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## THE PUBS CODE ARBITRATION

**BETWEEN:**

**SPICE ISLAND LEISURE LIMITED**

**CLAIMANT**

**AND**

**MARSTON'S PLC**

**RESPONDENT**

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**AWARD**

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### SUMMARY OF AWARD

- a. Should the Respondent have used a deed of variation for its MRO proposal containing only a variation to the release of tie obligations?

**Arbitrator: No**

- b. Do any of the following have the effect of rendering the Respondent's MRO proposal non-compliant with regulation 29 of the Code:

- i. The proposal being in the form of a new lease?

**Arbitrator: No**

ii. The proposed term?

**Arbitrator: No**

iii. Any land registration costs to be incurred by the Claimant?

**Arbitrator: No**

iv. The Respondent's requirement for legal costs to be paid by the Claimant in connection with a new lease?

**Arbitrator: No**

v. The Claimant's entitlement to statutory compensation in the circumstances prescribed by the Landlord and Tenant Act?

**Arbitrator: No**

vi. The Claimant's perception of being "worse off" than under its tied lease?

**Arbitrator: No**

vii. The Claimant's perceived requirement of extra investment of a further sum of money?

**Arbitrator: No**

- viii. The Claimant being bound by the terms of the tied lease previously entered into between the parties?

**Arbitrator: No**

- ix. Should the Respondent be directed to provide a revised response in the prescribed form of:

1. A deed of variation?

**Arbitrator: No**

2. Some other prescribed form?

**Arbitrator: No**

## **APPOINTMENT**

2. I, [REDACTED] was recommended as Arbitrator in this matter by the Chartered Institute of Arbitrators and appointed by the Deputy Pubs Code Adjudicator on 15 May 2019.

## **SUBMISSIONS RECEIVED**

3. I have received a bundle of agreed documents comprising:
- a. A revised Statement of Agreed Facts and Issues in Dispute;
  - b. The Claimant's Statement of Case and the documents appended thereto;
  - c. The Respondent's Statement of Defence and the documents appended thereto;

- d. A Scott Schedule;
- e. A witness statement and exhibits of [REDACTED] on behalf of the Respondent.

#### **NATURE OF THE DISPUTE**

- 4. This dispute relates to an MRO Response given by the Respondent to the Claimant in response to the MRO Notice given by the Claimant. The Claimant alleges that the Notice given by the Respondent is not a compliant Notice within the meaning of section 43 (4) of the Small Business, Enterprise and Employment Act 2015 ("the Act").

#### **WHAT ISSUES ARE TO BE DETERMINED BY THE ARBITRATOR**

- 5. I have been asked to determine the following issues:
  - a. Should the Respondent have used a deed of variation for its MRO proposal containing only a variation to the release of tie obligations?
  - b. Do any of the following the effect of rendering the Respondent's MRO proposal non-compliant with regulation 29 of the Code:
    - i. The proposal being in the form of a new lease?
    - ii. The proposed term?
    - iii. Any land registration costs to be incurred by the Claimant?
    - iv. The Respondent's requirement for legal costs to be paid by the Claimant in connection with a new lease?
    - v. The Claimant's entitlement to statutory compensation in the circumstances prescribed by the Landlord and Tenant Act?

- vi. The Claimant's perception of being "worse off" than under its tied lease?
- vii. The Claimant's perceived requirement of extra investment of a further sum of money?
- viii. The Claimant being bound by the terms of the tied lease previously entered into between the parties?
- ix. Should the Respondent be directed to provide a revised response in the prescribed form of:
  - 1. A deed of variation?
  - 2. Some other prescribed form?

I have been advised that the potential liability for SDLT and the revised requirements for dilapidations has been agreed between the parties and therefore I am not required to make any determination in respect of these issues.

## **JURISDICTION**

- 6. This is a statutory arbitration as set out in section 94 of the Arbitration Act 1996. I have been appointed as Arbitrator and I act pursuant to the authority contained within Regulation 58 (2) of the Pubs Code etc Regulations 2016 ["the Pubs Code] and paragraph 5 of Schedule 1 Part 1 of the Small Business, Enterprise and Employment Act 2015 ("The Act"). The statutory framework governing this arbitration is to be found within Part 4 of the Act, the Pubs Code, and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016. The applicable rules are the Chartered Institute of Arbitrators' Rules 2015.

## **BACKGROUND**

7. The Claimant is a Tied Pub Tenant of a public house called The Victoria which is at 90 Walton Street, Oxford. The Claimant took an assignment of the original lease.
  
8. The original lease was dated 28 November 2003 for a term of 21 years. The Claimant took an assignment of this lease on 17 August 2007. The Respondents are the successors in title to the original Lessors.
  
9. On 23 January 2018 the Claimant served an MRO [Market Rent Only] Notice upon the Respondent. The Respondent served its Response by letter dated 21 February 2018. The Claimant alleges that this Response is non-compliant with the meaning of s43(4) of the Act.

## **THE PARTIES' SUBMISSIONS**

### **THE STATEMENT OF CASE**

10. The Claimant says that the Respondent's response to the MRO Notice is non-compliant in that the Respondent proposes that a new lease is taken and that the terms of the proposed new tenancy "*seeks to vary the terms of the Lease to a greater extent than is necessary*" and that the release of the tie could be "*easily achieved*" by either the parties entering into a Deed of Variation, or by the Respondent sending a letter confirming the release of the tie.

11. The Claimant's representative presents an example of a binding release letter and says that a tie release letter "*can easily satisfy the legislative requirements of bringing about an MRO-compliant tenancy*".
12. Further the Claimant says that the original lease provides a mechanism for the Respondent to release the tie and which is a revision of the rental provisions which will then allow the lease to become MRO-compliant especially as "*there is no compelling reason to change any of the other clauses contained in the lease*".
13. Further the Claimant states that under the Landlord and Tenant Act 1954 on renewal of a lease, there can only be "*appropriate modernisation*" rather than a "*wholesale revision*" which could be seen as "*punitive to the tenant*".
14. In the alternative, the Claimant argues that on a more formal basis, the parties could agree to a Deed of Variation which would continue the current lease. The Claimant says that it is not proposing to extend the terms of the current lease which expires on 31 August 2024 and at expiry the Claimant would be reliant on the provisions of the Landlord and Tenant Act 1954 for lease renewal, and which if hostile, i.e. a section 25 Notice is served, then the Claimant would seek statutory compensation as set out in that Act. The Claimant considers that a Deed of Variation would ensure an MRO-compliant tenancy.

## **THE STATEMENT OF DEFENCE**

15. The Respondent argues that the current lease contains a right for the Respondent to withdraw any permission previously granted to sell certain alcoholic drinks and that such

a right is "*sufficient*" to make a tie-release letter inappropriate and non-compliant as such a provision would not be common in agreements between landlords and pub tenants not subject to a product or service tie and therefore, this would "*automatically*" be regarded as unreasonable under regulation 31(2)( c).

16. Further the Respondent says that the Claimant "*acknowledges that a Deed of Variation in a general sense is only the alteration of some very specific and minor items contained within a lease*". The Respondent however says that there are many terms within a tied tenancy that are "*uncommon*" in a Free Of Tie tenancy and which will have to be removed thus making any "*alleged commercial advantage of a Deed of Variation largely obsolete*" as drafting this would be "*more complicated*" than a "*new lease designed and drafted to be suitable for a FOT tenancy*" thus increasing costs.
17. The Respondent also says that it has a bespoke FOT lease which it uses for its MRO offers and for its non-MRO tenants thus having a standard form in use across the whole of the Respondent's operation.
18. On that basis, the Respondent contents the best way to ensure there is an MRO compliant tenancy is for the parties to agree a new lease.
19. I have also read the witness statement of [REDACTED] on behalf of the Respondent.

## **THE REPLY**

20. The Claimant takes issue with the Respondent and continues to maintain that either a tie release letter or a deed of variation would be appropriate.

## **APPLICABLE LAW**

21. Both parties have submitted that their proposed way of dealing with the tie is the more appropriate.

22. In order to consider this, I need to review the applicable law and in that respect I have taken note of the previous Awards published by the Pubs Code Adjudicator.

23. The Small Business, Enterprise and Employment Act 2015 [Part 4] ("the Act") requires the Secretary of State to make regulations about practices and procedures to be followed by pub owning businesses in dealing with their tied pub tenants. These regulations are known as the Pubs Code Regulations 2016.

24. The Act [section 43] states that the Pubs Code must require pub-owning businesses to offer their tied pub tenants falling within section 70(1)(a) a market rent only option in specified circumstances.

25. The Act goes onto state that:

*(2) A "market rent only option" means the option for the tied pub tenant—*

*(a) to occupy the tied pub under a tenancy or licence which is MRO-compliant, and*

*(b) to pay in respect of that occupation—*

*(i) such rent as may be agreed between the pub-owning business and the tied pub tenant in accordance with the MRO procedure (see section 44), or*

*(ii) failing such agreement, the market rent.*

*(3) The Pubs Code may specify—*

*(a) circumstances in which a market rent only option must or may be an option to occupy under a tenancy;*

*(b) circumstances in which a market rent only option must or may be an option to occupy under a licence.*

*(4) A tenancy or licence is MRO-compliant if—*

*(a) taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence it—*

*(i) contains such terms and conditions as may be required by virtue of subsection (5)(a),*

*(ii) does not contain any product or service tie other than one in respect of insurance in connection with the tied pub, and*

*(iii) does not contain any unreasonable terms or conditions, and*

*(b) it is not a tenancy at will.*

*(5) The Pubs Code may specify descriptions of terms and conditions—*

*(a) which are required to be contained in a tenancy or licence for it to be MRO-compliant;*

*(b) which are to be regarded as reasonable or unreasonable for the purposes of subsection (4).*

26. The Pubs Code ["the Code"] at Part 5 sets out what an MRO Notice is and describes what procedure should be followed in connection with an MRO offer.
  
27. An MRO Notice may be given by a tied pub tenant, as here, where an event specified in regulation 24 or 25 occurs, or an event as specified in regulation 26 or 27 occurs and the investment exception does not apply [see regulation 56]. I have not been provided with a copy of the Claimant's MRO Notice dated 23 January 2018, so I do not know under which regulation the Claimant has served its Notice, but I note from the Agreed Statement of Facts, that the parties agree that the Claimant served a valid Notice.
  
28. On the basis that the parties agreed that a valid Notice has been served, the Respondent served its response and proposed that the current lease be surrendered, and a new lease taken by the Claimant.
  
29. Under the Pubs Code, the Landlord [here the Respondent] is obliged to send to the Tenant [the Claimant] a statement confirming its agreement and a proposed tenancy which is MRO compliant.

#### **WHAT IS AN MRO COMPLIANT NOTICE OR OFFER**

30. Much of the parties' submissions are on this particular point as there is no clear guidance as to what comprises a Compliant Notice or Offer.
  
31. The Act states as follows:

" (10) In this Part "market rent", in relation to the occupation of particular premises under a tenancy or licence which is MRO-compliant, means the estimated rent which it would be reasonable to pay in respect of that occupation on the following assumptions—

(a) that the tenancy or licence concerned is entered into—

(i) on the date on which the determination of the estimated rent is made,

(ii) in an arm's length transaction,

(iii) after proper marketing, and

(iv) between parties each of whom has acted knowledgeably, prudently and willingly, and

(b) that condition B in section 68 continues to be met.

#### **4 Market rent only option: procedure**

(1) The Pubs Code may—

(a) make provision about the procedure to be followed in connection with an offer of a market rent only option (referred to in this Part as "the MRO procedure");

(b) confer functions on the Adjudicator in connection with that procedure.

(2) Provision made under subsection (1) may, in particular—

(a) make provision for the tied pub tenant to give notice to the pub-owning business that the tenant—

(i) considers that circumstances are such that the pub-owning business is required to offer the tenant a market rent only option, and

(ii) wishes to receive such an offer;

(b) specify a reasonable period ("the negotiation period") during which the pub-owning business and the tied pub tenant may seek to agree the rent to be payable in respect

*of the tied pub tenant's occupation of the premises concerned under the proposed MRO-compliant tenancy or licence;*

*(c) require the appointment of a person (referred to in this Part as an "independent assessor") to determine the market rent of the premises concerned in a case where, at the end of the negotiation period, the pub-owning business and the tied pub tenant have not reached agreement as mentioned in paragraph (b);*

*(d) require that appointment to be made by the pub-owning business and the tied pub tenant acting jointly or (where they cannot agree on a person to appoint) by the Adjudicator;*

*(e) require the Adjudicator to set criteria which a person must satisfy in order to be appointed as an independent assessor;*

*(f) require that the market rent must be determined by the independent assessor within a specified reasonable period;*

*(g) specify that the determination of the market rent by the independent assessor must be conducted in accordance with provisions of documents specified in the Pubs Code;*

*(h) where any document is specified for the purposes of paragraph (g), refer to the provisions of the document as amended from time to time.*

*(3) The Pubs Code may make provision for—*

*(a) the tenancy or licence under which the tied pub is occupied, and*

*(b) any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence,*

*as they are in force when a notice is given by virtue of subsection (2)(a), to continue to have effect until such time as the MRO procedure has come to an end (regardless of whether any of the agreements would or could otherwise cease to have effect before that time)."*

32. The Pubs Code says that any MRO Offer or Proposal must be "Compliant". To be "compliant" the Pubs Code says that its terms should be "not unreasonable". Section 31 of the Code sets out the terms and conditions regarded as being unreasonable. However, the parties are free to agree terms provided they do not contravene this section.

33. Both parties place reliance on the PCA Advice Note to give further guidance.

#### **THE PCA ADVICE NOTE - "MARKET RENT ONLY-compliant proposals"**

34. The Guidance Note is short but the summary states that:

- a. An MRO proposal does not have to be in the form of a new tenancy
- b. The terms of the MRO proposal do not have to be the same as the tied tenancy, but they do have to be reasonable.
- c. MRO is not the same as a negotiation on the open market and the POB should not take advantage of the limited negotiating power of the tenant
- d. If the POB proposes a new tenancy without good reason, and this disadvantages the tenant then the tenancy will be non-compliant
- e. The PCA expects the POB to engage in reasonable and fair negotiations.

#### **PROPOSED TERMS OF NEW TENANCY**

35. The general terms of the tenancy are set out in the Offer Letter dated 21 February 2018.

The proposed terms in that letter are [inter alia] as follows:

- a. Rent £90,000 per annum plus VAT in the first 5 years

- b. Upward only rent reviews every 5 years
- c. Claimant to be responsible for all repairs and maintenance with a schedule of condition to be attached to the lease; no structural alterations permitted; non-structural alterations only with Landlord's consent, not to be unreasonably withheld
- d. Security Deposit of 3 months' rent of £22,500 to be provided. No interest is payable, nor will there be any administrative charges.
- e. Lease is contracted in to the Landlord and Tenant Act 1954
- f. Claimant [Tenant] to pay the Defendant's [ Landlord's] solicitor's costs. I note there is no indication as to what these will be. Further the Claimant is also to pay the Landlord's costs of the surrender of the old lease as well as the costs of the new lease.
- g. TUPE to apply and the Claimant is to continue the employment of all staff employed at the pub on the date the Tenancy Agreement starts and that their employment rights will be continuous.

36. I have also been provided with a copy of the draft new lease. In order to decide if the Tenant is being offered reasonable terms, I consider that I have to look at the terms of the old lease as against those of the new lease.

#### **TERMS OF THE OLD LEASE/ASSIGNMENT**

37. The lease of the premises is for a period of 21 years as from 1 September 2003, expiring on 31 August 2024. The Claimant took an assignment of this lease on 19 August 2007 for the remainder of the lease period by way of a Licence to Assign.

38. Under the Assignment, the Claimant and its Guarantor covenanted with the Landlord [at that point, Marston's plc, the current Defendant] to pay the amounts required under the Lease and to be bound by and to observe and perform all covenants, terms and conditions of the Lease.
39. Under the terms of the lease dated 1 September 2003, the following provisions applied:
- a. With regard to the security deposit, whilst a deposit was required under grant of the 2003 lease, there is no reference to the provision of a security deposit being required from the Assignee. However, I would have expected the incoming tenant to have reimbursed the outgoing tenant the cost of this, thus meaning that Marston's would have continued to hold the deposit against any infringements made by the incoming tenant, the Claimant in this case. The 2003 lease required payment of rent, a share of the income from the amusement and vending machines, service charge, buildings insurance, and VAT together with any costs incurred by the Landlords for specified actions. Payment was to be made in 24 equal instalments each year.
  - b. Further provisions included the obligation to keep the property in repair, insured and the business managed appropriately.
  - c. In return the Landlord's obligations were not to interfere with the use and enjoyment of the property, to insure the property for the full rebuilding value and would also provide a number of services.
  - d. It was further agreed that when the lease came to an end, the tenant was to leave the property in such a state as to meet its obligations under the tenancy, no compensation would be paid. I note that the 2003 Lease makes no mention

of the Landlord and Tenant Act 1954 being excluded and I have seen no evidence to show that the Act is excluded, therefore the provisions of that Act would apply.

## **SCOTT SCHEDULE**

40. I have been helpfully provided with a Scott Schedule.

## **ISSUES TO BE DETERMINED**

**Issue 1 - Should the Respondent have used a deed of variation for its MRO proposal containing only a variation to release tie obligations?**

41. The Claimant argues that the "simplest and most efficient method" would be by way of a release letter and I am directed to an example of the same. The Respondent argues that such an example is "irrelevant, inappropriate and inadmissible". The Respondent further says that the lease contains the right to withdraw any permission previously granted to sell certain alcoholic drinks and that this right is "in itself" sufficient to make a tie release letter "inappropriate and non-compliant".

42. By way of alternative, the Claimant says that a Deed of Variation of the current lease would be sufficient rather than have to enter into a new lease for the remainder of the term which is just over 5 years. The Claimant argues that the only terms that need be varied are in respect of the tie and that these need to be deleted and that all other terms would remain the same and the lease would be MRO compliant. The Respondent disagrees and says that the Claimant considers that there would only be an "alteration of some, but not all, of the current lease terms and in a general sense is only the alteration of some very specific and minor items contained within the lease". It is the

Respondent's view that the Code requires removal of terms that would not be usual in Free of Tie leases and, the Respondent says that there are "*many terms within a tied tenancy that are uncommon in a FOT tenancy*". The Respondent is of the view that such a Deed of Variation would need bespoke drafting and there would be an increase in the cost payable by the tenant.

43. Both the Claimant and the Respondent accept that there is no set manner in which the MRO offer has to be made.

**Issue 2 - Do any of the following have the effect of rendering the Respondent's MRO proposal non-compliant with regulation 29 of the Code?**

Regulation 29 of the Code states as follows:

***Effect of tenant's notice***

**29.—(1)** *This regulation applies where a pub-owning business has received an MRO notice.*

*(2) The pub-owning business must send a written acknowledgement to the tied pub tenant as soon as reasonably practicable.*

*(3) Where the pub-owning business agrees with the tied pub tenant's opinion under regulation 23(3)(e), the pub-owning business must send the tenant—*

*(a) a statement confirming its agreement;*

*(b) where the MRO notice relates to a tenancy, a proposed tenancy which is MRO-compliant;*

*(c) where the MRO notice relates to a licence, a proposed licence which is MRO-compliant; and*

*(d) a proposed MRO rent.*

*(4) Where the pub-owning business disagrees with the tied pub tenant's opinion under regulation 23(3)(e), it must send the tenant—*

*(a) a statement confirming its disagreement; and*

*(b) its reasons for disagreeing.*

*(5) A response under paragraph (3) or (4) is a "full response".*

*(6) The pub-owning business must send a full response within the period of response.*

*(7) The "period of response" is, subject to paragraphs (8) and (9), the period of 28 days which begins with the day on which the pub-owning business receives an MRO notice.*

*(8) Where—*

*(a) the tenant gives an MRO notice that the event specified in regulation 26 has occurred;*

*(b) the event is a renewal by virtue of regulation 26(2)(a); and*

*(c) the pub-owning business—*

*(i) opposes the tenant's application for a new tenancy under section 24(1) of the Landlord and Tenant Act 1954; or*

*(ii) applies to the court under section 29(2) of that Act, for an order for the termination of the tenancy,*

*the "period of response" is the period of 28 days which begins with the day on which the court makes an order for the grant of a new tenancy.*

*(9) Where the tenant gives an MRO notice that the event specified in regulation 26 has occurred, and the event is a renewal by virtue of regulation 26(2)(b), the period of response is the period of 28 days which begins —*

*(a)at the end of the period of two months after the day on which the tenant makes a request for a new tenancy under section 26 of the Landlord and Tenant Act 1954; or*

*(b)where the pub-owning business opposes the tenant's application for a new tenancy under section 24(1) of that Act, or applies to the court under section 29(2) of that Act, on the day on which the court makes an order for the grant of a new tenancy.*

**a. the proposal being in the form of a new lease?**

44. Having considered the content of Regulation 29 of the Code I note that it says that where the notice relates to a tenancy, then a proposed tenancy which is MRO compliant should be given and likewise where the notice relates to a licence then a proposed licence which is MRO compliant. Here the tenant holds the lease by way of a Deed of Assignment [even though it is entitled a Licence, it is signed as a deed] and therefore I am of the opinion that it is for the parties to decide which form of tenancy agreement should be adopted to ensure that it is compliant.

**b. the proposed term?**

45. The 2003 lease is set to expire on 31 August 2024. I note that the MRO Tenancy Offer Letter proposes that the agreement expire on the same date, and I also note that the draft lease terms anticipated a term of 6 years on the basis that the new lease was going to commence in 2018. I note that the Claimant does not propose that the lease term should be extended beyond this date and that it would be reliant on the provisions of the Landlord and Tenant Act 1954 for a renewal of the lease, whether by agreement or by hostile opposition when it would be able to claim compensation.

46. I find that the proposed term is not unreasonable.

**c. Any land registration costs to be incurred by the Claimant?**

47. I understand that land registration fees will be payable whether there is a new lease, a deed of variation or a release letter, and that such fees will be similar for whatever form is decided to be used.

48. Under the Pubs Code, the tenant should be no worse off by a release of the tie. This must be a matter of fact as to whether a tenant would be worse off by having to pay an amount in Land Registry fees if a new lease is taken as opposed to using a Deed of Variation or even a Release letter. I have had no guidance from the parties as to what this might be for taking a new lease but if the tenant will suffer financially to a much greater extent by taking a new lease then one must question whether this is a fair dealing.

**d. The Respondent's requirement for legal costs to be paid by the Claimant in connection with a new lease?**

49. I note under both the 2003 lease and the licence of assignment, the tenant paid the Landlord's costs. I do note however that there is no provision in either of these 2 documents for those costs to be reasonable or for the tenant to challenge the amount of costs being charged. It is a usual clause for the tenant to pay the landlord's costs but

that such costs should be "reasonable". I consider that whilst the tenant should pay the landlord's costs, I also consider that these must be reasonable and fair.

**e. The Claimant's entitlement to statutory compensation in the circumstances prescribed by the Landlord and Tenant Act?**

50. The Claimant says that at the end of the lease term it would be entitled to statutory compensation under the Landlord and Tenant Act 1954 and that if it were to surrender the lease and take a new lease for 5 years, then no statutory compensation would be payable because the lease is for 5 years or less. I agree that if the 2003 lease were to carry on then statutory compensation would be payable. The Claimant indicates that this would be a substantial amount. However, it is my view that such compensation could be part of the parties' negotiations for a new lease if applicable, bearing in mind the requirements of the Code.

**f. The Claimant's perception of being "worse off" than under its tied lease?**

51. There is no requirement for the tenant to seek release of its tie unless it considers that it would be more financially viable. The requirements under the Code are that the parties will negotiate terms. There is expected to be "fair dealing" and I have considered the submissions from both parties on this point. If the Landlord is perceived as being unreasonable by the terms being offered, then there is the risk that the offered tenancy will be found to fall foul of the Code. The Claimant has set out its general objections to the new proposed tenancy, but I have not been provided with any detailed information as to what discussions have taken place between the parties over specific lease terms. The Respondent makes the point that it seeks to ensure that competition between FOT

tenants is fair and "*not distorted by a former TPT receiving significant commercial advantages or disadvantages compared to other traditional FOT tenants*". Further, it offers all prospective FOT tenants the same, precise terms in order that it can demonstrate consistent and free treatment. Whilst this may be the company policy, the Code appears to envisage each MRO proposal will be negotiated on an individual basis and on individual terms.

**g. The Claimant's perceived requirement of extra investment of a further sum of money?**

52. Again, I consider that this is a matter of negotiation between the parties, always taking into the account the requirements for fairness and for the tenant to be no worse off.

**h. the Claimant being bound by the terms of the tied lease previously entered into by the parties?**

53. I am of the view that this could not be considered as unreasonable.

**Issue 3 - Should the Respondent be directed to provide a revised response in prescribed form of a deed of variation or some other prescribed form?**

54. The Code does not prescribe what form the MRO proposal should be. The terms are expected to be negotiated between the parties. I do not have the power to direct such an action.

**DECISION [AWARD]**

55. It follows for the Reasons I have given above, that I determine and decide as follows:

- a. Should the Respondent have used a deed of variation for its MRO proposal containing only a variation to the release of tie obligations?

**Arbitrator: No**

- b. Do any of the following the effect of rendering the Respondent's MRO proposal non-compliant with regulation 29 of the Code:

- i. The proposal being in the form of a new lease?

**Arbitrator: No**

- ii. The proposed term?

**Arbitrator: No**

- iii. Any land registration costs to be incurred by the Claimant?

**Arbitrator: No**

- iv. The Respondent's requirement for legal costs to be paid by the Claimant in connection with a new lease?

**Arbitrator: No**

- v. The Claimant's entitlement to statutory compensation in the circumstances prescribed by the Landlord and Tenant Act?

**Arbitrator: No**

- vi. The Claimant's perception of being "worse off" than under its tied lease?

**Arbitrator: No**

- vii. The Claimant's perceived requirement of extra investment of a further sum of money?

**Arbitrator: No**

- viii. The Claimant being bound by the terms of the tied lease previously entered into between the parties?

**Arbitrator: No**

- ix. Should the Respondent be directed to provide a revised response in the prescribed form of:

- 1. A deed of variation?

**Arbitrator: No**

- 2. Some other prescribed form?

**Arbitrator: No**

**COSTS**

56. In accordance with Section 3 of the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016, I direct that the Respondent do pay the following fees on the basis that I do not consider that the referral was vexatious -

- a. The fees of Ms Fiona Dickie in the sum of £1,248.00
- b. My fees which total (33 hours at £395.00) £13,035.00 plus VAT

Dated: this 5th day of July 2019

