

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

BETWEEN

[REDACTED] (APPLICANT/TENANT)

AND

[REDACTED] (RESPONDENT/LANDLORD)

**FINAL AWARD OF
ANDREW L CREASE FRICS FCIARB**

DATED MAY 2025

BACKGROUND

1. The Applicant is the Tenant of [REDACTED]
[REDACTED]
2. The Respondent is the Landlord of the above property.
3. The parties been unable to agree the appropriate relief concerning rent arrears during the Coronavirus pandemic.
4. Notice of intention of arbitration was served by the Applicant, followed by the application to the Dispute Resolution Service of the RICS for the appointment of an arbitrator.
5. I was approached by the RICS to act as arbitrator under the Commercial Rent Coronavirus Act 2022. (CRCA). After conducting conflict checks I indicated that I would be able to accept the appointment.
6. I was appointed arbitrator on this matter on 3 December 2022.
7. I held an initial preliminary meeting where the parties indicated that it required more time for negotiation.
8. The Applicant requested that a timetable be reinstated.
9. I convened another Directions meeting where I indicated that my fees under the RICS Scheme C would be £3,000 plus VAT and monies should be lodged with the RICS before I proceeded.
10. Once the monies been deposited with the RICS, I issued further directions which culminated in receiving a revised formal offer with supporting evidence from the Applicant, a revised offer and response from the Respondent and final comments by the Applicant.

MATTERS IN AGREEMENT

- i. Eligibility. The parties have agreed that the eligibility criteria are met.
- ii. The parties have agreed to adopt Procedures C under the RICS scheme
- iii. The quantum of the protected rent debt is agreed at £76,000.

MATTERS IN DISPUTE

- i. The appropriate relief and repayment period.
- ii. Costs.

THE APPROPRIATE RELIEF AND REPAYMENT PERIOD

APPLICANT's Formal Offer

- 11. The Applicant offers to repay £12,500 immediately. The Applicant then suggests in their final comments that the £12,500 should be repaid by 30 September 2025 and the Landlord pays half the cost of these proceedings.

Respondent's Offer

- 12. Repayment of the whole of the protected rent amount over a period of 36 months.

LEGAL FRAMEWORK

- 13. The CRCA and guidance notes are very clear as to how arbitrators are to proceed in deciding these matters.

14. What I must do is assess the above offers and whether they are consistent with Section 15 of the Act. For ease of reference I quote the relevant section below:

Section 15 - Arbitrators' 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.

15. The CRCA permits me to award relief from zero to complete relief of the protected rent debt and if I decide that there is an amount to be repaid, I may make this repayment over a period of up to 24 months from the day after the date of this award.

APPLICANT'S EVIDENCE

16. The Applicant describes the background to the taking of the lease and the various fit out costs along with pre-pandemic profitability. They also describe the financial difficulties during the pandemic.
17. The Applicant explains the problems of trading in the current economic climate and introduces the four months turnover preceding the submission with a comparison of the same period on the previous years. These show a turnover of four months from October to January in a region of £ [REDACTED]. On this basis they suggest that a repayment of £12,500 is appropriate.
18. In response the Respondent whilst acknowledging the good payment record of the Applicant prior to the pandemic indicates that writing off of the protective rent debt to the extent requested by the Applicant would be damaging to the landlord who relies on the income as a return on the substantial investment in the property.
19. In their final statement the Applicant indicates that they view the £12,500 as affordable but seek seven months over which to repay it.

RESPONDENT'S EVIDENCE

20. Other than the fact that writing off the protected rent debt to the extent requested by the applicant would be damaging the Respondent offers nothing further in support of their offer. In response to this the Applicant maintains that they cannot afford to repay the full amount.

FINDING

21. **I do not find either formal offer to be consistent with the principles of the Act. I find that 2/3 of the protected rent debt should be repaid over 24 months.**

22. I find that the tenant should repay £50,667 being two thirds of the rent debt over a period of 24 months starting on the day after this award with a payment of £2,111.11 followed by 23 monthly payments of £2,111.11.

REASONS

23. Dealing firstly with the Landlord/Respondent's offer, this on the face of it complies with the principles in that it seeks repayment of the rent debt in full and offers an extended period of 36 months for this. I observe this would amount to some £2,111.11 a month repayment.
24. I am not allowed to make an award that gives the claimant longer than 24 months to repay the awarded sum after the date of my award. Therefore, this proposal is unacceptable as being one that I cannot comply with under the terms of the CRCA.
25. Turning to the Applicant offer. Whilst the reduced amount proposed is undoubtedly consistent with restoring/preserving the viability of the Applicant, I am not convinced it goes far enough in repaying the protected rent debt as far as possible to the Landlord.
26. The Tenant's proposal is not fully modelled, and I am not at all convinced that having made a final proposal of an immediate repayment of £12,500 that I can consider seven months repayment suggested in the summing up.
27. On the basis that I do not believe the Applicant's proposal meets the second arm of the arbitrator's principles, I find that it is not consistent with Section 15.
28. I am therefore left with two offers that are non-consistent with the arbitrator's principles and therefore I have made an award based on what I think is appropriate as the CRCA directs me to do.

29. On the evidence provided I have reached the conclusion that a monthly payment of £3,167 would result in full repayment of the rent debt over the maximum period of 24 months would threaten the ongoing viability of the Applicant.
30. I have concluded that the protected rent debt be reduced by 1/3 and to allow for the repayment over the maximum 24 months the monthly sum is £2,111.11.
31. I consider that the above repayment and repayment period meets with the arbitrator's principles contained within s15 of CRCA.

FINDING

32. **I find that the costs of this arbitration should be split equally between the parties.**

REASONS

33. There has been nothing in the conduct of the parties in the case that would lead me to diverge from the default position set out in section 19 (5) of the CRCA. I therefore direct that each party pay 50% of costs of this arbitration.

THE AWARD

34. I hereby award and direct as follows that the Applicant pay one day after the date of this award the sum of £2,111.11 to the Respondent and thereafter on the same day of each month for the next 23 months make further payments of £2,111.11 pence to the Respondent.
35. The Respondent repay the Claimant 50% of the application fee and the arbitration cost within seven days of the production of an invoice for these amounts from the Claimant.

PUBLICATION PURSUANT TO CRCA SECTION 18

36. This award must be published. I intend to publish it on the RICS website. I attach a redacted copy of the award, which I will send to the RICS for publication unless I hear back from either of you that you require further redactions within the next seven days.

SEAT

37. The seat of this arbitration is England and Wales.

Signed



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Andrew L Crease DipArb FRICS FCI Arb

Date:

30th May 2025