

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

**BETWEEN:**

**Wexford Inns Limited**

**Applicant**

**and**

**Wellington Pub Company plc**

**Respondent**

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**FINAL AWARD**

**FIVE BELLS**

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**Introduction**

1. This is the Final Award (“**Final Award**”) in an arbitration (“**the Arbitration**”) pursuant to the Commercial Rent (Coronavirus) Act 2022 (“**CRCA**” and/or “**the Act**”). Unless otherwise stated, reference to section numbers within this Award, related to sections of CRCA.
2. The Applicant in this Arbitration is Wexford Inns Limited (“**Applicant**”). The Applicant is the tenant of commercial premises at the Five Bells public house, Harmondsworth, UB7 0AL (“**the Premises**”). The Applicant’s representatives are Protected Rent Debt (“**PRD**”).
3. The Respondent, Wellington Pub Company plc (“**Respondent**”), is the Applicant’s landlord at the Premises. The Respondent’s address is Millbank Tower 3<sup>rd</sup> Floor, 21-24 Millbank, London. SW1P 4QP. The Respondent is represented by Criterion Asset Management (“**Criterion**”).

4. On 23 September 2022, the Applicant referred the dispute between it and the Respondent to arbitration ("**the Reference**") by the Consumer Code for Online Dispute Resolution ("**CCODR**"), an approved arbitration body for the purposes of section 7 of CRCA. The basis of the Reference was that the dispute should be determined on the papers without an oral hearing.
5. The Applicant's Reference asserts protected rent debt, pursuant to section 3, in respect of the Premises of £38,209.52 ("**the Rent Debt**") and that the eligibility criteria set out in the Act are met.
6. CCODR invited me to accept appointment as arbitrator ("**Arbitrator**") of the Reference, which I did, and was appointed on 29 September 2022.
7. Upon appointment, I received a range of documents from CCODR that had been submitted by the Applicant along with the Reference including a Formal Proposal and supporting evidence, as required by sections 11(1) and (3) of the Act, dated 15 September 2022.
8. I issued directions in respect of the conduct of the Arbitration on 30 September 2022 ("**Initial Directions**") and then further directions on 7 October 2022 ("**Further Directions**") which the parties complied with.
9. The Respondent raised a number of procedural and jurisdictional objections to the Reference. These were dealt with by way of an preliminary award ("**Award 1**") which I made on 5 October 2022. As a result my Award 1, the Reference proceeded for final determination which is covered by this Final Award.
10. I have carefully considered the Commercial Rent (Coronavirus) Act 2022 and the arbitration scheme that it provides ("**the Scheme**"). I have also considered the "*Guidance to arbitrators and approved arbitration bodies on the exercise of their functions in the Act*" dated April 2022 ("**the Guidance**"). I have considered the Arbitration Act 1996 ("**AA96**") which applies to this Arbitration and borne in mind that, as set out at paragraph 1.3 of the Guidance, where there is any inconsistency between CRCA and AA96, CRCA applies.
11. I have taken into account all of the parties' submissions and evidence. I have not responded to every submission or every piece of evidence but those which I consider to be most relevant to the issues I am required to decide upon.

## **Notification**

12. The CCODR referral form submitted by the Applicant identifies that the Respondent was first notified of the Applicant's intention to refer the matter to CRCA arbitration on 26 April 2022 and attaches the relevant notice to the Reference ("**the Notification**") which I have seen and considered.
13. There being no specific form of notification prescribed by CRCA, and in the absence of objection by the Respondent, I am satisfied that on or before 26 April 2022, the Claimant complied with its requirement to notify the Respondent of their intention to make a reference under CRCA as required by section 10(1)(a).
14. I am also satisfied that the Reference, dated 23 September 2022, was more than either the 14 days required after any response to the Notification is received or the 28 days beginning with the date of the Notification as required by sections 10(2)(a) or (b).
15. I am satisfied that the Reference was made within 6 months of CRCA being passed, i.e. by 23 September 2022, as required by section 9(2).
16. The referral form included a statement of truth verifying both the contents of the form itself and the accompanying formal proposal made by the Applicant pursuant to section 11(1).
17. Accordingly, in that regard, I am satisfied that I have been properly appointed, all the relevant formalities of the Reference having been met.

## **Mode of Determination**

18. The Guidance and CRCA is silent about whether or not prior consent is required by the Respondent in respect of the form of the arbitration, whether it be on the papers or oral. The Guidance states, at paragraphs 3.11 and 3.15, that once Notification has been made and the relevant time periods have elapsed as set out above, the Applicant may make a referral using the arbitration body's application form.
19. Section 20(1) states "*An oral hearing must be held where either or both of the parties make a request to the arbitrator.*"

20. Section 20(5) states *“Where one of the parties requests an oral hearing, that party must pay the hearing fees in advance.”*
21. The Applicant indicated on the Reference that an oral hearing was not required. I have not received a request from the Respondent for an oral hearing, nor am I aware of the Respondent having paid the relevant fee.
22. I am satisfied that I have been properly appointed to conduct the Arbitration on the papers.

### **Eligibility**

23. Having dealt with the validity of my appointment and the other procedural matters set out above and in my Award 1, I went on to consider eligibility for arbitration of the Reference under CRCA as required by section 1(1). *“This Act enables the matter of relief from payment of protected rent debts due from the tenant to the landlord under a business tenancy”*
24. Business Tenancy is defined in section 2(5) as a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies.
25. The Applicant identifies that the Premises is a public house. I am satisfied, that the activity carried out in public houses, namely food and drink being sold to the public by the tenant is *“for the purposes of a business carried on by him or for those and other purposes”* as set out a section 23(1) Landlord and Tenant Act 1954. I have not received any submissions to the contrary.
26. Rent is defined in section 2(1) as *“an amount payable by the tenant to the landlord under the tenancy for possession and use of the premises comprised in the tenancy”* including *“service charge”* and *“interest”*.
27. Protected rent debt is defined by section 3(1) as *“debt under a business tenancy consisting of unpaid protected rent”*.
28. Rent is protected if:
  - “(a) the tenancy was adversely affected by coronavirus (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 (section 5).*

29. Section 4 provides:

*“(1) A business tenancy was “adversely affected by coronavirus” for the purposes of section 3(2)(a) if, for any relevant period—*

*(a) the whole or part of the business carried on by the tenant at or from the premises comprised in the tenancy, or*

*(b) the whole or part of those premises, was of a description subject to a closure requirement.*

*(2) For this purpose—*

*(a) “closure requirement” means a requirement imposed by coronavirus regulations which is expressed as an obligation—*

*(i) to close businesses, or parts of businesses, of a specified description,  
or*

*(ii) to close premises, or parts of premises, of a specified description;*

*(b) “relevant period” means a period beginning at or after 2 p.m. on 21 March 2020 and ending at or before—*

*(i) 11.55 p.m. on 18 July 2021, for English business tenancies, ...”*

30. I am satisfied, and no submission has been made to the contrary, that the relevant coronavirus regulations during the relevant period (“**the Relevant Period**”) required the Applicant’s business, a public house, to close. Accordingly, I find that the Applicant’s business conducted at the Premises was adversely affected.

31. The Reference form indicates that “*all the criteria for eligibility have been met*”. No submissions to the contrary have been received. For the reasons set out above, subject to the Applicant’s viability, I am satisfied that the eligibility criteria have been met.

## **Viability**

32. Before considering whether or not relief should or shouldn't be given, section 13(3)(a) requires me to assess the viability of the Applicant's business, or and whether or not it would be viable if relief was given pursuant to 13(3)(b). If it is not, then I must dismiss the Reference.
33. I have borne in mind those matters to which I must have regard pursuant to section 16(1).
34. The Applicant submits it is viable. It has provided the evidence above which it says supports its position.
35. The witness statement of Mr Nolan on behalf of the Applicant dated 15 September 2022, states, on page 3 of 7, "*Current market intelligence suggests that footfall and spend is below normal with cost-of-living issues hitting consumers and our costs have risen and I do not think it needs proving as it is universal. Whilst this paints a bleak picture, I expect the business I run to be profitable but at a much-reduced level (close to break-even) for at least the next 2 years*".
36. Mr Nolan's witness statement goes on to say "*rent account payments have been met in full prior to the pandemic, and since the lifting of restrictions, I have paid post pandemic rent, this is a clear indication of viability*"
37. In support of this proposition, the Applicant has provided a range of documents. I found the following documents to be of particular relevance:
- a. The Applicant's Annual Accounts for the year ending 31 August 2021, show a net profit of the year of a little over £22,000.
  - b. A Barclays Bank Statements covering the periods December 2021 to 4 April 2022 and then 5 April 2022 to 1 July 2022. The balance at the start of the first statement in December 2021 was around £[REDACTED], rising and falling to around £[REDACTED] until the end of March. I was able to see monies being deposited from various sources and expenses being paid in what appeared to be a typical business manner. The balance then rose steadily until it reached over £[REDACTED] in late April, then fell to around £[REDACTED] on 3 May, then rose to £[REDACTED] in late May, £[REDACTED] in late June. Further subsequent statements showed the balance rising, at times, to over £[REDACTED]. This ebb and flow of finances appeared entirely consistent with a normal operating business.

38. The Respondent notes, in its Response at paragraph 12, that the Applicant's accounts are unaudited. It also observes that they reflect the Applicant's company more widely rather than specifically in respect of the Premises.
39. In respect of the Respondent's observations in relation to viability, there is no evidence before me, nor is it asserted by the Respondent, that the accounts are not a true reflection of the Respondent's finances. No comments are made in respect of the bank statements. There is no evidence that the business operations and finances at the Premises is materially different overall, relative to that of its other sites. In respect of viability, the Respondent's additional comments on particular features of the accounts do not appear to me to go to the heart of whether or not the Applicant's business is viable.
40. Therefore, I consider that the evidence of profitability, albeit modestly so, contained in the Applicant's Annual Accounts and the rising and substantial balances in the Applicant's Bank Statements was strong strongly supportive of the proposition that the Applicant's business was viable. Accordingly, for the purposes of this Arbitration, on the balance of probabilities I find that the Applicant's business is viable pursuant to section 13(3)(a).

### **Relief**

41. Pursuant to section 13(4)(a), having found that the Applicant's business is viable, I am required, pursuant to section 13(5)(a), to consider, subject to the provisions of section 14, whether or not the Applicant should receive any relief from payment of the protected Rent Debt, and if so, what relief.
42. Section 14(2) requires me to consider any proposal put forward by either party.

### **Applicant's Formal Proposal**

43. Section 11(1) requires that a referral "...*must include a formal proposal...*". Section 11(7)(b) states that a "*formal proposal*" must be "*expressed to be made for the purposes of this section*".

44. In a document dated 15 September 2022, signed with a declaration of truth, the Applicant provided the Respondent with a Formal Proposal. The Formal Proposal stated, at paragraph, that it was made pursuant to section 11 of the Act.
45. I therefore find that the Formal Proposal of 15 September 2022, submitted by the Applicant with the Reference amounts to a formal proposal ("**the Formal Proposal**").
46. In its Formal Proposal, at paragraph 1(b) the Applicant seeks relief in respect of the Protected Rent Debt £38,209.52. In the event that full relief is not provided, the Applicant seeks time to pay at paragraph 1(c) and 2(c) of the Formal Proposal.
47. The Applicant submits at paragraphs 9-10 and 12 of the Formal Proposal, that there is a need for the sharing of the impact of any rent debt between a landlord and a tenant. However, it asserts, at paragraphs 11-12, that the Respondent as suffered less than the Applicant and is larger and of stronger financial standing. It therefore argues, at paragraph 34, that the parties are not of equal standing and thus in respect of the Protected Rent Debt, the Applicant should be granted the relief sought.

### **Respondent's Response**

48. The Respondent provided a Response ("**the Response**") to the Formal Proposal on 1 November 2022.
49. At paragraph 2 of its Response, the Respondent asserts that the amount of Protected Rent Debt (PRD) asserted by the Applicant of £38,209.52, is not correct. It says the correct amount is £49,789.03. The Respondent has provided a statement in support of this which I have seen and considered.
50. The Respondent states, at paragraphs 3 and 4, that it is the largest "*free of tie*" (which I understood to mean tied to a brewery) pub company in the UK comprising of around 700 pubs. Its income is entirely derived from rental income is its sole source of revenue.
51. The Respondent states, at paragraphs 6 to 8, that its revenues fell from £19.8m in the year ended 2021, from £29.8m the year before. Associated profits before tax fell from £19.8m to £4.1m. The Respondent confirms that it is solvent but that it suffered a fall in profits of £15.7m "*directly as a result of Covid 19*".

52. At paragraphs 9 and 10, the Respondent states that it offered its tenants a support package in the form of a rent free period of 7.5 months linked to a 5 year reversionary lease. It said that 71% of its tenants accepted this.
53. In respect of relief, the Respondent submits, at paragraphs 13 and 14 of its Response, that following represented significant cash savings for the Applicant:
- i. That the Applicant was eligible to receive £24,700 in respect of government grants in respect of the Premises which did not need to be repaid.
  - ii. That the Applicant's business would have benefitted from a range of other support such as reductions in VAT and business rates and schemes such as the Eat Out of Help Out and furlough.
54. The Respondent brought to my attention section 15(1)(b) of the Act which provides that *"the tenant should, so far as it is consistent with the principles in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent debt in full and without delay"*.
55. Accordingly, the Respondent's Response is that the debt should be paid in full.

### **Applicant's Revised Proposal**

56. Both the Applicant and Respondent are allowed to submit a revised proposal/response by virtue of section 11(4) of the Act. Any revised proposal must be accompanied by further supporting evidence pursuant to 11(5) of the Act. The Applicant submitted a Revised Proposal dated 11 November 2022 ("**Revised Proposal**").
57. The Revised Proposal, at paragraph 2, rejects the Respondent's Response for the reasons it set out.
58. The Revised Proposal acknowledges, at paragraph 4, that the Applicant was not revising the level of relief it sought. Paragraphs 6 to 24 of the Revised Proposal can largely be characterised as submissions and comment on the Scheme generally and on Respondent's Proposal.
59. The Applicant states, at paragraph 26, that the Respondent announced that it would be providing its tenants with support in the form of a three month rent free period

without any conditions. The Applicant provides screen shots to support its assertion which I have seen and considered. The Applicant drew my attention to the fact, as had the Respondent, that the Respondent's subsequent offer was conditional upon tenants accepting a new 5 year reversionary lease. The Applicant submitted, at paragraph 26(10)(ii), that this created additional future liability on a tenant's part. The Applicant also submitted, at paragraph 26(10)(v), that on those terms, "*the landlord has not shared in the impacts and has in fact leveraged the impacts to their commercial advantage over a weaker party*".

60. The Applicant submitted, at paragraphs 31 to 33, that the Respondent has insurance to cover any rent shortfalls and personal guarantees and holds cash deposits. Whilst I have noted the Applicant's submissions in this regard. I have no evidence before me to support them so have not taken these into consideration.
61. The Applicant provided me with two Arbitration awards, made under the Act, which it submitted were relevant.
62. The first, at paragraph 39, is in respect of ***KXDNA Ltd v 60 SA Limited***. The Applicant relies on this, on the basis that it says a financial strong and viable business was granted £800,000 of relief against a £1,800,000 rent debt. The Applicant submits that if an Applicant of this strength is able to secure relief of 45% of the protected rent debt, then smaller tenants, with lower financial resources owing rent to a larger and more financially secure landlord than KXDNA's, should be award greater relief.
63. The second, at paragraph 40, is in respect of ***Wright Brothers Kittyhawk Ltd v Wellington Pub Company Limited***, the same respondent as in respect of this case before me. The Applicant likens the itself to the applicant in Wright Brothers Kittyhawk. It argues that it's business too is viable, with difficulties, but is managing. The Applicant draws my attention to paragraph 42 of that award which states that "*the Respondent has failed to share the financial burden with the Applicant*" and paragraph 44 which states "*The Respondent's proposal for full repayment of the protected rent debt is inconsistent with the requirements of section 15 of the CRCA*".
64. The Applicant submits that when considering relief, it would be appropriate to consider the relative size and financial resources of the parties and not merely to split the protected rent debt 50/50 between the parties.

## **Respondent's Revised Response**

65. The Respondent submits, in paragraphs 2 to 5 of its Revised Response (“**Revised Response**”) that the Applicant’s Revised proposal is little more than making further submissions on its original proposal and that the ultimate request in the Revised Proposal for full relief is no different from that in its Proposal.
66. The Respondent denies having insurance to cover any shortfall in the rent paid by its tenants.
67. Whilst I do not comment on the remainder of the Respondent’s Revised Response, I have taken all of its submissions into consideration.

### **Conclusion**

68. I have considered the two awards drawn to my attention by the Applicant. I reminded myself that neither of these awards are binding on me.
69. When considering whether or not to grant relief, the principles for arbitrators set out in section 15 state:

*“(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.”*

### **The Applicant’s Proposal**

70. The Applicant asserts, at paragraphs 26 to 30 of its Formal Proposal, that the Respondent is solvent.
71. This is accepted by the Respondent at paragraph 8 of its Response.
72. Furthermore, the Respondent has provided me with a copy of its annual accounts for the year ending 31 March 2021. These accounts show that the Respondent has Net Assets of around £382million which include a provision for bad debts (on page 23 of 30).
73. The Respondent has not provided any other evidence to suggest that were I to grant any relief on this specific case it would have any impact on its solvency. Nor has it provided any evidence in relation to me taking a more holistic view of the Respondent’s situation given that it has hundreds of pub leases. The Respondent has told me that 71% of its tenants previously accepted its proposals for support reducing down its open exposure to referrals such as this Reference.
74. Accordingly, I find that the Applicant’s Proposals for full relief are not inconsistent with section 15(1)(a).
75. However, I was mindful of the Applicant’s submission that the burden of coronavirus should be shared.
76. In respect of the submissions by the Applicant that there should be a “*sharing of the burden*”, there is no such provision with the Act. Once viability has been established pursuant to section 13(4)(a), as it has as set out above, the extent of any balancing of interests between the parties contained within the Act is limited to 15(1)(a)(ii), namely preserving the viability of the tenant and preserving the solvency of the landlord and 15(1)(b) that “*the tenant should, so far as it is consistent with the principle in paragraph 15(1)(a) to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay*”.

77. Even on the Applicant's own case, it was therefore not clear to me why it submits that full relief should be granted as this would mean that the Respondent would bear the full burden, notwithstanding, on the Applicant's case, that the Respondent has more financial resources.
78. Nor it is clear to me, given the Applicant's Annual Accounts show that it is modestly profitable and has a substantial and growing cash balance in its Barclays bank account, how this proposal is consistent with my duties pursuant to section 15(1)(b).
79. Accordingly, I find that the Applicant's proposal for full relief, in the circumstances of this case, is inconsistent with section 15(1)(b).

### **Respondent's Proposal**

80. In respect of the Applicant, I have not been provided with any direct supporting evidence, or even submissions, as to the impact on viability if no relief was given. However, I do have indirect evidence on which I can draw inferences in this regard.
81. First, the Applicant's most recent annual accounts show an annual profit of £22,025. If I were to award no relief, then the amount of the protected debt would exceed the company's most recent annual profits. This does not appear to me to be in keeping with the principle of maintaining the Applicant's viability.
82. Second, this case is one of six related referrals in respect of the Applicant and/or its director in respect of leases with the Respondent. Another of those referrals, relating to the "Plough" public house, is the subject of very similar consideration to this Final Award. Four more of the referrals were dismissed by me on procedural and/or jurisdictional grounds. I am therefore mindful that the decisions in respect of those referrals may have a financial impact. This, particularly with conjunction with the paragraph immediately above, leads me to consider that it would not be in keeping with the principle of maintaining the Applicant's viability if no relief was made.
83. Third, I am aware that the Applicant operates from multiple sites although I do not have any detailed information in this regard, such as how many sites.
84. I do have bank statements that show that the Applicant's cash balance at the bank increased during 2022 as set out above. Whilst I do not have sufficient evidence to know the full extent of the Applicant's financial affairs, on a very simple measure, the Applicant's cash balances do not appear to suggest that making no award in respect

of this specific Reference, would threaten the viability of the Applicant. However, I bear in mind that the Applicant does operate from more than one site and that it would be wrong to consider the Premises in this award in isolation without taking into account all the circumstances of this case.

85. Accordingly, I find that both the Respondent's Response seeking payment in full, and its Revised Response seeking payment in full over 12 months, is inconsistent with the principles of section 15, pursuant to section 14(3)(a). Even making full payment over 12 months would, for the reasons I have given, threaten the Applicant's viability.

## **Nature of Relief**

### **Rent**

86. Pursuant to section 14(5), because I have found that neither the Applicant's nor the Respondent's proposals, are consistent with the principles set out in section 15, I must make whatever award I consider to be appropriate (applying the principles in section 15).
87. I am mindful of the Respondent's Response, in asserting that it offered its tenants support in the form of 7.5 months' rent free and, according to paragraph 15 of its Response, that this offer was made to the Applicant. In making this offer, and in its Response at paragraph 11, the Respondent appears to accept the Applicant's suggestion that the burden should be "*shared*". But no such arrangement was agreed with the Applicant. Were the Respondent's request that no relief is awarded be upheld, this would leave the Applicant bearing all of the burden.
88. Neither party have expressly identified the level rent payable in respect of the Protected Period. I have been provided with a copy of the 20 year lease in respect of the Premises, starting on 1 May 2014. This states (on page 4) that the rent payable for the third and fourth years of the term, is £30,000. It is then subject to increase and reviews in accordance with the lease's First and Second Schedule. The First and Second Schedules provide that the rent shall increase at the higher of Open Market Rent or the Retail Price Index. On the balance of probabilities, I find that it is very likely that the annual rent is in excess of £30,000.

89. I also have the benefit of the rent account statement provided by the Respondent. In respect of the protected period as defined in section 5(1), the statement shows the following rent:

21/3/2020 - 31/5/2020 (c10 weeks): £8,347.09 = £3,617 per month

1/6/2020 - 31/8/2020 (3 months): £10,665.73 = £3,555 per month

1/9/2020 - 30/11/2020 (3 months): £10,944.50 = £3,648 per month

1/12/2020 - 28/2/2021 (3 months): £10,944.50 = £3,648 per month

1/3/2021 - 31/5/2021 (3 months): £11,229.06 = £3,743 per month

1/6/2021 - 17/7/2021 (c6 weeks): £5,851.31 = £4,226 per month

90. The total rent charged during the Protected Period is £57,982.19. The Average monthly rent is £3,740.

91. Were the Respondent to have provided the Applicant with 7.5 months of rent free, this would have therefore amounted to £28,050 less rent. In addition to rent, the Act provides for relief in respect of any service charge including insurance. Insurance appears, from the Respondent's statement, to amount to around 7%.

92. I have borne in mind the requirement of section 15(1)(b) for the Applicant to meet its obligations as regards the payment of protected rent in full and without delay subject to this not being inconsistent with section 15(1)(a)(i). I am satisfied that to award the Applicant no relief, particularly in the context of its positive, but relatively marginal, profitability and given that it operates multiple sites where its business will also have been affected by coronavirus, would threaten, and thus not preserve, the Applicant's viability.

93. As already set out above, I have borne in mind the principles I am required to take into account as set out in section 15(1)(a) in respect of the Landlords solvency.

94. Neither party have raised any issues in respect of the manipulation of either party's respective financial positions pursuant to section 15(2).

95. The Applicant asserts that the protected rent debt is £38,209.52. The Respondent asserts that it is £49,789.03. My role is not to identify what rent is or isn't owed and I make no finding in that regard, that is a matter between the parties. My powers are

to consider whether or not any relief should be awarded in respect of the protected rent debt.

96. I have borne in mind the difference in financial strength between the Applicant and the Respondent. Whilst the Respondent appears to me to be in a significantly stronger financial position than the Applicant, the Applicant does have financial resources available to it, and should make some contribution to what is owed.
97. I have taken into account the evidence from the Respondent's statement, that the Applicant's account was up to date, indeed in credit, on 1 March 2020. The total rent charged during the protected period appears to be £57,982.19. It appears that during the protected period, the Applicant continue to make payments towards that rent, totalling: £14,048.50. It has continued to make payments since. This does not appear to be a scenario where the Applicant made no payments at all.
98. I bore in mind that the Applicant was able to trade, to a lesser or greater degree, for some of the protected period and therefore it would reasonable to assume that some benefit was gained from the tenancy during that time.
99. In my assessment, the relief awarded in favour of the Applicant in respect of the rent should be in the sum of £28,050. This reflects the same 7.5 months' rent relief that the Respondent offered its other tenants. The Respondent clearly thought that to be a reasonable share of the burden. To offer either more or less, it appears to me, would not be appropriate as it would render the Applicant better or worse off than in relation to other tenants. Regardless, in light of being able to trade to some extent during some of the protected period, it appears to me that relief of this degree is appropriate balance between the parties' interests and relative positions.
100. It is not at all clear to me why the Applicant would be required to agree to an extended lease to access this "*support*" in the circumstances of the pandemic. To do so would, in my view, impose too much of the burden on the Applicant and too little on the Respondent. I have taken into account the relative disparity in bargaining power between the Applicant and Respondent when the Respondent made this offer which the Respondent says was accepted by other tenants.
101. As set out above, any relief should also take into account any insurance and associated charges, charged to the Applicant during the protected period. According to the Respondent's statement, this totals £4,092.42 for the 15.84 months of the

protected period. Applying the same 7.5 month support to the insurance due, gives relief in the sum of £1,937.70.

102. For all of the reasons set out above, I therefore award the Applicant relief of £28,987.70 from the Protected Rent Debt.

### **Payment Period**

103. The Applicant asks, at paragraph 1(c) of its Formal Proposal, for time to pay in respect of any balance. It seeks 24 months.
104. The Respondent's Response is silent in this regard but its Revised Response proposes that the rent debt should be paid within 12 months.
105. I am mindful that since the Protected Period and since the Applicant notified the Respondent of its intention to refer this matter to arbitration, economic headwinds generally have increased significantly. It is common knowledge, well reported on national media, that energy prices, general inflation and shortage of labour are affecting the hospitality industry particularly badly.
106. I am satisfied, that were I to grant the Respondent's request for any balance to be paid immediately or within 12 months, this may adversely impact the Applicant's viability.
107. For those reasons, I grant relief in the form that any balance of protected rent debt to must be paid within 24 months from the date of this award.

### **Costs**

108. Pursuant to Section 19(5), as I have made an award under sections 13 and 14, the Respondent shall reimburse the Applicant for half of the arbitration fees paid by the Applicant. As the Applicant paid fees in the sum of £1,400+VAT, I therefore require the Respondent to pay £840 to the Applicant.
109. Pursuant to section 19(6), I am also satisfied that it is more appropriate in all the circumstances of this case for the Respondent to pay a greater proportion of the fees of the Arbitration than is provided for pursuant to section 19(5). This is because the evidence of both parties that the Applicant already offered the same, or thereabouts,

that I have awarded. The Applicant was therefore put to the trouble and expense of making this Reference, and the Respondent had the opportunity to accept that offer. I therefore require the Respondent to pay the balance between half of the fees already awarded in the paragraph immediately above, and the full fees paid by the Applicant.

110. Pursuant to section 19(7), the parties must meet their own legal and other costs.

### **Publication of this Award**

111. Pursuant to section 18(2), I am required to publish this award. I intend to publish the award on the CCODR website. I have formed the provisional view that other than in respect of the Applicant's bank account balances at paragraph 37(b), the award contains no commercial information which ought to be redacted from the award pursuant to section 18(4). I will therefore publish the award in full on the CCODR website unless either party indicates to me by 4pm on 2 December 2022 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.

### **AWARD**

**112. Now I, Robin Somerville, having carefully considered the submissions of the parties, hereby award and direct as follows:**

- (i) The Applicant shall be given relief from payment of the Protected Rent Debt in the sum of £28,987.70 including charges and interest.**
- (ii) The Respondent shall pay the Applicant the sum of £1,680 by way of reimbursement of all of the arbitration fees paid by the Applicant 4pm on 9 December 2022.**

**113. MADE AND PUBLISHED by me, Robin Somerville at the Chambers of Robin Somerville, 5 Chancery Lane, London. WC2A 1LG, the seat of the arbitration, on 25 November 2022.**

