

ENGLAND AND WALES / JUDGMENT

Stonegate Farmers Limited v Chucks Farm Limited

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Neutral Citation Number: [2026] EWHC 742 (Comm) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES CIRCUIT COMMERCIAL COURT Case No: CC-2025-BRS-000018 Bristol Civil & Family Justice Centre Bristol BS1 6GR Date: 27/02/2026
Before : HHJ RUSSEN KC (Sitting as a judge of the High Court)

- ----- Between: STONEGATE FARMERS LIMITED
- and - CHUCKS FARM LIMITED Claimant/Applicant Defendant/Respondent
- -----
- ----- Rahul Varma and Rosamund Baker (instructed by Forsters LLP) for the Claimant/Applicant Charlie Greenwood (instructed by Blacks Law LLP) for the Defendant/Respondent Hearing date: 4th February 2026 Draft judgment circulated 16th February 2026
- ----- Approved Judgment This judgment was handed down remotely at 10.00am on Friday 27th February 2026 by email to the parties' legal representatives. The claim was heard in private in accordance with CPR 62.10 but after handing down the parties agreed to the publication of the judgment with the redactions in paragraphs 22, 26 and 27. HHJ RUSSEN KC HHJ RUSSEN KC Approved Judgment HHJ Russen KC:
A. Introduction Stonegate Farmers v Chucks Farm 1. 2. 3. 4. This is my judgment on the claim brought by the Claimant ("Stonegate") who challenges a consequential award dated 2 July 2025 ("Award 2") made by Mr Anthony Glaister FCI Arb ("the Arbitrator"), which was then the subject of a further decision on 1 August 2025 under section 57 of the Arbitration Act 1996, in an arbitration between Stonegate and the present Defendant ("Chucks Farm"). The Arbitrator was appointed on 8 January 2025 and, in an arbitration whose subject matter is explained below, Chucks Farm was the claimant and Stonegate the respondent. Stonegate's challenge to Award 2 is made primarily under section 68 of the Arbitration Act 1996 ("the Act"), on the ground of alleged serious procedural irregularity, but in the alternative Stonegate seek to appeal against it, on a question of law, under section 69. Central to Stonegate's challenge seeking the setting aside of Award 2 is their complaint about the Arbitrator's finding that it was in breach of an implied term of the contract between the parties ("the Implied Term" set out in paragraph 24 below). This judgment follows the

hearing directed by my Order dated 4 November 2025. That order was made on consideration of the papers including the parties' rival skeleton arguments. Stonegate's position was that I should postpone determination of the appeal under section 69, including their application for leave to appeal, after the decision on the section 68 challenge. Chucks Farm invited me to consider and dismiss the application for permission to appeal. I decided to direct a hearing of Stonegate's challenge under section 68 and the Claimant's application for leave to appeal (and of Chucks Farm's Respondent's Notice so far as it relates to the issue of leave to appeal). It appeared to me that a hearing on the issue of leave to appeal was required for the purposes of section 69(5) of the Act, particularly when Chucks Farm's position on the section 68 challenge is that the issue of the Implied Term was before the Arbitrator and properly decided by him without him being in breach of duty as alleged by Stonegate on that challenge. In my brief written reasons given in support of that order I explained that I considered Stonegate's case of serious procedural irregularity under section 68(2)(a) to be sufficiently closely related to the challenge to the Arbitrator's finding in relation to the Implied Term that the most cost-efficient and expeditious way to dispose of the claim was for the hearing of the application for leave to appeal under section 69 to be combined with the hearing of the challenge under section 68. However, the parties not having agreed that the hearing should be a fully "rolled up" one, which would include argument on the substantive merits of the appeal should leave be granted, I made it clear that the present hearing would be one leading to a decision on the section 68 challenge and (to the extent it remained material in the light of that decision) the application for leave to appeal under section 69. As I explained in those reasons, it followed that the focus of the latter will be upon the requirements of section 69(3).

B. Background 5. On 21 September 2020 Stonegate and Chucks Farm (the agreement was also described as being between "Martin Fox t/a Chucks Farm Limited") entered into an egg supply agreement under which Chucks Farm agreed to supply eggs to Stonegate ("the HHJ RUSSEN KC Approved Judgment Stonegate Farmers v Chucks Farm Agreement"). The Agreement provided for Chucks Farm to supply Stonegate with "all eggs produced by the Laying Flocks" at the prices specified by clause 9 and on terms which included an obligation upon Chucks Farm to comply with various industry codes of practice, including "the Code of Practice for Lion Eggs". That is a code of conduct issued by the British Egg Industry Council ("BEIC") to monitor hygiene standards in the egg industry and in respect of which the BEIC upholds a register assigning the Lion Code registration number ("the Lion Code") of any given farm (in this case Chucks Farm) to the relevant packer or 'subscriber' (in this case, Stonegate).

6. 7. In 2023, a dispute arose between Stonegate and Chucks Farm about the term (i.e. duration) of the Agreement, specifically whether the Agreement was to expire in January 2024 or whether a variation to the Agreement had been agreed in early 2023 by which Chucks Farm was obliged to supply Stonegate with eggs until 1 October 2025. Stonegate alleged that the Agreement had been validly varied and that Chucks Farm's contractual obligations did not terminate until 1 October 2025. Chucks Farm denied this. Their supply of eggs to Stonegate ceased in January 2024. Attempts to resolve that dispute by agreement were unsuccessful and on 15 March 2024 Chucks Farm issued a claim in Northern Ireland (where their business is based)

seeking damages and a mandatory injunction requiring Stonegate to “deliver up the Lion Code forthwith”. By this point, Chucks Farm had sought to contract with another subscriber, Morrisons Plc, and therefore wanted to transfer the Lion Code to Morrisons on the BEIC’s Lion Code database. 8. Later in 2024, the proceedings in Northern Ireland were stayed without relief being given. C. The Arbitration 9. Following the stay of the Northern Irish proceedings, Chucks Farm then initiated an arbitration under cl. 12.6 of the Agreement. On 8 January 2025, the Arbitrator was appointed. 10. By their Points of Claim in the arbitration Chucks Farm claimed damages for the following alleged breaches of contract:

1. failing to agree to release the Claimant’s Lion Code;
 2. requesting the BEIC not to release their Lion Code;
 3. preventing Chucks Farm from meaningful trading;
 4. harming Chucks Farm’s reputation with the BEIC; and
 5. preventing Chucks Farm from entering into other egg supply contracts with the benefit of Lion Code assurance.
11. Stonegate denied that there had been any breach on their part and counterclaimed for damages on the basis of Chucks Farm’s alleged breach in ending the supply of eggs in HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* January 2024 when Stonegate say the extended contract would have ended in October 2025. 12. 13. 14. 15. 16. 17. Awards 1, 1b, 1c and 1d On 4 February 2025, at Chuck Farm’s request, the Arbitrator gave directions for the determination of “the preliminary issue as to whether the Respondents are justified in retaining the Claimant’s Lion Code, and if so whether the Lion Code should be released back to the Claimants in advance of [his] dealing with the remaining substantive issues” (“the Preliminary Issue”). Stonegate denied that they were obligated to take any steps in respect of the Lion Code at all, or at least until the Arbitration had resolved the contractual position. Their position was that the BEIC will not release the code to another distributor until such a dispute is resolved. The Preliminary Issue was originally determined in an award dated 12 March 2025 (“Award 1”) and the Arbitrator granted a mandatory injunction, compelling Stonegate “to return to [Chucks Farm] their Lion Code as soon as possible and in any event no later than Wednesday 2nd April 2025”. The Arbitrator granted that injunction expressly on the basis that the merits of Stonegate’s position on the substantive issues in the Arbitration were irrelevant. He said at paragraph 11 of Award 1: “I need not delve into the question of whose interpretation of what was or was not agreed in 2023 [was correct] as I have decided that whoever is correct there is no adequate reason for [Stonegate] to continue to retain the Claimants [sic] Lion Code”. On 19 March 2025, Stonegate submitted an application under section 57 of the Act for the correction of Award 1. Stonegate said it was obviously wrong and/or procedurally irregular to grant an injunction in relation to the Lion Code when the decision to do so was expressly made without regard to the broader merits of Chucks Farm’s case in the Arbitration and where there was no term in the Agreement requiring the “return” of the Lion Code either at the end of the Agreement or whilst there was an ongoing dispute about its duration. That

application under section 57 led to the Arbitrator making an addendum to Award 1 (“Award 1b”) on 21 March 2025. Award 1b merely confirmed that no amendment would be made to Award 1. The Arbitrator did not accept Stonegate’s contention that ordering the release of the Lion Code effectively decided the whole case. Stonegate then submitted a second section 57 application on 31 March 2025. The essential reason for the application was that the Lion Code was not “property” within their ownership or possession, as, in any event, it was the BEIC who retained the Lion Code. This led to a further award dated 3 April 2025, which varied Award 1 (“Award 1c”). Award 1c varied the injunction from a mandatory one to a prohibitory one. It provided that Stonegate “should not obstruct and/or prevent the transfer of the Claimant’s Lion Code to another subscriber if requested to do so by the BEIC”. HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* 18. 19. Unhappy with that, Chucks Farm then made their own section 57 application on 15 April 2025. By this point, Stonegate had issued an appeal to the High Court in relation to Award 1 (as varied by Award 1c). In response to Chucks Farm’s application, the Arbitrator made a further award dated 29 April 2025 discharging Award 1 and its addenda (“Award 1d”). By Award 1d, the Arbitrator accepted Stonegate’s case that he had acted ultra vires in making Award 1 (as varied) and he reserved costs of the Preliminary Issue. Stonegate therefore discontinued its appeal. 20. The effect of Award 1d was, as the Arbitrator put in Award 2 (at paragraph 10) that he resiled from Award 1 and what had been the Preliminary Issue was moved forward to be dealt with in the substantive hearing. Award 2 and the Section 57 Decision 21. Following Award 1d, the parties then exchanged their statements of case in the Arbitration. The issues for decision (as identified at paragraph 11 of Award 2) were:

1. Was the Agreement varied in or around March 2023?
2. If it was varied, were Chucks Farm in breach of contract and, if so, what were Stonegate’s losses?
3. If it was not varied was Stonegate in breach and, if so, what remedies were Chucks Farm entitled to? Were Stonegate justified in not releasing Chucks Farm’s Lion Code?
4. If there was no variation what sum was Stonegate entitled to be repaid? 22. 23. 24. I note that the last of those issues arose because Stonegate had paid higher prices for eggs between 1 August 2023 and 20 January 2024 and factual and accountancy evidence was adduced in relation to periods of alleged overpayment and underpayment, alongside what was described as [REDACTED]. In the event, the Arbitrator found [REDACTED]. In relation to the third issue, Chucks Farm maintained that Stonegate was obliged to “return the Lion Code”. As I return to below, no express term in the Agreement was relied upon by Chucks Farm in their Statement of Case. After a hearing with evidence on 10 June 2025, on 2 July 2025, the Arbitrator produced Award 2 (although it was not received until 9 July 2025 and thereafter some mathematical calculations were rectified by the Arbitrator on 11 July 2025). Award 2 determined that there had been no variation to the Agreement (contrary to Stonegate’s case). The Arbitrator also found the existence of the Implied Term. He said, at paragraph 58: HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* “... I find that there is an

implied term in the Original Agreement to give it business efficacy that the Lion Code should be released once the supply contract came to an end and the distributor, Stonegate, should not stand in the way of a request to transfer the relevant Lion Code registration to another subscriber as and when their contract with Chucks had come to an end. If I decide there was no extension agreed, then that was on or about the 20 January 2024.” 25. That finding was made with the Arbitrator having acknowledged, at paragraph 13, that: “There was no mention within the contract of what would happen to the Lion Code if the contract was terminated. There was simply a requirement to comply with codes of practice at clause 8, to include the Code of Practice for Lion Eggs, which code sets out the threshold for egg quality and stock welfare.” 26. The Implied Term was the basis for an award of damages of approximately [REDACTED] (and continuing at the rate of [REDACTED] per week until the Lion Code was released) for losses claimed by Chucks Farm in respect of sales of eggs to other purchasers after March 2024 at lower prices in the non-Lion Code branded egg market. 27. Relevantly for present purposes (he went on to address interest and costs), the Arbitrator concluded Award 2 as follows: “1. The original agreement of 21 September 2020 was not varied by oral agreement on the 21 February 2023 or by letter dated 2 March 2023 or by subsequent conduct.

2. The Original Agreement therefore expired on the depletion of the second full laying flock on or about the 20 January 2024.
3. The respondent is in breach of contract for failing to agree that the Claimant’s Lion Code registration be released or otherwise transferred to another distributor in or about February 2024 thus preventing the Claimants from entering into more remunerative contracts with the benefit of Lion Code assurance.
4. The Claimant is entitled to be paid and shall be paid by the Respondent within 14 days the following losses claimed:
 - a. Underpayments in the period between 2 January 2021 and 20 January 2024 of [REDACTED]
 - b. Period 1 losses from 20 January 2024 to 18 April 2024 of [REDACTED]
 - c. Period 2 losses between 1 January 2025 and 30 June 2025 of [REDACTED] (not [REDACTED])
 - d. Continuing losses until the Lion Code is released or otherwise [REDACTED] per week or pro rata.
5. The Respondent is entitled to be repaid or set off against the above [REDACTED] otherwise the Respondent’s Counterclaim fails.” HHJ RUSSEN KC Approved Judgment Stonegate Farmers v Chucks Farm 28. 29. 30. 31. Stonegate did not challenge the Arbitrator’s findings in relation to the correct termination date of the Agreement but instead the existence of the Implied Term which exposed them to Chucks Farm’s damages claim. Stonegate made a further section 57 application in relation to Award 2 on 14 July 2025. This did not seek the correction of the Award but instead asked the Arbitrator to clarify and explain the Implied Term and to remove any potential ambiguities in it. On 25 July 2025, in the interests of

avoiding potentially unnecessary costs, the parties agreed that the 28-day period for appealing Award 2 would run from the date that the Arbitrator delivered his section 57 decision. Chucks Farm's responded to the section 57 application on 29 July 2025 with a Response headed 'IMPLIED TERM'. By an email dated 15 July, the Arbitrator had informed the parties that he was away until 22 July and had invited any response by that date. The service of Chucks Farm's response on 29 July reflected the fact that Ms Sharon Keeley on their behalf had replied on 17 July saying she was on holiday and the offices closed until 21 July and their counsel was on holiday until 26 July. She asked for an extension until after counsel's return. By an email of 17 July, the Arbitrator responded: "Thanks. If you can let me have your comments by the end of the month if possible." Chucks Farm's response relied upon what was said to be Stonegate's tacit acceptance that once the Agreement was at an end the Lion Code would be released, so "[t]he logical follow on from that is that [Stonegate] has accepted that the release of the Lion Code was already implied into the contract. That that was the case was so obvious as not to require any further clause." Chucks Farm said: "[t]he fact of the implied term that the Lion Code would be released once the contract came to an end was central to the entire case and was so closely tied into the principal facts of the case as to make specific reference to it in the pleadings redundant." Their response referred to the discretion of the Arbitrator under section 34 of the Act in relation to procedural and evidential matters, including (under section 34(g) "whether and to what extent the tribunal should itself take the initiative in ascertaining the fact and law." It also referred to the decision of the Supreme Court in Marks & Spencer Plc v BNP Paribas [2015] UKSC 72 on the test to be applied for implying a term (in fact) on the ground of business necessity. 32. By an email sent on 30 July (16:10), Forsters LLP (Stonegate's solicitors) observed that the response was the first time that any law or submissions regarding implied terms had been raised by Chucks Farm. They also said: "Stonegate agrees with the characterisation of the BEIC's position found in paragraph 2(c), namely that: "They [BEIC] conclude that the release of the Lion Code is dependent on the ending of the contract between the parties either by agreement or through the decision of the arbitration". The learned Arbitrator is invited to reflect upon that proposition carefully, as any appeal Court would be invited to." 33. At 17:56 on 30 July, the Arbitrator directed that Stonegate address the law of implied terms by 10am on 1 August 2025. On 31 July (20:43), Forsters stated that, due to their counsel's other professional commitments and parental leave, respectively, it would be HHJ RUSSEN KC Approved Judgment Stonegate Farmers v Chucks Farm impossible to address implied terms within one clear day. They said they required more than just that day to prepare Stonegate's submissions, saying "[t]his is a matter of basic procedural fairness; one clear day is plainly not the "reasonable opportunity" contemplated by section 33." Forsters sought until 5 September 2025 to allow for the Arbitrator's imminent holiday and the unavailability of counsel, though they went on to say "we would be happy to consider any alternative date which might assist the Learned Arbitrator and/or Chucks' representatives." 34. On 1 August (09:15), the Arbitrator asked Forsters whether Stonegate had paid the damages under Award 2. Later, at 14:23 and before Forsters had replied, the Arbitrator issued his Response dated 1 August 2025 to Stonegate's application under section 57 ("the Section 57 Decision"). This was

some 3 minutes after Ms Keeley on behalf of Chuck's Farm had said they were not in a position to consent to Stonegate's request for an extension until 5 September 2025. 35. By his email dated 1 August (14:23) attaching the Section 57 Decision, the Arbitrator said: "Thank you for your emails. I cannot allow this to drift just because counsel is unavailable for weeks. I attach my decision. I have not applied my usual lien but trust you can deal with my account shortly." 36. So far as the timing of the Section 57 Decision is concerned, the Arbitrator also said within it (at paragraph 11): "They [Forsters] asked for time to respond. I replied that given the straightforward nature of the references, if In [sic] received a response by 10am on Friday 1 August I would take that into consideration. Forsters then asked on the 31 July for an extension until their counsel returned from holiday in early September. I asked earlier today 1st August whether Chucks Farm had been paid the sums set out in my award and I did not receive a reply. I estimate that no sums have been paid. I do not consider that it is right to delay my determination that long and hence I make it today." 37. The Arbitrator also stated: "I shall release this decision promptly due to my indisposition for 3 weeks after 2 August 2025." That was a reference to him going on holiday. 38. In addressing the Implied Term and Stonegate's application for clarification of Award 2, the Section 57 Decision (having quoted paragraphs 13 and 58 of the Award) said: "6. I am asked to clarify a number of points in these paragraphs about my finding that there is this implied term in the Original Agreement that upon request to release it, the Lion Code should be released to another distributor providing the contract with Stonegate had ended. But before doing so Chucks Farm reminded me of my general duties under s34 Arbitration Act 1996 giving me a broad discretion over procedural issues, including deciding the extent to which the tribunal take the HHJ RUSSEN KC Approved Judgment Stonegate Farmers v Chucks Farm initiative in ascertaining the facts and the law and that I may take the initiative in ascertaining the facts and the law which I believe I have done to the best of my abilities.

7. It is Stonegate's complaint that the implied term was not pleaded, was not in the skeleton argument, or in the closing address of Chucks Farm. How then could I decide that there was such a term? Chucks Farm say that the test to apply is the same test as in Marks & Spencer Plc v BNP Paribas (2015) UKSC 72 namely that the term can be implied if it was so obvious that it goes without saying and that the term is necessary to give business efficacy to the contract. In the light of the express terms of the contract, commercial common sense, and on the basis of the facts known to both parties at the time the contract was entered into.
8. An egg producer like Chucks Farm upon signing Stonegate's standard contract would no doubt if asked how long Stonegate could retain his Lion Code would reply that it was so long as he was in contract with Stonegate. As a principle of commercial common sense, Stonegate would and indeed did agree with that statement. Quoting Bowen LJ in The Moorcock (1889) 'It will be found that ... the law is raising an implication from the presumed intention of the parties with the object of giving the transaction such efficacy as both parties must have intended that in all events it should have'.

9. Whilst the question wasn't put to the parties if either had been asked 'if Stonegate attempted unsuccessfully to extend the contract, depriving the producer of being able to trade elsewhere with the benefit of the Lion Code, would the producer be deprived of any remedy' the answer surely would be of course not, because there was a common understanding between the parties that at the end of the original contract the producer should be entitled to get his Lion Code registration back again to be used by another distributor replacing Stonegate. Further reference was made within Chucks Farm to the statements of the learned judges in *Reigate v Union Manufacturing* and *Shirlaw v Southern Foundries* along the same lines as Bowen LJ made in *The Moorcock* all those years ago.
12. I am asked the following questions
- a. With reference to specific paragraph numbers, please identify where in Chucks Statement of Case dated 19 February it is said that such a term should be implied. Answer: In the Points of Claim '... the contractual duties in relation to the Lion Code are set out in clause 8 of the Agreement in that the Claimant's responsibility is to ensure it complies with the Code of Practice' (para 12) and in the breaches 'Failing to agree to release of the Claimant's Lion Code' (para 16a). Further 'Requesting the BEIC not to release the Claimant's Lion Code' (paragraph 16b). In the Points of Reply and Counterclaim at paragraph 13a Stonegate say that they are the registered subscriber in relation to the Claimant's farm on the BEIC database and this 'reflects the contractual position'. HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* It is or ought to be common ground that once a contract is terminated the Lion Code should be transferred to whoever is the next purchaser of the producer's eggs. Stonegate's Responsive submissions on the Preliminary issue at paragraph 34(b)I at p269 of the bundle says 'It is correct and proper that the Lion Code registration remains with the Stonegate (the supplier to which the Claimant is contractually obligated)'. Further in the same document at p269 Stonegate say 'Stonegate's position on the Lion Code is that it is appropriately with the Subscriber who has the contractual entitlement to receive eggs from the registered producer. It would make a mockery of the system if the contractual position did not factor into the Lion Code register in some way'. Ergo if there is no contractual entitlement it must follow that there is no right to retain the Lion Code registration. There is further evidence such as the letter of the 6 February 2023 from Stonegate to Chucks Farm at option 1 and 3 (p25) – release the Lion code once 'our trade comes to an end' and Mr Gotts evidence in cross examination – if there is no contract there is no right to retain the Lion Code. There is otherwise no error requiring correction, ambiguity or clarification within the scope of s57(3)a.
- b. With reference to specific paragraph numbers please identify where in Chuck's skeleton argument the Arbitrator considers that

- i. The relevant law regarding implied terms is traversed, and ii. Chucks submits that a term as per paragraph 58 of the Award should be implied into the Original Agreement. Answer: I have interpreted the facts and the law as best I can and I don't consider that the skeleton argument is relevant to this application. There is no error requiring correction, ambiguity or clarification within the scope of s57(3)a.
- c. Does the learned Arbitrator consider that Chucks Farm's oral submissions addressed any implied term? If so, what was said and when? Answer: I have interpreted the facts and the law as best I can and I don't consider that the submissions are relevant to this application. There is no error requiring correction, ambiguity or clarification within the scope of s57(3)a.
- d. Please explain why Stonegate's counsel was not asked to address the Arbitrator in relation to the implied term. The Arbitrator relies upon the pleaded case, the admissions made by Stonegate as to when the Lion Code should be released, and common commercial interpretation of Stonegate's own contract. It is quite obvious that there is an implied term that they cannot simply refuse any request to release the Lion Code at the end of their contractual relationship with the Claimant simply because they deem that they have a dispute. I have interpreted the facts and the law as best I can, and I don't consider that whether Stonegate's counsel has addressed me on not is relevant to this HHJ RUSSEN KC Approved Judgment Stonegate Farmers v Chucks Farm application. There is no error requiring correction, ambiguity or clarification within the scope of s57(3)a.” 39. Stonegate released the Lion Code on 6 October 2025. I was shown a letter from Forsters dated 26 January 2026 which stated that Stonegate only received a request from the BEIC to transfer it on 2 October 2025. D. Stonegate's Challenge and Chucks Farm's Response 40. 41. 42. 43. The focus of Stonegate's challenge to Award 2 is the Implied Term which was the sole basis for the damages award and central to the costs order (in respect of both the Arbitration as a whole and the reserved costs of the Preliminary Issue) against them. They say that, without the award of damages, Chucks Farm would have failed in the Arbitration. Stonegate's primary challenge to Award 2 is under s. 68 of the Act on the ground of serious irregularity. Stonegate say there had been no mention of the Implied Term (or any implied term or even implied terms as a general topic) in any statement of case, written submissions, or oral submissions from the parties before Award 2, including those relating to the Preliminary Issue. After Award 2, Stonegate were given just one clear day to deal with implied terms, which they say was patently unreasonable. Stonegate therefore argue that the serious irregularity therefore arose through the Arbitrator's breach of the general duty under section 33(1)(a) of the Act, requiring that they should have been given a reasonable opportunity to put their case on the Implied Term and dealing with Chuck Farm's case on the point, and that this was the cause of substantial injustice in the form of the award of damages and costs against Stonegate. The Claim Form seeks an order that Award 2 be set aside in its entirety or else remitted to the Arbitrator for reconsideration (see section 68(3) of the Act). However, Mr Varma and Ms Baker on behalf of Stonegate made it clear at the hearing that the relief sought was an order under section 68(3)(a) remitting Award 2, in part, to the Arbitrator for reconsideration. Stonegate's appeal under section 69 of the Act reflects

an alternative position, which assumes that the existence of the Implied Term was a question which the Arbitrator was asked to determine, and which Stonegate had a reasonable opportunity to address. The question of law identified by Stonegate for the purposes of seeking leave to appeal on the ground that the decision of the Arbitrator on the point was “obviously wrong” (within the meaning of section 69(3)(c)) “Did the Agreement include an implied term which obliged Stonegate not to “stand in the way” of a request to transfer the relevant Lion Code registration regardless of any dispute as to the contractual position?” HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* 44. 45. In the event of leave to appeal being granted, and the appeal being allowed in circumstances where no such relief has been granted under section 68(3) of the Act, then Stonegate would ask the court to set aside Award 2 (under section 69(7)(d)) or, alternatively, to remit the matter to the Arbitrator for reconsideration (under section 69(7)(c)). Chucks Farm deny there was any serious irregularity affecting Award 2. Their position is that the Implied Term was very much “in play” (to use the expression adopted in the authorities addressed below) so there was no breach of the duty under section 33(1)(a) of the Act. Mr Greenwood on their behalf referred to the relatively low threshold applied by the court when determining whether a point was “in play”. In the alternative, they say that, even if there was a breach, it did not give rise to a substantial injustice. On this aspect, Mr Greenwood highlighted what the authorities described as the high hurdle faced by a party pursuing a case under section 68 on the basis that there has been a serious irregularity causing substantial injustice. 46. In response to Stonegate’s section 69 appeal, by a Respondent’s Notice, Chucks Farm invites the court to uphold Award 2 for the following additional reasons:

- (1) Stonegate have not sought to establish the question posed by their appeal was a question of law the Arbitrator was asked to determine, so that such that the requirement in section 69(3) (b) of the Act is not satisfied; and
- (2) Even if the Arbitrator had been asked to determine that question, the answer to that question does not affect the outcome of the Arbitration, given he did not order the Appellant to release the Lion Code. E. Stonegate’s Section 68 Challenge: Analysis and Decision Legal Principles 47. 48. 49. Section 68(2) of the Act defines a ‘serious irregularity’ (affecting the tribunal, proceedings of the award) by reference to one or more of nine kinds of clearly defined forms of irregularity “which the court considers has caused or will cause substantial injustice to the applicant”. Stonegate relies upon the first kind of irregularity; namely “failure by the tribunal to comply with section 33 (general duty of tribunal)”. Section 33(1)(a) of the Act sets out the arbitral tribunal’s duty to “act fairly and impartially between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent”. Section 33(2) provides that the tribunal shall comply with that duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it. The combined language of section 33(1)(a) and section 68(2)(a) is therefore clear in identifying the kind of procedural failure which renders an award vulnerable to being set aside. Mr Varma and Ms Baker relied upon two decisions given before the enactment of section 33 which, in cases post-dating the Act,

have been referred to explain the what the duty of fairness imposed by the section requires. Those earlier HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* cases were relied upon by Gloster J in *OA Northern Shipping Company v Remol Cadores de Marin SL* ("The Remmar") [2007] EWHC 1821 (Comm) when she said: "20. Where the challenge is made under section 68(2)(a), the seriousness of the irregularity must be judged in accordance with the fundamental principles laid down in a series of cases which ante-date the 1996 Act, but which have been repeatedly upheld as reflecting the principles enshrined in section 68(2)(a):

21. Thus, Ackner LJ in *The Vimeira* [1984] 2 Lloyd's Rep 66, 76) stated: "The essential function of an arbitrator ... is to resolve the issues raised by the parties. The pleadings record what those issues are thought to be and, at the conclusion of the evidence, it should be apparent what issues still remain live issues. If an arbitrator considers that the parties or their experts have missed the real point ... then it is not only a matter of obvious prudence, but the arbitrator is obliged, in common fairness or, as it is sometimes described, as a matter of natural justice, to put the point to them so that they have an opportunity of dealing with it ... the adequacy of the turning area was not at the conclusion of the evidence - even though it was a possible issue at the commencement of the arbitration - any longer a live issue. The arbitrators clearly thought otherwise. They should have so informed the parties ..." and (per Bingham LJ) in *Zermalt Holdings SA v Nu Life Upholstery Repairs Ltd*

[1985] 2 EGLR 14 at 15: "If an arbitrator is impressed by a point that has never been raised by either side then it is his duty to put it to them so that they have an opportunity to comment. If he feels that the proper approach is one that has not been explored or advanced in evidence or submission, then again it is his duty to give the parties a chance to comment. If he is to any extent relying on his own personal experience in a specific way, then that again is something that he should mention so that it can be explored. It is not right that his decision should be based on specific matters which the parties never had the chance to deal with, nor is it right that a party should first learn of adverse points in a decision against him. That is contrary both to the substance of justice and to its appearance....."

22. These principles apply to unargued points of law or construction as they do to unargued questions of fact. In such cases, whilst it is not necessary for the tribunal to refer back to the parties each and every legal inference which it intends to draw from the primary facts on the issues placed before it, the tribunal must give the parties "a fair opportunity to address its arguments on all of the essential building blocks in the tribunal's conclusion" (*ABB AG v Hochtief Airport* [2006] 2 Lloyd's Rep 1, paragraph 70)" 50. In *The Vimeira*, at p. 75, Goff LJ also said: HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* "In truth, we are simply talking about fairness. It is not fair to decide a case against a party on an issue which has never been raised in the case without drawing the point to his attention so that he may have an opportunity of dealing with it, either by calling further evidence or by addressing argument on the facts or the law to the tribunal." 51. 52. 53. 54. 55. No doubt Goff

LJ's reference in *The Vimeira* to such a failure amounting to "technical misconduct [which] renders the award liable to be set aside or remitted" informed the drafting of section 68 and the further requirement that it be shown to have caused "substantial injustice". In *The Remmar*, Gloster J was satisfied that an irregularity was 'serious' rather than 'technical' because it was pivotal to the damages award. Other cases post-dating the Act and addressing the duty under section 33 by reference to the relevance of what was said in *The Vimeira* and *Zermalt Holdings* include *Vee Networks Limited v Econet Wireless International Ltd* [2004] EWHC 2909 (Comm), [83], per Colman J and *Reliance Industries Ltd v The Union of India* [2018] EWHC 822 (Comm), [29]-[31], per Popplewell J. See also Russell on Arbitration (24th ed.) at para. 8-03 (headed "Treatment of new points"). On behalf of Chucks Farm, Mr Greenwood referred to a number of authorities which address what is meant by a new point triggering the need (under section 33(1)(a)) for each party to be given a "reasonable opportunity" to address it, as opposed to a point that was "in play" in the arbitration and, therefore, a point which, being in play, cannot be said to have involved the tribunal denying either party that opportunity. If the point was sufficiently in play then the court should analyse the position as one of a reasonable opportunity missed by the section 68 claimant rather than as one wrongly denied to it by the tribunal in breach of section 33. The authorities show that a point can be in play (or, to use a different expression, "in the arena") even it has not been precisely articulated in a pleaded case or in argument. Many of them are noted in Russell on Arbitration op. cit. at para. 8-02 (headed 'Issue must be in play') and para. 8-03. In *Reliance Industries* the claimants complained that the tribunal had reached a conclusion on a point of construction that had not been advanced by the defendant or explored with the parties by the tribunal at any stage. Popplewell J, as he then was, addressed this aspect of the general duty of the tribunal by agreeing with what Gloster J had said in *The Remmar*, at [22], about points of unargued law and construction being within the scope of the "overriding duty of fairness imposed by s. 33". He continued, at [32]: "However where a point of construction is squarely in play and addressed by both parties, the tribunal is not obliged to put to the parties all aspects of the analysis in support of its conclusion in order to fulfil the s. 33 duty of fairness. As is well known, construction is an iterative process involving consideration of the particular wording in question, the other provisions of the contract taken as a whole, and the commercial consequences which follow from the rival constructions. The relevant provisions may be lengthy and admit of many nuances in the analytical argument. If provisions are relevant, and have been adverted to and addressed in argument, it HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* is not necessarily unfair for the tribunal to use them to support its reasoning, even where the other party has not done so in the same way as the tribunal. It is always important to keep in mind the distinction between a lack of opportunity to deal with a case and a failure to recognise or take such opportunity. It is commonplace in judicial decisions on points of construction that a judge may fashion his or her reasoning and analysis from the material upon which argument has been addressed without it necessarily being in terms which reflect those fully expressed by the winning party. There is not perceived to be, and is not, anything which is unfair in taking such a course. It is enough if the point is "in play" or "in

the arena” in the proceedings, even if it is not precisely articulated. To use the language of Tomlinson J, as he then was, in *ABB AG v Hochtief Airport* [2006] 2 Lloyd’s Rep 1 at [72], a party will usually have had a sufficient opportunity if the “essential building blocks” of the tribunal’s analysis and reasoning were in play in relation to an issue, even where the argument was not articulated in the way adopted by the tribunal. Ultimately the question which arises under s. 33(a), whether there has been a reasonable opportunity to present or meet a case, is one of fairness and will always be one of fact and degree which is sensitive to the specific circumstances of each individual case. That applies to points of construction as much as to other points in dispute.” 56. 57. 58. In *Shipping Corporation v Intaari* (The “Magdalena Oldendorff”) [2007] EWCA Civ 998 the Court of Appeal dismissed the appeal from the judge’s refusal of the section 68 challenge. At [39]-[40], Waller LJ highlighted that the duty under section 33 concerns the conduct of the arbitral tribunal. The court concluded that the arbitrators’ conduct did not fall foul of the section when the relevant point on which the owners of the vessel lost the arbitration, and which they claimed they had not been given a reasonable opportunity to address, was one which the arbitrators perceived to be in issue between the parties. It (“the 17 hour point”) was part of a wider case about a window of time during which the vessel might have broken out of an Antarctic ice ring. It did not feature in the charterers’ written submissions but was pointed out as a possibility in their closing oral submissions. Accordingly, the situation was one of an opportunity missed by the owners and not one where the tribunal could be said to have acted unfairly as “it would be placing an unfair burden on the tribunal where (I stress) they do not appreciate that a point is being missed, to check whether leading counsel understands what is being said.” A breach of the general duty under section 33 of the Act will not, without more, sustain a successful challenge under section 68. Stonegate also needs to show that the breach has caused or will cause them substantial injustice. On this aspect, the decision of Tomlinson J in *ABB AG* was also endorsed by the Court of Appeal in *The Magdalena Oldendorff*. Waller LJ said, at [32], that the authorities (and the Report of the Departmental Advisory Committee on the Arbitration Bill which became the Act) summarised in *ABB AG* indicate that an applicant under section 68 faces a high hurdle. He continued, at [38]: “In my view the authorities have been right to place a high hurdle in the way of a party to an arbitration seeking to set aside an award or its remission by reference to section 68 and in particular by reference to section 33. Losers often think that HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* injustice has been perpetrated when their factual case has not been accepted. It could be said to be “unjust” if arbitrators get the law wrong but if there is no appeal to the court because the parties have agreed to exclude the court, the decision is one they must accept. It would be a retrograde step to allow appeals on fact or law from the decisions of arbitrators to come in by the side door of an application under section 33 and section 68.”

59. Mr Greenwood on behalf of Chucks Farm cited in his skeleton argument a number of cases, in addition to *ABB AG* and *The Magdalena Oldendorff*, to support the proposition that a section 68 challenge based on a breach of section 33 should not be treated as a soft option alternative to an unpromising application for leave to appeal under section 69 of the Act but

instead as a long-stop to deal with extreme cases where something went seriously wrong with the arbitral process, with the resulting injustice going beyond what can reasonably be expected as an ordinary incident of arbitration. 60. In my judgment, the points which emerge from the cases referred to by Mr Greenwood are sufficiently encapsulated by what Lawrence Collins LJ said in *The Magdalena Oldendorff*, at [46]-[47]: “46. As Christopher Clarke J observed, paragraph 280 of the Departmental Advisory Committee Report on the Arbitration Bill has been referred to often in this context. It is unnecessary to set it out again. What it emphasises is that what became section 68 was intended for cases where it could be said that what had happened was so far removed from what could reasonably be expected of the arbitral process that the court could be expected to take action. It was “really designed as a longstop, only available in extreme cases where the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected.” See especially Lord Steyn in *Lesotho Highlands Development Authority v Impregilo SpA* [2005] UKHL 43, [2006] 1 AC 221, at [28] (“Plainly a high threshold must be satisfied.”). The approach set out in paragraph 280 of the DAC Report has been specifically adopted in this court: *Warborough Investments Ltd v S. Robinson & Sons Ltd* [2003] EWCA Civ 751, at [59], per Jonathan Parker LJ, applying *Checkpoint v Strathclyde Pension Fund* [2003] EWCA Civ 84, (2003) 14 EG 124, at [59] per Ward LJ.

47. I doubt if reference to pre-1996 Act cases on misconduct or technical misconduct or procedural mishap (such as *Interbulk v Aiden Shipping (The Vimeira)* (No 1) [1984] 2 Lloyd’s Rep 66) is today helpful. Today the question is whether the tribunal has given the parties a fair opportunity of addressing them on all issues material to their intended decision, or whether there has been a denial of a fair hearing. This will no doubt be a rare case: for an example, see *Cameroon Airlines v Transnet Limited* [2004] EWHC 1829 (Comm). Section 68 is not to be used simply because one of the parties is dissatisfied with the result.” 61. Although the cases confirm that the language of section 33(1)(a) and 68(2) combined operates to set a high bar for Stonegate to overcome, it is important to note that the “substantial injustice” test does not require it to be shown that the Arbitrator would have been persuaded to the contrary by the submissions Stonegate would have made had they not (as they claim) been deprived of a reasonably opportunity to make them. In keeping HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* with the emphasis in some of those cases that a section 68 challenge cannot be entertained as a disguised appeal under section 69 (when Stonegate’s complaint is that the finding of the Implied Term is the product of what Gloster J in *The Remmar* described as an “unargued point of law”), it is instead sufficient for Stonegate to show that, but for the breach of section 33, he might well have formed a different view and reached a different conclusion. 62. On the assumption that Stonegate were denied a reasonable opportunity of putting their case against the Implied Term to the Arbitrator, counsel agreed that the authorities establish that any resulting “substantial injustice” must be based upon that case being reasonably arguable: see *Vee Networks*, at [90] per Colman J (“whether he was caused by adopting inappropriate means to reach one conclusion whereas had he adopted appropriate means he might well have

reached another conclusion favourable to the applicant”) and Konkola Copper Mines v U&M Mining Zambia Ltd [2014] EWHC 2374 (Comm), at [19] per Cooke J (“he cannot succeed in that unless he can establish that he had at least a reasonably arguable case contrary to the findings of the tribunal”).

63. Mr Greenwood referred to the decision of HHJ Mackie QC in Gujarat NRE Coke Ltd v Coeclerici Asia (PTE) Ltd [2013] EWHC 1987 (Comm) where the judge found, at [25], there was no arguable breach of section 33 and that the approach adopted by the tribunal was instead “impeccable”. Accordingly, the question of substantial injustice, through the claimant not having time to put forward certain defences to the claim to payment, did not arise. However, having briefly addressed them, the judge went on to state, obiter, at [35]: “I therefore do not consider that, had the Tribunal had the opportunity to be addressed about these points, it might well have reached a different view and produced a significantly different outcome.” Application of the principles to this case 64. As I indicated during the course of counsel’s submissions, having reflected upon their rival skeleton arguments, the key point of contention between them was whether or not the Implied Term was “in play” (in the way explained by Popplewell J in Reliance Industries) before Award 2.
65. Mr Varma and Ms Baker on behalf of Stonegate say the essential building blocks (or at least one of them) to support a case for the Implied Term, sustaining the claim for damages, were not before the Arbitrator prior to Award 2. This was despite the lapse of almost one month between the hearing on 10 June 2025 (at which Mr Varma had submitted there was no term in the Agreement to support a damages claim) during which the Arbitrator might have reached out to the parties for further submissions on the point. Counsel referred to Forsters’ email dated 30 July 2025 for what they said is the indisputable contention that the first time that Chuck’s Farm had asserted the existence of an implied term was in their Section 57 response dated 29 July 2025. They said that the one working day allowed by the Arbitrator (by his email sent at 17:56 on 30 July) to engage with that response did not provide Stonegate with a reasonable opportunity to address the point. In fact, given what Forsters then said in their email of 31 July (20:43) about the unavailability of their leading and junior counsel during that short period (the reasons being other professional commitments and parental leave respectively), it was no opportunity at all. Stonegate were not responsible for the “drift” HHJ RUSSEN KC Approved Judgment Stonegate Farmers v Chucks Farm (and delay) mentioned by the Arbitrator in his email of 1 August 2025, enclosing the Section 57 Decision. It was Chucks Farm who had requested further time in July 2025 to respond to Stonegate’s section 57 application and who had been given to the end of the month. 66. For Chucks Farm, Mr Greenwood said the Implied Term was “in play” in the arbitration, in the sense described by Popplewell J in Reliance Industries, and no injustice to Stonegate was involved in Award 2 and the Section 57 Decision. He referred to Chucks Farm’s Statement of Case dated 19 February 2025 which (at paragraph 12) alleged that the Agreement did “not permit retention of the Lion Code in the event of breach of contract” and (at paragraph 16(a)) alleged a breach of contract by Stonegate in “failing to agree the release of the Claimant’s Lion Code”. Damages for “restraint of trade and breach of contract” were claimed. Stonegate

having by their Points of Reply and Counterclaim dated 11 April 2025 (at paragraph 17) having said “the Respondent cannot be in breach of a non-existent term”, Chucks Farm’s Response and Reply to Counterclaim said this (at paragraph 9): “The Claimant takes issue with the Respondent’s Points of Reply in paragraph 17. It was assumed that it was obvious from the Statement of Case how the Respondent was in breach of contract. The Respondent was obliged to release the Lion Code at the conclusion of the contract between the parties. This was accepted by the Respondent in its letter to the Claimant of the 6th February 2023 where the Respondent stated that: “You provide Stonegate with 6 months’ notice, you continue to supply us with eggs during this term at current prices, and then we shall release your lion code. Our trade comes to an end.” For the sake of clarity once the contract between the parties was at an end the Respondent should have released the Claimant’s Lion Code to allow any other subscriber to register it in their name. The Respondent failed to do so leading to the breach of contract alleged.” 67. I clarified with Mr Greenwood during the course of argument that paragraph 9 of Chucks Farm’s Response was the clearest expression of their case on Stonegate’s alleged breach of contract before the publication of Award 2. In his Section 57 Decision the Arbitrator referred to Stonegate’s letter dated 6 February 2023 (at paragraph 12(i)) and he was clearly persuaded by paragraph 9 of Chuck’s Farm’s Response because he said (at paragraph 8): “An egg producer like Chucks Farm upon signing Stonegate’s standard contract would no doubt if asked how long Stonegate could retain his Lion Code would reply that it was so long as he was in contract with Stonegate. As a principle of commercial common sense, Stonegate would and indeed did agree with that statement.” HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* 68. 69. 70. 71. 72. Despite Mr Greenwood’s reliance upon the statements of case pre-dating Award 2, in my judgment from the way in which Chucks Farm expressed their case and the chronology of events in the arbitration (in particular the after-the-event justification of the Implied Term in the Section 57 Decision) it is clear that the Implied Term, or any implied term of the Agreement, was not “in play” in argument between the parties before the Arbitrator decided to articulate it and act upon it in Award 2. The terms of the Section 57 Decision itself point to the conclusion that this is a case where the Implied Term was used as the basis for the damages award against Stonegate without them having the opportunity to address it in the way that principles of basic fairness demand (per *The Vimeira*). At paragraph 9 of the Section 57 Decision, set out in Section C above, the Arbitrator acknowledged “the question wasn’t put to the parties”. In the light of Mr Varma’s submissions to him (addressed below) about the absence of any relevant contractual term, the Arbitrator should have raised the point with the parties before making Award 2 so that they had the chance to comment on the reflection of his legal analysis behind the Implied Term (per *The Remmar* and *Reliance Industries*). The conclusion that this was therefore an opportunity denied by the Arbitrator rather than one missed by Stonegate (cf. *The Magdalena Oldendorff*), so that the duty under section 33(1)(a) of the Act was breached, is reinforced by the following factors. First, there is missing from Chucks Farm’s statement of case the initial building block (as a start for the point being in play) of a clearly formulated implied term, whether that be the Implied Term as found by the Arbitrator or some other

term supporting a claim for damages of the kind awarded. I have quoted above from paragraph 16 of Chucks Farm's Statement of Case and the allegation of a breach of contract by Stonegate in "failing to agree" the release of the Lion Code. Conventionally, an allegation of breach of contract proceeds on the basis that a party has already agreed to do something (either expressly or impliedly) and has broken that past promise. Although Chucks Farm's Response assumed it was obvious how Stonegate were in breach of contract, that was not the case, at least not so far as identification of a contractual term to support such a breach was concerned. Chucks Farm have never in their statements of case formulated an implied term, to be read into the Agreement with effect from 21 September 2020, that would support a claim for damages against Stonegate in the event of them failing to establish the Agreement continued beyond January 2024. I recognise the claim was for "damages for breach of contract", rather than damages for conversion, but it is clear that, at all times until Award 2, Chucks Farm's case proceeded on the basis that the Lion Code was their property. The "event of [a] breach of contract" referred to in paragraph 12 of the Statement of Case was referring to any breach by Chucks Farm; and their case that, even if they were in breach the Agreement by terminating the supply of eggs before October 2025 (as Stonegate claimed), Stonegate were not entitled to retain their (Chucks Farm's) Lion Code. That was the basis on which the Arbitrator made Award 1 (for the "return to [Chucks Farm of] their Lion Code" (my emphasis)); and it was his later acceptance, by Award 1d, that the Lion Code was "not within Stonegate's possession" but "could only be released by the BEIC" that led to the awards of pre-emptive injunctive relief being set aside on the basis that he had acted ultra vires. HHJ RUSSEN KC Approved Judgment Stonegate Farmers v Chucks Farm 73. Secondly, although Mr Greenwood relied upon the transcript of the hearing on 10 June 2025 to suggest that an implied term was in play (as a result of the Arbitrator asking questions of Mr Gott, Stonegate's witness, and counsel Mr Varma about "the contractual position that the subscriber with the relevant laying farm must have the Lion Code for that producer"), there was no mention of an implied term at that hearing. It is clear from the passages relied upon by Mr Greenwood (pages 139 to 141 of the transcript) that the Arbitrator was not there referring to a contractual term that might support a claim in damages but was instead clarifying Stonegate's recognition that any subscriber in a contractual relationship with the laying farm must also have the Lion Code for that producer. That is clear from the Arbitrator's reference (by page number in the bundle before him) to paragraph 30 of Stonegate's responsive submissions on the Preliminary Issue, where they went on to say that a failure to do so would be "a breach of the BEIC Code of Conduct and [is] a C4 Fundamental Critical Breach." Mr Gott confirmed that was Stonegate's position. Mr Varma said that because Stonegate recognised that, there would be no need to grant injunctive relief in the event of Stonegate losing on the issue of a contractual extension. 74. Not only was there no mention of an implied term, or any acceptance by Stonegate that its recognition that Chucks Farm's subscriber had to have the Lion Code carried with it a liability in damages if it was later determined that Stonegate had not been that subscriber from a certain date, but Mr Varma could not have been clearer in his submission to the Arbitrator that there was no contractual basis for such liability (or indeed to grant an injunction). His submissions on

this point (pages 146 to 147) included the following: “What you cannot do is grant remedies for breach of non-existent terms. And the onus is on the party alleging breach again, at the risk of stating the obvious, to identify the obligation that has been breached and where it can be found, and that is just not done. It is not in any pleading. It is not in any skeleton argument. It is no part of the evidence that has been provided by Mr Fox, which is that the only agreement he entered into with Stonegate is the agreement that he entered into in

2020. That’s the end of it.” 75. 76. 77. Reading the transcript of the hearing on 10 June 2025 as a whole, it is therefore clear that the finding of the Implied Term came out of the blue in Award 2. As matter of fairness, the Arbitrator should have reverted to the parties after that hearing for further submissions about the implied term he was minded to adopt. By their email of 30 July (16:10), to which the Arbitrator responded by his email of 30 July (17:56) mentioned below, Forsters were quick to highlight that omission by correctly pointing out that the authorities relied upon by Chucks Farm in support of the Implied Term “have never previously been referred to in this arbitration” and they concluded by saying “[w]e trust the learned Arbitrator will answer those queries [i.e. those raised by the section 57 application] with his duties under section 33 in mind.” The third and last factor which supports the conclusion that section 33(1)(a) was breached lies in the Arbitrator’s own recognition that he would have benefited from Stonegate’s reply to Chucks Farm’s section 57 response. His email of 30 July (17:56) invited Stonegate’s submissions to the paragraph in Chucks Farm’s response which referred to certain authorities in implied terms (principally *Marks & Spencer v BNP Paribas* [2015] UKSC 72). Yet he allowed Stonegate only one working day to do so, HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* 78. 79. having on 17 July agreed to Chucks Farm’s request for more time beyond 22 July that they could have a fortnight for their response (even though, in the event, they did not need to go beyond the date of 29 July following their counsel’s return from holiday). Whether or not he knew it on 17 July, when allowing Chucks Farm their extension, it is clear from the Arbitrator’s email of 30 July (17:56) that, by the end of the month when time Chucks Farm’s response was due, he knew he would be departing for a 3 week holiday on Saturday 2 August. That was the reason why he requested Stonegate’s response by 10am on 1 August. As noted in section C above, it is also clear from his email of 1 August (09:15) and paragraph 11 of the Section 57 Decision that the Arbitrator was also influenced in not acceding to the request for more time by the absence of confirmation that the damages award had been paid. He issued Award 2 before Forsters had responded to his email and only three minutes after Ms Keeley on behalf of Chuck’s Farm indicated they could not consent to that request and (whilst not directly answering the question in the Arbitrator’s email of 1 August) referred to Chucks Farm’s “severe financial hardship and ongoing stress”. I clarified with Mr Greenwood during the course of his submissions that it was implicit in what the Arbitrator said that, if Stonegate had paid the damages awarded by Award 2, they might well have been given more time for their reply. Yet Stonegate wanted to reply with a view to questioning the very basis of the damages award; and any further “drift” (as the Arbitrator put it in his email) would be at Stonegate’s expense if the

Arbitrator was not persuaded by Stonegate's submissions. I do not know (and I assume neither did the Arbitrator) whether on 1 August 2025 Stonegate were financially able to promptly meet the "expense" already incurred under the questioned Award. I should not assume they were not able to pay, but, in the circumstances, Stonegate were entitled to question the basis of it. I recognise that there may be cases where the failure by a party to an arbitration to comply with a clear payment obligation may be material in determining the outcome of any later challenge under section 68 based upon a complaint that the tribunal allowed insufficient time for submissions as to why payment was not due. *Gujarat v Coeclerici* was such a case (where the decision also illustrates how the lack of merit in the suggested defences to the payment obligation will also result in the "substantial injustice" test under section 68 not being satisfied). However, in my judgment the present case is not one of them. In *Gujarat v Coeclerici*, the tribunal had made an award (with which Gujarat failed to comply) in accordance with the express terms of a payment agreement by which the parties had settled the arbitration. The contrast between that situation and the present one, where Stonegate were questioning the Implied Term underpinning the payment obligation, could not be clearer and is illustrated by the observation of HHJ Mackie QC in that case, at [22], that "[i]f the Tribunal had been considering a new case in which [Gujarat] sought to put forward its defences to a claim then the procedure adopted would of course have been irregular and unfair".

80. My focus must be on the question of whether, objectively, Stonegate were afforded a reasonable opportunity of putting their case on the Implied Term. However, the reasons operating on the Arbitrator's mind (his imminent holiday and Stonegate not having confirmed they had paid the damages already accrued under Award 2 whose legal basis they were questioning) were not in my judgment consistent with him acting fairly and impartially in accordance with section 33. HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* 81. 82. 83. 84. If Stonegate had been given a reasonable opportunity to reply to what Chucks Farm had said (on 29 July, for the first time) about the basis for the Implied Term then (as Forsters' email of 30 July (16:10) had flagged) they would have inevitably reminded the Arbitrator of the parties' rival submissions respectively made at the hearing on 10 June 2025 and this would have involved Stonegate making the points summarised by me above by reference to the transcript. What the Arbitrator might then have decided is more appropriately considered in the context of the "substantial injustice" test. As to that test, I am also satisfied that the serious irregularity arising through the breach of section 33 has worked a substantial injustice for Stonegate for the purposes of section 68 of the Act. Paragraph 9 of the Section 57 Decision posed the rhetorical question: "if Stonegate attempted unsuccessfully to extend the contract, depriving the producer of being able to trade elsewhere with the benefit of the Lion Code, would the producer be deprived of any remedy?". Of course, it is the remedy of damages which Stonegate disputes (and which, in effect, were found to be payable as the price of Stonegate arguing its case on a contractual extension beyond January 2024 only to find later, by Award 2, that it has not succeeded on that case). In my judgment, putting the point at its lowest, Stonegate has a reasonably

arguable case that the Implied Term cannot be supported as a matter of contractual analysis, such that the award of damages for the period between January 2024 and the publication of Award 2 might not have been made. I say that for the following reasons. Firstly, again, what the Arbitrator had already said, before Award 2, supports the conclusion that Stonegate were entitled to a determination of the issue over the duration of the contract before becoming exposed to a claim for damages (if, thereafter, they were responsible for the Lion Code not being registered in the name of Chucks Farm's replacement 'subscriber'). By Award 1d, setting aside the grant of injunctive relief, the Arbitrator said: "... instead any final determination of the contractual issues by me will act as the litmus test for the BEIC to determine then who might have the Lion Code applicable to Chucks Farm. That does not mean that I accept the argument put by Stonegate that the BEIC procedure to handle delisting disputes should have been utilised instead of arbitration ..." (my emphasis in underlining). That way of expressing things, when considered against the Arbitrator's rejection of the property-based assumption behind paragraph 12 of the Chucks Farm's Statement of Case, seems to me to be very arguably at odds with the Implied Term which operates to attach the "price" of a retrospective award of damages in the event of Stonegate engaging with the contractually ordained arbitral process over the duration of the Agreement and then losing on that issue. 85. Secondly, what the Arbitrator said after Award 2 gives an indication that, if they had been given a fair opportunity to make them, Stonegate's arguments against Chucks Farm's response to their section 57 application may well have gained traction with him. I say that noting, as Mr Varma pointed out, the existence of the Section 57 Decision provides considerable insight into his analysis of the Implied Term without having had the benefit of those arguments. 86. In Section C above, I have quoted paragraph 12(a) of the Section 57 Decision where, in later justification of the Implied Term, the Arbitrator adopted Chucks Farm's reliance upon Stonegate's recognition that that Agreement must in some way "factor in" the HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* Lion Code and that registration of the Lion Code should be with the subscriber who has the contractual entitlement to receive eggs from Chucks Farm. As the Arbitrator put it: "Ergo if there is no contractual entitlement it must follow that there is no right to retain the Lion Code registration" (my emphasis). The assumption in Chucks Farm's case (one at all times until their section 57 response based on a proprietary interest rather than a clearly formulated contractual obligation upon Stonegate) is that a later decision that there was no such entitlement from a certain date in the past carries with it an exposure for Stonegate to a damages claim from that past date. The Arbitrator has acted on that assumption for the purpose of the Implied Term or at least the final component of it quoted in paragraph 24 above. I understand that, subject to the point mentioned in Forsters' letter dated 26 January 2026 about the need for the BEIC to be involved, Stonegate would have no real issue with the language of "should be released" and "should not stand in the way" provided that those obligations take effect from the date of the award which determined that to be the position. At paragraph 12c of the Section 57 Decision the Arbitrator said: "It is quite obvious that there is an implied term that they cannot simply refuse any request to release the Lion Code at the end of their contractual relationship with the Claimant simply because

they deem that they have a dispute.” Unlike the Arbitrator, I do not regard that as so obvious that there can be no reasonable argument against the Implied Term. The Agreement made express provision for the Arbitrator to determine the dispute about whether the contractual relationship had ended and he himself said his determination of that dispute provided the “litmus test” of entitlement to the Lion Code. Clause 8.1 of the Agreement also contained an obligation upon Chucks Farm to comply with the BEIC’s Code of Practice. The BEIC controls transfers between subscribers of any Lion Code registration on its database. Mr Varma referred to the BEIC’s Code of Practice dated 17 October 2024 which in section 1 (‘Background’) contains a passage beginning: “Unfortunately, there has been an increasing number of contractual disputes concerning which subscriber is entitled to receive egg from a Producer.” The BEIC stated it did not wish to take sides in such disputes and referred to the “Existing Procedure” under which subscribers were expected to mediate and the “Revised Procedure” which would involve a determination by a barrister as to who should hold the Lion Code registration. The BEIC will, if necessary, amend the database to reflect the barrister’s decision but “[i]f either subscriber does not agree with the barrister’s decision they may still pursue legal action or explore other alternative dispute resolution.” I referred above to the language of Award 1d where the Arbitrator concluded that the dispute between Chucks Farm and Stonegate over the Lion Code registration was a matter for him in the alternative dispute resolution process of the arbitration, rather than a matter to be addressed through the BEIC procedure as suggested by Stonegate. However, the language he used in that award prompts the question as to whether (under an Agreement which expressly incorporates the BEIC’s Code of Practice) there is scope for an implied term which creates a damages liability for a party to the dispute before the dispute is resolved (howsoever it is resolved). 87. 88. 89. 90. 91. HHJ RUSSEN KC Approved Judgment Stonegate Farmers v Chucks Farm 92. As Mr Varma and Ms Baker submitted by reference to the decision in Attorney General of Belize v Telecom Ltd [2009] UKPC 10, at [17], the default position is that nothing is to be implied and if an event (such as a reference to arbitration over the duration of a contract) causes loss to one party then the loss lies where it falls. If a term is to be implied on the ground of business efficacy then it must be reasonable and equitable, capable of being expressed with clarity and precision, required in order to give commercial or practical coherence to the contract, so obvious that it goes without the need for the parties to express it, and, of course, not inconsistent with any express term (such as clause 12.6 of the Agreement providing for the referral of disputes to arbitration): see the judgment of Coulson LJ in Candey Ltd v Boseh [2022] EWCA Civ 1103, at [29], summarising the test for implying a term in fact. The test of necessity applies not only to the justification for implying a term but also to the selection of one term over another, so that the court must imply the least onerous term that is needed to achieve such commercial or practical coherence: see Barton v Morris [2023] UKSC 3 at [32] per Lady Rose.

93. When those principles are applied to the present case it is in my judgment reasonably arguable, to put the point at its lowest, that Stonegate were entitled to have the dispute over the end date of the Agreement determined without paying the price imposed by the Implied

Term. 94. Accordingly, in my judgment, this is one of the relatively rare type of case where the court should act upon the “long stop” in section 68 of the Act. 95. 96. 97. 98. Decision I will therefore order pursuant to section 68(3) that Award 2 be remitted to the Arbitrator for reconsideration. At the hearing, Mr Varma and Ms Baker relied upon the decision in *Noord Shipbuilding Division BV v Offshore BV* [2008] EWHC 2904 (Comm), at [111]-[120], to say that that terms should be attached to this remitter. The terms suggested in their skeleton argument went beyond providing that it should be limited to consideration of the Implied Term and costs (with which Mr Greenwood did not take issue) and were said to be “to ensure that reconsideration of Award 2 by the Arbitrator is now conducted properly”. I indicated to the parties that (in the absence of agreement between the parties over any such further terms, if any) I would hear further argument on this aspect at a further hearing following the handing down of this judgment. F. Stonegate’s Section 69 Application for Permission to Appeal: Decision In the light of my decision on the section 68 challenge it is neither necessary nor appropriate for me to determine Stonegate’s application for leave to appeal. As I indicated in the introduction to this judgment, it was Chucks Farm’s primary position on Stonegate’s claim which meant it was sensible to hear the application for leave to appeal at the same time as the section 68 claim. Although counsel’s oral submissions at the hearing were principally directed to the section 68 challenge, they HHJ RUSSEN KC Approved Judgment *Stonegate Farmers v Chucks Farm* referred me to their detailed rival skeleton arguments on the application for leave to appeal. 99. 100. Stonegate’s skeleton argument recognised that the application for leave to appeal was a true alternative to their section 68 challenge. Chucks Farm’s skeleton argument (and Respondent’s Notice) made the point that on Stonegate’s primary case, in support of that challenge, Stonegate could not satisfy the pre-condition in section 69(3)(b) for the grant of leave to appeal; namely that the court is satisfied that the question of law (i.e. the issue of the Implied Term) is one the Arbitrator was asked to determine. I have not been satisfied of that and the result of my decision on the section 68 challenge (with Stonegate meeting the “reasonably arguable” threshold on its argument about the Implied Term rather than needing to show the Arbitrator’s finding was “obviously wrong”) is that the Arbitrator will now reconsider and make a decision about the Implied Term having had the benefit of the parties’ full argument on the point. G. Disposal 101. I will therefore remit Award 2 to the Arbitrator for his reconsideration of the Implied Term, Chucks Farm’s damages claim and the issue of costs. Any further terms to be attached to the remitter, if any, will be a matter for further determination by me having heard the parties on that and any other consequential matters upon which they are not agreed. I invite the parties to submit a draft minute of order reflecting this judgment and identifying any such matters which remain in issue.

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