FCA

FALCON CHAMBERS ARBITRATION

In the matter of an Arbitration under the Commercial Rent (Coronavirus) Act 2022

Between

ISABEL MARANT UK LIMITED

Applicant

and

BERKELEY SQUARE HOLDINGS LIMITED

Respondent

AWARD

Introduction

1. In this Award expressions defined in the Commercial Rent (Coronavirus) Act 2022 (**CRCA**) bear the meanings ascribed to them in CRCA.

2. The Applicant is the tenant of premises on the ground floor and basement, 29 Bruton Street, London W1 (the **Property**) under a lease granted by the Respondent landlord on 9.5.2011 (the **Lease**). The Applicant's title is registered at HMLR under title no. NGL919205.

3. Under the Lease the Principal Rent is currently £336,500 per annum (plus VAT). This rent is payable by equal quarterly instalments in advance. In addition, the Lease reserves payment of a service charge, insurance rent and other sums. Interest, likewise reserved as rent, is also payable on any arrears.

4. Pursuant to a Rent Deposit Deed dated 28.9.2011 (the **Deed**) the Applicant set up a rent deposit of £276,000 (the **Deposit**) and is obliged to maintain the same.

5. The Applicant seeks relief from payment under CRCA in relation to a protected rent debt, the quantum of which (*ignoring* any interest, as to which see below) is now agreed to be £141,164.40 (the **Debt**).

6. The Debt comprises:
   (1) £40,214.40 in respect of Principal Rent and service charge (and VAT thereon) due on 25.3.2020.
   (2) £100,950 in respect of the Principal Rent (and VAT thereon) due on 24.6.2020.

7. The £40,214.40 element of the Debt represents the sum which was withdrawn by the Respondent from the Deposit and which the Applicant is obliged, but has yet, to replenish under the terms of the Deed.

8. In addition, the Applicant owes the Respondent £210,643.30 in respect of rents due on 29.9.2021 and 25.12.2021. This sum is not protected rent debt and is not the direct focus of this Award.

The Applicant's trading performance and finances

9. The Applicant is a retailer of branded clothing and accessories. It occupies the Property for this purpose. In addition, it has 2 other branches. It started trading from the Property in 2013 and opened the other stores in August 2019 and May 2021.

10. There is no dispute that the Applicant's business was greatly affected by the coronavirus pandemic. During the 3 periods of enforced statutory closure (totalling c.6½ months) its doors were shut and it was only able to conduct a very limited (principally telephone) trade, ranging from 0.33% to 16.42% of its normal volume.

11. The following table demonstrates the position.

Year ended	31.12.2018	31.12.2019	31.12.2020 (restated figures)	31.12.2021	31.12.2022
Turnover *for the Property*	£2.715m	£2.856m	£869k	£989k	£1.55m
Net Profit/(Loss) *for the Property*	N/A	£195k	(£487k)	(£322k)	(£255k)
Cash and cash equivalents	£1.106m	£2.496m	£3.093m	£2.064m	N/A
Amounts owed to group undertakings	£1.924m	£3.507m	£4.872m	£4.245m	£4.612m
Net current assets (liabilities)	£343k	£201k	(£448k)	(823k)	N/A
Total assets	£1.522m	£1.680m	£862k	£362k	N/A

12. The Applicant further explains (and I accept) that:

(1) It received loans from its parent (Isabel Marant Production) before the pandemic to help it pay for the improvement of its new stores. Such loans are not part of its usual operating model.
(2) It has received additional support from its parent in the light of the pandemic.
(3) At the end of 2022 it not only owed the £4.612m recorded above to its parent but also £670,585 of supplier payables and the said £210,643.20 non-protected rent debt.
(4) All in all, it remains balance sheet solvent, but this is down to the support of its parent.
(5) In past years it has not repaid the debts owed to its parent.
(6) In 2021 it was able to pay some of the debt owed to its parent but, as the figures show, the debt was not fully repaid, and indeed it increased in 2022.
(7) With such parent company assistance, it has continued trading.

13. The latest available (2021) financial statements for the Applicant record (as did those for earlier years) that:

> **The company has performed in line with expectations during the year under review and has a secure asset base and sufficient cash reserves at the year-end to support its ongoing operations alongside the continued support of the parent company**.
>
> The directors consider the company to be well placed to adapt to ongoing changes in the economic environment in which it operates. However, the directors accept that the current economic climate resulting from the widespread pandemic will continue to present challenges and there remains uncertainty as to how this will affect the overall results of the company for the forthcoming financial year. Notwithstanding this, the company has undertaken an assessment of its business plans, as part of its business continuity and contingency planning, **and the directors believe it is well placed as it can be financially and operationally to withstand the uncertainties ahead.**
>
> As with any business facing such exceptional circumstances, the directors acknowledge that there can be no certainty as to the overall impact on financial performance and position, although at the date of approval of these financial statements **the directors have a reasonable expectation that the company has adequate resources to continue in operational existence for a period of 12 months from the date of approval of these financial statements.**

> **Accordingly, the directors continue to adopt the going concern basis in preparing the annual report and accounts.**

(emphasis added)

14. An Income Analytics report dated 15.11.2022 in relation to the Applicant assesses the Applicant's probability of default at 0.26% over 1 year and 2.4% over 10 years. It has a medium-low risk and an 'A' rated financial strength.

15. The above demonstrates that:
    (1) The pandemic had a material impact on the Applicant's business.
    (2) Although the Applicant's financial position has started to improve, it remains loss-making.
    (3) The Applicant is heavily dependent on support from its parent company, and still owes the parent a substantial sum.
    (4) Nonetheless, the performance of the Applicant to date:
        a. Is such as to enable its directors to confirm that it is regarded as a going concern – and the Applicant submits that it remains a going concern: Applicant's submissions, para.28(a).
        b. Founds a market perception that its finances are essentially sound.

Reference to arbitration & parties' formal proposals

16. On 23.9.2022, the final date for so doing, the Applicant referred to arbitration the matter of relief from payment for the protected rent debt, pursuant to CRCA. The reference was made to Falcon Chambers Arbitration (**FCA**), an approved arbitration body for the purposes of CRCA. I was subsequently appointed by FCA as arbitrator.

17. The Applicant's formal proposal sought full relief from "payment of the sums due during the 'protected period' under [CRCA]". It did not then quantify the alleged protected rent debt.

18. On 7.11.2022, pursuant to directions I had made, the Applicant explained that its position was that the protected rent debt was £141,164.40 (together with any interest), and it stated that it sought full relief by the writing off of that sum together with any interest due: Applicant's response, paras.20 & 24.

19. In line with my directions, the Respondent's formal proposal was given on 21.11.2022. In it the Respondent:
    (1) Challenged the quantum of the protected rent debt. (This centred on an issue concerning the amount withdrawn from the Deposit, which issue has since fallen away/become irrelevant.)
    (2) Observed that the Applicant had not provided any evidence as to the viability of its business.
    (3) Referred to the Applicant's 2021 accounts and contended that they indicated that the Applicant could pay its rent in full.
    (4) Asserted that the Applicant should not be awarded the relief sought, i.e. full relief.
    (5) Indicated that if the Applicant put forward financial information justifying a claim for relief, the Respondent might revise its proposal.

20. Also in line with my directions, on 23.12.2022 the Applicant submitted a revised formal proposal under CRCA s.11(4) (the **Applicant's final proposal**). In it the Applicant:
    (1) Reiterated its claim for full relief from payment of the protected rent debt (which it then believed might be £145,536, although, as per paragraph 5 above, the parties have subsequently agreed the figure to be £141,164.40) and interest thereon: para.15.
    (2) Further or alternatively, requested payment of the entire protected rent debt over 24 months to assist it with cashflow: para.15.

21. Again in line with my directions, the Respondent's revised formal proposal made under CRCA s.11(4) (the **Respondent's final proposal**) was made on 20.1.2023. In it the Respondent:
    (1) Again maintained that there is no evidence that the Applicant cannot pay, and asserted that it should not be awarded the relief sought: para.20.
    (2) However, indicated that the Respondent is amenable to payment of the Debt over a 6 month period: para.21.

The arbitration

22. I gave directions on more than one occasion, including in respect of disclosure and witness statements. Neither party sought any additional disclosure to that provided by the other. Neither party sought to adduce expert evidence.

23. In addition to the formal proposals and other documentation put forward by the parties, I received a witness statement dated 3.2.2023 from Marion Marie, the chief financial officer of the Applicant.

24. Neither party wanted an oral hearing, although they were given the opportunity to request one, and they confirmed that they are content for me to determine the dispute on the papers. The parties are both professionally represented and I proceed on this agreed basis.

25. I have had regard to all the material put forward by the parties which is included in the composite bundle which has been supplied, together with the parties' written submissions. I have considered all the evidence and submissions even though I do not refer in this Award to every single matter raised therein.

Eligibility conditions

26. To have jurisdiction to make an award resolving the matter of relief from payment of a protected rent debt I must be satisfied that:
    (1) The tenancy is a business tenancy.

(2) There is a protected rent debt.

(3) The parties have not resolved the matter of relief from payment of the protected rent debt before the reference to arbitration was made.

(4) The Applicant's business is viable or would be viable if relief from payment of the protected rent debt were given.

27. If I am not so satisfied, I must dismiss the reference: CRCA s.13(2) & (3).

28. The parties have agreed that all the above conditions are met.

29. Specifically, the parties agree that the Applicant's business is viable: Applicant's submissions para.28; Respondent's submissions, para.27.

30. In the circumstances I proceed on this basis, namely that all the eligibility conditions are met.

Relief from payment

Principles

31. Since the eligibility conditions are satisfied, the Applicant is eligible in principle for the grant of relief from payment of the protected rent debt. Therefore, I must determine whether, and if so what, relief should be granted, and make an award under CRCA s.14: see CRCA ss.13(4) & (5).

32. An award may: write off the whole or part of the protected rent debt; extinguish or reduce any interest thereon; give the tenant up to 2 years to pay (including by instalments); (at the other end of the spectrum), grant the tenant no relief: CRCA ss.6(2) and 14(6) & (7).

33. Significantly, by CRCA s.14(2) before determining what award to make I must consider the parties' *final* proposals, as to which see above.

34. I remind myself that the Applicant's final proposal is that the Debt should be written off, alternatively that it should be paid over 24 months. By contrast, the Respondent proposes that the Debt be paid in full, albeit over 6 months.

35. Where, as here, both parties make a final proposal:
    (1) If I consider that *both* proposals are consistent with the principles set out in CRCA s.15, I must make the award set out in whichever of the proposals I consider to be the *most* consistent: s.14(3)(a).
    (2) If I consider that *only one* proposal is consistent, I must make the award set out therein: s.14(3)(b).
    (3) If I consider that *neither* proposal is consistent, I must make whatever award I consider appropriate, applying the s.15 principles: s.14(5).

36. So far as material to the present case, the s.15 principles are that:
    (a) Any award should be aimed at preserving the viability of the Applicant's business, so far as that is consistent with preserving the Respondent's solvency; and
    (b) The Applicant should, so far as it is consistent with the principle in (a) to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay.

    See CRCA, s.15(1).

37. By CRCA s.16(1), in assessing the Applicant's viability I must have regard, so far as known, to:
    (1) Its assets and liabilities.
    (2) The previous rental payments made under the tenancy.
    (3) The impact on coronavirus on the business.
    (4) Any other information relating to its financial position that I consider appropriate.

38. Also, by CRCA s.16(3)(a), in assessing the Applicant's viability I must disregard the possibility of the Applicant borrowing further money, although that does not preclude regard being had to, and use being made of, existing (cf future) borrowings.

39. Whether a formal proposal under CRCA can be made on a dual-limbed, alternative basis is perhaps a moot point. However, no issue in that regard has been taken by the Respondent in relation to the Applicant's final proposal, and so I proceed on the basis that the Applicant's final proposal is a valid proposal for the purposes of CRCA.

40. For completeness I mention that the Applicant submits that the Respondent's primary proposal is that no relief should be granted: Applicant's submissions, paras.28 & 41. The Applicant contends that this proposal is not consistent with the s.15 principles.

41. As is apparent from paragraphs 21(2) & 34 above, I do not agree that the Respondent's *final* proposal (which, rather than its *original* proposal, is that which I must consider under CRCA s.14(2)) comprises a proposal that no relief at all be granted. That was the Respondent's original position but, as I read it, the position adopted in its final proposal is that relief should be granted in the form of the affording of time to pay, with the Debt to be repaid over 6 months: Respondent's final proposal, para.21.

42. Unlike the Applicant's final proposal, the Respondent's final proposal is not advanced on a dual-limbed basis. Rather, the Respondent's position is simply that the Debt should be paid in full but over 6 instalments, a stance confirmed in its submissions, paras.39 & 46. I proceed on this footing.

The parties' positions

43. It is accepted by the Respondent that its solvency is not at risk: Respondent's submissions, para.26. Thus I disregard any solvency related issue.

44. The Respondent submits that the Applicant has provided only limited financial information so far as the assessment of its viability is concerned. As examples of information that might have, but have not, been given, it cites: management accounts; details of the loan agreements with its parent; profit forecasts.

45. I agree with the Respondent that the Applicant could supplied more information. However, as noted above, no request for further disclosure has been made. In the circumstances I am bound to, and can only, work with what I have: see CRCA s.16(1) "so far as known".

46. The Applicant's case is that: (a) its business suffered as a result of the pandemic; (b) it is still trading at a loss; (c) its positive cash position is purely attributable to the support of its parent; (d) the debt to its parent will have to be repaid in time, as will its other liabilities (along with the ongoing rent under the Lease); (e) the grant of relief by writing off the Debt is consistent with the s.15 principles because it will allow it to pay down its debts with a view to returning to profitability in the longer term; (f) alternatively, allowing payment over 24 months is more consistent with the s.15 principles than the Respondent's final proposal for repayment over 6 months.

47. For its part the Respondent contends that: (a) although the Applicant experienced difficulties because of the pandemic, it has demonstrated its resilience; (b) the Applicant is viable and its financial position since the pandemic is consistently improving; (c) an award of relief in the form of payment by instalments is consistent the s.15 principles.

The evidence

48. I have set out above the key financial information in relation to the Applicant's business.

49. So far as the matters to which, by CRCA s.16(1), I am to have regard (see paragraph 37 above) are concerned:
    (1) The Applicant's assets and liabilities, so far as known, are outlined above. I do not have any specific details in relation to the tenancies of its other 2 stores.
    (2) The Applicant has, I believe, generally paid its rent to the Respondent except for (a) the Debt and (b) the £210,643.20 non-protected arrears. The latter were, I find, deliberately withheld because, at the time, the Applicant was seeking to negotiate a resolution with the Respondent and the scope of what later became CRCA was not then known. I am not told why such sum has still not yet been paid; I decline to find that it is the result of an inability to pay, noting that the current rent throughout 2022 was paid.
    (3) The impact of coronavirus on the Applicant's business is noted above.
    (4) Such other limited information as I have (and consider appropriate) in relation to the Applicant's financial position is noted above and below.

50. In addition, I record that the Applicant's evidence includes the following:

> In addition to its ongoing liabilities to the Respondent of the Principal Rent, Service Charge, Insurance Rent and any other sums owed under the Lease, the Applicant as of 31 December 2022, still owes £4,612,014 to the parent company for loans and £670,585 of supplier payables, as well as arrears outside the "Protected Period" of £210,643.20. Therefore, monthly instalments of £23,527.40 on top of this would be a lot for them to pay, whereas **monthly instalments over a 24 month period would help to ensure the Applicant business would not be undermined and remain viable.**

See Ms Marie's witness statement, para.28. (emphasis added)

Decision

51. In my opinion, in all the circumstances not only is the Applicant currently viable (as the parties agree) but also its viability will not be undermined if it is required to pay the £141k Debt (and, any interest thereon, as to which see below) in full, certainly if some time to pay the same is given.

52. My reasons for this conclusion are:

(1) The financial facts, figures, review and analysis outlined in paragraphs 9 to 15 above.

(2) The historical performance of the Applicant and the improvement in the Applicant's fortunes since the pandemic, even though the Applicant remained loss-making in 2022.

(3) The fact that the Applicant's directors have consistently regarded the Applicant as a going concern, and there is no reason to imagine that in this regard account was not had to the existence of the Debt (noting that the 2020 financial statements were approved on 8.4.2021, long before CRCA was enacted).

(4) The fact that, so far as I can tell on what is before me, the Applicant retains substantial cash reserves: there is no suggestion or evidence that the position at the end of 2022 and into 2023 is materially different from that which prevailed at the end of 2021.

(5) The Applicant's case is that its cash reserves meant that at the end of 2021 it could meet its immediate liabilities (submissions, para.28(a)), and again there is no reason to believe that the position in that regard has changed since then.

(6) The cash reserves are sufficient to repay: (a) the £670,585 supplier payables; (b) the £210,643.20 non-protected rent debt (which accrued in 2021); (c) the Debt.

(7) Even after such repayment, prima facie there would remain a not insubstantial sum representing working capital (available for the purchasing of stock etc.), subject only to repayment of the debt owed by the Applicant to its parent.

(8) As regards the debt owed by the Applicant to its parent, there is no reason to think, and no evidence suggesting, that the parent will not continue to support

the Applicant, in just the same manner as it has done to date, if the Applicant is obliged to repay the Debt.

(9) Specifically, whether or not the Applicant is required to repay the Debt, there is no basis to suppose or conclude that the parent will demand full repayment in the next year of the £4.612m amount owed to it (which sum forms the overwhelming majority of the Applicant's current liabilities and predominantly accounts for the fact that the Applicant shoulders net current liabilities), i.e. that it will 'pull the plug' and thereby undermine the Applicant. It is readily apparent that the parent has for a number of years tolerated the non-repayment (or only partial repayment) of the substantial debt owed to it, and there is simply no reason to think that this stance is liable to change, let alone to be influenced by the position regarding the Applicant's liability for the Debt, i.e. that ongoing support will be provided only if the Debt is written off.

(10) There is also no allegation or evidence before me that, if the Applicant is bound to repay the Debt, it will be required to take additional borrowing from its parent (or another), and I am satisfied that this is not the case.

(11) As noted in paragraph 50 above, the Applicant's own evidence is that monthly repayments of the Debt over 2 years would help preserve its business. In this regard, I do not conceive that the Applicant has suggested something (albeit as an alternative, fallback position) which it believes would materially compromise its viability. In the circumstances it is to be inferred that the Applicant considers that its business *can* sustain payment of the Debt over the next 2 years without undermining its viability. I agree with the Respondent (Respondent's submissions, para.42) that the Applicant acknowledges that, if payments were spread over a period of time, the Applicant would remain viable despite paying the Debt in full.

53. All in all, on the material before me, I conclude that paying the Debt (and any interest thereon) in full over a period of time, as which see below, would not compromise the Applicant's viability.

54. For example, repaying the Debt (ignoring interest, as to which see below) by 24 instalments (as alternatively proposed by the Applicant) would see the Applicant have to find £5,881.85 per month. In all the circumstances I am fully satisfied that the Applicant would be able to do that without the viability of its business being put at risk (or it having to resort to additional borrowing).

55. In the light of the above, I conclude that the first limb of the Applicant's final proposal is not consistent with the s.15 principles because: (a) payment of the Debt in full (over time) would not jeopardise the viability of the Applicant's business; (b) writing off the Debt is necessary to preserve such viability; (c) in the circumstances the grant of such relief would conflict with the principle in s.15(1)(b) that the Applicant should meet its obligations as regards the payment of protected rent in full, where (as here) that is not inconsistent with the preservation of its viability.

56. I now turn to consider the question of timing. This arises on the alternative limb of the Applicant's final proposal, namely that it be given 2 years to repay the Debt, and on the Respondent's final proposal, namely that the Debt be repaid in 6 months.

57. The Applicant accepts that both such proposals are consistent with the s.15 principles: Applicant's submissions, para.43. The Respondent does not clearly state its position in that regard so far as the Applicant's proposal that it be given 24 months to repay the Debt is concerned, although it clearly opposes the same.

58. CRCA clearly recognises that there may be a spectrum of proposals which can, in a given case, be consistent with the s.15 principles, i.e. that there is not inevitably just a single 'consistent' answer. This follows from the terms of s.14(3)(a), as to which see paragraph 35(1) above.

59. In my view, in this case and with particular regard to Applicant's financial status, *both* the parties' timing proposals are consistent with the s.15 principles. In this regard I remark that both proposals appropriately seek to and achieve a meaningful balance (a) the principle that an award should be aimed at preserving the viability of the tenant's business and (b) the principle that, subject thereto, protected rent should be paid in full and without delay.

60. The question is thus: which timing proposal is the *most* consistent with the s.15 principles?

61. In this respect, there is fairly little to choose between the competing proposals, and my ability to weigh their merits is constrained by the limited financial information before me.

62. Nonetheless, doing the best I can, I conclude that, by a narrow margin, the Applicant's proposal that the Debt be repaid over 24 months is a better fit with the s.15 principles than the Respondent's proposal for repayment over 6 months.

63. My reasons are:

(1) The Applicant's fortunes were hit markedly by the pandemic.

(2) Although the Applicant's performance has rebounded, there is still some way to go before it returns to net profitability.

(3) I accept the Applicant's evidence (Ms Marie, para.28) that repaying the Debt by monthly instalments of £23,527.40 (which would result if the Respondent's proposal were accepted), along with the Applicant meeting its other extant and ongoing liabilities, would be a lot for the Applicant to bear, even bearing in mind (as I do) the Applicant's cash reserves (on which there are, as noted, various calls), whereas payments over 24 months would be more manageable.

(4) By deferring the payment of the total £141k Debt by instalments over 2 years the Applicant will be able to repay the same slowly and steadily, and in my

judgment this represents the best means whereby the Applicant will be able to afford repayment without risk of potentially being subjected to an undue and unmanageable financial burden which might imperil the viability of its business.

64. I am therefore satisfied that in the circumstances the Applicant's proposal strikes a slightly better balance between the two s.15 principles than does the Respondent's proposal, and hence (as the most consistent proposal) is that which I should, indeed must, accept.

65. Consequently, by CRCA s.14(3)(b) I am required to make the award sought by the Applicant in the alternative limb of its final proposal. I do so below.

66. There is a remaining question about interest. As noted above, there is power under CRCA s.6(2)(c) to reduce or extinguish contractual interest. Further, contractual interest on unpaid protected rent is itself a protected rent debt: CRCA ss2(1)(c) & 3(3).

67. In its submissions (para.47) the Applicant contends that it is implicit in the alternative limb of its proposal that any interest on the Debt be reduced to zero. In this regard it points to the fact that it seeks an award permitting it to pay the Debt by 24 monthly instalments of £5,881.85, i.e. a total of £141,164.40.

68. The Respondent does not directly address the question of interest.

69. In my view, the Applicant's submission is wrong. I so conclude because:
    (1) As above, by CRCA s.14 I am bound to consider the parties' final proposals, and (where appropriate) to endorse one or the other thereof.
    (2) In the light of the above, I am required in this case to endorse the alternative limb of the Applicant's final proposal.

(3) In my opinion, on its true construction and natural reading, the alternative limb of the Applicant's final proposal (contained in para.15 thereof):

a. Does address the question of interest.

b. But does not (unlike the position in the context of the primary limb of the proposal) propose that interest be written off.

c. Indeed, is itself premised on the protected rent debt (including any interest) *not* being written off.

d. Simply proposes that the protected rent debt (including, to my mind, any interest), in whatever sum it is, be repaid over 24 months.

(4) Moreover, neither the figure of £5,881.85 nor any figure which represents only calculated monthly repayment instalments of the Debt (without interest) appears in the Applicant's final proposal.

(5) It is only in Ms Marie's later and separate witness statement (para.26) that the £5,881.85 figure appears and, leaving aside that (in the overall context) the position there stated in relation to interest is somewhat enigmatic, the fact is that this witness statement does not constitute the Applicant's final proposal for the purposes of CRCA ss.11 & 14.

70. In the circumstances the Applicant is bound, as am I, by the terms of its final proposal, as I construe the same.

71. Consequently, I determine that:

(1) Any contractual interest payable under the terms of the tenancy in relation to the protected rent debt is <u>not</u> to be waived.

(2) Rather, any such interest is to be paid by 24 equal monthly instalments, along with the repayment of the Debt itself.

72. I do not have any figures for interest. Therefore, I shall frame the Award accordingly.

Conclusion

73. For the reasons given above I determine the matter of relief from payment under CRCA s.14 by making an award (below) which gives the Applicant relief from payment in the following manner and on the following terms:
    (1) The Applicant shall be given time to pay the £141,164.40 Debt, which shall be paid to the Respondent by monthly instalments as follows:
        a. £5,881.85 shall be paid on 13 April 2023;
        b. £5,881.85 shall be paid on the 13th day of each month from May 2023 to February 2025 inclusive (22 instalments); and
        c. £5,881.85 shall be paid on 13 March 2025.
    (2) Any interest payable under the terms of the Lease in relation to the £141,164.40 Debt shall be paid by 24 equal monthly instalments on the above dates.

Arbitration fees

74. Pursuant to CRCA s.19(5), when an award is made under s.14, the arbitrator must (unless they consider it more appropriate to award a different proportion under s.14(6)) also make an award requiring the respondent to reimburse the applicant for half of the arbitration fees paid by the applicant.

75. The Applicant has submitted (submissions, para.48) that an award in respect of 50% of the fees should be made. The Respondent has not specifically addressed the point, and I consider that it is appropriate to give it the opportunity to do so, if it wishes. That said, I record that, in view of (a) the mandated default position, (b) the outcome of this arbitration, I am *provisionally* minded to make an award in respect of half of the arbitration fees.

76. I hereby direct that if the Respondent wishes to make representations in support of a different award in relation to the arbitration fees, it must do so by 4pm on 15.3.2023.

77. In the absence of any such representations, after that date I shall make a further award in these terms: "The Respondent must reimburse the Applicant 50% of the arbitration fees paid by the Applicant."

Costs

78. CRCA s.19(7) provides that (arbitration fees aside) each party must bear its own costs. Therefore, costs are not an issue for me.

Publication

79. Pursuant to CRCA s.18, this Award must be published. I intend to publish it on the FCA website. I am of the *provisional* view that this Award contains no commercial information which must be excluded under s.18(3). Not only is the majority of the financial information in this award publicly available but also I do not conceive that the information would or might significantly harm the legitimate interests of either party. Therefore, I shall publish this Award in full on the FCA website unless either party makes representations to the contrary by 4pm on 15.3.2023. If any such representations are made, I will consider them before publishing the Award.

Disposition

80. I hereby award and direct as follows:

(1) The Applicant shall be given time to pay the £141,164.40 Debt, which shall be paid to the Respondent by monthly instalments as follows:

a. £5,881.85 shall be paid on 13 April 2023;

b. £5,881.85 shall be paid on the 13th of each month from May 2023 to February 2025 inclusive (22 instalments); and

c. £5,881.85 shall be paid on 13 March 2025.

(2) Any interest payable under the terms of the Lease in relation to the £141,164.40 Debt shall be paid by 24 equal monthly instalments on the above dates.

Seat of the arbitration

81. Pursuant to AA s.95(2), the seat of this arbitration is in England and Wales.

Date of the award

82. This Award is made by me, Martin Dray FCIArb, this Monday 13.3.2023.

Signature

Martin Dray FCIArb