

**Arbitration award in the under the provisions of the
Commercial Rent (Coronavirus) Act 2022**

[REDACTED]

Parties:

[REDACTED]

and

[REDACTED]

[REDACTED]

14. Any additional financial assistance given by the landlord to the tenant under an earlier tied agreement is no longer available under the terms of the current lease, agreed under the provisions of the Pubs Code Etc Regulations 2016 at market rent.

Legal Framework and Eligibility

The Act provides for relief on payment of protected rent debt provided;

- i. the property is occupied under a business tenancy as defined by the Act;
 - ii. There is a protected rent debt consistent of unpaid protected rent;
 - iii. The Tenant's business is viable or if not would be if granted relief.
15. I am satisfied that the tenancy qualifies as a business tenancy under the Act and that there is a protected rent debt which is agreed at £51,252.05.
16. It remains that I must determine whether the Tenant's business is viable or if not would be if granted relief.

Proposals of the Applicant and Respondent

17. In her client's formal proposal and revision [REDACTED] summarises the lease terms and distinguishes between the earlier tied agreement and the current 'market rent only' free of tie lease. She includes a breakdown of the protected rent debt (which is agreed). She also provides a summary of the [REDACTED] company structure and financial position of her client.
18. She goes onto acknowledge that the Respondent always opened the premises for trade when able to do so, but throughout the periods of the closure requirement, the residential flat of the public house remained as living accommodation for the Respondent. Such benefit is not reflected in the profit and loss accounts.
19. The initial formal proposal made by the Applicant sets out an offer of relief of 10% against the outstanding rent debt. This offer was revised to a relief of 25% against the protected rent debt as described above.
20. In his proposal, [REDACTED] describes the trading style of the business and his history at [REDACTED] over 20 years. He points to the inevitable downturn in trade during 2020 and the benefit of the government backed bounce back loan of £50,000 plus an overdraft facility from his bank. He also describes several initiatives by him to 'keep the pub alive in the eyes of customers'.
21. [REDACTED] calculates, in percentage terms, what effect relief might have on total rent received by [REDACTED] over the period of the 10 year agreement. He implies this is a modest amount and believes that 50% relief against the protected rent debt 'gives his business the best chance to thrive and prosper through the duration of the lease'. His proposal is to make an initial payment of £5,626.03 followed by 24 payments of £833 per month.

[REDACTED]

22. In his further response to the Applicant's revised formal proposal [REDACTED] describes the effect on the pub's trade as a result of football matches (nearby [REDACTED] stadium) being closed, the pub's [REDACTED] and the continuing difficulties of generating profit from food sales at the business.

Finding on Relief from Payment

23. The outstanding issue between the parties is therefore the amount of relief (if any) that should be granted to the Respondent Tenant from payment of the protected rent debt. In this regard the Applicant Landlord has offered to accept a reduced amount, but the reduction is regarded as too small by the Respondent. In order to maintain viability the tenant believes that the protected rent debt should be reduced by 50%. My award must decide this issue.

24. Section 7.14 of the Act states as follows:

7.14.1. Any award should be aimed at preserving or, as the case may be, restoring and preserving the viability of the business of the tenant, so far as it is consistent with preserving the landlord's solvency; and

7.14.2. The tenant should, so far as it is consistent with the first principle to do so, be required to meet its obligations as regards payment of the protected rent in full and without delay.

Section 6.8 of the Act requires me to consider the following when assessing viability so far as known;

6.8.1. the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party;

6.8.2. the previous rental payments made under the business tenancy from the tenant to the landlord

6.8.3 the impact of coronavirus on the business of the tenant; and

6.8.4. any other information relating to the financial position of the tenant that the arbitrator considers appropriate.

25. The proposals by the parties make much of the (understandable) difficulties suffered by the business during the pandemic, but these will only influence my award insofar as they affect its continuing viability from today.

26. The most effective assessment of viability for a public house is to review the past accounting (particularly profit and loss) information and to this end I have been provided with accounts for the years ended 30 September 2019 and 2020 prepared by [REDACTED] associates. These can be summarized as follows

	[REDACTED]	[REDACTED]
Takings/other income	330,442	231,117
Gross Profit	151,531 (45.9%)	138,623 (60.0%)
Overheads	168,323	166,531

[REDACTED]

Net loss	16792	27938
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27. The accounts for the year ended 30 September 2020 cover the period when the business was either closed or detrimentally affected by the pandemic and do not provide me with an indication of future viability. The accounts also include grant income which is no longer available and a deduction for depreciation. A depreciation allowance against profit is normal accounting practice, but not an item that directly affects viability.
28. Accounts for the year ended 30 September would similarly reflect detriment caused by the pandemic.
29. The accounts for the year ended 30 September 2019 provide the clearest guide to future viability, however they can only be a guide and they must be considered in light of the following:
1. The accounts are now 3.5 years old and there are inflationary pressures on both bar prices and operating costs.
 2. The gross profit percentage of 45.9 % was achieved whilst the business was subject to a tie, requiring wet products to be purchased from the applicant landlord. Under the new lease agreement, the Tenant is able to purchase on the free of tie market at prices which are below those required by the landlord under a tied agreement. This business relies heavily on wet sales and, as a result the gross profit percentage will be considerably higher. In assessing the profit/loss forecast I shall adopt a gross profit percentage of 62%.(to include net machine income)
 3. The overheads include an amount of £71,849.5 as rent rates and insurance . My forecast includes the current rent, rates and likely insurance.
 4. The amount of depreciation is shown at £9,981 and should be disregarded.
 5. Several of the cost items have increased since 2019 (particularly heat and light) due to inflation.
30. I have assessed the fundamental question of viability through the following annual forecast.

Takings	£340,000
Gross Profit	£210,800
<u>Expenses</u>	<u>£ 175,000</u>
Net Profit	£35,800

31. Having regard to the parties' proposals and the trading potential for this public house I am not persuaded that relief of 25% from the protected rent debt as put forward by the Applicant would make the business of the [REDACTED] unviable. In the circumstances my Award will direct payment in accordance with the Applicant's offer of relief over 24 months.

[REDACTED]

Arbitration Costs

32. Section 19(7) of the Act requires that each party pay half of the arbitrator's fees unless a different proportion is considered appropriate. My findings will award that the fee is divided equally.

The Award and Publication

33. This Award will be published by the RICS in an anonymized form.
34. I Award and Direct as follows:
- a) The Respondent will pay to the Applicant 24 amounts of £1,601.62 per calendar month, with the first payment due on 1 April 2023. Total £38,439.
 - b) The Respondent must reimburse the Applicant half of my fee of £1,500 plus vat (£750 plus vat) to be paid by 1 April 2023.
 - c) The seat of the Arbitration is England and Wales.



Signed.....

Date . 15 March 2023

