FALCON CHAMBERS ARBITRATION

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

Between

Horsham District Council

Applicant

and

Bills Restaurants Limited

Respondent

Final Award

The Parties and the Premises

1. The Respondent, Bills Restaurants Limited, is the tenant of premises at Old Town Hall, Market Square, Horsham, RH12 1EU ("the Premises").

2. The Respondent is part of a group of companies ultimately controlled by Mr Richard Caring. The Respondent's immediate parent company is Bills Stores Limited and its ultimate parent company is Bills Stores Topco Limited, a company incorporated in Jersey. This dispute relates to the Respondent's Horsham Branch, which is one of 72 restaurant premises which make up the Respondent's portfolio. The Respondent occupies the Premises pursuant to a lease dated 21 September 2012 for a term of 20 years commencing on 21 September 2012 ("the Lease").

3. The Applicant, Horsham District Council, a local government authority, is the freehold owner of the Premises and the Respondent's landlord.

4. I have not been provided with a copy of the Lease but it is common ground: (i) that the Respondent occupies the Premises for the purposes of its restaurant business; (ii) that the Lease creates a business tenancy as defined by Part II of the Landlord and Tenant Act 1954; and (iii) that the current rent payable under the Lease is £80,000 per annum.

Procedural Background

5. On 27 May 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 the Respondent's 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. The referral form:
    a. Identified the protected rent debt as £111,233.97 comprising rent arrears for a period of 485 days in the period from 21 March 2020 to 18 July 2021 in the sum of £106,301.37 and interest on such arrears in the sum of £4,932.60;
    b. Confirmed that the Applicant had served notice of intention to make this reference to arbitration on the Respondent on 28 April 2022 in accordance with section 10(1) of the CRCA;
    c. Stated that no response to the Applicant's notice of intention to make a reference had been received;
    d. Confirmed that it was agreed that the Respondent's tenancy was a business tenancy within the meaning of section 2 of the CRCA; the dispute had not already been resolved by agreement; the protected rent debt was not subject to a CVA, IVA or compromise; and the debt fell within the definition of "protected rent debt" for the purposes of the CRCA.

7. The referral form attached a copy of the Applicant's formal proposal. On 8 June 2022 the Applicant re-sent its formal proposal to both FCA and the Respondent, this time accompanied by evidence and a statement of truth from Mr Brian Elliot FRICS, head of Property and Facilities, Horsham District Council, as required by sections 11 and 12 of the CRCA.

8. Thereafter, FCA proposed my appointment as arbitrator and gave details of my proposed fee, and invited the parties to confirm acceptance of my appointment and sign an arbitration agreement.

9. On 15 June 2022:
    a. The Applicant signed and returned the arbitration agreement;
    b. The Respondent did not sign the arbitration agreement, but instead wrote to the Applicant in terms which disputed that the arbitration process had been triggered, by reason of the fact that no notice of intention under section 10 of the CRCA had been served on the Respondent. The Respondent requested the Applicant to either comply with section 10 of the CRCA or to provide copies of any relevant notice of intention, if such had been served;
    c. The Applicant responded explaining that a notice of intention had been sent and a copy of the notice, dated 28 April 2022, was provided to the Respondent.

10. On 16 June 2022 I issued a procedural order which, amongst other things, confirmed that FCA had appointed me as the arbitrator in respect of the arbitration; that pursuant to section 30 of the Arbitration Act 1996, as modified by schedule 1 to the CRCA, I could rule on my own substantive jurisdiction; and directed the parties to jointly confirm by 4pm on 20 June 2022 whether:
    a. They agreed that a notice of intention had been given to the Respondent before the Reference, in accordance with section 10 of the CRCA, with the consequence that the Reference was properly made and I had substantive jurisdiction; or
    b. They agreed that no notice of intention was given to the Respondent before the Reference in accordance with section 10 of the CRCA, with the consequence that the Reference was not properly made and I lacked substantive jurisdiction; or (as the case may be)
    c. They disagreed as to whether notice of intention was given to the Respondent before the Reference in accordance with section 10 of the CRCA, and hence disputed whether the Reference was properly made and whether I had substantive jurisdiction.

    I further directed that the necessary consequential directions would be made either to proceed with the substantive arbitration or to determine the issue of whether the Reference was properly made.

11. On 17 June 2022 the Respondent, by its solicitor Trowers & Hamlins LLP, responded to say:

"*Subject to the Council providing evidence of how and when the notice of intention was served … our client will accept that s10 of the CRCA has been complied with and that the reference to arbitration made on 8 June was valid.*

In the circumstances, we kindly request that the arbitrator issues directions on Monday [20 June] and exercises its discretion in accordance with s11(6) of the CRCA, to grant our client an extension of time in which to put forward a formal proposal in response to the Council."

12. On 17 June I made a further procedural order directing that:
    a. By 4pm on 24 June 2022, the Applicant was to file any written submissions and/or evidence it sought to rely on in support of its claim that the Applicant notified the Respondent, before the Reference, of the intention to make a reference as required by section 10 of the CRCA;
    b. By 4pm on 1 July 2022, the Respondent was to either confirm that it accepted that the Reference was properly made, and that I had substantive jurisdiction, or file any written submissions and/or evidence in response to the Applicant's evidence/submissions;
    c. In the interim, and insofar as I was able to so direct, the time for the Respondent to put forward a formal proposal in response to the Applicant's formal proposal in accordance with section 11(2) of the CRCA was extended until the earlier of: (i) 7 days after the day on which the Respondent confirmed that the Reference was properly made; or (ii) 7 days after the day on which the Arbitrator's decision as to this issue was received by the parties.

13. On 20 June, Trowers & Hamlins LLP confirmed on behalf of the Respondent that it was accepted that a notice of intention had been given in accordance with section 10 of the CRCA, with the consequence that the Reference was properly made and that I had substantive jurisdiction.

14. In the circumstances, I am fully satisfied that the arbitration is properly constituted and I ought to proceed to an award.

15. On 24 June, the Respondent served a formal proposal in response to the Applicant's formal proposal, together with supporting evidence in accordance with section 11 of the CRCA and paragraph 4(2) of my procedural directions dated 17 June 2022.

16. On 27 June 2022, I made a further procedural order setting out the time limits by which the parties were required under CRCA to make any revised proposals and directing the parties to make any request for an oral hearing by 27 July 2022. In the absence of any such request, the

parties were directed to file and serve any written submissions they wished to make by 5pm on 12 August 2022.

17. On 6 July 2022, the Applicant put forward a revised proposal. The Respondent has made no further revised proposal.

18. Neither party took advantage of the direction to provide written submissions, and neither party requested an oral hearing. I therefore make my award following consideration of the following documents that were provided to me:

    a. The Applicant's initial formal proposal and the Statement of Mr Brian Elliott FRICS dated 7 June 2022. This proposal was that no relief from payment of the protected rent debt should be given to the Respondent and the Respondent should pay the protected rent debt in full without any deduction and without delay.
    b. The Respondent's formal proposal dated 24 June 2022 made pursuant to section 11(2) of the CRCA, as varied by my directions dated 17June 2022, which proposed that the Respondent pay 50% of the outstanding protected rent, immediately.
    c. The Respondent's filed accounts for 2019 and 2020, together with a document which is described in the heading as an "RPT Monthly profit and Loss", but which appears from the text to state the annual profit or loss made at each restaurant in the Bills chain for the year 2020.
    d. The Applicant's revised formal proposal dated 6 July 2022, which stated that the Applicant was "willing to accept a deferred payment schedule for repayments over the next 12 months."

Overview of the Legal Framework

19. 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.

20. Section 3(1) of the CRCA provides that "a protected rent debt" is a debt under a business tenancy consisting of unpaid protected rent.

21. 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".

22. As noted above, there is no dispute here that the tenancy is a business tenancy. It is common ground that section 3(2) of the CRCA is satisfied. The Respondent was mandated to close the Premises by the Government as part of the Government's strategy for managing the coronavirus pandemic, and the mandated period for closure was from 21 March 2020 to 18 July 2021, such that this is the protected period: see Mr Elliott's statement at paragraph [4].

23. Section 13 of the CRCA sets out the awards open to the arbitrator and provides so far as relevant as follows:

" (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.

" (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.

"(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.

"(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."

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

Eligibility

25. 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.

26. As for subsections (2)(b) and(c), as stated above, it is common ground that the tenancy is a business tenancy and that there is a protected rent debt.

27. As for subsection (2)(a), and the question of whether the parties have by agreement resolved the matter of relief from payment of a protected rent debt, the protected rent was calculated by the Applicant as follows: 21 March 2020 to 20 March 2021 (365 days); and 21 March 2021 to 18 July 2021 (120 days); giving a total of 485 days at a daily rate of £219.18. The protected debt was thus said to comprise rent arrears of £106,301.37. Interest is also claimed by the Applicant in the sum of £4,932.60, giving a total of £111,233.97.

28. In its revised formal proposal the Applicant states:

    "Since the first exchange of proposals, the Respondent has made a payment of £28,233.97p [sic] which reduces the debt owed to £80,000."

29. If a payment of £28,233.97 was made this would reduce the total of £111,233.97 to £83,000 not £80,000. However, the Applicant has stated that the arrears are £80,000.

30. The Respondent has not sought to dispute the Applicant's figures, and has not commented on or confirmed whether it has made a payment in the sum of £28,233.97. I accordingly make my Award on the basis that, save for the sum £28,233.97, the parties have not agreed the matter of relief from payment and it is common ground that the protected rent debt which is the subject of this Arbitration is £80,000, as stated by the Applicant.

31. 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".

32. Viability is not defined in the CRAR but as the DBEIS Commercial Rent (Coronavirus) Act 2022 Guidance (issued under section 21 of the CRAR) 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.*"

33. The Applicant has submitted that the Respondent's business is viable and that the filed accounts for the periods ending 29 December 2019 and 3 January 2021, and the Directors' Strategic Report, and the Directors' Report set out in the latter accounts, shows this to be the position. The Respondent has not specifically addressed me on the Viability Condition but it follows from the formal proposal it has put forward and the arguments made to justify its position that it considers its business to be viable for these purposes. It thus seems to be common ground between the parties that the Respondent's business is viable for the purposes of section 13(3). In this regard I note that the Respondent states, at paragraph 11 of its formal proposal: "*The Respondent is hopeful that with negotiations of reduced rental costs, as well as other cost reductions, trade across its portfolio including the Property will recover*."

34. Despite the apparent agreement between the parties, I propose to review the evidence to reach my own conclusion on the point.

The Evidence relating to Viability

35. The main evidence I have been provided with in connection with the financial position of the Respondent comprises its filed accounts for the periods ending on 29 December 2019 and 3 January 2021.

36. 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). As such, evidence relating to viability at the current time is key and for this reason I will have regard to the most recent accounts provided, rather than focus on the Respondent's position in 2019 and 2018, as shown in the accounts for the period ending on 29 December 2019.

37. The accounts for the period ending on 3 January 2021 show that the Respondent's business generated a turnover of £61.7 million for the 53 weeks to 3 January 2021.This was a decline of approximately £65.3 million (51.2%) from the previous period of 52 weeks to 29 December 2019. The Directors' Strategic Report attributes the decline solely to the Covid-19 pandemic. The Respondent's balance sheet for the period ended 3 January 2021 showed net liabilities of

£13.8 million. The financial statements showed a total comprehensive loss for the period of just under £17.0 million. The Respondent is a guarantor to a £42.5 million revolving credit facility taken out by Bills Stores Limited (a company related by common control) and, as at 3 January 2021, approximately £42.3 million was outstanding under this facility, which was subsequently extended through to the end of March 2022.

38. The Directors' Strategic Report in these accounts provides some assistance in assessing the current viability of the Respondent's business. In the stated opinion of the Directors, the key performance indicators for monitoring the financial performance of the business are: revenue, gross profit margins, restaurant staff costs and underlying EBITDA (a term defined in Note 1 to the accounts). For the 53 weeks ended 3 January 2021 these were stated to be as follows:

Revenue	£62.0m
Gross margin	79%
Labour %	73%
Underlying EBITDA	£1.3m

(I note in passing that the Directors' Strategic Report contains a discrepancy in the figure that is given for the Underlying EBITDA. In the section of the report headed 'Business Review to 03 January 2021', the Underlying EBITDA was stated by the Directors to be £2.3 million. In the section headed 'Key Performance Indicators', however, the Directors stated the Underlying EBITDA to be £1.3 million. The Statement of comprehensive income in the audited financial statements themselves provides a figure for the Underlying EBITDA of £1.334 million and, since the financial statements have been audited, I have proceeded on the basis that the figure of £2.3 million mentioned in the Strategic report is a mistake.)

39. The Directors' Strategic Report discusses the impact of the pandemic on the business and states that:
"The UK economy has suffered significantly as a result of the pandemic and this presents a risk to any consumer business. The group, however, has taken decisive action to secure its long term future, proven by the strong trading results that have occurred since the majority of sites re-opened."

40. The Directors' Report also discusses the impact of the pandemic on the business but explains that:

"Despite the challenges relating to Covid-19, the directors and management believe that the business is well positioned to be able to navigate through the impact of Covid-19 due to its available cash and working capital position, its ability to manage its costs, and the strength and flexibility of its customer proposition. This is further supported by the strength of the open sites trading performances since May 2021."

41. The Directors' report then states that:

"In assessing the going concern basis of preparation of the financial statements for the period ended 03 January 2021, the directors have taken into consideration detailed cash flow forecasts for the Bill's business, the forecast compliance with bank covenants, and the continued availability of funding from banks and shareholders covering a period of at least 12 months from the date of approval of the financial statements, which includes the need to refinance the group in March 2022."

42. In relation to the going concern basis on which the accounts have been prepared, the Directors conclude that:

"Based on the available cash and the plans that have been put in place to manage the business in a cost-controlled manner, and the current statements which are being by the Government [sic], the directors believe that the business will be able to operate within its agreed facilities, meet all of its covenant requirements, refinance successfully, and have the continued support of its bank and shareholders … Therefore, the expectation of the Directors' is that they will be able to continue in operation and meet liabilities as they fall due over a period of at least 13 months …"

43. The independent auditors, BDO LLP, have stated that, in auditing the financial statements, they have concluded that the Directors' use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

44. In the circumstances I am satisfied that the Respondent's business is viable for the purposes of section 13(3).

45. Having determined that the relevant eligibility conditions are met and the Respondent's business is viable 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

46. 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: (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 (section 6(2)); or

    (2) To determine that the Respondent is to be given no relief from payment.

47. 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).

48. 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 that the Respondent be given a deferred payment schedule for repayments over the next 12 months and the Respondent's proposal that the protected rent debt be reduced by 50% and paid immediately. I must consider these proposals by reference to the arbitrator's principles set out in section 15 of the CRAR.

49. The arbitrator's 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, be required to meet its obligations as regards the payment of protected rent in full and without delay ("the Second Principle").

50. 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.

51. 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 is a local government authority and, as the Applicant acknowledges (at paragraph [6] of Mr Elliott's statement), will remain solvent under this definition. As such, this is not a case where relief from payment would pose a risk to the landlord's solvency.

52. My immediate concern, in accordance with the First Principle, is to preserve the viability of the Respondent's business. In doing so, 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. I am required to approach this matter disregarding the possibility of the Respondent borrowing money or restructuring its business: s.16(3).

Relief from Payment: Decision

53. In this case both parties have put forward final proposals in accordance with section 11. When considering these final proposals, by reference to the Arbitrator's Principles, if I consider that both proposals are consistent with the principles in section 15 then I **must** make the award set out in whichever of them I consider to be the most consistent: section 14(3)(a). If I consider one proposal is consistent and the other is not, I **must** make the award set out in the proposal that is consistent: section 14(3)(b). Where neither is consistent with the section 15 principles I must make whatever award I consider appropriate: section 14(5).

54. I have been provided with limited financial information in this case, essentially comprising the two sets of audited accounts for the periods ending 29 December 2019 and 3 January 2021. The Respondent has not provided any management accounts for the Premises themselves. The only information I have been given that is specific to the Premises is the document described as a "RPT Monthly profit and Loss" which, as I have indicated already, appears in fact to show the annual profit or loss for each restaurant in the Bills chain, including the Premises, for the calendar year 2020.

55. 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. Having regard to the available information, as bears on the matters set out in the CRAR section 16, I make the following observations.

56. The most recent audited financial statements for the period ended 3 January 2021 state that the Respondent's business overall was making a loss.

57. The decline in the Respondent's gross margin and Underlying EBITDA for the period ended 3 January 2021, when compared to the two earlier periods, shows that the Covid-19 pandemic clearly had a serious impact on the Respondent's business. Overall, the Respondent and its wider group have significant debt commitments, but these are commitments which pre-date the pandemic. As I have noted above, however, when addressing the Viability Condition, the Respondent's Directors have stated that, notwithstanding the difficulties presented by the pandemic, the Respondent will be in a position to continue in operation and meet its liabilities as they fall due over a period of at least 12 months. I refer to the Directors' statements in their Strategic Report and in their Directors' report for the period ended 3 January 2021, mentioned in paragraphs 37 to 41 above.

58. The Applicant (at paragraph 10 of Mr Elliott's statement) submits that the Horsham Branch was closed from late March through to early July 2020; and again for four weeks from 5 November 2020; and finally from 4 January to 17 May 2021; but that other than these periods the restaurant was open and trading. The Applicant further submits that for the year ended 2020 Bills opened 62 of its 77 stores and this branch ranked 11th out of 62 in terms of Profit Before Tax. It is said that the Horsham branch generated a profit before tax of £175,343 during the year ending December 2020 and that the evidence provided by the Respondent shows that the Horsham branch traded profitably during 2020 and was in the top 20% of restaurants.

59. The accounts for the period ended 3 January 2021 confirm that the Respondent re-opened 62 sites on 17 May 2021 "*which saw strong trading performances*". However, the document described as a "RPT Monthly profit and Loss" appears to show that the Horsham branch made an overall loss of £175,343, not a profit. No underlying information behind this figure is given, however, and as noted above no information as to the turnover for the Horsham Branch has been provided. The Respondent has not sought to challenge or correct the Applicant's statement to the effect that the Horsham branch traded profitably, but based on the extremely limited information before me it does not appear to me to be the case that Horsham branch was profitable in 2020.

60. The question of whether the Respondent made a profit from trading from the Premises in 2020 is not, however, determinative of the question of the Respondent's viability or whether or not the Respondent is now able to meet its obligations. As stated above, the Respondent's Directors have stated in the most recent filed accounts that the Respondent is able to meet its liabilities as they fall due for a period of at least 12 months. I have no evidence which relates to the Respondents' financial position after 3 January 2020 and no evidence which post-dates the statements made by the Respondents' Directors in the most recent filed accounts. There is no evidence before me which suggests that the position now is different to that as stated by the Directors.

61. I understand that previous rental payments due under the Lease have been met and the Respondent specifically invites me to bear in mind that the suggested reduction in rent it proposes (£54,116.99) will have little impact on the Applicant over the course of the 20-year lease, 10 years of which remain. It submits that:

"For the first 5 years of the term, the Respondent was required to pay the Applicant rent in the sum of £60,000 per annum. Since 2017, the annual rent has been £80,000. It is due to be reviewed on the 10th anniversary of the term and the parties have agreed that the rent shall not be less than £80,000 per annum. As such, the minimum total rent the Applicant will receive over the course of the Lease is £1,500,000. [If] the Respondent's proposal is awarded; this rent will be reduced to £1,445,883.01."

62. I am not, however, persuaded that this analysis is helpful when addressing the principles I am required to apply under section 15, in particular the Second Principle, which requires the tenant, so far as is consistent with the First Principle, to meet its obligations as regards the payment of the protected rent in full and without delay.

63. As stated above, when assessing the viability of the tenant I must disregard the possibility of the tenant borrowing money or restructuring its business. The Respondent makes this point at paragraph 14 of its proposal when it says:

"*When considering this proposal, the prospect of financial support being provided to the Respondent by Richard Caring (the Respondent's main shareholder) should not be taken in to account."*

64. In making my decision I have had regard to the Respondent's financial position as evidenced by its filed accounts, but I make no assumptions as to any financial assistance that might be provided by Mr Caring, in particular as regards the payment of the disputed sums.

65. 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. In the circumstances, and based on the available evidence, I have concluded that the available evidence does not support a conclusion that the Respondent is unable to pay the protected rent debt in full. I accordingly consider the Respondent's proposal is not consistent with the Second Principle.

66. I do consider that allowing the Respondent more time to pay would assist in preserving its viability and bearing in mind the need to apply **both** section 15 principles I consider the Applicant's proposal to be consistent and the Respondent's not. I therefore must make an award as set out in the Applicant's proposal, as required by section 14(3)(b).

67. The Applicant's proposal is for a deferred payment schedule for repayments over the next 12 months. I understand this proposal to mean monthly repayments of the protected rent debt, which I have determined comprises the sum of £80,000. I accordingly direct the Respondent to pay the monthly sum of £6,666.67 on 1 September to 1 April 2023 and thereafter the monthly sum of £6,666.66 on 1 May to 1 August 2023.

Arbitration Fees and Costs

68. 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).

69. Neither party has invited me to make an award which differs from the mandated default position and I consider 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

70. In accordance with section 18 of the CRAR I intend to publish this Award on the FCA website. The award contains no commercial information which ought to be excluded under section 18(3) and I shall publish this award in full.

71. I hereby award and direct as follows:
    (1) The Respondent is to pay the protected rent debt in the sum of £80,000 in monthly instalments to be paid as follows: the sum of £6,666.67 to be paid on 1 September 2022, 1 October 2022, 1 November 2022, 1 December 2022, 1 January 2023, 1 February 2023, 1 March 2023 and 1 April 2023; and the monthly sum of £6,666.66 on 1 May 2023, 1 June 2023, 1 July 2023 and 1 August 2023.
    (2) The Respondent must reimburse the Applicant 50% of the arbitration fees paid by the Applicant.

72. The seat of this Arbitration is England and Wales: AA section 95(2). This Award is made by me, Elizabeth Fitzgerald, on 26 August 2022.

Signature

Elizabeth Fitzgerald