



Pubs Code Adjudicator

Office of the Pubs Code Adjudicator
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21 September 2017

Dear XXX

Thank you once again for your email, received on 27 July 2017, requesting an internal review of our response to your request of 25 May 2017 made under the Freedom of Information Act 2000 (the Act).

I explained in my letter of 23 August 2017 that a possible anomaly had been identified with how the data had been calculated when responding to your original request and that the underlying figures were being validated to ensure their accuracy. An internal validation exercise has now concluded. As a result, a small number of inaccuracies have been identified in the numbers contained in our original response of 23 June 2017. These inaccuracies have arisen as a result of human error in the interpretation of the data held. The PCA takes seriously the need to ensure the accuracy of its data and has taken the time to ensure that the approach to future data collection is undertaken in a consistent manner to minimise this risk in the future. This includes the introduction of a new case management system this autumn.

I have now completed an internal review of your request for information in the light of the validation exercise, taking into account the arguments you raise in your correspondence of 27 July 2017. Taking into consideration all information available to me, including recently published data by both the PCA and by third parties, I am satisfied that certain exemptions under the Act no longer apply to some of the information requested. Annex A of this letter provides information relevant to your request, including updated information where necessary as a result of the validation exercise and internal review.

There are, however, five requests contained in your original letter for which I consider the information to be exempt under the Act. These are set out below.

In relation to the following requests:

- The number of cases referred for arbitration which on conclusion have been awarded in favour of the pub-owning business.
- The number of cases referred for arbitration which on conclusion have been awarded in favour of the tenant of the pub-owning business.

In my view, information within the scope of these requests is exempt under section 40(2) of the Act because it constitutes personal data, the disclosure of which would contravene the



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first data protection principle, namely the fair and lawful processing of personal data where none of the conditions in schedule 2 of the Data Protection Act 1998 apply. As set out in our response of 23 June 2017, this is because information relates to a relatively small data set and, when considering information already published by third parties, I am of the opinion that individuals and/or pub-owning businesses in arbitration proceedings may be identified as a result.

The Information Commissioner's Office recently confirmed its position on protecting the privacy of individuals, including in relation to small data sets in its Decision Notice FS50645552. This decision confirms the Information Commissioner is in favour of protecting the privacy of the individual and that a small sample size could lead to identification in breach of the Data Protection Act 1998. The decision further shows that the Information Commissioner will, in determining whether disclosure is fair, consider the reasonable expectations of individuals in light of the circumstances in which they provided information. In this case, arbitration proceedings are recognised by law as being confidential, and parties have an expectation that this confidentiality is upheld and respected in proceedings in which they took part. The consequences of disclosing information that risks identifying individuals could, therefore, have the effect of undermining the arbitration process which the PCA was set up to operate within. I therefore continue to consider that the information is exempt pursuant to section 40 of the Act and is not disclosable.

In relation to the following requests:

- The number of referrals for arbitration, received from pub tenants by the Adjudicator, broken down by the pub-owning business of the pub tenants.
- The number of referrals made in relation to Market Rent Only disputes which were referred by a tied pub tenant, broken down by the pub-owning business of the tied tenant.

This information is exempt under section 43 of the Act because release of the information would, or would be likely to prejudice the commercial interests of the pub-owning businesses regulated by the PCA. I have again considered whether public interest lies in disclosing the information or whether the public interest favours maintaining the exemption and withholding it, and I remain satisfied that the reasons set out in previous correspondence continue to apply.

You may wish to be aware, however, that the PCA published data on [26 July 2017](#) which shows that, in the first 12 months since the Pubs Code became law, 156 cases were accepted for arbitration; of these, 131 related to Market Rent Only. The published information additionally shows the proportion of disputes relating to different pub-owning businesses. This information can be found at www.gov.uk/pca. This is the latest position on the number of referrals, covering a longer period of time than that contained in your original request.

In addition, the PCA has published the findings of a [verification exercise](#) relating to tenants' experiences of accessing the Market Rent Only option. This report includes data provided by pub-owning businesses in relation Market Rent Only, which may be of interest to you.



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In relation to the following request:

- The number of referrals accepted for arbitration, where the cases were concluded in: July 2016, August 2016, September 2016, October 2016, November 2016, December 2016, January 2017, February 2017, March 2017, April 017, May 2017, June 2017.

In my view, information within the scope of this request is also exempt under section 40(2) of the Act for the same reasons provided above. This is in relation to data which is broken down by month, given the small data sets involved. However, I can confirm that a total of 37 referrals accepted for arbitration were concluded in the period between the Pubs Code coming into force on 21 July 2016 up to and including the date of your request on 25 May 2017.

In addition, it may be helpful to note that the PCA has published further information on its website since our original response which may be of interest to you. This includes the [PCA's Annual Report and Accounts \(2 May 2016 to 31 March 2017\)](#) and data relating to the [first year of the Pubs Code](#). The PCA has additionally commissioned a [verification exercise](#) looking into the accessibility of the Market Rent Only option for tied pub tenants, and the report is also available on the PCA website at www.gov.uk/pca. Furthermore, the PCA intends to publish information relating to referrals and arbitrations on a quarterly basis.

If you are not content with the outcome of this 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.



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Annex A: Information released under the Freedom of Information Act 2000

1. **Requested information:** *The number of queries received through the Adjudicator's online enquiry form.*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA received 138 online enquiries.

2. **Requested information:** *The number of queries received through the Adjudicator's telephone enquiry line (0800 528 8080).*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA received 372 telephone enquiries.

In addition to online and telephone enquiries, the office of the PCA also received enquiries by email and by letter.

3. **Requested information:** *The number of referrals for arbitration, in relation to dilapidations, received from pub tenants by the Adjudicator.*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA received 36 referrals from tied pub tenants which reference dilapidations. It should be noted that there is no direct Pubs Code-related provision under the Pubs Code for dilapidations. The PCA has therefore interpreted your request to mean any reference to dilapidations from the point of a referral being received by the PCA to the referral being accepted for arbitration. Referrals may also contain multiple issues, not all of which may be accepted by the PCA for arbitration.

4. **Requested information:** *The number of referrals for arbitration, in relation to business support, received from pub tenants by the Adjudicator.*

The PCA has interpreted your request to mean the numbers of referrals made under regulation 41 of the Pubs Code. Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA received 5 referrals from tied pub tenants which relate to regulation 41 matters. As above, it should be noted that referrals can contain multiple issues, not all of which may be accepted by the PCA for arbitration.

5. **Requested information:** *The number of referrals made in relation to Market Rent Only disputes which were referred by the pub-owning business.*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA received 12 referrals from pub-owning businesses in relation to Market Rent Only disputes.

6. **Requested information:** *The number of referrals made in relation to Market Rent Only disputes which were referred by a tied pub tenant.*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA received 131 referrals from tied pub tenants in relation to Market Rent Only disputes.



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7. **Requested information:** *The number of cases referred for arbitration which have been concluded due to the parties reaching a decision between themselves.*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, 34 referrals accepted for arbitration by the PCA were concluded by the parties reaching a decision between themselves.

8. **Requested information:** *The number of referrals which were rejected for arbitration due to lack of clarity or the provision of insufficient information.*

The PCA cannot accept referrals which do not fall within his jurisdiction, as set out in the Pubs Code framework (which includes the provisions of Part 4 of the Small Business, Enterprise and Employment Act 2015, the Pubs Code etc. Regulations 2016 and the Pubs Code (Costs, Fees and Penalties) Regulations 2016). It is the responsibility of the referrer to make a valid referral which falls within the PCA's jurisdiction, including the appropriate fee. Where a referral is received which requires further information or clarification in order to determine jurisdiction, the PCA requests this from the referrer.

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, 17 referrals were received which did not fall within the PCA's jurisdiction and could not therefore be accepted; of these, 6 were due to the referral fee not being paid.

9. **Requested information:** *The number of referrals which were rejected for arbitration due to being found vexatious.*

Vexatiousness is not a ground for rejecting a referral for arbitration. As detailed above, the PCA cannot accept referrals which do not fall within his jurisdiction, as set out in the Pubs Code framework. The PCA considers all referrals to ascertain if it has jurisdiction to consider the case.

10. **Requested information:** *The number of referrals accepted for arbitration, where the cases were opened in:*

- a. July 2016
- b. August 2016
- c. September 2016
- d. October 2016
- e. November 2016
- f. December 2016
- g. January 2017
- h. February 2017
- i. March 2017
- j. April 2017
- k. May 2017
- l. June 2017

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA has accepted 142 referrals for arbitration. Valid referrals could not have been made before August 2016 given the timescales in the Pubs Code framework that could only apply following the Pubs Code coming into force on 21 July 2016. No referrals were accepted in August 2016; 12 referrals were accepted in September 2016;



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35 referrals were accepted in October 2016; 31 referrals were accepted in November 2016; 11 referrals were accepted in December 2016; 13 referrals were accepted in January 2017; 7 referrals were accepted in February 2017; 14 referrals were accepted in March 2017; 10 referrals were accepted in April 2017, and 9 referrals were accepted in May 2017 (up to 25 May).

11. **Requested information:** *The total number of open cases for arbitration that have not been concluded as of 25th June 2017.*

Up to and including 25 May 2017, 113 accepted cases for arbitration had not yet been concluded. I have provided information up to and including 25 May 2017, the date your request was received.

12. **Requested information:** *Of the current cases for arbitration that have not been concluded, the number of each that have been open for:*
- a. 1 month
 - b. 2 months
 - c. 3 months
 - d. 4 months
 - e. 5 months
 - f. 6 months
 - g. 7 months
 - h. 8 months
 - i. 9 months
 - j. 10 months
 - k. 11 months
 - l. 12 months

It may be helpful to explain the timings and purpose of arbitration. The object of arbitration is to obtain settlement without undue delay or expense; however, there is no set time that a case will take. The time taken to complete an arbitration is dependent on one or more of a number of different reasons. These may include how many people are involved, how quickly the parties agree to procedures and provide relevant information and evidence, how complicated the case is, and the nature and extent of evidence as well as whether other applications are made within the proceedings (for example for preliminary hearings/references to the High Court). Cases can often be stayed for a period of time or deadlines extended at the request of the parties involved in order to address particular matters. This will impact on the length of time a case remains open.

You may wish to refer to the PCA's factsheets and flowcharts which provide further information about the Pubs Code, including the arbitration process. These are available at www.gov.uk/pca

The following data includes open cases that are currently, or have been, stayed at the request of the parties.

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA had 13 cases which were open for 1-2 months; 13 cases which were open for 2-3 months; 4 cases which were open for 3-4 months; 14 cases which were open for 4-5 months; 9 cases which were open for 5-6 months; 21 cases which were open for 6-7 months; 20 cases which were open for 7-8 months, and 5 cases which were open for 8-9 months. No cases were open for more than nine months.

Pubs Code enquiries to 0800 528 8080 or enquiries@pca.gsi.gov.uk
Website: www.gov.uk/pca



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As noted above, valid referrals could not have been made before August 2016 given the timescales in the Pubs Code framework that could only apply following the Pubs Code coming into force on 21 July 2016.

In addition to your request, it may be helpful to note that the office of the PCA had a further 14 cases which were open for less than one month up to 25 May 2017.