

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 20 October 2014

Before :

MR JUSTICE EDER

Between :

SUGAR HUT GROUP & OTHERS

Claimant

- and -

A J INSURANCE

Defendant

Mr Richard Slade QC (instructed by **Thomas Cooper**) for the **Claimants**
Mr Angus Piper (instructed by **Caytons Law**) for the **Defendant**

Hearing dates: 6, 7 & 8 October 2014

Judgment

Mr Justice Eder:

Introduction

1. These proceedings arise out of a serious fire on 13 September 2009 at the well-known nightclub, the Sugar Hut Club in Brentwood, Essex. The fire destroyed one wing of the Club and all of the office areas. There was also extensive water, extinguishing and carbon damage. The Club was effectively unusable for a period of some 49 weeks until it eventually reopened on 25 August 2010. During that period repairs and reinstatements were carried out. The capacity of the Club was increased by minor changes to the design. It is common ground that the time taken for the repair works was reasonable.
2. The first claimant is the ultimate holding company of the Sugar Hut Group and promotes and organises the Group from offices on the same premises as the Club in Brentwood. It is owned by Mr Michael Norcross. At the time of the fire, the other claimants were companies in the Sugar Hut Group and the trading companies for Sugar Hut Clubs in Brentwood, Fulham, Basildon and Hertford respectively. A new trading company, Brentwood Sugar Hut Village Ltd was created for the Brentwood Club in June 2010 shortly before the Club reopened.

3. The defendant, AJI, was an insurance broking partnership which procured the claimants' insurance cover in March 2009. The claimants claimed against their insurers under the insurance policy arranged by AJI. In the event, the insurers purported to avoid the policy, so the claimants sued them in Action 2010 Folio 68. There was a trial of liability in the Commercial Court in October 2010 before Burton J. The judge dismissed the claimants' claims on the grounds that there had been non-disclosure before inception of the insurance policy and because there had been breaches of warranties under the policy. The judge awarded the insurers their costs on the standard basis.
4. The claimants then commenced these proceedings against AJI on the basis that the grounds on which they had been held by Burton J to have no right under the policy were attributable to the negligence/breach of duty of AJI. AJI admitted certain allegations of negligence but denied others and also resisted the claimants' claim on the basis of causation and contributory negligence. These differences on liability are now academic because shortly before the trial of liability AJI conceded liability on the terms set out in a consent order which provided, in effect, that AJI would pay an agreed 65% of the claimants' losses. The consent order was expressed to be without prejudice to the claimants' right to interest on its damages at a commercial rate under s35A Senior Courts Act 1981.
5. It is against that background that the claimants claim 65% of property damage costs of £310,000 and also the claimants' and the insurers' legal costs in the claimants' unsuccessful claim against its insurers in the same of £573,136.88. Both these are agreed.
6. The matters still in dispute are the claimants' claim for 65% of:
 - i) Business Interruption Losses of £1,345,794. AJI puts this figure at no higher than £385,776.
 - ii) Claimants' accountants' costs of £19,275 (excluding VAT). AJI puts the recoverable figure under this head at nil.
7. The claimants also claim interest under s35A Senior Courts Act 1981 upon their damages to be assessed. In this context, the main disputes concern (i) the appropriate rate of interest; and (ii) the period for which interest should be payable.
8. AJI has made certain interim payments to the claimants in 2013 and 2014 totalling about £800,000.
9. In support of their claim, the claimants served a witness statement from Mr Michael Norcross. He is the director and ultimate beneficial owner of the claimant companies. He also gave oral evidence.
10. As explained by Mr Norcross, the Club was a beautiful place teeming with beautiful people. It was filled with ornate Thai artefacts, velvet drapes and exotic flowers. It was an opulent and extravagant venue with a unique atmosphere created by lavish decoration, elaborate lighting and music. The Club was extremely successful. Every weekend there would be queues of customers down the High Street in Brentwood

waiting to get in. Mr Norcross was a regular customer at the Club and became what he himself describes as one of the Club's big spenders.

11. The Club was originally owned by a Mr Georgallides. Following discussions between Mr Georgallides and Mr Norcross, Mr Norcross purchased a 49% shareholding in Sugar Hut Group Ltd in October 2007 through one of his companies Newfund Investments Ltd.
12. At the time Mr Norcross purchased his shareholding in the business, the Club had 5 main areas viz:
 - i) The Restaurant. This was a ground floor restaurant which seated about 100 people. It was fitted with a marble bar, hardwood flooring and wooden bamboo-effect restaurant furniture. The walls were lined with Thai tapestries, ornate lamps, velvet drapes and decorative wrought iron metal work illuminated from behind by LED mood lighting. Chandeliers hung over the bar and an abundance of exotic flowers and plants in large glasses were scattered throughout. In addition, hardwood and porcelain Buddha statues stood around the restaurant.
 - ii) The Karma Bar. This was on the ground floor and fitted with hardwood furnishings, dark wood panels and originally Thai lanterns. The Karma Bar included a large bar area along with 3 or 4 intimate alcoves filled with deep seat sofas covered in intricately embroidered original Thai scatter cushions and surrounded by velvet drapes.
 - iii) The Krug Room. This was a VIP room on the ground floor containing the same hardwood flooring and furnishing as the Karma Bar, along with seating booths upholstered in white leather, intimate lamp lighting, gold plated porcelain Buddha statues and Thai wall art.
 - iv) The Club Room. This was on the first floor. It was an open room designed for dancing and equipped with a DJ booth and two bars. Again, the Club Room had hardwood floors and bamboo-lined walls with ornate gold-painted hardwood Buddha statues lining the walls along with Thai tapestries and exotic plants. Many chandeliers hung from the ceiling and there was also some floor lighting. There were several lion statues placed around the walls.
 - v) The Gallery and Gallery Floor Area. This was on the first floor of the Club. It was a sprawling area containing a long hardwood bar and original brick walls and beams. Again there was a number of Buddha statues with velvet drapes hung in various parts of the room to create a more intimate environment with seating for 70-80 people.
13. In addition, the Club premises contained offices which were primarily located on the top floor of the premises. It is also important to note that the Club had a sophisticated sound system which was constantly evolving; as well as an elaborate lighting system and also security and network systems.
14. Following his initial investment in October 2007, Mr Norcross bought Mr Georgallides out of the business in October 2008. It was Mr Norcross' evidence that

thereafter he introduced certain improvements to the Club. In particular, it was his evidence that he enhanced the sound system, lighting, upholstery and carpets, toilets, quality of beverage, staff uniforms and security; and that he also implemented staff and security training and weekly meetings to discuss improvements to the Club and maintenance issues.

15. There was some dispute as to the precise nature of such improvements. However I am satisfied on the basis of his evidence that Mr Norcross did carry out various improvements in particular with regard to upgrading the VIP toilets, security via an identification system, electronic and office equipment and the till system. In addition, I am satisfied that he generally ensured that the Club was kept to a high standard with ongoing maintenance including flooring and upholstery repairs, website updates and staff training; and that, in broad terms, the Club was a successful business operation although one of the difficulties in the case is the lack of sufficient weekly sales data and other information during certain of the earlier periods.
16. It was Mr Norcross' evidence that he started thinking about increasing the capacity of the Club in or about January 2009 and, had it not been for the fire, he would have increased the capacity at the Club by the end of 2009. In particular, it was his evidence that this would have been a relatively simple task involving moving the front entrance doors to the Club back to give room for an external fire escape and expanding the fire doors and access points; and that these were, in truth, relatively minor adjustments which could have been achieved whilst the Club was open. According to Mr Norcross, the application process for a variation of premises licence takes between 2 and 4 months, so had he applied for this by the end of September 2009 it would have been in place between November 2009 and January 2010. In the interim, the restaurant was turned into a bar. According to Mr Norcross, the closure of the restaurant increased profitability.
17. As already stated above, following the fire it was necessary to carry out reinstatement works. Such works apparently cost approximately £1.5 million. At the same time, the opportunity was taken to increase the capacity of the Club in line with what Mr Norcross said he had previously intended; and following completion of those works, the restaurant was reopened although half of the space in the area is dedicated to a bar/café.
18. Following completion of the reinstatement works, the Club reopened on 25 August 2010. There is no doubt that following the reopening, the Club continued to be a successful operation and its overall turnover increased even more than before. The claimants rely on this increased turnover post-fire and completion of the works in support of their claim for business interruption profits during the period between September 2009 and August 2010 when the Club was inoperational. This is an important aspect of the dispute between the parties. I consider this further below. However, at this stage, it is convenient to mention that an important aspect of this dispute arises out of what has been referred to as the "TOWIE" effect. TOWIE is an acronym of a well known TV show – The Only Way Is Essex – which was first aired in autumn 2010 very shortly after the Club reopened. I have not had the benefit of seeing this TV show but it is common ground that the Club was heavily featured in it from the beginning. Apparently, the Club was chosen because of its reputation as a high class venue and TOWIE has had a big impact on the Club's national profile. According to Mr Norcross, it has as a result become a tourist destination. However, it

was Mr Norcross' evidence that the exposure brought about by TOWIE has had a negative impact on the Club's big "spenders" and local clientele. In particular, it was his evidence that the big spenders have stopped attending the Club along with the local customer base because they have been put off by the new customers who treat the Club as a TOWIE tourist destination and an opportunity to spot TOWIE cast members. According to the records, it would indeed appear that the Club has lost almost all of its paid-up members since TOWIE first aired in October 2010. Although the Club attracted a higher number of customers after the Club reopened, these customers spent significantly less per head.

19. The various claims advanced in these proceedings have been considered by forensic accountants instructed by the parties. They served reports and gave oral evidence viz: (i) Mr Fred Brown, who is the Client Service Director at Grant Thornton (UK) LLP and an associate of the Institute of Chartered Accountants in England and Wales, instructed by the claimants; and (ii) Mr James Stanbury of RGL Forensics who is a Fellow of the Institute of Chartered Accountants in England and Wales, instructed by the defendant. In addition to their respective reports, the experts have provided a Joint Statement which has served to narrow the disputes between the parties and helpfully to summarise the outstanding issues. The following is a summary of the areas of agreement/disagreement taken from that Joint Statement although, as appears below, certain of the differences included in this summary were narrowed further in the course of the hearing.

Area	Mr Brown	Mr Stanbury
	£	£
Brentwood		
Loss of turnover – agreed	9,000	9,000
Loss of turnover – not agreed	2,626,769	1,883,311
Total	2,635,769	1,892,311
Rate of gross of profit – not agreed	77.2%	73.2%
Loss of Gross profit	2,034,814	1,385,171
Saved costs – agreed		
monthly	(409,464)	(409,464)
as a percentage of turnover (3.7%)	(97,523)	(70,016)
Saved costs – not agreed	(571,259)	(546,547)
Total	(1,078,246)	(1,026,027)
Continuing costs – agreed	2,629	2,629
Continuing costs – not agreed	157,130	5,000
Total	159,759	7,629
Increased cost of working – agreed	5,304	5,304
Increased cost of working – not agreed	52,486	13,698
Total	57,790	19,002

Hertford		
Loss of turnover – not agreed	85,881	0
Rate of gross profit	73.35'	n/a
Loss of gross profit	62,993	n/a
Fulham		
Loss of turnover – not agreed	152,219	0
Rate of gross profit	71.4%	n/a
Loss of gross profit	108,684	n/a
Total	1,345,794	385,776

20. It is common ground that in order for the claimants to recover any monies by way of damages from these defendants, the burden lies on them to show that such monies would have been recoverable against the original insurers. In that context, I bear well in mind the terms of the original insurance policy although I do not consider that it is necessary to set out the relevant terms in full. For present purposes, I would merely note that it was in a familiar form, covering both property damage and business interruption (“BI”) on an “all risks” basis. In summary, the cover provided under the BI Section provided for an indemnity for loss of “Gross Profit” (as defined) as a consequence of any of the “Contingencies” (as defined) by reference to “Standard turnover” (as defined). Although the latter was defined as being the “Turnover” (as defined) during the period corresponding with the “Indemnity period” (as defined) in the twelve months immediately before the date of the Contingencies appropriately adjusted where the Indemnity period exceeds twelve months, the policy also included a special clause as follows:

“Trends and variations

Adjustments shall be made to the Gross profit Rate of Gross Profit Standard turnover and Annual Turnover as may be necessary to provide for the trend of Business and for variations in or other circumstances affecting the Business either before or after any of the Contingencies or which would have affected the Business had the Contingencies not occurred so that the adjusted figures shall represent as nearly as may be reasonably practicable the results which but for the Contingencies would have been obtained during the relative period after the Contingencies.”

In addition, the policy included a “professional accountants’ clause” (“PAC”) which, in effect, provided cover for the charges payable by the insured to their professional accountants in respect of the cost of such accountants producing particulars or details contained in the insured’s books of account or other business books or record “... which may be required by the [insurer] under the General Claims Conditions ...”.

21. In opening the case, Mr Slade also drew my attention to the fact the policy contained an arbitration clause. That is certainly true although it does not seem to me to be of

much, if any relevance, in the present case. More generally, Mr Piper submitted that since the assessment of damages against his clients had to proceed by reference to what would have been recoverable against the original insurers if valid cover had been in place, it was necessary and important to consider the manner and timing of the original presentation of the claim as well as (i) what the insurers' response would have been to such claim in such circumstances; and (ii) what the claimants' own response would then have been. I did not understand Mr Slade to suggest otherwise and I proceed on that basis although I do not consider that such approach affects the ultimate outcome of the claims against this defendant in the particular circumstances of the present case.

22. Against that background, I turn to consider the various heads of claim.

Loss of Gross Profit - Turnover

23. As appears from the above table, the major area of dispute concerns the proper assessment of the overall loss of turnover during the period immediately following the fire until the Club eventually reopened in August 2010. As appears from the above summary, it was Mr Brown's evidence that the loss of turnover was £2,626,769 whereas Mr Stanbury's evidence was that the loss of turnover was substantially lower i.e. £1,883,311. In summary, the main reasons for this substantial difference were as follows.
24. Mr Brown's calculation of lost turnover is based on an average between two perspectives. Mr Brown's first perspective ("P1") is, in effect, based upon an extrapolation of the Club's turnover in the period before the fire. As Mr Brown readily accepted, the difficulty with this exercise is the lack of reliable data before the middle of October 2008. Accordingly, what Mr Brown did was to seek to identify what, if any, trends there were within the period of approximately 11 months prior to the fire to seek to measure the impact of the changes which Mr Norcross said he had made to the underlying business. The difficulty with that exercise is that Bank Holiday weekends and the pre-Christmas period have a significantly higher level of revenue resulting in "spikes" in turnover; and it was common ground between the experts that it was reasonable to exclude these periods. On this basis, Mr Brown sought to compare 2 periods each consisting of a total of 12 weeks of sales i.e. (a) the period from 26 October 2008 to 22 February 2009 (in fact a period of 18 weeks but only 12 weeks after excluding the pre-Christmas and Christmas weeks); and (b) the period from 31 May 2009 to 6 September 2009 excluding the August Bank Holiday week. Such comparison indicated that the turnover in the latter period was 27% higher than the turnover in the former period. Mr Brown then applied a 27% uplift to the turnover during the period September 2008 to August 2009 to calculate the projected lost turnover during the period immediately after the fire until the Club reopened i.e. from September 2009 to August 2010.
25. In support of P1, Mr Slade submitted that Mr Brown's analysis was cogent in particular because (i) it was based on almost 11 months of trading immediately before the fire which was not merely a "snapshot"; (ii) it was logical to exclude holiday periods; and (iii) using 12 week periods as a basis for comparison was sensible. Further, Mr Slade submitted that I should accept Mr Norcross' evidence that since he bought out Mr Georgillades and took over full ownership of the Club in October 2008, he (Mr Norcross) made significant improvements both to the physical

environment of the Club and also with regard to staff training to ensure that the Club was increasingly successful and, in particular to drive turnover. Although Mr Slade accepted that such matters were, in certain respects, intangible, nevertheless they were all consistent with what he said was a “momentum” in a very successful business operation and increasing turnover; and that it was likely that such momentum would have continued into 2010 both generally and following the implementation of Mr Norcross’ plans as referred to above to make certain changes to the Club’s layout and thereby to expand capacity. Indeed, Mr Slade submitted that, if anything, the 27% figure was likely to be conservative given (i) the later 12 week comparator is in the (relatively) quiet summer period; (ii) the later comparator does not show growth over a full year; and (iii) if a shorter period is taken (eg first 6 weeks/last 6 weeks) the growth percentage would, in fact, materially increase to about 36%.

26. Mr Brown’s second perspective (“P2”) is based upon the actual turnover achieved post-fire after the Club had reopened in August 2010. Mr Brown then carried out an averaging exercise between these two perspectives to arrive at his overall conclusion.
27. The results of Mr Brown’s exercise are summarised in a schedule which he produced and which I attach in a slightly revised form as an Appendix to this Judgment.
28. Mr Stanbury disagreed with virtually every stage of the exercise carried out by Mr Brown. In particular, he emphasised that there was a dearth of reliable and reconcilable financial data and that general market evidence indicated that this industry suffered badly during the relevant period. As to P1, although Mr Stanbury acknowledged that the exclusion of holiday periods was in a sense reasonable, he disagreed with the exercise then carried out by Mr Brown and, in particular, he did not accept that a comparison of the two 12-week periods during 2008-2009 could be applied or utilised to identify a reliable indicator of any trend in increase of turnover. Thus, he did not accept Mr Brown’s evidence that the turnover of the business had, in effect, risen in the course of 2008-2009 by 27% still less that the 27% figure can then be used to uplift the turnover in 2008-2009 to calculate the lost turnover in 2009-2010. As to P2, he did not accept that the actual turnover achieved in the period after the Club reopened in August 2010 could be used as a reliable indicator of what the Club would have achieved in the period immediately following the fire. It followed that Mr Stanbury’s evidence was that the averaging exercise carried out by Mr Brown was flawed and unreliable. Rather, Mr Stanbury concluded that the Club’s turnover in 2009-2010 would only have increased by the relatively modest amount of the Consumer Price Index (“CPI”).
29. As to these contrasting views, my observations and conclusions are as follows.
30. First, as both Mr Brown and Mr Stanbury agreed, the difficulty in the present case is that the information available with regard to turnover before the fire is somewhat limited. As noted above, Mr Brown focussed on the turnover in the period commencing October 2008. In order to identify any “trend”, there is no doubt, in my view, that it would ideally have been preferable to have had additional information prior to that date so as to enable comparisons year-by-year and also season-by-season prior to the fire. However, such information was unavailable, unreliable or incomplete.

31. In his report, Mr Brown had identified a figure of £2.16 million as the annual turnover for the 52 weeks prior to October 2008 which was, in fact, higher than the turnover in the following year. Contrary to the claimant's case, this would suggest that there was a downward trend in turnover in the year before the fire when compared with the previous year. However, as submitted by Mr Slade on behalf of the claimants, it is possible that the stated figure of £2.16 million is unreliable for various reasons. Mr Piper accepted that this may be so but submitted that, if it were unreliable, this was because it was, on any view, too low rather than too high and that other evidence indicated that the figure was understated by perhaps £300,000 or more; that the downward trend was therefore even more significant; and that this was also consistent with other general evidence as to the state of the market in this industry particularly after the recession kicked in in the latter part of 2008. I originally considered that this was an important point in favour of the insurers. However, it only arose as a result of a question which I myself raised in the course of the trial; and it was not one which the experts themselves had properly considered. In particular, Mr Stanbury does not appear to have considered the point of any significance. In such circumstances, I do not consider that it would be appropriate to attach any significance to this possible point.
32. The result is that in considering any underlying "trend" in turnover before the fire, the relevant information is limited to the period of approximately 11 months between October 2008 and September 2009 which is somewhat unsatisfactory. That is not only because the information is limited in time but also because the exercise carried out by Mr Brown is based upon two different seasons. In addition, although Mr Stanbury readily accepted that it was reasonable to exclude the holiday periods, there is in my view much force in his point of view that it does not necessarily follow that it is reasonable to apply the results to derive an annual growth trend.
33. In my view, there are also considerable difficulties (or at least uncertainties) in explaining the reason(s) for any possible general increase in turnover in particular against the background of the general effect of the recession. This is important when considering the crucial question as to the likely turnover following the fire in 2009-2010. As submitted by Mr Piper, it seems to me that the evidence of Mr Norcross in this regard was, at best, extremely vague and unsupported by any evidence from (for example) any of the Club's staff; and, although I accept that Mr Norcross did carry out certain physical improvements as referred to above, it seems to me that they were of a somewhat limited nature and are unlikely of themselves to explain any significant increase in turnover. However, although Mr Piper submitted that the Club was, in effect, already a "mature" business in October 2008 with little scope for real growth, Mr Norcross appears to be a successful businessmen and, having bought out Mr Georgallides in October 2008, I accept that he ensured that the Club was generally kept to a high standard as stated above. Further, the closure of the restaurant and the increase of the bar area may well help to explain the apparent higher levels of turnover during the summer months in 2009. In that regard, it is noteworthy that Mr Stanbury's own evidence was that he would expect turnover in the autumn/winter period leading up to Christmas to be generally higher than during the summer months. On that basis, and whatever the explanation may be, it seems to me that the figures do appear, in broad terms, to show a general and significant increase in turnover during 2008-2009 although I remain doubtful as to the accuracy or reliability of the figure of 27%. Given all the uncertainties and doing the best I can, it is my conclusion that

there was a general increase in levels of turnover which I would assess as no more than about 20%. I should make plain that this figure is not based on any mathematical exercise. Rather it is a figure based upon Mr Brown's exercise and which takes into account Mr Slade's points that it should be regarded as "conservative" but discounted in a broad way to take account of Mr Stanbury's criticisms and the various points referred to above.

34. In the context of Mr Brown's P1, the next main question is whether this 20% figure should be used to uplift the 2008-2009 turnover to arrive at the projected turnover for 2009-2010. In principle, I have no doubt that a significant uplift should be applied to at least part of the 2008-2009 figures to arrive at the turnover for 2009-2010. That this must be the case is highlighted by considering Mr Stanbury's evidence. As stated above, his evidence was that the weekly sales figures in 2008-2009 should be increased by the CPI to arrive at figures for 2009-2010. However, the result of such exercise would be a very sharp notional drop in turnover immediately after the fire. As Mr Stanbury readily accepted, that is a flaw in his analysis particularly in the light of the fact, as he also accepted, that turnover would generally be expected to increase in the period after the summer months in the period up to Christmas.
35. As I understood Mr Slade's submissions, there were two main reasons for applying the uplift figure to the turnover in 2008-2009 to arrive at the projected turnover for 2009-2010 viz: (i) Mr Norcross' plans to carry out improvements to the Club which would, in particular, increase capacity; and (ii) in any event, the Club had already built up a momentum in 2008-2009 and this was likely to continue into the following year.
36. As to (i), it seems to me that this is both speculative and vague. Although the restaurant had been closed prior to the fire and the bar area extended, there is no contemporaneous documentary evidence to indicate what or when steps would be taken to change the layout of the Club and, despite Mr Norcross' evidence, I am unpersuaded that such possibility can properly be taken into account in assessing damages.
37. As to (ii), even accepting (as I do) that the Club had managed to increase general levels of turnover in 2008-2009, it does not, in my judgment, necessarily follow that there would be a similar further increase in turnover spread over the entirety of the following year. To my mind, that is mere speculation: there is simply insufficient data pre-fire to justify such conclusion. In fairness, Mr Brown accepted in cross-examination that contrary to his original P1, it would become increasingly "testing" to apply the uplift figure to weekly sales figures towards the latter part of the period in question in 2010. That is really the obverse (or perhaps corollary) of the flaw already highlighted in Mr Stanbury's analysis referred to above although it leaves open the practical difficulty of determining how any uplift figure should be applied. In addition, it seems to me that there is a very strong argument that this further uplift figure cannot be applied mechanically to increase the weekly sales figures during the 6 week period excluded in the first comparator period in the lead up to Christmas and just after in 2008 although I would accept that a reduced uplift figure (say 10%) during these equivalent 6 weeks in the following year would be reasonable.
38. Thus, in broad terms and doing the best I can, it seems to me that the appropriate approach should be to increase the weekly sales figures for 2008-2009 up to the week

ending 28 February 2009 by 20% apart from the 6 week excluded period which should be increased by 10% to arrive at a projected turnover in the equivalent weeks following the fire in 2009-2010 and thereafter to apply a notional increase equivalent to the CPI for the remainder of the period in 2010 until the reopening of the Club. I fully recognise that this exercise is necessarily somewhat crude and inexact but, in my view, it provides a reasonable assessment in the particular circumstances of the present case. I leave it to the parties to calculate the appropriate figure which I hope can be agreed and inserted in my final Order.

Perspective 2 (P2)

39. It is then necessary to consider what, if any, account, should be taken of the turnover actually achieved after the Club re-opened. As already stated, this aspect i.e. P2 formed an essential part of Mr Brown's analysis and his subsequent averaging exercise. In principle, I have no doubt that such an exercise is potentially relevant – and it is common ground that it is an exercise which is expressly contemplated by the terms of the insurance policy referred to above. As appears from the Appendix to this Judgment, Mr Brown's P2 analysis shows a very substantial increase in turnover post-reopening over that achieved in 2008-2009 as well as the projected turnover in 2009-2010 based purely on P1. However, in my view, the P2 exercise is not comparable, provides no real assistance in the circumstances of the present case and should be ignored for the following main reasons. First, some of the figures relied upon by Mr Brown as part of the P2 exercise extend beyond even 2011 and are therefore some distance in time away from the relevant period during 2009-2010. Second, as already stated, the Club was refurbished at a cost of some £1.5 million following the fire. This was, in effect, a new club. Third, as part of that refurbishment, the capacity of the Club was increased from 595 to approximately 1,000. On any view, that is a very large increase indeed. Fourth, the TOWIE effect. As Mr Norcross accepted, there is no doubt that exposure on this television programme substantially increased the total number of visitors to the Club. Mr Norcross' evidence was that the Club's turnover would have grown substantially anyway in 2010 even without TOWIE but it seems to me that this is not merely speculative but, in my judgment, unsupported by the evidence – at least if the suggestion is that such turnover would have increased by more than the P1 exercise as modified above.
40. It is fair to say that the records show a decline in paid-up members between 2008 and 2012; and Mr Norcross may well be right that this was the result of at least some of these individuals giving up their membership because of the TOWIE effect. However, it is difficult to evaluate the impact of this point given the gap in records between 2009-2011 and the apparent limited benefits of membership (particularly after the closure of the restaurant). Further, although Mr Norcross sought to bolster this point by identifying a number of celebrities who, according to his evidence, no longer came to the Club because of the TOWIE effect, it would seem that at least some such celebrities did still come to the Club post-TOWIE or did not come because of reasons other than TOWIE. As submitted by Mr Piper, it seems to me that the fact that Mr Norcross permitted the Club to remain in TOWIE from October 2010 to March 2013, to re-join 6 months later in October 2013 and thereafter to continue to feature in the series would suggest, at the very least, that it was overall beneficial – even though Mr Norcross maintained that, given what had happened, the Club really had no option but to stay in the programme.

41. It is for these reasons that I do not consider that Mr Brown's P2 exercise is of any assistance and it follows that Mr Brown's averaging exercise falls away. In summary, it is my conclusion that the lost turnover should be assessed by reference to Mr Brown's P1 exercise as modified above.
42. I then turn to consider the other items in dispute.

Rate of growth profit

43. Both experts have sought to calculate the gross profit. Mr Stanbury originally calculated a figure of 69.5% but this was subsequently increased by him to 73.2%. Mr Brown calculated a figure of 77.2% although he subsequently recalculated this to arrive at a gross profit margin of 78.4%. The differences between the experts are the result of imperfect data. In the event, it seems to me that a figure which lies approximately halfway between Mr Stanbury's figure (73.2%) and Mr Brown's highest figure (78.4%) is appropriate. On this basis, it is my conclusion that the rate of gross profit should be assessed as 75.8%.

Saved costs

44. As I understand, these are now agreed in the sum of £603,164 plus (i) a further 16% of turnover for staff costs; and (ii) 3.7% of turnover in respect of various items covering travel and motor/general travel expenses, crockery and glasses and cleaning of premises.

Continuing costs

45. As I understand, certain of these items are now agreed, viz:
- i) Professional services costs: £2,629.
 - ii) Alternative offices: £11,570.
 - iii) Promotion for reopening: £13,698.
 - iv) BDO/IBR cost: £7,521.
 - v) Catering: £5,304.
 - vi) Mr William Sibley: £5,000.

Staff wages/mobile phone costs

46. Under this head, the staff wages as claimed by the claimants amount to £122,266 and related mobile phone costs of £5,500. It was common ground between the parties that these items stood or fell together. Relying upon Mr Norcross' evidence, Mr Slade submitted that these items were recoverable on the basis that Mr Norcross continued to pay some of his staff following the fire because he did not wish to lose their skills from the business. However, Mr Piper submitted that, as Mr Norcross confirmed in evidence, all of the named staff continued to work for the group both before and after the fire. After the fire, they were not at home on gardening leave but continued to add benefit to the group business at all times. On that basis, Mr Piper submitted that the

claimants should recover nothing under this head. In theory, I can well understand that such claim might be recoverable if there were evidence to show what these staff members actually did even in general terms both before and after the fire. I had originally thought that it might be appropriate to make some apportionment of some kind. However, the evidence with regard to what these staff members did both before and after the fire is severely lacking and in such circumstances it is my conclusion that the sums claimed are irrecoverable.

Alternative accommodation for Ms Cuny

47. This item concerns a claim for £6,000 (£600 per month for 10 months) in respect of alternative accommodation provided to Ms Cuny who was a member of the Claimants' staff. Prior to the fire, she was apparently provided with living accommodation within the Club premises although the precise terms of such arrangement are unclear. Following the fire, this accommodation became uninhabitable and she was therefore provided with alternative accommodation at, it is said, a cost of £6,000. In principle, I accept that such cost might be recoverable. However, the evidence in support of this claim is tenuous in the extreme. In support of the claim, the claimants produced two Assured Shorthold Tenancy Agreements in respect of two properties, one showing Mr Norcross as the tenant and the second showing Ms Cuny as the tenant. However, there is no other cogent evidence as to the nature of the arrangements and no evidence whatsoever that the rents payable in respect of these properties were additional costs incurred by any of these claimants as a result of the fire. In such circumstances, I reject this claim.

Redundancy costs

48. The claim under this head is for £5,700 as a redundancy payment to one staff member i.e. Darren Fisher following the fire. The only evidence in support of this claim is an email from Emma Craven (Personal Assistant of Sugar Hut Group) which refers to the fact that Mr Fisher had received £3,000 cash from "Mick" (i.e. Mr Norcross) but that he is still due £2,700. However, there is no evidence that any of the claimants paid the sum of £3,000; nor is there any evidence that the balance of £2,700 was ever paid; nor, if it was, by whom. In these circumstances, it is my conclusion that these claimants are not entitled to recover any sum under this head.

Hertford & Fulham Venues

49. Under this head, the claimants claim loss of profits at the Fulham and Hertford Sugar Huts following the fire. In summary, the claimants claim loss of profit in the sum of £62,993 in relation to the Hertford Sugar Hut Club and £108,684 in respect of the Fulham Sugar Hut Club. Both experts agree that after the fire both Fulham and Hertford Sugar Hut suffered a significant drop in average daily takings. However, the experts disagree as to the reasons for such loss of profits.
50. In principle, it is common ground that the claimants are entitled to recover loss of profits suffered at these venues if, indeed, this was caused by the fire at the Sugar Hut Club in Brentwood.
51. The evidence in support of this claim was limited to two short paragraphs in the fourth witness statement of Mr Norcross. In summary, it was his evidence that the fire

at the Brentwood premises destroyed the office including most of their equipment and files and consequently the majority of their data. According to Mr Norcross, this was the biggest cause of loss to the other venues because, without the extensive mailing list and contact numbers compiled over years of business, they were unable to market the other venues as they had previously done. He explained that marketing is usually done 3 to 4 weeks in advance; and it is for this reason that the effect of losing the data may not have been immediately evident. However, Mr Norcross' evidence was that without the ability to contact their customer base directly, the other venues suffered massively. In addition, Mr Norcross' evidence was that once the flagship club at Brentwood was taken out of the equation, the other venues were not high profile enough on their own to attract big name DJs and the loss of these DJs resulted in loss of customers at the other venues. It is for these two main reasons that the claimants say that they are entitled to recover their losses under this head.

52. As stated above, it is common ground between the experts that there was indeed a fall off in turnover at the other two clubs following the fire. However, I remain unpersuaded that this was the result of the fire at Brentwood. As to the reasons advanced by Mr Norcross, he was unable to identify a single DJ or to produce a single email or other document to demonstrate any unwillingness by any DJ to work at Fulham or Hertford. As submitted by Mr Piper, Mr Norcross accepted that DJs are paid by the hour, such that on the face of it there is no reason for them to turn down work. Equally, Mr Norcross accepted that DJs try to work at more than one venue per night; and given that Fulham of course is central London, I can see no sound reason why DJs would not be prepared to work at that club.
53. As to the suggested loss of customer data, I found it extremely surprising that the claimants did not see fit to call direct evidence from any member of staff at the Hertford or Fulham clubs who were involved in promotions and who would, no doubt, have been able to set out with proper detail the difficulties which are alleged to have occurred. As submitted by Mr Piper, it does seem somewhat incredible that in this electronic age and with computers existing at both Fulham and Hertford (as Mr Norcross was obliged to concede) as well as staff having Blackberrys and there being back up from Brentwood computers that customer data would still not have been available. I recognise that Mr Norcross denied that the back-ups included customer lists; but even if that is right, it would appear that some information was readily obtainable from the website membership.
54. In considering this claim I also bear in mind the other evidence that the recession was biting at this time and further evidence which emerged in the course of the trial with regard to both Fulham and Hertford which would suggest that there were possible other reasons for the decline in turnover at these clubs during this period.
55. Be all this as it may, I remain unpersuaded that the evidence before me is sufficient to justify a conclusion that the loss of profit at these clubs can properly be attributed to the fire at Brentwood. For these reasons I reject the claims for loss of profits under this head.

Marriott's invoices

56. The claimants claim the sum of £19,275 in respect of monies paid to Marriotts who were accountants instructed on behalf of the claimants to investigate and present the

claim to the original insurers. The claim is advanced by the claimants on the basis that these sums are recoverable under the PAC. However, in order to make good this claim under that clause the claimants would have to show that the monies would have been incurred pursuant to a requirement of some kind by the insurers. Here, there is absolutely no evidence whatsoever to that effect; and for that reason alone, it follows that this claim must be rejected.

Depreciation

57. Under this head, the defendants say that any loss of profits should be reduced by a figure for depreciation. The difficulty is that this point was only raised by the defendants shortly before the trial commenced – and even then without any real specificity. It was never pleaded by the defendants; nor was it considered by the experts in their reports; nor is there any reference to depreciation in the Joint Statement. Nevertheless, Mr Piper submitted that it is obvious that there should be a deduction made in respect of depreciation; and that the failure to focus on this point was due to an oversight by all parties and the experts. Mr Piper may well be right in those submissions. However, for various reasons which it is unnecessary to consider in detail, it seems to me that there is very great difficulty at this late stage of these proceedings in seeking to perform the necessary calculations to work out what, if any, depreciation should be included in any calculation. In order to carry out a proper calculation, one would need to know, for example, the estimated residual value of any particular items which might involve an element of depreciation. In addition, it would be necessary to identify the appropriate rate of depreciation. None of this is straightforward. In his last throes, Mr Piper submitted that I should take a broad brush and, in effect, include a notional minimum amount of depreciation against the claim for loss of profit. I have much sympathy with that suggestion. However, in the circumstances, it seems to me that this is a stab too far.

Interest

58. The claimants claim interest at a commercial rate from various dates. So far as the costs paid in relation to the insurance claim and their own solicitors, the claimants claim interest from the date of payment. In respect of the claims relating to the property damage, the interest is claimed from 5 March 2010. So far as business interruption losses are claimed, the claimants claim interest from 24 June 2010. Mr Slade explained the reasons why different dates applied for the commencement of the claimants' claim for interest. However, it is unnecessary to explain such reasons because Mr Piper did not, as I understand, take issue on any of these dates.
59. The two remaining issues under this head concern (i) the rate of interest to be applied and (ii) whether the period for which interest is claimed should be reduced.
60. As to the first point, the claimants seek interest at a rate of 6%. In support of that claim, the claimants adduced in evidence the fourth statement of Mr Norcross which deals with 3 aspects of interest viz: (i) that Sugar Hut Group Ltd is bound to pay 5% on its loans to Barclays; (ii) that an equivalent of 6% per annum will be charged on Mr Norcross's loans to the Sugar Hut companies once the companies can afford to pay; and (iii) that Mr Norcross himself is presently liable to pay interest on borrowing from NatWest at 6.5% plus a risk fee of 0.5%. However, in my view, the actual amount of interest payable either by the Sugar Hut Group Ltd or Mr Norcross is of

little, if any, relevance. Consistent with the authorities, the real question is not what rate of interest is actually payable by the Sugar Hut Group Ltd, but rather what rate of interest would generally be payable by a company like the Sugar Hut Group Ltd. having regard to the general nature of its business operations. As to that, there was some evidence before me in the form of reports from the Bank of England. Initially, it was Mr Piper's case that the interest to be awarded by the court should be no more than 3.25%. However, in the light of the material from the Bank of England, it seems to me that the appropriate rate of interest is 5% p.a. simple.

61. As to the second point, Mr Piper submitted that there have been substantial delays in bringing this claim to trial which have been compounded in part by the failure of the claimants to provide adequate disclosure on a speedy basis. Mr Piper is no doubt right to say that this is a relatively old claim which relates to a fire in September 2009 (i.e. over 5 years ago) and a claim for loss of profits in the following year. However, it seems to me that the delay here is mainly due to three factors viz: (i) the fact that the claimants originally sued the insurers under the insurance policy; (ii) the decision to have a split trial; and (iii) the inevitable (albeit most regrettable) delay in obtaining a hearing in this court. As to the first point, it seems to me that it is difficult, if not impossible, for these defendants properly to criticise the claimants for pursuing the insurers in the first instance. Similarly, it seems to me that it is difficult for these defendants to criticise the claimants for proceeding by way of a split trial. I know nothing at all about the background that led to the eventual settlement of the claim by these claimants against these defendants of liability. As to the third point, the delay in getting a trial date is, as I say, most regrettable but it is certainly not the fault of these claimants.
62. Having regard to all the above and in the exercise of my discretion, it is my conclusion that the claimants be awarded interest on the sums recoverable as reflected by the terms of this judgment from the dates specified above without interruption until the final order is drawn at the rate of 5% p.a. simple.

Conclusion

63. For these reasons, it is my conclusion that the Claimants are entitled to recover the net amounts calculated in accordance with this Judgment together with interest as set out above. Counsel are accordingly requested to seek to agree the appropriate figures and any other consequential matters (including costs). Failing agreement, I will deal with any outstanding issues.

APPENDIX

Revised Schedule 3

Sugar Hut Group Limited and Others v AJ Insurance
Date of incident: 13 September 2009

CLAIM AND CALCULATION: BRENTWOOD SUGAR HUT - LOSS OF SALES

Week ending	FB's Calculation								Comparison		
	Perspective 1				Perspective 2				Expected Turnover (average perspectives 1 & 2)	FB expected v Prior Year	FB perspective 2 v Prior Year
	Prior year	Assumed prior year (2)	Trend	Prior year plus 27% growth	Actual	Post reinstatement actual					
	Sch. 4		Sch. 4		Sch. 4	18-Sept-11 to 30-Oct-11	7-Nov-10 to 21-Aug-11	26-Aug-12 to 11-Nov-12			
£								£	£	k = (f or g or h) / (a or b)	
a	b	c	d	e	f	g	h	i			
13-Sep-09 (1)								9,000			
20-Sep-09	n/a	28,071	27%	35,650				44,098	57%	87%	
27-Sep-09	n/a	28,071	27%	35,650				44,230	58%	88%	
04-Oct-09	n/a	28,071	27%	35,650				45,003	60%	94%	
11-Oct-09	n/a	28,071	27%	35,650				56,370	101%	175%	
18-Oct-09	n/a	28,071	27%	35,650				49,416	76%	125%	
25-Oct-09	26,127		27%	33,182				50,303	93%	158%	
01-Nov-09	25,152		27%	31,943				50,525	101%	175%	
08-Nov-09	28,684		27%	36,429				39,522	38%	49%	
15-Nov-09	27,890	Average	27%	35,420			46,086	40,753	46%	65%	
22-Nov-09	32,502		27%	41,278			54,055	47,667	47%	66%	
29-Nov-09	39,791		27%	50,535			72,278	61,406	54%	82%	
06-Dec-09	40,766		27%	51,773			40,667	46,220	13%	(0%)	
13-Dec-09	43,274		27%	54,958			53,976	54,467	26%	25%	
20-Dec-09	71,741		27%	91,111			41,286	66,198	(8%)	(42%)	
27-Dec-09	60,900		27%	77,343			71,629	74,486	22%	18%	
03-Jan-10	44,414		27%	56,405			93,797	75,101	69%	111%	
10-Jan-10	29,839		27%	37,895			41,627	39,761	33%	40%	
17-Jan-10	28,597		27%	36,318			55,302	45,810	60%	93%	
24-Jan-10	29,718		27%	37,742			47,853	42,798	44%	61%	
31-Jan-10	32,731		27%	41,569			54,650	48,109	47%	67%	
07-Feb-10	32,382		27%	41,125			50,838	45,981	42%	57%	
14-Feb-10	28,426		27%	36,101			51,684	43,892	54%	82%	
21-Feb-10	25,571		27%	32,475			49,216	40,845	60%	92%	
28-Feb-10	41,035		27%	52,115			52,072	52,093	27%	27%	
07-Mar-10	35,485		27%	45,066			56,206	50,636	43%	58%	
14-Mar-10	35,897		27%	45,589			42,965	44,277	23%	20%	
21-Mar-10	33,216		27%	42,184			46,146	44,165	33%	39%	
28-Mar-10	37,122		27%	47,145			43,919	45,532	23%	18%	
04-Apr-10	34,205		27%	43,440			56,702	50,071	46%	66%	
11-Apr-10	74,054		27%	94,049			56,413	75,231	2%	(24%)	
18-Apr-10	42,574		27%	54,069			53,836	53,953	27%	26%	
25-Apr-10	48,099		27%	61,086			109,025	85,055	77%	127%	
02-May-10	59,567		27%	75,651			127,804	101,727	71%	115%	
09-May-10	33,259		27%	42,239			55,181	48,710	46%	66%	
16-May-10	40,375		27%	51,276			60,198	55,737	38%	49%	
23-May-10	66,275		27%	84,169			53,509	68,839	4%	(19%)	
30-May-10	36,163		27%	45,928			86,347	66,137	83%	139%	
06-Jun-10	26,828		27%	34,071			57,706	45,888	71%	115%	
13-Jun-10	33,853		27%	42,993			53,040	48,017	42%	57%	
20-Jun-10	32,402		27%	41,151			52,817	46,984	45%	63%	
27-Jun-10	37,662		27%	47,831			47,557	47,694	27%	26%	
04-Jul-10	30,017		27%	38,121			49,502	43,811	46%	65%	
11-Jul-10	38,048		27%	48,321			43,998	46,160	21%	16%	
18-Jul-10	37,757		27%	47,952			42,491	45,221	20%	13%	
25-Jul-10	34,521		27%	43,841			48,568	46,205	34%	41%	
01-Aug-10	41,994		27%	53,332			61,221	57,277	36%	46%	
08-Aug-10	38,912		27%	49,418			50,393	49,906	28%	30%	
15-Aug-10	38,408		27%	48,779			56,659	52,719	37%	48%	
22-Aug-10	32,494		27%	41,267			36,213	38,740	19%	11%	
29-Aug-10	61,716		27%	78,379				71,388	16%	4%	
05-Sep-10	45,466		27%	57,741				58,507	29%	30%	
12-Sep-10					38,255			49,565			
19-Sep-10					36,452			50,165			
26-Sep-10					35,633			43,561			
03-Oct-10					39,934			46,781			
10-Oct-10					39,183			52,553			
17-Oct-10					33,861			46,600			
24-Oct-10					34,715			55,539			
31-Oct-10					61,245			58,784			
07-Nov-10					42,615			55,751			
14-Nov-10					46,086			54,713			
Total	1,795,908	140,355		2,459,054	407,979	436,514	2,368,045	637,681	3,163,637	39%	51%

Notes:
(1) Actual sales for the week ending 13-Sep-09 have not been provided. I have therefore adopted the claimed lost sales for 13-Sep-09, which is based on the weekly takings for the week ending 6-Sep-09.
(2) Pre-incident sales data is only available from the week ending 26-Oct-08. Mr Brown has therefore calculated a weekly average of the five weeks to 22-Nov-09 for the period 20-Sep-09 to 18-Oct-09.