**THE PUBS CODE ARBITRATION BETWEEN: -**

**THE EXECUTORS OF THE ESTATE OF ELIZABETH DOYLE**

**Claimant**

**-and-**

**PUNCH PARTNERSHIPS (PTL) LIMITED**

**-and-**

**First Respondent**

**STAR PUBS & BARS LIMITED**

**Second Respondent**

---

**Award**

---

**Summary of Award**

I had jurisdiction to issue the award dated 31 October 2018 and the operative provisions ordered in that award are effective.

## Background

1. This award is issued further to that of 31 October 2018[1] in which I found the MRO proposal served on the Claimant by the First Respondent on 3 April 2017 had been non-compliant[2], and made orders including one that the Second Respondent must serve a revised response on the Claimant within 28 days of my determination of its terms.

2. The law and procedure of this arbitration are as set out in paragraphs 1 and 2 of my previous award. After its issue, on 6 November 2018 solicitors for the Respondents wrote to me to advise that:

    a) The tied pub tenant Mrs Elizabeth Doyle had passed away on 15 January 2018 and by way of her will [redacted] was appointed as her executor, and

    b) A rent review agreement in relation to the tied rent under the existing lease was agreed on 12 June 2018.

3. By virtue of regulation 39(4)(g), where the pub-owning business conducts a rent assessment, the MRO procedure ends on the day on which the tenant agrees, in writing, the new rent.

4. The rent review agreement produced in evidence is in the form of a deed varying the lease, though the lease is wrongly identified (as being dated 18 September 2007, whereas that was the date of assignment from the original tenant under the lease dated 1 October 2002). The Rent Review date is 1 October 2017 and the deed is signed by the executor and for/on behalf of the Second Respondent and is witnessed.

5. The Respondents submit that the rent review agreement had the effect of ending the MRO process pursuant to regulation 39(4)(g) and that my award is superseded by this prior agreement and therefore that no basis exists upon which it may be lawfully enforced. This award determines whether this challenge by the Respondents is correct, and whether my previous award is therefore a nullity.

6. The estate of the Claimant is represented by Mr Chris Wright of the Pubs Advisory Service. The Respondents are represented by DLA Piper Scotland LLP.

## Case Management

7. The office of the PCA wrote to the Respondents on 8 November 2018 in the following terms:

    *"There has been a total failure to keep the arbitrator informed of matters relevant to the lease (and therefore this arbitration). It is incumbent on the parties to inform the arbitrator of matters that may have an effect on the lease*

[1] And reissued corrected for typographical errors under Article 38 of the CIArb Rules on 9 November 2018, which award was also served on solicitors for Punch Taverns PLC.
[2] Under regulation 29(3) of the Pubs Code.

*and the proper operation of the arbitral proceedings. In this case the arbitrator cannot understand why the Respondents have not informed the arbitrator until now, some five months after a new tied arrangement appears to have been signed, of their view on the changes to the lease and its effect on the arbitration.*

*No issue relating to jurisdiction has to date been properly raised and determined by the arbitrator or on appeal and therefore the award issued on 31 October 2018 continues to have effect."*

8. I listed a telephone case management conference which took place on 19 November, when I made directions as follows:

    a) *If the Respondent seeks to challenge the jurisdiction of the arbitrator to make the award issued on 31 October 2018, or any part of that award, the Respondent must within 14 days:*
        a. *Make full written submissions on the operation of regulation 39(4)(g) in general and in relation to this case, in particular to address:*
            i. *The meaning of 'agree new tied rent in writing';*
            ii. *Whether intention of the parties is relevant; and if so;*
            iii. *What effect it has on the operation of regulation 39(4)(g) where there is no meeting of minds as to the intention of the parties;*
            iv. *The relevance of the failure of both parties to notify the arbitrator of any change to her jurisdiction as soon as possible;*
            v. *What effect these matters have on (a) the jurisdiction of the arbitrator and (b) the effectiveness of award;*
        b. *The Respondent shall disclose to the Claimant and the arbitrator:*
            i. *all correspondence accompanying or associated with the rent review memorandum, including the covering letter to the executor enclosing it.*
            ii. *All evidence showing the intention of the parties at the time the rent review was signed (including evidence of the Respondent's understanding that the MRO process had not come to an end).*

9. Essentially, the Claimant's position understood from correspondence and from the case management conference is that I did have jurisdiction to issue my award, that the MRO procedure continued after the rent memorandum was signed, or the Claimant believed that it did in the circumstances and wanted to have the opportunity to choose between the two options – staying tied and going free of tie. The Claimant is not legally represented and had not taken the opportunity to make written submissions on the jurisdictional issue now raised. The Respondents were of the view that evidence of fact was not required for my determination as to that issue, the relevant facts not being in dispute. Punch Taverns PLC, the former owner of the First Respondent, has declined to make submissions in respect of this jurisdictional matter.

**Respondents' Submissions**

10. The questions addressed by the Respondents are:

    a) Whether an agreement in writing as to the new tied rent, following a rent assessment, is sufficient to engage regulation 39(4)(g) without compliance with the provisions of paragraph 3.6 of the PCA Advice note published in July 2017 by the parties; and

    b) Whether the failure to bring this to the arbitrator's attention before her award was published is relevant to the question of the status of the award and her jurisdiction.

11. The Respondents acknowledge that Paragraph 3.6 of a PCA Advice Note published in July 2017 (the "Advice Note") contains the following text:

    *"Where a TPT has exercised their right to seek a MRO option, and the tied rent remains in dispute, the parties may need to resolve the tied rent review (including by reasonably triggering the dispute resolution clause). The PCA considers that this process can establish a tied rent figure without this being an agreement to the new tied rent in writing for the purposes of the Pubs Code which would bring an end to the MRO procedure in accordance with regulation 39(4)(g) of the Pubs Code. If both parties intend that the MRO procedure will be ended by agreeing a new tied rent, this should be expressly agreed between the parties so that the TPT clearly understands the position in relation to their Pubs Code rights."*

12. There is no dispute that the final sentence of that paragraph (in relation to ensuring express agreement between the parties that the MRO procedure would be ended on agreement of a new tied rent) was not adhered to in relation to agreement of the tied rent review with the executor of the estate of the tenant. The Respondents do not consider a failure to comply with paragraph 3.6 of the Advice Note to be fatal to the operation of regulation 39(4)(g) however.

13. The Respondents acknowledge that I was not, and could not have been, aware as of the date of issue of my award on 31 October 2018 of the facts which were relevant to the operation of regulation 39(4). Notwithstanding this, they submit that unknown to me I lacked jurisdiction at the time of my award to issue it, as there was no longer any "matter" which was capable of being the subject of the reference for arbitration[3]. They therefore argue that the order (at paragraph 50(b) of the Award of 31 October) to provide a revised response to the Claimant's MRO notice was *ultra vires*.

14. The Respondents submit that the parties' intention is not relevant to the operation of regulation 39(4), whether the new rent was agreed in writing being assessed objectively, and that as a rent was agreed and that agreement documented and signed in this case, that the objective test is met.

[3] Under regulation 32(2) of the Pubs Code

15. The Respondents concede however that in theory it may be open to the Claimant to impugn the agreement as voidable, on the basis of a lack of awareness of the consequences in relation to the MRO process of agreeing the rent, but consider that the circumstances in which this would be possible are limited and do not arise in the present instance. They accept that, theoretically, it would be open to the tenant to rely on a misunderstanding which, if corrected, would have caused the executor not to have signed the rent review memorandum, and to contend that the agreement reached as to the tied rent is voidable.

16. However, the Respondents assert that the narrative and history of this referral do not support any applicable grounds, which are limited to the doctrine of mistake, undue influence or misrepresentation. In their submissions, saying nothing about the MRO process at the time of signing a rent agreement *"would not amount to a misrepresentation (unless it were considered necessary to make the position clear to disabuse the tenant of a belief that agreeing the tied rent was of no consequence). In the Respondent's submission, no evidence of such belief on the part of the Claimant exists."*

17. The Respondents consider that the only way that the failure to intimate or otherwise mention that written agreement to the arbitrator would preclude the Respondents from relying on it is if the tenant was able to establish some sort of estoppel, of which they say there is no obvious basis for asserting. This is an assertion as to the facts, but the Respondents do not specifically address any of the facts of the case when making its legal submissions.

**Factual Background**

18. I required disclosure by the Respondents of relevant correspondence, file notes, and evidence that they had undertaken a Pubs Code rent assessment such that regulation 39(4)(g) could apply. They disclosed:

    a) Meeting notes with Punch Taverns dated 6 February 2018 which said: "The market rent agreement has been sent to Heineken for approv" and "The main area of concern is the assignment of the agreement and this must be completed before any rent review can be completed."

    b) Meeting notes with Star:
        a. Dated 19 March 2018 which recorded "lucy (sic) confirmed executor of will should be able to sign rent review if she has death certificate and authority";
        b. Dated 24 May 2018 which recorded "rent review agreed and signed by executor"
        c. Dated 8 August 2018, 25 October 2018 and 4 December 2018 which did not reference the MRO procedure.

19. My office wrote to the parties on 6 and 21 February, 5, 15, 21 March, 26 and 30 April and 10 May 2018, but was not advised of the death of Mrs Doyle. Correspondence was received from Mr Doyle on 27 February and 1 March 2018 asking the Respondents to forward an electronic copy of the proposed MRO

lease, and on 6, 8 and 12 March and on 3 April he wrote again. On 13 March DLA Piper went on the record as representative for the Respondents, and they wrote to my office during March, April and May.

20. The Respondents have also produced correspondence between the POB and Mr Doyle and/or the executor prior to the signing of the rent review agreement, none of which refers to the MRO process. It was under cover of a letter dated 8 May 2018 that the Respondents sent the rent assessment memorandum for signature by the executor, and after that date they sent two items of correspondence to my office – on 11 May concerning required disclosure and on 24 May providing that disclosure, including the MRO proposal with the draft MRO lease.

**Discussion - Delay in notifying arbitrator of any change of jurisdiction**

21. I invited the Respondents to address the relevance of the failure of the parties to notify me as soon as possible of any change to my jurisdiction. However, those representations are very limited and do not address the central issue of arbitration law which is at play.

22. The Respondents relied upon the decision in *Sun United Maritime Ltd v Kasteli Marine Inc* [2015] 1 WLR 1527 in support of its proposition that it does not consider "*the failure to notify the arbitrator of the change to her jurisdiction as a consequence of agreement of the tied rent between the parties as documented by the agreement of 12 June 2018 to in any way dilute the import of article 39(4)(g).*"

23. With respect to the Respondents, that authority serves to undermine its case, not support it. This is clear from paragraph 18 of the judgment in that case (to which I have added my own emphasis), which it cites in its submissions:

> *"In my judgment, where there is a dispute as to whether the claim (or a claim) which has been referred to arbitration has been settled that will generally fall within the reference made to the arbitral tribunal.* ***The alleged fact of settlement will be a defence to the continuing claim and, like any other defence, a matter for the arbitral tribunal to determine****. The same applies where the only remaining claim in the arbitration is one for costs. The alleged settlement is a defence to the claim for a costs order and within the reference made. An arbitration reference generally includes the power to make an award on costs, as the Act makes clear (see sections 59 to 65). Even where there is an agreed settlement that does not generally of itself bring the reference to an end (see section 51)."*

24. The alleged settlement of the dispute (in this case the alleged end of the MRO procedure) would be a defence to the continuing claim, but it would be a matter for the tribunal to determine. Thus, the Respondents had to raise the matter at a time when I could have enquired into the facts and law in order to satisfy myself whether or not the MRO procedure was at an end, but they did not do so.

25. Furthermore, the facts of *Sun United Maritime Ltd v Kasteli Marine Inc.* are different in a material way. That case concerned the issue of an award on costs

in circumstances in which there was dispute between the parties as to whether an agreement as to costs had existed before the award was issued. However, in that case the arbitral tribunal was made aware by the parties, before the issue of the award, that the one party considered an agreement as to costs had been reached and that the other disagreed. In the present case the arbitral tribunal was not made aware of the rent review memorandum having been signed before issue of the award. It should have been, such that it could have determined the merits of the matter.

26. Section 31(2) of the Arbitration Act 1996 ("the 1996 Act") provides:

> *"Any objection during the course of the arbitral proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised."*

27. Article 23 of the ClArb Rules ("Pleas as to the jurisdiction of the arbitral tribunal"), provides:

> *1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.*
>
> *2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed or participated in the appointment of an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified."*
>
> *3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.*

28. In the present case, the Respondents plainly did not comply with section 31(2) and Article 23. These provisions act to defeat the challenge now raised to my jurisdiction, even if that challenge would have been successful if raised in compliance with them. The principle of *Kompetenz Kompetenz*, that an arbitral tribunal is competent to determine its own jurisdiction, is reflected in s.30 of the Arbitration Act 1996.

29. If a party contends that an arbitrator does not have jurisdiction to determine an issue, then such a challenge will need to be made to the arbitrator if it wishes that

objection to be heard. A failure to raise a challenge to jurisdiction in a timely manner can be interpreted as a waiver of a party's right to make such a challenge. Section 31(2) of the 1996 requires that a challenge should be raised at the earliest time possible, though it is provided in section 31(3) that an arbitrator "*may admit an objection later than the time specified in subsection […] 2 if it considers the delay justified*."

30. Firstly, I do not find any justification for the delay between 12 June 2018, the date of the rent review agreement in relation to the tied rent under the existing lease, and 6 November 2018 when the Respondents' solicitors advised me of the existence of that agreement. The Respondents are arguing now that my jurisdiction to make a determination in relation to MRO ended on 12 June 2018 by operation of regulation 39(4)(g). However, they have put forward no good reason as to the delay of five months in bringing the existence of the agreement as to tied rent to my attention, and which only occurred after I had issued my substantive award on 31 October 2018. During that time the arbitration was ongoing.

31. Section 73(1) of the 1996 Act provides:

> *"if a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection […] that the tribunal lacks substantive jurisdiction […] he may not raise that objection later […] unless he shows that at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection."*

32. Section 94 of the 1996 Act applies Part 1 of that Act to statutory arbitrations unless it is inconsistent with the provisions of the enactment concerned, with any rules or procedure authorised or recognised by it or excluded by another enactment. Regulation 58(3) of the 1996 Act requires the arbitration to be conducted in accordance with the CIArb Rules (or other the rules of another dispute resolution body nominated by the arbitrator), and there is no inconsistency or exclusion.

33. The purpose of section 73 is to ensure that where a party considers it has a challenge to jurisdiction, in the interests of fairness to all the parties it raises the issue as soon as practicable. As stated by Clarke J in *C v D1 and others* [2015] EWHC 2126 (Comm), citing *Rustal Trading Ltd v Gill & Duffus SA* [2000] 1 Lloyd's Rep 14, "*It would be unfair if he took part in arbitration yet kept an objection up his sleeve and only attempted to deploy it later*." It cannot be fair, and this is one of the mischiefs which section 73 is intended to prevent, that a party could potentially sit on a proposed jurisdictional challenge until after a substantive award and only then decide to raise that challenge.

34. I am conscious that section 73(1) states that party will lose the right to object when it "takes part" in proceedings and fails to object within the appropriate time. The very latest that the Respondents could argue they became aware of the potential jurisdictional challenge would be 12 June 2018. It is in fact arguably

earlier, and I note for example the meeting notes dated 24 May 2018 which recorded “rent review agreed and signed by executor”. Regardless, I am not required to make any finding of fact as to whether the Respondents could reasonably have known the grounds which it considered allowed an objection prior to 12 June 2018. “Taking part” does not necessarily mean active participation but can include allowing the proceedings to continue without raising an objection.

35. The matter was considered by Moore-Bick J sitting in the High Court in *Rustal Trading Ltd v Gill & Duffus* SA 1999 WL 1142684, and his reasoning is applicable in the present case:

> *“the expression "continues to take part in the proceedings" is broadly worded and the subsection as a whole is designed to ensure that a party who believes he has grounds for objecting to the constitution of the tribunal or the conduct of the proceedings raises that objection, if he wishes to do so, as soon as he is, or ought reasonably to be, aware of it. He is not entitled to allow the proceedings to continue without alerting the tribunal and the other party to a flaw which in his view renders the whole arbitral process invalid […] Once arbitration proceedings have been commenced there may well be many periods during which no formal step is required of one or other party, but it would not be right as a matter of ordinary usage to say that during such periods either party is not taking part in the proceedings. I think the same can be said of the period between the conclusion of the hearing and the publication of the award. Nothing further may be required of either of them at that stage, but that does not mean that they have in any real sense ceased to take part in the proceedings.”*

36. Therefore, I conclude that the failure of the Respondents to notify me of the event which they say brought the MRO procedure to an end is fatal to their challenge to my jurisdiction to have issued my award. That is sufficient to dismiss that challenge in my view, but I go on to consider the jurisdictional objection on the facts and law in the event that I am wrong, and as a means of illustrating the justice in its rejection.

**Discussion - Effect of Regulation 39(4)(g)**

37. I am conscious that I am determining this dispute based only on the argument and evidence before me, and I keep an open mind in the event that similar issues come before me for determination in future arbitrations on different argument or evidence. However, the following discussion serves as a minimum to demonstrate that there were matters of fact and law for consideration upon any issue as to my jurisdiction having arisen during the proceedings but before I issued my award, and thus the importance of the Respondents having raised such issues with the executor so that they could have been determined on evidence.

38. I have no witness evidence. The Respondents declined the opportunity for a direction for its production, considering it unnecessary as the essential fact of

failure to adhere to the Advice Note was not in dispute. I have before me only the documents in evidence, but I am able to draw certain conclusions from them.

39. The Respondents do not address in their representations the fact that they remained engaged in the MRO proceedings after sending the rent assessment memorandum to the executor and did not refer to the fact that settlement had been reached and was expected shortly to be agreed in writing. This is not consistent in my view with a belief on the part of the Respondents that such agreement would then bring an end to the MRO process, and importantly the failure to notify my office of the signing of the rent review memorandum is good evidence that it did not rely on it to end the MRO process. I understand the Respondents' position to be that this was as a result of a mistake, but their silence on the MRO process left them able to accept the outcome of the arbitration if it was favourable and reject it if it was not. That being the case, I consider I should be slow to favour the Respondents' case without specific evidence in support of it. The Respondents should not benefit from a failure to show that they no longer considered they were engaged in a valid arbitration and that they acted to end the MRO proceedings (as the time of entering into the new agreement) in circumstances where the tenant alleges otherwise.

40. The Respondents' case does not address how the silence to the executor / Mr Doyle and to the arbitrator as to the MRO process having ended should be understood in light of the PCA's Advice Note. Though that Advice Note[4] does not have force of law, it does indicate how the PCA is minded to approach the matter if it arises. The PCA has indicated that it expects express intention between the parties that the agreement will bring to an end the MRO procedure – this is not present, and it is common ground this was not sought and obtained. There has been no argument that the Advice Note is not relevant in this case. The purpose of the advice is to ensure that TPTs do not inadvertently, by virtue of regulation 39(4)(g), lose their MRO rights which they have already begun to exercise, when they did not intend to do so. In this case, the new tied tenant has been given no information about what entering into a new tied rent would do to the outstanding MRO procedure, and the POB did not identify the extent to which that new tenant was even aware of the outstanding MRO rights. The POB must engage in conduct which is in line with the core Code principles and take particular care to ensure the tied tenant is aware of those outstanding Code rights and has the ability to make a decision based on all the relevant facts. The Advice Note therefore appears particularly relevant to this case.

41. Given that the PCA has given advice requiring the parties expressly to agree that the signed rent review memorandum brought the MRO process to an end, the starting position in any case should be that the absence of such agreement points towards the parties entering into it on a representation that it did not bring it to an end, and there is nothing in the undisputed evidence that is inconsistent with that. There is no evidence adduced that at the relevant time there was a meeting of minds that the MRO procedure had come to an end – and this is relevant to whether the parties therefore represented that the MRO procedure remained held in abeyance pending the arbitration outcome.

[4] Issued pursuant to powers under s.60 of the Small Business, Enterprise and Employment Act 2015

42. The parallel operation of the rent review and MRO process underpins the implementation of Parliament's intention, expressed in the core Code principles[5] that the tied pub tenant ("TPT") should be no worse off than if they were free of tie. At rent review, the TPT has the right to serve an MRO notice[6]. Pursuant to regulation 29, though the rent review process can continue in tandem with the MRO process, the increased rent cannot be recovered from the tenant during that process (and such suspension is lifted on the end of the MRO process unless an MRO option is agreed between the parties). Thus, the TPT has the ability to compare the tied rent on review with the MRO terms and rent, and to make an informed choice between them. This ability is at the centre of the effectiveness of the Pubs Code machinery to strengthen the TPT's hand in its dealing with the POB. Thus, there can be a difference between the parties reaching agreement as to what the reviewed rent is, whilst the tenant completes the MRO process to compare this with the tied rent, and an agreement for the purposes of regulation 39(4)(g) which ends the MRO process.

43. In the present case, though clearly there has been an agreement in writing as to the tied rent on review, it is in my view incumbent on the POB to ensure that the tied tenant, in this case the unrepresented executor, was made aware of the effect of regulation 39(4)(g) so that she could make an informed decision whether to sign that agreement. Given the POB's failure to do so, it was in my view (and in light of the PCA Advice Note) making a representation to the tenant that it did not end the MRO process. I therefore do not agree with the Respondents' summation of the evidence that there are no grounds for concluding that the rent review memorandum is voidable as an agreement for the purposes of regulation 39(4)(g) on the grounds of misrepresentation. By failing to ensure that the executor was aware of the effect of that regulation and the effect on the MRO procedure of signing the agreement, it appears to me that in this case the regulated POB was indeed misrepresenting to the executor that effect, and which misrepresentation was further evidenced by the silence to the arbitrator as to that matter. The Respondent did not want directions for the exchange of witness evidence, and I have reached my conclusion on the limited evidence before me.

44. Furthermore, Parliament needed to find a way of ensuring that the MRO procedure did not endure when it was agreed between the parties to stay tied, but this says nothing about whether the MRO procedure[7] can be ended during arbitration proceedings when those proceedings themselves have suspended the running of the MRO procedure pending the outcome of that arbitration. Only an award from the arbitrator can end the arbitration proceedings and bring that suspension to an end – no application had been made to request me to exercise my powers to terminate the proceedings as no longer being necessary – the lack of such an application is evidence of the complicity of the POB in the continuation of the arbitration proceedings.

[5] See s.42(3) of the Small Business, Enterprise and Employment Act 2015
[6] Pursuant to regulation 23(1)(b) of the Pubs Code
[7] See regulation 39 of the Pubs Code

45. The Respondents' position in this case has been distasteful. I would not expect a regulated POB to rely on its own failure to follow the advice of the regulator as grounds for avoiding the effectiveness of an award relating to MRO rights that was not in its favour by raising such arguments again as have been advanced in this case.

46. Another issue which would have been for determination by me, if the jurisdictional question had been put before me before I issued my award, is a challenge to the validity of the rent assessment proposal now brought by the Claimant claiming such that regulation 39(4)(g) could not be engaged. The Respondents, in response to my direction, produced a rent assessment proposal dated 1 April 2017 from Punch Taverns. The Claimant challenges that rent assessment as clearly non-compliant as there is no 3-year calculation under Pubs Code Schedule 2 (5) (a) & (c) or reason given for not supplying it. I also note that the Punch Tavern notes from February 2018 said that the rent review was put on hold because of the passing of the TPT. The impact of any such non-compliance would have been a matter for my determination had the Respondents challenged my jurisdiction to make an award before I had made it. There may have been other issues of Pubs Code compliance in respect of the rent assessment procedure that would have arisen in the court of any jurisdictional challenge.

47. In the light of the above, it is too late for the Respondents to dispute the *vires* of my award of 31 October 2018, the operative provisions of which are effective. The Respondents must comply with my order in that award. Directions are to be issued for the purpose of determination by the arbitrator of compliant MRO terms.

48. Neither party has addressed me on how a finding that I had jurisdiction to order a revised response interacts with the remaining Code provisions. It is not for me as arbitrator to perform that task on their behalf.

49. The regulated POB must now take steps to rectify the position in this case. In the event that there is any conflict with remaining provisions in the Code, the POB will clearly understand the importance of it acting consistently with those provisions in order to be able to demonstrate to the regulator that its conduct has caused it no benefit as against the Claimant executor. The DPCA has the right, at an appropriate time, to consider whether regulatory action is appropriate in respect of this matter.

**Costs**

50. Issues as to costs of the arbitration are reserved pending the parties' opportunity to make submissions as to costs.

51. Costs are reserved.

**Arbitrator's Signature**:
**Date Award made** 20 February 2019

**Claimant's ref: ARB/000263/DOYLE**
**Respondent's ref: ARB/000263/DOYLE**