

IN THE MATTER OF

Ref: ARB/10045/FOODDRINKROOMS

THE PUBS CODE ARBITRATION BETWEEN: -

Food Drink Rooms Limited

(Tied Pub Tenant)

Claimant

-and-

**(1) Ei GROUP PLC
(Pub-owning Business)**

First Respondent

&

**(2) UNIQUE PUB PROPERTIES LIMITED
(Subsidiary of the First Respondent and landlord of the Claimant)**

Second Respondent

Award

Introduction

1. The seat of this arbitration is Birmingham, England. The applicable law is that of England and Wales. The Claimant is the tied pub tenant of The Marlborough, 90 High Street, Marlborough, Wiltshire, SN8 1HF ("the Pub"), which it occupies as assignee of a lease dated 27 June 2003 granted by the Respondent Pub-Owning Business's group company. The Claimant is represented by the Pubs Advisory Service and the Respondent by Gosschalks Solicitors of Queens Gardens, Hull, HU1 3DZ.
2. The Claimant alleged in this referral¹ that the proposed MRO tenancy² was not compliant. After a concession made by the Respondent in correspondence and in its proposed list of agreed facts, the parties have agreed in writing that the MRO proposal will be offered by way of deed of variation, instead of by way of the new lease that formed part of the MRO proposal.
3. The Respondent has on 15 February 2019 acknowledged that in the circumstances I have jurisdiction to make an order under regulation 33(2) to determine the content of the MRO revised response. The terms of the proposed MRO lease in the revised response that I may order are a matter for my discretion, but they must be compliant. The Respondent's suggestion that my

¹ Made on 12 February 2018 pursuant to reg 32(2) of the Pubs Code etc. Regulations 2016 ("the Pubs Code")

² Issued as part of its full response on 28 January 2018 pursuant to reg 29(3) of the Pubs Code

power is limited to making an order only in respect of the particular terms of the proposed new lease challenged in the referral is clearly wrong. The issues raised in dispute related to the proposed MRO lease referred for arbitration, and not to the proposed deed of variation subsequently offered which seeks to replace all of the terms of the existing lease with the terms of the new lease. Therefore, the Claimant did not in these proceedings' advance disputes in relation to the compliance of the latter approach. Furthermore, given that terms and conditions must together as well as individually be complaint, it is not correct to suggest that my power is limited to making an order in respect of the particular terms challenged as that could lead to unreasonable terms elsewhere.

4. In the circumstances of this case, it is appropriate that I exercise my power under regulation 33(2) to order the Respondent to serve on the Claimant a revised response in the form of a deed of variation of the existing lease in the precise terms that I shall order. The appropriate terms of the order under regulation 33(2) will be a matter on which the parties will have the opportunity to make submissions.
5. With the consent of the parties, I have already approved the instruction of an expert under Article 29 of the CI Arb Rules and section 37 of the Arbitration Act 1996 to advise in respect of the disputed terms. On receipt of that report, if the terms of the deed of variation are not settled, the parties can consider the need for any additional expert or other evidence to enable the making of an appropriate order by the arbitrator for compliant terms in the revised response.

Costs

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

Operative provisions

7. In the light of the above:
 - a) The revised response is to be in the form of a deed of variation of the existing lease on MRO-compliant terms to be determined by the arbitrator;
 - b) The First Respondent is ordered to provide a revised response to the Claimant within 28 days of the arbitrator's determination of its terms;
 - c) Costs are reserved.

Arbitrator's Signature:



Date Award made: 11 April 2019.