

**IN THE MATTER OF AN ARBITRATION UNDER THE
COMMERCIAL RENT (CORONAVIRUS) ACT 2022**

BETWEEN

**GREGARIOUS LIMITED
(APPLICANT)**

&

**KEMSLEY PROPERTY CONSULTANTS
(RESPONDENT)**

IN RESPECT OF 21 PEPPER STREET, LONDON, E14 9RP

FIRST AWARD - JURISDICTION

**BY
BY SIMON S GOULDBOURN BSc MRICS ACI Arb
ARBITRATOR**

1.0 *Preliminaries*

- 1.1 The Applicant is Gregarious Limited, the Tenant of premises known as 21 Pepper Street, London, E14 9RP. The Tenant Applicant is represented by Mr Anthony Thomas (AT), a Director of Gregarious Limited.
- 1.2 The Respondent is Kemsley Property Consultants, the Landlord's managing agent of the aforementioned premises. The Respondent is represented by Mr J Brightman (JB) and Mr L Pearce (LP) both of Ellisons Solicitors.
- 1.3 The Applicant had occupied the premises by way of a lease dated 8th April 1999 with Westgroup Investments Limited as the named Landlord and Gregarious Limited as the named Tenant. The lease was forfeited by the Landlord on 17th April 2023 due to non-payment of rent by the Applicant.
- 1.4 The Applicant previously used the premises as a public house.
- 1.5 It is agreed with the parties that I am to consider the following preliminary issues and make an Award as to my jurisdiction to proceed under the Commercial Rent (Coronavirus) Act 2022 (CRCA):
 1. **Has the Applicant complied with s.10 of the CRCA, namely did it validly serve notice on the Respondent of its intention to proceed to Arbitration?**
 2. **Was the 'formal proposal' from the Applicant sufficient for the purposes of s.11 of the CRCA?**

2.0 *Procedural Background*

- 2.1 The Applicant served a notice of intention to make a reference to arbitration on 23rd August, 2022, the letter addressed to Westgroup Investments, 19 Cavendish Square, London, W1A 2AW.
- 2.2 The Applicant sent a further notice of intention to make a reference to arbitration on 13th September 2022, addressed to Kemsley Property Consultants, 113 New London Road, Chelmsford, Essex, CM2 0QT.
- 2.3 In its application form to the Royal Institution of Chartered Surveyors (RICS) for relief from payment of a protected rent debt under the CRCA dated 22nd September 2022, the Applicant, Gregarious Limited, cited the Respondent as "Kemsley Property Consultants", and requested the arbitration be conducted in accordance with the RICS arbitration procedure "D".
- 2.4 On 19th October, 2022, prior to my appointment as arbitrator, JB wrote to the Dispute Resolution Service (DRS) at RICS raising preliminary points in respect of the arbitration and ultimately stating that the Applicant had failed to give a valid notice pursuant to s.10 of the CRCA and had also failed to make a proposal in accordance with s.11 of the CRCA.

- 2.5 In the letter of 19th October 2022, JB advised that his client, the Landlord of the Applicant, was “Westgroup Investments Limited”. JB told DRS that under s.10 (1) (a) of the CRCA the Applicant had to give notice of its intention to apply to arbitration no later than 14 days prior to the deadline for arbitrations to be made.
- 2.6 The Applicant had sent a letter of notice of intention to refer to arbitration dated 23rd August 2022 to the Landlord but not to their registered address. As a consequence, JB stated it had not been validly served.
- 2.7 JB advised DRS that the Applicant sent a second letter of notice of intention to refer to arbitration to “Kemsley Property Consultants” on 13th September 2022. JB said the last date for serving such a notice of intention to refer to arbitration was 26th August 2022, the deadline under the CRCA for an application being 23rd September 2022; and the letter was not addressed to their client.
- 2.8 JB further told DRS that the application document made by the Applicant incorrectly named the Respondent as “Kemsley Property Consultants”. By reference to their letter of 23rd August 2022 the Applicant knew the identity of the Landlord, according to JB.
- 2.9 JB went on to state that no formal proposal for resolution of the dispute was supplied within the documents although acknowledged that some bank account statements and profit and loss analysis had been included. This was also considered a breach of s.11 (1) of the CRCA.
- 2.10 JB stated that it was the Respondent’s position that the reference to arbitration should be dismissed because the Applicant had not complied with s.10 or s.11 of the CRCA.
- 2.11 S.10 of the CRCA stipulates specific notification procedure and timelines for the Applicant to observe when serving a notification of intention to proceed to arbitration under the CRCA:

“s.10 (1) Before making a reference to arbitration –

(a) the tenant or landlord must notify the other party (“the respondent”) of their intention to make a reference, and

(b) the respondent may, within 14 days of receipt of the notification under paragraph (a), submit a response.

(2) A reference to arbitration must not be made before –

(a) the end of the period of 14 days after the day on which the response under sub section (1) (b) is received, or

(b) if no such response is received, the end of the period of 28 days beginning with the day on which the notification under sub section (1) (a) is served.”

- 2.12 S. 11(1) of the CRCA stipulates:
“A reference to arbitration must include a formal proposal for resolving the matter of relief from payment of a protected rent debt.”
- 2.13 On 2nd December 2022 I was appointed by the President of the RICS to act as an arbitrator under the CRCA.
- 2.14 I convened a preliminary meeting with the parties whereupon it was agreed that my jurisdiction to proceed under the CRCA would be dealt with as a preliminary issue. I would consider sequentially the 2 questions raised at 1.5 above.
- 2.15 The Applicant and Respondent were directed to provide submissions on jurisdiction by Monday 24th April 2023 with Replies on each other’s submissions due by Tuesday 9th May 2023.
- 2.16 All reports were ultimately lodged on 18th May 2023.
- 2.17 Following receipt of submissions I sought further clarification from LP as to the identity of the Respondent for the purposes of these proceedings. LP confirmed that the action had been brought against “Kemsley Property Consultants” by the Applicant and that should be the Respondent name for the purposes of this dispute.
- 2.18 Both parties to this dispute have referred to the Respondent as “Kemsley Property Consultants”.

3.0 *The Applicant’s Submission*

- 3.1 AT initially questioned the suitability of the arbitrator to determine his own jurisdiction as he considered it is a legal question to which the arbitrator may not be best qualified to determine.
- 3.2 AT acknowledged that the Respondent is content that I should determine the matter without recourse to a legal expert but that this may only likely prolong matters because any determination on this point as a preliminary issue is open to a legal challenge by either party.
- 3.3 AT further stated that where the arbitrator deals with this preliminary issue and where he is not best qualified to consider legal points then it would be highly likely that a legal challenge will occur.
- 3.4 AT made reference to a very similar case where the arbitrator advised the parties that he is not a legal expert and where a legal opinion was offered but “not taken up” and an Appeal has been made following that decision on jurisdiction.
- 3.5 AT stated that the Applicant served the “requisite Notices” informing the Respondent of their intention to refer the issue of relief from protected rent debt to arbitration.

- 3.6 AT said that the details of the Respondent name were correct but the address used for initial service of notice was incorrect.
- 3.7 AT then said that if there was any breach of inadequacy of service of notice then it had been waived because the Respondent's agent confirmed in an email on 21st September 2022:
- “With respect to the intention to make an Application under the Commercial Rent Coronavirus Act 2022 this is noted, and the landlord is happy to enter a discussion over arrears”.*
- 3.8 As regards the Applicant's failure to make a proposal in accordance with s.11 of the CRCA, AT maintained that the Applicant included a proposal within its application to arbitrate of a 30/70 Tenant/Landlord split, meaning that 70% of the protected rent debt should not be paid by the Applicant.
- 3.9 AT maintained that to its knowledge the Applicant had complied with the proposal requirements as prescribed by s.11 of the CRCA.
- 3.10 AT added that because there had been ongoing discussions and negotiations regarding the lease and Covid, such negotiations and proposals having been engaged upon in open correspondence, it was clear that there had been no failure under s.11 of the CRCA.

4.0 *The Respondent's Submission*

- 4.1 By way of introduction, JB confirmed that the lease at 21 Pepper Street, London dated 8 April 1999 was between Westgroup Investments Ltd (Landlord) and Gregarious Ltd (Tenant).
- 4.2 Under the lease all notices must be sent to a parties' registered address. The Landlord's registered address was 113 New London Road, Chelmsford, Essex, United Kingdom, CM2 0QT.
- 4.3 JB stated that the Applicant had purportedly served two notices of intention to refer a protected rent arrears dispute to arbitration pursuant to Sections 9, 10 and 11 of the CRCA.
- 4.4 JB stated that the first purported notice of intention to refer to arbitration was allegedly sent to Westgroup Investments at 19 Cavendish Square, London, W1A 2AW and dated 23rd August 2022.
- 4.5 JB confirmed that is an incorrect address for the Landlord.
- 4.6 JB advised that the Landlord's managing agent, Kemsley Property Consultants, received a copy of the notice dated 23rd August 2022 in late September as is evident from the terms of the Respondent's solicitor's letter to the Applicant dated 23rd September 2022.
- 4.7 JB advised that the second purported notice of intention to refer to arbitration was sent to Kemsley Property Consultants at the correct address and was dated

13th September 2022. JB further advised that Kemsley Property Consultants are not the Landlord under the terms of the Lease.

4.8 JB confirmed that I have competence to rule on my own jurisdiction and reserves without qualification all of its rights under s.67 of the Arbitration Act 1996 (AA) to challenge the jurisdiction of the arbitrator appointed for the purposes of this referral.

4.9 JB also considered that the viability of the party seeking relief is also a “gateway issue” and would deal with that point in his submission.

4.10 JB considered that the question of validity of the notices served under s.10 of the CRCA fall into two parts:

“a) *Did the Applicant's Notice dated 23rd August 2022 fail to amount to a compliant Notice as it was not sent to the Respondent's correct address;*

and if not:

b) *Did the Applicant's Notice dated 13th September 2022 amount to a compliant Notice - for the purposes of an Arbitration commenced on the 22nd September 2022”*

4.11 JB highlighted the limitation period for service of notice as prescribed by s.9(2) of the CRCA being the period of six months beginning with the day on which the CRCA was passed. The CRCA was passed on 24th March 2022.

4.12 JB highlighted the wording of s.10(1) and (2) of the CRCA. JB further confirmed that the terms of s.10 of the CRCA make it clear that notification of an intention to refer to arbitration is a mandatory requirement.

4.13 JB said it is a mandatory requirement because it affords the Respondent a right of reply within 14 days of notice of intention to refer to arbitration; and precludes the Applicant from referring the matter to arbitration only after 28 days has passed, in the absence of any response by the Respondent.

4.14 JB went on to say that a failure by the Applicant to serve a notice of intention to refer to arbitration deprives the Respondent of statutory protection afforded by s.10(1)(b) and renders s.10(2) unworkable.

4.15 JB had relied on the express wording of s.10(1) of the CRCA together with the Code of Practice, such that the Applicant must properly serve the notice of intention to refer to arbitration, prior to the commencement of arbitral proceedings.

4.16 JB highlighted the first paragraph of the Code of Practice:

“This is a voluntary code and does not change the underlying legal relationship or lease contracts between a Landlord and Tenant and any guarantor”.

- 4.17 JB maintained that as a consequence, Clause 56 of the lease (relating to service of notices) remained in full force and the Applicant had failed to comply with its contractual obligation.
- 4.18 Having failed to comply with the lease terms, JB stated that the Applicant cannot rely on the notice dated 23rd August 2022, nor can it rely on the second notice dated 13th September 2022, which was sent to the correct address.
- 4.19 JB believed that the Applicant knew it had served a defective notice on 23rd August 2022 because it sent a further notice to the Respondent on 13th September 2022.
- 4.20 JB further advised that there is no power conferred to the arbitrator allowing him to amend or disapply the provisions of the statutory requirements at s.10 of the CRCA or go behind the wording of the Code of Practice.
- 4.21 The general powers of the arbitrator conferred by s.38(1)-(4) of the AA have been omitted from the CRCA. As a consequence, any attempt to modify s.9, s.10 or s.11 of the CRCA would fall outside the powers of the arbitrator, according to JB.
- 4.22 JB continued that the general rule applying to commencement of arbitral proceedings under s.14(1) and (2) of the AA are also omitted, so no application can be made by default.
- 4.23 JB warned that any attempt by the arbitrator to abridge or disapply s.9, s.10 and s.11 of the CRCA, ignore the Code of Practice or seek to apply s.14 of the AA by default, would amount to a “serious irregularity” for the purpose of s.68 of the AA, leaving any decision open to challenge.
- 4.24 For these various reasons, JB submits that the purported notice dated 23rd August 2022, which was sent to the wrong address, cannot be a valid notice of intention to refer to arbitration under the CRCA.
- 4.25 Turning to the notice dated 13th September 2022, JB again confirmed that it was sent to the correct registered address, but identified Kemsley Property Consultants as the Respondent as opposed to the correct Respondent detail of Westgroup Investments Limited.
- 4.26 JB stated that even if a response had been made by the Respondent following the notice of 13th September 2022, the earliest date at which the Applicant could have made a referral to Arbitration would have been 27th September 2022, a period of 14 days following its notice of intention to refer to arbitration as prescribed by s.10(2)(a).
- 4.27 JB had highlighted s.9 of the CRCA, the CRCA having been passed on 24th March 2022, meaning that a reference to arbitration within the six month limit would fall on 23rd September 2022 as the deadline for serving arbitral proceedings under the CRCA. As a consequence, JB maintained that the Applicant had made its referral in advance of the stipulated statutory period provided by s.10(2) of the CRCA, making it an invalid reference such that the arbitrator has no jurisdiction to deal with the reference.

- 4.28 JB reiterated that there are no additional powers conferred on the arbitrator to save the Respondent from breaching the time limits imposed by s.10 (2) of the CRCA.
- 4.29 JB continued that the Applicant likely being rushed to make its reference to arbitration as a result of the CRCA deadline expiring, provided no justification for the waive of the requirements of s.10(2) of the CRCA.
- 4.30 As a consequence, JB maintained that the notice dated 13th September 2022 cannot confer jurisdiction to the arbitrator.
- 4.31 JB sought to introduce the viability of the Applicant as a precondition for eligibility of Arbitration, but this First Award deals with compliance under s.10 and s.11 of the CRCA only.
- 4.32 JB concluded that the Applicant had failed to serve (or serve in accordance with s.10 of the CRCA) on the correctly identified Respondent a notice of intention to refer to arbitration within the statutory time limits.
- 4.33 JB also maintained the Applicant had failed to file and serve a formal proposal in accordance with the mandatory provisions of s.11 of the CRCA and the applicable provisions of the Code of Practice.
- 4.34 JB reiterated that the arbitrator has no power to waive or modify the mandatory provisions of s.9, s.10 and s.11 of the CRCA. The failure of the Applicant to meet those requirements has consequently rendered any purported reference to arbitration null and void.
- 4.35 JB asked that I determine that I have no jurisdiction to conduct the arbitration.

5.0 *Applicant's Further Submission on Jurisdiction*

- 5.1 AT confirmed that Westgroup Investments Limited were its Landlord prior to forfeiture of the lease, with Tom Kinlock (TK) of Kemsley Property Consultants the Landlord's authorised agent.
- 5.2 AT mentioned that the Respondent had said that at all material times, the registered address for the Landlord had been 113 New London Road. AT provided a "change of registered office address" from Companies House dated 8th September 2022, advising that Westgroup Investments Limited had a new address:

"Tom Kinlock, 113 New London Road, Chelmsford, Essex, United Kingdom. CM2 0QT".
- 5.3 AT maintained that the Applicant had at all times dealt with TK regarding this matter.
- 5.4 AT referred me to email correspondence between himself and TK dated 9th September 2022, in which AT said to TK that he should have received a notice of intention to refer to arbitration.

- 5.5 TK responded later that evening, advising he had seen no notice and asking when it was made, by whom, and where it was sent. TK said he could not investigate its whereabouts unless the notice could be resent.
- 5.6 AT said he readdressed the original letter to reflect the change of registered office and then sent the amended notice by recorded delivery on 13th September 2022. TK acknowledged receipt via email on 21st September 2022. Copies of this correspondence were supplied by AT.
- 5.7 AT drew my attention to an extract of the lease relating to service of notices, particularly Clause 56.3:
“The provisions for postal service set out above in Clause 56 are not to prevent any other effective form of service”.
- 5.8 AT then highlighted s.76 of the AA:
“(3) A notice or other document may be served on a person by any effective means”.
“(6) References in this Part to a notice or other document include any form of communication in writing and reference to giving or serving a notice or other document shall be construed accordingly”.
- 5.9 AT also referred to the wording of s.10(1)(a), (b) and (2)(a) and (b).
- 5.10 AT maintained that the email exchange dated 9th September 2022 made it clear that the Applicant intended to apply for arbitration and this was understood by the Respondent on behalf of the Landlord.
- 5.11 AT claimed this email exchange constituted effective service under clause 56.3 of the lease and consequently complied with the requirements of the CRCA.
- 5.12 AT goes further to say that the notice is compliant under s.76 of the AA, the letter dated 13th September 2022 simply reconfirmed the position addressed to the Landlord at the revised registered address, which included TK in the address.
- 5.13 AT summarised by stating that having served notice on the Respondent on 9th September 2022, which was acknowledged and understood by the Respondent, the Applicant then made the application for the appointment of an arbitrator on 23rd September 2022 via email, the 15th day after notice was served and prior to the last date to apply, that being 24th September 2022.
- 5.14 The Applicant had consequently complied with the requirements of s.10 of the CRCA.
- 5.15 AT maintained that the Respondent had acknowledged and accepted the arbitration process until *“such time as they determined to seek to circumvent matters by having the referral struck out”.*
- 5.16 As regards s.11 of the CRCA, AT supplied a copy of the email to the RICS dated 23rd September 2022 by his colleague, Ms L Fitzgerald, which stated:
- 5.17 *“Formal Proposal; we propose 30% payment, with 70% of the debt written off”.*

- 5.18 AT highlighted that the Respondent may provide a formal proposal but had not done so to date.
- 5.19 AT advised that the supporting evidence accompanying its proposal was initial information as there was no guidance on what supporting information was required. The supplying of twelve months bank statements, together with a profit and loss account for the period 2019-2021 was given, although envisaged that there would be further opportunity to provide additional information if required.
- 5.20 AT is of the view that the Applicant made a formal proposal with accompanying information and intended to provide further details as required. The Respondent had ample time to request any further information, but has failed to do so. AT is satisfied that the Applicant has complied with s.11 of the CRCA.
- 5.21 The Applicant concluded that it had complied with both s.10 and s.11 of the CRCA and that I have jurisdiction to proceed with the arbitration.

6.0 *Respondent's Further Submission on Jurisdiction*

- 6.1 JB refuted AT's contention that I was not best qualified to rule on my own jurisdiction.
- 6.2 JT reaffirmed that the arbitrator has an express power to determine its own jurisdiction without need or right to refer the matter to a third party.
- 6.3 JB also maintained its right to challenge my decision on jurisdiction pursuant to s.67 of the AA.
- 6.4 JB went on to say that if the arbitrator was unable to determine his jurisdiction, then he should resign and the matter be resolved by the High Court.
- 6.5 On the issue of the Applicant referring this point to the Director of DRS at RICS, JB is adamant that the RICS has no general authority to consider questions of jurisdiction of an appointed arbitrator. If it were to seek to impose its own views on jurisdiction of the arbitrator, then it would be acting *ultra vires* and immediately challenged by the Respondent in the High Court.
- 6.6 JB confirmed the lease was forfeited on 17th April 2023 and attached a spreadsheet of the Applicant's rent arrears.
- 6.7 JB pointed out that the Applicant had freely admitted that there had been no effective service of notice of intention to refer to arbitration until 13th September 2022. The earlier notice had been sent to the wrong address and never come to the attention of the Respondent.
- 6.8 JB reiterated that the referral to arbitration via the RICS dated 22nd September 2022 was not in accord with the timetable as prescribed by s.10 of the CRCA.
- 6.9 JB concluded that the absolute earliest the Applicant could have made a referral to arbitration would have been 26th September 2022, and that the Applicant had "*jumped the gun*" in making its application on 22nd September 2022.

- 6.10 According to JB, the Applicant filed its referral early to avoid missing the deadline of 24th September 2022 for making a referral under the CRCA.
- 6.11 The Respondent is clear that it is a strict matter of law that the Applicant failed to comply with s.10 of the CRCA and consequently I have no jurisdiction to proceed.
- 6.12 It is noted by JB that the Applicant had caveated its submission on s.10 of the CRCA by stating that the Respondent's actions in response to correspondence received constituted a waiver of any breach of s.10 of the CRCA.
- 6.13 JB further mentioned that no evidence had been put forward by the Applicant in support of this contention of waiver or whether an arbitrator can ignore that statutory provision.
- 6.14 JB said that on the contrary, TK's comments in his email of 21st September 2022 were quite impossible to discern that the Landlord had waived any right:
"With respect to the intention to make an application under the Commercial Rent Coronavirus Act 2022, this is noted, and the landlord is happy to enter discussion over arrears. What he has asked for, though, is a proposal from you so we can start this process. I would therefore be grateful if you could issue a proposal to me so I can then take instructions".
- 6.15 It was impossible to conclude whether parties had even turned their minds to the issue of time limits under the CRCA when the emails were exchanged, according to JB. The Applicant was simply being asked for a proposal for settlement which remained in the hands of the Applicant as to whether to make a proposal or refer the matter to arbitration.
- 6.16 JB denied that CRCA can be overridden by consent, even by agreement by the parties.
- 6.17 As regards s.11 of the CRCA, it is the Respondent's position that it had been unable to locate the 30/70 proposal referred to by the Applicant within the documents served on the RICS. Further, JB maintained that the Applicant had made no attempt to explain where the proposal was to be found within the application documents.
- 6.18 As a consequence, the Respondent remains clear that there had not been compliance with s.11 of the CRCA which invalidated the referral, meaning that I have no jurisdiction to proceed.

MY DECISION

7.0 *Has the Applicant complied with s.10 of the CRCA, namely did it validly serve notice on the Respondent of its intention to proceed to Arbitration?*

7.1 It is agreed between the parties that the lease at 21 Pepper Street, London, E14 9RP was between Westgroup Investments Limited (Landlord) and Gregarious Limited (Tenant).

7.2 The Landlord's registered address for service of notice was 113 New London Road, Chelmsford, Essex, United Kingdom, CM2 0QT.

7.3 Within the Applicant's initial submission, when referring to the First Notice of intention to make a referral to arbitration dated 23rd August 2022, AT said:

"...it can be seen that whilst the details of the Respondent were correctly entered, there was an error in the address that was initially used for service...."

7.4 The first letter dated 23rd August 2022 was sent to Westgroup Investments at 19 Cavendish Square, London W1A 2AW.

7.5 Both parties to this dispute have confirmed that the Landlord's registered address is 113 New London Road, Chelmsford, Essex, United Kingdom, CM3 0QT.

7.6 AT had also sought to rely on the email exchange on 9th September 2022 between himself and TK as constituting compliance with s.10 of the CRCA.

7.7 The email exchange confirms an acknowledgement from AT that a mistake had been made in serving the original notice letter and that a fresh notice would be served by the Applicant:

"...it would seem that we have used a historic contact address rather than the current registered office, so we shall send again to the correct address tomorrow by registered post, however, I attach a copy of the original for reference."

7.8 I cannot conclude from this exchange that an effective form of service of notice under Clause 56.3 of the lease has been demonstrated by the Applicant.

7.9 The email exchange merely recognises that an error has been made and there is an intention to rectify that error at a future date by service of a fresh notice on the Respondent.

7.10 The Applicant also sought to rely on s.76(3) & (6) of the AA as proof of effective service by the Applicant of intention to refer to arbitration.

7.11 The entirety of s.76 of the AA needs to be considered including s.76 (4):

"If a notice or other document is addressed, pre-paid and delivered by post

(a) *To the addressee's last known principal residence or, if he has been carrying on a trade, profession or business, his last known principal business address, or*

(b) *Where the addressee is a body corporate, to the body's registered or principal office,*

it shall be treated as effectively served"

7.12 The Applicant has not demonstrated that it has satisfied the requirements of s.76 (4) of the AA. The first notice letter dated 23rd August 2022 did not go to the registered or principal office and the second notice letter dated 13th September was not sent to the correct addressee.

7.13 AT has twice confirmed within his submissions that the initial letter dated 23rd August 2022 had been served incorrectly.

7.14 AT later provided evidence of a change of registered office address from Companies House dated 8th September 2022 for Westgroup Investments Limited as follows:

"Tom Kinlock, 113 New London Road, Chelmsford, Essex, United Kingdom CM2 0QT".

7.15 The document was stated as having been received for filing in electronic format on 8th September 2022. Immediately under the new address on the Companies House form, there is the following statement:

"Please note:

The change in the registered office does not take effect until the registrar has registered this form. For 14 days, beginning with the date that a change of registered office is registered, a person may validly serve any documentation on the company at its previous registered office."

7.16 I have not been provided with the date upon which the registrar registered the new address details but the Applicant could in any event serve a notice of intention to refer to arbitration under the CRCA using the original Westgroup Investments Limited registered office address.

7.17 AT sent a subsequent notice of intention to refer to arbitration dated 13th September 2022.

7.18 AT supplied the correct registered office address but described the Landlord as "Kemsley Property Consultants" within the notice letter of 13th September 2022.

7.19 The letter of 13th September 2022 was not addressed to the Landlord and did not include "Tom Kinlock" within the correspondence, as AT has contended.

7.20 It is clear that the last attempt by the Applicant to serve a notice of intention to refer to arbitration was made on 13th September 2022.

7.21 The period for making a reference to arbitration is stipulated at s.9(2) of the CRCA:

“A reference to arbitration may be made by either the tenant or the landlord within the period of six months beginning with the day on which this Act is passed.”

- 7.22 By serving a notice of intention to refer to arbitration on 13th September 2022, the earliest date at which the Applicant could have made a referral would have been a period of 14 days following service of notice.
- 7.23 Any application made following a notice of intention to refer to arbitration on 13th September 2022 cannot comply with the statutory time limits imposed by s.9(2) and s.10(2) (a) of the CRCA.
- 7.24 There are no powers afforded the arbitrator to override the statutory time limits imposed by s.9 and s.10 of the CRCA. The general powers of the tribunal ordinarily afforded by s.38 of the AA are excluded by the CRCA as JB has confirmed.
- 7.25 There have been procedural errors made by the Applicant, namely:
- Notice letter dated 23rd August 2022 - did not contain the full Landlord name and was not sent to the registered or principal office of the Landlord.
 - The letter dated 13th September 2022 - was not addressed to the Landlord and left insufficient time to comply with the statutory time limits for making a reference to arbitration under the CRCA.
- 7.26 I find that both notices of intention to refer to arbitration served by the Applicant dated 23rd August 2022 and 13th September 2022 were defective and invalid primarily because they were incorrectly addressed.
- 7.27 By also serving notice on 13th September 2022, the Applicant had left insufficient time for the Respondent to reply before making its application to DRS at RICS for the appointment of an arbitrator.

WAS THE ‘FORMAL PROPOSAL’ FROM THE APPLICANT SUFFICIENT FOR THE PURPOSES OF S.11 OF THE CRCA?

8.0 *My Decision*

- 8.1 In finding that the Applicant has failed to serve valid Notices for the purposes of these proceedings, there is no requirement for me to consider whether the Applicant has lodged a formal proposal with its application under s.11 of the CRCA.

9.0 *Arbitration Costs*

- 9.1 Under s.19 (6) of the CRCA I have discretion as to the apportionment of my own costs.
- 9.2 Both parties have participated in these proceedings to enable me to deliver my Award.
- 9.3 I have given due consideration to these facts when considering apportionment of my costs.

10.0 *Publication*

- 10.1 I am directed by s.18 (2) of the CRCA to publish my Award.
- 10.2 The Award will be published on the website of the RICS.
- 10.3 I do not consider there is commercial information which must be excluded under s.18 (3) of the CRCA.
- 10.4 I intend to publish the Award in full on the RICS website unless either party wishes to make representation to the contrary by 5.30pm on Monday 2nd October 2023. If any representations are made I will give due consideration to them before publishing the Award.

11.0 *Award*

- 11.1 I, Simon Stuart Gouldbourn, Award and Direct as follows:
- (a) The Applicant has not served a valid notice on the Respondent of its intention to proceed to arbitration under s.10 of the CRCA.
 - (b) I have no jurisdiction to proceed under the CRCA and dismiss the Applicant's referral to arbitration.
 - (c) My fee for dealing with this matter is £2,500 plus VAT. I apportion costs on a 50:50 basis and the Respondent must reimburse the Applicant the sum of £1,250 plus VAT.
- 11.2 The seat of this Arbitration is England and Wales.

Signed:



Simon S Gouldbourn BSc MRICS ACI Arb

Date: 4th September 2023