IN THE MATTER OF THE SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015
IN THE MATTER OF THE PUBS CODE ETC REGULATIONS 2016
IN THE MATTER OF THE ARBITRATION ACT 1996
IN THE MATTER OF A STATUTORY ARBITRATION

BETWEEN:

(1) Alastair Howard Bramley
(2) Anna Catherine Mary Bramley

Claimants

-and-

Star Pubs & Bars Limited

Respondent

FINAL AWARD

27 February 2020

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I: THE PARTIES

1. The party that made the original reference to arbitration dated 20 December 2018 ("the Referral") was Home County Pubs Limited ("HCPL"). HCPL is a trading company owned by Alastair Bramley and Anna Bramley ("Mr & Mrs Bramley") which they use to manage the public house in question; viz The Bull, 113 High Street, Watton at Stone, SG14 3SB ("the Premises"). It is however Mr & Mrs Bramley who are the proprietors of the lease of the Premises under registered title no. HD509697 and who are the tied pub tenants ("TPT"). By Procedural Order No. 2 dated 24 October 2019, and with the consent of the Respondent, Mr & Mrs Bramley were substituted as Claimants in place of HCPL.

2. The Respondent is the corporate vehicle through which the Heineken Group of companies manages its public house estate in the United Kingdom. The freehold title to the Premises is held by Punch Partnerships (PTL) Limited ("Punch") under registered title no. HD394969. In March 2008 the Respondent acquired ownership of Punch. The Respondent is the pub owning business ("POB") for the purposes of the Small Business, Enterprise and Employment Act 2015 ("SBEEA 2015") and the Pubs Code Etc. Regulations 2016 (2016 SI No. 790) ("the Pubs Code").

II: THE PREMISES

3. The Premises are situated at 113 High Street, Watton-at Stone, Hertford SG14 3SB. The website (www.thebullatwatton.co.uk) describes the Premises as "A Proper Village Pub", saying:
"We are nestled in the heart of the pretty village of Watton at Stone in Hertfordshire, ideally placed within easy reach of the A1 and the towns of Herford, Ware, Stevenage & Welwyn Garden City. Our ambience is that of a local village pub, offering you a warm welcome, unassuming & friendly service and outstanding food."

4. Mrs and Mrs Bramley have not challenged the Respondent's "analysis of the demographics of the pub" and categorization of the Premises "Great Pub, Great Food" category. from its undated 5-page Pub Catchment Report ("the PCR").

III: THE CLAIM

5. Mr & Mrs Bramley claim that the market rent only ("MRO") tenancy proposed by the Respondent and sent to them on 4 June 2019 ("the Offer") does not comply with s43(4)(a) SBEEA 2015 and reg 31(2)(c) Pubs Code in respect of the stocking requirement stated therein.

6. The MRO lease proposed by the Respondent as part of the Offer stated amongst other matters, that:
   6.1. the Contractual Term was 10 years from its date of conclusion (stated to be an unspecified date in 2019); see clause 1.1;
   6.2. the stocking requirement proposed in Schedule 4 shall remain in force *"for as long as the* [Respondent] *or a Group Undertaking of the* [Respondent] *is a Brewer"*; see clause 3.23.1.

7. As set out in the parties' Statement of Agreed Facts and Issues in Dispute dated 2 October 2019 ("the Agreed Statement"), the stocking requirement at that time related to three different categories of beer and was in the following terms:

7.1. Keg Brands

"The Claimant[s] *may in* [their] *absolute discretion stock and offer for sale any keg brands throughout the term of the proposed lease provided that* [they] *shall ensure that not less than 60% of the keg taps shall dispense the Respondent's keg brands, with equal prominence to the other keg brands sold by the Claimants."* ("the Keg Brand Stocking Requirement – "KBSR")

7.2. Cask Brands

"The Claimant[s] *may in* [their] *absolute discretion stock and offer for sale any cask brands throughout the term [of the proposed lease] provided that* [they] *shall ensure that at least one [of the Respondent's] cask brands shall be available for sale at the Premises, with equal prominence to the other cask brands sold by the Claimants."* ("the Cask Brand Stocking Requirement – "CBSR")

7.3. Premium Packaged Brands

"The Claimant[s] *must stock and offer for sale two or more PPB Own Brand Beers and two or more PPB Own Cider Brands of the Respondent and that the Claimant*[s] *shall procure not less that 50% of the Shelf Space is used to make available for sale either the PPB Own Beer Brands or PPB Own Cider Brands, with equal prominence to other PPB brands sold by the Claimant."* ("the PPB Brand Stocking Requirement – "PBSR")

IV: THE DISPUTE

8. The issue for my determination is whether, by virtue of the terms of the stocking requirement in the Offer ("the Stocking Requirement"), the Offer does not comply with SBEEA 2015 and/or the Pubs Code. This is to be determined in accordance with English law.

9. The Claimants seek an award not only declaring negatively that the Offer does not comply with SBEEA 2015 and/or the Pubs Code but also declaring positively the terms of a reasonable stocking requirement for the Premises for the purpose of the MRO lease negotiations.

10. The parties have stated the issue in dispute in the Agreed Statement in the following terms:

> *"The issue in dispute between the parties is limited to whether the .... Offer is a compliant MRO tenancy and complies with regulation 31(2)(c) of the Pubs Code and section 43(4)(c) of the Small Business, Enterprise and Employment Act 2015 ("SBEEA"), specifically with reference to the proposed stocking requirements of the MRO proposal."*

V: APPOINTMENT & JURISDICTION

11. By letter dated 6 June 2019 the Pubs Code Adjudicator ("PCA") appointed me as arbitrator with jurisdiction over this dispute.

12. On 12 June 2019 the Claimant's (then HCPL's) representatives signed my Terms of Appointment. On 15 July 2019 the Respondent's solicitors signed my Terms of Appointment on behalf of the Respondent.

VI: THE PARTIES' REPRESENTATION

13. The original Claimant, HCPL, and from the date of their substitution as Claimants on 24 October 2019 Mr & Mrs Bramley, have been represented throughout these proceedings by MDE Pub Consultants ("MDE"). The Respondent has been represented by solicitors, DLA Piper UK LLP ("DLA"). Both representatives are experienced adversaries in Pubs Code arbitration. I am grateful to both MDE and DLA for their compliance with my procedural orders in this matter and their submissions.

VII: PROCEDURAL HISTORY

14. The PCA accepted the Referral by letter dated 16 January 2019 pursuant to reg 32 of the Pubs Code. On 4 February 2019 the PCA granted a stay of the arbitration proceedings to 7 May 2019. As recorded above, on 4 June 2019 the Respondent served the Offer.

15. Following my appointment on 6 June 2019, and following a joint request by the parties on 13 June 2019, I directed a further stay of proceedings to 12 July 2019. This stay did not resolve the dispute between the parties.

16. The institutional rules applicable to the arbitration are by default the Rules of the Chartered Institute of Arbitrators. By Procedural Order No. 1 dated 16 July 2019, made after hearing the parties' representatives, I directed that the parties file their Statements of Case, together with all documentation they wish to rely on and file an Agreed Statement of Facts and Issues in Dispute. Procedural Order No. 1 stated further that: *"The Arbitrator will consider only those issues raised in the Statements of Case (the Statement of Claim, the Statement of Defence and any Reply and the evidence as set out below."* That evidence was the documentation the parties appended to their Statements of Case, being in each case *"all relevant documents"* in that party's possession.

17. Neither party sought a direction for the admission of witness statement evidence. I directed further that the parties were to inform me if they wished permission to rely on expert evidence and, if so, on what issues relevant to the Offer.

18. HCPL served its Statement of Claim on 8 August 2019. The Respondent served its Defence on 22 August 2019. HCPL served its Response on 6 September 2019. The Respondent served its Response on 19 September 2019.

19. By Procedural Order No. 2 dated 24 October 2019, made after hearing the parties' representatives, I directed that HCPL should file an Amended Statement of Claim by which Mr & Mrs Bramley would be substituted as the Claimants. The Amended Statement of Claim did not simply substitute Mr & Mrs Bramley for HCPL and generally comply with paragraph 1 of Procedural Order No.2. It included factual evidence from Mr & Mrs Bramley and further legal submissions. The Respondent has not objected to the scope of the Amended Statement of Claim or sought permission to serve a responsive Amended Defence.

20. In addition, I directed the Claimants to serve on the Respondent a product stock report ("PSR") for the Premises for keg, cask and premium packaged brands for the 3-year period 1 October 2016 to 30 September 2019. I directed that the Respondent should, so advised, have the opportunity to serve a responsive product stock report in like terms for the same period. In addition, I directed that the parties to file and serve their final submissions in writing on facts, law and remedies sought ("Final

Submissions") by dates ending with the Claimants' reply submissions on 20 December 2019.

21. These directions were made against the background of the parties' agreement that they wished me to determine the dispute in respect of the proposed stocking requirement without receiving expert evidence and without an oral hearing. The recitals to Procedural Order No. 2 stated as follows:
"Upon the parties agreeing:
not .... to seek permission to rely on any further factual evidence on the issue of reasonableness (and/or commonality) of the proposed stocking requirements;
not to seek a direction for permission to rely on independent expert evidence on the issue of reasonableness (and/or commonality) of the proposed stocking requirements;
pursuant to s37 Arbitration Act 1996 that the Tribunal shall not have power to appoint an independent expert to report on the issue of reasonableness (and/or commonality) of the proposed stocking requirements".

22. On 25 August 2019 the Claimants served a PSR for the Premises for the approximate 2-year period 25 July 2017 – 24 October 2019. The Respondent waived its right to serve a PSR.

23. The parties complied with the directions as to filing and service of their final submissions on facts, law and remedies. The Respondent waived its right to file and serve reply submissions.

24. The forensic position as to factual evidence, other than documentary evidence, in relation to the Claimants' case is that Mr & Mrs Bramley have signed a Statement of Truth stating that they believe that the facts set out in the Amended Defence are true. The Respondent has not requested an oral hearing to challenge that evidence by cross-examination. The Respondent has not submitted in its written submissions that Mr & Mrs Bramley are unreliable witnesses. It could not do so without seeking a direction for an oral hearing and challenging their evidence by cross-examination.

25. The forensic position as to factual evidence, other than documentary evidence, in relation to the Respondent's case is that the Respondent's solicitor has signed the Statement of Truth on the Defence stating that *"The Respondent believes that the facts in this Statement of Defence are true."* No individual within the Respondent company is named.

26. The parties have agreed that I should determine their dispute without the service of witness statements, without expert evidence, without an oral hearing and therefore without cross-examination of factual witnesses and without oral submissions that may be tested by Tribunal questioning.

VIII: THE LEGAL PROVISIONS

s43 SBEEA: market rent only option

27. The relevant legal provisions are:

(1) The Pubs Code must require pub-owning businesses to offer their tied pub tenants falling within section 70(1)(a) a market rent only option in specified circumstances.

(2) A "market rent only option" means the option for the tied pub tenant—

(a) to occupy the tied pub under a tenancy or licence which is MRO-compliant, and

(b) to pay in respect of that occupation—

(i) such rent as may be agreed between the pub-owning business and the tied pub tenant in accordance with the MRO procedure (see section 44), or

(ii) failing such agreement, the market rent.

(3) The Pubs Code may specify—

(a) circumstances in which a market rent only option must or may be an option to occupy under a tenancy;

(b) circumstances in which a market rent only option must or may be an option to occupy under a licence.

(4) A tenancy or licence is MRO-compliant if—

(a) taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence it—

(i) contains such terms and conditions as may be required by virtue of subsection (5)(a),

(ii) does not contain any product or service tie other than one in respect of insurance in connection with the tied pub, and

(iii) does not contain any unreasonable terms or conditions, and

(b) it is not a tenancy at will.

S51(6) – Tribunal's fees and expenses

(6) The pub-owning business concerned must pay the reasonable fees and expenses of the arbitrator in respect of the arbitration, except where—

(a) the arbitration follows a referral by the tenant under section 48, and

(b) the arbitrator concludes that the referral was vexatious.

S68 "Tied pub" – stocking requirement

(1) In this Part a "tied pub" means premises in relation to which conditions A to D are met.

(2) Condition A is that the premises have a premises licence authorising the retail sale of alcohol for consumption on the premises.

(3) Condition B is that the main activity or one of the main activities carried on at the premises is the retail sale of alcohol to members of the public for consumption on the premises.

(4) Condition C is that the premises are occupied under a tenancy or licence.

(5) Condition D is that the tenant or licensee of the premises is subject to a contractual obligation that some or all of the alcohol to be sold at the premises is supplied by—

(a) the landlord or a person who is a group undertaking in relation to the landlord, or

(b) a person nominated by the landlord or by a person who is a group undertaking in relation to the landlord.

(6) But condition D is not met if the contractual obligation is a stocking requirement.

(7) The contractual obligation is a stocking requirement if—

(a) it relates only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord,

(b) it does not require the tied pub tenant to procure the beer or cider from any particular supplier, and

(c) it does not prevent the tied pub tenant from selling at the premises beer or cider produced by a person not mentioned in paragraph (a) (whether or not it restricts such sales).

The Pubs Code
Reg 31

Terms and conditions regarded as unreasonable in relation to proposed MRO tenancy etc

31.

(1) Paragraph (2) applies where—

(a) a tied pub tenant is subject to a tenancy ("the existing tenancy") granted by the pub-owning business;

(b) the tied pub tenant gives an MRO notice to the pub-owning business; and

(c) the pub-owning business sends a proposed tenancy ("the proposed MRO tenancy") to the tied pub tenant as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period.

(2) The terms and conditions of the proposed MRO tenancy, taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy, are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they—

(a) include a break clause in relation to the MRO tenancy which is exercisable only by the pub-owning business;

(b) impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the proposed MRO tenancy relates; or

(c) are terms which are not common terms in agreements between landlords and pub tenants who are not subject to product or service ties.

Reg 33

MRO procedure where a matter is referred to the Adjudicator in connection with the full response

33.

(1) Where—

(a) a matter is referred to the Adjudicator under regulation 32(2)(b) or (c); and

(b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that no failure has occurred in connection with the full response,

the full response provided by the pub-owning business under regulation 29(3) or (4) is deemed to have been received by the tied pub tenant on the day of the Adjudicator's ruling.

(2) Where—

(a) a matter is referred to the Adjudicator under regulation 32(2)(a) to (c); and

(b) the Adjudicator rules that the pub-owning business must provide a revised response to the tied pub tenant,

the pub-owning business must provide that response within the period of 21 days beginning with the day of the Adjudicator's ruling or by such a day as may be specified in the Adjudicator's ruling.

(3) A "revised response" is a response which includes the information mentioned in regulation 29(3)(a) to (c).

BEIS Guidance

The Pubs Code: Stocking requirement clarification note issued on 3 March 2017 by BEIS states:

Even if a stocking requirement were to be regarded as an uncommon term, it is implicit that regulation 31(2)(c) - read, as it must be, in the light of the governing terms of the 2015 Act - does not apply to a stocking requirement. In such case regulation 31(2)(c) could not have any legal effect if and insofar as it purported to apply to a stocking requirement, but section 43(4)(a)(iii) of the 2015 Act would continue to apply.

PCA Guidance

The PCA's Bulletin Note dated December 2016 confirmed that the PCA appointed arbitrator will determine the reasonableness of a proposed stocking requirement on a case-by-case basis.

IX: THE FACTUAL BACKGROUND

The current lease

28. The current lease under which Mrs & Mrs Bramley occupy and trade from the Premises is dated 10 April 2007. It was made between Punch and their predecessors in title, [redacted] who operated their business at the Premises through a company called [redacted] The term of the lease is 15 years from 11 May 2007. It therefore expires in May 2022.

The current stocking

29. There are 6 keg taps (or lines) at the Premises. From one of these taps, the Claimants have since 2017 stocked one of the Respondent's keg brands. This is a stocking percentage of 16.67%. Until an unspecified date in 2019 before September this was Amstel. It is now Birra Moretti. For an unspecified period of time the Claimants have stocked Caledonian Deuchers IPA ("Caledonian") one of the Respondent's cask brands. Again, for an unspecified period of time, the Respondent's PPB brands have constituted approximately 20% of its stock of PPB products.

Negotiations before the Offer

30. The Agreed Statement contains some factual background in relation to the position before the Respondent made the Offer. It is right to record that the Respondent's position before the Offer, set out in a proposed MRO lease sent on 3 December 2018, was more demanding than that contained in the Offer; for example it included provision for three "must-stock" items and an obligation on the Claimants to maintain line monitoring equipment. These requirements, and some others, were not included in the Offer and were therefore withdrawn. There is no need or purpose for me to determine hypothetical issues set out in terms that have been withdrawn. Those requirements are no longer in dispute between the parties. Quite rightly, the parties have restricted their Statements of Case and submissions to the terms of the Offer. This award therefore determines the dispute between the parties in respect of the Offer, as varied by the Respondent in its Response dated 19 September 2019.

The Offer

31. The terms of the Offer are set out in paragraph 7 above.

IX: THE PARTIES' CONTENTIONS

Claimants

32. The Claimants' initial position was that any stocking requirement in the proposed lease failed to comply with SBEEA 2015 and/or the Pubs Code. By the Claimants' response dated 6 September 2019, filed under the terms of Procedural Order No.1, the Claimants changed their position in respect of the KBSR and stated they were prepared to accept a KBSR of 1 tap (or line) and therefore one of the Respondent's keg brands. The Claimants have maintained their position that no CBSR is reasonable. By its Amended Statement of Claim dated 31 October 2019 the Claimants changed their position further in respect of the PBSR and stated they were prepared to accept *"a 20% stocking requirement within this* [PBSR] *category"*.

33. In their Amended Statement of Claim, the Claimants made the following submissions:

Generally, including KBSR

33.1. a stocking requirement under SBEEA 2015 is not intended to permit a POB brewer to impose its products on tenants who would otherwise choose to stock different products in line with their customers' wishes;

33.2. the purpose of a stocking requirement under SBEEA 2015 is to protect, but not to increase, the POB brewer's route to market;

33.3. the POB brewer should compete on its brand strength in the open market and other competing brands should be available for sale;

33.4. the issue of reasonableness must take into account the individual circumstances of the Premises;

33.5. it is important to consider the site's ownership and trade history, as well as the current products on sale. It would be unreasonable to expect a business to change the majority of its products. If the customers do not take to the new products, it would pose an unfair risk to the business given the dominant importance of beer sales at the Premises;

CBSR

33.6. Heineken is not a well-known cask brewer and any cask stocking requirement is not reasonable;

PBSR

33.7. the principal issue is the need for the Premises to respond to changes in market trends in particular in relation to craft beers. This is the fastest area of growth in the beer marketplace;

33.8. the Claimants wish to preserve the ability to increase the PPB offering of craft beers during the term of the proposed lease. The effect of the proposed 50% stocking requirement on this ability is and would be unclear. To impose a 50% stocking requirement *"could hinder the site's ability to remain competitive depending on how trends change"*;

33.9. fridge stock is more difficult to analyse as it has changed over time more than other product categories;

33.10. the Claimants would not expect in the foreseeable future to stock below the PBSR of 20% accepted in the Amended Statement of Claim. This level of PBSR is *"as close as possible to maintaining the status quo"*.

34. In their Final Submissions, the Claimants made the following submissions:

34.1. there must be a reasonable balance between the free-of-tenant's commercial freedom and the protection of the POB brewer's route to market[1];

34.2. the undisputed principle behind the incorporation of a stocking requirement is to protect a POB brewer's route to market;

34.3. the legitimate purpose of a stocking requirement is to protect, but not to increase, a brewer pub owning business' route to market;

[1] Citing Arb/103756/HELLIWELL *Garden Pub Limited v the Respondent & Anr* (*"Helliwell"*) paragraph 61: final award (save as to costs) dated 3 December 2018 issued by Fiona Dickie, then the Deputy Pubs Code Adjudicator.

34.4. any stocking requirement more than 1 keg line would be to increase, and not simply to protect, the Respondent's route to market at the Premises. This is contrary to the legislative intention of SBEEA 2015;

34.5. the issue of reasonableness of a stocking requirement should take into account the current stocking situation at the Premises as evidenced by the PSR;

34.6. any requirement to stock more than 1 line of the Respondent's cask brands would be to increase, rather than to protect, the Respondent's route to market;

34.7. a Respondent seeking to demonstrate the reasonableness of a stocking requirement must direct its evidence to *"the particular circumstances of the pub, its trade and its market"*[2]. On this point, the evidence from the TPT should be given due weight because by running a pub he will have *"a good grasp of trade in the area"*[3];

34.8. in the present case, Mr & Mrs Bramley, who run the Premises on a day-to-day basis and know what their customers want, are best placed to decide what products best suit their business. The current bar range is the product of this knowledge and experience and should therefore be considered reasonable in terms of the volume of Heineken brands.

35. In support of its submissions on the legitimate purpose of a stocking requirement the Claimants refer to and rely generally on the reported arbitration award issued by the Deputy Pubs Code Adjudicator in *Helliwell,* including paragraphs 39, 40, 42, 43, 52, 53, 55, 58, 61, 67 and 75. The Claimants relied on particular on:

35.1. paragraph 39, which stated the following:

"..... It is important to distinguish the opportunity to protect the brewer POB's route to market for products it brews (which accords with the policy intent of the legislation) from the opportunity to increase the brewer POB's route to market for those products (which does not and may raise competition issues which are matter for other authorities than the PCA). This is furthermore consistent with the two core principles of the Pubs Code – those of "fair and lawful dealing" and "no worse off"[4], and relevant to considering the test of reasonableness which each proposed MRO term must meet ....."

35.2. paragraph 75, which stated the following:

"Ultimately, it is the quality, range and marketing of the Respondent's products which helps to ensure its route to market. Whilst this range can be relevant to the reasonableness of a stocking requirement, I observe that this particular POB

[2] see *Helliwell* (paragraph 43). The Deputy Pubs Code Adjudicator heard oral evidence and submissions in *Helliwell.*

[3] *Helliwell* paragraph 52

[4] S42(3) SBEEA 2015

has the ability to bring its products to market by other means. The stocking requirement offers reasonable protection for the route to market, balancing all the circumstances including the business risk it presents, but does not offer an opportunity for artificial support to the brewer POB's trade against market forces by securing an increased or better route to market...."

36. In relation to the current trade of the Premises, the Claimants relied on paragraph 58 of *Helliwell* where it was said:

"The policy intention being to protect the route to market, it can be seen that protecting a variable and unguaranteed route to market for own-brewed products does not mean guaranteeing a route to market for at least the amount of landlord brewed product currently being stocked in the pub."

37. The Claimants' Final Submissions conclude by making a general submission that:

"In broad terms, it seems there is a common principle emerging whereby to increase the level of stocking requirement is particularly difficult to justify as being within the definition of policy's intention and to pass the test of reasonableness."

38. The Claimants' Final Submissions do not include positive submissions in respect of the contractual term of the proposed MRO lease and/or the operative period of the stocking requirement. Nonetheless, the Respondent has, quite properly, put into evidence the terms of the proposed MRO lease including the 10-year period of the Contractual Term under clause 1.1 and the operative period of the stocking requirement under clause 3.23.1. In *Helliwell*, the Deputy Pubs Adjudicator stated (paragraph 54):

"Nobody has a crystal ball, and the tied lease has a term of more than 14 years unexpired. The MRO lease must be for a term of at least as long. That is a very significant period over which to try to predict what it would be reasonable to stock in the pub, and a business should be ready to respond to changes in the market over time."

39. In relation to remedies, the Claimants seek in their Final Submissions an award not only declaring negatively that the stocking requirement in the Offer does not comply with SBEEA 2015 but also declaring positively the terms of a reasonable stocking requirement for the Premises for the purpose of the MRO lease negotiations.

40. The Claimants refer to and rely on the approach to jurisdiction in this respect taken in *Helliwell* in the paragraphs 77-78 and 80 of that award:

"77. In a MRO dispute referred for arbitration the PCA must "arbitrate the dispute or appoint another person to arbitrate the dispute. Regulation 33(2)

empowers me to rule that the POB must provide a revised response to the TPT. A revised response is a response which includes a proposed tenancy which is MRO compliant. The parties considered whether the extent of my power was to identify the compliance failures and order a revised response, or whether I could be more prescriptive and order the terms in which that revised response must be made.

78. I take the view that the reference to my powers in regulation 33(2) is not exhaustive. Its language is permissive, in that it does not restrict me in the scope of any ruling I may make as to the terms of the revised proposal. I must arbitrate the dispute, and that means that I should ensure that the Claimant obtains a compliant MRO proposal with the need to refer for further arbitration on the terms of the MRO lease. History indicates to me that the parties are unable to negotiate to an effective agreement, and therefore in this case, I have determined that I should order the compliant terms on which the revised proposal must be made.

....

80. The delay in concluding the compliant terms of an MRO agreement is potentially to the Respondent's advantage. It is a huge international brand with deep pockets. The financial burden of repeated litigation impacts on the tenant in a way it does not on the landlord. I am satisfied that I have the power, and indeed I ought, to bring this dispute to an end with an order which cannot result in further dispute between the parties as to what terms would be compliant in the revised proposal to be made pursuant to regulation 33(2). The parties have had more than sufficient opportunity to produce evidence to enable me to do so."

41. The Claimants' submissions do not include reference to any Advice or Guidance issued by the PCA or BEIS or to any arbitration awards issued and published by the PCA, other than *Helliwell*.

42. The Claimant's submissions do not address the restrictive effect, if any, on my jurisdiction of the agreement as to the scope of the issue in dispute recorded in the Agreed Statement set out in paragraph 16 above.

Respondent

43. The Respondent's position has been that all parts of its proposed stocking requirement comply with SBEEA 2015 and the Pubs Code. However, by its response dated 19 September 2019 filed under the terms of Procedural Order No.1, the Respondent reduced its proposed KBSR from not less than 60% to not less than 40% of the keg taps throughout the term of the proposed MRO lease.

44. The Respondent submitted that, because the SBEEA 2015 introduced the concept of a stock requirement *"it was never Parliament's intention for there to be 0% stocking requirement in new MRO leases where the pub owning business is also a brewer."*

45. In its Defence, the Respondent submitted on the issues of reasonableness that the following points are relevant:
    45.1. the locality and demographic of the Premises;
    45.2. the trading history of the Premises;
    45.3. the current stocking of beer brands at the Premises;
    45.4. the Respondent's brand portfolio.

46. it submitted further that in framing a compliant stocking requirement for a pub the Respondent will consider (1) the segment of the market, (2) suitable product categories (3) optimal product range and (4) the local market;

    <u>The locality and demographic of the Premises</u>

    46.1. the Respondent, by its *"analysis of the demographics of the pub"*, places the Premises in its *"Great Pub, Great Food"* category saying this categorisation is *"amplified"* by its 5-page undated Pub Catchment Report for the post code area SG14 3SB ("the PCR") produced from data provided by Experian;

    46.2. the Respondent states that *"using CGA[5] data the Respondent has established"* that the clientele of the pub would expect the following categories of product, which it says is optimum product offering at the Premises:
    46.2.1. one premium lager
    46.2.2. two continental lagers
    46.2.3. at least one craft lager
    46.2.4. one premium apple cider
    46.2.5. one premium flavoured cider
    46.2.6. one Guinness;

    <u>The trading history of the Premises</u>

    46.3. the Respondent relies on the (undisputed) fact that that the Premises has for some years since at least 2017 sold one of its keg brands (Amstel), one of cask brands (Caledonian) and various of its PPB products as evidenced by the figures stated in the Customer Information Pack for the Premises updated to 5 August 2019 ("the CIP") for the Premises for the years ending 31 July 2018 and 2019;

    <u>The current stocking of beer brands at the Premises</u>

[5] CGA data consultancy

46.4. the Respondent relies on the fact that that the Premises currently continues to sells one of its keg brands (now Birra Moretti) and one of cask brands (Caledonian) and various of its PPB products and again relies on the CIP[6]. It submits that the proposed CBSR would not therefore change the cask mix;

The Respondent's brand portfolio

46.5. the Respondent notes that the definition of Landlord's Keg Brands, Landlord's Cask Brands, PPB Own Brands and PPB Own Cider Brands in the proposed MRO lease refer in each case to brands produced by a "Group Undertaking" of Punch[7], the landlord; i.e. any Heineken brewing company;

46.6. the Respondent submits that the Heineken Group currently has over 250 leading beer and cider brands, including in the UK Fosters, Kronenburg 1664, Amstel and Birra Moretti, John Smith's, Strongbow, Bulmers and Desperados, and develops new products based on customer demand;

46.7. the Respondent submits that this brand portfolio offers the Claimant a wide, and increasing range, of brands for the proposed stocking requirement;

46.8. the Respondent states it is able to offer the following products which are comparable with the following third-party products currently stocked at the Premises. It states that based on its *"experience of the industry [its products] would enhance sales at the Premises"*[8]:

Respondent's brand	Third-party brand
Birra Moretti	Becks Vier
Orchard Thieves	Thatchers Cider
Maltsmiths	Mosaic

47. On the issues of commonality, the Respondent accepted that a stocking requirement is not currently common in non-tied pub leases. It submitted that this is the case because the stocking requirement is a new provision made available to POB brewers by SBEEA 2015. It submitted further that therefore a proposed stocking requirement *"cannot logically be subject to the same "commonality" requirement as other clauses with the proposed MRO leases"*.

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[6] In relation to the PBSR, the figures in the CIP indicate that the Claimant has stocked a variety of Heineken owned brands (Birra Moretti, Heineken, Sol, Leffe Blonde and various Old Mout brands) but do not indicate the percentage those brands represent.

[7] As that term is defined by s71(1) SBEEA and, in turn by s1161(5) Companies Act 2006. It therefore includes a parent undertaking or subsidiary undertaking of Punch or a subsidiary undertaking or any parent undertaking of that undertaking.

[8] In their response dated 6 September 2019 the Claimants did not reject this claim out of hand, saying that *"We have reservations .... that switching brands to Heineken would "enhance sales at the Premises"."*

48. The Respondent did not object to the introduction of the new arguments included by the Claimant in their Amended Statement of Claim. It did not seek permission to file an Amended Defence in response to the Amended Statement of Claim. Its Final Submissions confirmed that position. Its Final Submissions were directed to the points and submissions made by the Claimants in their Amended Statement of Claim and in their Final Submissions.

49. In its Final Submissions, the Respondent repeated the submissions made in its Defence. The Respondent submitted that:
    49.1. the inclusion of a stocking requirement pursuant to s68(7) SBEEA 2015 is justified to protect a POB brewer's route to market and permits the TPT flexibility to purchase beer and cider produced by the POB brewer from any supplier;
    49.2. the onus of proof is on the Claimants to prove that the terms of the stocking requirement (i.e. each of the KBSR, the CBSR and the PBSR) are uncommon or unreasonable. The onus of proof is therefore not on the Respondent to prove that those terms were common or reasonable;
    49.3. the Claimant, then HCPL, attached no documentation to the Statement of Claim or the Amended Statement of Claim and the Claimants have failed to discharge this onus of proof;
    49.4. the Respondent has taken into account of (1) the locality and demographic of the area in which the Premises are situated and (2) the *"circumstances"* of the Premises. It was said that *"very detailed and Premises specific consideration has been given by the Respondent in formulating its stocking obligation"*;
    49.5. on the basis of its analysis the Respondent considers that the proposed stocking requirement is (1) reasonable and (2) would not result in any loss of sales given the range of its brand portfolio.

50. In its Final Submissions the Respondent did not expand on the submission in its Defence that the onus of proof was on the Claimant to establish that the Stocking Requirement was unreasonable. It did not refer to or make submissions about the weight, if any, I should attach to the reasoning and conclusions of the Deputy Pubs Code Adjudicator in *Helliwell*. Further, it did not respond to or challenge the Claimants' submission in their Final Submissions that the Tribunal has jurisdiction to declare a positive stocking requirement for the Premises for the purpose of the MRO lease negotiations.

51. The Respondent's submissions do not include reference to any Advice or Guidance issued by the PCA or BEIS or to any arbitration awards issued and published by the PCA; e.g. as which party has the onus of proof on the issue of reasonableness (or unreasonableness as the case may be) in respect of a stocking requirement.

XI: THE EVIDENCE

Agreed Statement

52. The facts set out in the Agreed Statement relate only to the status of the parties and the procedure before and after the Referral by which Mr & Mrs Bramley have sought a new MRO lease proposal.

Documentary Evidence

Claimants

53. HCPL did not attach any documentation to the Statement of Claim. The Claimants did not attach any documentation to the Amended Statement of Claim. The Claimants filed and do rely on the PSR. However, the Claimants made no specific submissions based on the content of the PSR.

Respondent

54. The Respondent attached a number of documents to its Defence. The majority of that documentation related to the freehold and leaseholds titles to the Premises, the Offer and the correspondence by which the Offer was made (and an earlier offer which the Respondent accepted on 4 June 2019 did not comply with SBEEA 2015 and the Pubs Code). In relation to the stocking requirement issue, the Respondent filed and relies on the contents of the CIP and the PCR.

55. In its Defence the Respondent described the CIP as *"a standard document produced by the Respondent and shared with its tenants"* which lists the products sold at the pub in question and states the sales for the previous 2-year period[9]. The Respondent state that the CIP shows that annual sales of Amstel at the Premises have risen from 20.24 barrels in the year ending 31 July 2018 to 26.89 barrels in the year ending 2019. However, it is common ground that on an unspecified date in 2019 before 18 September 2019, the Claimants ceased to stock Amstel and started to stock in its place Birra Moretti, another of the Respondent's keg brands.

[9] The CIP included sales figures for Heineken 0.0%. However, in its Response dated 19 September 2019, the Respondent made it clear that it was not relying on this product in support of its case on the reasonableness of the stocking requirements because it is not classified as a "beer" in the statutory scheme.

56. The Respondent did not file a product stock report for the Premises. It did not formally admit the contents of the Product Stock Report. The obvious inference is that the Respondent agreed the contents of that report. In any event, it did not serve evidence to contradict the contents of that report.

Witness Evidence

Claimants

57. In their Amended Statement of Claim, the Claimants state, supported by their Statement of Truth, the follow evidential matters:

57.1. *"the Stocking Requirement would require the Claimants to change the majority of their products on the bar and pose an unreasonable level of risk to the business"*;

KBSR

57.2. *"the current stock range [excluding Heineken 0.0%) consists of:*
Birra Moretti (recently substituted for Amstel (Heineken owned)
San Miguel (Non-Heineken)
Becks Vier (Non-Heineken)
Guinness (Non-Heineken)
Thatchers Cider (Non-Heineken)
Mosaic (Non-Heineken)"

57.3. *"the product range has remained consistent in terms of overall Heineken keg brands since the first MRO notice was served back in 2017, at one single product"*;

57.4. *"the current keg stocking percentage is 16.7%"* (i.e. 1 tap/line of 6 taps/lines);

57.5. *"we consider that Heineken's range is sufficient to ensure that there would be a suitable product to substitute for this single line should trends change"*;

CBSR

57.6. the current stock range consists of:
Doombar (Non-Heineken)
Adnams Ghost Ship (Non-Heineken)
a rotating guest beer (Non-Heineken, but on occasions a Heineken brand)

57.7. *"whilst it is widely acknowledged that Heineken* [is] *a leading keg brewer, the range of options available on cask is far more restrictive";*

57.8. *"the only Heineken owned cask brand to have been stocked by the site is Caledonian"*;

57.9. Caledonian is the only top selling Heineken cask brand;

57.10. *"the trend is moving towards more local brewed products and it is not easy to predict which products will be popular in the future"*;

57.11. *"the lack of choice being bound to a single brand is of great concern. If the Caledonian product became unpopular, there would be no viable alternative from Heineken"*;

PBSR

57.12. the Premises stock a range of PPC products including Heineken owned brands. The percentage of Heineken owned brands has varied over time from 20% to 80%.

Respondent

58. The Respondent did not serve evidence in witness statement form. The Statement of Truth on the Defence, signed by the Respondent's solicitor who does not have first-hand knowledge of the Premises and the factual issues, does not identify any named individual who had such knowledge.

XIII: ANALYSIS

59. This analysis does not address each and every contention by the parties. It addresses those contentions I consider relevant to reach my determination.

The legislative intention

60. A stocking requirement in a MRO lease may be justified on the part of the POB brewer, and also be found reasonable on the facts, on the basis that it protects the POB brewer's route to market in a reasonable and proportionate manner taking into account the commercial interests of the TPT as well as the POB brewer.

61. I reject the Respondent's submission that, in the case of a POB brewer, the intention of the legislation was to exclude the prospect of a "0% stocking requirement". In my view, the SBEEA permits but does in any way mandate the inclusion of a stocking requirement in a MRO lease. There is no presumption in favour of a stocking requirement in the case of a POB brewer. In my view, it is for a POB brewer to prove that the terms of any stocking requirement it seeks to introduce into a MRO lease are reasonable on the facts of that case.

62. I consider that the Claimants are right in their submission that, in an appropriate case, the legitimate purpose of a stocking requirement is to protect, but not to increase, the POB brewer's route to market.

63. I do not however consider it correct that the legislation necessarily excludes a stocking requirement that has the effect of limiting a TPT's choice to stock products in line with its customers' wishes. This effect, if shown, is however a factor that is relevant to the overall assessment of reasonableness.

The legal test for compliance

64. It is common ground between the parties that, in order to be a MRO compliant response, the Offer must comply with s43(4)(a) SBEEA 2015 and s31(2)(c) Pubs Code. By s43(4)(a)(iii), in order to be compliant, a MRO response must not contain *"any unreasonable terms or conditions"*. The principal factual issue for my determination is whether each of the terms of the Stocking Requirement (KBSR, CBSR and PBSR) is reasonable on the facts of the present case. The parties accept that the assessment of reasonableness should take account of the individual circumstances of the pub in question.

65. I consider that this conclusion is the correct interpretation of s43 and s68 SBEEA 2015 and the reg 31 Pubs Code. It is also supported by the PCA Guidance in its Bulletin note dated December 2016. It is also consistent with the reasoning of the Deputy Pubs Code Adjudicator in her award in *Helliwell*. I am not of course bound by the decision in *Helliwell* but am entitled to take that reasoning into account. The Respondent did not make any responsive submissions about *Helliwell* and did not therefore submit that the reasoning was flawed. The Respondent did not rely on any previous PCA arbitration awards to support its submissions.

<u>Reasonableness</u>

66. In my view, the test of reasonableness is open-ended and depends on the facts of the case, the nature and quality of the evidence relied on by the parties and the Tribunal's assessment of that evidence.

67. The assessment of reasonableness includes, but is not limited to, the points relied on by the Respondent; namely the locality and demographic of the Premises, the trading history of the Premises, the current stocking of beer (and cider) brands at the Premises and the Respondent's brand portfolio. The assessment includes the history and nature of the TPT's business, the evidence from the TPT as to the potential future development of that business and the potential demands from its customers during the period of the proposed stocking requirement.

68. I consider that, where the TPT has given evidence concerning its own business at the pub in question, that evidence should be given due weight because it is inherently likely to be well-informed and specific to the pub in question.

69. I consider also that the duration of the proposed stocking requirement is a relevant consideration when assessing reasonableness. The proposed length of the MRO lease is 10 years from 2019. That is a significant period of time during which the Claimants are entitled to respond to their customer's wishes as to stocking at the Premises. The duration of the proposed stocking requirement was not an issue addressed by either party in the Statements of Case or Final Submissions. Procedural Order No. 1 recited that the Tribunal will consider the pleaded issues, which I interpret as including those issues addressed also in the parties' Final Submissions. For that reason, I do not take the duration of the proposed stocking requirement into account in my determination. However, had the parties addressed this issue, it may well have been the case that it would have provided further support for the Claimants' position that the Stocking Requirement was unreasonable.

Commonality

70. I accept the Respondent's submission, made against itself, that being a provision introduced by SBEEA, a stocking requirement is not currently common in non-tied pub leases. This may or may not prove to the case in the future. I do not find against the Respondent for this reason and consider that it is a neutral point in the present case. I am content to adopt the BEIS Guidance issued on 3 March 2017 that, until issues of commonality become clear, the relevant test is reasonableness under s43(4)(a)(ii) SBEEA 2015.

The onus of proof

71. The Respondent has cited no legal basis for its position that the onus of proof is on the Claimants to prove that the terms of the stocking requirement (i.e. each of the KBSR, the CBSR and the PBSR) are unreasonable. It has therefore also not cited any legal basis for its position that the onus of proof is not on the Respondent to prove that those terms were reasonable.

72. I consider that the correct interpretation of s43(4) SBEEA 2015, including sub-paragraph (iii), is that the onus of proof is on the POB brewer, and therefore the Respondent, to prove that a proposed stocking requirement is reasonable. In my view, this is consistent with the intention of the legislation to permit a TPT to move free-of-tie, the general duty on the POB brewer of "fair and lawful dealing" and the

general principle that the TPT shall be "no worse off" going free-of-tie. In addition, the greater information and resources available to POB brewers indicate that this is a fair conclusion. Finally, a conclusion that the onus of proof is on the TPT would create for the less well informed and resourced party the general forensic difficulty of proving a negative.

The evidence

73. Mr & Mrs Bramley have given evidence in this matter through their Statements of Truth supporting the facts and evidence set out in the Amended Statement of Claim. The Respondent has elected to have this matter determined on the documents and without challenging Mr & Mrs Bramley's evidence by cross-examination. The Respondent does not submit that their evidence is not genuine or that it is flawed or mistaken for any identifiable reason.

74. The Respondent is correct that the Claimants have not relied on documentary evidence in support of their evidence about the future risk to their business from the Stocking Requirement. On the other hand, the Respondent has not pointed to any evidence from the documentation it has relied on (PSR, CIP and PCR) that contradicts the Claimants' evidence or renders it unreliable.

75. The evidence the Respondent has relied on is either uncontroversial, for example, in relation to the trading and stocking history as evidenced by the CIP and PSR, or is generic to a locality that includes the Premises, as evidenced by the PCR. The Respondent has not relied on factual witness evidence, for example evidence in witness statement form, from any individual with first-hand knowledge of the Premises and the Claimants' business.

76. I see no basis for rejecting the evidence from Mr & Mrs Bramley regarding the risk of, or potential for, adverse effect that the proposed stocking requirement would have on their business at the Premises and, in particular, the risk that the restrictions placed on their choice of products would prevent them from responding to changes in customer demand.

77. I accept the Claimants' evidence that *"the Stocking Requirement would require the Claimants to change the majority of their products on the bar and pose an unreasonable level of risk to the business"*.

78. In relation to the KBSR, I also accept their evidence, against themselves, that *"we consider that Heineken's range is sufficient to ensure that there would be a suitable product to substitute for this single line should trends change"*.

79. In relation to the CBSR, I accept their evidence that they keep only a limited number of cask brands and that *"the trend is moving towards more local brewed products and it is not easy to predict which products will be popular in the future"*.

80. In relation to the PBSR, I accept the Claimants' submission that the principal issue is the need for their business at the Premises to be able to respond to changes in market trends in particular in relation to craft beers, which is the fastest area of growth in the beer marketplace.

Has the Respondent discharged the onus of proof?

81. I conclude having read the evidence and submissions made by both parties that the Respondent has failed to discharge the onus of proof on it to prove that any part of the Stocking Requirement (KBSR, CBSR and PBSR) is reasonable.

82. The Respondent have not put forward any evidence or submissions that cause me to reject the Claimants' evidence or to conclude that it is unreliable or not genuine. In relation to documentary evidence, I do not consider there are any specific factual points to taken or inferred from the PSR, CIP or PCR that challenge or undermine the Claimants' evidence that the Stocking Requirement pose a risk to their business during the term of the MRO lease.

Does the Offer comply?

83. For the reasons set out in my Analysis above, I conclude that the Respondent has failed to establish that the terms of the Stocking Requirement in respect of the KBSR, the CBSR$ and the PBSR are reasonable. Accordingly, the Offer does not comply with SBEEA 2015 and/or the Pubs Code.

Jurisdiction to declare a compliant stock requirement

84. The Claimants submit that I have jurisdiction not only to declare the Stocking Requirement non-compliant but also to declare the terms of a compliant stocking requirement. By inference, the Claimants submit that the terms of a reasonable stocking requirement are those they have indicated they will accept. Those terms are, in summary:

    84.1. PBSR: 1 tap (or line)

84.2. CBSR: 0

84.3. PBSR: 20%

85. The Respondent has not made submissions to the contrary as to my jurisdiction or as to any terms other than those it has maintained are reasonable and compliant in this arbitration. It has not addressed submissions in response to the Claimants' reliance on *Helliwell*, in which the Deputy Pubs Code Adjudicator found that she had such jurisdiction. I adopt the reasoning in *Helliwell* set out in paragraph 40 above and conclude I have such jurisdiction.

86. In exercising that jurisdiction, I take into account the passage of time that has elapsed since the Respondent made its first offer, the fact that the Claimants' referral to the PCA was in January 2019, the ineffectiveness of two stays to permit the parties to negotiate further, the revisions the Respondent has made to the Offer (e.g. as to not less than 40% for the PBSR), the disparity of resources between the TPT and the POB and the costs that would otherwise be incurred by the TPT in further negotiation in relation to a reasonable stocking requirement.

XIV: CONCLUSION

87. Having considered the parties' evidence and submissions, I conclude that:

87.1. the Stocking Requirement is unreasonable and does not comply with s43(4)(a)(iii) SBEEA 2015 and reg 31(2)(c) the Pubs Code;

87.2. a stocking requirement for the Respondent's Cask Brands would be unreasonable;

87.3. I have jurisdiction to declare a compliant stocking requirement;

87.4. a compliant stocking requirement will provide that the Claimants shall ensure that throughout the term of the proposed lease or for the first 10-year period of the term, whichever is the shorter that:

87.4.1. one tap at the Premises shall dispense one of the Respondent's Keg Brands as that term is defined in the proposed MRO lease;

87.4.2. 20% of the premium packaged brands ("PPB") of beer and cider available for sale at the Premises shall be one or more of the Respondent's PPB Own Brands of beer and/or cider as those terms are defined in the proposed MRO lease;

87.4.3. the Claimants shall procure that 20% of the shelf space used for PPB of beers and cider shall be used for the Respondent's brands, with equal prominence to other PPB brands sold.

XV: TRIBUNAL FEES & PCA COSTS

Tribunal Fees

88. Pursuant to s51(6) SBEEA, in the absence of a finding that a claimant's reference to arbitration is vexatious, the Respondent is liable for the Tribunal's fees and expenses. The Respondent has not sought to argue that the Claimants' reference to arbitration is vexatious.

89. The unpaid balance of the Tribunal's fees for these proceedings, as evidenced by invoice dated 27 February 2020, from appointment on 6 June 2019 to signature of this Final Award, are £25,200 inclusive VAT (£21,000 + £4,200 VAT).

PCA costs

90. The PCA's costs are £80 (0.5 hours at £160 per hour), as stated in the PCA's letter of appointment dated 6 June 2019.

XVI: CONFIDENTIALITY

91. These arbitration proceedings, including all statements of case, submissions and evidence filed and this award (and any part or extract from this award) are and remain confidential under the Pubs Code, as confirmed by paragraph 6 of my Terms of Appointment. Publication or quotation is not permitted unless both parties consent to full publication of the award in which event personal data should be redacted in accordance with the General Data Protection Regulation (EU 2016/679).

XVII: FINAL AWARD

92. Having read the evidence provided by both parties and having received their submissions and for the reasons set out above, I, [redacted], do hereby issue my award as follows:

92.1. the MRO tenancy proposed by the Respondent sent to the Claimants on 4 June 2019 ("the Offer") does not comply with s43(4)(a) of SBEEA 2015 and reg 31(2)(c) of the Pubs Code in respect of the proposed Stocking Requirement;

92.2. the Stocking Requirement is unreasonable and does not comply with s43(4)(a) SBEEA 2015 and reg 31(2)(c) the Pubs Code;

92.3. I have jurisdiction to declare a compliant stocking requirement;

92.4. a compliant stocking requirement will provide that the Claimants shall ensure that throughout the term of the proposed lease or for the first 10-year period of the term, whichever is the shorter that:

92.4.1. one tap at the Premises shall dispense one of the Respondent's Keg Brands as that term is defined in the proposed MRO lease;

92.4.2. 20% of the premium packaged brands ("PPB") of beer and cider available for sale at the Premises shall be one or more of the Respondent's PPB Own Brands of beer and/or cider as those terms are defined in the proposed MRO lease;

92.4.3. the Claimants shall procure that 20% of the shelf space used for PPB of beers and cider shall be used for the Respondent's brands, with equal prominence to other PPB brands sold.

92.5. the Respondent shall not later than 13 March 2020 pay the PCA its costs in the sum of £80;

92.6. the Respondent shall not later than 13 March 2020 pay the Tribunal its fees assessed in the sum of ££25,200 inclusive VAT (£21,000 + £4,200 VAT);

92.7. there is no order as to costs between the parties.

This Final Award is made on 27 February 2020

The seat of the arbitration is England

Sole Arbitrator

In the presence of and witnessed