

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

**REASONS FOR AWARD – Gavin Dingley FCI Arb, Sole Arbitrator**

**BETWEEN:**

████████████████████

**Claimant**

**-And-**

████████████████████

**Respondent**

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**REASONS FOR AWARD**

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1. These are the Reasons for the Award that I make in this Arbitration.
2. The matter referred to arbitration by the Claimant ██████████ is set out in its Notice for Arbitration (**Dispute Resolution Ombudsman Arbitration Referral Pro Forma**) dated 21<sup>st</sup> September 2022, by which Claimant contends that a debt of £57,600.00 is rent which was unpaid during the “Protected Period” of 21<sup>st</sup> March 2020 to 18<sup>th</sup> July 2021. By contrast Respondent ██████████ claims that I do not have jurisdiction to resolve this dispute.
3. The procedural history is that:
  - a. I was appointed as Sole Arbitrator by the Dispute Resolution Ombudsman on 9<sup>th</sup> October 2022;
  - b. On 10<sup>th</sup> October 2022 I issued **Procedural Order No. 1** and gave the following directions to the Parties:

- i. Whether they have any objections to my appointment, if so on what basis;
- ii. Whether they have any objections to the jurisdiction of this Tribunal, if so on what basis;
- iii. Whether the Parties wish to have an oral hearing or are content for the matter to proceed and to be determined on the papers alone;
- iv. If the matter is to proceed on the papers, whether they object to the following timetable:
  - a. The Claimant is to file all evidence relied upon and their proposal for resolving the matter of relief from payment of a protected rent debt by no later than 4pm on 27<sup>th</sup> October 2022;
  - b. The Respondent is to file all evidence relied upon and their proposal for resolving the matter of relief from payment of a protected rent debt by no later than 4pm on 10<sup>th</sup> November 2022;
  - c. The Claimant is to file any reply and any further evidence by 17<sup>th</sup> November 2022; and
  - d. The Claimant and Respondent are at liberty to vary the above upon an application.
- v. All communication and submissions in this matter are to be sent via email to [REDACTED] CC'ing my clerks [REDACTED] The Claimant must also CC in the Respondent and vice versa.

vi. If no response is received by 10 am on Friday 14<sup>th</sup> October 2022 the matter will proceed as detailed in (iv), above.

4. In these proceedings:

a. The Claimant was represented by [REDACTED].

b. The Respondent was represented by [REDACTED],  
Solicitors.

5. I am grateful to the parties for their clear, helpful and concise submissions in writing.

6. I set out these Reasons under these headings:

- I. The Background**
- II. The Issues**
- III. The Submissions and the Law**
- IV. Discussion**
- V. Decision**
- VI. Costs**

**I. The Background**

7. In the Notice for Arbitration Pro Forma, there is limited scope to provide much information about the dispute. That being said, the Claimant has attached a document which is titled ‘Notice of intention to arbitrate’ which underlines his position and notifies the Respondent that he intends to refer a debt of £57,600.00 which is rent that was unpaid during the “Protected Period” of 21<sup>st</sup> March 2020 to 18<sup>th</sup> July 2021. This sets the framework for the dispute.

8. By contrast, the Respondent replied to my Procedural Order No.1 requesting the Notice of Arbitration and the document titled ‘Notice of intention to arbitrate’, which I duly provided copying in the Claimant. At first instance the Respondent objected to the jurisdiction of this Tribunal to adjudicate this matter and made submissions to that

effect. The Claimant did not respond to my Directions or make any submissions as to the jurisdiction of the Tribunal.

## II. *The Issues*

9. At this stage there is only one issue, whether or not I have jurisdiction to determine adjudicate this dispute applying the Commercial Rent (Coronavirus) Act 2022 and its associated Guidance.

## III. *The Submissions and the Law*

10. Unfortunately, the Claimant did not address me on whether I had jurisdiction, on the law or indeed the Commercial Rent (Coronavirus) Act 2022 Guidance (**the Guidance**) which is the principal instrument which governs these disputes. All I have been provided with is the Notice of Arbitration and some other associated documents. This leaves many unanswered questions when making my determination. This was despite offering the Claimant an opportunity to make their submissions and making directions to that effect.
11. I find that the Claimant has had a sufficient opportunity to make submissions but has deliberately chosen not to engage with the Tribunal to put forward its case. I believe that the Claimant has had an opportunity to be heard but has declined to exercise its right to do so.
12. By contrast, the Respondent made submissions on 10<sup>th</sup> October 2022 in accordance with my directions and provided me with submissions as to why they said I did not have jurisdiction to adjudicate this dispute. In summary, the Respondent's position was the subject lease was a lease of premises in Edinburgh, Scotland and that the arbitration scheme under the Commercial Rent (Coronavirus) Act 2022 extends to England and Wales only.

#### IV. Discussion

13. I agree with the Respondent's submissions and find that the arbitration scheme under the Commercial Rent (Coronavirus) Act 2022 extends to England and Wales only. My rationale for this decision is premised upon the following facts:

14. First, the Business premises address given in the Arbitration Referral Pro Forma is [REDACTED], Edinburgh. I also note that the tenant's given contact address is in Glasgow.

15. Second, the arbitration scheme under the Commercial Rent (Coronavirus) Act 2022 extends to England and Wales only. This is because section 31 of the 2022 Act, "*Extent, commencement and short title*" states:

"31. *Extent, commencement and short title*

1. ***Parts 1 to 3 extend to England and Wales only (except as provided by subsections (2) and (3)).***
2. *The following provisions extend to England and Wales, Scotland and Northern Ireland –*
  - a. *In section 25-*
    - (i) *Subsections (1), (2)(c) and (3), and*
    - (ii) *Subsection (4) so far as relating to a compromise or arrangement under section 899 or 901F of the Companies Act 2006.*
  - b. *Part 1 so far as relating to the provisions mentioned in paragraph (a), and*
  - c. *This Part*
3. *The following provisions extend to England and Wales and Scotland only-*
  - a. *In section 25-*
    - (i) *Subsection (2)(a), and*
    - (ii) *Subsection (4) so far as relating to a company voluntary arrangement,*
  - b. *Paragraph 1 of Schedule 3 and section 27 so far as relating to that paragraph, and*

- c. *Part 1 so far as relating to the provisions mentioned in paragraphs (a) and (b)."*

16. On this basis, I agree and find that as a Tribunal I lack substantive jurisdiction in this matter. Furthermore, pursuant to paragraphs 12.2 and 12.6 of the Guidance, I may deal with the matter of jurisdiction either in a standalone award or as part of an award under the Act.

**V. Decision**

17. In summary, I make the following award that the application for relief under the Commercial Rent (Coronavirus) Act 2022 by the Claimant is dismissed as I do not have jurisdiction to adjudicate upon this matter under the Commercial Rent (Coronavirus) Act 2022 because the property is situated in Scotland and the Commercial Rent (Coronavirus) Act 2022 only applies to England and Wales.

**VI. Costs**

18. Considering all of the matters and submissions by both parties, my judgment is that the appropriate costs order is that there be no order as to costs. My rationale for doing so is that both the guidance and the Commercial Rent (Coronavirus) Act 2022 are clear in specifying that the parties must meet their own legal or other costs in connection with the arbitration, pursuant to section 19(7) of the aforementioned act.

**Seat of the arbitration: London, United Kingdom**

**Date of this Final Award: 20<sup>th</sup> October 2022**

**THE DISPUTE RESOLUTION OMBUDSMAN**



**Mr. GAVIN DINGLEY**

Sole Arbitrator