



Pubs Code Adjudicator and Tenant Representatives Group meeting

13 September 2018

Attendees:

Paul Newby - Pubs Code Adjudicator (PCA)
Stephen Childerstone – Office of the PCA
Tom Astley – Office of the PCA
Stacy Rigby – Office of the PCA (notes)
Kate Nicholls – UKHospitality (UKH)
Mike Clist – British Institute of Innkeeping (BII)
Martin Caffrey - Federation of Licensed Victuallers Associations (FLVA)

Apologies:

Fiona Dickie - Deputy Pubs Code Adjudicator -DPCA
Laura Campbell - Office of the PCA

Key Decisions and Actions

1. Publishing arbitration awards

The PCA updated the meeting with the progress made, and confirmed it is committed to publishing awards in full and that the overarching principles for publication have been agreed with pub-owning businesses (POBs). The PCA and POBs are working collaboratively to agree details, and the PCA is actively working on an implementation plan. The meeting discussed ways of encouraging tied pub tenants (TPTs) in arbitration to give consent. There was also discussion regarding TPTs being issued non-disclosure agreements (NDAs) in a possible attempt to prevent publication.

Action: PCA to consider approach if a POB's consent is withdrawn.

Action: PCA to consider any evidence of the use of NDAs in relation to waiving confidentiality.

Action: PCA to confirm the number of arbitration awards in next quarterly data release for September 2018.

Action: TRG to actively encourage TPTs to provide consent so that the whole industry can benefit from published awards.

Action: TRG to consider channels the PCA can use to promote the publication of arbitration awards to reach as many TPTs as possible.

2. Compliance reports

The PCA informed the TRG that the compliance reports were published on the PCA's website, together with a PCA statement. The PCA confirmed it had completed the initial analysis of the reports and identified three general areas of concern. The PCA had subsequently written to all POBs with a number of questions arising from their individual reports and these will be discussed at the bilateral meetings in October. The meeting discussed the identified general areas of concern and the TRG confirmed that it was aware of some of the issues highlighted in the report although there is also evidence of TPTs receiving improved tied offers; however, it was reported that NDAs are being used by POBs which prevent further awareness of this.

Action: TRG to collect information/evidence of TPTs being issued section 25 Landlord and Tenant Act 1954 notices inappropriately.

3. MRO data

The PCA notified the TRG that, following a request by the PCA, monthly MRO data from all POBs is now being published by the British Beer and Pub Association (BBPA) on their website. This data provides the industry with a clearer picture of the numbers of MRO Notices being served, conversion rates into MRO agreements and trends in the MRO market. The PCA considered that the data needed to be more visible and accessible on the BBPA website and would revert to them on this.

Action: PCA to send TRG members the internet pathway to access the monthly MRO data published by BBPA.

4. MRO questionnaire

The PCA confirmed that POBs were in the process of issuing to those TPTs who have received a MRO proposal the MRO questionnaire and that an online version would be accessible on the PCA website in September. The PCA emphasised that the questionnaire is independent of the POBs and its purpose is to provide a feedback mechanism for TPTs who have gone through the MRO process and to provide more transparent information to the industry about the MRO option.

The PCA highlighted that he considers BDMs are a key conduit to remind and encourage TPTs to complete the questionnaire, and the PCA is actively encouraging TPTs to complete the questionnaire through its bulletin, through its website and through TPT representative forums.

Action: PCA to provide TRG with communications piece containing information about the MRO questionnaire, for TRG to distribute to their TPTs.

5. Operational and sediment wastage calculations

The PCA informed the meeting that it was working with POBs and tenant campaigners to investigate and agree in principle approaches to more clarity and greater consistency in the way that beer duty is disclosed and wastage is accounted for in Schedule 2 profit and loss statements. The PCA stated it was confident that it had collectively agreed a practical way forward that will meet the requirements of the Code and deliver greater transparency. The meeting agreed that the issue is of importance to the entire industry and therefore wider stakeholder engagement will be employed and the PCA plans to carry out a public consultation on draft guidance based on these approaches.

6. Dilapidations

The PCA informed TRG that it has put a call to action in the last two bulletins (latest was August 2018) for any reports from TPTs about dilapidations issues and asked for TRG experiences on the issue. The PCA endorsed his support of the establishment of a cross-industry working group on this issue and the meeting discussed the logistics of establishing the group.

Action: TRG to provide feedback comments on logistics and membership for establishing a dilapidations cross-industry group.

7. TPT information

The meeting discussed the importance of TPTs receiving the right information at the right time and discussed ways of collaborating to ensure this was accomplished in practice.

Action: PCA and BII to align communications strategy of informing TPTs of Pubs Code matters. PCA to action contact with Mike Clist.

Action: PCA to consider the issue of TPTs having better information about Stamp Duty Land Tax.

8. AOB

The PCA reminded the meeting that all POBs have agreed that the PCA can refer low-level TPT concerns which do not fall under the Code to the relevant POBs internal complaints process and confirmed that it had prepared a signposting process for its Enquiry Line which would be live in September.

Action: PCA to consider approach adopted in Voluntary Codes.

The TRG were advised that the PCA had raised with POBs apparent inconsistencies in how they are determining lease lengths. The PCA will be asking each POB how they are approaching the question of lease length on their MRO proposals in order to assess whether this is inhibiting access to MRO.

The PCA advised that it is committed to highlighting the role of CCOs to their TPTs and plans to publish an accessible document about who their CCOs are, what they do, and how to contact them.

The PCA confirmed that a second PCA tenant survey will be undertaken and published 2019 which will develop and refine the qualitative and quantitative approach from the first survey. The meeting agreed to work collaboratively on the content and format of the survey.

Remaining 2018 meeting date confirmed as 04 December 2018.