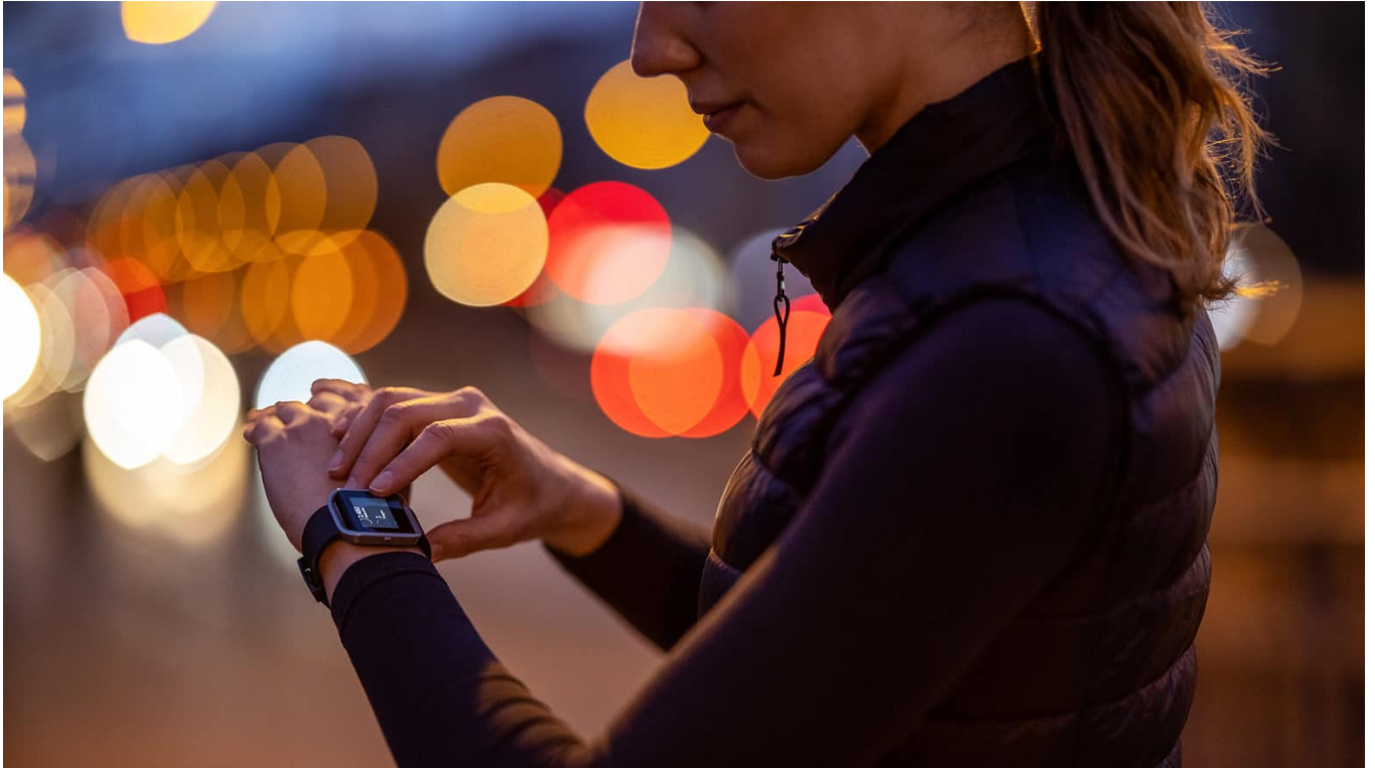


## Virgin Active: Will landlords be feeling the burn? (Part 1)

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The proposed restructuring of Virgin Active has garnered plenty of press coverage in the last few weeks, primarily due to the procedure Virgin Active are invoking and the impact on its landlords if the restructuring is sanctioned.

In this first of three articles, [Nitej Davda](#) considers the restructuring procedure being utilised by Virgin Active. Subsequent articles will review the key differences between this procedure and CVAs and the outcome of the Virgin Active case and its potential impact following the publication of the judgment.

[Corporate restructuring](#) of the type being utilised by Virgin Active was introduced into law last year. Its purpose is to enable a company in 'financial difficulty' to propose and then have sanctioned a scheme which compromises both historic and future liabilities. The restructuring process involves a number of set stages and is overseen by Court. The process is as follows:

### Gateway criteria

To be able to engage this procedure the Company must be in 'financial difficulty'. There is no guidance as to what 'financial difficulty' means. Importantly there is no requirement for the company to demonstrate that it is insolvent. In the case of Virgin Active it is a matter of public record that as a business it was valued at somewhere between £350m and £400m. The financial difficulty it was seeking to mitigate was the absence of cashflow caused by the Covid lockdowns and the cancellation of membership subscriptions.

## Formulation of the proposal

Having identified a financial difficulty, the purpose of the restructuring proposal is to mitigate its effect. The scheme may envisage the Company trading out of the financial difficulty but that is not a requirement. A scheme could have a purpose of offering a better dividend to creditors than administration or liquidation. The proposal will comprise a significant amount of information setting out:

- The financial plight of the Company;
- The options (aside from the proposed scheme) available to the Company and the likely outcome for the Company in each case;
- The proposed restructuring scheme;
- The categorisation of creditors under the scheme;
- The impact of the proposal on each category of creditor; and
- How that impact compares with the alternative options.

The intention behind categorising creditors is to group together those creditors whose rights and interests are similar. Similar to a CVA the restructuring proposal will affect each category differently. However, given the court's powers to impose a restructuring scheme on dissenting creditors, categorisation is of greater significance under this process than under CVAs.

## Convening hearing

This is the first stage at which the Court considers the restructuring proposals. Creditors are given advance notice and are entitled to make representations. The court will consider whether the gateway criteria are met and, if so, whether the information provided and the categorisation of creditors meets the requirements of the Act.

The convening hearing in Virgin Active was held at the end of March. A lot was said on behalf of the landlords in that case regarding the quality of information provided. Criticisms were levelled at Virgin Active and its insolvency advisers over the formulation of the proposal, that it unduly favoured secured creditors over others and that the alternatives to the restructuring scheme were not as damaging as Virgin Active contended. While these concerns were not sufficient to derail the process at the convening hearing, Virgin Active were directed to provide further information to the creditors and it is inevitable that these concerns will be central to the submissions made at the final sanctions hearing.

At the conclusion of a successful convening hearing the court will set down a timetable for creditor meetings, voting and a final hearing at which the court will make a final decision on whether to sanction the proposal or not.

## Meetings and votes

Creditor meetings can be convened by category or by grouping a number of categories and the process is governed by the timetable set down at the first court hearing. The outcome of voting is considered by category rather than globally. For a category of creditor to be taken to approve the proposal, 75% or more (by value) must vote in support. If no category votes to support the scheme it fails. If all categories vote in support then, while a sanctions hearing will still be required, it is likely to be a formality. If at least one category of creditor approves the scheme then a court, at the sanctioning hearing, can still impose it on all creditors. The outcome of voting in the Virgin Active case has not been published. However it is expected that at least one class of creditors (the secured creditors) will have supported the scheme and that the majority of landlord classes will have voted against it.

## Sanctioning hearing

This is the final stage in the court process. The votes have been cast and all parties affected by the scheme will know the extent of support for it. The court has to decide whether it is just and equitable to sanction the scheme. If all categories of creditors support the scheme in sufficient numbers then this should be a formality. If faced with dissenting classes the court has to consider the alternatives to the scheme and whether the restructuring scheme represents the best (or least worst) outcome for those dissenting classes. If it does then it will likely conclude that the scheme should be imposed on those dissenting classes of creditor.

There is no set timeframe within which the restructuring process needs to be conducted but we have seen in Virgin Active that the court can permit a very tight timeframe where necessary.

In the next article, the key differences between this [restructuring process and CVAs](#) will be considered.



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