



Pubs Code Adjudicator

Office of the Pubs Code Adjudicator
Lower Ground
Victoria Square House
Victoria Square
Birmingham
B2 4AJ
Email: office@pca.gsi.gov.uk

13 October 2017

Dear xxx

Thank you for your email, received on 18 September 2017, in which you requested information from the office of the Pubs Code Adjudicator (PCA) under the Freedom of Information Act 2000.

The Freedom of Information Act 2000 entitles you to:

- know whether the information you have requested is held by the PCA; and
- be provided with that information, subject to any exemptions in the Act which may apply.

You have requested the following information:

- *of the referrals made to the PCA and had an arbitrator appointed, how many of the referrals then challenged the arbitrator's appointment or conduct under Chartered Institute of Arbitrators rules; and*
- *were any of the challenges made then upheld (i.e. the arbitrator's conduct or appointment was found to have breached Chartered Institute of Arbitrators rules).*

I can confirm that the office of the PCA does hold information relevant to your request. Further details are set out below.

- The office of the PCA is aware of 12 referrals made to the Chartered Institute of Arbitrators (the CI Arb) challenging the appointment of an arbitrator up to and including 18 September 2017, the date your request was received.
- Of these, 4 challenges have been upheld up to and including 18 September 2017, the date your request was received.

For completeness, it might be helpful to set out the PCA's view about challenges that are made to the CI Arb. One of the express statutory duties placed on the PCA is to arbitrate Pubs Code disputes referred to the PCA. There is a duty placed on the PCA, set out in section 48(5) of the Small Business and Enterprise Act 2015 (the



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Act) in respect of non-Market Rent Only disputes and in regulation 58(2) of the Pubs Code etc. Regulations 2016 (the Code) for Market Rent Only disputes, which requires the PCA to arbitrate the dispute or appoint another person to arbitrate the dispute.

The PCA does not consider that article 13 of the CI Arb Rules applies to arbitrations conducted under the Act or the Code, and does not consider that the CI Arb has jurisdiction to appoint or remove a person from the role of arbitrator in relation to such an arbitration.

Regulation 58(3) of the Code requires that an arbitration under the Code “must be conducted in accordance with” the CI Arb Rules. In the PCA’s view, the use of the verb “conducted” indicates that the legislator intended that the procedure for the arbitration would be governed by the CI Arb Rules, but not matters preparatory or ancillary to the arbitration. In particular, the PCA considers that the “conduct” of an arbitration does not include the appointment and removal of the person who is to conduct it. As such, an interpretation of regulation 58(3) of the Code is consistent with the general scheme of the Act and the Code, which is to the effect that the function of deciding who should arbitrate on a particular dispute is primarily a matter for the PCA and that, in general, he should be responsible for exercising all of the functions conferred upon the PCA by Part 4 of the Act.

Accordingly, the PCA does not consider that regulation 58(3) of the Code applies Section II of the CI Arb Rules in the context of arbitrations under the Code. If a party wishes to have an arbitrator removed, that party must follow the procedure provided for by section 24 of the Arbitration Act 1996 and make an appropriate application to the court.

The PCA does not seek to prevent appropriate challenges being made in respect of the carrying out of his statutory functions; however, he does seek to ensure that the appropriate challenge route is used and that the independence of the PCA in undertaking his statutory functions is maintained in accordance with the express will of Parliament.

If you do not believe that the office of the PCA has provided an appropriate response to your request, as set out above, you are entitled to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be made in writing, quoting the above reference, to office@pca.gsi.gov.uk or:

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If you are dissatisfied with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.