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

Between

The Entertainer (Amersham) Limited)

Applicant

and

**British Overseas Bank Nominees Limited
and WGTC Nominees Limited**

Respondent

FINAL AWARD

The Parties and the Premises

1. The Applicant, The Entertainer (Amersham) Limited, is the tenant of premises known as Unit 1, 71/77 St. Peter's Street, St. Albans, AL1 3ED ("the Premises") pursuant to a lease dated 14 August 2014 made between Lancashire County Council as landlord and the Applicant as tenant, for a term of years commencing on 14 August 2014 and ending on 24 January 2025 ("the Lease").

2. The Respondents acquired the Property from Lancashire County Council on 1 October 2019 and are now the Applicant's Landlord. The Respondents are nominees on behalf of NatWest Trustee and Depositary Services Limited as depositary of the LPPI Real Estate Fund.
3. The Applicant is represented by Alistair Ritchie, the Applicant's 'Head of Legal'. The Respondents are represented by Shannon Breeze and Connor Merrifield of Pinsent Masons.
4. The Applicant is a toy retailer with a rental portfolio of 172 toy shops across the UK, together with an active online business. It is a family owned business. Its immediate parent company is TEAL Group Holdings Limited, who own 100 % of the shares in the Applicant.

Procedural Background

5. On 25 August 2022 the Applicant made a reference to arbitration ("the Reference") in relation to the matter of relief from payment of a protected rent debt arising under its tenancy, the Reference being made pursuant to section 9 of the Commercial Rent (Coronavirus) Act 2022 ("CRCA"). The Reference was made to Falcon Chambers Arbitration ("FCA"), an approved arbitration body for the purposes of section 7 of the CRCA.
6. FCA proposed my appointment as arbitrator and invited the parties to confirm acceptance of my appointment, which they subsequently did.
7. The Applicant's referral form:
 - a. Identified the protected rent debt in dispute as £32,581.33 ("the Debt");
 - b. Indicated that it had not reached an agreement with the Respondents as to whether the Applicant's tenancy was a business tenancy within the meaning of section 2 of the CRCA or whether the protected rent debt was subject to a CVA, IVA or compromise;
 - c. Indicated that the Respondents had neither agreed nor disagreed that the Debt fell within the definition of "protected rent debt" for the purposes of the CRCA or that the dispute had not already been resolved by agreement, but that this was unlikely to be contested;

- d. Confirmed that the Applicant had served notice of intention to make this reference to arbitration on the Respondent in accordance with section 10(1) of the CRCA;
 - e. Stated that no response to the Applicant's notice of intention to make a reference had been received.
8. The Debt is said by the Applicant to comprise 50% of the rent payable pursuant to the Lease for the following periods, said to comprise the "Protected Periods": 24 March 2020 to 14 June 2020; 5 November 2020 to 1 December 2020; 21 December to 11 April 2021.
9. The CRCA treats both VAT and interest on rent as "rent" for the purposes of the statutory regime (sections 2(2) and 2(1)(c)). Neither party has sought to break down the sum of £32,581,33 and I do not know whether part of this sum comprises VAT or interest on arrears of rent. The Respondents have not sought to dispute that the sum of £32,581,33 falls within the definition of "protected rent debt" for the purposes of the CRCA and do not seek to argue that the Protected Period is other than as set out by the Applicant. Under the CRCA there is a single protected period. In the circumstances I proceed on the basis that the protected period envelopes the periods identified by the Applicant, as set out above at paragraph 7, and that the total protected rent debt which is the subject of this arbitration is agreed to be the sum of £32,581,33.
10. The Respondents have also not sought to argue that: the Applicant's tenancy was not a business tenancy; the dispute had already been resolved by agreement; the Protected Rent Debt was the subject to a CVA, IVA or compromise or that there is any other reason why the arbitration cannot proceed. In the circumstances I have proceeded on the basis that these matters are agreed between the parties.
11. In the circumstances I am fully satisfied that the arbitration is properly constituted and ought to proceed to an award.
12. As required by sections 11 and 12 of the CRCA the referral form attached a copy of the Applicant's formal proposal and was accompanied by a statement of truth from Mr Gary Grant founder and chairman of the Applicant.

13. On 12 September 2022 I issued a procedural order which, amongst other things, confirmed that FCA had appointed me as the arbitrator in respect of the arbitration; and which made the necessary directions to proceed with the arbitration. The procedural order:
 - a. Extended time for the Respondent to put forward a formal proposal in response to the Applicant's formal proposal until 5pm 22 September 2022;
 - b. Required the parties to make any request for an oral hearing by 5pm 22 November 2022;
 - c. In the event that an oral hearing was not requested, required the parties to make any further written submissions by 5pm 1 December 2022.
14. On 22 September the Respondent served a formal proposal in response to the Applicant's formal proposal. Neither party has put forward a revised proposal under s.11 of the CRCA and neither party requested an oral hearing. On 20 November 2022 the Applicant made further written submissions in accordance with my procedural order dated 13 September 2022. The Respondent made no further submissions.

The Evidence

15. In addition to the parties' formal proposals and the Applicant's further written submissions dated 29 November 2021, the evidence I have been provided with comprises the following:
 - a. A spreadsheet prepared by the Applicant which summarises the turnover and profit/loss of the subject store for the financial year ending January 2020 and for the period February 2020 to April 2021.
 - b. The Annual Report and Financial Statement for the Applicant for the period ending 25 January 2020 and for the period ending 30 January 2021.
 - c. The Annual Report and Financial Statement for Teal Group Holdings for the period ending 30 January 2021.
 - d. A "Covid-19 Budget Landlord Information Pack", which comprises a presentation prepared by the TEAL Group of its "C19 Budget", designed to be a presentation to the Group's landlords and aimed at mitigating the impact of the pandemic on its business.

16. Neither party has invited me to direct the disclosure of any additional evidence, and in view of the amount of rent in dispute and the need to resolve this matter without further delay and costs I do not propose to do so. Accordingly, I make my award following consideration of the above documents.

Overview of the Legal Framework

17. Section 1(1) of the CRCA provides that the Act enables the matter of relief from payment of protected rent debts due from the tenant to the landlord under a business tenancy to be resolved by arbitration.
18. Section 3(1) of the CRCA provides that “a protected rent debt” is a debt under a business tenancy consisting of unpaid protected rent.
19. By section 3(2) of the CRCA, rent due under the tenancy is only “protected rent” if:
- a. The tenancy was adversely affected by coronavirus; and
 - b. The rent is attributable to a period of occupation by the tenant for, or a period within, the protected period applying to the tenancy”.
20. As noted above, there is no dispute that the tenancy is a business tenancy, and I have no reason to conclude that it is not, and there is no dispute that the Debt is a protected rent debt for the purposes of section 3(2).
21. Section 13 of the CRCA sets out the awards open to the arbitrator and provides as follows:

“13(2) If the arbitrator determines that—

- a. the parties have by agreement resolved the matter of relief from payment of a protected rent debt before the reference was made,
- b. the tenancy in question is not a business tenancy, or
- c. there is no protected rent debt,

the arbitrator must make an award dismissing the reference.

“13(3) If, after assessing the viability of the tenant’s business, the arbitrator determines that (at the time of the assessment) the business—

- a. is not viable, and

b. would not be viable even if the tenant were to be given relief from payment of any kind,
the arbitrator must make an award dismissing the reference

“13(4) Subsection (5) applies if, after making that assessment, the arbitrator determines that (at the time of the assessment) the business—

- a. is viable, or
- b. would become viable if the tenant were to be given relief from payment of any kind.

“13(5) In that case the arbitrator must resolve the matter of relief from payment of a protected rent debt by—

- a. considering whether the tenant should receive any relief from payment and, if so, what relief, and
- b. making an award in accordance with section 14.”

22. Section 14 of the CRCA deals with the award on the matter of relief from payment, and I consider this further below. However, I must first determine whether the dispute is eligible for the grant of relief, as required by section 13.

Eligibility

23. For the dispute to be eligible for the grant of relief the parties must not have resolved the matter of relief themselves before the reference; the tenancy must be a business tenancy (namely, a tenancy within Part II of the Landlord and Tenant Act 1954 (CRCA section 2(5)); there must be a protected rent debt; and it must be shown that the tenant’s business is viable or would be viable if relief from the protected rent debt were given: section 13(2) & (3). If any one of these conditions is not met, the case fails on the grounds of eligibility and the reference must be dismissed.

24. As for section 13 (2) I refer to paragraph 10 above and the fact that the parties have evidently not resolved the matter of relief from payment by agreement.

25. The final eligibility criterion is viability: section 13(3). I have to be satisfied that the Respondent's business is viable or would become viable if it were to be given one of the permitted forms of relief from payment of the protected rent debt: "the Viability Condition".
26. Viability is not defined in the CRAR but as the DBEIS Commercial Rent (Coronavirus) Act 2022 Guidance (issued under section 21 of the CRAR) ("the 2022 Guidance") states at paragraph 6.3: "*In making the assessment of viability a key question is whether protected rent debt aside, the tenant's business has, or will in the foreseeable future have, the means and ability to meet its obligations and to continue trading.*"
27. For the purposes of section 13(3), the assessment as to the Respondent's viability is to be made now (at the time of the assessment). It is apparent that both parties accept that the Applicant is viable for the purposes of section 13(3). Having reviewed the evidence set out above, I am satisfied that the Applicant is viable and that the relevant eligibility conditions are met.
28. It follows that I must now proceed to determine whether the Respondent should receive relief and, if so, what relief should be awarded.

Relief from Payment: the Principles

29. In accordance with section 13(5)(a) of the CRCA I must decide whether the Respondent should be given any relief from payment of the protected rent debt and, if so, what relief. The awards which I am permitted to make under section 14(6) are either:
 1. To give the tenant relief from payment by means of any one or more of the following (section 6(2)): (i) writing off all or any part of the debt; (ii) giving time to pay the whole or part of the debt (including by instalments); (iii) reducing (including to zero) any interest otherwise payable by the tenant;or
 2. To determine that the Respondent is to be given no relief from payment.

30. In the event that any award I make gives the Respondent more time to pay, the payment date must be within the period of 24 months beginning with the day after the date of the award: section 14(7).
31. In deciding whether the tenant should receive any relief from payment and, if so, what, I must consider the final proposals put forward by the parties: section 14(2). In this case the final proposals are the Applicant's proposal which accompanied the referral, which proposed that the Applicant be given full relief, i.e. that the whole Protected Rent Debt be written off, and the Respondent's proposal dated 22 September 2022 which proposed that the Applicant should be given no relief from payment.
32. I must consider these final proposals by reference to the arbitrator's principles set out in section 15 of the CRAR ("the Principles") . What I must decide is:
 - a. Whether both proposals are consistent with the Principles, in which case I must decide which is the most consistent proposal and make an Award in terms of this proposal;
 - b. If I decide only one proposal is consistent with the Principles then I must make an award in terms of that consistent proposal;
 - c. If I decide that neither final proposal is consistent I may make an Award in terms which I consider to be the most appropriate applying the Principles.
33. The Principles to be applied when considering the matter of relief are that:
 - a. Any award should be aimed at preserving or, as the case may be, restoring and preserving the viability of the business of the tenant, so far as that is consistent with preserving the landlord's solvency ("the First Principle"); and
 - b. The tenant should, so far as it is consistent with the first principle to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay ("the Second Principle").

34. Section 16 requires me to make this assessment having regard to:
- a. The assets and liabilities of the tenant, including any other tenancies to which the tenant is a party;
 - b. The previous rental payments made under the business tenancy from the tenant to the landlord,
 - c. The impact of coronavirus on the business of the tenant, and
 - d. Any other information relating to the financial position of the tenant that I consider appropriate.
35. In assessing the solvency of the landlord I am similarly required to have regard to the assets and liabilities of the landlord and any other information relating to its financial position: section 16(2). A landlord is solvent unless the landlord is, or is likely to become, unable to pay their debts as they fall due. In this case the Applicant has submitted, paragraph 13 of its further written submissions, that the Respondents are both dormant companies and the viability of each of them has never been dependent upon receipt of payments from the Applicant. The Respondent has not sought to address the question of its own solvency or suggested that it would be affected if relief from payment were given. As such I proceed on the basis that this is not a case where relief from payment would pose a risk to the landlord's solvency.

Relief from Payment: Decision

36. The Applicant submits that its proposal is the most consistent with the Principles and it requests that:
- “...in the interests of equity and fairness in sharing the burden of the losses that the Covid lockdowns have caused to both landlords and tenants alike, the arbitrator makes an award in accordance with the Tenant's formal proposal. That aims to promote fairness within the Company's landlord counterparties population and the best prospect for the long-term success of all parties affected and also reflects the intention of the legislation introduced by HM Government.”

37. There is a superficial attractiveness to the Applicant's submissions. It is clear that the Applicant, like many retailers, has been hard hit by the pandemic and the consequential measures introduced by the Government. It has paid 50% of the full rent that fell due during the Protected Period and, throughout the pandemic, was active in taking steps to preserve its business. The Applicant's formal proposal and further written submissions set out in detail the action it took to maintain the viability and solvency of its business. Details of this are also set out in the Director's Strategic Report for the period ending 30 January 2021. To summarise, the Applicant has participated in VAT and NI payment deferral; has taken advantage of commercial properties rates relief and has sought local authority and National and EU grants to support its business. It has successfully engaged with the landlords of other properties across its portfolio, typically reaching agreements "to pay 50% of its outstanding protected rent debts". In addition to such measures, the Applicant undertook additional activity such as increased on-line sales activity, and no dividends were declared or paid in respect of the relevant financial years.
38. The Applicant explains, at paragraph 9 of its further written submissions, that it has reached fully documented rental waiver agreements or other less formal arrangements with many of its other landlords and has confirmed that "[t]here are no ongoing rental arrears claims continuing with any other of the Applicants Landlord, nor does the Applicant owe any other arrears to the Respondent other than the matter before the Arbitrator."
39. The Applicant has been clear in stating that without the various relief it secured, and without the cash flow support provided by other landlords across its rental portfolio, "it is quite possible that the Tenant's business would not have survived the initial lockdowns." The Applicant is highly critical of the Respondent's approach to the question of relief and regards its proposal as reflecting "an obdurate refusal by the Respondents to enter into any informal process."

40. I recognise the significant measures the Applicant has undertaken to ensure the survival of its business, and I can appreciate its frustration in not being able to reach an agreement with the Respondent as it has with many of its other landlords, but the question for me in this arbitration is not whether the Respondent has acted fairly or reasonably, or whether it would be equitable and fair if the Respondent were required to share the burden of the losses that the Covid lockdowns have caused. I am required to make an Award which is aimed at preserving or, as the case may be, restoring and preserving the viability of the business of the tenant, so far as that is consistent with preserving the landlord's solvency, if this is a relevant factor. I must also have in mind the Second Principle, namely in doing this, and so far as this is consistent, a tenant is required to meet its obligation to pay the protected rent in full and without delay.

41. I am required to look to the Applicant's financial position now and for the foreseeable future, not retrospectively. I am also required to approach this matter disregarding the possibility of the Applicant borrowing money or restructuring its business: s.16(3). However, I do not consider that this requires me to assume that the Applicant has no existing borrowings but simply to preclude me from taking into account any future additional borrowing that the Applicant might take to fund payment of the protected rent debt in the event that relief were refused. In this regard I note that paragraph 6.3 of the 2022 guidance supports this approach as it explains the rationale of s.16(3) as follows:

“if a business took on more debt to become viable for the purposes of arbitration under the Act, they would likely be delaying the problem and risking their long term viability.”

42. The Subject Store was operating a slight loss pre-pandemic. The Applicant's spreadsheet relating to the subject store shows that for the period ending January 2020 gross till sales were £788,420 (£658,709 net) leading to a gross profit of £369,617 but an overall loss in this period of (£421). Compared to the period from February 2020 to April 2021, where gross till sales were £506,907 (£422,424 net) which led to a gross profit of £221,322 but an overall loss of (£178,818). This loss was mitigated, however, by the various forms of Government support received, resulting in an overall loss of (£137,393). The Applicant submits that “the branch moved from minor losses to fundamental loss making during the protected rent periods and was entirely unsustainable in isolation in those circumstances.”

43. The relevant concern for me, when seeking to apply the First Principle, is to preserve the viability of the Applicant's business. Preserving the viability of the business is not the same as seeking to allowing a tenant to return to pre- Covid levels of profitability. A business may well be viable even if trading at a loss for a period of time. Further, in seeking to apply the First Principle, I may look beyond the landlord and tenant relationship between the parties and I can consider the impact of the tenant's other debts and its wider financial situation.

44. Both parties recognise that it is appropriate to look to the Applicant's business on a wider level. At paragraph 2.1 of its formal proposal the Respondent submits "the relevant test for the Arbitrator is the Applicant's ability to meet its liabilities, not the success or otherwise of individual premises." The Applicant, at paragraph 11 of its further written submissions states, in reference to the question of viability of the business, that this "...is clearly a reference to both the individual location of the premises the subject of a lease but also the wider context of a commercial enterprise."

45. Looking to the Applicant's business as a whole, the Director's Strategic Report for the year end January 2021 states as follows:

"Whilst it has been an incredibly challenging year for the business as a result of the pandemic, the business has delivered a robust set of results in unprecedented conditions demonstrating its ability to adapt its focus and to capitalise on the shift to online. Whilst the business expects further uncertainty as the world comes out of the pandemic it remains confident in the future growth potential of the business."

46. The Applicant's Financial Statement for the period ending 30 January 2021 shows that the Applicant's business generated a turnover of £180.1 million for this period. This was a decline of approximately 17.6% from the previous year to 30 January 2020. The Directors Strategic Report explains this decline as being "driven entirely by the forced store closures".

47. Despite the decline in turnover the Financial Statements show a total profit before tax of £1.249 million and, a profit after tax of £590,000. This compares to the previous year's profit of £10.996 million before tax and £8,609,000 after tax.

48. The Balance Sheet in the Financial Statements shows the Applicant's total net assets as at 30 January 2021 to be £46,085 million. This compares to £45,495 million for the period ending 25 January 2020 and £38,286 million for the period ending 26 January 2019. The Applicant had a cash balance of £20,468 million at the period end 30 January 2021.
49. The Applicant has submitted, at paragraph 3 of its further written submissions, that the statutory accounts reflect the balance sheet on a particular date and that "They do not reflect or state the sequential cash flow that has been achieved during each trading period within that financial year. They are therefore at best a partial indication of the financial health of a business still less of a single shop within a multi faceted set of activities within a company or the companies within a Group of companies. They may indicate an apparently healthy position on a balance sheet date, but they are of little relevance to the concept of solvency on a day to day basis. Further previous years profitability are not relevant to the viability of a business."
50. As stated above, I am entitled to have regard to the Applicant's financial position as a whole, and not just the financial health of the 'single shop' run from the subject premises. It is right to say that the Applicant's accounts which it has provided speak to the financial position of the Applicant at the start of 2021 and not directly 'to the concept of solvency on a day to day basis'. I reiterate, however, that I am concerned with the overall *current viability* of the Applicant's business which is to be assessed in a "holistic and common-sense way": see paragraph 6.10 of the Guidance. I accept that evidence relating to the Applicant's business prior to the pandemic will only be of relevance to the extent that it assists in assessing the current viability of the business but I consider a comparison of net and gross profit pre and post the protected period to be useful in making an assessment of viability.
51. I have already noted above, the comments made in the Directors' Strategic Report for the period ending 30 January 2020 to the effect that the Applicant's Directors were confident in the future growth potential of the Applicant's business. The Strategic report further notes:
- "As seen from these financial results, the business has shown its ability to adapt its focus and to capitalise on the shift to online and is well-positioned to overcome any future challenges. ... The business remains sufficiently funded to be confident of its ability to withstand likely future financial pressures."

52. The Notes to the Financial Statements for this period further explain:

“Throughout the pandemic, the toy market has remained resilient with e-commerce demand increasing during lockdown periods but also remaining high afterwards. Following the first lockdown, the business carried out extensive work to permanently increase e-commerce fulfilment capacity and enable the business to respond to the increased online demand and weather any potential future lockdowns.

In addition to permanently increasing online capacity the business has taken further steps to diversify its business operations....

The increased diversification of the business combined with the extension of the group revolving credit banking facilities until November 2023 ensures the business remains sufficiently funded to be confident of its ability to withstand likely future financial pressures.”

53. As the Respondent notes, the Applicant has not adduced any evidence as to its financial position as at year ending January 2022. The Respondent comments “It is anticipated that this would show increased profitability reflective of improved market conditions following the pandemic and further support the Applicant’s ability to meet its liabilities.” Aside from the spreadsheet relating to the subject premises, which extends to the period up to April 2021, no evidence of the Applicant’s financial position has been provided after 30 January 2021. The Applicant has given no explanation as to why it has not provided more recent accounts or an account of its situation post January 2021.

54. The Director’s Strategic Report for the period ending 30 January 2021 gives a positive picture of the business in the face of the impact of the pandemic. I find that on the evidence before me the Applicant’s business was clearly viable as at this date. It is clear that the Applicant was properly assessed as a going concern as at the time of approval of the Financial statement by the independent auditor on 22 October 2021 and that this was on the basis that the Applicant would be able to continue as a going concern for a period of at least twelve months from when the financial statements were authorised for issue.

55. The Respondent submits that the financial information provided by the Applicant does not support its position that it cannot afford to make payment of the full rent which fell due. It submits that based on the financial information provided, "...[a]ny argument that the Applicant cannot meet its liabilities under the Lease is unsustainable." The Respondent further submits that "...there is no credible argument that the Applicant has either insufficient assets, or other cash flow constraints which render it unable to meet its contractual liabilities."
56. There is nothing before me to suggest that the Applicant's business has deteriorated since January 2021, or that its situation has changed from that reflected by the Financial Statements which have been provided. In the circumstances I accept the Respondent's submission that the evidence provided does not support a conclusion that the Applicant is unable to meet its contractual liabilities.
57. The Respondent has also referred to me to the Annual Report and Financial Statement of Teal Group Holdings Limited for the period ending 30 January 2021, which were included with the Applicant's formal proposal. I have not, however, found this evidence useful when making an assessment of the Applicant's viability or its ability to pay the Debt in full because the relevant assessment is of the Applicant's viability, and not that of its group.
58. The Applicant submits that its viability has been preserved by the "flexibility and co-operation of many third parties" and I have no reason to doubt that this is correct. The Applicant further submits that "it seems inequitable that in all the circumstances, the Respondent's obdurate behaviour should be rewarded by an award of the type sought by it." I am not unsympathetic to the Applicant's situation but as explained above, my role as arbitrator is not to make an award based on an assessment of what I regard to be fair and equitable as between the parties/ third parties. I am required to consider the parties' final proposals by reference to the Principles.

Relief from Payment: Conclusion

59. In summary, for the reasons set out above, I do not consider this to be a case where both final proposals are consistent with the Principles in section 15, such that I must decide between the two proposals. I have concluded that the available evidence does not support a conclusion that the Applicant is unable to pay the Debt in full. I am satisfied on the evidence before me that the viability of the Applicant's business will not be undermined if relief against payment of the Debt is refused and the Applicant's business is and will remain viable, even if it is required to pay the Debt. I therefore do not consider the Applicant's proposal to be consistent with the Second Principle.
60. As for the Respondents' final proposal, it is only if I conclude that this proposal is not consistent with the Principles that I am free to make whatever award I consider appropriate: s.14(5). If I conclude that the Respondents' proposal is consistent with the Principles, I am bound to make an award upholding it.
61. The Respondents' final proposal is that the Applicant be given no relief. In the circumstances, I have concluded that this proposal is consistent with the section 15 Principles. I recognise that the Applicant's business has suffered during the pandemic, but its business proved resilient during this time, largely due to the careful measures and steps taken by the Applicant to preserve the viability of its business. I have no reason to conclude that the Applicant's trading environment has deteriorated in the period following the pandemic, and based on the evidence before me I must conclude that the Applicant has adequate resources to continue to run its business for the future, even if required to pay the Debt in full.
62. It follows from this conclusion that, in accordance with the Second Principle, the Applicant should be required to pay the Debt in full. I therefore determine that the Respondents' final proposal is consistent with the s.15 Principles and I am accordingly required to make an award giving effect to this.
63. For the reasons set out above I determine the matter of relief from payment under s.14 of the CRCA by making an award which gives the Applicant no relief from payment of the Debt.

Arbitration Fees and Costs

64. Section 19(7) of the CRCA provides that each party must pay its own costs, so this is not an issue for me to determine. In accordance with section 19(5) of the CRCA, when an award is made under section 13 the arbitrator must also make an award requiring the respondent to reimburse the applicant half of the arbitration fees paid by the applicant, unless it is considered more appropriate to award a different proportion under subsection (6).
65. Neither party has invited me to make an award which differs from the mandated default position. Given the mandated default position, which appears not to envisage a 'costs following the event' approach, and given that I have not been invited to depart from this position I have formed the view that it would be appropriate to make an award which reflects the default position. Accordingly I also make an award in respect of half the arbitration fees.

The Award and Publication

66. In accordance with section 18 of the CRCA I intend to publish this Award on the FCA website. The award contains no commercial information which ought to be excluded under section and I shall publish this award in full.
67. I hereby award and direct as follows:
1. The Applicant is to be given no relief from payment of the Debt, as defined above.
 2. The Respondent must reimburse the Applicant 50% of the arbitration fees paid by the Applicant.
68. The seat of this Arbitration is England and Wales: AA section 95(2). This Award is made by me, Elizabeth Fitzgerald, on 19 December 2022.

Signature



Elizabeth Fitzgerald