



# Pubs Code Technical Guide

---

## Arbitration

TECHNICAL GUIDE NUMBER 14

March 2017



## Contents

OVERVIEW.....	3
DETAILED TECHNICAL GUIDE.....	5
Arbitration of Pubs Code Disputes.....	5
Referrals .....	6
Case Management.....	7
Annex A – Example Proposed Order and Directions.....	11

## Overview Technical Guide 14 - Arbitration

1. This Technical Guide is designed to help tied pub tenants who are considering making a formal request for arbitration.
2. Any dispute that may be referred to the PCA is dealt with by way of arbitration. Only a Tied Pub Tenant (TPT) may refer a Pubs Code dispute to the PCA (with the exception of a market rent only (MRO) dispute under Parts 5-8 of the Pubs Code which may be made by a TPT or a Pub-Ownning Business (POB)). A referral must be made within the Code timeframes.
3. The first step is to complete and submit the formal [referral for arbitration](#). Referrals outside the specified Code timetables cannot be accepted by the PCA. You must pay a fee of £200 at the time the referral is made.
4. Where the referral is accepted, the PCA office will write to the parties with information about case management, including confirming the details of any representative for each party. The PCA office will communicate only with a single point of contact for each party – the party directly or their nominated representative.
5. Both the arbitration process and the Award are confidential between the parties unless the parties agree otherwise.
6. In most cases, the PCA will arbitrate the dispute. The parties have the opportunity to comment before an arbitrator is appointed in their particular case.
7. The parties will receive a proposed Order and Directions which they should seek to agree between them. The Order and Directions set out what each party has to do at each stage of the arbitration process, including in relation to the submission of documents and evidence.
8. The person making the referral is the Claimant. The person responding to the claim is the Respondent. Each party is required to submit their full statements of case which will set out each party's case in detail.
9. If a hearing is required it is likely to take place at the PCA's offices in Birmingham but the PCA will consider requests for hearings to take place in another UK city nominated by the TPT.
10. These are statutory arbitrations under the Arbitration Act 1996 which are governed by the Pubs Code legal framework (the Small Business, Enterprise and Employment Act 2015, the Pubs Code Regulations 2016 and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016). The rules for the conduct of the substantive process where the PCA is the arbitrator are

those of the Chartered Institute of Arbitrators. These include the requirement that all correspondence and evidence must be copied to the other party.

11. Most cases are likely to be managed on paper, with communications via email unless the parties indicate a preference for an alternative communication method.
12. The arbitrator will consider each party's case and prepare the Award (a reasoned decision including setting out the findings of fact, interpretation of the relevant law and any remedy provided). The decision is final and binding on the parties.
13. The Award will include the management of costs and parties will be invited to provide their views before the arbitrator makes the final costs Award.
14. There is no set time that a case will take. The time taken to complete the arbitration depends on how complicated it is and how quickly the parties respond.
15. If the parties settle or the Claimant wants to withdraw their claim before the full arbitration process is completed this will usually be reflected in an agreed Award which terminates the proceedings. The case cannot be closed until a binding Award, including management of costs, has been issued by the arbitrator.

## Technical Guide 14 - Arbitration

16. This Technical Guide is designed to help tied pub tenants who are considering making a formal request for arbitration to understand the process in relation to disputes concerning the Pubs Code.

### Arbitration of Pubs Code Disputes

17. Any dispute that may be referred to the PCA under the Small Business Enterprise and Employment Act 2015 (the Act) or the Pubs Code Regulations 2016 (Pubs Code) (a Pubs Code dispute) is dealt with by way of arbitration.<sup>1</sup>
18. Only a Tied Pub Tenant (TPT) may refer a Pubs Code dispute to the PCA (with the exception of a market rent only (MRO) dispute under Parts 5-8 of the Pubs Code).
19. Either a TPT or a Pub-Owning Business (POB) may refer a dispute in relation to a MRO dispute (where a right of referral is provided for in the Pubs Code). This includes disputes in connection with:
- a MRO full response
  - the negotiation period
  - the independent assessor
  - a tenancy or licence after a proposal is agreed
  - rent recovery after MRO procedure
  - the investment agreement
20. Referrals to the PCA must be made within the Pubs Code timeframes. Specific timescales apply to particular types of dispute (for example a MRO-related dispute in connection with a MRO full response must be made within the 14 day period following the 28 day period of response).
21. The PCA emphasises that parties are not expected to pursue the formal arbitration route if they are able to resolve disputes more quickly informally. Even after the formal process has started, the PCA encourages continued negotiation to seek to settle the dispute or narrow the issues in dispute.
22. Complaints about broader practices, not just about their own situation, can be made by TPTs to the PCA. Such complaints will be considered by the PCA outside the arbitration framework; for example, when considering whether to begin an investigation.

<sup>1</sup> See s 48 of the Small Business, Enterprise and Employment Act 2015 in respect of non-MRO disputes and reg 58 of the Pubs Code Regulations 2016 in respect of MRO disputes.

23. The purpose of arbitration is to obtain fair resolution of disputes by an impartial tribunal without unnecessary delay or expense. However, given the binding nature of decisions (Awards), and the potential costs implications, the PCA urges parties to seek independent legal advice before entering into arbitration.
24. While the PCA Enquiry line can provide information about the Code and its processes, it cannot provide advice in respect of individual circumstances, as the PCA must remain impartial in case a dispute is later referred for arbitration.
25. The PCA will tailor its approach in each case and aim to reflect the parties' agreement about how any arbitration is conducted. However, the PCA must act in accordance with the Pubs Code legal framework. In each case the arbitrator will set out a number of key elements to ensure that the process can proceed without undue delay.

## Referrals

26. The first step is to complete and submit the formal [referral for arbitration](#). This must be completed and sent to the PCA in accordance with the time limits set out in the Act ([Part 4, SBEE Act 2015](#)) or the Code ([Pubs Code regs](#)) in relation to the particular dispute. For non-MRO disputes, the TPT must give 21 days' notice to the POB of the alleged non-compliance before submitting a referral to the PCA for arbitration.<sup>2</sup> For MRO-related disputes, the Code sets out specific timescales for referral depending on the nature of the dispute.
27. Referrals outside the specified time limits cannot be accepted by the PCA.
28. The referral form should be sent to the other party to the dispute as well as to the PCA. It requires the referrer to set out:
- Details of the TPT, POB and tied pub
  - The Code provision under which the referral is made
  - A description of the dispute, including relevant dates
29. The form should be completed as fully as possible to enable the PCA office to consider the application.

### *Confirming Acceptance*

30. Once the form is received, the office of the PCA will consider whether the request is valid. This has three main elements:
- Is the referral complete? - The PCA may request further explanation, including the dates on which relevant actions were taken, but may require

<sup>2</sup> See s 48(2) of the SBEE Act 2015

a new arbitration request form to be completed before taking further action.

- When did the dispute arise? - The PCA cannot consider disputes arising before the Code came into force on 21 July 2016. The PCA cannot consider disputes referred outside of the timeframes in the Act (for non-MRO disputes) and the Pubs Code (for MRO-disputes). The PCA cannot consider disputes about matters not covered by the Act or the Pubs Code.
- Has the fee has been paid? - The statutory framework requires that a fee of £200 must be paid at the time the referral is made. The referral is not valid until the fee is paid.<sup>3</sup>

### **Case Management**

31. Where the referral is accepted for arbitration, the PCA office will write to the parties with information about case management. The PCA will also ask if either party is using a representative, and for their details. The PCA office will communicate only with the TPT or POB directly, or where a representative is nominated to represent a party, their representative, so there is only a single point of contact for each party with the PCA office in connection with the dispute.

32. Both the arbitration process and the Award are confidential between the parties unless the parties agree otherwise. So once an arbitration has started, neither the TPT or the POB can share details of the dispute more widely unless they both agree.

#### *The Arbitrator*

33. The PCA must arbitrate the dispute or appoint another person to do so. In most cases, the PCA will arbitrate the dispute (with expert advice where necessary). The PCA office will write to provide details of any relevant disclosures by the PCA and the parties are invited to provide any comments for the PCA to take into account in advance of a decision appointing the arbitrator in the particular case.

34. Although the PCA will arbitrate most Pubs Code disputes himself, this may not be possible; for example, for some large or complex cases. In those circumstances, the PCA will appoint an alternative arbitrator without undue delay once a decision to appoint a different arbitrator has been made.

---

<sup>3</sup> See regulation 3(2) of the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016 in respect of MRO referrals and regulation 4(2) in respect of non- MRO referrals

35. Once appointed, the arbitrator will write to the parties with further case management arrangements and a draft of proposed Order and Directions for the parties to consider and seek to agree between them. The Order and Directions set out what each party has to do at each stage of the arbitration process. An example proposed Order and Directions where the PCA is the arbitrator is shown in Annex A below.
36. Location. The place (known as the seat) of the arbitration is Birmingham, under the law of England and Wales. If a hearing is required it is likely to take place at the PCA's offices in Birmingham but the PCA will consider requests for hearings to take place in another UK city nominated by the TPT. Consideration will be given to the appropriateness (including cost and accessibility) of other accommodation proposed for a hearing.

#### *The Arbitration Process*

37. Arbitrations are conducted in accordance with the Arbitration Act 1996. All arbitrations are statutory arbitrations and are governed by the Pubs Code legal framework (the Small Business, Enterprise and Employment Act 2015, the Pubs Code Regulations 2016 and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016). The rules for the conduct of the substantive process where the PCA is the arbitrator are those of the Chartered Institute of Arbitrators. These include the requirement that all correspondence and evidence must be copied to the other party.
38. All decisions in a case are taken by the appointed arbitrator. Day to day management of arbitration correspondence is handled by caseworkers who work in the office of the PCA.
39. Once agreed, the caseworker will write to the parties with a final version of the Order and Directions, which the parties are expected to follow. The arbitrator will consider and deal with any procedural and substantive issues arising during the arbitration process.
40. The Order and Directions set out the timetable and actions that the parties are required to follow, including in relation to the submission of documents and evidence to be submitted by each party. The person bringing the referral is the Claimant. The person responding to the claim is the Respondent. Each party is required to submit their full statements of case which will set out each party's case in detail.
41. Most cases are likely to be managed on paper, with communications via email unless the parties indicate a preference for an alternative communication method. However, further case management correspondence, meetings and preliminary or other oral hearings (by telephone or in person) may be held if requested and agreed by the arbitrator.
42. The arbitrator can give directions to the parties as to how issues that arise are to be managed, engage experts and technical assistance. If there is to be an



arbitration hearing, the arbitrator can allow each party to put its case and respond to the arbitrator's questions or the arbitrator can enable witnesses to give evidence and be cross examined by the other party.

43. The arbitrator retains discretion to call a case management meeting (to be held by telephone or in person, likely to be at the PCA's offices), seek oral evidence, or invite or accept expert evidence by or on behalf of a party.

#### *Decision and Award*

44. Once the parties have complied with the Order and Directions, the arbitrator will consider each party's case and the relevant documents. The arbitrator will then prepare the Award (a reasoned decision including setting out the findings of fact, interpretation of the relevant law and any remedy provided). The decision is final and binding on the parties.

#### *Costs*

45. The arbitrator will set out a proposed approach to the management of costs in writing before issuing the final Award. The parties will be offered the opportunity to provide their views on the proposed approach before a costs decision is made. The costs award must be compliant with the Pubs Code legal framework. This includes the following:
- The reasonable fees and expenses of the arbitrator are to be met by the POB, unless the TPT's claim is found to be vexatious or wholly without merit. Fees and expenses of any experts, legal advisers or technical assessors appointed by the arbitrator form part of these fees;
  - The arbitrator has the discretion to order the TPT to pay some of the POB's costs – to a maximum of £2,000 (unless the referral was vexatious or conduct is unreasonable during the arbitration, where up to full costs may be awarded);
  - All other costs are considered and assigned at the arbitrator's discretion (usually in line with the principle that costs follow the event - in other words the unsuccessful party pays - unless there are circumstances where the arbitrator considers this is not appropriate). Those other costs include:
    - Fees and expenses of any arbitral institution (such as the Chartered Institute of Arbitrators) in support of arbitration;
    - Any remaining legal or other costs of the parties.
46. The PCA expects both parties to seek to continue to resolve their disputes directly and to keep the PCA office informed of any progress. Failure to do so may influence the allocation of costs.

### *Settlement*

47. Any agreement by the parties to settle before the full arbitration process is complete is usually reflected in an agreed Award which terminates the proceedings. The parties are encouraged to provide the terms of settlement to the PCA. The case cannot be closed until a binding Award, including management of costs, has been issued by the arbitrator.

### *Withdrawal*

48. Where the referring party indicates they want to withdraw their referral, this is usually reflected in an Award that terminates the proceedings on grounds of withdrawal. The case cannot be closed until a binding Award, including management of costs has been issued by the arbitrator.

### *Arbitration length*

49. The object of arbitration is to obtain settlement without undue delay or expense. There is no set time that a case will take. The time taken to complete the arbitration depends on how complicated it is, whether applications are made within the proceedings (for example preliminary hearings/references to the High Court), how many people are involved and how quickly the parties agree to procedures and provide relevant information and evidence.

### *Appeals*

50. The arbitration award is binding on the parties and can be enforced through the courts and worldwide. It can be appealed only on a narrow range of grounds provided for in the Arbitration Act 1996. Parties need to seek their own legal advice in connection with appeals.

Pubs Code Adjudicator

March 2017

**Annex A – Example Proposed Order and Directions**

**Note:** This example relates to referrals about MRO Full Responses. Sections may be subject to change depending on the dispute type.

**PROPOSED DIRECTIONS No: 1**

**IN THE ARBITRATION BETWEEN:**

**TPT name**  
**(The tied pub tenant)** **Claimant**  
**and**  
**POB name**  
**(The pub-owning business)** **Respondent**  
**Pub Name and Address**

**DIRECTIONS:**

**Introduction**

1. The Arbitrator will consider only those issues raised in the Statements of Case (the Statement of Claim, the Statement of Defence and any Reply) and evidence as set out below.
2. The time for compliance with the following deadlines is 5pm on the appropriate date.
3. Each Statement of Case must include a signed statement of truth in the following terms “I believe that the contents of this Statement of Case are true”.

**The Statement of Claim**

4. By [+14 calendar days from date of order], the Claimant shall submit to the Respondent and to the Arbitrator a Statement of Claim which must:
  - a. Include a Schedule setting out in the appropriate column:
    - i. Each alleged breach of the Pubs Code, with reasons. In respect of each alleged breach of regulation 29, setting out each term of the MRO response which the Claimant alleges to be unreasonable with reasons (with reference where relevant to the list of terms which are to be regarded as unreasonable under

regulation 31(2) of the Pubs Code). You may not succeed in your challenge if you do not provide proper reasons.

- b. Set out:
  - i. Any points of law or legal authority on which the Claimant seeks to rely, including reference to the specific provisions of the Small Business Enterprise and Employment Act 2015 or the Pubs Code and how they should be interpreted;
  - ii. The facts relied on and full explanation of the alleged breaches of the Code if these cannot conveniently be included in the Schedule;
  - iii. The remedy sought.
- c. Attach a copy of the Respondent's disputed MRO response(s).
- d. Include a copy of all relevant documents in the Claimant's possession.

### **The Statement of Defence**

5. By [+14 days from Statement of Claim], the Respondent shall submit to the Claimant and to the Arbitrator a Statement of Defence which must:
  - a. Include the Schedule setting out in the appropriate column:
    - i. The defence to each alleged breach of the Pubs Code, with reasons. In respect of each alleged breach of regulation 29, setting out why each term alleged to be unreasonable is not.
  - b. Set out:
    - i. Any points of law or legal authority on which the Respondent seeks to rely, including reference to the specific provisions of the Small Business Enterprise and Employment Act 2015 or the Pubs Code and how they should be interpreted;
    - ii. The facts relied on and full explanation of the defence if this cannot conveniently be included in the Schedule;
    - iii. The remedy sought.
  - c. Include a copy of all relevant documents in the Respondent's possession.

### **The Claimant's Response**

6. By [+14 days from Statement of Defence], using the appropriate column in the Schedule, the Claimant may (if desired) respond only to new matters raised in the Statement of Defence, enclosing any further documents relevant to the issues in dispute and not already disclosed to the Respondent.

### **Documents for the Arbitration**

7. By [+14 days from Claimant's Response], the Respondent shall submit to the Arbitrator an agreed indexed bundle of documents (electronically and in hard copy) which shall comprise:
  - A Statement of all Agreed Facts and Issues in Dispute which has been signed by both parties;

- The Statements of Case and Schedule;
- The Claimant's Documents/Evidence;
- The Respondent's Documents/Evidence.

### **Expert Evidence**

8. By [+14 days from Claimant's Response], the parties shall notify the Arbitrator:
  - a. If they wish to rely on expert evidence and if so regarding what issues in the dispute, and
  - b. Whether the instruction of a joint expert is agreed and if so the details of that expert.
  - c. What further directions as to expert evidence they consider appropriate.  
The Arbitrator may then make further Directions.

### **Determination**

9. The Arbitrator will reach a decision on consideration of the documents only and without an oral hearing. The parties may request an oral hearing. This request must be made to the Arbitrator in writing, giving reasons.