

**IN THE MATTER OF AN ARBITRATION BETWEEN**

**C**

**AND**

**U**

**AND THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022**

**AND THE ARBITRATION ACT 1996.**

C (Applicants)

And

U (Respondent)

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FINAL AWARD

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1. This Award is my First and Final Award and is issued with reasons following an application under the Commercial Rent (Coronavirus) Act 2022 (the Act) to apply for relief from payment of protected rent debts under a business arbitration.
2. This Award is issued on the matter of relief from payment is given in a way that is consistent with the section 15 principles aimed at preserving or restoring and preserving the viability of the business of the tenant so far it is consistent with preserving the landlord's solvency.
3. The landlord is required where appropriate to submit evidence for the arbitrator to consider on its solvency which would be judged on the criteria set out in 15 3 to consider whether the landlord is likely to become unable to pay its debts as they fall due.
4. C (the Applicant) of Premises is the tenant of the premises at Unit XXX (the premises) under a lease dated xxxxx. The tenant is an applicant in person. The ultimate parent company is C Group.

5. The landlord under the lease is U (the Respondents). The landlord is represented in this arbitration by xxx.
6. Rent is defined as an amount payable possession and use of premises plus a service charge plus interest on the unpaid amount. Protected rent occurs during a period in which the tenancy was adversely affected by coronavirus and was subject to a closure requirement beginning on 21<sup>st</sup> of March 2020 and ending on 18 July 2021. The relief available under the Act might be writing off the whole or any part of the debt, giving time to pay the whole or any part of the debt by instalment and reducing to no interest otherwise payable under the terms of the tenancy in relation to the whole or part of the protected rent debt. Under part 3 of the Act section 23 gives a temporary moratorium on the enforcement of protected rent debts and the conclusion of an arbitration.
7. The Applicant and the Respondent have agreed that arrears of £xxx including VAT relates to the COVID protected rent period as set out in a series of email between xxx of C and xxx of solicitors for the landlords commencing with the email dated 17 August 2022 marked 'without prejudice' relating to the period 21 March 2020 to 18 July 2021 and that all other non COVID arrears would be paid on or before completion, in a sum to be agreed but the other non-COVID arrears are not protected rent debt as defined in Sections 2 and 3 of the Commercial Rent (Coronavirus) Act 2022.
8. I note in that email chain of correspondence that xxx of C accepted the email concession agreement side letters already signed by the landlord on 15 September 2022 were signed by the C's CEO. However, in xxx C's email reply on 7 October 2022 stated that although his CEO had signed the side letters they were not given to the landlord because their US Chapter 11 bankruptcy lawyers, KE, would not authorise him to send the signed documents to the landlord for completion until Chapter 11 Court approval was obtained. It is not clear from the correspondence if such an application was made and Chapter 11 approval was obtained.
9. A dispute had arisen concerning the protected COVID rent period debt, that was the subject of the subsequent 7 October 2022 email correspondence, and an application was made on 13 September 2022 to the Dispute Appointment Services at the Chartered Institute of Arbitrators under Section 11(1) of the Act with a formal proposal by C.
10. The applicant, C, provided a summary of its accounts and a calculation of protected rent due with an offer to settle for a payment of £xx rent against arrears of £xx plus a service charge payment of £xx against arrears of £xx plus the insurance instalments of £xx payable in full.
11. A summary of the C statutory accounts were attached to the offer and hence to the application for relief. The application predates the draft agreement referred to as signed in the chain of emails ending on 7 October 2022, based on the agreement dated 14 September 2022 signed by the landlord but not by the tenant. The agreement does not refer to any interest or costs of the application or who would bear the Arbitrator's costs.

12. The Respondent offered on 14 September 2022 to accept a Concessionary Rent of 50% of the rent in the protected period by 24 equal instalments payable on 1 month from October 2021 onwards if the arrears were paid from 1 October 2022 and the dispute was settled by the signed agreement before 31 October 2022. It might be if the agreement has not been signed by both parties that the 'without prejudice' offer could be considered to have lapsed. It is noted that the agreement would be cancelled if 3 consequence instalments were missed after acceptance of the offer and commencement of the payments or, in addition, if non-COVID protected arrears were not paid in full.
13. I, Kay Catherine Sheila Hilary Linnell was appointed as Arbitrator in this dispute by the Chartered Institute of Arbitrators as arbitrator in this reference under case number DAS-01328-C2T7K on 1 March 2023.
14. I issued my standard terms and conditions and engagement letters on 3 March 2023 and these were returned 21 March 2023 from the Applicant and 20 March 2023 from the Respondent.
15. On 3 March 2023 I informed both Parties that I have been forwarded the following documents on 28 October 2022:-
  - a) Original letter including Applicant's formal proposal dated 13 September 2022;
  - b) Respondent's letters dated 17 August 2022, 14 September 2022, 26 September 2022 and dated 10 November 2022 from xxx;
  - c) Applicant's letters dated 2 August 2022 and 13 September 2022; and
  - d) Email exchanges between the parties between 17 August 2022 and 7 October 2022.
16. I requested a limited disclosure exercise with a specific request for financial data to enable me to review the submissions exchanged to date. This did not exclude either party sending any other document to me, copied to the other party that is considered relevant. All documents are held confidentially and not disclosed to any other person.
17. From C I requested the financial accounts and details of all relevant financial arrangements with any associated companies (including joint banking and financial guarantees – if any) and so that I could review the trading and financial position of the Applicant as tenant of the premises and the protected rent arrears in dispute between 21 March 2020 to 18 July 2021 under this scheme. I specifically requested full accounts covering the 2020, 2021 and 2022 financial periods and in addition any budgets or forecasts for the current trading period.
18. On 21 March 2023 Mr xx of the Applicant provided the financial statements for the years ended 31 December 2020 and for 31 December 2021 and informed me that the 2022 figures would not be available for some time. C is guarantor to 3 leases. I note that Mr xx of C informed me that the company operated a stand-alone bank account and there are no cross guarantees between other C Group plc company accounts but C Group paid labour, staff, overheads, services and suppliers and recharged these costs to C. C Group plc was founded in 1995 and is now stated to

be one of the leading xxx groups in Europe. Originally a private company, it re-registered as a public company in May 2006 and was first listed on the London Stock Exchange in May 2007.

19. The matter of going concern was dealt with in the 31 December 2020 accounts on page 14 and C considered itself viable based on full reliance on its parent entity and written confirmation from the C Group plc. The C 2020 accounts were signed on 21 September 2021 and filed at Companies House on 24 September 2021.
20. There is public information that indicates shareholders in C Group will lose the value of their investment under C Group plc recent proposals to reorganise their business and exit the Chapter 11 bankruptcy. The London-listed C chain issued a statement on 11 April 2023 that it had filed a reorganisation plan with an American bankruptcy court. The long-term future of C Group remains uncertain as C Group struggles to sell its business following six months in bankruptcy. In September 2022, it was publically announced that C Group had filed for bankruptcy in the US for its own protection after accumulating billions of dollars in debt during the pandemic.
21. No financial information was provided to me by the Respondent.
22. I have reviewed the accounts and financial summaries provided by C as tenants and note that C accounts show an insolvent position in as completed. I have considered the financial viability of the Applicant based on the latest available Balance Sheet as at 31 December 2021 and note that the intercompany debt decreased from £415,550K in 2019 (before COVID) to £327,538K in 2020 and rose again the draft figures for 2021. I conclude that the continuing support of the parent company is essential for the continued trading of the subsidiary C. After the confirmation of the Chapter 11 US filing for the parent company in October 2022 I have serious concerns the solvency issues of the applicant, C
23. I note that the 2019 turnover was £xx with gross profit of £xx and a net loss for the year of £xx, before the impact of the COVID pandemic. In 2020 turnover fell to £xx with a gross profit of £xx and a loss for the year of £xx. The draft 2021 figures show a turnover of £xx, a gross profit of £xx and a net loss of £xx for the year.
24. The Respondent in the letter from solicitors for the Respondent dated 26 September 2022 addressed to Mr xx of C draws attention to Section 13(3) of the Commercial Rent (Coronavirus) Act 2022 pointing out the duty of an Arbitrator to dismiss any reference where the tenant's business is not viable or would not be viable even if the tenant were to be granted relief from payment of any kind.
25. It is clear to me as Arbitrator that C is not trading profitably and its Balance Sheet shows a negative net worth of £xx at 31 December 2020 and was insolvent. It has survived solely through the support of its parent C Group plc and following my obligation under Section 13(3) of the Commercial Rent (Coronavirus) Act 2022 I do not consider that the tenant has satisfied me that its business is viable even if the application for the relief from commercial rent sought were awarded.

**I, Kay Catherine Sheila Hilary Linnell as Chartered Arbitrator do hereby consider, make and publish my Final Award.**

**The Award**

- 1) I award and direct that the Application for relief of 50% of the rent due of £xxx (including VAT) for the COVID protected period being 21 March 2020 to 18 July 2021 plus £xxx service charge and insurance payments due in the sum of £xx is dismissed;**
- 2) Each party bears its own costs in the Arbitration and the Respondent shall deduct the sum of £3,250 from the arrears of rent to compensate the Applicant for 50% of the Arbitration costs.**

**Published by me this 4th day of May 2023 in Basingstoke, England.**

**Miss Kay Linnell**

**Chartered Arbitrator**

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**Date**\_\_\_\_\_

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FIRST AND FINAL AWARD

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MISS KAY LINNELL (Arbitrator)

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The Avenue  
Herriard  
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Hampshire  
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