

HOW MUCH LEEWAY DO LANDLORDS HAVE
TO PROTECT THEIR POSITION AND ENFORCE THEIR RIGHTS
WHEN TENANTS BECOME INSOLVENT OR ENTER RESTRUCTURING REGIMES?



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The Pari Passu Principle

“The most fundamental principle of insolvency law is that of pari passu distribution, all creditors participating in the common pool in proportion to size of their admitted claims”

(Professor Goode)

The Creditors' Voluntary Arrangement (CVA)

- S.1 of the Insolvency Act 1986 - directors make a proposal to the company and its creditors for a “composition in satisfaction of its debts or scheme of arrangement of its affairs”.
- CVA takes effect if at least 75% of creditors by value approve and binds all creditors, including the minority who voted against or did not vote
- Time limited right to challenge under s.6 on grounds of unfair prejudice or material irregularity.

What is a Restructuring Plan?

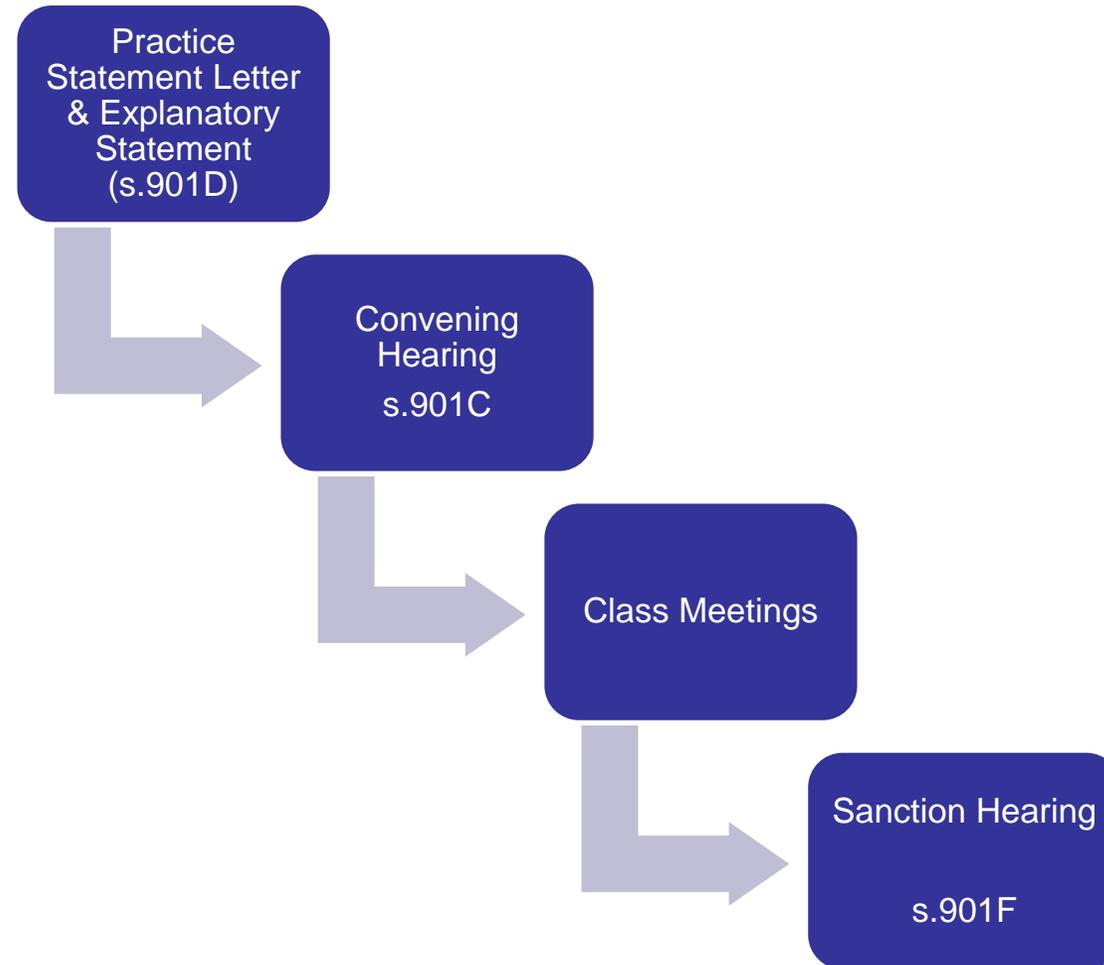
- New restructuring procedure introduced by CIGA 2020 as a new Part 26A of the Companies Act 2006. Also see the relevant new Practice Statement issued by the former Chancellor on 26.6.2020.
- Similar to schemes of arrangement under CA 2006 but Part 26A only applies to companies in financial distress and also includes a power of cross class cram down
- Part 26A facilitates broader restructuring than CVAs involving not only unsecured creditors (including landlords) but also secured creditors and shareholders
- As with CVAs, Part 26A does not permit interference with landlord's property rights

The Threshold Conditions – s.901A

That the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern (“Threshold Condition A”)

That a compromise or arrangement is proposed between the company and its creditors or members (or any class of them), the purpose of which is to eliminate, reduce, prevent or mitigate the effect of, any of the financial difficulties so mentioned (“Threshold Condition B”)

Part 26A Procedure



Court's power to Sanction Plan – s. 901F

If each class votes in favour of Plan by 75% in value of creditors/ members voting

Court then decides whether to exercise its discretion to sanction Plan at the Sanction Hearing

Where Plan is sanctioned by the court, it is binding on all creditors, members and the company

Cross Class Cram Down – s.901G

If at least one of the classes does not achieve a 75% majority

Do the Cross Class Cram Down Conditions A & B in s.901G apply?

If Yes, the court can (but is not obliged to) exercise its discretion to sanction the Plan

The Cross Class Cram Down Conditions

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” (“the No Worse Off Test”)

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

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

Case citations – Forfeiture, Moratorium and Payment of Liquidation/Administration Expenses

- Re Atlantic Computer Systems Ltd [1992] Ch 505
- Innovate Logistics Ltd (in admin) v Sunberry Properties Ltd [2009] BCC 164
- Lazari GP Limited v Jervis [2012] EWHC 1466 (Ch)
- Jervis v Pillar Denton Ltd [2014] EWCA Civ 180
- London Bridge Entertainment Partners LLP (In Administration) [2019] EWHC 2932 (Ch)
- SBP 2 SARL v 2 Southbank Tenant Ltd [2025] EWHC 16 (Ch)

Case Citations – CVAs

- Prudential Assurance Co Ltd v PRG Powerhouse Ltd [2007] EWHC 1002 (Ch)
- Mourant & Co Trustees Ltd v Sixty UK Ltd [2010] EWHC 1890 (Ch)
- Discovery (Northampton) Ltd v Debenhams Retail Ltd [2019] EWHC 2441 (Ch)
- Re Instant Cash Loans Ltd [2019] EWHC 2795 (Ch)
- Carraway Guildford (Nominee A) Limited v Regis UK Limited [2021] EWHC 1294 (Ch)
- Lazari Properties 2 Ltd v New Look Retailers Ltd [2021] EWHC 1209 (Ch)

Case Citations – Restructuring Plans

- Virgin Active Group [2021] EWHC 1246
- UK Commercial Property Holdings Ltd v Cine-UK Ltd [2024] EWHC 2475 (Ch)
- AGPS Bondco Plc [2024] EWCA Civ 24 (pending appeal to Supreme Court)

Thank you for listening

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