

IN THE MATTER OF

ARB/000308/ANDERSON4

THE PUBS CODE ARBITRATION BETWEEN:

EDWARD ANDERSON

(Tied-Pub Tenant)

Claimant

-and-

MARSTON'S PLC

(Pub-owning Business)

Respondent

FINAL AWARD

IN RELATION TO REMEDY AND COSTS

Summary of Award:

The Arbitrator directs as additional remedies in this case that the Respondent is to issue guidance to, and undertake training of, its BDMs regarding all of their obligations under the Pubs Code, including their obligation to provide notes of their meetings with TPTs and provide evidence to the PCA (as regulator) of its compliance with these directions. The Arbitrator also directs the Respondent to pay the Claimant the sum of £200 in respect of costs, and to pay the reasonable fees and expenses incurred by the Arbitrator in the sum of £2,032.00 by **10 December 2018**.

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Introduction

1. The seat of this arbitration is Birmingham, England. The applicable law is that of England and Wales.
2. The Arbitrator is Mr Paul Newby, Pubs Code Adjudicator, Lower Ground, Victoria Square House, Victoria Square, Birmingham, B2 4AJ. Mr Newby was appointed pursuant to regulation 58(2) of the Pubs Code etc. Regulations 2016.
3. The Claimant is Edward Anderson, the tied-pub tenant of The Swan public house, 35-37 High Street, Cheltenham, Gloucestershire, GL50 3QL (“the Pub”), who is unrepresented in this referral.
4. The Respondent and pub owning business is Marston’s plc of Marston’s House, Brewery Road, Wolverhampton, WV1 4JT. The Respondent is represented by [REDACTED].

Background

5. I made a Final Award except in relation to remedy and costs on 24 September 2018 (“the First Award”). At paragraph 40 of the First Award, I indicated that I was minded to direct the Respondent to issue guidance to, and undertake training of, its business development managers regarding all of their obligations under the Pubs Code, including their obligation to provide notes of their meetings with TPTs within the specified period of time, and to provide evidence to the PCA (as regulator) of their compliance with this direction within a reasonable period of time. However, I noted at paragraph 41 of the First Award that as such a remedy had not been proposed by the Claimant, that I had not received any submissions from the parties on any such proposal.
6. As such, in the covering letter to the parties accompanying the First Award, I directed the parties to provide further submissions as to the suitability of such a proposed remedy and a reasonable compliance period by 4pm on 01 October 2018.
7. In addition, at paragraph 42 of the First Award I also reserved the issue of costs pending the parties’ opportunity to make submissions. As such, in the covering letter to the parties accompanying the First Award I invited the parties to provide submissions on costs by 8 October 2018.
8. On 1 October 2018, the PCA’s Office received a letter via email from the Respondent asking for an extension of time until 8 October 2018 to respond to the issues in the covering letter of 24 September 2018 accompanying the First Award. The Claimant responded to this request by confirming that he was happy with any such extension, and on 2 October 2018 I agreed to this request.
9. On 8 October 2018, the Respondent provided submissions in relation to my proposed additional remedy (as outlined at paragraph 40 of the First Award and

paragraph 5 above of this Award) but failed to provide any submissions in relation to costs.

10. The Claimant has not provided any submissions in relation to either any additional remedy or costs.
11. As such, I have now reconsidered whether I ought to impose any additional remedies against the Respondent in light of the Respondent's submissions of 8 October 2018, and also considered what Award I ought to make on costs.

Additional Remedy

12. I note that the Respondent stated in its earlier main submissions in this referral that it has implemented a review of their internal processes for sending notes of meetings between its business development managers ("BDMs") and tied pub tenants ("TPTs"). I also note from their letter of 8 October 2018 that they are, firstly, intending to reconfirm instructions to all BDMs to copy the notes of all relevant meetings with TPTs to a dedicated internal email address when they send these to the TPT, so that there is a central log of both the date of any such meetings and the date on which these notes are sent out for audit purposes; and, secondly, that their 'Company Compliance Officers' are in the process of attending all BDM team meetings and providing additional training on the Pubs Code, including on the provision of notes to TPTs, and that these sessions will be completed by the end of December 2018.
13. However, owing to the failings in this case I wish to ensure that the steps taken by the Respondent to avoid any such problems happening again are both timely and sufficient. As such, and notwithstanding that such measures already appear to be in the process of being undertaken or arranged, in relation to my finding of a breach of Regulation 41(4)(b) of the Pubs Code in the First Award, I do also formally direct the Respondent to issue guidance to its BDMs regarding all of their obligations under the Pubs Code, including their obligation to provide notes of their meetings with TPTs in accordance with the statutory time scales within the next 28 days by **07 December 2018**, and also to undertake training of its BDMs on all of their obligations under the Pubs Code, including their obligation to provide notes of their meetings with TPTs within the statutory time scales, by **31 December 2018**, and to provide evidence to the PCA (as regulator) of its compliance with each of these directions within 7 days of the expiry of the respective deadlines by **14 December 2018** and **7 January 2019** respectively.

Costs

14. In relation to the parties' costs, the starting point for any award of costs is set out in Article 42 of the CIArb rules, which states that:
"The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that

apportionment is reasonable, taking into account the circumstances of the case”.

15. This starting point is subject to the discretion of the Arbitrator, in light of any submissions received from the parties to either advance or oppose this position. As stated above, I have received no submissions on costs from either party in this case. As such, and given that the Claimant’s referral was at least partially successful, it appears to me that the Claimant ought (in principle) to be entitled to have any costs he has incurred met by the Respondent.
16. I have received no details from the Claimant as to the level of any costs he has incurred, and as I am aware that the Claimant represented himself in this matter, the only conclusion I can draw is that the Claimant has not incurred any costs in bringing this referral.
17. However, I am aware that the Claimant incurred a £200 fee in relation to the charge paid to the Office of the PCA when the referral was made. As he has been successful in his referral, I consider it appropriate to award the Claimant this £200 referral fee, which is to be paid to him by the Respondent.
18. In relation to my costs as Arbitrator, section 51(6) of the Small Business, Enterprise and Employment Act 2015 states:
(6) The pub-owning business concerned must pay the reasonable fees and expenses of the arbitrator in respect of the arbitration, except where—
 - (a) the arbitration follows a referral by the tenant under section 48, and*
 - (b) the arbitrator concludes that the referral was vexatious.*
19. The provision applies in relation to a non-MRO dispute and therefore applies in this case.
20. In view of the above, I can only make an award other than that the Respondent should pay my costs in circumstances where a referral has been made by the tenant and where I have concluded that the referral was vexatious.
21. There has been no allegation in this case that the Claimant’s referral was vexatious, nor do I find that it was vexatious.
22. The award for my costs as Arbitrator shall therefore be that laid down by section 51(6) of the Small Business, Enterprise and Employment Act 2015.

Operative Provisions (Decision)

23. In the light of the above I make the following Award:
 - 23.1 The Respondent is to issue guidance to its BDMs regarding all of their obligations under the Pubs Code, including their obligation to provide

notes of their meetings with TPTs within the statutory time scales by **07 December 2018**, and provide evidence to the PCA (as regulator) of its compliance with this order by **14 December 2018**.

23.2 The Respondent is to undertake training of its BDMs on their obligations under the Pubs Code, including their obligation to provide notes of their meetings with TPTs within the statutory time scales, by **31 December 2018**, and to provide evidence to the PCA (as regulator) of its compliance with this order by **7 January 2019**.

23.3 The Respondent is to pay the Claimant the sum of £200 in respect of costs by **07 December 2018**.

23.4 The Respondent is to pay the reasonable fees and expenses incurred by the Arbitrator in the sum of £2,032.00 by **10 December 2018**.



Arbitrator's Signature:

Date Award made:09 November 2018.....

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Respondent's Ref: ARB//000308/ANDERSON4