LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/16/2019

BETWEEN

JD SPORTS FASHION PLC – APPLICANT

AND

CENTRAL CRAIGAVON LIMITED – RESPONDENT

PART 1

Re: Units 43 & 44 Rushmere Shopping Centre, Central Way, Craigavon

Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)

Background

1. JD Sports Fashion PLC ("the applicant") is the tenant of Units 43 & 44 Rushmere Shopping Centre, Craigavon ("the reference property"). The applicant occupies the reference property under a lease dated 3rd October 2008 ("the lease") which demised the reference property for a term of 10 years from 18th August 2008.

2. On 31st January 2018 Central Craigavon Limited ("the respondent") served a Landlord's Notice to Determine the lease in accordance with the Business Tenancies (Northern Ireland) Order 1996 ("the Order"). The notice proposed the grant of a new tenancy for a term of 10 years from 18th August 2018 at a rent of £144,000 per annum.

3. On 20th February 2019 the applicant made a tenancy application to the Lands Tribunal. The application agreed with the 10 year term but proposed a rent of £110,000 per annum. The applicant has asked the Tribunal to note that there was no start date for the new tenancy specified in the applicant's tenancy application.

4. Both parties appointed experts to act on their behalf and in November 2019 the experts prepared a "Statement of Agreed Facts". The statement noted that the applicant's tenancy application had been submitted out of time, but the parties were "before the Lands Tribunal to determine the terms to be effective from 18th August 2018", the date of the respondent's Notice to Determine. Thereafter the date of 18th August 2018 was used by the experts to assess the other terms of the new tenancy, including the rent.

5. Prior to negotiations being finalised, the "Covid crisis" then broke, which the applicant contended had the effect of seriously depreciating the retail property market, although no market evidence was submitted to the Tribunal to confirm the applicant's contention.

6. The applicant was then of the view that any tenancy to be granted had to reflect the property market at the time the tenancy was being granted and it was not reasonable to expect the applicant to pay a 2018 pre "Covid" rent for the grant of a new lease in 2020.

Preliminary Question

7. The parties have therefore asked the Tribunal to decide a preliminary issue as to the correct date for the new tenancy to commence and consequently the valuation date to assess the rent under the new tenancy.

8. Under normal market conditions the choice of start date would have minimal impact on the rent for the new tenancy and this is probably why the issue had not previously troubled the Tribunal.

9. In the subject reference, however, the Notice to Determine specified a start date for the new tenancy in August 2018 but the Lands Tribunal reference is being heard in January 2021, in

the middle of the "Covid" pandemic and at a time when the rental market faces significant uncertainty.

Procedural Matters

10. The applicant was represented by Mr Douglas Stevenson BL, instructed by Carson McDowell solicitors. Mr Adrian Colmer QC, instructed by Hewitt & Gilpin solicitors, represented the respondent. The Tribunal is grateful to the legal representatives for their helpful submissions.

11. The applicant's expert witness, Mr Mark McKinstry, provided a "Witness Statement" addressing some of the issues in relation to the preliminary point to be decided by the Tribunal. Mr Frank Cassidy provided reciprocal evidence on behalf of the respondent. The Tribunal is grateful to the experts for their submissions.

Position of the Parties

12. The applicant's position was that the start date for the new tenancy must be a date shortly after any Lands Tribunal hearing on the matter, as directed by the Order. The respondent's position was that the start date should be the date specified in the respondent's Notice to Determine, that is, 18th August 2018 and as agreed between the experts.

The Statute

13. The parties and the Tribunal consider the following sections of the Order to be relevant in the context of the subject reference:

> "**Continuation of tenancies to which this Order applies until terminated in accordance with this Order**
>
> 5.-(1) A tenancy to which this Order applies shall not come to an end unless terminated in accordance with the provisions of this Order;
>
> (a) a notice to determine served by the landlord in accordance with the provisions of Article 6; or

(b) a request for a new tenancy made by the tenant in accordance with the provisions of Article 7."

And

"**Interim continuation of tenancies pending determination by the Lands Tribunal**

11.-(1) In any case where-

(a) a notice to determine a tenancy has been served under Article 6 or a request for a new tenancy made under Article 7; and

(b) a tenancy application has been made; and

(c) but for this Article the effect of that notice or request would be to terminate the tenancy before the expiration of the period of 3 months beginning with the date on which the tenancy application is finally disposed of,

the effect of the notice or request shall be to terminate the tenancy either at such date as the Lands Tribunal may by order direct or at the expiration of the said period of 3 months and not at any other time."

And

"**Duration of new tenancy**

17.-(1) Where the Lands Tribunal makes an order for the grant of a new tenancy, the new tenancy shall be-

(a) a tenancy for such period as may be agreed between the landlord and tenant; or

(b) in the absence of agreement, a tenancy for such period, not exceeding 15 years, as may be determined by the Lands Tribunal to be reasonable in all the circumstances,

and shall begin on the coming to an end of the current tenancy."

And

"**Rent under new tenancy**

18.-(1) …

(2) In the absence of agreement the rent shall be such as may be determined by the Lands Tribunal to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor …

(3) …

(4) Where the Lands Tribunal fixes the amount of rent under this Article, it may by order direct –

(a) that the rent shall be payable in that amount from such date (including a date then past), and

(b) that interest shall be payable on rent in arrears (including rent in arrears by virtue of a direction under sub-paragraph (a)) at such rate,

as the Lands Tribunal considers proper in all the circumstances.

(5) Where rent is in arrears by virtue of a direction under paragraph (4)(a), the Lands Tribunal shall order the payment of-

(a) the sum of any arrears of rent created by virtue of that direction; or

(b) where the Lands Tribunal also directs that interest shall be payable on rent in arrears, the sum of any arrears so created and interest on such arrears."

Authorities

14. The Tribunal was referred to the following authorities:

- English Exporters (London) Ltd v Eldonwall Ltd [1973] Ch 415
- Derby & Co Ltd v ITC Pension Trust Ltd & Anor [1977] 2 All ER 890
- Lovely and Orchard Services Ltd v Daejan Investments (Grove Hall) Ltd [1978] 1 EGLR 44
- Gale v Superdrug Stores plc [1996] 1 WLR 1089
- Car Park Services Limited v Bywater Capital (Winetavern) Ltd [2018] NICA 22

- Alfred Street Properties Ltd (formerly Killultagh Estates Ltd) v National Asset Management Agency [2020] EWHC 397 (Comm)

15. And to the following texts:

- Section 64 of the Landlord and Tenant Act 1954 England and Wales
- Reynolds & Clarke "Renewal of Business Tenancies" Fifth Edition; Kirk Reynolds QC Wayne Clark

Consideration of the Statute and Authorities

16. In support of their positions both parties relied on the terms of the Order. Mr Stevenson BL's primary submission was that the Order only permitted the Tribunal to fix a commencement date for any new tenancy shortly after any Tribunal hearing on the matter. Mr Colmer QC submitted that the Order gave the Tribunal the discretion to fix any date of commencement, including a date in the past.

17. Mr Stevenson BL referred the Tribunal to Article 5 which directed that a tenancy to which the Order applied should not come to an end unless terminated in accordance with the Order. He considered this to be the central part of the Order, as Business Tenancies did not simply end on contractual expiry, rather they continued on until terminated in accordance with the terms of the Order. This was not disputed by the respondent.

18. Mr Stevenson BL then referred the Tribunal to Article 17 which stated that any new tenancy "shall begin on the coming to end of the current tenancy". He submitted, therefore, that a tenant could not occupy the same premises at the same time under two different tenancies, that was under the current tenancy and at the same time, any new tenancy, which he considered was the outworking of the respondent's position.

19. With regard to Article 17 Mr Colmer QC submitted:

(i) the provision did not provide that the new tenancy must begin at some time in the future.

(ii) as to the date of commencement of the new tenancy, the provisions merely stated that the new tenancy should begin on the coming to the end of the current tenancy.

20. Article 11 of the Order deals with continuation and termination of an existing tenancy. Mr Stevenson BL accepted that the Tribunal had a discretion as to when the current tenancy should terminate, that is either three months after the proceedings were determined or "such date as the Lands Tribunal may by order direct".

21. The applicant's position was that Article 11 only permitted the Tribunal to fix an end date for the current tenancy at such date after the conclusion of the proceedings as the Tribunal seen fit. He considered the respondent's position, that the Tribunal could terminate the current tenancy at a date in the past, to be wrong as, the Tribunal could not rewrite history.

22. He referred the Tribunal to the following example:

> At the date of the hearing if you asked on what basis did the applicant occupy the reference property the answer was, of course, under the terms of the current tenancy. Take then the respondent's position and a case where the tribunal makes an order on say 1st December 2020 terminating the current tenancy on 1st July 2020 and starting the new tenancy from that date. Let us again ask the question on what basis did the applicant occupy the premises on 1st August 2020? On the respondent's case the answer to the question was, it depends on when you ask the question. If you ask it after 1st December 2020 the answer was the new tenancy.

23. Mr Stevenson BL submitted that the applicant could not be regarded as occupying the reference property on the same day under two different tenancies. The applicant's position was, therefore, that the current tenancy could not be terminated retrospectively and could only be terminated at some date after the date of any order of the Tribunal.

24. In support Mr Stevenson BL referred the Tribunal to an extract from Reynolds & Clarke "Renewal of Business Tenancies" 5th Edition para 8-120:

> "It may be of importance to know at what date the premises are notionally being let in the market, since the state of the market may change from time to time while the application for a new tenancy is pending. It has been held in English Exporters v Eldonwall and Lovely and Orchard Services v Daejan Investments that the valuation date is technically the date of commencement of the new tenancy, but that in practice the court must do its best with the evidence available at the date of hearing to assess the rent appropriate to the new tenancy which will by virtue of S64 [Mr Stevenson BL: 'the broad equivalent of Article 11'] not begin until some months after the hearing, Thus the judge has to assess the rent on the basis of the evidence presented at the hearing, including evidence of any changes in the market likely to occur between the date of the hearing and the date on which the tenancy will commence.".

25. It was accepted by Mr Stevenson BL that the legislation in England was different. In contrast to Article 11 of the Order, Section 64 of the 1954 Act did not contain the reference to the termination date being "such date as the Lands Tribunal may by Order direct". He asked the Tribunal to note, however, that in England and Wales, the current tenancy could not be terminated on a date which had past.

26. Mr Stevenson BL then referred the Tribunal to Article 18(2) of the Order. It was not disputed, however, that the Tribunal should fix the rent by reference to the start date of the new tenancy.

27. Article 18(4)(a) states that rent was payable "from such date including a date then past". Mr Stevenson BL referred to the respondent's position that this clause meant that the start date for any lease could be a date long since past.

28. Mr Stevenson BL considered the respondent's approach to be wrong for three reasons:

(i) Article 18 was not concerned with the start date of any tenancy, it was concerned with rent.

(ii) If it were the case that a tenancy could commence at a date in the past then there would be no need for the words "including a date then past". If a tenancy could commence on a date which had passed, what purpose would the words serve? The wording was therefore only needed if a new tenancy could not commence on a date in the past.

(iii) There was no conceptual problem with saying that for the grant of a new lease the tenant had to pay a consideration before the new lease commenced. That could happen under an Agreement for Lease, for example. By contrast there was an obvious conceptual problem with saying that a tenant occupied the same premises under the terms of two different leases on the same day.

29. Mr Colmer QC referred the Tribunal to the differences between the 1954 Act England & Wales and to the Order. He referred to the following differences between the two statutes:

(i) Section 64(1) of the 1954 Act permitted only one termination date, fixed by reference to disposal of the application to the Court.

(ii) By way of contrast, Article 11(1) of the Order permitted two possible termination dates, one being a date fixed by the Tribunal, the other being a date fixed by reference to the disposal of the application to the Tribunal.

30. He submitted that the affect of Article 11(1) was that the date of determination of a business tenancy may be at large, and fell to be fixed by the Tribunal, and only in default would it be fixed by operation of the Order itself. There was no such provision in the 1954 Act.

31. In these circumstances, Mr Colmer QC submitted that Section 64 and Article 11 were so different in substance that they were not truly equivalent and what the English authorities and text books might say about Section 64 was of little importance when considering the meaning, effect and application of Article 11. He considered there to be no restriction, either in terms of Article 11 or in the Order more generally, as to the date which the Lands Tribunal may fix as the date of termination and that meant that the Lands Tribunal had the power to choose any date of termination, including a date in the past.

32. Given that under Article 11(1) the Lands Tribunal may by order direct that the current tenancy should terminate at a date in the past, Mr Colmer QC submitted that the outworking of Article 17(1) was that the new tenancy should begin on the coming to the end of the current tenancy and the new tenancy should begin also on a date in the past.

33. In conclusion Mr Colmer QC submitted:

    (i) It was clear that there was no basis, whether in statute, case law or commentary to support the applicant's proposition that the valuation date for the purposes of a tenancy being renewed under the Order must be at a future date.

    (ii) On the contrary, it was clear that both the general scheme and the specific provisions of the Order foresaw and permitted that the valuation date for the purposes of a tenancy being renewed under the Order may be a date in the past.

The Tribunal's Conclusions on the Statue and Authorities

34. Mr Colmer QC submitted that the Tribunal should be wary of allowing the wording and the scheme of an entirely different statute to influence the construction of the Order. Albeit dealing with a different point (contracting out), this warning was emphasised by Her Majesty's Court of Appeal in Northern Ireland in Car Park Services Ltd v Bywater Capital (Winetavern) Ltd [2018] NICA 22 per Stephens LJ:

    "(a) The statutory context in Northern Ireland in relation to business tenancies is different from England and Wales in that contracting out is permitted in England

and Wales but not in Northern Ireland. Accordingly, it is the duty of the courts in Northern Ireland to enforce the 1996 Order and to observe the principle that the parties cannot contract out of that Order. It can no longer be said that a similar duty or a duty with a similar emphasis rests on the courts in England and Wales. In the statutory context in England and Wales it is understandable in that jurisdiction for the parties' professed intentions and the labels attached by them to an agreement to have a greater impact."

35. The important difference between the statutes was that, in Northern Ireland, the Lands Tribunal was given a discretion in Article 11(1) of the Order: "the effect of the notice or request shall be to terminate the tenancy at such date as the Lands Tribunal may by order direct …". There is no equivalent discretion in the 1954 Act. The Tribunal therefore derives little assistance from the English authorities and texts put forward by the applicant.

36. The Tribunal also does not agree with Mr Stevenson BL that, the effect of the Tribunal fixing a termination date in the past would be that the applicant was regarded as occupying the reference property on the same day under two different tenancies.

37. Under the terms of the Order the respondent had served the applicant with a valid Notice to Determine, advising that the current tenancy would come to an end on 18th August 2018. The statutory effect of that notice was to terminate the current tenancy on 18th August 2018. From that date the applicant was, therefore, holding over on the terms of the terminated tenancy pending agreement on the terms of the new tenancy or adjudication on the new terms by the Lands Tribunal. Once those terms had been settled they would be backdated to 18th August 2018.

38. The Tribunal agrees with Mr Colmer QC there was no restriction in Article 11(1) which dictated that the Tribunal must fix a date in the future. The Tribunal had an unfettered discretion, given by the statute, to fix the termination date of a tenancy, including a date in the past. The Tribunal will now consider how it should exercise that discretion.

The Discretion of the Tribunal

39. The applicant's alternative position was that, if the Tribunal was not with the applicant on its submission on when the new tenancy must start, that did not mean that the new tenancy must start on the determination date specified in the respondent's notice.

40. Mr Stevenson BL referred to Mr Cassidy's report which offered three reasons why the termination date should be the date specified in the respondent's notice:

    (i) "This was the way the matter had been approached by surveyors in the past." Mr Stevenson BL submitted that the way surveyors dealt with the matter in the past could not dictate the way in which the Tribunal exercised its discretion under the Order and it was for the Tribunal to exercise the discretion on a case by case basis. The Tribunal agrees but it must give weight to the fact that this was established procedure in the surveying profession over many years.

    (ii) "A date after the hearing gives rise to difficulties, as one does not know what way the market may move after any hearing." Mr Stevenson BL asked the Tribunal to note that in England and Wales the valuation date was always after the hearing and this did not cause problems. There was, however, no evidence before the Tribunal relating to the number of appeals etc to confirm Mr Stevenson BL's assertion.

    (iii) "The applicant's expert agreed to the valuation date of August 2018." Mr Stevenson BL submitted that the reason why Mr McKinstry agreed to that date was because he understood that this is what the date had to be. The question was therefore whether the applicant was now entitled to argue for another date having "agreed" the earlier date.

41. The Tribunal was referred to the White Book at paragraph 27/3/11 which quoted the case of Gale v Superdrug [1996] WLR 1089. This was a personal injury claim whereby the defendant's

insurers had admitted liability. The case proceeded for two years on the question of quantum. The defendant then sought to resile from its admission of liability and the court of Appeal permitted it to do so, quoting with approval from the case of Bird v Birds Eye Walls Ltd where the Court of Appeal said:

> "when a defendant has made an admission the Court should relieve him of it and permit him to withdraw it or amend it if in all the circumstances it is just to do so having regard to the interests of both sides and to the extent to which either side may be injured by the change in front."

Waite LJ said:

> "Litigation is however a field in which disappointments are liable to occur in the nature of the process, and it cannot be fairly conducted if undue regard is paid to the feelings of the protagonists.
>
> That does not mean that the late retraction of an admission is something that the Courts should encourage. But what it does mean is that a party resisting the retraction of an admission must produce clear and cogent evidence of prejudice before the court can be persuaded to restrain the privilege which every litigant enjoys of freedom to change his mind."

42. In the subject reference, Mr Stevenson BL submitted that the applicant was seeking to argue for a new valuation date as:

    (i) it was not aware the date could be other than the date in the notice and;

    (ii) there had been a serious downturn in the rental property market as a result of the "Covid" pandemic and this should be reflected in the rent payable under any new lease.

43. Mr Stevenson BL could not envisage any prejudice which would be caused to the respondent as it would still be able to prosecute its case in the normal way, even if the commencement date was changed.

44. He contended that it would be unfair to fix the rent for a new lease by reference to historic values which no tenant in the current market would take a new lease at. The rent payable under a new lease should reflect the market rent. He considered this to be fair to the applicant and the respondent.

45. In the subject reference the Tribunal, however, finds it difficult to consider "fairness" and "prejudice" in relation to the valuation date and rent to be paid under the new tenancy as there was no market evidence before the Tribunal to confirm the relationship between rental levels in 2018 and 2020.

46. In conclusion Mr Stevenson BL submitted the applicant's alternative position was that the Tribunal should use its discretion to fix a commencement date in the past of, say, 1st October 2020.

47. Mr Colmer QC asked the Tribunal to note that for a considerable period of time, from the commencement of the application, throughout the preparation of the expert evidence and up until shortly before a planned hearing, the applicant had accepted and agreed with the respondent, that the valuation date was 18th August 2018.

48. He submitted that the adoption and agreement of that valuation date was consistent with the operation of the valuation and surveying profession in Northern Ireland. This was not disputed by the applicant.

49. Mr Colmer QC referred the Tribunal to the following extracts from the submissions of both experts to the Tribunal which confirmed the parties had agreed that the current tenancy ended on 17th August 2018:

    (i) Paragraph 3.2 of the Statement of Agreed Facts November 2019:

"Osborne King served an Article 6 Notice dated 31st January 2018 on the tenants bringing their lease in respect of the premises to an end with effect from 18th August 2018."

(ii) Expert report of Mr McKinstry at page 3:

"Lease expiry date 17th August 2018"

(iii) Paragraph 3.7 of the Statement of Agreed Facts:

"We are before the Lands Tribunal to determine the terms to be effective from 18th August 2018."

(iv) Paragraph 6.2 and 6.3 of the Statement of Agreed Facts:

"… we are before the Lands Tribunal to determine the terms of the new lease including the rent effective from the lease renewal date of 18th August 2018. The forgoing facts are agreed by the parties."

(v) Mr McKinstry's expert report at page 3:

"The matter in dispute is the amount of the revised rent and lease terms at the renewal date of 18th August 2018."

(vi) Mr Cassidy's expert report:

(P4) "My instructions are to deal with the lease renewal in respect of Units 43 & 44 Rushmere Shopping Centre, Craigavon which is effective from 18th August 2018."

(P24) "Commencement: 18th August 2018."

50. The Tribunal notes the agreement between the parties and this was not disputed by the applicant.

51. Mr Colmer QC referred to Mr McKinstry's suggestion that the consequences of his mistake were that the applicant found itself in 2020 fixed with a 2018 rent, whereas if the rent was to

be assessed at 2020 values, it would be at a lower level. He contended that this was not a position of principle rather it was one of commerce and, more specifically, convenience for the applicant alone. He suggested that if the facts were reversed, i.e. rents in 2020 were higher than 2018, it was hard to imagine that the applicant would be insisting on a 2020 date.

52. Mr Colmer QC contended that the position adopted by the respondent was based on adherence to a number of principles:

(i) It was in accordance with the traditional and agreed custom and practice in the surveying profession in Northern Ireland. This was accepted by Mr McKinstry.

(ii) Holding the applicant to the agreement between the parties was entirely in keeping with the general principles, scheme and policy of Order. Those general principles, scheme and policy all emphasised facilitating and encouraging agreement of issues between the parties. The Order repeatedly stated that the Tribunal would only decide issues "in the absence of agreement". The Tribunal should therefore uphold agreements when they were reached.

(iii) Such approach to upholding agreements reached between the parties in the course of litigation was entirely consistent with the principles of the overriding objective of litigation in Northern Ireland, including the imperatives to save expenses and to deal with litigation expeditiously and fairly

(iv) To allow the applicant unilaterally to resile from its agreement was not in accordance with any legal principle as to the discharge or variation of agreements, freely entered in to.

(v) The effect of allowing the applicant to unilaterally resile from its agreement would have the effect of wasting significant costs in the litigation and subjecting the respondent to a valuation date which would produce a reduced rental value. Both consequences were highly prejudicial to the respondent and fundamentally, they contradicted the principle application of the Order.

53. Mr Colmer QC contended that it was inequitable for the applicant to now deviate from its previously agreed position. He referred the Tribunal to Alfred Street Properties Ltd v National Asset Management Agency [2020] EWHC 397 (Comm) in which Phillips LJ referred to Lord Steyn's summary of the law relating to estoppel by convention in Republic of Ireland v India Steamship Co (No 2) [1998] AC 878 HL, as follows:

> "It is settled that an estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption."

54. Mr Stevenson BL submitted that a party wishing to establish estoppel must establish that some prejudice or detriment had occurred. The Tribunal agrees. With regard to any additional costs suffered by the respondent, these could be awarded by the Tribunal. Also, as previously stated, no market evidence was before the Tribunal to demonstrate the difference in rental levels between 2018 and 2020. The Tribunal finds, therefore, that estoppel had not been established in the subject reference.

55. In conclusion Mr Colmer QC submitted that in exercising its power under Article 11(1), the fundamental question of justice, fairness and equality should weigh heavily with the Tribunal and that it operated to confirm that the valuation date should be 18th August 2018.

Conclusion

56. The Tribunal finds the following facts to be relevant to the exercise of the Tribunal's discretion under Article 11(1) of the Order:

    (i) The respondent's Notice to Determine advised the applicant that its tenancy would end on 17th August 2018 and as a consequence the new tenancy would commence on 18th August 2018. For a significant period of time, from 31st January 2018 to 3rd June 2020, the applicant accepted this termination date to be correct.

(ii) A Statement of Agreed Facts, Expert Reports and Experts Meeting had been conducted and assessed on the basis of the termination date in the Notice to Determine.

(iii) At the time of agreeing that date and throughout the production of evidence for the Tribunal, the applicant's expert, Mr McKinstry, had legal advice available to him.

(iv) The general principles, scheme and policy of the 1996 Order emphasised and encouraged agreement between the parties and the Tribunal should only intervene "in the absence of agreement".

(v) Mr McKinstry and Mr Cassidy were in agreement that it was accepted by the surveying profession in Northern Ireland that, traditionally, the date for commencement of any new tenancy was the date specified in the Notice to Determine. The Tribunal accepts, however, that it was not bound in law by convention or tradition.

(vi) Neither party had submitted market rental evidence to confirm the relationship between retail rents in 2018 and 2020. It was therefore impossible for the Tribunal to establish the extent of any prejudice, no matter what date was chosen.

57. Article 11(1) of the Order gives the Tribunal an unfettered discretion "to terminate the tenancy … at such date as the Lands Tribunal may by order direct …". In the circumstances of the subject reference the Tribunal directs that the current tenancy should terminate on the date specified in the respondent's Notice to Determine, that is 17th August 2018. It therefore follows that the commencement date for the new tenancy should be 18th August 208 and the Tribunal directs that this is also the valuation date.

The "Covid" Pandemic

58. Neither party had established, by market evidence, the impact of the "Covid" pandemic on retail rental levels. The Tribunal is keen, however, that the applicant should be afforded the opportunity to reflect the effect of the pandemic on any rent it should pay. The Tribunal understands that the parties had agreed a term of 10 years for the new tenancy. As part of the negotiations on new terms the Tribunal would encourage the parties to consider a rent review in or around August 2020, whereby any effect of the pandemic could be reflected in

the rent and a further review in or around August 2022 whereby rental levels may have returned to normal.

59. If the parties are unable to agree the terms of the new tenancy, Article 19 of the Order gives the Tribunal the statutory authority to adjudicate on such terms.

5th February 2021

Henry Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland