CIVIL WAY

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IN BRIEF

- Publicans untied.
- Ombudsman justice.
- Spad(e)work.
- Bye bye costs.
- Latest FPR update.
- The Great (Rent) Escape.
- Public to see and hear.

CHEERS 1

The much maligned Pubs Code—calculated to allow a tied house to move to free-of-tie, paying only a 'market rent'—saw some improvements on 1 April 2022 when the Small Business, Enterprise and Employment Act 2015 and Pubs Code etc (Amendment) Regulations 2022 (SI 2022/341) came into force. As a result, a pub-owning business could come into the Code's scope more quickly and fall out of it more slowly. See *https://bit.ly/3K4XAel*.

CHEERS 2

Where the complaint has been referred on or after 1 April 2022, the limit of compensation awardable by the Financial Ombudsman Service has increased to £375,000 in respect of acts or omissions on or after 1 April 2019 (previously £355,000) and £170,000 for those before 1 April 2019 (previously £160,000). Compensation can reflect distress, inconvenience, pain and suffering and damage to reputation over and above financial loss. Superior to Wigan county court: shame there are no costs in it. Failure to convince the Ombudsman does not preclude civil proceedings (online, of course).

CHEERS 3

With my Ocado order now hitting the roof of my wallet, I am pondering an attempt at appointment to the MoJ as a special adviser. I see that Beatrice Timpson, who holds such a position, has disclosed a commendable hospitality-received marathon during October 2021. On the 3rd, dinner with the political and deputy editor of *The Sun*; on the 4th, breakfast with the political and deputy editor of *The Sunday Times* and lunch with two journos at the *FT*; and on the 5th, a Politico inhouse communications drinks event, dinner with Laura Kuenssberg and the BBC executive political editor and a *Spectator* drinks event. Things tailed off for the rest of the month with just dinner at the Australian High Commission and lunch from Sir Paul Coleridge. November, though, picked up: on the 5th, lunch with *The Sun*; on the 9th, dinner at the United and Cecil Club (with mention of a £250 ticket gift); on the 11th, lunch with *The Telegraph*; and on the 19th, lunch with *Politico*. December, alas, a little dull for the time of year. On the 2nd, a drinks event with Airbus, BAE Systems and Rolls-Royce and on the 6th, dinner with the senior and deputy editor of *The Sun* (again!). The last time I enjoyed MoJ hospitality, it was curled cheese sandwiches and a cuppa. If LexisNexis will foot the bill, I'll invite Ms Timpson for afternoon tea at Claridge's.

DIVORCE CORNER

Forget the costs—almost The President has spoken. Guidance on costs in the new world of the Divorce, Dissolution and Separation Act 2020 was issued on 28 March 2022 and, as predicted here, offers no encouragement in the run of the new mill case. 'It follows that, while the court will retain a discretion to make a costs order against the other party, the circumstances in which an order for costs will be appropriate are likely to be very limited.' There would be no scope for the court to consider relationship conduct. But conduct before or during the proceedings or in the manner on which a case had been pursued or defended would remain relevant: in particular, if it has been unreasonable (for example, by attempting to evade service or raising spurious or irrelevant arguments). Also limited, would be the concept of success. In a standard (ie undisputed) case, it would not be appropriate to regard either party as having succeeded in the outcome. Joint applications would be no different. In a disputed case, different considerations might apply.

Online: Offline The pilot crazy FPR update no 3 of 2022 is partly dedicated to the reforms. New PD 36ZC establishes the online system for issue and progression. The 'must use' edict for legal representatives will be disapplied where there is some 'unplanned down-time' (for the perplexed, this could include a system failure). Amended PD36N covering the pilot online financial remedy scheme withdraws the maintenance pending suit exception to the scheme and introduces an application for a legal services order in its place. PD 41B dealing with the online financial remedy divorce consent order pilot is also amended to extend to other matrimonial and to civil partnership proceedings. Maintenance pending suit and variation orders will now come within the pilot: mandatory use of the pilot will be out for orders for legal services payment and for variation in respect of a financial remedy order that was not made as a result of an application made via the online system. All these changes are already in force.

A VERY PECULIAR TYPE OF ARB

It's goodbye to the last lot of those temporary coronavirus protections for business tenants in England and Wales that we visited in 'Civil way', 171 *NLJ* 7940, p17. They have lapsed. Primary legislation has taken over but not for ever. Meet the Commercial Rent (Coronavirus) Act 2022 which came into force on 24 March 2022. If rent arrears are outside its ambit, then the landlord is at liberty to sue, forfeit and seize away as though the pandemic had never occurred. But if the arrears (and service charges, insurance premiums and interest on the lot are included) are within the new legislation and the parties cannot reach terms, either can have their dispute referred to a special arbitration process. To be within, the whole or part of the business or premises must have been required to close or be subject to regulation on running or user at some time from 21 March 2020 to 18 July 2021 in England and 7 August 2021 in Wales, or earlier expiry of closure or regulation.

The landlord will be statutorily paralysed from enforcement until the arbitration has been concluded. Where no reference to arbitration is made, the landlord will still be paralysed right up to 25 September 2022 (extendable by regulations). Any proceedings already issued by the landlord after 10 November 2021 or during paralysis will be stayed, on application. If the arbitrator decides that the business is not viable, even with the benefit of relief, the tenant loses. But the tenant may win if viability at assessment or with relief can be established. The aim then is to preserve viability, or restore and preserve it, so far as that is consistent with preserving the landlord's solvency. The arbitrator can then write off all or part of the arrears, allow up to two years to pay or reduce interest.

REMOTE RUSH

Provisions in the Coronavirus Act 2020 (see s 55 and sch 25, if you must) have been extended to 25 September 2022 by SI 2022/362 which was made at 11.04am and laid at 4.30pm on the day before it came into force. 'Were they closed, Jasper? It's okay, guv, they were just about to lock up.' This means that, pending primary legislation to give permanence to the situation, courts and tribunals can continue to direct that the public sees and hears video and audio proceedings and offences of recording or transmission in relation to broadcasting stay put. NLJ