

Statement of Ivan Titmuss

1. I am the tenant of the Fox and Duck public house in Therfield, Hertfordshire, a tied house owned by Greene King. I have been at the Fox and Duck for 4 years. The pub has been successful in recent times and won "Best Pub – Tied house" in the Hertfordshire Food and Drink Awards 2016.
2. Before becoming landlord of the Fox and Duck I was the bar manager for the King William 4th at Heydon for over 7 years. This is one of the most successful high-end pub and restaurant establishments in the area, seating over 120 patrons at any one time. Before this I had been employed in various part time bar and waiting roles in the hospitality industry. Full time employment for me was as a team leader in local firms, including Johnson Matthey for nearly 5 years. Currently I now run one of the busiest pubs in the area employing 5 staff on a full time basis and up to 14 staff on a part time basis.
3. Before Christmas 2011, when The Cabinet at Reed was for sale, I was approached by two local residents – Barry and Jackie Lieberman – who were thinking of buying The Cabinet. They asked me whether I might be interested in being their tenant. We looked around the property and drew up a business plan. In fact, Mr and Mrs Lieberman decided not to pursue their interest in the Cabinet, instead investing in property abroad.
4. This had, however, sparked my interest. At the time, the pub was being offered for sale rather than for rent. I approached the owners, Albanwise, and asked if they would be interested in renting the property. The attraction of renting the property from the vendors' perspective would be that the business would be re-established and make the building more saleable at the end of the rental.
5. They asked me to make a proposal. I responded to the effect I would rent the property for 5 years. The owners agreed in principle. The sign outside the pub was changed so it read "For sale or to rent".

6. Detailed negotiations then commenced. I was on several occasions led to believe I was just two weeks from moving in. Yet on no occasion did I meet the owners face-to-face – instead communicating with them through the agent, Mullucks Wells. There was, however, an understanding that I would meet them at an interview in a hotel in London to conclude the negotiations and sign the lease.
7. A feature of my dealings with Albanwise was that they would typically request answers to their questions to me by 5pm the same day. At the same time they would take a week or more to answer mine. The Albanwise web site was always under construction, so you could not contact them directly.
8. At first, all seemed to go well. Heads of terms were agreed by the end of February 2012. However, various problems quickly became apparent and the negotiations dragged on until the end of June.
9. The owners sent me a draft lease. My solicitor advised that the proposed terms it included were the most onerous he had seen.
10. An example of such onerous terms arose from my offer of a step rent – that is to say, a rental based on a percentage of turnover. I sought advice from a company called MBA Systems, who specialised in advice to the licensed trade. They suggested I offered 10% of turnover, the understanding being that the turnover figures were examined each year.
11. Albanwise wanted to assess turnover on a monthly, rather than yearly, basis. The terms they proposed were that, if I did not produce accounts within 10 days of the end of any month, the tenancy would become null and void and I would be liable for the rent for the remainder of the 5-year term. I was able to negotiate the 10 days to 30 days, but still had strong reservations about the risks I would be taking.
12. Another difficulty arose in respect of the state of the building, both inside and out. I proposed that I, as the tenant, would paint the inside of the building and asked the

owners to paint the outside. They were initially unwilling but eventually agreed to this on the understanding that I would maintain the outside subsequently.

13. That is when a schedule of condition was introduced. I had already paid for a surveyor to assess the condition of the building. He took pictures of every area. I undertook to leave the pub in better condition than at the time of moving in. The main issue for me was that there were serious problems with the fabric of the building – holes in the walls and problems with the roof – and I risked being liable if, for example, the roof fell in, potentially for costs of up to £100k.
14. A third issue was the heating. The lease would have made me responsible for the boilers. Although this is normal, the freeholders could not demonstrate to my satisfaction that the boilers were working. So I paid £200 for oil and hired a plumber in order to prove that the boilers were functioning properly.
15. The freeholders raised the internal colour scheme, which they set out in detail. They even asked whether I intended to use Farrow and Ball paint. By the time a “mood board” was introduced I started to think the discussions were becoming ridiculous.
16. I suggested that questions about the colour scheme could be resolved face-to-face at the interview in London that had been proposed. But the owners would not give me a date.
17. By now I had developed serious reservations about what the freeholders were trying to do. I was already concerned about my solicitor’s advice in respect of several clauses that were unduly onerous, so that if anything went wrong I could be liable for the remaining rent until the end of the lease. I took further professional advice. That was, bluntly, that the owners were “out to get you”, noting in particular the fact that there was no escape clause in the lease for me.

18. On the basis of that advice I put it to the freeholders that the rental should be through a limited company lease. They replied that they had lost confidence in my willingness to finalise the deal and they were withdrawing their instructions from their solicitors.
19. Looking at these negotiations as a whole, I am clear that Albanwise were not behaving in the way parties who genuinely wanted to conclude a deal would behave. If I had agreed to the owners' ridiculous demands, it was likely that I would have failed one of the many onerous requirements in the lease and been liable for 5 years rent.
20. I was committed at all times to pursuing the negotiation in good faith, persisting and looking for solutions even when faced with the onerous terms I have described.
21. Pursuing the deal involved a considerable commitment of time and money on my part. I had worked out a detailed business plan, which is available for perusal. In developing it I visited other pubs in the area to work out what our unique selling point was going to be and what would have worked at The Cabinet. I instructed a solicitor and obtained advice from MBA Systems on rental. I instructed a surveyor, who visited twice. I had meetings with accountants. I also called in an oil man and a plumber. I arranged a visit from Greene King to assess the cellar. I even invited chefs to visit the kitchen to see if it was workable. I went to no less than three graphic designers for logos. In the course of all this, I incurred significant costs in the form of professional fees. All told, my dealings in relation to The Cabinet cost me about £9k. Usually this sort of exercise would cost half that. The reason for the additional expense was because the owners created one obstacle after another, and it is clear to me now that they did not want to finalise a deal. In my opinion, they were making it difficult to conclude a sensible rental agreement in order to try to show that The Cabinet was not marketable as a pub.
22. Subsequently, I made enquiries about tenancies at the Green Man in Thriplow and the Fox and Duck in Therfield. Both were much easier processes. Greene King asked me to move into the Fox and Duck within 3 weeks – which I did.

23. I believe that the facts stated in this witness statement are true.

(Signed) Ivan Titmuss



(Date)

29-3-2017

(Witnessed) Edwin Kilby

