

## ENGLISH COURT APPROVES THAMES WATER'S INTERIM RESTRUCTURING PLAN

On 18 February, the English court approved the interim restructuring plan proposed by Thames Water and supported by the Class A creditors (the "Plan"). The purpose of this interim restructuring plan is to extend Thames Water's liquidity runway by a further two years to provide it with a sufficiently stable platform to raise further capital in order to implement an adequate longer-term restructuring plan ("RP2").

The Plan faced significant opposition from its Class B creditors, subordinated creditor (Thames Water Ltd, of which the Plan Company is a wholly owned direct subsidiary), as well as Charlie Maynard MP who represented the public interest grounds. The court engaged its "cross class cram down" powers to bind the Class B creditors and subordinated creditor to the Plan notwithstanding their dissent.

### Key Terms of the Plan

The Plan gives Thames Water the opportunity to obtain a further £3 billion of super senior funding. This will be made up of:

- an initial tranche of £1.5 billion to extend its liquidity runway until September 2025;
- capacity for a further £1.5 billion across two tranches of £750 million to further extend its liquidity to May 2026 (if required); and
- the extension of the Class A debt and Class B debt (including the amortisation payments) by two years.

Creditors will be given the right to participate in the new funding pro rata to their existing holdings.

### Cross Class Cram Down

In exercising its "cross class cram down" powers the court was satisfied that the statutory conditions for doing so were met. These conditions are in summary that the dissenting class would be no worse off under the Plan than they would be in the most likely alternative to the Plan (referred to as the

#### Key issues

- The English court approves the interim restructuring plan proposed by Thames Water.
- The Class B creditors are likely to appeal the court's decision, with any appeal likely to be heard at the end of February.
- The Class B creditors' alternative restructuring plan is dismissed, as it did not have any "real prospect of success".

"relevant alternative") (Condition A) and that the Plan had been approved by at least one class of creditors who had a genuine economic interest in the event of the relevant alternative (Condition B).

## **Relevant Alternative**

Whether the statutory conditions were met in this case depended in particular on what the relevant alternative was in this case. The court agreed with Thames Water that the correct relevant alternative to the Plan was Thames Water entering special administration regime ("SAR") under which the junior creditors would receive nothing. The court rejected the Class B creditors' opposing arguments that the relevant alternative was a competing restructuring plan proposed by the Class B creditors (the "Class B Plan").

In arriving at this conclusion timing played a key role. The court considered that there was insufficient time to implement the Class B Plan prior to the expiry of the required liquidity runway, and that the Class A creditors were unlikely to consent to the Class B Plan. Without their support, the Class B Plan could not be implemented, making a SAR the more likely alternative.

It is worth noting that a restructuring plan supported by the Class B creditors could not be used to cram down the Class A creditors as they had no economic interest in the relevant alternative. Furthermore, the court was not satisfied that the Class B creditors had provided truly binding commitments to fund its Class B plan; their funding was subject to a number of conditions which the court was not persuaded were satisfied.

## **No Worse Off**

The court was also satisfied that the dissenting creditors were no worse off under the Plan than they would have been under the SAR. In fact, it was held that the Class B creditors and subordinated creditors would in fact be out of the money entirely in a SAR.

## **Fairness**

The court also rejected the Class B creditors' arguments that the Plan was unfair based upon the balance of control afforded to the Plan A creditors (particularly in connection with conditionality around the release of further funding if a lock-up agreement for a recapitalisation of Thames is not entered into by specified majorities of Plan A creditors by June 2025), alleged breaches of competition law relating to the conditions of the funding, and releases of liability provided to directors and advisers as a term of the Plan. We understand that these issues are to feature in the appeal.

## **Public Interest**

This is the first restructuring plan of its kind whereby the plan related to a business providing a public service. As such, the court had to consider for the first time whether the interest of the public was adequately provided for under the Plan.

The court rejected Thames Water's argument that Charlie Maynard MP did not have proper standing to oppose the Plan on public interest grounds, stating that a special administrator is bound to perform its duties to ensure uninterrupted provision of vital public services even if it is not in the interest of the creditors to do so. However, the court was not satisfied with Maynard MP's

argument that the Plan was not in the public interest or in the interest of the customers to sanction it.

## **Permission to Appeal**

The court has granted permission to all opposing parties to appeal to the Court of Appeal. This includes Charlie Maynard MP, representing the public interest. Given Thames Water's impending liquidity wall, the appeal is to be sought on an expedited basis, with grounds of appeal to be submitted to the court by 20 February.

## **No Stay**

The court did not order for its judgment to be stayed pending any outcome in the Court of Appeal or the Class B Plan proceedings, meaning Thames Water may begin to take steps to implement the interim restructuring plan so long as they are capable of reversal if so ordered.

## **Dismissal of the Class B Plan**

The Class B creditors' hearing to propose the rival restructuring plan was heard in the High Court yesterday, where the court dismissed the Class B creditors' application to convene creditors to vote on their alternative restructuring plan.

The court found that the latest proposed timetable for the Class B Plan was unworkable, and as such the plan meetings did not have any "real prospect of success", nor would it serve "any useful purpose". It is yet to be seen if the Class B creditors will also pursue an appeal of yesterday's judgment, and if so, what the further impact of this will be on the prospect of successful implementation.

## **Next Steps**

Any possible appeal of Thames Water's Plan by the dissenting creditors and/or Maynard MP would be likely held no later than the end of February, given the impending liquidity wall. In parallel, by this stage it is anticipated that Thames Water will have selected bidders to proceed to the next stage of the equity raise process.

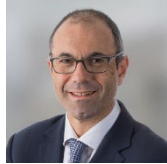
The Class B creditors may also pursue an appeal in respect of the dismissal of the Class B Plan. The timetable remains incredibly tight, leaving very little, if any, time for implementation in the event of success of either appeal process.

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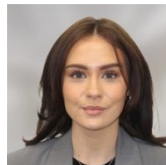
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