



**Meeting between the Pubs Code Adjudicator, Forum of Private Business,
British Pub Confederation and Punch Tenant Network
3 October 2018**

Attendees

Paul Newby – (PN) Pubs Code Adjudicator
Fiona Dickie – (FD) Deputy Pubs Code Adjudicator
Tom Astley – (TA) Office of the PCA
Laura Campbell – (LC) Office of the PCA (notes)
Ian Cass – (IC) Forum of Private Business (FPB)
Dave Mountford – (DM) Forum of Private Business (FPB)
Chris Lindesay – (CL) Punch Tenant Network (PTN)
Greg Mulholland (GM) – British Pub Confederation (BPC)

Key Decisions and Actions

Prior to the meeting, IC confirmed that the FPB represent approximately 3,000 tied pub tenants (TPTs); it is not currently known how many of these have rights under the Pubs Code but the FPB are currently gathering this information.

1. Actions from previous meeting

Action: IC and LC to agree protocol for future meetings to include attendance and agenda items.

Update: Action completed.

Action: PCA to draft a proposed summary of the role of a Code Compliance Officer (CCO) to be forwarded to POBs for their consideration.

Update: Action completed. CCO profile now published on the PCA website.

Action: Olivia Tyler to forward copy of non-disclosure agreement (NDA) to the PCA.

Update: Action completed. FD confirmed that this matter had been raised with CCOs at the September CCO meeting. NDAs were only to be used by exception by pub-owning businesses (POBs). IC advised that the FPB were recording any further instances of NDAs being used by POBs and, where a pattern emerges, will refer this information to the PCA.

Action: PCA to consider dedicated cross-industry focus group in relation to dilapidations.

Update: PN advised that the PCA is still considering the best approach to forming a cross-industry working group and would welcome the meeting's views on structure and format. This is being taken forward by TA who will be in contact outside the meeting. The PCA is however focusing on gathering information in relation to dilapidations at the present time.

The PCA has also requested information from TPTs directly on their concerns relating to dilapidations.

DM welcomed the formation of a cross-industry working group but felt that the first point of clarification should be around the law.

2. Publishing arbitration awards

FD provided the meeting with an update. FD reiterated that the PCA remains committed to publishing awards in full and that the overarching principles for publication have been agreed with POBs. Work is now progressing to implement working practices and processes to ensure arbitration awards can be published, with commercial sensitivities and GDPR respected.

The meeting discussed the risks around TPTs not providing consent to publish individual awards. FD advised that some TPTs had not provided their consent to date. Attendees from the tenant representative bodies were surprised and suggested further investigation into this issue.

IC confirmed that the FPB is fully supportive of publishing arbitration awards and would seek to reassure TPTs where possible.

3. Operational and sediment wastage calculations

PN provided the meeting with an update, advising that the PCA had investigated and agreed in principle with POBs approaches to provide greater clarity and consistency in the way that beer duty is disclosed and wastage is accounted for in Schedule 2 profit and loss statements. The PCA also plans to carry out a public consultation on draft guidance based on the approaches agreed. The consultation document will cover issues relating to, for example, overfilling. The PCA expects to consult over the autumn with a view to the guidance formally coming into effect from the start of the new Code reporting year on 1 April 2019.

FD confirmed that any guidance is not expected to be retrospective. GM queried the PCA's role in HMRC requirements for operational and sediment wastage calculations, and advised that the BPC would write to the PCA formally on this matter.

Attendees from the tenant representative bodies reiterated their view that the current actions of POBs in relation to operational and sediment wastage calculations are illegal because TPTs are being charged for product that isn't sellable and is contrary to the Pubs Code because it makes rent reviews inaccurate.

4. The way forward, communication and action

IC updated the meeting on how the various tenant groups represented in this forum would work together to provide a unified voice for the PCA and wider Pubs Code engagement, including the statutory review. This also included working with CAMRA and SIBA. IC also noted international links with Greece and Africa.

The above was welcomed by the PCA and PN reiterated the importance of the PCA being able to communicate to all TPTs as this was currently a significant issue faced by the office due to their being no single, TPT representative group. IC confirmed that the FPB would be happy to communicate messages to TPTs where appropriate.

ACTION: PCA to communicate future messages to TPTs through the FPB.

Attendees from the tenant representative bodies raised concern over the physical and mental health of some TPTs where they are in lengthy disagreements with their POBs, and that such health issues were being ignored. CL noted his own support of some TPTs in such situations.

IC advised that attendees from the tenant representative bodies accepted that there would unlikely be no early review of the Pubs Code; however, they intended to provide their comments, concerns and proactive solutions through the BEIS review process at the appropriate time.

5. The intention of the Code and Market Rent Only options

GM advised the meeting that the BPC does not believe that the legislation in relation to the MRO option, nor the PCA's interpretation, reflects Parliament's intention when drafting the Code. The BPC believes that TPTs should have the legal right to an independently assessed rent if negotiations fail. This view was shared by attendees from the tenant representative bodies who noted that, in their opinion, there has been no MRO tenancy achieved as intended by Parliament since the Code's introduction.

FD and PN explained that the PCA's role is to interpret current legislation as it has been enacted, and that any requests for legislative changes need to be directed through the Pubs Code statutory review process being led by BEIS.

GM advised that the BPC would write further on this issue to the PCA.

6. Unfair business practices

DM presented the meeting with a reporting proforma developed by the FPB to collate any examples of alleged unfair business practice. It was agreed that DM and TA would discuss the reporting proforma requirements further outside the meeting.

ACTION: DM and TA to discuss the FPB's reporting proforma requirements for allegations of unfair business practice to the PCA.

7. Compliance data

TA informed the meeting that POB compliance reports were now published on the PCA's website, together with a statement outlining the PCA's initial analysis and next steps. The meeting discussed the high level of TPT churn identified in some of the compliance reports. IC noted that, in his experience, POBs do not offer TPTs the necessary training and support to help them reach higher trading levels and that POBs instead choose to remove TPTs from their pubs.

TA also reminded attendees that monthly MRO data from all POBs is now being published by the British Beer and Pub Association.

TA additionally highlighted the availability of the PCA's MRO questionnaire on its website and confirmed that the questionnaire is also being delivered to all eligible TPTs (those who have received a MRO proposal since the Code was implemented or will in future receive a MRO proposal) through POBs on behalf of the PCA. The PCA is actively encouraging TPTs to complete the questionnaire through its bulletin, through its website and through TPT representative forums such as these. The PCA requested tenant representatives also encourage TPTs to complete the questionnaire.