



## 1. Introduction

This First Award relates to an application pursuant to the provisions of the Commercial Rent Coronavirus Act 2022 (“CRCA”) for the resolution of the matter of relief from payment of a protected rent debt due in respect of a tenancy of premises known as [REDACTED] (“the subject premises”).

## 2. Parties

Applicant: [REDACTED]

Respondent: [REDACTED]

## 3. Summary of Dispute

An application was made by [REDACTED] Limited (the Applicant) under the Commercial Rent Coronavirus Act 2022 (“CRCA”) for relief from payment of rent for a protected rent debt. The Respondent contends that, contrary to section 10(1)(a) of the of the CRCA the Applicant failed to provide the Respondent with a letter of intention by 26 August 2022 and the application should therefore be dismissed.

## 4. Appointment

I was appointed on 17 December 2022 by the President of the RICS to act as Arbitrator in the above matter.

## 5. Procedure

- 5.1 I received a copy of a letter dated 21st December 2022 from [REDACTED] on behalf of the Respondent to Mr Mushtaq Ahmed of the RICS setting out the Respondent’s reasons why the Applicant’s claim should be dismissed.
- 5.2 Both parties agreed this point will be dealt with initially by a First Award.
- 5.3 I issued directions on the 19 June 2023, inviting parties to make further representations and confirming that, in the absence of any further representations, a decision would be made based on the correspondence referred to above and forwarded to the RICS in the first instance.
- 5.4 No further representations were received.

**Having considered the evidence I hereby publish this my First Award. The seat of the Arbitration is London, England and the Law of England and Wales apply.**

**6. Legal Framework**

- 6.1 The Commercial Rent (Coronavirus) Act 2022 provides that a reference to arbitration under the CRCA must be made within 6 months of the date of the CRCA having been passed, being the 23 September 2022.
- 6.2 Section 10(1)(a) of the CRCA provides that the Applicant must notify the Respondent of their intention to make a reference, and Section 10(1)(b) that the respondent may, within 14 days of receipt of the notification, submit a response.
- 6.3 Section 10(2)(a) provides that a reference to arbitration must not be made before the end of the 14 days on which the response under Section 10(1)(b) is received, or if no response is received the end of the period of 28 days beginning with the day on which the notification under subsection 1(a) is served.

**7. The following facts have not been disputed:**

- 7.1 The application was made on the prescribed form DRS CRAA3, signed on behalf of [REDACTED] and dated 22 September 2022.
- 7.2 In a letter dated 23 August 2022 on paper headed [REDACTED] Limited, the Applicant, wrote “please accept this letter as formal notice of our intention to apply to Arbitration under Part 2 of the Commercial Rent Coronavirus Act 2022”.
- 7.3 The letter was sent to the following address

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## 8. Issue in Dispute

8.1 The Respondent contends that, contrary to section 10(1)(a) of the Commercial Rent (Coronavirus) Act 2022 (“CRCA”) the Applicant failed to provide the Respondent with a letter of intention by 26 August 2022 and the application should therefore be dismissed.

## 9. The Respondent’s Case

9.1 The Respondent expresses the opinion that the word “notify” in section 10(1)(a) would be interpreted to mean receipt and that this is reinforced by the requirement in section 10(1)(b) which refers to receipt. The respondent cites the case of *Holwell Securities Ltd v Hughes* where it was held an option, exercisable by a notice in writing, was not validly exercised by the posting of a letter which was not received.

9.2 At the date of the letter the registered office of [REDACTED] Limited, as stated in the lease, was [REDACTED].

9.3 This is an address that is known to [REDACTED] as evidenced by the fact that service charge demands have been forwarded to that address.

9.4 [REDACTED] Limited’s main office is at [REDACTED]. [REDACTED] had knowledge of and had previously used [REDACTED] Limited’s email.

9.5 [REDACTED] Limited have no office at the [REDACTED]. [REDACTED] sent notice of their intention to make a reference to arbitration.

9.6 As a result of the notice being sent to the wrong address, the Tenant’s notice of intention to apply to arbitration was eventually opened by an employee of [REDACTED] Limited on 30 August 2022.

9.7 As a consequence of the timetable set out in section 10 of the CRCA the deadline for Applicants to have notified Respondents of their intention to refer the matter to Arbitration was 26 August 2022.

9.8 In summary, the respondent sets out a statutory requirement for the notice to be received by 26 August 2022 and that the

Respondent, despite being in possession of the Applicant's registered office and email address, failed to comply with this requirement.

9.9 The Applicant has not sought to rebut any of the points made above.

## 10. **Conclusion**

10.1 No representations have been received to suggest that there is any dispute with regard to the timing or delivery of the notice.

10.2 The Applicant has not sought to dispute the Respondent's assertion that, under the CRCA, receipt is a necessary requirement for notification.

10.3 The question that arises is whether receipt of the notice on the 30 August, 4 days later than the date required to comply with the timetable laid down by the CRCA, should render the Application invalid and that the Application should therefore be dismissed.

10.4 The Act only applies to the "Protected period", which in England is 21 March 2020 to 18 July 2021 (Section 5(1)), or if earlier the last day on which the whole or part of the business was subject to a closure requirement (Section 5(2)). It is reasonable therefore that the CRCA sought to put a limit on the time during which an application could be made.

10.5 The Act provides for a specific procedure to be followed which differs from usual arbitration practice. To the extent that the CRCA (Commercial Rent (Coronavirus) Act 2022) is inconsistent with the Arbitration Act 1996 (AA96), the CRCA will prevail.

10.6 The general duty of a tribunal is laid down in Part 1 Section 33(1)(a) of the Arbitration Act 1996:

*to "act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, .."*

This is a fundamental principle of Arbitration.

10.7 Having considered both the timing provisions of the CRCA and the duty of a tribunal under the Arbitration Act 1996 as set out above, I consider a delay of 4 days is insufficient to warrant the dismissal of the Application.

- 10.8 The Respondent, in their letter dated 21st December 2022 from [REDACTED] to Mr Mushtaq Ahmed of the RICS requested, in the event the Arbitrator was to find against them in respect of the question of the validity of the Application, that they be awarded an extension of time in which to put forward a formal proposal in response to the Application, to the date 14 days after the resolution of the issue.
- 10.9 Section 11(6)(B) of the CRCA enables the Arbitrator to extend the time periods laid down by subsections (2) and (4) of Section 11 if “reasonable in all the circumstances”. I confirm consent to this reasonable request.

## 11. **Costs**

- 11.1 Section 19(5) of the CRCA states that, when I make an award under Section 13 or 14, I must also make an award requiring the Respondent to reimburse the Applicant for half the arbitration fees already paid. Section 19(6) states that general rule does not apply if I consider it more appropriate in the circumstances of the case to award a different proportion.
- 11.2 The need for a First Award arose from the Applicant’s failure to serve notice at the correct address in a timely manner and I therefore conclude, despite finding for the Applicant (10.7), that it is appropriate for the costs to be shared in equal parts between the parties.

## 12. **Accordingly I hereby Award and Direct that:**

- 12.1 The application made by [REDACTED] Limited, for the resolution of a matter of relief from payment of a protected rent debt to be determined by arbitration in accordance with the CRCA, shall not be dismissed.
- 12.2 The Respondent shall be allowed 14 days from receipt of this Award to put forward a formal proposal in response to the Application.
- 12.3 The Respondent shall reimburse the applicant with half of my fees and one half of the RICS application within 28 days of this Award.
- 12.4 This is my First Award in this matter.
- 12.5 Made and signed 14 July 2023.

A handwritten signature in blue ink, appearing to read 'K. Procter', is positioned above the typed name.

**Signed:**

**Kate Procter MRICS MCI Arb**

**Date: 14 July 2023**