

IN THE MATTER OF AN ARBITRATION  
AND IN THE MATTER OF THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022  
BETWEEN:

GAMEHOUSE LIMITED

Applicant

-and-

WELLINGTON PUB COMPANY PLC

Respondent

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FINAL AWARD

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## **Introduction**

1. The dispute relates to rent and interest due from the Applicant to the Respondent pursuant to a lease made between the parties [hereinafter referred to as 'the Lease']. The Applicant's business is known as the 'Bull Inn' situated at 152 Laleham Road, Shepperton TW17 0DB [hereinafter referred to as "the Premises"]. The Applicant is the tenant under the Lease and the Respondent is the landlord.
2. There is a dispute between the parties in respect of the eligibility of the reference.
3. Arrears of rent has accrued and remain in dispute. There was an initial dispute between the parties in respect of the amount of the protected rent debt. The Applicant stated that the protected rent debt was in the sum of £22,621.10 and the Respondent stated that it was in the sum of £38,634.99. The Applicant's revised proposal accepted that the protected rent debt is £38,634.99.
4. The Applicant has made an application under The Commercial Rent (Coronavirus) Act 2022 [hereinafter referred to as "the Act"] for relief.

## **The Parties**

5. The Applicant carries on business running a public house called the 'Bull Inn' and is represented by Chris Wright of Protected Rent Debt.
6. The Respondent is the Applicant's landlord pursuant to the said Lease and is represented by Alison Cornelius of Criterion Asset Management Limited.

## **Jurisdiction and Seat of Arbitration**

7. The parties have been unable to resolve their dispute in relation to the protected rent debt and the Applicant has commenced this arbitration pursuant to the Act. The Act itself provides the jurisdiction for this arbitration and the seat of the arbitration is England and Wales.
8. I was appointed as the arbitrator and the parties were notified of my appointment on 23<sup>rd</sup> September 2022.
9. The referral is for an arbitration on the papers with no oral hearing.

## **Procedural and Interlocutory Matters**

10. I had received the following documents [hereinafter referred to as 'the Documents'] as part of the Applicant's referral;
  - a. Bank Statements.
  - b. Business Loan Statement
  - c. Gamehouse Limited Report & Accounts
  - d. The Government's policy statement on Resolving Commercial Rent Arrears accumulated due to Covid 19.
  - e. 2 Fitch Affirm reports.
  - f. The Code of Practice.
  - g. The Commercial Rent (Coronavirus) Act 2022.
  - h. The Commercial Rent (Coronavirus) Act Bill.
  - i. Government Press Release.
  - j. 2 Venn diagrams.
  - k. The Applicant's formal proposal.
  - l. The Applicant's notification of intention.
  - m. The Applicant's statement.
11. A summary of the correspondence and documents received are as follows. The Applicant's referral included its formal proposal and narrative statement.

12. The Respondent's formal proposal was received on the 12<sup>th</sup> October 2022.
13. On 24<sup>th</sup> October 2022, the representatives agreed an extension of time until 7<sup>th</sup> November 2022 pursuant to section 11(6)(a) of the Act for the filing of the Applicant's revised proposal.
14. The Applicant's revised proposal was received on 7<sup>th</sup> November 2022 accompanied by 2 published awards, the Gamehouse Limited's Companies House entry, an email regarding the dilapidations and screenshots of a communication from the Respondent entitled ' Covid-19 Support for Tenants Offer 14<sup>th</sup> May 2020.
15. In an email dated 7<sup>th</sup> November 2022, Ms. Cornelius requested an extension of time pursuant to section 11(6) of the Act until 18<sup>th</sup> November 2022 to file the Respondent's revised proposal.
16. On 17<sup>th</sup> November the Respondent's revised proposal was received accompanied by supporting evidence in the form of the Gamehouse Limited report and accounts for the year ending 31<sup>st</sup> March 2021.
17. Both parties have filed final proposals, which I have detailed below.
18. I thank both parties for their engagement in this process and take this opportunity to apologise for the delay in publishing this Award.
19. I have carefully reviewed all of the evidence and the submissions from the parties.

### **The Statutory Requirements**

20. Section 13 of the Act sets out the Awards that are available.

Arbitration awards available

(1) This section sets out the awards open to the arbitrator on a reference under this Part.

(2) If the arbitrator determines that—

(a) the parties have by agreement resolved the matter of relief from payment of a protected rent debt before the reference was made,

(b) the tenancy in question is not a business tenancy, or

(c) there is no protected rent debt,

the arbitrator must make an award dismissing the reference.

(3) If, after assessing the viability of the tenant's business, the arbitrator determines that (at the time of the assessment) the business—

(a) is not viable, and

(b) would not be viable even if the tenant were to be given relief from payment of any kind,

the arbitrator must make an award dismissing the reference.

(4) Subsection (5) applies if, after making that assessment, the arbitrator determines that (at the time of the assessment) the business—

(a) is viable, or

(b) would become viable if the tenant were to be given relief from payment of any kind.

(5) In that case the arbitrator must resolve the matter of relief from payment of a protected rent debt by—

(a) considering whether the tenant should receive any relief from payment and, if so, what relief, and

(b) making an award in accordance with section 14.

21. Section 14 of the Act sets out what to consider when determining the relief from payment;

(1) This section applies where the arbitrator is considering how to resolve the matter of relief from payment of a protected rent debt as required by section 13(5).

(2) Before determining what award to make the arbitrator must consider any final proposal put forward to it by a party under section 11.

(3) Where both parties put forward final proposals under section 11—

(a) if the arbitrator considers that both proposals are consistent with the principles in section 15, the arbitrator must make the award set out in whichever of them the arbitrator considers to be the most consistent;

(b) if the arbitrator considers that one proposal is consistent with the principles in section 15 but the other is not, the arbitrator must make the award set out in the proposal that is consistent.

(4) Where only the party making the reference to arbitration puts forward a final proposal under section 11, the arbitrator must make the award set out in the proposal if the arbitrator considers that the proposal is consistent with the principles in section 15.

(5) Otherwise, the arbitrator must make whatever award the arbitrator considers appropriate (applying the principles in section 15).

(6) An award under this section may—

(a) give the tenant relief from payment of the debt as set out in the award, or

(b)state that the tenant is to be given no relief from payment of the debt.  
(7)Where an award under subsection (6)(a) gives the tenant time to pay an amount (including an instalment), the payment date must be within the period of 24 months beginning with the day after the day on which the award is made.

(8)In subsection (7) “the payment date” means the day specified in the award as the day on which the amount concerned falls due for payment.

(9)An award giving the tenant relief from payment of a protected rent debt is to be taken as altering the effect of the terms of tenancy in relation to the protected rent constituting the debt.

(10)Subsection (9) means, in particular, that—

(a)the tenant is not to be regarded as in breach of covenant by virtue of—

(i)non-payment of an amount written off by the award, or

(ii)failure to pay an amount payable under the terms of the award before it falls due under those terms;

(b)a guarantor of the tenant’s obligation to pay rent, or a former tenant who is otherwise liable for a failure by the tenant to pay rent, is not liable in respect of anything mentioned in paragraph (a)(i) or (ii);

(c)a person other than the tenant who is liable for the payment of rent on an indemnity basis is not liable—

(i)to pay any unpaid protected rent written off by the award, or

(ii)to pay an amount payable under the terms of the award before it falls due under those terms;

(d)any amount payable under the terms of the award is to be treated for the purposes of the tenancy as rent payable under the tenancy.

(11)In this section “final proposal” means—

(a)the revised formal proposal put forward by a party under section 11(4), or

(b)if there is no revised formal proposal put forward by a party, the formal proposal put forward by the party under section 11(1) or (2).

22. Section 15 of the Act sets out the principles which I must apply in my determination.

Section 15 Commercial Rent (Coronavirus) Act 2022 - Arbitrator’s principles

(1)The principles in this section are—

(a)that any award should be aimed at—

(i)preserving (in a case falling within section 13(4)(a)), or

(ii)restoring and preserving (in a case falling within section 13(4)(b)),

the viability of the business of the tenant, so far as that is consistent with preserving the landlord’s solvency, and

(b)that the tenant should, so far as it is consistent with the principle in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay.

(2)In considering the viability of the tenant’s business and the landlord’s solvency for the purposes of subsection (1), the arbitrator must disregard anything done by the tenant or the landlord with a view to manipulating their financial affairs so as to improve their position in relation to an award to be made under section 14.

(3)For the purposes of this section, the landlord is “solvent” unless the landlord is, or is likely to become, unable to pay their debts as they fall due.

23. I now turn to consider the final proposals put forward by each party pursuant to section 11 of the Act for relief from payment. The matter of relief from payment is defined in section 6 of the Act as follows;

(1)References to the matter of relief from payment of a protected rent debt are to all issues relating to the questions—

(a)whether there is a protected rent debt of any amount, and

(b)if so, whether the tenant should be given relief from payment of that debt and, if so, what relief.

(2)“Relief from payment”, in relation to a protected rent debt, means any one or more of the following—

(a)writing off the whole or any part of the debt;

(b)giving time to pay the whole or any part of the debt, including by allowing the whole or any part of the debt to be paid by instalments;

(c)reducing (including to zero) any interest otherwise payable by the tenant under the terms of the tenancy in relation to the whole or any part of the debt.

### **The Applicant’s proposal**

24. The Applicant filed a Formal Proposal dated 21<sup>st</sup> September 2022 as follows;

a) The amount of the Protected Rent Debt is assessed by the Applicant as £67,242.13.

b) The amount of relief requested is £67,242.13.

c) That the Protected Rent Debt be written off in its entirety.

d) If applicable, the Applicant is to be given relief from immediate repayment and time to pay any balance over 24 months.

e) The Respondent is to pay 50% (half) of the Arbitrator's fees pursuant to section 19(5) of the Act.

25. The Applicant's formal proposal and the statement in support, dated 15<sup>th</sup> September 2022, set out the Applicant's position in respect of the relief sought and the basis upon which the offer was made. I have not rehearsed all of the contents herewith but have considered them carefully and refer to them below.

26. Bank statements have been provided as evidence to demonstrate that there are regular sales and that the business is viable. I have also considered the projections in respect of the business sector and the other documents provided.

### **The Respondent's formal proposal**

27. The Respondent's proposal was filed on 12<sup>th</sup> October 2022. It contains a narrative statement. I have not rehearsed all of the contents of it herewith but have considered it carefully and refer to it below.

28. The Respondent agrees that the debt assessed by the Respondent is in the sum of £67,242.13. The Respondent draws my attention to the principles in section 15, in particular, section 15(1)(b) that;

*'the tenant should, so far as it is consistent with the principle in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay.'*

29. The Respondent goes on to state, among other things, that the Applicant vacated the premises on the 27<sup>th</sup> July 2022 following occupation under the terms of a continuation tenancy following the expiry of the lease on 24<sup>th</sup> October 2021. An extension of time was agreed with the Applicant following negotiations regarding a proposed renewal of the lease however, the Applicant subsequently decided to quit the premises.

30. As the tenant had vacated the premises before making a reference for arbitration under the Act on 23<sup>rd</sup> September 2022, the Respondent considers that the provisions of the Act do not apply.

- Section 1(2)(b) of the Act provides for statutory arbitration between the landlord and tenant under a business tenancy (suggestive of existing tenancy).

- Paragraph 1(1) Schedule 2 states that it applies to a “protected rent debt under a business tenancy” and section 2(5) defines a business tenancy as “a tenancy to which Part 2 of the LTA 1954 applies” (i.e. present tense).
- Section 13(2) provides that an arbitrator must dismiss a reference if it determines that the tenancy in question is not a business tenancy..
- The language and terminology within the government issued “Commercial rent code of practice following the COVID-19 pandemic” is consistent with requirement for an ongoing tenancy – Paragraph 36 states the first question for a party to check is “am I a party to a business tenancy?”
- The rationale for the protection conferred by the Act is the preservation of an otherwise viable business. This is consistent with the requirement that the tenancy be ongoing as there is little to be achieved in that regard by assisting a former tenant whose tenancy has already ended.
- The rationale is reflected within the arbitrator’s principles at section 15 CR(C)A 2022 which sets out that first and foremost any award should be aimed at preserving the viability of the tenant’s business (so far as that is consistent with preserving the landlord’s solvency).

31. Further, the respondent’s solicitors, Gosschalks, have made a proposal to settle the outstanding debt to the Applicant’s solicitors, Maitland Walker, dated 4th October 2022. In summary this is:-

- (i) Wellington Pub Company shall retain the statutory compensation, £32,000, to be offset against the arrears.
- (ii) Gamehouse Ltd shall pay to Wellington Pub Company the sum of £35,272.13, being the balance of the arrears less the statutory compensation.
- (iii) Wellington Pub Company will waive:-  
Any claim for dilapidations at the Property, and  
Interest upon the arrears.

### **The Applicant’s revised proposal**

32. The Applicant filed a revised proposal dated 7<sup>th</sup> November 2022 which is the same as the formal proposal. The Applicant does not deny that the Premises have been vacated and states that there is nothing in the code of practice that confirms that an Applicant must continue to operate from the premises where the debt accrued or that the tenancy still exists now.



33. I do not propose to rehearse the whole of the revised proposal herewith but have considered the contents carefully.

34. The Applicant invites me to agree that the Applicant's revised proposal is the most consistent with the Act and that this should form the basis of my Award.

### **The Respondent's revised proposal**

35. The Respondent filed a revised proposal which was received on the 17<sup>th</sup> November 2022 reiterating its position as stated above and responding to the matters raised by the Applicant.

### **Relief sought**

36. Whilst I have carefully considered all of the papers before me, I have not addressed every single disputed fact or provided my opinion in respect of every proposition that the Applicant has asked me to agree with. I have focussed on resolving the dispute in accordance with the Act.

37. There is no dispute between the parties in respect of the amount of the debt owed to the Respondent by the Applicant. Both agree that it is £67,242.13. I have been asked by the Applicant to determine that the debt is a protected rent debt and to grant the Applicant relief in the form of a total write off of the said sum of £67,242.13. The Respondent asks me to dismiss the referral as it is ineligible because there is no longer a subsisting business tenancy, the premises are closed and the Applicant no longer occupies the premises or carries on business there.

38. The Overview to the Act states that '***This Act enables the matter of relief from payment of protected rent debts due from the tenant to the landlord under a business tenancy to be resolved by arbitration (if not resolved by agreement).***

39. A Protected Rent Debt is defined at section 3 of the Act as follows;

(1) A "protected rent debt" is a debt under a business tenancy consisting of unpaid protected rent.

(2) Rent due under the tenancy is "protected rent" if—

(a) the tenancy was adversely affected by coronavirus (see section 4), and

(b) the rent is attributable to a period of occupation by the tenant for, or for a period within, the protected period applying to the tenancy (see section 5).

40. I note the generic nature of a large part of the Applicant's evidence, but accept that the Applicant's business was adversely affected by the pandemic during the 'protected period' as defined by section 5 of the Act and in the manner described in the evidence adduced by the Applicant. I also accept the impact of the pandemic on the Respondent and the loss of profits as set out in the Respondent's formal proposal document.
41. I do not accept the Respondent's submissions that the referral should be dismissed as a result of the Applicant having vacated the premises and there being no current and subsisting business tenancy and I therefore do not make an award dismissing the reference pursuant to section 13(2) of the Act. I note that a proposal for settlement may have been made but have seen no evidence to suggest that an agreement has been reached for the settlement of the protected rent debt before the reference was made.
42. The Applicant vacated the premises on July 2022 and it is not disputed by either party that it was in occupation of the premises and trading therefrom during the protected period as defined in section 5 of the Act, that is the period from the beginning of 21<sup>st</sup> March 2020 and ending on 18<sup>th</sup> July 2021. I determine that the sum of £67,242.13 is the protected rent debt.
43. I have confined myself to matters that form part of the arbitration and have carefully considered all of the documents and the submissions made together with the principles clearly set out at paragraph 15 of the Act and the Act specifically. In addition, I have considered the Awards that have been brought to my attention, along with a number of others, which I note are fact specific and not binding.
44. I have carefully considered both parties proposals. Section 11 of the Act requires each party to make proposals for 'resolving the matter of relief from payment of a protected debt'. The Applicant's proposal is for the whole of the protected rent debt to be written off and if not for it to be given 24 months to pay it. The Respondent's proposal appears to be focussed on inviting me to dismiss the referral with no clear proposal for the payment of the protected rent debt.
45. I do not disregard the Applicant's revised proposal, as requested by the Respondent. However, I am of the view that the Applicant's proposal to write off the whole of the protected rent debt of £67,242.13, in the particular circumstances of this case and on the evidence before me, is inconsistent with the principles in section 15 of the Act and is hereby dismissed.

46. I have reviewed all of the evidence and both parties positions. On a careful consideration of the principles in section 15 of the Act, I determine pursuant to section 14(4), (5) and (6) of the Act that the Applicant is not granted relief from the payment of the protected rent debt in the sum of £67,242.13 which is to be paid to the Respondent by the Applicant. This satisfies the principles contained in section 15 of the Act and preserves the viability of the Applicant's business on the figures that I have seen. I have not been provided with evidence of whether the Applicant's business is trading from other premises since its move.
47. I note the propositions that the Applicant asks me to agree with. I accept the difficulties suffered by the Applicant during and as a result of the pandemic. I see no evidence that the Respondent seeks to use information supplied in the course of this arbitration for rent reviews, negotiations etc. This is prohibited by the Act in any event. I have not been provided with evidence of the renovations and improvements that the Applicant undertook and am unable to take this into account or quantify the value that it has been asserted was added to the premises as a result.
48. Section 14(7) of the Act provides for the protected rent debt to be paid by 12<sup>th</sup> April 2025 (24 months from the day after the award is made). I understand that a proposal for settlement was made to the Applicant and in the absence of the mode of payment having been agreed post the referral, I have provided for instalment payment below.
49. Now I, Kemi Ojutiku, having carefully considered the proposals and submissions of the parties, together with all of the documents before me, hereby award and direct as follows;
- a) The amount of the Protected Rent Debt is £67,242.13.
  - b) The amount of the Protected Rent Debt payable is £67,242.13.
  - c) That the Protected Rent Debt is to be paid by the Applicant to the Respondent by 23 monthly instalments of £2,923.57 commencing on 12<sup>th</sup> May 2023.
  - d) The Respondent must pay 50% (half) of the Arbitrator's fee, pursuant to section 19(5) of the Act.

## **Publication of the Award**

50. Pursuant to section 18(2) of the Act, I am required to publish this award. I intend to publish the award on the CCODR website. I have formed the provisional view that the award contains no commercial information which ought to be redacted. I will therefore publish the award in full on the CCODR website unless either party indicates to me by 4pm on Friday, 14<sup>th</sup> April 2023 that they wish me to do otherwise in which case I will consider any submissions put forward in relation to that issue together with any evidence submitted in support of any such submissions.

Kemi Ojutiku FCI Arb

A handwritten signature in black ink, appearing to read 'K. Ojutiku', written in a cursive style.

12th April 2023

Consumer Code for Online Dispute Resolution (CCODR).