

**IN THE MATTER OF  
THE Pubs Code Arbitration Between: -**

**Ref: ARB/000118/CARELESS**

**MR PAUL CARELESS  
(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**

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**Award**

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## **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 Robin Hood, 16 Severn Grove, Canton, Cardiff, CF11 9EN and since 18 October 2018 has been represented by TP Legal Solicitors. Before that date he was unrepresented. The Respondents are represented by Gosschalks Solicitors of Queens Gardens, Hull, HU1 3DZ.
2. The Claimant alleged in his referral<sup>1</sup> that the proposed MRO tenancy<sup>2</sup> was not compliant. This referral was among the earliest received disputing the compliance of a proposed MRO tenancy. The Respondents initially took, but then withdrew, a jurisdictional point. Case management directions were then issued on 6 March 2017 and thereafter each party put its case. There were lengthy exchanges about the need for expert evidence as to common terms and as to the issues in dispute.

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<sup>1</sup> Made on 21 October 2016 pursuant to reg 33(2) of the Pubs Code etc. Regulations 2016 ("the Pubs Code")

<sup>2</sup> Issued as part of its full response on 21 September 2016 pursuant to reg 29(3) of the Pubs Code

3. I replaced Mr Paul Newby, Pubs Code Adjudicator, as arbitrator on 26 January 2018. The PCA Advice Note on MRO Compliant Proposals was issued in March 2018. The issues in dispute include some which have been repeated in other arbitrations before the PCA that have already been determined. As a result of such determinations, and after case management conferences on 30 July and 3 September 2018, the Respondents in an open concession on 14 September 2018 offered, in place of the proposed new tenancy that formed part of its full response, the terms of a deed of variation of the existing lease. Negotiations have been taking place since then to see if the terms of a deed of variation can be agreed. However, there has been no settlement.
4. The Respondents have acknowledged that the “full response” was not compliant<sup>3</sup> and consent to me making such a finding. Where a MRO proposal is non-compliant, I may make a ruling<sup>4</sup> that the pub-owing business must provide the tenant with a revised response. As agreement has not been reached, such a ruling is required, and issue of this award engages my power to make one.
5. Given the history of these proceedings and that agreement by the parties appears unlikely, in order to avoid the possibility of further dispute as to the compliance of the revised proposal, I consider I should proceed to rule that the First Respondent must provide a revised response in the precise terms that I shall order, and it acknowledges that I have the power to do this in relation to the terms challenged. The parties will have the opportunity to make submissions as to the terms.
6. It would not be possible on the current evidence for me to determine compliant terms which I could lawfully order should form part of the revised response. In particular I will need expert advice as to what terms would be common, and I may need legal assistance in respect of drafting of the MRO lease terms. I propose to appoint such experts as required under Article 29 of the CI Arb Rules and section 37 of the Arbitration Act 1996.

## **Costs**

7. Issues as to costs of the arbitration are reserved pending the parties’ opportunity to make submissions as to costs.

## **Operative provisions**

8. In the light of the above:
  - a) Determination of MRO-compliant terms to be made 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;

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<sup>3</sup> As it did not comply with section 43(4)(a)(iii) of the Small Business, Enterprise and Employment Act 2015

<sup>4</sup> Under regulation 33(2)(b) of the Pubs Code

- c) Directions to be issued for the purpose of determination by the arbitrator of compliant MRO terms;
- d) Costs are reserved.



**Arbitrator's Signature**

**Date Award made :** 14 January 2019

**Claimant's Ref: ARB/000118/CARELESS**

**Respondent's Ref: ARB/000118/CARELESS**