



# **Pubs Code Adjudicator**

**PCA Advice Note**

**Tied rent contractual  
dispute resolution  
clauses and Calderbank**

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## **PCA ADVICE NOTE**

### **TIED RENT CONTRACTUAL DISPUTE RESOLUTION CLAUSES AND CALDERBANK OFFER LETTERS**

#### **1. Pubs Code rights**

1.1 The Pubs Code gives a tied pub tenant (TPT) rights to information about their tied rent review. This information is provided in a Rent Assessment Proposal (RAP). The Pubs Code also gives a TPT the right to request a Market Rent Only (MRO) option from their landlord, a pub-owning business (POB). A TPT has the right to refer a Pubs Code dispute to the PCA for arbitration.

#### **2. Tied rent review disputes**

2.1 Many tied agreements include a dispute resolution clause which can be used to resolve rental disputes between the parties to that agreement. This clause often allows for disputes to be resolved by arbitration.

2.2 Such a clause is part of the tied agreement; however, its use should be considered carefully where it interacts with the rights a TPT has under the Pubs Code.

#### **3. Tied rent dispute resolution clauses and Pubs Code rights**

3.1 The PCA's view is that this type of dispute resolution clause should not be used by a POB in a way that frustrates or prevents a TPT from accessing their Pubs Code rights. A POB must consider the effect of using such a dispute resolution clause to resolve a tied rent dispute if Pubs Code rights may also be engaged.

3.2 The PCA strongly recommends that, to avoid a clause like this being triggered, both the POB and the TPT should engage in meaningful negotiations to complete the contractual tied rent review. Both parties should however note paragraph 3.6 of this advice note regarding bringing an end to the MRO procedure, where the new tied rent is agreed in writing. Both the POB and TPT should avoid unnecessary costs. This is especially the case for TPTs who may have limited resources.

3.3 The PCA's view is that a POB should not trigger an arbitration clause in a tied agreement relating to a tied rent review if there is an outstanding PCA arbitration concerning the rent assessment proposal in connection with that

rent review. All six regulated POBs agree that they do not, or will not do this in future.

3.4 In some circumstances, a TPT can request a Market Rent Only (MRO) option under the Pubs Code and may wish to know the final MRO proposal available to them before deciding whether to formally challenge a tied rent review under their existing agreement. Where this applies, the PCA's view is that the POB should act reasonably to avoid unnecessary costs and procedures, and particularly take into account the effect on a TPT's Pubs Code rights. In many cases, this means that a POB should delay triggering a tied rent dispute resolution clause until the TPT has an undisputed MRO proposal. In such situations, the TPT should make this clear to the POB in relation to negotiations taking place. This is especially the case where any difference in the proposed tied rent is not substantial.

3.5 A POB should not generally act in a way that curtails a TPT's Pubs Code rights unless the TPT has explicitly agreed otherwise. Where a POB acts in a manner that may have this effect, it may engage regulation 50 (detriment) or regulation 57(2) (unenforceable terms) of the Pubs Code.

3.6 Where a 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). The PCA considers that this process can establish a tied rent figure without this 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) of the Pubs Code. If both parties intend that the MRO procedure will be ended by agreeing a new tied rent, this should be expressly agreed between the parties so that the TPT clearly understands the position in relation to their Pubs Code rights.

#### **4. Calderbank Offer letters**

4.1 A Calderbank Offer letter is a written offer made by one party to the other party aimed at settling the dispute between them and which is usually labelled 'without prejudice save as to costs'. If a Calderbank Offer letter is sent, then its contents cannot be referred to the dispute resolver – usually the arbitrator in this context - until the proceedings relating to the main issues in the dispute have ended and an award of costs is being considered. At that point, it can be taken into consideration when deciding who pays the relevant costs of the dispute. Calderbank Offer letters are cost protection measures used in arbitration disputes to show that the party making the offer was trying to settle the dispute and, having regard to the outcome of the arbitration, is seeking an award of some or all the costs against the other party.

4.2 The PCA's view is that Calderbank Offer letters should not be used by a POB if this places unnecessary pressure on a TPT to withdraw a Pubs Code arbitration or stops a TPT from accessing their Pubs Code rights. Calderbank Offer letters should not work contrary to the Pubs Code's core principles, in particular fair and lawful dealing between a POB and their TPT.

4.3 Therefore, any Calderbank Offer letter issued by a POB that may limit Pubs Code rights should make clear the effect of the offer on the TPT's rights. This way, everyone is clear about how accepting the offer in the letter impacts on Pubs Code matters.

4.4 If a TPT believes that their Code rights have been affected as a result of the actions of their POB, they can refer the issue to the PCA. Visit [www.gov.uk/pca](http://www.gov.uk/pca) for details on how to contact the PCA. All information will be treated in confidence.

## **5. Further information and guidance**

5.1 The PCA has produced a number of factsheets and flowcharts which provide further information and guidance on the Pubs Code, including the [arbitration](#) process. These are available at [www.gov.uk/pca](http://www.gov.uk/pca)

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