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

BETWEEN

PUBOLA LIMITED
(APPLICANT)

&

LBC LEYTON LIMITED
(RESPONDENT)

IN RESPECT OF 265B HIGH ROAD, LONDON, E10 5QN

FIRST AWARD - JURISDICTION

BY
BY SIMON S GOULDBOURN BSc MRICS ACIArb ARBITRATOR

MEMBER OF THE INTERNATIONAL RETAIL NETWORK Europe | America

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1.0 *Preliminaries*

1.1 The Applicant is Pubola Limited, the Tenant of premises known as 265b High Road, London, E10 5QN. The Tenant Applicant is represented by Mr Anthony Thomas (AT), a Director of Pubola Limited.

1.2 The Respondent is LBC Leyton Limited, the Landlord of the aforementioned premises. The Landlord Respondent is represented by Mr A Vidler (AV) of Teacher Stern Solicitors, and Ms E Fitzgerald (EF) of Falcon Chambers.

1.3 I have not been provided with a copy of the Lease relating to the premises but the parties are described by the Respondent as the *'former'* Landlord and Tenant as the Respondent forfeited the Lease by way of peaceable re-entry on 10th October 2022. The Respondent says that no application for relief from forfeiture was sought by the Applicant, a contention not refuted 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 two 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 On 2nd December 2022 I was appointed by the President of the Royal Institution of Chartered Surveyors (RICS) to act as an arbitrator under the CRCA.

2.2 In its application form dated 22nd September 2022, the Applicant requested the arbitration be conducted in accordance with the RICS arbitration procedure "D".

2.3 The Applicant had served a 'notice of intention to arbitrate' on 23rd August 2022.

2.4 The aforementioned Applicant's letter dated 23rd August 2022 was addressed to LMO UK LLP, Brook Point, 1412-1420 High Road, London, N20 9HB. A copy of that letter was emailed the same day to the Respondent's solicitors, Teacher Stern.

2.5 Immediately following my appointment as arbitrator, AV sent a letter dated 6th December 2022 via email immediately challenging my jurisdiction to proceed citing the following grounds:

- Applicant's failure to give a valid notice pursuant to s.10 of the CRCA.

- Applicant's failure to make a proposal in accordance with s.11 of the CRCA.

2.6 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."

2.7 I convened a preliminary meeting with the parties on 15th December 2022 whereupon it was agreed that my jurisdiction to proceed under the CRCA would be dealt with as a preliminary issue.

2.8 A timetable for parties to submit reports was also agreed together with my fees.

2.9 The Applicant was given opportunity to reply to the Respondent's letter of 6th December 2022 and state its own views on my jurisdiction. The Applicant issued its response on Friday 6th January 2023.

2.10 The Respondent was given opportunity to comment further on the Applicant's response dated 6th January 2023, the Respondent's additional commentary received on 13th January 2023.

2.11 The Applicant was given opportunity to provide further commentary having considered the Respondent's correspondence dated 13th January 2023 but made no further representation.

2.12 The deadline for the Applicant's final commentary regarding my jurisdiction was 27th January 2023.

2.13 On 6th February 2023 I contacted the parties, having read their correspondence advising that, in advance of making any decision, there was opportunity to use the services of a legal assessor to provide an opinion on the preliminary issues.

2.14 Schedule 1 (k) of The CRCA amends the arbitrator's powers to appoint a legal assessor under s.37 of The Arbitration Act 1996. An appointment of a legal assessor can only be done if both parties are in agreement.

2.15 Both parties were initially amenable to a legal assessor being appointed. I subsequently approached Maitland Chambers for a fee estimate which was relayed to the parties.

2.16 The Respondent rejected the fee estimate stating it was disproportionate to the claim and requested I determine my own jurisdiction based on the submissions of the parties.

2.17 On 15th March 2023 AT expressed some confusion as to why I would adjudicate on the preliminary issues if it is fundamentally a legal question, believing there was an inference that a legal opinion would be necessary.

2.17 On 20th March 2023 I contacted the parties advising that under Schedule 1 (k) of the CRCA, my ability to appoint a legal assessor under s.37 of the Arbitration Act 1996 is amended such that I must have consent of both parties to proceed.

2.18 I made it clear that I was unable to appoint a legal assessor to consider my jurisdiction due to the Respondent's refusal to agree to an appointment. I reminded both parties that I am not a solicitor or a legal expert. I must consider and determine the questions raised based on information supplied by the parties.

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?

3.0 *The Respondent's Claim*

3.1 The Respondent is clear that the Applicant has failed to provide a valid notice pursuant to s.10 of the CRCA.

3.2 AV draws my attention to:

"s.10 (1) before making a reference to Arbitration –

(a) The tenant or landlord must notify the other party of their intention to make a reference"

3.3 The Respondent states that the Applicant emailed a notice to AV's practice, Teacher Stern Solicitors, on 23rd August 2022 with what the Respondent describes as a "*purported notice*" of intention to proceed to Arbitration under the CRCA.

3.4 AV states that Teacher Stern were not instructed to accept service of statutory notices on behalf of the Respondent and the firm had made no prior indication to the Applicant that it was instructed. AV states that consequently this mode of service was not effective.

3.5 Further, the "*purported notice*" was not addressed to the Respondent and it was not sent to the Respondent's registered address. The Respondent said that the "*purported notice"* had been addressed to the original landlord of the property.

3.6 The Respondent directed me to paragraph 12.19 of the CRCA Guidance Notes to Arbitrators and approved Arbitration Bodies on the exercise of their functions, this section headed "Service of Notices".

3.7 The relevant wording under this header is as follows:

"a notice or other documents shall be treated as effectively served if it is addressed, prepaid and delivered by post:

12.19.1 to the addressees last known principal residence or, if the addressee is or has been carrying on a trade, professional business, its last known principal business address; or

12.19.2 where the addressee is a body corporate, to the body's registered or principal office."

3.8 The guidance notes also state at 12.20 *"notices and other documents under the Act may be served by email provided this is an effective means.*"

3.9 The Respondent states that a notice addressed to the wrong party and sent to the wrong address cannot be a valid notice.

3.10 The Respondent claims that the Applicant is subsequently not entitled to refer this matter to Arbitration pursuant to the terms of the CRCA.

4.0 *The Applicant's Submission*

4.1 AT is a Director of the Applicant, Pubola Limited. AT says that he met with a representative of the Landlord on 8th July 2022 at the Pubola offices to discuss the arrears position, which largely related to the Covid period.

4.2 the Applicant states that the CRCA and a reference to Arbitration were mentioned at that meeting and so a verbal notice of intent had been provided to the Respondent at that time.

4.3 The Applicant's letter of 23rd August 2022 giving notice of intention to refer the matter to Arbitration was addressed to LMO UK LLP, an active Partnership with Jon and Michael Pollendri as members of that Partnership.

4.4 The Applicant states that it had never been provided with a notice that the identity of the Landlord had been changed to LBC Leyton Limited, an active company with Michael Pollendri as a Director, which the Applicant considers to be a related entity to LMO UK LLP.

4.5 The Applicant has always dealt with the Respondent via Lee Valley Estates, a Limited company with Michael Pollendri as Director. AT's understanding was that when dealing with the Respondent, he dealt with the Pollendris.

4.6 The Applicant goes onto say that its payment system for the subject property is registered at Lee Valley Estates and its bank account number is the same account operated by LMO UK LLP and now by LBC Leyton Limited.

4.7 The Applicant states that rent payments have been made throughout its tenancy to the same Landlord bank account.

4.8 The Applicant states that Teacher Stern's letter of 6th September 2022 made it clear that the Respondent had received the original notice letter on 26th August 2022.

4.9 The Applicant claims that despite Teacher Stern stating they were not authorised to accept service on behalf of the Respondent, both they and the Respondent were clearly aware of the Applicant's intention to proceed to Arbitration.

4.10 Once the change of name of the Landlord to LBC Leyton Limited had been made aware to the Applicant it re-sent the letter of intent to arbitrate with amended Respondent name and address details. As a matter of fact, the updated letter was re-sent on 13th September 2022.

4.11 The Applicant summarises that verbal notice was given on 8th July 2022. There followed a written notice to the Landlord on 23rd August 2022, followed by a re-serving of the written notice on 13th September 2022, having being informed that the Landlord name had changed.

4.12 The Applicant concludes that where the Principals are related to all the parties representing the Respondent, it believes that good service was made in accordance with the CRCA.

5.0 *The Respondent's Submission*

5.1 A submission in response to the Applicant was made on 13th January 2023 by EF of Falcon Chambers on behalf of the Respondent.

5.2 In dealing with the issue of compliance with s.10 of the CRCA, EF was also categoric that the Applicant did not serve a valid notice of intention to proceed to arbitration.

5.3 EF accepts that LMO UK LLP is an active company as stated by the Applicant, but that it is the former Landlord, not the Applicant's current Landlord, LBC Leyton Limited.

5.4 The Respondent does not accept that the Applicant was unaware of the change of identity of the Respondent Landlord.

5.5 EF states that the Applicant was informed that the assets and liabilities of LMO UK LLP had been transferred to LBC Leyton Limited, by way of a letter of August 2019 which was attached to her submission and corroborated by a Mr Nigel Fletcher of Lee Valley Estates.

5.6 EF submits that the Applicant simply failed to check that it was giving notice to the correct Landlord, instead relying on the Landlord details as originally set out in the Lease.

5.7 EF says this is the reason why the Applicant did not send the letter of 23rd August 2022 to the correct registered address for LMO UK LLP.

5.8 Moreover, EF submits that it is irrelevant whether or not the Applicant was aware that the identity of its Landlord had changed.

5.9 In support of this contention EF draws my attention to *OG Thomas Amaethyddiaeth v Turner and Ors [2022].*

5.10 In this case the tenant, Mr Thomas, assigned his oral tenancy to a company of which he was the sole Director and shareholder and whose registered address was the same as his home address.

5.11 The landlord was unaware of the existence of the new company and 3 days later served a notice to quit. The notice and its covering letter were addressed to Mr Thomas and not the new company.

5.12 The notice was delivered to Mr Thomas by hand at the address shared by the company.

5.13 The Court of Appeal held that the notice was invalid because it had been addressed to the incorrect recipient. The fact that the landlord fell into a trap wittingly or unwittingly created by the tenant was not relevant.

5.14 EF went on to say that, in reaching its decision, the Court of Appeal had regard to an earlier decision of the court of appeal in *(R Morris) v The London Rent Assessment Committee* [2022].

5.15 In this case, the notice served by the landlord was not addressed to the current tenant of the flat, it was expressly addressed to a different person. This was not a minor error or slip, the person to whom it was addressed had long ceased to be the tenant of the flat. EF draws my attention to Mummery LJ's observations in the *R (Morris)* case:

"The notice was not addressed to the tenant Mr Fry, either expressly by name or implicitly by status as tenant. It was expressly and unambiguously addressed by name to an altogether different person, Mr H G Barnby. That was not a minor error or slip. Mr Barnby was not Mr Fry, and he was not, and had long since ceased to be, tenant of the flat. The reaction of the reasonable tenant receiving the notice addressed to Mr H B Barnby (or receiving an envelope so addressed) would be to think that the notice or the envelope and its contents were meant for Mr Barnby. The notice cannot be construed as a notice given to Mr Fry."

5.16 The judge in that case decided that the reaction of the reasonable tenant receiving such notice would be to think that the notice or the envelope and its contents were meant for a different person. The notice could not be construed as a notice given to the tenant.

5.17 EF refers me back to a section within the judgment in the *O G Thomas* case:

"*A noticed addressed to A and received by A cannot be regarded as being a notice give to B, even if A knows that B would have been the correct recipient of it*".

5.18 EF views the Applicant's position as having always dealt with the Lee Valley Estates and always paid rent to the same bank account, implies that the Applicant thought it was entitled to treat LMO UK LLP as if it were the same entity as the Respondent.

5.19 EF states that this must be incorrect as the two companies are distinct and separate companies.

5.20 EF reaffirms that the former landlord has no authority to accept notices on behalf of the Respondent.

5.21 EF maintains that irrespective of where rent is actually paid by the Applicant, the rent demands are made by the Respondent Landlord.

5.22 Supporting this assertion is an invoice attached to her submission stating the Landlord company name and address. EF correctly highlights that the Arbitration Act 1996 does apply to these proceedings but in amended form.

5.23 EF acknowledges that the Arbitration Act 1996 generally makes a fairly wide allowance for service of notices but a notice for the purpose of arbitral proceedings must be given to the correct party.

5.24 EF draws my attention to *"Lantic Sugar limited, Copersucar Trading AVV v Baffin Investments Limited [2009]."* In this case the judge had to consider whether a notice to begin arbitral proceedings had been given in sufficient time where notice had been given to two companies in the same group but not to the intended respondent company, in circumstances where Baffin, the respondent, was aware that notice had been given.

5.25 The judge, Gross J, concluded that the respondent had not been properly served.

5.26 The judge recognised that s.76 of the Arbitration Act 1996 afforded flexibility on the service of notices rather than in respect of court proceedings but, as EF highlights, Gross J went on to say:

"Separate corporate personality cannot simply be ignored. In short, nothing in the Act, authority or principle exempts an Arbitration claimant from serving a notice commencing Arbitral proceedings on the correct party".

5.27 EF draws my attention to paragraph 40 of Gross J's judgment in which he says:

"The requirement was that the claimants should serve Baffin before the expiry of the time limit; not that Baffin should be aware that the claimants were trying to do so. If a claimant is required to serve X and, mistakenly purports to serve Y, the mere fact that Y informs X of the purported service so that X knows of it,

cannot convert Y's receipt of the documents into good service upon X. To my mind, Mr Olbourne's submission in this regard is untenable".

5.28 EF then responds to the Applicant's suggestion of a verbal notice of intent to proceed to arbitration under the CRCA, during a meeting between AT, a Director of the Applicant and a Mr Jon Polledri, a representative of the Respondent.

5.29 EF maintains that written notice is required and refers to s.21 of the CRCA Guidance at paragraph 3.8: "*we recommend that this is done via a letter of notification."*

5.30 EF contends that whilst there is no specified form of notice required by the CRCA, it clearly requires written notification. In support of this contention EF refers to paragraph 3.11 of the CRCA Guidance where the 28 days of notice of intention to proceed to arbitration is calculated:

"..beginning on the day in which the applicant's notice of intention is served".

5.31 EF considers that a reference to *"service"* envisages an actual physical document being given and that you cannot serve an oral notification.

5.32 EF highlights that the Applicant provided no detailed evidence as to what was discussed in the meeting other than the CRCA and a reference to arbitration were mentioned. EF maintains that this would be insufficient as a valid notice even if the verbal notice was sufficient for the purposes of the CRCA.

5.33 EF refers to a copy of the notice letter dated 23rd August 2022 being emailed to Teacher Stern LLP. EF then highlights that the Applicant's solicitor, Amphlett Lissimore, in its letter dated 20 October 2022, stated that (the Applicant's letter of 23rd August 2022) *"..did not amount to a specific service on your client.."* .

5.34 EF refers to the Applicant's purported service of an additional notice dated 13th September 2022 on the Respondent. Notice was not given without prejudice to the validity of the first notice and EF states that the Applicant does not make it clear which notice it seeks to rely on.

5.35 EF is satisfied that the second notice dated 13th September 2022 is invalid because any reference to arbitration must be made within 6 months beginning with the date on which the CRCA was passed, that date being 24th March 2022.

5.36 EF reasons that under s.10 (2) of the CRCA the reference to arbitration cannot be made before the end of a period of 14 days after the day on which a response under subsection (1)(b) is received; or if no such 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.

5.37 A notice dated 13th September 2022 meant that the initial 14 day response period would go beyond the statutory deadline for making an application to arbitration under the CRCA of 23rd September 2022, according to EF. This, in

turn, meant the additional 28 day criteria before making an application under the CRCA was also too late.

5.38 EF also mentions that the second notice was only received on 20th September 2022.

5.39 EF points out that the Applicant referred to its second notice as being a re-service of the earlier notice.

5.40 EF reiterates that a reference to arbitration cannot be made before the requisite 14 or 28 days had elapsed and as the arbitration was made on 23rd September 2022, the Applicant did not comply with time limits imposed by s.10 of the CRCA.

5.41 EF concludes that the language of s.10 is mandatory:

"a reference to arbitration must not be made before" the time period set out in s.10(2) has elapsed.

5.42 EF asserts that no valid referral has been made and as a consequence I have no jurisdiction to make an award on the issue of relief from payment under the CRCA.

My Decision

6.0 *Was the Applicant's Notice letter Dated 23rd August 2022 Valid?*

6.1 It is clear from the information supplied by both parties that the letter dated 23rd August 2022 from the Applicant giving notice of intention to refer the matter to arbitration, was not addressed to the current Landlord entity, LBC Leyton Limited.

6.2 The Applicant's defence to this error is that it had not been given notice the Landlord entity had changed from LMO UK LLP to LBC Leyton Limited.

6.3 The Respondent rejects the Applicant's claim that no notification of change of Landlord had been made and, in its defence, has presented a letter marked "August 2019", but with no addressee details, providing said notification of change of Landlord details.

6.4 The Respondent also attached a copy invoice made out to the Applicant dated 24th June 2022 which included the current Landlord detail "LBC Leyton Limited".

6.5 The Applicant has made no further comment regarding the "August 2019" letter and June 2022 invoice. I attach weight to both documents as they have been corroborated and appended to EF's submission without any rebuttal from the Applicant.

6.6 I have also found the case law provided by EF of assistance to my deliberations.

6.7 To further its defence the Respondent drew my attention to *O G Thomas Amaethyddiaeth v Turner and Ors [2022]* where the Court of Appeal on considering a notice to quit on an agricultural holding reluctantly concluded that the Landlord's notice was invalid.

6.8 In reaching its conclusion, the Court of Appeal had regard to *R (Morris) v The London Rent Assessment Committee [2022]* case where a notice had been addressed to a Mr Barnby, the former tenant and not the actual tenant, Mr Fry. I attach weight to this evidence put forward by EF particular the wording she extracted from the R Morris judgment:

"The notice was not addressed to the tenant Mr Fry, either expressly by name or implicitly by status as tenant. It was expressly and unambiguously addressed by name to an altogether different person, Mr H G Barnby. That was not a minor error or slip. Mr Barnby was not Mr Fry, and he was not, and had long since ceased to be, tenant of the flat. The reaction of the reasonable tenant receiving the notice addressed to Mr H B Barnby (or receiving an envelope so addressed) would be to think that the notice or the envelope and its contents were meant for Mr Barnby. The notice cannot be construed as a notice given to Mr Fry."

6.9 *The O G Thomas* case is also of assistance not least because the landlord was seemingly completely unaware of an assignment of the tenancy to an incorporated company sharing the same address as the original tenant. Even though the landlord hand delivered notice to the same address as the tenant, it was defective because he had not put the new incorporated company name on the notice.

6.10 Within these proceedings the Applicant has not provided me with any other case law relating to the service of notices to deliberate upon.

6.11 The Applicant has offered no defence or counter argument to the submission put forward by EF.

6.12 The Applicant's silence following EF's submission provides me with no additional information to assist my deliberations

6.13 There is clear guidance within the case law that has been supplied to these proceedings by EF that notice cannot be correctly served if addressed to the wrong recipient. The correct entity of the landlord must be provided to be effective.

6.14 I find that the notice served by the Applicant dated 23rd August 2022 was defective and invalid because it was incorrectly addressed to the previous landlord entity.

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7.0 *Was Verbal Notice Sufficient?*

7.1 AT stated that during a meeting at the Applicant's offices of 8th July 2022:

"*The Act and a reference to Arbitration were mentioned at that meeting and so a verbal notice of intent had been provided to the Landlord at that time*"

7.2 It does raise the question as to why, if the Applicant had felt it had already served a valid verbal notice of intent on 8th July 2022, it subsequently needed to send a notice of intention to refer the matter to arbitration on 23rd August 2022.

7.3 Notwithstanding the Applicant's reference to a verbal notice, the language of the CRCA envisages a written notification.

"s.10 (1)(a) *the Tenant or Landlord must notify the other party ("The respondent") of their intention to make a reference."*

"s.10 (2)(b) *if no such 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."*

7.4 I find EF's commentary relating to this wording persuasive. Where a notification is served, the presumption would be that it is done in writing.

7.5 As EF points out, the CRCA is not explicit but the guidance notes do recommend that a letter of notification of intent to proceed to arbitration is served on the respondent.

7.6 Notwithstanding the argument as to whether the notice should be verbal or written, the first consideration is whether the Applicant had in fact given a verbal notification of intention to proceed to arbitration under the CRCA in its meeting on 8th July 2022.

7.7 EF points to the fact that the Applicant simply made mention of the CRCA and a reference to arbitration in its meeting. EF states that a mention of the CRCA would not be sufficient to contribute verbal notice.

7.8 The Applicant has had opportunity to explain itself further having considered the comments made by EF, but has not done so.

7.9 A mentioning of the CRCA and a reference to arbitration does not give me sufficient comfort that any verbal notice of intent was provided to the Respondent. The word "*mentioned*" is not categoric that a verbal notice had been given.

7.10 The fact that the Applicant followed up with a letter dated 23rd August 2022 notifying the (incorrect) landlord of its intention to proceed to arbitration, also indicates to me that the Applicant did not consider that it had given a verbal notice in the meeting held on 8th July 2022.

7.11 I find that a mentioning of the CRCA and a reference to arbitration does not constitute a verbal notice of intent to arbitrate.

7.12 I reject the Applicant's claim that a verbal notice of intention to Arbitrate had been made on 8th July 2022.

8.0 *Was the Sending of a Copy of The Written Notice dated 23rd August 2022 to the Landlord's Solicitors Sufficient?*

8.1 The Respondent's solicitors, Teach Stern, have made it clear that they were not authorised to accept service of statutory notices on behalf of the Respondent.

8.2 EF draws my attention to a letter from Amphlett Lissimore solicitors dated 20th October 2022, who were acting on behalf of the Applicant.

8.3 In their letter of 20th October 2022 Amphlett Lissimore acknowledge to Teacher Stern:

"..it is accepted that copying to your good selves did not amount to a specific service on your client.."

8.4 The Applicant had opportunity to challenge Teacher Stern's assertions that they were not authorised to receive statutory notices on behalf of the Respondent but have not done so.

8.5 Both parties' solicitors have stated that emailing a copy of the letter of notification dated 23rd August 2022 to Teacher Stern did not constitute service of notice on the Respondent.

8.6 I must conclude that emailing a copy letter to Teacher Stern does not constitute effective service of notification of intention to proceed to arbitration under the CRCA.

9.0 *Was the Notice Dated 13th September 2022 Valid?*

9.1 EF makes reference to a further notice dated 13th September 2022 being served on the Respondent. It was not sent without prejudice to the validity of the first notice.

9.2 The Respondent provided further pertinent case law evidence on the service of notice for the purpose of Arbitral proceedings where time limits were imposed.

9.3 In *Lantic Sugar Limited, Copersucar Trading AVV v Baffin Investments Limited [2009]* the judgment at para. 40 is pertinent:

"The requirement was that the claimants should serve Baffin before the expiry of the time limits: not that Baffin should be aware that the claimants were trying to do so..."

9.4 The CRCA was passed on 24th March 2022. The CRCA clearly sets out the deadline for making a reference to arbitration:

"s.9 (2) 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"

9.7 The wording of the CRCA is unambiguous regarding the statutory periods giving the Respondent opportunity to reply to the Applicant's notice of intention to refer to arbitration:

"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."

9.8 With time limits imposed under the CRCA giving opportunity for the Respondent to reply before the Applicant proceeds to making its referral to arbitration, it is imperative that the Applicant serves effective notice timely on the Respondent so that the Applicant can ultimately make its reference to arbitration prior to the 23rd September 2023 statutory deadline.

9.9 As the statutory deadline for making a reference to arbitration under the CRCA was 23rd September 2022, the notice served by the Applicant on 13th September 2022 has left insufficient time for the days described at s.10 (2) (a) and (b) of the CRCA to elapse before any application for arbitration is made.

9.10 I find that the Applicant's notice letter dated 13th September 2022 was invalid because the subsequent time limits prescribed under s.10 of the CRCA meant that any subsequent referral would be beyond the 6 month statutory time limit set out at s. 9 (2) of the CRCA.

Was the "Formal Proposal" from the Applicant Sufficient for the purposes of s.11 of the CRCA?

10.0 *My Decision*

10.1 In finding that the Applicant has failed to serve a valid notice 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.

11.0 *Arbitration Costs*

11.1 Under s.19 (6) of the CRCA I have discretion as to the apportionment of my own costs.

11.2 Both parties have participated in these proceedings to enable me to deliver my Award.

11.3 I have given due consideration to these facts when considering apportionment of my costs.

12.0 *Publication*

12.1 I am directed by s.18 (2) of the CRCA to publish my Award.

12.2 The Award will be published on the website of the RICS.

12.3 I do not consider there is commercial information which must be excluded under s.18 (3) of the CRCA.

12.4 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 Friday 21st April 2023. If any representations are made I will give due consideration to them before publishing the Award.

14.0 *Award*

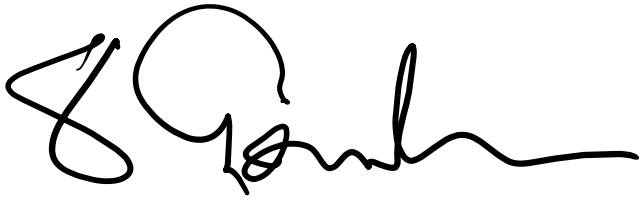
14.1 I, Simon Stuart Gouldbourn, Award and Direct as follows:

(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.

14.2 The seat of this Arbitration is England and Wales.

Signed: 

Simon S Gouldbourn BSc MRICS ACIArb

Date: 11th April 2022