



Neutral Citation Number: [2020] EWHC 2190 (Comm)

Case No: LM-2018-000092

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/08/2020

Before :

PETER MACDONALD EGGERS QC
(sitting as a Deputy High Court Judge)

Between :

(1) HALAL MEAT SELLERS COMMITTEE LIMITED	<u>Claimants</u>
(2) NIMAT HALAL FOOD LIMITED - and - HMC (UK) LIMITED	<u>Defendant</u>

Timothy Deal (instructed directly) for the **Claimants**
Samantha Knights QC (instructed by **Simons Muirhead & Burton LLP**) for the **Defendant**

Hearing dates: 24 June 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10:30 am on 10 August 2020. A copy of the judgment in final form as handed down can be made available after that time, on request by email to the judge's Clerk

Peter MacDonald Eggers QC:

Introduction

1. The Defendant (“HMC”) has applied, pursuant to CPR rules 3.4(2)(a), (b) and/or (c), for an order striking out the Claimants’ Part 8 Claim on the grounds that it discloses no reasonable grounds for bring the claim and/or is an abuse of the Court’s process and/or there has been a failure to comply with a rule and practice direction.
2. HMC is registered as a charity by the Charity Commission in England and Wales and monitors and certifies the production and supply of non-stunned Halal meat and poultry.
3. The First Claimant (“HMSC”) is described by its director, Mr Tariq Masood, as a representative body of “*individuals and companies who may be butchers, wholesalers or meat cutting plants*” and is registered as an organisation that promotes and protects the rights of Halal meat butchers. HMSC’s registered business is the wholesale of meat and meat products. Mr Masood stated that HMSC’s objectives include working “*in the best interests of its members to secure best quality certified Halal meat at a fair market price*”, to “*Restrict the suppliers’ monopoly in the Halal meat industry and to restrain unfair practices*” and to work “*in unity to secure the fairest prices for its members from Halal meat suppliers*”. Mr Masood also describes himself as a member of HMSC.
4. The Second Claimant (“NHFL”) is said to be a member of HMSC and sues HMC on its own behalf and on behalf of all other members of HMSC, who are butchers, wholesalers or meat cutting plants (I will refer to them as “butchers”). According to para. 9 of Mr Masood’s third witness statement, nearly all of the butchers who are members of the HMSC are accredited by HMC and have a direct contractual relationship with HMC.
5. The complaint made by the Claimants relates to the Halal accreditation scheme provided by HMC, whereby upon payment of an application fee and a monthly licence fee by the relevant butcher who sells fresh meat products supplied by a slaughterhouse approved by HMC, the butcher is provided with certain benefits, including an HMC certificate of compliance (updated monthly), a yellow window sticker which is displayed in the butcher’s shop window informing consumers that the shop is HMC-approved, a blog spot on HMC’s website (which has over 70,000 users visit each month), trained HMC personnel randomly visiting butchers to ensure compliance, and the use of the HMC logo (the first witness statement of Mr Yunus Dudhwala, the chairman of HMC, para. 67-69). I shall refer to these benefits as “HMC accreditation” or “the right to use and display HMC accreditation”.
6. The Claimants object to the fact that HMC has placed restrictions upon the NHFL and the butchers whom it represents refusing to allow them to retain, use and display HMC accreditation if they sell fresh meat products from any source not “*under the control of*” HMC or not approved by HMC.
7. According to Mr Timothy Deal, who appeared on behalf of the Claimants, the Claimants are concerned by the unfair way in which the HMC accreditation scheme was operated and that the “*heart of the grievance*” was that by its accreditation

conditions HMC has unjustified control over the way in which the butchers' businesses are operated, which unfairly impacts on the Claimant butchers.

8. Mr Dudhwala, the chairman of HMC, said in his second witness statement that the chief grievance of Mr Masood on behalf of the Claimants "*is based upon his interpretation of Halal and what this means in terms of slaughter requirements*". "*Halal*" is Arabic for "*permissible*" and Halal food is that which adheres to Islamic law. Mr Masood expressly relies on HMC's interpretation of Islamic dietary laws as the basis of the Claimants' claim (para. 27-30 of Mr Masood's first witness statement and para. 18 and 24 of Mr Masood's third witness statement).
9. The difference of interpretation centres around the acceptability of stunning animals prior to slaughter for use as Halal meat. HMC's position is that it is not permissible to use pre-stunned animals to produce Halal meat. The issue of stunning has long divided Islamic scholarly opinion, but the practice is becoming common in both Muslim majority and minority countries.
10. At para. 21 of his first witness statement, Mr Dudhwala stated that the Islamic form of slaughtering animals or poultry (*dhabihah*) involves killing by a Muslim through a cut to the animal's jugular vein, carotid artery and windpipe, that animals must be healthy at the time of slaughter and all blood is drained from the carcass; during this process, a Muslim will recite a dedication (*tasmiya* or *shahada*). At para. 22, Mr Dudhwala identifies a number of different factors which are either accepted or controversial depending on a Muslim's own preference, knowledge and background. Some of those factors include whether stunning was used, the method of stunning and whether the animal was stunned to kill the animal or render it unconscious. At para. 23, Mr Dudhwala stated that Muslims in the United Kingdom are not agreed upon a single set of criteria in the Halal slaughter process.
11. The Claimants' position is that it is acceptable if Halal meat is sourced from pre-stunned animals and that this is an interpretation of Halal which is shared by a majority of Muslims. Mr Masood observed in his third witness statement, at para. 18, that "*80% of the halal market concerns meat from stunned animals*". At para. 24, Mr Masood states that "*The narrow interpretation of halal by the Defendant is unjustifiable and it is indisputable that it serves to restrict access to the halal market place*".
12. By their CPR Part 8 Claim Form, the Claimants, HMSC and NHFL, seek declarations that:
 - (1) HMC's decision to remove its "HMC" accreditation from butchers wishing to sell products certified by HMC as well as other Halal certified products is in breach of natural justice, is outside of HMC's stated charitable objects, and is void as being an unreasonable restraint upon the Claimants' trading activities.
 - (2) HMC's decision to remove its "HMC" accreditation from butchers without following a fair procedure to investigate and take account of representations is unreasonable, unfair, not a proportionate measure and void and unenforceable.

- (3) The Claimant butchers or HMC certified members be permitted to sell from their premises such other products as certified by other Halal accreditation bodies and/or such other products as deemed appropriate without limitation.
13. HMC maintains that the Claimants' claim must be struck out on the causes of action and facts set out in the Claimants' Claim Form. Although the Claimants have applied to the Court for permission to allow its claim to become a CPR Part 7 Claim Form, pursuant to CPR rule 8.1(3), they have stated in their application that their Part 8 Claim Form "*will stand as its Claim Form and the Particulars of Claim in the Part 7 proceedings*", that is the Claimants do not intend to supplement the matters alleged in their Claim Form.
14. The Claimants resist the application to strike out their Claim Form.
15. The parties are agreed that the Court need not adjudicate on the issue whether the use of stunned meat accords with the requirements of Halal.

HMC's Licence agreement

16. It is common ground that HMC's accreditation scheme was operated pursuant to a contract between HMC and the accredited butchers. One version of HMC's standard licence agreement is exhibited to the first witness statement of Mr Masood. Another version of the agreement is exhibited to the first witness statement of Mr Nadeem Adam, HMC's Operations Director.
17. The version exhibited to Mr Masood's witness statement contains the following provisions:

“WHEREAS:

- (A) *The HMC is a quality control service for Certifiable Goods and is the owner of the Certification Mark Halal Monitoring Committee - HMC (UK) ... (“the Certification Mark”) ...*
- (C) *The Licensee carries on the business of [...] ... and wishes to use the Certification Mark in the Territory as stated in clause 3 below in relation to its Certifiable Goods only*
- (D) *The HMC has agreed to grant the Licensee a licence to use the Certification Mark in relation to its Certifiable Goods ... on the terms set out in this Agreement ...*

NOW IT IS HEREBY AGREED as follows

...

2 PURPOSE:

- 2.1 *The HMC grants and the Licensee accepts an non-exclusive licence to use the Certification Mark in the Territory as stated in clause 3 below ...*

- 2.5 *The Licensee agrees to have Certifiable Goods that are to be sold for Halal consumption to be monitored and maintained in accordance with the Regulations and the HMC's Criteria's/Standard in particular ...*
- 2.7 *The Licensee agrees to comply strictly with any directions the HMC may have regarding the application of the Certification Mark ...*
- 2.9 *The Licensee agrees to appoint HMC as the sole body for the certification of all products*

3 DOMAIN OF THE LICENCE - TERRITORY

This non-exclusive licence grants the Licensee the right to sell all Certifiable Goods covered by this Agreement within the EU and not to engage in any other products which are not HMC certified ..."

18. Schedule 3 to the Licence Agreement (described as "*the Regulations*"), as exhibited to Mr Masood's witness statement, provides in summary that (1) HMC has liaised with Scholars of the Sunni School of jurisprudence to set a standard for what constitutes the Halal slaughtering of animals, which are set out in the Regulations, (2) HMC will only grant licences and certificates to those businesses that are able to meet the HMC Standard, (3) only Certifiable Goods that have been slaughtered/witnessed and monitored by an HMC inspector will be certified as Halal, (4) HMC has a complete discretion in deciding whether the HMC Standard has been met and wholly implemented, and (5) the Licensee will be the authorised user of the Certification Mark and will agree to comply with the Regulations and the terms and conditions of the licence and Certification Mark.
19. Schedule 3 as exhibited to Mr Adam's witness statement provided in summary that (1) HMC will inspect slaughterhouses to determine whether Islamic Shariah Law and the "*HMC Standard*" has been followed, (2) HMC will certify that animals are Halal when they are satisfied that animals have been slaughtered in the approved manner and according to Islamic Shariah Law, (3) HMC acting in accordance with the Regulations (set out in Schedule 3) shall be the competent authority to rule whether Certifiable Goods are Halal, (4) HMC shall be entitled to insist on its standards being met before Licences are issued, (5) HMC shall be entitled to issue religious rulings (after consultation with the Ulama) on methods or processes of production as well as on the Certifiable Goods, *i.e.* whether they conform to the "*HMC Standard*". The "*HMC Standard*" is identified as the standard set by HMC after consultation with an Alim and the Ulama of the Sunni School of jurisprudence.
20. However, the Claimants maintain that, although the butchers whom NHFL represents agreed with HMC to be accredited when they made an online application to HMC, no agreement in the above terms of the licence agreement had been shown to the butchers at that time, with the result - as the Claimants argue - that these terms were not incorporated into any agreement between NHFL and HMC (Mr Masood's first witness statement, para. 12-14; Mr Masood's second witness statement, para. 26-27). Mr Adam in his first witness statement, para. 19, took issue with this.
21. That said, Mr Masood at para. 6 and 22 of his first witness statement also refers to the fact that a contractual relationship was formed upon the acceptance of the application

made online and a welcome pack made available to new member who apply for accreditation online, and that pack appears to contemplate that accreditation involves HMC inspectors monitoring butchers' compliance with HMC regulations that only HMC-approved products are stocked.

22. Mr Deal, on behalf of the Claimants, submitted that there are “*real issues of interpretation and incorporation irrespective of whether the contract terms relied upon by the Defendant did form part of contractual terms between the parties*” and that the principal factual dispute between the parties relates to the terms of the contract.
23. The important point is that the Claimants do not allege, in the proceedings, that HMC is not contractually entitled to insist on butchers whom HMC permit to use and display its accreditation not also selling fresh meat sourced from slaughterhouses not approved by the HMC as a condition of the right to use and display HMC accreditation. In argument, however, Mr Deal on behalf of the Claimants submitted that HMC's charitable objects influenced the terms of the contract.
24. Ms Samantha Knights QC on behalf of HMC observed that the Claim Form does not contain or relate to any allegations of breach of contract by HMC and that if the Claimants had any issue about the terms of the contract with HMC, the correct approach would have been to commence proceedings properly and plead a contractually based claim. Ms Knights QC is right in this respect.
25. Although the Claimants' Claim Form (both in its guise as a Part 8 Claim and a draft Part 7 Claim) seeks declaratory relief on specified grounds, those grounds do not include any reference to the contract between the HMC and the butchers represented by NHFL. The Claim Form pleads that HMC has acted “*Wrongfully and in breach of its charitable objects*” and that HMC's operation of its accreditation scheme amounts to an “*unreasonable restriction on the right of the Claimants to trade freely*”, but there is no allegation in the Claim Form that HMC has failed to comply with, or is not entitled to act in the manner in which it is carrying out, the contract between HMC and the butchers. The Claim Form does not identify any such contract or allege any breach of contract as a cause of action or a ground for claiming declaratory relief. Further, the Claimants do not identify any terms of any contract which are inconsistent with the manner in which HMC operates its accreditation scheme. In argument, the Claimants relied on the influence of HMC's charitable objects on the relevant contract.

The parties' submissions

26. Ms Samantha Knights QC on behalf of HMC submitted that:
 - (1) There is no maintainable cause of action based on an alleged breach by HMC of its charitable objects.
 - (a) The Claimants' claim that HMC has acted in breach of its charitable objects is without substance and cannot be adjudicated by the Court.
 - (b) The Claimants have notified the Charity Commission of their grievance and were told the proceedings were not established to be

charity proceedings. The Charity Commission has not authorised the commencement of the Claimants' proceedings against HMC, because it has not been established that they represent charity proceedings for the purposes of section 115 of the Charities Act 2011, meaning that they are not proceedings brought under the Court's jurisdiction with respect to charities (see para. 23 of Mr Masood's first witness statement). Subject to certain exceptions, no charity proceedings must be undertaken before any court without the authorisation of the Charity Commission.

- (c) HMC has acted at all times within its charitable objects. HMC has no commercial activities and its income is applied solely for the purpose of its charitable objects.
 - (d) A disagreement as to what is required by Islamic law or indeed by any organised body of religion is not a matter on which the Court can adjudicate and the existence of such a disagreement does not mean that a charitable object for the advancement of that religion is not being adhered to.
- (2) There is no wrongful restraint of trade by HMC as it does not carry on any commercial activity; it is not a commercial or trading organisation, but a charity providing certification of goods produced in accordance with its interpretation of Islamic dietary laws. The fact that HMC uses a contract to provide such certification is irrelevant. No butcher is under an obligation to use HMC's accreditation process. HMC has no dominant market position; nor could it as a charity which earns no profit. As Mr Masood stated, 80% of Muslim consumers buy stunned Halal meat, which is not certified by HMC. HMC certifies only a minority of the Halal meat sold in the United Kingdom. In addition, there is no clear evidence that anyone other than the NHFL is aggrieved by HMC's certification process and there is no evidence that were NHFL (or anyone else) to stop using and displaying HMC's accreditation, this would have any financial impact on its trading. Importantly, butchers are free to sell HMC certified frozen and fresh meat, but if they sell other fresh meat products (which they are permitted to sell), they are precluded from being certified and displaying the HMC sticker (Mr Dudhwala's second witness statement, para. 66-69), which is not disputed by Mr Masood.
- (3) Even if there were a contract in restraint of trade between the butchers and HMC, it is not unreasonable, because there are clear and compelling justifications and motivations of HMC in seeking to ensure that consumers who wish to eat non-stunned Halal meat can do so. The rationale for HMC's requirements are based on consumer rights and transparency and a public interest in the monitoring and certification carried out by HMC.
- (4) There is no breach of "*natural justice*" as alleged by the Claimants. The Claimants' claim is vague and unsubstantiated and it is unclear how it applies to the present claim. Although HMC provides a certification service to allow Muslim consumers who wish to purchase non-stunned Halal meat with assurance of the supply chain, there is no obligation or compulsion for any butcher to be accredited by HMC, but if they wish to benefit from HMC

accreditation, they should not sell non-HMC-approved products. Any butcher is free to sell HMC products alongside other stunned meat products but if a butcher chooses to do so, that butcher cannot use and display the HMC accreditation, because HMC cannot guarantee the integrity of the supply chain. The Claimants do not allege a breach of contract, even in their proposed Part 7 Claim Form. In any case, HMC has given NHFL the opportunity to remedy any breach of its contract with HMC (Mr Adam's first witness statement, para. 19-23).

- (5) The Claimant's claim based on a breach of natural justice is not clear. Although natural justice is relevant to decision-making by a court, tribunal or adjudicator, it is not apt for a certifying organisation where it relies on a stricter or different interpretation of Islamic dietary laws.
- (6) Accordingly, the Claimants' Part 8 Claim Form discloses no reasonable grounds for bringing a claim and should be struck out.
- (7) The Claimants' claim is an abuse of the Court's process:
 - (a) It is unclear in what capacity HMSC appears as there is no legal relationship between HMSC and HMC. Mr Masood is a director and is the sole shareholder of HMSC; this is insufficient to establish a relationship with HMC. Further, there is no evidence that Mr Masood is genuinely acting on behalf of any other members of HMSC. HMC has received no complaint from any other member of HMSC.
 - (b) Mr Masood's assertions that he is bringing the claim on behalf of a large number of individuals and that HMC has a dominant market position have no evidential basis.
 - (c) HMC has serious concerns about the Claimants' conduct prior to and during the proceedings, including displaying arguably defamatory pictures and graphics on HMSC's website aimed at portraying HMC as corrupt, bullying and manipulative.
 - (d) Mr Masood has adopted obstructive tactics in connection with the proceedings, including being unavailable for mediation and his refusal to engage with testing IT facilities for the purposes of the remote hearing in April 2020 (which was adjourned).
- (8) The Claimants have failed to comply with the Court's procedures in that:
 - (a) The Claimants failed to comply with CPR Pre-Action Protocols in failing to issue a letter before action.
 - (b) The Claimant served a Part 8 Claim Form in circumstances where there are substantial issues of fact between the parties.
 - (c) The Claimants also have not complied with the requirements of CPR rule 19.6 with respect to representative proceedings, because there is a lack of evidence in that respect.

- (9) The Claimants' application to have its Claim continued under CPR Part 7 instead of CPR Part 8 should be dismissed, because the subject of and the grounds for the claim remain the same; and is in any event a claim which has no merit and represents an abuse of the Court's process.

27. Mr Timothy Deal, on behalf of the Claimants, submitted that:

- (1) HMC's activities in promoting only a part of "*halal food*" and unfairly imposing restrictions on the sale of other "*halal*" food renders its activities outside its charitable objects, and contrary to the requirement that the activities of a charity must be exclusively in pursuit of its charitable objects.
- (2) The restricted way in which HMC defines "*halal*" is not set out in HMC's charitable objects which make no reference to the exclusive promotion of meat from un-stunned animals and describes its activities in general terms as the "*advancement*" of "*Islamic dietary requirements and laws relating to Halal food*". HMC's charitable objects should be taken into account when considering the terms of the contract with HMC.
- (3) The contracts which NHFL and the butchers it represents have with HMC are in unreasonable restraint of trade, because by refusing to permit the butchers to display HMC accreditation and to source and sell non-HMC-approved fresh meat, it is wrong for HMC to control the market place in this way, by restricting the sale of meat from humanely killed stunned animals. The restrictions imposed by HMC are not in the public interest and are unreasonable (*Petrofina (Gt Britain) Ltd v Martin* [1966] 1 Ch 146).
- (4) The restrictions imposed by HMC upon the butchers are a breach of natural justice as they have been imposed upon the Claimants without any form of consultation, failing to take into account material considerations, and without reasons or rationale.
- (5) HMC's imposed restrictions fail to take into account material considerations such as the rights of consumers to purchase stunned meat, the provisions of animal welfare law, the spirit of which is ignored, the lack of any form of accurate product labelling, the increased product prices that HMC's policy imposes on retailers and consumers, and the failure to comply with its stated charitable objects.
- (6) The Claimants' pleaded case has set out the facts indicating what the claim is about (CPR PD 3A, para. 1.4(1)).
- (7) The Claimants deny that there are grounds for striking out the claim on the grounds of abuse of process or a failure to comply with the Court's procedures.

The application to strike out the Part 8 Claim Form

28. CPR rule 3.4(2) empowers the Court to strike out a statement of case, including a Claim Form (CPR rule 2.3(1)). The Court may strike out the Part 8 Claim Form if it appears to the Court that:

- (1) The statement of case discloses no reasonable grounds for bringing or defending the claim.
 - (2) The statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings.
 - (3) There has been a failure to comply with a rule, practice direction or Court order.
29. The striking out of a statement of case, or a part of it, has the effect of expunging that document, or the relevant part of the document, and the case which it contains so that it ceases to have legal effect for the purposes of the maintenance or defence of a claim (or an issue arising in the proceedings).
30. HMC relies on each of these grounds in support of its application to strike out the Part 8 Claim Form issued by the Claimants.
31. I will consider each of these grounds in turn.

Does the Claim Form disclose reasonable grounds for bringing the claim?

32. CPR rule 3.4(2)(a) permits the Court to strike out a statement of case if it discloses no reasonable grounds for bringing the claim.
33. CPR PD 3A, para. 1.4 provides that:
- “The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):*
- (1) *those which set out no facts indicating what the claim is about, for example ‘Money owed £5000’,*
 - (2) *those which are incoherent and make no sense,*
 - (3) *those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.”*
34. This ground on which the Court may exercise its power to strike out the Claim Form may apply in different circumstances. There are two common circumstances where CPR rule 3.4(2)(a) may be engaged. First, where the statement of case is vague or incoherent or incomplete with the result that there is no adequate explanation in the statement of case of the justification and grounds for the relief claimed.
35. Second, where though the statement of case is understandable, coherent and sufficiently complete, the law does not recognise that a claim or defence may be advanced on the basis alleged. In this second respect, the application for a strike out is often made together with an application for summary judgment on the basis that it is certain that the claim will fail (*TBS v Commissioner of Police of the Metropolis* [2017] EWHC 3094 (QB), para. 7). If the Court is satisfied that there is no real prospect of the claim succeeding, it may strike out the Claim Form or give summary

judgment, suggesting that the test is the same or substantially similar (*Andric v Credit Suisse (UK) Ltd* [2017] EWHC 1724 (Comm), para. 5).

36. Assessing the prospects of success differs depending on whether the dispute between the parties is an issue of law or an issue of fact. As para. 1.4(3) of CPR PD 3A recognises, the Court can determine questions of law. If the question of law (or construction) can be determined no matter what disputes of fact exist, the Court is in a position to resolve such questions on a summary basis, without having to wait for the trial. However, even though the Court may come to the view that the claim cannot succeed in accordance with the law, the law itself may be in an evolving or developing state and, in such circumstances, the Court may well reach the view that it should be deferred until trial (*TBS v Commissioner of Police of the Metropolis* [2017] EWHC 3094 (QB), para. 7). Alternatively, if the Court comes to the conclusion that there is no benefit to either party in allowing the statement of case to stand, it should be prepared to strike out the statement of case, provided of course one of the jurisdictional grounds exist.
37. The Claimants bring their claim on three legal bases, namely that the operation of HMC's accreditation scheme in refusing to allow a butcher to use and display such accreditation if it is also selling fresh meat products sourced from a non-approved slaughterhouse is:
 - (1) outside the stated charitable objects of HMC; and/or
 - (2) an unreasonable restraint on trade; and/or
 - (3) a breach of natural justice.
38. If, however, there is a dispute between the parties about the facts, the scope for the Court determining such issues is more restricted. If the assertion of a fact is devoid of any evidence in its support or if there is evidence, but that evidence "*is so deeply improbable that the court can safely rule before trial that [the] evidence cannot be true*", the Court may decide that the claim should be struck out (*Andric v Credit Suisse (UK) Ltd* [2017] EWHC 1724 (Comm), para. 16).
39. Where there is no such issue of fact which the Court can obviously or readily determine at such a preliminary stage, which must be an exceptional case, the Court on application for a strike out should determine issues of law on the basis of facts which are common ground and/or which are must be assumed in favour of the party whose statement of case is sought to be struck out. Accordingly, in the present case, where there is a real prospect of establishing the alleged facts, generally when considering the application for a strike out, the Court should assume that the facts as pleaded, in this case by the Claimants, are true and can be established.
40. For the purposes of this application, I will assume that the following facts on which the Claimants rely in their Part 8 Claim Form and the witness statements of Mr Masood served on behalf of the Claimants are true, some of which facts are common ground, namely:
 - (1) HMC adopts an accreditation scheme which permits licensees the right to use and display HMC's accreditation only if the butcher does not sell fresh meat

from a slaughterhouse not approved by HMC (because the slaughterhouse produces fresh meat from a stunned animal).

- (2) However, any butcher can sell fresh meat products from sources not approved by HMC, but in that event, the butcher cannot use or display HMC's accreditation. This is the thrust of the Claimants' complaint (Mr Masood's first witness statement, para. 9-10).
- (3) HMC's scheme is based on a particular interpretation of Halal and Islamic dietary laws which deprecates the use of stunned animals.
- (4) 80% of the Halal market uses fresh meat from stunned animals. Most Muslims in the United Kingdom adopt an interpretation which allows the use of stunned meat, but there are a substantial (although unspecified) number of Muslims whose interpretation accords with that of HMC.
- (5) The butchers entitled to use and display HMC's accreditation have entered into a contractual relationship with HMC concerning HMC's accreditation (para. 11 of Mr Masood's third witness statement). The precise terms of the contract were not common ground between the parties, but it is not suggested by the Claimants that HMC is not contractually entitled to insist that butchers can use and display HMC's accreditation only if they do not source fresh meat products from slaughterhouses not approved by HMC (subject to one argument based on HMC's charitable objects). Certainly, any dispute or issue relating to the relevant contract or its terms is not raised by the Claimants in their Claim Form (see above).
- (6) HMC's accreditation scheme may well have a financial impact on the operation of the butchers' business.
- (7) HMC is a charitable organisation and does not engage in any trade for profit. There is no allegation made by the Claimants to the contrary.

41. I would add that HMSC, the First Claimant, claims to be an organisation of which the butchers represented by NHFL, the Second Claimant, are members. It is not clear to me what standing HMSC in fact has, but I will assume for the purposes of this application that it has such standing.

HMC's charitable objects

42. HMC is registered as a charity by the Charity Commission in England and Wales (no. 1147462). HMC's specified charitable objects or purposes as printed on the Charity Commission's website and quoted in the Claimants' Part 8 Claim Form are:

“(1) The advancement of the religion of Islam, by means of, but not exclusively, the provision of facilities to enable Muslim members of the public to practise the Islamic religion and in particular to enable them to observe the Islamic dietary requirements and laws relating to Halal food; (2) to advance the education of the public by means of, but not exclusively, providing training in matters relating to the Islamic dietary requirements, laws relating to Halal food, food safety and good standards in food hygiene.”

43. The Claimants allege in their Claim Form that HMC has, wrongfully and in breach of its charitable objects, placed restrictions upon the Claimants in refusing to allow them to use and display the said accreditation if they sell Halal meat from any source not under the control of HMC and that this goes beyond what is necessary or reasonable to promote HMC's charitable objects. At para. 27 of his first witness statement, Mr Masood stated that HMC's practice and policy goes beyond its charitable aims of monitoring Halal foods, because the foods which the Claimant butchers sell are all Halal foods which are accredited by various Islamic accreditation bodies, other than HMC, as well as those accredited by HMC, so that there is no justification for HMC in refusing the Claimants to use and display HMC accreditation if it sells Halal foods approved by other Halal accreditation bodies. At para. 28, Mr Masood stated that there is no obvious source of confusion to purchasers, given that all of the relevant products are properly labelled and separately prepared and labelled.
44. The Claimants' Claim Form does not adequately explain or particularise this aspect of the Claimants' claim.
45. In my judgment, therefore, the Claimants' Part 8 Claim Form does not disclose reasonable grounds for bringing the Claim insofar as it concerns HMC allegedly operating outside its charitable objects.
46. As I understand the Claimants' evidence, the allegation that HMC's conduct lies outside HMC's charitable objects is based on the assertion that HMC's practice of allowing butchers to use and display HMC's accreditation depends on the butcher not selling fresh meat sourced from a slaughterhouse which is not approved by HMC, because it uses stunned animals. There are two ways of characterising this aspect of the claim. First, HMC has failed to give credit to the majority view of what is permissible in respect of Islamic dietary laws. Second, whether or not HMC's interpretation is correct, HMC has failed in its charitable objects in not embracing an interpretation which HMC did not accept, that is in failing to accommodate diverse views of the requirements of Islamic dietary laws.
47. Taking into account the Claimants' evidence, the claim is based on a difference between the parties as to the correct interpretation of Islamic dietary laws. Indeed, other than identifying a difference of interpretation of Islamic dietary laws, the Claimants have not identified in their Claim Form, in their evidence or in their argument how HMC's activities are said to fall outside its charitable objectives based on the advancement of religion, which is a legitimate charitable purpose (sections 2(1), 3(1)(c) and 3(2)(a) of the Charities Act 2011). There is no suggestion by the Claimants that HMC does not sincerely hold its opinion on the interpretation of Halal and Islamic dietary laws and that its actions are not intended to advance its interpretation of Islamic dietary laws.
48. For good measure, Mr Dudhwala's evidence, at para. 27 of his first witness statement, was that the slaughterhouses which HMC approved were approved by the EU and operated in accordance with all animal welfare standards prescribed by law (including The Welfare of Animals at the Time of Killing (England) Regulations 2015). This was not disputed by the Claimants, although the Claimants do state that the use of non-stunned animals is regarded as cruel by many consumers and raises issues of animal welfare (Mr Masood's first witness statement, para. 29; Mr Masood's third witness statement, para. 24). I do not consider this particular issue in this judgment,

but I note that the Claimants are seeking declaratory relief which would permit them to sell HMC-accredited fresh meat products.

49. The difference in the interpretation of Halal between the Claimants on the one hand and HMC on the other hand concerns the acceptability of using stunned animals for the production of Halal meat. The Claimants argue that HMC's interpretation is at odds with the view of a majority of Muslims in the United Kingdom that stunning is permissible under Islamic dietary law, although, according to the first witness statement of Mr Nadeem Adam, HMC's Operations Director, at para. 11, many Muslims disagree. HMC recognises that there are other interpretations but that it is free as a charity to promote the advancement of the Islamic religion and its dietary laws in accordance with the interpretation which it sincerely holds to be valid.
50. On the indisputable facts of this case, and having regard to the undisputed contractual arrangements between the parties, the existence of a difference of opinion or interpretation of Islamic dietary laws is not sufficient to conclude that HMC is acting outside its charitable objectives. In this respect, HMC relied on the decision in *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15; [2005] 2 AC 246, where the House of Lords was concerned with the question whether section 548 of the Education Act 1996 prohibiting the use of corporal punishment infringed the freedom to manifest religious beliefs under article 9(1) of the European Human Rights Convention and the right to education in accordance with religious convictions under article 2 of the First Protocol to the Convention. Lord Nicholls explained the right under article 9(1) at para. 22:

“It is necessary first to clarify the court’s role in identifying a religious belief calling for protection under article 9. When the genuineness of a claimant’s professed belief is an issue in the proceedings the court will inquire into and decide this issue as a question of fact. This is a limited inquiry. The court is concerned to ensure an assertion of religious belief is made in good faith: “neither fictitious, nor capricious, and that it is not an artifice”, to adopt the felicitous phrase of Iacobucci J in the decision of the Supreme Court of Canada in Syndicat Northcrest v Amselem (2004) 241 DLR (4th) 1, 27, para 52. But, emphatically, it is not for the court to embark on an inquiry into the asserted belief and judge its “validity” by some objective standard such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant’s belief conforms to or differs from the views of others professing the same religion. Freedom of religion protects the subjective belief of an individual. As Iacobucci J also noted, at p 28, para 54, religious belief is intensely personal and can easily vary from one individual to another. Each individual is at liberty to hold his own religious beliefs, however irrational or inconsistent they may seem to some, however surprising.”

51. Then Lord Nicholls considered the practical issues arising from the manifestation of a religious belief or conviction at para. 23:

“Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of “manifestation” arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These

threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention ..."

52. Accordingly, HMC argued, it is not the function of the Court to resolve any issue of interpretation of Islamic dietary law. In *Sulaiman v Juffali* [2002] 1 FLR 479, Munby, J said, at para. 47, that “*Religion - whatever the particular believer's faith - is no doubt something to be encouraged but it is not the business of government or of the secular courts. So the starting point of the law is an essentially agnostic view of religious beliefs and a tolerant indulgence to religious and cultural diversity*”. I accept HMC's submission as a general statement of the Court's role.
53. On the other hand, the Claimants submitted that even if issues of religious belief and doctrine arise between the parties, it may be that the Court will have to resolve any civil disputes or consequences which arise in connection with or as a result of such issues. In *Shergill v Khaira* [2014] UKSC 33; [2015] AC 359, the Supreme Court drew this distinction as follows, at para. 46, in connection with disputes between two factions of the Sikh community concerning the trusteeship and administration of the two gurdwaras:

“This distinction between a religious belief or practice and its civil consequences underlies the way that the English and Scottish courts have always, until recently, approached issues arising out of disputes within a religious community or with a religious basis. In both jurisdictions the courts do not adjudicate on the truth of religious beliefs or on the validity of particular rites. But where a claimant asks the court to enforce private rights and obligations which depend on religious issues, the judge may have to determine such religious issues as are capable of objective ascertainment. The court addresses questions of religious belief and practice where its jurisdiction is invoked either to enforce the contractual rights of members of a community against other members or its governing body or to ensure that property held on trust is used for the purposes of the trust.”

54. However, I do not think this claim involves the Court having to decide between conflicting interpretations of Islamic dietary laws.
55. Mr Deal, in his skeleton argument on behalf of the Claimants, submitted that the restrictive interpretation of Halal implemented by HMC is not set out in HMC's charitable purposes which make no reference to the exclusive promotion of meat from un-stunned animals and describes its activities in general terms as the "*advancement*" of "*Islamic dietary requirements and laws relating to Halal food*", which could and should accommodate alternative interpretations. Mr Deal added that HMC's charitable objects "*should be taken into account when considering the contractual terms and the enforceability of those terms, that run contrary to those objects*".
56. This argument is not reflected in the Claimants' Claim Form. In any event, where the Claimants have identified no contractual term to the effect that HMC is not contractually entitled to administer its accreditation scheme in the manner that it does, I do not consider that HMC's charitable objects should alter the effect of the contractual arrangements and I do not consider that HMC's decision to promote its charitable objects in accordance with its own sincerely held interpretation of Islamic dietary laws can give rise to an entitlement to the declaratory relief the Claimants seek.
57. The Claimants have not identified in their Claim Form any grounds on which the alleged non-fulfilment of HMC's charitable objects is relevant to their claim. Aside from the contractual relationship between the butchers whom NHFL represents and HMC, there is no suggestion or evidence of a legal relationship between the Claimants on the one hand and HMC on the other hand which relates to the Claimants' objection to HMC's conduct on the basis that it is not fulfilling its charitable objects.
58. As far as any contractual relationship is concerned, the Claimants do not identify any contract, and there is no evidence of any contract, between the butchers whom NHFL represents and HMC which requires the charitable objects to be adhered to by HMC in the manner alleged by the Claimants or in any manner other than that adopted by HMC. The only evidence of the terms of the contract (which contract is accepted by both parties to exist, although the terms are disputed) is the Licence Agreement (of which there are two versions) referred to above. If either version of the Licence Agreement represents the terms of the contract between HMC and most of those whom NHFL represents, which is in dispute, it sets no requirements that HMC's charitable objects be adhered to in the manner alleged by the Claimants or in any manner other than that adopted by HMC (Mr Adam's first witness statement, at para. 25). Whether or not the Licence Agreement represents the terms of the relevant contract, the Claimants have identified no contract or contractual terms in their Claim Form on the basis of which they could legitimately complain that HMC's charitable objects are not being fulfilled.
59. I would add that, having regard Mr Deal's submission, there is no reason to suppose that HMC's particular interpretation of Islamic dietary law, even if it is the view of only a minority of Muslims in the United Kingdom, cannot inform the promotion of charitable objects based on the advancement of religion if that is in accordance with the parties' contract which both parties acknowledged exists.

60. Therefore, the Claimants' Claim Form does not identify the grounds on which any conduct on the part of HMC could be said to exceed its charitable purposes. Insofar as it is the difference of interpretation of Islamic dietary laws which is the foundation of the Claimants' complaint, HMC's promotion of one interpretation of Halal does not of itself mean that HMC is acting outside its charitable objects or purposes, having regard to the contractual arrangements in place.

Is there an unreasonable restraint of trade?

61. The doctrine which renders contractual provisions void or unenforceable by reason of its operating as an unreasonable restraint of trade has long been recognised. The doctrine or its application contends with three competing considerations: first, every person is entitled to engage in its trade or business in any manner which it considers in its own interests, provided that it does not operate the trade or business unlawfully; second, many contracts impose some sort of restriction on a party's freedom to carry on a trade or business on each of the contracting parties; third, the contractual restrictions placed by one contracting party on another contracting party may represent or be the result of a pronounced inequality in their respective bargaining positions or may detract from the realm of fair competition on which trades and businesses are based.
62. Given that these considerations are broadly stated, the doctrine itself is resistant to any rigorous definition, other than one based on a flexible concept of reasonableness.
63. In *Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* [1968] AC 269, the House of Lords considered the doctrine of restraint of trade in relation to a dispute concerning two separate agreements each relating to a different garage; both agreements provided that the respondents would purchase fuels from the appellants (and not from anyone else) with the benefit of a rebate and had to resell the fuels at specified prices (as required by a price maintenance clause) and to keep the garages open at specified hours; one of the agreements was for a period of approximately five years and the other was for a period of 21 years, the latter also involved a mortgage over the garage. After low-priced petrol came on to the market, the appellants considered that the price maintenance clause penalised their dealers and informed the respondents that they would not insist on the implementation of the price maintenance clause. The respondents argued that the effective removal of the price maintenance clause rendered the agreements null and void in restraint of trade. The House of Lords held that the shorter agreement was not in unreasonable restraint of trade, but the longer was and was therefore void.
64. At pages 293-294, Lord Reid grappled with the principle:

"The most general statement with regard to restraint of trade is that of Lord Parker in Attorney-General of the Commonwealth of Australia v. Adelaide Steamship Co. Ltd. He said:

"Monopolies and contracts in restraint of trade have this in common, that they both, if enforced, involve a derogation from the common law right in virtue of which any member of the community may exercise any trade or business he pleases and in such manner as he thinks best in his own interests."

But that cannot have been intended to be a definition: all contracts in restraint of trade involve such a derogation but not all contracts involving such a derogation are contracts in restraint of trade. Whenever a man agrees to do something over a period he thereby puts it wholly or partly out of his power to “exercise any trade or business he pleases” during that period. He may enter into a contract of service or may agree to give his exclusive services to another: then during the period of the contract he is not entitled to engage in other business activities. But no one has ever suggested that such contracts are in restraint of trade except in very unusual circumstances ...”

65. At pages 298-299, Lord Reid then proceeded to deal with the application of the doctrine to the case at hand:

“It is true that it would be an innovation to hold that ordinary negative covenants preventing the use of a particular site for trading of all kinds or of a particular kind are within the scope of the doctrine of restraint of trade. I do not think they are. Restraint of trade appears to me to imply that a man contracts to give up some freedom which otherwise he would have had. A person buying or leasing land had no previous right to be there at all, let alone to trade there, and when he takes possession of that land subject to a negative restrictive covenant he gives up no right or freedom which he previously had ... But there is some difficulty if a restraint in a lease not merely prevents the person who takes possession of the land under the lease from doing certain things there, but also obliges him to act in a particular way. In the present case the respondents before they made this agreement were entitled to use this land in any lawful way they chose, and by making this agreement they agreed to restrict their right by giving up their right to sell there petrol not supplied by the appellants.

In my view this agreement is within the scope of the doctrine of restraint of trade as it had been developed in English law. Not only have the respondents agreed negatively not to sell other petrol but they have agreed positively to keep this garage open for the sale of the appellants’ petrol at all reasonable hours throughout the period of the tie. It was argued that this was merely regulating the respondent’s trading and rather promoting than restraining his trade. But regulating a person’s existing trade may be a greater restraint than prohibiting him from engaging in a new trade. And a contract to take one’s whole supply from one source may be much more hampering than a contract to sell one’s whole output to one buyer. I would not attempt to define the dividing line between contracts which are and contracts which are not in restraint of trade, but in my view this contract must be held to be in restraint of trade. So it is necessary to consider whether its provisions can be justified ...”

66. At pages 304-305, Lord Morris explained the principle in the following terms:

“In general, the law recognises that there is freedom to enter into any contract that can lawfully be made. The law lends its weight to uphold and enforce contracts freely entered into. The law does not allow a man to derogate from his grant. If someone has sold the goodwill of his business, some restraint to enable the purchaser to have that which he has bought may be recognised as reasonable. Some restraints to ensure the protection of confidential information

may be similarly regarded. The law recognises that if business contracts are fairly made by parties who are on equal terms such parties should know their business best. If there has been no irregularity, the law does not mend or amend contracts merely for the relief of those for whom things have not turned out well. But when all this is fully recognised yet the law, in some circumstances, reserves a right to say that a contract is in restraint of trade and that to be enforceable it must pass a test of reasonableness. In the competition between varying possible principles applicable, that which makes certain covenants in restraint of trade unenforceable will in some circumstances be strong enough to prevail. Public policy will give it priority. It will have such priority because of the reasonable necessity to ensure and preserve freedom of trade.”

67. At pages 328-329, Lord Pearce said:

“The doctrine does not apply to ordinary commercial contracts for the regulation and promotion of trade during the existence of the contract, provided that any prevention of work outside the contract, viewed as a whole, is directed towards the absorption of the parties' services and not their sterilisation. Sole agencies are a normal and necessary incident of commerce and those who desire the benefits of a sole agency must deny themselves the opportunities of other agencies. So, too, in the case of a film-star who may tie herself to a company in order to obtain from them the benefits of stardom (Gaumont-British Picture Corporation Ltd. v. Alexander. See, too, Warner Brothers Pictures Incorporated v. Nelson. and partners habitually fetter themselves to one another.

When a contract only ties the parties during the continuance of the contract, and the negative ties are only those which are incidental and normal to the positive commercial arrangements at which the contract aims, even though those ties exclude all dealings with others, there is no restraint of trade within the meaning of the doctrine and no question of reasonableness arises. If, however, the contract ties the trading activities of either party after its determination, it is a restraint of trade, and the question of reasonableness arises. So, too, if during the contract one of the parties is too unilaterally fettered so that the contract loses its character of a contract for the regulation and promotion of trade and acquires the predominant character of a contract in restraint of trade. In that case the rationale of Young v. Timmins comes into play and the question whether it is reasonable arises.”

68. Having regard to these principles, in my judgment, the Claimants' claim based on an alleged unreasonable restraint of trade is bound to fail for the following reasons.

69. First, the contracts between NHFL and those whom it represents on the one hand and HMC on the other hand are not in restraint of trade, because

- (1) HMC is not engaged in any trade, whether for profit or otherwise; it is a charity whose purpose is to promote the advancement of the Islamic religion and the observance of Islamic dietary requirements and laws relating to Halal food. To this end, it provides accreditation and certification services to ensure transparency in the supply chain. It does not engage in the buying or selling of

meat products, even those which are HMC-approved (Mr Dudhwala's second witness statement, para. 66). This is not disputed by the Claimants.

- (2) HMC-certified meat products are free to be sold across the value supply chain. Any butcher - whether or not it has a contractual relationship with HMC - is free to buy and sell HMC-certified products. However, if a butcher is an HMC-accredited butcher and wishes to enjoy the benefits of such accreditation, by using and displaying HMC's certificate and shop sticker, it must not sell fresh meat sourced from slaughterhouses not approved by HMC (Mr Dudhwala's second witness statement, para. 67-69).
- (3) This means that NHFL and those butchers whom it represents were under no obligation to become HMC-accredited butchers. Further, even if they are accredited by HMC, there is no obligation to continue to be so accredited, and if they wish to cease accreditation they may do so in accordance with the contract and thereafter sell fresh meat from HMC and other sources.
- (4) HMC's requirements are that the use and display of its accreditation by any butcher depends on the butcher's observance of certain conditions, including that no fresh meat products are sold if it is sourced from a slaughterhouse not approved by the HMC. In other words, the very right of which HMC seeks to deprive the butchers who do not observe its conditions is created under the contract which is alleged to be in unreasonable restraint of trade; it was not a right which existed prior to such contract.
- (5) The conditions imposed by HMC do not extend beyond the life of the contractual relationship with HMC.
- (6) Accordingly, there can be no restraint of trade imposed by the contract with HMC in circumstances where all that HMC is doing is identifying the conditions on which its accreditation scheme operates. A butcher can sign up to that scheme or not; if the butcher does so, he/she must abide by those conditions. This is not a contract in restraint of trade.

70. If I am wrong and the contract between HMC and the butchers is in restraint of trade, insofar as any assessment can be made at this time, I think it is unlikely that any such restraint is unreasonable, given that the conditions of accreditation need only be observed whilst the accreditation remains valid and there are no obligations imposed thereafter. However, I do not think it is possible for me to come to a firm conclusion that the Claimants are certain to fail on this issue of reasonableness without a trial, because it involves consideration of a number of competing policy interests relied on by the parties, which would require consideration of all relevant evidence adduced at trial.

Has there been a breach of natural justice?

71. I found this aspect of the Claimants' claim difficult to understand. There are no clearly identifiable grounds for this claim set out in the Claimants' Part 8 Claim Form. In Mr Deal's written skeleton argument, the Claimants' position appears to be that HMC's requirement that the butchers represented by NHFL cannot use and display HMC's accreditation if they also sell fresh meat from sources not approved by HMC

represent restrictions imposed is in breach of natural justice, because they are imposed without consultation with the butchers, without taking into account material considerations, and without reasons being given.

72. At para. 34-36 of his first witness statement, Mr Masood refers to the fact that HMC provided no opportunity for representations from a member or for a proper investigation where a particular butcher initially lost its accreditation because non-HMC-approved meat had mistakenly been supplied to a butcher, but that accreditation was reinstated. Mr Masood's real objection is that the imposition of HMC's condition of accreditation - that the butcher will not sell fresh meat sourced from a non-approved slaughterhouse - is arbitrary and unfair. There is a lack of correspondence between Mr Masood's evidence and the grounds relied on by the Claimants during the hearing.
73. In my judgment, the Claimants' Claim Form does not disclose any reasonable grounds for bring this claim because:
- (1) The alleged failure to follow procedurally fair rules, in breach of natural justice, is not explained or particularised at all in the Part 8 Claim Form (or in the draft Part 7 Claim Form). There is no reference in that document to a lack of consultation, a failure to take account of material considerations or a lack of reasons. Indeed, the only reference to a "*breach of natural justice*" is in the terms of the declaratory relief sought, not in the grounds for the claim for such relief. Another declaration sought by the Claimants is that HMC's decision to remove its accreditation from butchers without following a fair procedure to investigate and take account of representations is unreasonable and unfair.
 - (2) There is no allegation or claim that HMC is not contractually entitled to impose as a condition of accreditation the requirement that the butchers in question will not sell fresh meat products sourced from a non-approved slaughterhouse.
 - (3) Although I can conceive that the decision by HMC to allow a butcher to be accredited would have to be taken in accordance with natural justice and fair procedures, a contractual entitlement to impose such a condition is not amenable to objection on grounds of a breach of natural justice. It might be - although it is not alleged - that a person in the position of HMC who imposes such a condition in accordance with a discretion granted to HMC by the contract must exercise that discretion in a manner which is not arbitrary or capricious or unreasonable. However, that is not the Claimants' case.
 - (4) It is not clear to me that the Claimants are in fact alleging that HMC's condition of accreditation was imposed in procedurally unfair circumstances. Instead, the Claimants are arguing that the condition itself is unfair.
 - (5) Even considering the alleged breaches of natural justice referred to in Mr Deal's skeleton argument, I have seen no evidence which begins to justify this complaint.

No reasonable grounds disclosed for bringing the claim

74. For the reasons explained above, the Claimants have disclosed in their Part 8 Claim Form (or their draft Part 7 Claim Form) no reasonable grounds for bringing the claim on the grounds of HMC proceeding outside its charitable objects, acting in unreasonable restraint of trade, or in breach of natural justice, on the facts I have assumed, which are either common ground or which are asserted by the Claimants.
75. I have come to this decision because:
- (1) The Claim Form insofar as it is based on an allegation that HMC has acted outside its charitable objects and in breach of natural justice does not identify with sufficient precision or at all the factual basis on which these claims are brought.
 - (2) Even making allowances for this deficiency, the Claimants' claim on all three grounds is certain to fail.
76. I emphasise that I have not determined any claim based on an alleged breach of contract between the butchers whom NHFL represents and HMC, because no such claim has been made.
77. Therefore, the Claimants' Claim Form should be struck out. There is no real benefit to the parties in allowing this Claim Form to stand.

Alleged abuse of process

78. The Court may strike out a claim if the Claim Form is an abuse of process (CPR rule 3.4(2)(b)). CPR PD 3A, para. 1.5 provides that "*A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded*".
79. HMC alleges that there has been an abuse of process because the Claimants have used the Court's process for a purpose or in any way that it is significantly different from its ordinary and proper use. In support of this submission, HMC relies on the following factors:
- (1) It is unclear in what capacity HMSC appears as there is no legal relationship between HMSC and HMC and there is no evidence that Mr Masood is genuinely acting on behalf of any other members of HMSC.
 - (2) HMC has serious concerns about the Claimants' conduct prior to and during the proceedings, including displaying arguably defamatory pictures and graphics on HMSC's website aimed at portraying HMC as corrupt, bullying and manipulative. This is explained in Mr Adam's first witness statement, at para. 19-23 and 35-47, where Mr Adam also refers to HMSC's relationship with another certifying body, HFA.
 - (3) Mr Masood has adopted obstructive tactics in connection with the proceedings.
80. As to the Claimants' capacity, Mr Masood has given evidence of the representative role played by both Claimants (Mr Masood's third witness statement, para. 9-10). I

am not in a position to draw a conclusion which is at odds with Mr Masood's evidence. Accordingly, on an application for a strike out, this ground is not established.

81. As to the allegations that the Claimants have acted improperly, they have not been answered by the Claimants in evidence, other than to note that the Claimants have no connection with HFA (Mr Masood's third witness statement, para. 22). However, I am not in a position to decide whether these alleged events which are serious in nature are substantiated and are sufficiently connected with the current proceedings.
82. Although I consider that the Claimants' Claim Form discloses no reasonable grounds for bringing the claim, I do not consider that it is necessarily an abuse of process.

Alleged procedural failures

83. HMC submitted that the Claim Form should be struck out on the grounds that the Claimants have failed to follow the Court's procedures set out in a rule or practice direction, because:
 - (1) The Claimants have failed to comply with CPR Pre-Action Protocols in failing to issue a letter before action.
 - (2) The Claimants served a Part 8 Claim Form in circumstances where there are substantial issues of fact between the parties.
 - (3) The Claimants have also not complied with the requirements of CPR rule 19.6 with respect to representative proceedings, because there is a lack of evidence of the interests of the representative and the represented parties in that respect.
84. In my judgment, a failure to issue a letter before action should not be penalised by striking out the Claim Form. The absence of such a letter other than, perhaps, in the most extreme circumstances would not warrant such a drastic step. If the claim were clearly or arguably a meritorious one, such a step would be unduly disproportionate and any absence of a pre-action letter can be dealt with, if necessary, by other sanctions. If the claim were a plainly an unmeritorious claim, the claim itself would no doubt be exposed to striking out or summary judgment.
85. The second ground relied on by HMC that the Part 8 procedure was inappropriate again is not sufficient in my judgment to warrant striking out a claim, especially as in the present case the Claimants have applied to alter the Part 8 Claim Form to a Part 7 Claim Form.
86. As to the third ground, Mr Masood has stated in evidence that NHFL can act in a representative capacity. Under CPR rule 19.6(1), the claimant may commence proceedings as a representative (without an order of the Court) and it would then be incumbent on the defendant to seek an order that the representative should not act as such (CPR rule 19.6(2)-(3)). Other than the above submission, no such application has been made. I am not satisfied that such an order should be made.

Conclusion

87. For the above reasons, I grant HMC's application to strike out the Claimants' claim pursuant to CPR rule 3.4(2)(a) on the ground that the Claimants' Claim Form discloses no reasonable grounds for bringing the claim. I do not accede to this application on the other grounds relied on by HMC.
88. In these circumstances, the Claimants' application to have their Claim Form treated as a Part 7 Claim Form must also be dismissed.