



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

2 March 2018

Dear XXX

Thank you for your email, received on 6 February 2018, 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 Freedom of Information Act 2000 which may apply.

You have requested the following information:

- ‘1. What is the average time taken to complete arbitration for cases accepted?’*
- 2. What is the number of cases accepted in 2016 which have still not been resolved?’*
- 3. Please provide an exact breakdown of arbitration cases accepted by the PCA by pub-owning business.*
- 4. Please provide an exact breakdown of MRO arbitration cases accepted by the PCA by pub-owning business.*
- 5. If data is held, please indicate the number of cases accepted from Wales and from England proportionally.*
- 6. Have any MRO contracts been accepted by the PCA which include an upfront "dilapidations" payment? I am seeking to request if the adjudicator has approved any MRO contracts which contain upfront payment on behalf of the tenant to cover:*
 - a) repairs*
 - b) to act as a deposit.’*

I have responded to each of your requests below.

- 1. What is the average time taken to complete arbitration for cases accepted?’*

The office of the PCA does not hold information about the existing average time taken to complete arbitrations as this will vary from time to time depending on the nature of each case. The object of arbitration is to obtain settlement without undue



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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 arbitration process. The PCA also publishes arbitration data on a quarterly basis, in accordance with its arbitration information policy. The latest data was published on 22 January 2018, covering the period up to and including 31 December 2017, and includes information about the current PCA arbitration caseload. All information is available on the PCA website at www.gov.uk/pca.

2. What is the number of cases accepted in 2016 which have still not been resolved?

Up to and including 6 February 2018, the date your request was received, 21 referrals accepted by the PCA in 2016 remain open. As detailed above, the time taken to complete an arbitration is dependent on one or more of a number of different reasons which impact on the length of time a case remains open.

3. Please provide an exact breakdown of arbitration cases accepted by the PCA by pub-owning business.

4. Please provide an exact breakdown of MRO arbitration cases accepted by the PCA by pub-owning business.

The PCA is mindful of the need to be as transparent as possible and includes the proportion of arbitrations (including Market Rent Only (MRO) arbitrations) by pub-owning business in its published data. The latest data was published on 22 January 2018, covering the period up to and including 31 December 2017. Any further breakdown of this data is exempt under section 40(2) of the Act because it constitutes personal data, the disclosure of which would contravene the first data protection principle, namely the fair and lawful processing of personal data where none of the conditions in Schedule 2 to the Data Protection Act 1998 apply. This is because some of the information relates to a relatively small data set and, when considering information already published by third parties, for example the media, the PCA is of the opinion that individuals in arbitration proceedings may be identified as a result.

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.



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5. *If data is held, please indicate the number of cases accepted from Wales and from England proportionally.*

As detailed above, the latest arbitration data was published on 22 January 2018, covering the period up to and including 31 December 2017. Within this period, 3% of cases accepted by the PCA related to pubs in Wales.

6. *Have any MRO contracts been accepted by the PCA which include an upfront "dilapidations" payment? I am seeking to request if the adjudicator has approved any MRO contracts which contain upfront payment on behalf of the tenant to cover:*

a) repairs

b) to act as a deposit

Information within the scope of your request is not held as the PCA and Deputy PCA, when acting as arbitrators, do not approve MRO contracts. The PCA and the Deputy PCA have a duty to arbitrate Pubs Code disputes in accordance with the Pubs Code framework, relevant arbitration rules (Chartered Institute of Arbitrators Rules) and the Arbitration Act 1996, and have powers to award redress if a breach is found.

Depending on the particular case, they may be required to consider whether a particular term is uncommon or otherwise unreasonable. This in turn depends on whether the term is in dispute between the parties and the arguments put before the arbitrator in that case. Each case will turn on its own facts.

It may also be helpful to note that by law, the outcome of any arbitration is confidential to the parties to the dispute.

If you consider that the office of the PCA has not provided an appropriate response to your request, 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 consider that the office of the PCA has not provided an appropriate response to your request, 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.