
From:
Sent: 14 June 2013 17:07
To: Pubs Consultation Responses
Subject: my story about Enterprise and PICAS
Attachments: COP complaint2 23.08.12.docx; COP complaint pt 3 - 23.08.12.docx; COP complaint -pt 1-23.08.12.docx

Dear Sirs,

I have been the Lessee at .

I have struggled enormously because Enterprise have not been honest, transparent or as co-operative as they are required by the code of practice.

They have not followed the rules of their code of practice. They have not applied the disregards correctly in valuation.

And they have obtained my signature during the 2007 rent review process through fraudulently misleading the facts.

I wish to submit the COP complaint 2 & 3 and COP complaint 1 which was excluded from PICAS due to the dates.
 If you would like to see all the supporting evidence I will gladly send you copies.

I subsequently lost my PICAS claim but do not know why. I have been given no explanation other than... 'from the evidence presented...Enterprise have not committed a breach'.

I do not accept this as accurate especially since Enterprise did not present any hard copy evidence save for 1 piece of paper.

In my experience PICAS is flawed and does not serve the purpose it was designed for.

1. I did not get an explanation for their decision.
2. I did not get the decision until after it was released to the press and 3 days after both EIP and MA received notice.
3. There are no minutes to the hearing.
4. In my case there are clear areas of fact that should not have lost the case. They are black and white. Yet somehow I still lost.
5. I do not believe that ' can be independent nor impartial when we know he has worked defending Punch taverns in other disputes.
We deserve to have more independence than this.
6. I was not introduced to any of the panel so am completely unaware of their experience. I am also completely unaware as to their Politics and impartiality. I do not know if the panel was balanced or not.
7. I truly do not believe that Justice has been served here and have no right of appeal to prove this is the case.
8. It would appear to me that the panel are not confident of their decisions given the blocks in place.
If they were confident then there would be no problem in standing up to scrutiny like any usual judicial process.
9. If by chance the panel have 'made a mistake' what recourse is available to me. Where is the justice if there is no accountability.
10. Enterprise have now tried to block my counter claim by stating in court that I cannot hear the same facts again as PICA have already heard and judged these points. Yet the wording in the PICA paperwork states that this cannot stop my right to pursue a legal challenge. And the PICA panel knew I was already pursuing a legal challenge but did not halt the PICA process and wait for the legal process to be completed.
11. Enterprise only presented 1 page of evidence. This evidence was not particularly important. I made over 67 points in my submissions. Every single point is supported with hard copy evidence (where required) including over 36 pieces of evidence. Yet the panel state that the evidence was not enough. What I believe they have done is ignore everything I've said hoping I'll just go away.
12. How is this possibly justice when I've given them so much evidence and EIP have given them nothing. Why do they just believe the word of ' . A man who was never involved with any aspect of the case until the very last minute. So he was only repeating what is written

in a file. And we all know how inaccurate files can be.

I truly hope that you will fully investigate my complaint.

Kind regards

This email was received from the INTERNET.

Communications via the GSI may be automatically logged, monitored and/or recorded for legal purposes.

23rd August 2012

BII, Wessex House
80 Park Street
Camberley
Surrey
GU15 3PT

Attn:

Dear :

Code of Practice COMPLAINT against
Part One.

and Enterprise Inns Plc –

I, _____ wish to make a formal complaint against Enterprise Inns Plc,
_____ both employed by Enterprise Inns PLC for non compliance of their Code of Practice. In particular the
non compliance with RICS guidelines and their subsequent flawed valuation. I refer to 1 (one) valuation
completed for the purpose of a rent review effective date _____.

1. My complaint is that they failed to apply the RICS guidelines; in particular but not solely, they failed to apply the disregards of the value of improvements within the methodology for establishing rental value of the Public House known as _____.
2. They deliberately and knowingly supplied incorrect information about the comparable rental properties.
3. They failed to follow their Code of Practice in particular but not solely pages 10 -12.
4. They knowingly failed to inform an independent Valuer to disregard the value of improvements as contained within the Consent to Alterations, and subsequently failed to communicate this fact to us. They specifically advised us that the Valuer was instructed to disregard the value of improvements which is wholly untrue.

The Code of Practice effective August/September 2007

5. On the inside cover Ted Tuppen writes..."Such a relationship requires trust, understanding, clarity and focus. This Code of Practice details the essential elements of the relationship between Enterprise Inns and our licensees and clearly sets out the basis of our future partnership and our ongoing joint commitments." (KV1)
6. **Breach of Code of Practice pg 10...**"We exclude the value of any agreed voluntary authorised improvements you have made, together with any special personal goodwill that you have built up and we take into account the extent to which drinks purchases are tied." (KV1a)

Disregards and Consent to Alterations

7. _____ and _____ did not disregard the value of improvements correctly. The works were completed and paid for by my company _____ and agreed within the Consent to Alterations (CTA) initially dated _____ and subsequently changed to 29th February 2008. (KV1b)
8. The rent review of September 2007 was agreed and signed off on 28 March 2008, 1 month after the completion of the CTA and as such the disregards should have been applied. (KV2)

9. Enterprise never stated that they were not applying the disregards to this valuation. It was not stated ever that there was any issue with applying the disregards of the value of improvements. In fact the direct opposite is true. At all times we were lead to believe that the disregards were always being applied to the valuation.
10. On 21st August 2002 and 30th August 2002 we received a letter from (the current freeholder) confirming receipt of our building plans and the need to have a legal licence to Alter. In addition, this letter confirmed the company will disregard the development works at cyclical review. (KV3)
11. On 1st February 2007 our lawyers () sent us the engrossed Consent for Alterations as received from their lawyers (). (KV4)
12. On 9th February 2007 our lawyers sent a request to for confirmation that all works carried out prior to the completion of the Licence had been carried out to their satisfaction. (KV5)
13. On 18th July 2007 our lawyers chased for the confirmation requested in February but also advised that subject to this confirmation being authorised, we () were ready to complete the Consent to Alterations. (KV6)
14. On 13th August 2007 our lawyers reiterated the request of to complete the document. (KV7)
15. From 31 July 2007 until 28th March 2008 we were engaged with of Enterprise Inns regarding the rent review effective date 10th September 2007. We received a letter dated 31.07.07 with the first rent bid of £48,000.00. (KV8)
16. **Breach of COP pg 11 paragraph 1..."** We aim to provide you with written notice of a rent review at least six months (but not more than 12 months) before it falls due. (KV8a)
17. On 27th August 2007 we sent an email to chasing up the Consent to Alterations as it had still not been returned from Enterprise Inns to their Solicitors who in turn would send it to our Solicitors (). (KV9)
18. On 30.08.07 I sent an email with an attached P&L outlining her first rent bid of £48,000.00, not including any disregards. (KV10)
19. In the 5th paragraph of this email refers to a meeting ...' when we can hopefully reach a mutually acceptable level of rent going forward...'
20. At this meeting we discussed the inclusion of the disregards. It was agreed the disregards would be included and that would update her valuation and resend the calculations. She stated that there was no question about the consent to alterations as it was now just a formality and that Enterprise Inns clearly understood and accepted we had paid for all the works. In addition she confirmed that there were no issues with the disregards of the value of improvements being applied to the valuation.
21. At about this time we were advised that her valuation work was signed off by Mr .

22. In her email dated 17.09.07, clearly demonstrated that the disregards were now being applied and further supported this statement by including a £9,000.00 disregard figure in her calculations of rental value. Thus clearly indicating the disregards now being applied. (KV11). See also email dated 17.10.07 (KV11A) as further evidence of disregards clearly now being included.
23. At the time we were of the opinion that the rental value should be substantially lower than the £39.5k she eventually offered.
24. On 18th September 2007 we sent an email to requesting a return of the signed Consent to Alterations. Also included is letter dated 27.11.07 and 07.12.07. (KV12)
25. offered, agreed and instructed an independent Valuer to complete a valuation on the basis of applying the disregards rule. She advised that if the valuation resulted in a value below her offer of nil increase, she would agree to settle on this lower value however if the Valuer assessed a high valuation then hers she would still offer a nil increase.
26. In a meeting at 12pm on Tuesday 29th January 2008, presented the valuation. In the discussion that followed she expressly stated that the Valuer had made an allowance for the disregards. (KV13)
27. She reiterated that the Valuer did disregard the value of improvements in relation to the works completed by and as per the Consent to Alterations agreement.
28. I was briefly shown a copy of the valuation which stated that the FMR = c£40,500 based on a dry & wet operation. It stated that the current operators are working the site to a very high standard and one would not expect to exceed the takings. Therefore describing us as 'above average operators'.
29. We subsequently signed the rent review agreement dated 28th March 2008 upon the understanding it would be back dated to the effective date of 10th September 2007. However as it was a nil increase there was no payment required.
30. From approximately November 2009 onwards I, became increasingly sceptical about the validity of this valuation following a meeting with a Valuer from VOA. I realised that it was quite probable that the disregards had not been applied. This is because the VOA advised that the Valuer would most likely have been instructed to complete an open market rent assessment.
31. I now believe that the instructions given by to the Valuer were to complete an open market valuation, thus by valuation definition the disregards could not have been applied as they only apply to and not to the open market.
32. In a witness statement written by of Enterprise Inns (KV14) dated 04.05.12, pg 3, point 18 he confirms that the Licence to Alter had been disregarded with regard to this valuation. Thus confirming that the rent review valuation was incorrect,
33. At no time throughout this rent review process was it stated that they had not applied the disregards. In fact the complete opposite was implied and stated throughout the entire process

Breach COP pg 11 paragraph 2, clear evidence of EIP back tracking on the initial statements made by [redacted] regarding the inclusion and process of disregarding the value of improvements.

Breach of RICS guideline 6.2 - pg 9, 6.20 – pg 11 and in accordance with the 8th schedule of The Lease, cl3 (viii)-(ii), pg 20

Breach of RICS guidelines 6.17 – pg 10, 6.19, pg 11

Disregards costed at the date of Rent review and Quantum of Investment

34. On 17th September 2007 [redacted] describes in an email how they deal with disregards. Under RICS guidelines pg 11, paragraph 6.25, the valuation must use the cost of improvements at the date of rent review not at the date the works were completed. (KV11 & KV11A). They did not do this; they used the 2002 cost of improvements.
35. This email clearly shows that we were led to believe that the process fully included a disregard of the value of improvements. There is no way we could have known that they were not instructing the valuer to not include these disregards.
36. RICS guidelines Pg 6, CL5, Step 4.c dictates that the valuation must assume vacant possession, thus allowance is made for typical expected ingoing expenses. This list is written expressively on pg 6 of the guidelines. There must be an allowance for Quantum of Investment.
37. At no time throughout this valuation can we see any evidence that [redacted] or [redacted] applied either the disregards costed at the date of rent review or the quantum of investment to our valuation.
38. We believe and state that this was knowingly left off the valuation as a deliberate fraudulent attempt to mislead us.
- Breach of RICS guidelines 6.25 & step 5, cl 4.c, pg 11**

FMT, REO and disregards

39. In a meeting of 7th June 2010, [redacted] admitted that [redacted] was virtually a 100% wet – led operation prior to the beginning of our lease in September 2002.
40. I only became aware of this fact days before this meeting in June 2010.
41. In this same meeting [redacted] reiterated that they can't rentalise on [redacted] (goodwill) and can't rentalise on the site development as paid by [redacted]. But they have clearly done this as we latterly learned. (KV15)
42. During the rent review process I [redacted] constantly used either our turnover figures or inflated wet sales unrealistic of achievement by a Wet-led pub. (KV11 & KV11A). We were subsequently described by the independent valuation as completed by AG&G and the VOA in another separate valuation of December 2009 as above average operators. (KV16) We now understand that this is entirely against the RICS methodology to use our turnover figures or inflated figures as it does not represent FMT of an average operator.

Breach of RICS Guidelines cl 2.5 - pg 2, cl 2.9 & 2.10 - pg 3, 5.12 & 5.13 – pg 7 & 5.17 – pg 8
Breach RICS guidelines cl 5 – pg 6

Comparable Rentals Misrepresentation

43. At a meeting on June 7th 2010, with a witness present, [redacted] repeated comparable rental details as relayed to us during the rent review process of September 2007. (KV15)
44. She incorrectly stated that [redacted] rent was £48k RPI linked less £3k cap-ex as EIP only paid to do the dumb waiter. Thus the rent equivalent = £45k. In fact the truth is that the base rent at July 2007 = £42k + £6k cap-ex. Enterprise paid for a lot more than just the Dumb waiter, they paid for Kitchen work which included rewiring of electrical works, plumbing, extraction, lining and relaying of new floor. This pub is bigger internally, has substantially more external space, is within a much busier shopping location with 2 bus stops and 2 mini supermarkets, council offices and other shops in their immediate vicinity. The pedestrian flow is considered higher in this location.
45. [redacted] statement clearly over inflated the true rent value of [redacted]
46. [redacted] stated that [redacted] rent is £34k. It's a boozer with no food sales and [redacted] incorrectly stated it..."does not have a kitchen..." In truth [redacted] has a bigger kitchen than what we inherited at [redacted], when it too was 100% wet-led Boozer. This pub is on the same street, of a similar size and within 3 minutes walking distance of [redacted]
47. [redacted] incorrectly stated that [redacted] rent as at September 2007 was £43k and RPI linked, latterly we found out it was £37k + £6k cap-ex and not RPI linked. She also stated at this meeting that the best comparable evidence is a new let and that [redacted] had just been let at £43k and RPI linked. We subsequently discovered that the new let was actually £33k, not RPI linked with substantial renovations not cap-ex thus not included in the rent deal.
48. [redacted] stated the average turnover for a pub is £400k as either a food – led or wet-led pub. They (EIP) would discount £60k off my turnover to reflect the food-led element thus the acceptable FMT = £400k as a wet-led operation. However this does not correlate with [redacted] which is also Wet-led.
49. She neglected to mention the rent on [redacted] or [redacted] We latterly discovered they were £26,000 and £28,000 respectively.
50. I believe that because [redacted] was the BDM of all these pubs at the time there is no way that she could or should get these basic and vitally important facts wrong about these comparable rentals. It is proof that she continued to mislead us about the rent review of 2007.
Breach RICS guidelines cl 2.5 – pg 2, 2.9 & 2.10 – pg 3

Divisible Balance

51. Because information about comparable properties was misleading it followed that a discussion did not develop into a negotiation on the subject of divisible balance.
52. We would expect a divisible balance of 35% to reflect the RPI link enforced on [redacted] but not on other comparable rentals.
Breach RICS Guidelines 6.8 & 6.15(c) – pg 10

In conclusion: It is My honest opinion that [redacted] and Enterprise Inns deliberately mislead and misinformed us ([redacted]) of vital information which had a major detrimental impact on the final agreed rent review figure. We believe that they did not follow the RICS guidelines correctly and are in breach of the Code of Practice principally but not exclusive to pg 10 - 12 and as such the rent

agreement effective from 10th September 2007 is void. We conclude that this rental should be reduced to £18,000 rent pa effective from September 2007, the rent difference be refunded immediately including interest and the members concerned be struck off this professional body for gross misconduct unfitting of the BII as their actions bring the institute into disrepute.

We further request compensation for costs incurred, loss of trade, the direct subsequent lost capitalisation and we are seeking substantial damages.

Statement of Truth

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