



Department for  
Business, Energy  
& Industrial Strategy

Paul Scully MP

Department for Business, Energy &  
Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

Fiona Dickie  
Pubs Code Adjudicator  
Office of the Pubs Code Adjudicator  
Victoria Square House  
Victoria Square  
Birmingham  
B2 4AJ

T +44 (0) 20 7215 5000  
E [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk)  
W [www.gov.uk](http://www.gov.uk)

3 November 2020

Dear Fiona,

**STATUTORY REVIEW OF THE PUBS CODE ADJUDICATOR PERFORMANCE –  
GUIDANCE UNDER SECTION 65(7) OF THE SMALL BUSINESS, ENTERPRISE &  
EMPLOYMENT ACT 2015**

1. I was grateful for the Pubs Code Adjudicator's (PCA's) response to the invitation for contributions to the statutory review of the Pubs Code which highlighted a number of areas where you think the application of the Code can be improved. The Government report on the review was published on 3 November 2020 and you will be aware that stakeholders had a range of views about the performance of the PCA.
2. The review was, by its nature, retrospective and many of the issues raised related to the challenges of the PCA being set up quickly and the complexity of the Pubs Code requirements. The report of the review recognises that many of these issues are being tackled and notes the progress made since the end of the review period.
3. As you know, under section 65(7) of the Small Business, Enterprise and Employment Act 2015, as a result of the findings of a review of the Adjudicator's performance, the Secretary of State may give guidance to the Adjudicator about any matter relating to the Adjudicator's functions. I attach this guidance.

## Arbitrations

4. The length of time taken to conclude some arbitration cases during the review period was raised by a range of respondents to the review. As noted by some respondents, the number of enquiries and referrals to the PCA reduced over the review period and the backlog of arbitration cases diminished following your appointment as Deputy PCA. However, as noted in the PCA's own response, there are process issues that may be preventing quicker resolution of cases. As a result of the review, the Government has committed to considering how the Market Rent Only timescales and the dispute resolution procedure might be improved, and I have asked my officials to work with you to develop options for consultation.
5. The Secretary of State's report on the review notes the progress that the PCA has made in resolving long-standing arbitration cases, including through the use of alternative arbitrators, and the publication of a number of arbitration awards to improve transparency. My officials will work with you and stakeholders to consider whether there is scope to amend arbitration rules and make it easier to publish arbitration awards.
6. The report on the review notes that the use of external arbitrators is helping to free up the PCA's time to undertake more regulatory activity. I agree this is a sensible approach and that timely and appropriate regulatory interventions should help prevent cases reaching the arbitration stage. There were, however, concerns raised by both tenants and pub-owning businesses about the use of external arbitrators in terms of the level of understanding required given the complexities of the Code. The **guidance at point (a)** asks that you consider these points when exercising your power to engage external arbitrators. The reasonableness of external arbitrators' fees was also raised as an issue. I understand the PCA's view is that these are the commercial rates that businesses would ordinarily expect to pay for the services of an arbitrator, and you also make the point that because of the operation of the Fees provisions, it is unusual for such fees to be borne by a tied tenant. I have not therefore addressed this in guidance.

## Information and advice to tenants and prospective tenants

7. Stakeholders made a number of comments about the information provided by the PCA and other aspects of communications during the review period, including how information tenants had provided of alleged non-compliance and unfair business practices by pub-owning businesses, had been dealt with. In relation to the second point, the **guidance at paragraph (b)** asks that you reflect the importance of providing clear information about the PCA practice in handling such reports.
8. While the PCA has made excellent progress in producing information and guidance that is less legalistic and easier for tenants to access, there remains a wish for information to be easier to locate. For example, to build on the good work the PCA has done in achieving publication of awards by consent of the parties, it would be helpful to stakeholders if published arbitration decisions were easier to find on its pages of the

gov.uk website so that, for example, cases dealing with similar issues can be readily identified. I recognise that the PCA has already taken steps to seek to address this and my officials would be happy to work with your team to consider how the organisation and accessibility of the information about cases might be improved.

9. I am aware that you are currently undertaking a project to understand the barriers to information sharing and how to ensure individual tied tenants can access clear information about the Code and their rights. I hope you will consider the findings of the review as part of that work to ensure all parties have an opportunity to contribute their views and that end-users are able to shape how information is provided.
10. The review identifies some concerns about whether tenants are receiving and understanding information from their pub-owning business as required by the Code and I am particularly concerned about new tenants. The report on the review notes that awareness of Code rights has reduced in the most recent PCA Tenant Survey, despite a larger proportion of respondents to the survey having taken up tied tenancies since the Code and its information requirements came into operation. The **guidance at paragraph (d)** is intended to address that by providing in guidance for the PCA to have in mind the importance of new tied tenants fully understanding their Code rights and how they can learn about and access their rights. I would welcome your thoughts about how best to do this and whether there is any additional research, survey work or other means that might help give a clearer picture.
11. While I support the PCA's change of focus from arbitrations to regulatory interventions, the review found that stakeholders are not always aware of what those interventions might entail and where they have successfully been used in the past. The guidance at **paragraph (c)** is intended to help address that and I would particularly like you to consider whether there is more the PCA can do to increase awareness among stakeholders of how the PCA addresses alleged non-compliance and to publicise your actions short-of-investigation in line with your published guidance on investigations and enforcement.

#### PCA functions generally

12. It was suggested in the evidence provided to the statutory review that the PCA should publish key performance indicators. Your team has already begun working with my officials to develop a set of key performance indicators and this work should be continued with a view to the PCA publishing the indicators and reporting annually on them. Ideally, these indicators should be developed for the financial year beginning April 2021. It is recognised there are challenges in identifying objective measures, but a clear set of measures would help to indicate how well the Code and the PCA are operating and to identify any areas for improvement.

13. While the Government does not propose changes to the PCA's powers at this stage, as a result of the review, I invite you, in the course of undertaking your functions, to retain evidence you may come across where you consider your existing powers are insufficient to enforce the Code. This will allow for consideration of whether there is a case for strengthened powers as part of the next statutory review, including whether this should involve amending the enabling powers in the 2015 Act.
14. I appreciate that you are already developing your approach to many of these areas. It would be helpful if you could confirm what your next steps are in response to these points and the guidance once you have had an opportunity to consider and discuss these with my officials.

Yours sincerely,



**PAUL SCULLY MP**  
Minister for Small Business, Consumers & Labour Markets  
Minister for London

**Statutory Guidance issued by the Secretary of State to the Pubs Code Adjudicator pursuant to section 65(7) of the Small Business, Enterprise and Employment Act 2015**

**Guidance relating to the PCA's functions in the arbitration of disputes**

- a) In relation to the use of external arbitrators, this is a sensible approach and timely and appropriate regulatory interventions should help prevent cases reaching the arbitration stage. However, concerns were raised by both tenants and pub-owning businesses about the level of understanding required by external arbitrators of the complexities of the Code. The PCA should have in mind the following considerations when exercising the power to engage external arbitrators:
  - i. whether there is sufficient availability of individuals with suitable experience and knowledge of the statutory framework for dispute resolution under the Code; and
  - ii. if there are any additional training requirements.

**Guidance relating to the PCA's regulatory functions: enforcing compliance with the Code**

- b) Stakeholders would like a better understanding of the position the PCA takes on managing issues of alleged non-compliance with the Code that are reported to the PCA. The PCA should have in mind the importance to stakeholders that they have a clear explanation about the PCA's practice as to how reports of alleged non-compliance and complaints about pub-owning business behaviour are dealt with.
- c) The review found that stakeholders are not always aware of what the PCA's regulatory interventions might entail and when they have successfully been used. The PCA may wish to consider making more public statements in order to announce the outcome of successful interventions or other instances where the PCA has worked successfully with pub-owning businesses to resolve issues.
- d) The review identifies some concerns about whether tenants are receiving and understanding information from their pub-owning business as required by the Code. It notes that awareness of Code rights has reduced in the most recent Tenant Survey despite a larger proportion of respondents having taken up tied tenancies since the Code came into operation. The PCA should have in mind the importance of new tenants fully understanding their Code rights and how they can learn about and access their rights.

*Guidance dated 3 November 2020*