

**Pubs Code Adjudicator and Code Compliance Officer meeting
26 March 2018, 13.00 – 15.30**

Attendees:

Paul Newby	PCA	Rob May	Ei Group
Fiona Dickie	DPCA	Sara Kitchen	Ei Group
Katharine Diamond	Office of the PCA	Chris Moore	Star Pubs & Bars
Stephen Childerstone	Office of the PCA	Lynne Winter	Star Pubs & Bars
Alex Lawther	Office of the PCA (notes)	Julie Jolly	Greene King
Andy Tighe	BBPA	Mark Brown	Admiral Taverns
		James Richards	Punch Taverns
		James Edwards	Marston's
		Christine Stevens	Marston's

Apologies:

Stuart Gallyot Punch Taverns

The Chair welcomed Fiona Dickie (Deputy Pubs Code Adjudicator) and Katharine Diamond (Head of Legal, Office of the PCA) to the meeting.

1. Actions from previous meeting

BBPA to send aggregated figures on rent reviews and lease renewal information to PCA.

Action: Andy Tighe to collate and send information to PCA.

2. Code Compliance Reports

Subsumed under agenda item 3.

3. Progress on matters raised for discussion

3.1. PCA advice note on Market Rent Only (MRO)-compliant proposals

The DPCA asked pub-owning businesses (POBs) for feedback on how the PCA's MRO statutory advice was being embedded into their businesses. POBs said the publication was recent, and they needed time to reflect internally and consider next steps.

3.2. Tied rent contractual dispute resolution clauses and Calderbank Offer letters

There was agreement that where a tied pub tenant (TPT) has exercised their right to seek a MRO option, and the tied rent remains in dispute, the parties may need to resolve the tied rent review (including by reasonably triggering the dispute resolution clause). But also that this process can establish a tied rent figure without being an agreement to the

new tied rent in writing for the purposes of the Pubs Code, which would bring an end to the MRO procedure in accordance with regulation 39(4)(g). One POB has two separate types of agreement which indicated whether or not the parties intend to end MRO. It was agreed that, if both parties intend that the MRO procedure will be ended by agreeing a new tied rent, this will be expressly agreed between the parties.

3.3 Meaningful negotiations following arbitration decisions

The DPCA gave some reasons in support of transparency in Pubs Code arbitrations where there was no commercial sensitivity. She asked CCOs to consider and advise the PCA in writing whether they would agree to waive confidentiality in arbitrations. Awards are fact specific but she compared the situation to those first instance decisions in courts and tribunals which are publicly available. At present, POBs and TPTs have different levels of information and understanding of previous awards and this is undesirable and has the potential for unfairness.

The recent stakeholder meeting held by the Pubs Minister, Richard Harrington, attended by POB CEOs and TPT representatives was referred to and a number of CCOs said that there were different understandings about what had been agreed to at the meeting. A discussion was had about what commercial confidentiality existed in the decisions and how to achieve removal of commercially sensitive information. CCOs agreed that whatever the eventual position, confidentiality was waived on all or no cases, there would be no cherry picking such that the POBs would not select for waiver of confidentiality cases whose outcome was more favourable to them.

Action: POBs to confirm positions on waiving confidentiality and report individually to PCA by 19 April.

3.4 Alternative dispute resolution processes

The PCA sought agreement for the POBs to fund alternative dispute resolution (ADR) processes to be used to reach effective settlement for parties, especially where arbitration – which should be the exception – may not give parties the best outcome. There were Code and non-Code disputes at a relatively minor level which could be more effectively and efficiently managed by some form of independent adjudication, especially those cases turning on behavioral issues. In appropriate arbitration cases mediation should also be available where the parties consent.

POBs queried the need for a further dispute resolution mechanism beyond what is already in place. POBs asked for greater clarity regarding the evidence base and examples of instances referred to the PCA that would benefit from such an alternative mechanism. POBs all had internal complaint resolution systems in place which should always be exhausted first.

However, CCOs were supportive of working with the PCA office to avoid formal arbitrations wherever possible and supported the principle of some form of mediation where appropriate.

Action: CCOs agreed to consider further how mediation and a low level ADR scheme could operate, and put a proposal to the PCA.

3.5. Schedule 2 information

The PCA expressed concern about lack of clarity in relation to wastage allowances in rent assessments. There were three issues: compliance with Pubs Code Schedule 2 para 5 (c) and (f) in conjunction with para 8; sediment waste and operational waste; and concerns over the training of valuers, new tenants, BDMs and others over how to calculate wastage. Evidently POBs all deal with sediment waste in a different ways, with varied and blended approaches. The Code requires POBs to give tenants a clear explanation of how wastage is calculated and the PCA stressed the need for greater transparency in current valuations. CCOs were content in principle to amend their rent assessments to provide an explanation and show allowances made for sediment and operational waste more clearly; but this would require systems changes and adequate time to implement them.

Action: CCOs agreed to come up with proposals for a more standardised approach to waste calculation, provision of Schedule 2 information and examples of how this is embedded into relevant training by 19 April.

3.6. Short agreements

TPTs and their representatives had reported instances of short agreements for more than 12 months. The POBs acknowledged that going over 12 months brought TPTs into the Code. A different approach is taken by different POBs to the use and management of short agreements. The PCA advised the POBs that they must inform these tenants about their Code rights.

Action: Where tenants were on short agreements that could engage reg 54, CCOs agreed to ensure that they write to tenants at 9 months informing them about their Code rights from 12 months.

3.7. Code Compliance Officers

CCO details are published on the POB websites though they had had few enquiries in connection with the Code. The DPCA stressed the need for CCOs to raise their profile, saying who they were and what they could offer tenants as guardians of the Code within each business, and suggested photographs on the websites.

Action: CCOs to consider how they could raise profile and report back to PCA by 19 April.

3.8. Complying with arbitration decisions

PCA expectations were explained around compliance with arbitration awards. If POBs do not comply with arbitration decisions, the PCA will consider further regulatory action as necessary. Where an appeal is made in respect of an award, POBs are expected to apply for a stay of the effect of the award (preferably with the consent of the other party). This is to ensure that respect for the statutory process in the Code is upheld and TPTs understand the position. The POBs welcomed confirmation of the PCA's expectations where an appeal is contemplated.

3.9 PCA Compliance Report Framework

The office of the PCA would be available to discuss any queries about the completion of the report and to liaise with POBs over the timing of their publication of the summary report.

4. Tenants Survey

Three main themes had emerged from the survey:

- (i) General awareness of Code was relatively high; but became more patchy on specific provisions. TPTs want more accessible information on their Code rights.
- (ii) TPTs find Code processes complex.
- (ii) The TPT / BDM relationship is the crucial pre-requisite to the successful operation of the Code.

The office of the PCA planned to address the first point through a review and refresh of its factsheets and information for tenants. It challenged POBs to consider what they could do to address issues highlighted by the survey. POBs expressed some surprise with what was considered quite a negative slant in the accompanying press release to what was a well-balanced survey that highlighted ongoing areas of learning but also recognised that progress had been made.

The PCA welcomed his invitation to attend an Ei BDM training day in May. He would welcome similar invitations from other POBs.

5. Levy

The Minister is considering the levy proposal. The office of the PCA would revert to POBs when this had been approved.

6. CCO update

Ei reported a number of successful tied rent reviews and higher number of disputes being resolved.