



The Pubs Code Adjudicator and Code Compliance Officer meeting 12 December 2018

Attendees

Paul Newby – (PN) Pubs Code Adjudicator (PCA)
Fiona Dickie – (FD) Deputy PCA
Stephen Childerstone – (SC) PCA
Tom Astley – (TA) PCA
Stacy Rigby – (SR) PCA (notes)

Andrew Tighe – (AT) BBPA
Andrew Green – (AG) BBPA
Mark Brown – (MB) Admiral
Rob May – (RM) Ei Group
Christine Stevens – (CS) Marston's
James Edwards – (JE) Marston's
Julie Jolly – (JJ) Greene King
James Richards – (JR) Punch Taverns
Stuart Gallyot – (SG) Punch Taverns
Chris Moore – (CM) Star Pubs & Bars
Lynne Winter – (LW) Star Pubs & Bars

Apologies:

Sara Kitchen – (SK) Ei Group plc

Key Decisions and Actions

1. Actions from previous meeting

Action: CCOs to raise any additional questions or concerns with the PCA as a priority to prevent any unnecessary delays with publishing awards.
Update: Complete.

Action: PCA to advise POBs as soon as a date for launching the publication process has been decided.
Update: PCA confirmed that the publication of awards is imminent.

Action: PCA to develop guidelines on what information parties may consider redacting to ensure consistency across all published awards.
Update: PCA to publish this with the first tranche of awards.

Action: CCOs to agree Compliance Report publication plan with the PCA for subsequent years.
Update: PCA to provide a further update on this under the relevant agenda item.

Action: CCOs to issue a hard copy MRO questionnaire and covering letter to all TPTs who have received an MRO proposal since the Code was introduced and to all future TPTs who receive an MRO proposal at the conclusion of their MRO process.
Update: Ongoing.

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

Update: Some POBs have confirmed the exact numbers, the PCA requested that all POBs confirm numbers and provide monthly updates.

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

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

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.
Update: Complete.

Action: PCA and BBPA to consider and agree a consistent and accessible form of words for signposting TPTs to professional advice.
Update: Ongoing - discussed at relevant agenda item.

Action: PCA to write to CCOs outlining its intended consultation approach in relation to beer duty and waste.
Update: Completed.

Action: CCOs to identify any further changes necessary to promote their role in external communications prior to the next meeting e.g. websites
Update: Ongoing – discussed at relevant agenda item.

Action: CCOs to refer examples of unintended consequences as a result of the tenant information leaflet to the PCA (to be co-ordinated by BBPA).
Update: Outstanding. CCOs confirmed that this will be provided shortly.

2. ARBITRATION

Publishing arbitration awards

FD updated the meeting on progress and confirmed that she remains committed to publishing awards in full. FD confirmed that the PCA has implemented a robust process to manage the redaction of personal and commercially sensitive information, and that guidance for TPTs on the publication process and redaction will be published at the same time as the first set of awards. FD asked CCOs to ensure that they highlight only the information contained in awards which they wish to be redacted and not to redact on behalf of TPTs. PN also requested that CCOs encourage TPTs to provide consent to waive confidentiality and promote publication more generally.

ACTION: PCA to give POBs at least 24 hours' notice prior to publication of first and subsequent collections of awards.

Alternative arbitrators

FD informed the meeting that although there had been a slight reduction in referral numbers there were still a high number of live arbitration cases and therefore, she and the PCA had decided, on a case by case basis, to refer a number of cases to alternative arbitrators. FD confirmed that an arrangement was in place with the Chartered Institute of Arbitrators for them to provide a recommendation service and that a similar approach is proposed with the Royal Institution of Chartered Surveyors. POBs and TPTs could also suggest arbitrators, but the appointment would be made by the PCA. PN added that this would create a pool of

experts which the PCA could rely on and that some familiarisation training would be offered at an appropriate time.

FD said that arbitration must become the exception and not the norm. The initial stay in MRO arbitration proceedings was part of this process. It would allow parties more space within tight Code timescales to negotiate an agreed MRO outcome; and would reduce both costs and the number of active arbitrations. Parties would be incentivised to make positive use of the initial stay option – if they settle during that stay and the referral is withdrawn, there will be no arbitrator's costs to pay, the tenant will get back £150 of their £200 referral fee and, to the extent that any part of the levy is calculated by reference to the number of arbitrations referred to the PCA, the case will not count towards the calculation of the POB's share of that part of the PCA levy.

3. MRO

MRO questionnaire

SC updated the meeting on the numbers of responses per POB. TA outlined some of the emerging themes from the responses so far. SC confirmed that the purpose of the questionnaire was for the PCA to obtain more transparent information / data about MRO and to provide first-hand feedback from TPTs who have gone through the process. The PCA would be proactively promoting the questionnaire in 2019, and CCOs confirmed that they would promote the questionnaire where possible to their TPTs.

Regulatory Compliance Handbook

SC confirmed that the PCA intends to publish a new chapter of the Regulatory Compliance Handbook relating to aspects of the MRO compliant proposal and the MRO process. The PCA was also considering how more could be done to improve transparency about how MRO rents are calculated.

Stamp Duty Land Tax (SDLT)

FD confirmed that the office of the PCA had received a response to her letter on SDLT in MRO proposals.

ACTION: PCA to respond in writing early in 2019 to BBPA's correspondence in relation to SDLT.

4. 2018/19 COMPLIANCE REPORTING

TA circulated a copy of the 2018/2019 draft compliance report and invited comments from CCOs by the end January.

ACTION: PCA to send electronic copy of the 2018/2019 Compliance Report to CCOs.

ACTION: PCA to write to POBs in January about the publication plan for the 2018/2019 Compliance Reports.

ACTION: POBs to provide comments on draft compliance report by end of January 2019.

5. DILAPIDATIONS

PN set out his expectations about how dilapidations should be managed and the requirement for a cross industry working group that CCOs should lead. SG suggested that

the PCA should do the initial scoping of the project before handing leadership to the industry. PN clarified that at this stage he was seeking a commitment from POBs to participate.

ACTION: PCA would seek to agree terms of reference for the dilapidations working group with the BII and BBPA.

6. STAKEHOLDER ENGAGEMENT MATTERS

CCO engagement

SR advised CCOs that the office of the PCA have reviewed the Pubs Code information on POB websites. The PCA would like to continue to work closely with CCOs to raise their profile. The PCA had received some responses to its CCO Q&A request and encouraged all POBs to respond.

ACTION: PCA to write to POBs individually with comments on Pubs Code information on their respective websites.

Tenant Engagement

FD described the recent updates to the PCA website to improve accessibility and asked that TPTs were made aware of these. The PCA requested information from CCOs on any TPT-related events that the PCA and DPCA could attend in the new year.

ACTION: POBs to give PCA information about TPT-related events in 2019.

Tenant Survey

SC confirmed that the PCA will be conducting a second tenant survey in 2019 which will build on the qualitative and quantitative approach from last year. The expectation was that the survey would be in the field in February/March 2019 and that the report would be published in spring 2019.

Professional advisers for TPTs

PN stressed the importance of TPTs having access to reliable and affordable professional advice when exercising their rights under the Pubs Code. The PCA planned to provide information for tenants about obtaining advice.

7. AOB

Sediment and operational waste statutory consultation

The PCA confirmed that the consultation was open until 11 January 2019 and that the expectation was that the guidance would come into effect from the start of the new Code reporting year on 01 April 2019. The PCA confirmed that the final requirements would reflect the Pubs Code (Schedule 2). POBs advised that subject to the date and content of the final guidance, an implementation date of 1st April may be unachievable.

ACTION: PCA to send CCOs Word version of the consultation response form.

BEIS plan for statutory review

The PCA confirmed that it was in the early stages of engaging with BEIS to understand their plans for the scope and timing of the review. This was still expected to commence after the end of the review period in March 2019.

8. Meeting dates for 2019

The PCA confirmed it will send out proposed dates for 2019 meetings in early January.