this case, for formulating a restructuring plan which allocates different specific funds or "pots" for claimants with claims of different origins, provided there is, as has been shown to be the case here, a justification for the different treatment.
56. Judge Dorsey referred also to the complexity that can arise in the absence of consolidation and that a relevant consideration can be and was in that case based on the analysis prepared by the Company and its experts.
57. Before I leave Judge Dorsey's Opinion, there are a number of further observations I will make in relation to his Opinion. He referred to the long history of the negotiation of the Plan and how this brought an end to the extraordinary scale, as he put it, of the litigation threat facing this group of companies. He noted that it was not necessarily an end to that process, but at least was a formula for resolving claims without a "race to the Court" and which would potentially otherwise lead to more limited returns to claimants. He also referred to other beneficial features of the Plan, including the very important Opioid Operating Injunction. That is a form of injunction appended to the confirmation ruling which governs the conduct of the Company in relation to the sales, distribution and marketing of opioid related products and so on, and the evidence was that this was fair to all concerned, including, in particular, future opioid claimants.

58. He also expressed the view that the trusts established for the benefit of Claimants were well funded.
59. Judge Dorsey referred also to the widespread support of the creditor body and he examined a number of other tests by reference to section 1129 of the US Bankruptcy Code, all of which are familiar to this Court in terms of its critical examination of a Scheme namely, whether the scheme has been put forward in good faith; whether it satisfied the “best interests of creditors” test; the question of feasibility, which goes to the question of the long term survival of the Company; and unfair discrimination.
60. No party has suggested that I should replicate the process of the Delaware Court and it is very clear that the Plan was examined by reference only to US law and it would not be appropriate for this Court to re open that examination. But the tests are very familiar to us in particular, as far as they concern such issues as to whether the Scheme is fair and equitable, discrimination, and issues such as feasibility. As I said earlier, it seems to me to be very clear that I can take into account the compelling judgment of Judge Dorsey and his rigorous analysis of the Plan as a whole.

Report of the Examiner

61. The evidence of the Examiner in relation to formulation and the effects of the Scheme of Arrangement is uncontradicted.
62. The Examiner says that following his appointment he reviewed the Chapter 11 Plan. He also reviewed the draft scheme of arrangement prepared by the Company “which in large part mirrors and gives effect to the Chapter 11 Plan as a matter of Irish law”. He refers also to the consideration by the US Bankruptcy Court of the Chapter 11 Plan and that affected creditors had the opportunity to participate in that process and that many did so.
63. At the hearing of the petition the question arose as to whether it would be appropriate for the Examiner to simply adopt a scheme of arrangement based on a plan which has been put forward in the Chapter 11 proceedings. In my judgment of 22 March 2022, I referred to the duty of an examiner appointed under the Act to form his own view and formulate a scheme of arrangement. The Examiner has discharged that duty and performed his obligations under the Act. He says in paragraph 3.4 of his report that;

"In my view, the Chapter 11 Plan forms a viable basis for formulating proposals for a scheme of arrangement which would : restructure the Company's liabilities in a sustainable way; give the Company a reasonable prospect of trading on a sustainable basis in the future; treat creditors fairly; produce a better outcome for creditors, employees and other stakeholders than insolvency; and satisfy the requirements of Part 10 of the Companies Act 2014.

I took the decision that the interests of the Company, creditors, employees and other interested stakeholders are best served by the formulation of a scheme of arrangement that is consistent with and implements the Chapter 11 Plan in Ireland."

64. He says that, in performing his functions, he took the view that:

"...it would not have been in the interests of the Company, creditors, employees and other interested stakeholders for me to seek to formulate new proposals which were materially different to or inconsistent with those approved by the US Court. I did not believe that such an approach would have been viable.

65. The Examiner explains and this has been clear from the very outset of these proceedings from the presentation of the petition that these proposals recognise that the primary restructuring process for the Company is the US Chapter 11 process.

66. He refers to the manner in which the proposals give effect to the Chapter 11 Plan and, in particular, he refers to the specifics of the cancellation of existing shares, the introduction of a new constitution to provide for the issuance of the new ordinary shares in the Company, the extinguishment and cancellation of unexercised equity interests, and the payment in full of preferential creditors. He considered it desirable to include in the proposals provisions in respect of creditors' claims which mirror those in the Chapter 11 Plan in order to enhance legal certainty about the effectiveness of the restructuring and ensure that the restructuring effected by the Chapter 11 Plan has automatic recognition within Ireland and within the European Union.

67. The Report records the outcome of the meetings of members and creditors. As far as quorate meetings were concerned, the number of creditor classes who voted in favour was 25 and 3 did not vote in favour. The number of impaired creditor classes voting in favour was 23 as against 2 who did not vote in favour.

68. In relation to the employees, the Examiner notes the fact that the Company itself does not have any direct employees, but that the Group employs approximately 2,890 people internationally, of which approximately 116 are employed by Irish subsidiaries of the Company. He says that the successful implementation of the proposals would ensure the continuity of employment for employees in the Group. In the event that the Chapter 11 Plan and the proposals are not implemented, the most likely outcome is that the Company would be wound up and that other Group entities would enter insolvency proceedings. He says it is very likely that all of these jobs would be lost, and he says that he believes that it is in the interests of employees that the Chapter 11 Plan and the proposals are implemented.

69. He refers then to the Statement of Assets and Liabilities at Appendix D to the Report, which shows in the Company itself assets as of the 10th of March 2022 having a value of \$327 million; secured claims in the amount of \$3.48 billion; unsecured claims of \$23.35 billion; and an overall deficiency, he says, of \$26.5 billion.

70. He then provides a liquidation outcome both in relation to the Group and in relation to the Company itself. In his liquidation outcome for the Company, he has treated the intercompany receivables, which in the Statement of Assets and Liabilities were at \$323.2 million, as having a realisable value of nil and leaving, therefore, total realisable assets on

a liquidation analysis for the Company of \$12.5 million; and secured creditors' claims again amounting to \$3.48 billion, leaving a deficit even as regards preferential creditors. These tables illustrate that a winding up of the Company would result in no dividend being paid to any classes of unsecured creditors, whereas the Plan provides for returns to many classes of creditors. And he says that successful implementation of the proposals and the Plan would allow for a significantly better outcome for creditors than a scenario where the Company was wound up.

71. The Examiner refers to other important benefits of the proposals. The plan envisages a reduction in senior debt from \$1.65 billion to \$375 million, which increases the pool of funds available to unsecured creditors.
72. He concludes by saying that the restructuring envisaged by both the Plan and the proposals is fundamental to the overall reorganisation; that the reduction of approximately \$1.3 billion in senior funded debt would facilitate the restructuring.
73. The Examiner says that an independent review of the Company's forecasted revenue and financial performance was undertaken by his Grant Thornton Corporate Finance colleagues and he is satisfied that implementation of the Plan would positively impact the financial position and the value of the subsidiary holdings. He concludes that the implementation of the Plan and the proposals will give the Company "a good prospect of operating on a sustainable basis in the future, and that this would be facilitated by confirmation of the Plan."
74. I accept the evidence of the Examiner as to the reasons for and the basis on which he formulated the proposals and that the proposals, reflecting the plan approved by Judge Dorsey, are fair and equitable to the interested parties.

Evidence of the company

75. Mr. Welch swore an affidavit on 21st of April 2022. Mr. Welch identifies the benefits that would flow from confirmation of the proposals. He says that he believes that the Plan and the proposals present a fair and balanced compromise between the interests of economic stakeholders in the Group and that the restructuring will result in a better outcome for stakeholders compared with a winding up.
76. He refers to the reduction of \$1.3 billion in the senior financial debt of the Company.
77. In relation to the timing of this application, he identifies a number of features which he says would be disruptive and would potentially put the restructuring at risk, if confirmation were to be delayed.
78. He refers to such matters as financing and refinancing costs, business disruption, the ongoing cost of professional fees, and the basic risk that any delay in confirming the proposals would present to the prospect of consummating the entire restructuring through the Plan and these proposals. This evidence is uncontradicted.

Parallel insolvency proceedings

79. *In the Matter of Sean Dunne* the Supreme Court found that there was no bar to the opening of parallel insolvency proceedings in relation to the same entity, and this court considered that question when appointing the Examiner.
80. *In Re Weatherford International Limited*, insolvency proceedings were opened in three jurisdictions, namely the US, Bermuda, and in Ireland. The Scheme confirmed by this court contained provisions for the treatment of certain classes of creditors in accordance with the Chapter 11 Plan. This case is different in that, with very limited exceptions, the treatment of creditors is entirely by reference to the Plan.
81. This approach has been indicated from the very outset of the process. By the time the Examiner had been appointed, the Chapter 11 process had been ongoing for 18 months since August 2020. The parties affected and who participated in the process here have participated also in that process. Including the sole objector in this hearing, namely, the Acthar Claimants they voted in meetings and they participated in hearings before the Bankruptcy Court in Delaware. It is not said that any of those parties, including Acthar, ever protested that Delaware was not the appropriate forum for confirmation of a plan of reorganisation to treat their claims.
82. This does not mean that this Court should not consider the fairness of the treatment of the members and creditors which is to be adopted and confirmed and given binding legal effect both in the State and in the EU. I have already examined the proposals and for the reasons identified earlier and, applying the tests identified in the case law of this court, I am satisfied that the proposals meet the test in section 541 and are fair and equitable in themselves and not unfairly prejudicial to any interested party.
83. I have been referred also to case law concerning recognition in this jurisdiction of proceedings in other jurisdictions and, in particular, the cases of *Re Fairfield Sentry* [2012] IEHC 81, and *Banco Ambrosiano v Ansbacher*. But recognition of the foreign order, i.e. the confirmation of the plan, by the traditional method of an order in aid is not the remedy sought here. In this case, the Court was requested to open a full main proceeding and the Court found, based on the evidence presented in the petition, that the Company had its centre of main interests here.
84. A separate filing such as occurred here is the remedy a foreign officeholder would be obliged to seek if no cooperation or recognition order could be obtained in this jurisdiction. But that is not the only basis to invoke the jurisdiction of this court. There is no reason why a full or "main" proceeding within this State could not be utilized which does both of the following: firstly replicates the restructuring plan and places beyond doubt its recognition in the State and in the EU, subject to the proper consideration of the treatment of interested parties; and, secondly, regulates those features of the restructuring which are peculiarly suitable for this jurisdiction, notably the treatment of shareholders by cancellation and extinction, and the provisions for the issue of new shares going forward.

Shareholder correspondence

85. My attention has been drawn to correspondence received by the Examiner from a number of persons who claim to be shareholders a Mr. Edelman and also a group representing certain shareholders, namely, Buxton Helmsley. They have indicated certain objections to this process from the very outset, principally in correspondence. Mr. Edelman has filed an appeal in the District Court against the Confirmation Order. Each of these parties has been on notice of this hearing and has chosen not to come to this Court. The Examiner has complied with his obligation by exhibiting the form of appeal that has been lodged in the District Court by Mr. Edelman, but no objections have been made by them in this court either by way of evidence or legal submissions.

Conditionality and the Effective Date

86. I have been referred to 23 conditions precedent in Article VIII.A of the Plan. Mr. Welch's swore affidavits on 21st of April 2022 and on 25th of April 2022 in which he described all of these conditions and updated the Court on the status of the Company's expectations in terms of the satisfaction or waiver of those conditions. It is not necessary to deal with every one of them individually, but a number of them are material. Particular issues were raised by the Governmental Plaintiff Ad Hoc Committee during the course of the hearing yesterday, initially in the context of an application by that Committee for an adjournment of the confirmation hearing. I refused the adjournment, but the points raised are relevant to considering whether these conditions are so material that they should affect the Court's decision today.
87. In the affidavit of Mr. Welch of the 21st of April, he refers to the Plan conditions and he says that the Company is satisfied that if this Court makes an order to confirm the proposals, the debtors will be in a position to either satisfy or procure the waiver of each of the Plan conditions, and therefore intends to proceed with consummation of the transactions contemplated by the Chapter 11 Plan and the restructuring as soon as possible after the making of any scheme confirmation order.
88. Mr. Welch says that the debtors have set a target date of the 11th May 2022 for satisfaction or waiver of the Plan conditions and as the Effective Date for both the scheme and the Chapter 11 Plan.
89. The first condition in VIII.A.1 of the Plan is that the "Restructuring Support Agreement" should remain in full force and effect and not have been terminated. The Restructuring Support Agreement was negotiated at an early stage of the Chapter 11 process with the principal stakeholders affected by the filing, long before the finalisation of the Plan itself. Mr. Welch says that that agreement remains in full force and effect and that he knows of no reason why that Plan condition would not continue to be satisfied on the intended Effective Date.
90. Four conditions, numbers 2 to 5, were referred by Mr. Rynn on behalf of the Governmental Plaintiff Ad Hoc Committee.
91. The first of those is what is referred to as the Final Order Condition. It is a condition of the Plan that: -

"the Bankruptcy Court or another court of competent jurisdiction shall have entered the Confirmation Order in form and substance consistent with the Restructuring Support Agreement, such order shall be a Final Order, and to the extent that such order was not entered by the District Court, the District Court shall have affirmed the Confirmation Order."

92. Mr. Welch says that none of the parties to the Restructuring Support Agreement have indicated any objection to the form of the Confirmation Order and he says that it is possible for the Final Order Condition to be waived collectively by a number of parties, referred to as the "Waiver Right Parties". They are the debtors themselves, a proportion of what are referred to as the Required Supporting Unsecured Noteholders; the Governmental Plaintiff Ad Hoc Committee, which is defined in the Plan as the ad hoc group of US Government entities holding opioid claims; and a group referred to as the MSGE Group. Mr. Welch refers to correspondence with the representatives of the Governmental Plaintiff Ad Hoc Committee over the course of the last week. There was before the Court at the hearing yesterday, exhibited to an affidavit sworn by Mr. Rynn, an e mail written on the 25th of April in which, on behalf of the Governmental Plaintiff Ad Hoc Committee, Mr. Rynn referred to the fact that there were, he said, outstanding issues regarding the opioid "deferred cash payment terms." These are terms which form part of a suite of agreements related to the establishment of the Opioid Trusts under the terms of the Plan. He refers to Condition 2, the Final Order Condition and to a further Condition 3, which concerns final entry of the Opioid Operating Injunction Order and he says that he is instructed that:

"...the Ad Hoc Committee's position is that at the time of the hearing tomorrow..."

i.e. yesterday

"...there will be outstanding conditions precedents of the Plan and therefore the Scheme becoming effective for which there will be no certainty that they will be waived by the Ad Hoc Committee or otherwise be capable of being satisfied."

93. He then requested a two week adjournment to facilitate further engagement with a view to resolving issues relating to these agreements.
94. He referred also to Plan Condition 4 and 5. Plan Condition 4 is a condition to the effect that:

"All documents and agreements necessary to implement the Plan (including the Definitive

Documents, the Opioid MDT II Documents, the Opioid Creditor Trust Documents, the New Opioid Warrant Agreement, the Federal/State Acthar Settlement Agreements, and any documents contained in the Plan Supplement) shall have been documented in compliance with the Restructuring Support Agreement (to the extent applicable)."

95. There is a similar condition in VIII.A.5 concerning the execution of all other documents required to establish the trusts.
96. I am told that these documents include a Cooperation Agreement to which it is intended the Governmental Plaintiff Ad Hoc Committee will be a party.
97. Mr. Welch acknowledges that it is not possible for this Plan condition to be satisfied until consummation has occurred on the Effective Date, and then he refers to ongoing negotiations and possible waivers. He says that:
- "With the exception of certain documents relating to financing, all of the principal documents and agreements necessary to implement the Plan are..." at the time of swearing that affidavit "...either in agreed form or close to being in final form."*
98. He continues that there is a significant number of other documents that are "ancillary" to those principal documents which are not yet finalised, and he says that "the Company is confident that it will be in a position to finalise all such documents, satisfy all conditions, and that such documents will be executed on the anticipated Effective Date."
99. In the context of considering whether to defer confirming the proposals by reason of conditionality it is appropriate to refer to a number of the other conditions, many of which are also material.
100. There is a condition concerning obtaining external consents and regulatory approvals. Mr. Welch says that he believes that these all have been or will be in place by the anticipated date.
101. There is a condition that the Bankruptcy Court will have confirmed that the Bankruptcy Code authorises the transfer and vesting of the Opioid MDT Consideration. Mr. Welch verifies that this is addressed by the Confirmation Order of Judge Dorsey issued on 2nd of March.
102. There is a condition that there be an order of the Canadian Court recognising the Confirmation Order. The affidavit of Mr. Welch sworn on the 25th of April verifies that this order was duly made by the Canadian Court on the 22nd of April.
103. The Confirmation by this Court of the proposals for a scheme of arrangement is referred to as Condition 11.
104. Condition 12 refers to the necessary clearance or waiver of conditions by the Irish Takeover Panel. There was handed into court a letter from the Irish Takeover Panel issued yesterday, the 26th of April, confirming that it has decided to grant a waiver of Rule 9.1 in respect of an obligation to make an offer which would be required by a "concert party" as a result of participation in the restructuring. That, I am informed, is the clearance letter necessary to satisfy Condition 12.

105. There is a condition in relation to unresolved claims by the Department of Justice (US), which it is said are addressed by the Plan itself.
106. There are conditions in relation to the discharge of professional fees and the establishment of a fee escrow account. These are matters which are largely within the control of the Company and do not involve the same degree of external participation as other conditions.
107. There are conditions associated with the payment of finance parties' fees, trustee fees, term loan exit fees and a condition that there remains extant a "cash collateral order". This was an order made at the outset of the Chapter 11 proceedings which entitles the Company and subsidiaries to utilise cash to which they might not otherwise have had access. This order was due to expire on the 30th of April 2022, but I have been informed that on the 24th of April Judge Dorsey made an order extending that period to the 30th of May.
108. It is clear from an overview of the conditions and the evidence before the Court in relation to the status of these conditions that there are numerous "moving parts" to the completion of the restructuring. It was clear from the very outset of these proceedings that there would always have been many moving parts between a confirmation order and the Effective Date. It seems to me that to suspend or delay the process of confirmation pending the satisfaction or waiver of all the conditions would put at risk not only the achievement of the target date – albeit that is only a target date – would potentially put at risk the success of the restructuring as a whole. It could cause significant delay and I'm told also would cause very significant professional costs to continue to be incurred.
109. The conditions referred to by the Governmental Plaintiff Ad Hoc Committee are not trivial. A number of submissions have been made as to what would occur if certain conditions precedent are not satisfied or waived, including the possibility, referred to in the Plan, of intervention by the Bankruptcy Court in the event of an impasse. It is not clear to me how that Court could override a withholding of a co-operation agreement or of a consent by an external party, but it is not appropriate or necessary for me to speculate today on how that would be resolved. The question is whether I should confirm proposals when there are so many conditions precedent which are still unsatisfied and not waived.
110. In the judgment in relation to *Re Arctic Aviation Assets* the question of confirmation of conditional schemes of arrangement was considered and I referred to the traditional approach of the Court, which is to lean against confirmation of a plan which remains conditional. I referred to case law from the early days of examinership following the passing of the Companies (Amendment) Act 1990 and said that the traditional approach of the Court had been to decline confirmation of proposals where the investment required to implement them has not been unconditionally committed.
111. I noted that there were good reasons why the Court as a general rule would lean against confirmation where there is an uncertainty or conditionality regarding the delivery of the investment, and that : -

"There is no rule which precludes the court from adopting a flexible approach in an appropriate case."

And I said there that:

"The special circumstances and complexity of a case may warrant the making of an order confirming proposals even where certain conditions remain to be fulfilled."

112. The Court should as a general rule be slow to confirm proposals where there is extensive conditionality. Doing so should be the exception, and the question arises as to whether this case is such an exception. There is also a risk that the conditions would never be satisfied or waived and that the Scheme may never become effective. That risk cannot be eliminated. Nor should I contemplate that such a situation would continue indefinitely. The company cannot remain under court protection indefinitely, and clearly could not do so if it emerged that any of the conditions precedent were no longer capable of being satisfied or waived.
113. For the consummation of the restructuring in this case to take effect, there are many moving parts involving participants in numerous jurisdictions required to cooperate and I am informed that unless a confirmation order is made, there will be a risk that the moving parts, many of which are embedded into the conditions, will not stop moving and that the target date for the Effective Date would be more difficult to achieve unless this Court takes the step of confirming the proposals. That of itself would not justify making a confirmation order.
114. If the proposals never come into effect, then the parties will not be bound by them and will later be free to pursue their own remedies instead of availing of the benefits under the Scheme and the Plan. Having regard to the benefits for stakeholders, it seems to me that the risk of a failure to consummate the restructuring because of delay creates a greater prejudice to the stakeholders as a whole than the limited prejudice which would flow from a confirmation order being made now, even if ultimately the proposals do not come into effect.
115. I have considered whether to only declare the Court's intention to confirm the proposals and to adjourn the matter before making a final order. That has some attraction in the light of the materiality of the conditions precedent and which remain unsatisfied and unwaived. But having concluded that the proposals meet the test for confirmation pursuant to s. 541, and that confirmation itself will facilitate the restructuring and the survival of the Company and all or part of its undertaking, I am satisfied that in this case I should now grant the application to confirm the proposals.
116. I am also comforted by the suggestion, which I adopt, that the matter be listed before this Court again. The date suggested is the 13th of May, which is two days after the target Effective date. There will be liberty to apply and if any insurmountable difficulty is encountered, an application can be made.

117. The form of the order will reflect that the Effective Date will be referential to the consummation of the Plan, namely that the scheme will come into effect simultaneously with the substantial confirmation of the Chapter 11 Plan on the Effective Date, as that term is defined in the Plan, being the date on which all of the Plan conditions have been satisfied or waived.
118. The form of the proposals before me contains a number of modifications which are essentially corrections and clarifications. The version of the proposals exhibited to the Examiner's affidavit sworn 21 April 2022 is the version which I confirm.
119. The new Constitution proposed to be adopted will come into effect at the same time.
120. The matter will be adjourned for mention to 13 May 2022 at 11:00 am and the Examiner will have liberty to apply.