



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

29 March 2018

Dear XXX

Thank you for your email, received on 19 February 2018, in which you requested information from the office of the Pubs Code Adjudicator (PCA) under the Freedom of Information Act 2000. On 21 February 2018, we requested clarification on aspects of your request and you provided these to the office of the PCA on 5 March 2018.

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:

'Following on from the FOI Oct 2017 (attached) we have some further question we would require answers to under FOI.

1. Since the PCA's response to the FOI request in September 2017 regarding the number of challenges to Mr Newby sitting as arbitrator, how many challenges, either previously undetermined or new, have succeeded?

2. How many challenges out of all those made remain undetermined?

3. How many challenges out of all those made have failed?

4. How many challenges out of all those made were made by the pub owning businesses, and how many challenges were made by tied pub tenants?

5. How many tied pubs were the subject of the arbitration proceedings in which challenges have been made?

6. Of the challenge panellists that upheld the challenges, how many:

a. Were chartered surveyors;

b. Were solicitors;

c. Were barristers, and of those barristers how many were Queen's Counsel?



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And in respect of each profession of challenge panellist, how many succeeded and how many failed?

7. In cases where challenges have succeeded or remain undetermined, what is the duration of those arbitration proceedings from the time of the notice of referral to the time of either an award being made or, where the arbitrations are ongoing, the present time?

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

In relation to requests 1-3, we understand your request to be how many challenges to the Chartered Institute of Arbitrators (the CI Arb) have either been upheld, rejected or not yet determined since 18 September 2017, the date of your previous request under the Act.

The office of the PCA is aware of two challenges being upheld and one further challenge yet to be determined by the CI Arb between 18 September 2017 and 19 February 2018, the date your request was received.

In relation to requests 4, 6 and 7, information within the scope of these requests is exempt under section 41 of the Act. This is because information pertaining to these requests was received by the PCA from third parties and disclosure of this information would constitute an actionable breach of confidence. Arbitration proceedings, including any action taken by parties within those proceedings, are recognised by law as being confidential unless waived by the parties. 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.

Furthermore, the disclosure of information relating to small data sets such as those contained in your requests can reveal information which could, together with other published information (including but not restricted to information already published by third parties), lead to individual cases being identified.

In relation to request 7, 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. Cases can often be stayed for a period of time 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. The PCA publishes data relating to arbitrations at www.gov.uk/pca.

It is a matter for individual parties to decide how to take forward their arbitration case. Any referral to the CI Arb is likely to have the effect of extending the time taken to arbitrate a case. The PCA does not, however, consider that article 13 of the CI Arb Rules applies to arbitrations conducted under the Pubs Code framework, 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. The PCA's position in relation to CI Arb Rules was previously outlined in our response to you dated 13 October 2017.



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In relation to request 5, of the three challenges referred to in response to requests 1-3, five tied pubs either were or continue to be part of these disputes.

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 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.