

MRO – A LANDLORD’S POINT OF VIEW

ALTERNATIVELY: PCA – WHAT A FARCE

BASICS

[Redacted] 20yr lease, commencing [Redacted] Dec. 1999 at an annual rent of £22,660 & assigned to me on [Redacted] Mar. 2003 at increased rental of £24,860. The 2005 rent review saw a small increase to £25,000 with nil increase thereafter, the 2014 review being decided by a very protracted PIRRS battle. The original rent proposal prior to the PIRRS application was £30,000 with [Redacted] independent expert valuation coming in at £37,000, against ours of £21,400 and the final PIRRS independent valuer assessment to remain at £25,000. Whilst still in the middle of this PIRRS negotiation [Redacted] sent a new quote for the 2017 rent review of £42,000.

PCA Application

This 2017 rent review triggered the MRO application, the offer for which from [Redacted] was £62,000, but which rather than via a simple deed of variation required me to enter into a new lease, at considerable cost and which would not only mean the loss of some of my Landlord & Tenants rights but which was severely more onerous than the existing one. This was followed soon after by a flurry of meetings with various [Redacted] representatives, all with veiled threats of them not renewing my lease after 2019 should I continue down this route. At this point I had no definite intention of taking the MRO option but was advised to apply anyway in order to comply with the strict application timescales.

Even with the benefit of expert advice, through the same independent experts still dealing with the 2014 PIRRS rent review, we were both unsure as to how best to fill in the application form but my application, along with the £200 fee, was sent to the PCA on [Redacted] Feb. 2017 and so started a game of communication ping-pong which never saw it even get past the starting gate. A reply to this was received on [Redacted] Mar. 2017 from what would appear to simply be an (unqualified) complaints handler but who was in fact acting as a quasi-arbitrator, stating that my application was incomplete. My 3 page reply (quite how you’re supposed to fit that into the allotted 500 word box on the application form I’m not sure!) was sent on [Redacted] Mar. 2017 and was replied to on [Redacted] again refusing the application on my terms but seemingly accepting it on their (and the PubCo) preferred ones. As this reply asked for the same information again, a formal complaint to escalate it was made on [Redacted] Apr. 2017 but which basically got the same response on the [Redacted] as did our further attempt to free this impasse in May.

A final attempt to get a response from an actual arbitrator was made on [Redacted] May 2017, addressed to Mr Newby but which had to be sent to the general office email addresses in the absence of one for him. Although the reply to this on [Redacted] Jun. 2017 advised that it had been referred to him, nothing was heard from him and we were just fed the same tired lines by the same handlers.

This complete waste of everyone’s time was thankfully brought to an end by my not seeing any future in continually banging my head against the brick wall that is PCA and agreeing to yet another nil increase for the last 2 years of the lease. Any such agreement immediately terminates an MRO application.

This should have been the end to it but the PCA had one final sting in their tail when we notified them of the above decision and asked for a refund (less administration fee) due to our only ever having swapped emails and never actually agreeing on any arbitration. Apparently, having refused the application on my grounds but accepting it on their own, this was still seen as a valid referral and as such no refund was due. This despite the fact that we never got to any actual arbitration and never even received the promised award confirming the case as settled, as promised in their final email of [Redacted] Aug. 2017.

£200 for basically just repeatedly sending out the same email over again Not bad!

Conclusion

The Pubs Code etc. Regulations 2016 document is in itself a confusing read, with various sections referring to other sections within sections, but the PCA are not helping in any way to ease the referral process. Their referral form is [Redacted] confusing without sufficient explanation as to each option, making it easy to unknowingly select the wrong ones and thus, as in this case, unintentionally giving them alternative regulations to hide behind when they do not like the actual one you are applying for. Considering that it is generally us pub landlords and not legal eagles making these applications, the whole system seems flawed. I would never have even been able to have gotten this far (which to be honest, wasn't very far at all!) without the help of the independent experts.

The main problem, as I see it, is the PCA's continual refuse to accept any referral on the basis of Regulation 50 and only accepting or shifting such applications to Regulation 32 or Regulation 29. I have repeatedly sent information as to why the MRO offer from my PubCo is detrimental to my business but the application is continually refused. One has to ask therefore why would the PCA be [Redacted] preferring the (PubCo preferred) R32/29 route?

The cynical of us would say that this is because the PCA is [Redacted].

The more forgiving of us may put it down to confusion around filling in the actual referral form and the PCA's subsequent handling of it, although this still does not answer why they our such R50 averse. It has been made clear several times that this claim was being made under R50 but this has been ignored and only their preferred R32/29 has

been applied just to avoid having to refund the fee?

The PCA can get away with this because they try to hide behind a cloud of confidentiality and will not disclose information between cases, even when a general principle, that should then be applicable to all cases, has been established. In fact, Mr Newby himself has openly stated that he would be from time to time issuing guidance notes on case principles as they are established.

In all communications with the PCA, they head their missives with '*Confidential between the parties*', which is something we have repeatedly refused to accept and reserve the right to disclose all correspondence to third parties. To this aim and due to the fact that no referral has actually been started, both by PCA's repeated refusal to accept our requested R50 route & by disputing the validity of their attempt to enforce their preferred route, all the correspondence mentioned here is available on request.

Ultimately, the PCA is not working ... or [Redacted].