

Near-miss Calderbank Offer in lease renewal ineffective on costs

October 2013

In a recent case the High Court determined that a tenant's Calderbank Offer on rent that was above market level when it was made but below market level at the date of determination could properly be disregarded on costs.

The case of *Centreland Management –v- HSBC Bank Pension Trust* (2013) concerned the renewal of an office lease under the Landlord and Tenant Act 1954. The parties had agreed all the terms of the new lease apart from the new rent which issue was referred under *PACT* to an arbitrator. The arbitrator determined a new rent of £69,000 per annum. It was then disclosed that, some nine months before the arbitrator's determination, the tenant had made a Calderbank Offer, without prejudice save as to costs, of £68,000 per annum which had been rejected by the landlord. The arbitrator treated the Offer as being an unsuccessful one and ordered that each party bear its own costs.

The tenant appealed the arbitrator's costs decision. It argued that, given the timing of the Offer, the arbitrator should have considered the rent he would have awarded as at the date of the Offer and compared that with the Offer figure. On the evidence before the arbitrator, the tenant said, the market rent at the date of the Offer was just under £68,000 per annum and so the Offer should have been treated as an effective one for the purposes of costs.

The court disagreed with that approach, however. It said that the tenant's Offer should be looked at as an offer as at the valuation date which was the date the arbitrator made his award, not some prior date. If, at the time it made the Offer, the tenant had wanted to hedge against later changes in market rent, then it could have provided that the Offer track or be linked to a particular market index. It had not done so, and the landlord had done better by not accepting the Offer actually made and taking the matter to arbitration. Thus the arbitrator was entitled to treat the Offer as not being effective when it came to the question of costs.





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