



Pubs Code Adjudicator

Minutes: Pubs Code Adjudicator meeting with Campaign for Pubs and the British Pub Confederation

10 November 2022

Attendees:

Greg Mulholland (GM) - Campaign for Pubs (Campaign Director), British Pub Confederation (Chair)

Paul Crossman (PC) - Campaign for Pubs (Chair), British Pub Confederation

Ian Cass (IC) - Forum of Private Business (MD), Forum of British Pubs (MD), British Pub Confederation (Vice Chair)

Victoria McDonald (VM) - Campaign for Pubs

Fiona Dickie (FD) - PCA

Louise Smith (LS) - PCA

Glenis Simms (GS) - PCA

Meeting started at approximately 13.15pm

Introductions

Attendees introduced themselves and exchanged thanks for the meeting invite and acceptance.

1. Core code principles

1.1. The attendees discussed their understanding of the core Code principles. GM stated that promises and clear commitments made by Ministers on MRO had not been upheld, and that the Code was not delivering on the two core Code principles. GM believed that a genuine Market Rent Only option was the right to go free-of-tie on an independently assessed market rent, with no changes to any other terms, and that this did not exist.

1.2. FD explained that the two core Code principles are not free-standing legal rights provided for in the Code but are principles in statute which places a duty on the Secretary of State to ensure the Code is in line with them. The principles can be a tool in interpreting the Code duties. This was not accepted by the attendees from Campaign for Pubs and the British Pub Confederation, who believe that the Code should deliver these rights and that currently it delivers neither.

2. Unfair business practices to avoid the Code

- 2.1. The view of Campaign for Pubs and the British Pub Confederation was that unfair business practices existed e.g., dilapidations, the hostile use of section 25 notices [under the Landlord and Tenant Act 1954], and the increasing use of “quasi-managed franchises” by regulated pub companies.
- 2.2. FD repeated what she had said at the Select Committee hearing in relation to unfair business practices. She explained that where she is satisfied that one exists, she must report it to the Secretary of State. She explained that as defined, such a practice must be designed to avoid the operation of the Code and the PCA would require evidence of that intent. FD stated that the PCA does not have powers to require the production of evidence in relation to unfair business practices.

3. Market changes

- 3.1. GM expressed concerns about pub companies systematically using section 25 notices to deliberately get the tied tenant out. FD noted that all business planning conversations between the Business Development Manager (BDM) and the tied tenant must be recorded, and if the tenant does not believe it is an accurate record, then this can be challenged. GM stated that BDM notes are not always full and accurate records of discussions and that “threats” about what would happen if tenants pursued MRO are not being recorded.
- 3.2. FD said the PCA was aware of such reported concerns regarding section 25 notices and had been collecting data to observe any trend. Of 8500 tied pubs over the last three years there had been 68 section 25 notices issued opposing a new tenancy and 35 section 26 notices for a new tenancy opposed. Though not high in number the PCA has been continuing to monitor and had included data in the second statutory review submission to the Secretary of State. IC and PC did not agree with these figures.
- 3.3. FD explained that where there were Code issues, the first port of call for the tenant was their Code Compliance Officer (CCO) and that this statutory role needed further promotion. Attendees from Campaign for Pubs and the British Pub Confederation said that CCOs were employees and representatives of the pub companies. They did not consider that tenants and organisations could have confidence in the CCOs to ensure tenants’ rights in the Code.
- 3.4. IC noted and expressed concern about the increased use of franchise agreements. IC asked whether the PCA should be investigating this and reporting it to the Minister.
- 3.5. FD invited IC to refer to available data on estates in the pub company compliance reports which may prove useful. FD referred to the Secretary of State’s report of the first statutory review in which it is concluded that there was no substantive evidence at that point to show changes in the market as a result of the Code.

4. Annual tied tenant survey

- 4.1. FD noted she was looking for evidence of improvements within pub companies and 2023's survey would double to 1200 participants to provide more data. FD said previous survey data on BDMs was encouraging. GM, PC and IC expressed concern that in their view the PCA was looking for evidence of improvements rather than a neutral assessment of the reality for tenants of the regulated pub companies.
- 4.2. Attendees from Campaign for Pubs and the British Pub Confederation voiced that they had no confidence in survey data origins and of the potential for pub companies to exclude contested cases from the data provided to survey company, Ipsos. FD referred them to the survey's technical report outlining the best practice methodology adopted by Ipsos.

5. SCORFA

- 5.1. IC had concerns around pub companies' transparency with information regarding the value of SCORFA (special commercial or financial advantages) to the tied tenant. He stated that the regulated pub companies cannot put a value on the SCORFA and should be made to do so. He stated that it currently contains marketing and promotional items which are supplied at no cost to the pub companies, so this is not value which the pub company provides nor something that tenants could not access directly.
- 5.2. FD explained that the Pubs Code puts a duty on the pub company as part of Schedule 1 to set out the SCORFA benefits to new tenants. There was no further duty in the Code to quantify the value, which by contrast imposes transparency duties in relation to the rent proposed. It is for the tenant to assess the value of the SCORFA to them. IC suggested that there should be a detailed factual report on all benefits of the tie for them to be able to do this.

6. New tenants

- 6.1. VM stated lots of new tenants are not business orientated and choose to run a pub as a lifestyle choice, but they are not guided or supported, and are unaware of SCORFA. FD added that tenants should get the professional advice they need, such as schemes where new tenants have access to a panel of independent professionals.
- 6.2. FD noted that work was continuing on how Schedule 1 information should be presented to new tenants and tenant views are important.

7. Future engagement

- 7.1. FD invited attendees to write to her with any follow up questions regarding the Pubs Code and GM said he would provide testimonies from tenants. In response to concerns about the independence of certain tenant bodies and the need to engage with others, FD clarified that as PCA she had never met

the Tenants Representative Group (set up by the former PCA) and the forum had not met since 2019.

- 7.2. Attendees agreed to meet again in six months and to consider a virtual meeting if any important issues arose in the meantime.

The meeting ended after the allotted hour at 14.15pm.