

**Pubs Code Adjudicator and Code Compliance Officer meeting
6 September 2018, 12:30 – 14:30**

Attendees:

Paul Newby	PCA	Rob May	Ei Group
Fiona Dickie	DPCA	Sara Kitchen	Ei Group
Stephen Childerstone	Office of the PCA	Chris Moore	Star Pubs & Bars
Tom Astley	Office of the PCA	Lynne Winter	Star Pubs & Bars
Laura Campbell	Office of the PCA (notes)	Julie Jolly	Greene King
Andy Tighe	BBPA	Mark Brown	Admiral Taverns
Andrew Green	BBPA	Stuart Gallyot	Punch Taverns
Christine Stevens	Marston's	Caroline Southwell	Punch Taverns
James Edwards	Marston's		

Key decisions and actions

1. Actions from previous meeting

Actions from previous meeting agreed as complete or updates to be provided under this meeting's agenda items.

2. Publication of arbitration awards

The PCA tabled its current version process map for publishing awards. The meeting noted that agreement on overarching principles had been reached regarding publication and that the focus was now on agreeing the detailed aspects of publishing arbitration awards. Encouraging progress had been made in this area.

The PCA had written to tenant representative group (TRG) members and will continue to actively engage with these groups to encourage tied pub tenant (TPT) support for publishing awards. Pub-owning businesses (POBs) also have a role to play in highlighting the benefits to the wider industry.

Action: Code Compliance Officers (CCOs) to raise any additional questions or concerns with the PCA as a priority to prevent any unnecessary delays in publishing awards.

Action: PCA to advise POBs as soon as a date for launching the publication process has been decided.

Action: PCA to develop guidelines on what information parties may consider redacting to ensure consistency across all published awards.

[Post-meeting note: The BBPA confirmed to the PCA, on behalf of that POBs, that all were content with the process map as presented at the meeting.]

3. Compliance reports

The meeting discussed the publication of the first compliance reports submitted under the Pubs Code and agreed that a publication plan will be considered for future reporting years. The PCA welcomed Star Pubs & Bars and Ei Group publishing their full compliance reports and encouraged all POBs to do the same, both for this year and in future years.

The PCA had written to all POBs with a number of questions arising from their individual reports and these would be discussed at the bilateral meetings to be held with CEOs in October. SC invited POBs to provide clarification on aspects of their compliance reporting data, if they felt this to be necessary, when responding to the follow-up questions. POBs could also publish clarification on their own data if they wished. SC also noted that the compliance report template would be reviewed ahead of the 2018/19 reporting cycle, including addressing areas such as content, consistency and comparability.

CCOs requested advance notice of reporting requirements to ensure internal processes were in place to gather the necessary data. CCOs also requested clearly defined reporting criteria and definitions to ensure all POBs reported in a consistent way. SC confirmed that there would be a refining and refocussing of the data requirements.

PN informed the meeting that one POB had requested a short extension to respond to the PCA's follow-up questions. PN extended the response period to all POBs in the interests of fairness, with responses due w/c 1 October 2018.

Action: CCOs to agree publication plan with the PCA (TA) for subsequent years.

4. Access to Market Rent Only (MRO)

(i) MRO questionnaire

TA reported that the MRO questionnaire was sent to all POBs on 28 August 2018 with a request that POBs issue the questionnaire and covering letter from September 2018 to all TPTs who have received a MRO proposal since the Code was implemented, and to all future TPTs who receive a MRO proposal, for completion at the conclusion of the MRO process. An online version of the questionnaire would also be available on the PCA website shortly. The meeting discussed the risk of non-eligible tenants/individuals submitting online questionnaires but noted the need to balance this risk with accessibility for all eligible TPTs.

The PCA is actively encouraging TPTs to complete the questionnaire. In addition, the PCA requested BDMs to encourage TPTs to complete the questionnaire and POBs to consider providing links to the online questionnaire on the Pubs Code section of their websites.

Action: CCOs to issue hard copy questionnaire and covering letter to (a) all TPTs who have received a MRO proposal since the Code was introduced and (b) all future TPTs who receive a MRO proposal, at the conclusion of the MRO process.

Action: POBs to each provide the PCA with the number of questionnaires issued to enable response rates to be verified.

(ii) MRO-compliant proposals advice note and judicial review, and PCA statutory advice

RM informed the meeting that the judicial review continued. FD noted that the PCA's position on MRO-compliant proposals remained as outlined in its advice note pending any decision by the court as a result of the judicial review.

(iii) MRO standard agreements

FD advised the meeting that the PCA had considered the letter from the BBPA requesting that the PCA should carry out an annual accreditation of POBs' MRO-compliant agreements. FD emphasised that the Pubs Code places the duty to serve a compliant proposal on the POBs. They should be capable of informing themselves what is common in the tie-free market. What is reasonable may depend on the circumstances of the particular pub in question. Their rationale and evidence can be tested in arbitration.

FD did not therefore believe that it would be a good use of PCA resources to regularly research what is common in the market on behalf of each of the POBs. PCA accreditation would tend to imply that the POB's standard lease is reasonable in each and every case, even though TPT businesses are different. The PCA is therefore not currently convinced that there is a 'one size fits all' approach to compliance – as even standard terms may require adjustment to be compliant in a particular case.

(iv) Lease lengths on MRO proposals (section 43 SBEE Act and regulation 30 Pubs Code)

FD reported that, following a number of arbitrations, the PCA believes there may be some difference in interpretations of the statutory requirements in relation to lease lengths on MRO proposals. The PCA would like to know how each POB is approaching the question of lease length on their MRO proposals.

Action: PCA to write to CCOs requesting further information on how individual POBs approach lease lengths on MRO proposals.

(v) Stamp Duty Land Tax

PN advised the meeting that he will be writing to the BBPA in due course in response to the initial proposals put forward following the last CCO meeting. The PCA believes that more understanding and explanation is required on the potential liability, if any, of SDLT in MRO proposals.

Action: PCA to write to the BBPA outlining next steps on SDLT.

(iv) Dilapidations

The PCA has written to POBs to request information on dilapidations by 21 September 2018.

PN noted that the PCA would also like to support the establishment of a cross-industry working group on this issue.

(v) MRO Data

The meeting discussed the PCA's request for monthly data on the average time taken to complete MRO negotiations, and for this to be included as part of the BBPA's published MRO data each month. The CCOs highlighted that this would be a substantial piece of work for the POBs and suggested that either six-monthly or annually would be more proportionate and meaningful. SC and SK agreed to progress this matter outside of the meeting.

Action: PCA (SC) and CCOs (SK) to identify and agree calculation methodology for average time taken to complete MRO negotiations and a schedule for publication.

5. Signposting tied tenants to the right information at the right time

PN informed the meeting that the PCA welcomed POBs' recognition of the need to flag up to TPTs the importance of professional advice.

PN proposed that the PCA work with POBs through the BBPA to agree a consistent and accessible form of words that all can use to stress the importance of getting independent advice.

Action: PCA and BBPA to consider and agree a consistent and accessible form of words for signposting TPTs to professional advice.

6. AOB

(i) Operational and sediment wastage calculations

SC reported that the PCA plans to carry out a formal consultation on draft guidance which is expected to commence over the Autumn, with the current intention of implementing an approach from 1 April 2019.

Action: PCA to write to CCOs outlining its intended consultation approach.

(ii) Use of non-disclosure agreements in tied rent negotiations

FD reported that the PCA has become aware of some cases where POBs have required TPTs to enter into non-disclosure agreements (NDA) in respect of the outcome of their tied rent deals. FD recognised that there may be legitimate reasons for the use of an NDA in very limited circumstances but would be concerned if there are moves to use these on a routine basis.

CCOs requested that individual concerns be raised with the identified POBs directly.

(iii) CCO profiles

LC asked CCOs to refer any final queries or clarification points on the circulated CCO profile document to the PCA within the next week, prior to its publication on the PCA's website.

FD requested that CCOs also revisit their own websites and published information outlining their roles, as PCA desk research has identified very limited accessible information on the role of CCOs on the POBs' websites. CCOs requested that the findings of this desk research be provided to each POB so that they could address specific issues.

Action: CCOs to identify any further changes necessary to promote their role in external communications, e.g. websites, prior to the next CCO meeting.

(iv) 2019/20 levy

The meeting discussed timings for agreeing future levies and underspends returned to POBs.

(v) Tenant information leaflet

JJ raised concern that the PCA's published tenant information leaflet on what to expect from your pub company included some information that did not necessarily align with current POB practices. This raised unfair expectations on POBs by TPTs. The PCA agreed to review any examples referred by POBs to establish whether any amendments to the leaflet were required.

Action: CCOs to refer examples of unintended consequences as a result of the leaflet's content to the PCA (coordinated via BBPA).