



# Pubs Code Adjudicator

## The Pubs Code Adjudicator and Tenant Representatives Group meeting 18 March 2019

### Attendees

Paul Newby – (PCA) Pubs Code Adjudicator  
Stephen Childerstone – (SC) PCA  
Stacy Rigby – (SR) PCA

Mike Clist – (MCI) BII  
Martin Caffrey – (MCa) FLVA  
Jim Cathcart – (JC) UKHospitality

### Apologies:

Fiona Dickie – (DPCA) Deputy Pubs Code Adjudicator  
Kate Nicholls – (KN) UKHospitality

## Key Decisions and Actions

### 1. Actions from previous meeting

**Action:** PCA and BII to align communications strategies of informing TPTs of Pub Code matters.

**Update:** Covered at relevant agenda item.

**Action:** PCA to ask POBs to confirm how they serve MRO proposals.

**Update:** PCA will raise with CCOs.

**Action:** TRG to actively encourage TPTs to provide consent so that the whole industry can benefit from published awards. TRG to consider channels the PCA can use to promote the publication of arbitration awards to reach as many TPTs as possible.

**Update:** Ongoing. TRG to provide update.

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

**Update:** Ongoing. TRG to provide update. Covered at relevant agenda item (1.3).

**Action:** PCA to send TRG a link to the PCA MRO Questionnaire and any future related communications for them to share via their own communication channels.

**Update:** Have sent previously but PCA will forward more communications as and when published.

**Action:** PCA to seek to agree terms of reference for the dilapidations advisory group with the BII and BBPA.

**Update:** Complete.

**Action:** PCA to contact TRG in early 2019 to discuss attendance at TRG events.

**Update:** Covered at relevant agenda item (5.2).

### 2. MRO Outcomes

#### 2.1 MRO Conversion rates

PN informed the meeting that the PCA had reviewed the statistics relating to MRO outcomes published by the BPPA, on a monthly basis, and did not consider that it reflects all the possible outcomes that can follow the service of a MRO Notice. PN expressed concern that this could lead to a misleading depiction of the true result of TPTs exercising their MRO rights- which in turn could influence TPTs not to pursue their MRO option.

TRG members said that in many instances' POBs were approaching TPTs to negotiate before the MRO process had begun. PN reiterated the need to have an accurate picture of the effect of MRO.

**ACTION:** PCA to send suggested 'MRO outcomes' data questions to TRG. TRG to provide comments and suggestions.

## **2.2 The actual effect of the MRO option in the tenanted and wider industry**

The meeting discussed some of the barriers TPTs face when exercising their MRO rights; including some of the concerns present in the PCA MRO questionnaire responses. These included high costs of taking up MRO, SDLT and the service of hostile section 25 Landlord and Tenant Act 1954 (LTA) notices.

PN urged TRG members to provide evidence to the PCA of these examples. TRG members stated that TPTs were fearful of retribution if they make reports to the PCA, but they would try to reassure and encourage their TPTs to contact the PCA. TRG members advised that it would not be practical for them to collate data relating to MRO.

**ACTION:** PCA to review the operation of its enquiry service and consider further ways of gathering intelligence direct from TPTs.

## **2.3 Update on regulatory activity**

PN explained that the PCA's current focus is to arbitrate less and focus more on behavioural change by intervening more robustly in the regulatory sphere and actively taking further steps in its capacity as regulator.

PN confirmed that the PCA would shortly be publishing a new chapter of the Regulatory Compliance handbook (RCH) on MRO proposals, which would set out that in each case POBs should have proper evidence that the proposal they are making is both reasonable and on common terms, and that it represents an accessible option for the TPT concerned.

PN advised on the current MRO priorities for the PCA; including a clearer understanding of how MRO rent is determined, what is common when setting lease length in the market and the issuing of section 25 LTA notices.

## **3. Dilapidations Advisory Group**

### **3.1 Update on progress**

PN informed the meeting that the Dilapidations Advisory Group (the focus of which is on the industry working together to achieve best practice through the whole 'life span' of repairs and dilapidations issues) was in the process of being set up. The eventual aim was for this group to develop a further chapter for the RCH.

## **4. Beer Consultation**

### **4.1 Responses and guidance implementation**

SC confirmed that the guidance was expected to come into effect from the 01 April 2019. SC advised, that as a result of the consultation, some changes had been made to the proposed guidance following concerns about the availability from third party suppliers of information on the volume on which duty had been paid; and the risk of potential 'de-listing' of small and / or seasonal brewers. PN stressed that although there is still a small risk of unintended consequence, transparency would ultimately improve the issue and asked the TRG to promote the guidance to the TPTs they represent.

## 5. Arbitration

### 5.1 Publication of arbitration awards update

PN gave an update, advising that the second batch of awards was to be published shortly. He was encouraged to see signs that greater transparency may be encouraging parties to take up the initial stay and negotiate. MCA stated that he had seen an example of a TPT who had a dispute relating to dilapidations who had used the information contained in a published PCA award to settle the issue.

### 5.2 Alternative arbitrators update

PN reported that the PCA had seen evidence to suggest that this new approach may be encouraging settlements. PN advised that the PCA would continue to monitor the process and would appreciate any feedback TRG can provide from TPTs.

### 5.3 'Initial stay' update

PN informed the meeting that the PCA had not seen parties settling as a result of the initial stay, as envisaged, and rather had seen requests for further stays. The meeting agreed that the intervention was a helpful tool for parties and that it should continue to be offered and monitored.

## 6. Tenant Engagement

### 6.1 Tenant focus group

SR advised the meeting that the PCA was in the initial stages of setting up a tenant focus group to participate in improving its publications and asked if the TRG knew of any TPTs who would consider participating or had any suggestions for how to coordinate such a group. SR confirmed that the PCA were looking for a range of different operators who represent the wider TPT community. TRG members agreed to take this away and suggested video conference as suitable means of facilitation.

**ACTION:** TRG to consider potential candidates for PCA tenant focus group and report back to the PCA by the end of April 2019.

PN reiterated that the PCA wants POBs to do more to inform their TPTs about the process of requesting MRO and that it will be requiring POBs to publish a FAQ section on their respective websites setting out 'what tenants should expect when requesting MRO' from them. PN asked the TRG if they had any suggestions, based on their experience, of what should be included. MCA suggested including information relevant to the Pubs Code schedule information and MCI offered to publish the FAQ on the BII website once it was ready.

**ACTION:** PCA to consider checklist contained in the voluntary code and the insight section on the BII website.

### 6.2 BII engagement

MCI advised that the BII were currently considering how they structure their Regional meetings and that there was potential for a PCA presence at a combined regional event.

**ACTION:** MCI to consider PCA presence at BII combined regional events.

### 6.3 CCO profile

PN expressed dissatisfaction with the engagement by CCOs with their Code duties and advised that the PCA was now actively monitoring this issue.

**ACTION:** SR to send PCA CCO information document to TRG members so that they can inform TPTs about the role of their CCO.

## 7. AOB

### **7.1 Statutory Review**

PN informed TRG that the PCA was working with BEIS officials in respect of managing its input into the review; and TRG confirmed that they were also in communication with BEIS.

### **7.2 Tenant Survey**

PN notified the meeting that the survey had begun, and the feedback so far had been positive with the majority of TPTs willing to participate in the in-depth interviews. The survey report is to be published in the summer.