



Pubs Code Adjudicator

Office of the Pubs Code Adjudicator
Lower Ground
Victoria Square House
Victoria Square
Birmingham
B2 4AJ
Email: office@pubscodeadjudicator.gov.uk

30 October 2020

[REDACTED]

[REDACTED]

Thank you for your email, received on 02 October 2020, in which you requested information from the Office of the Pubs Code Adjudicator (PCA) under the Freedom of Information Act 2000 (FOI Act).

The FOI Act entitles you to:

- know whether the information you have requested is held by the PCA; and
- be provided with that information, subject to any exemptions in the FOI Act which may apply.

You have requested the following information:

1. *“Advise how many unfair business practices have been referred to the Secretary of State since 20th June 2018 (follows on from our previous FOI).”*
2. *“Supply a list of the issues reported to the PCA as unfair business practices since July 2016 that were rejected (in the PCA’s opinion) as not being unfair business practices.”*
3. *“Indicate which (if any) issues considered by the PCA might be unfair but for now lack the evidence to proceed.”*

I can confirm that the PCA does hold some information relevant to your request.

In response to point 1 above, since 20 June 2018 I can confirm that the PCA has not concluded that there has been an unfair business practice within the meaning of section 71A of the Small Business, Enterprise and Employment Act 2015 (the 2015 Act). A report to the Secretary of State is required upon the PCA considering that there is such an unfair business practice and therefore no such report has been made to the Secretary of State. Further information published by the PCA Office to support tenant understanding of when a report will be made to the Secretary of State can be found [here](#).

In response to point 2, the PCA has not “rejected” any particular matter as not being an unfair business practice. The PCA therefore does not hold this information.

It may be helpful to note that all of the criteria contained in section 71A(4)(a) and (b) of the 2015 Act must be met for the matter to constitute an unfair business practice within the meaning of the statute. The criteria are that, in the PCA’s opinion, a pub-owning business is engaged in an unfair practice which is designed in order to avoid the Pubs Code and which is detrimental to TPTs. When information is received from stakeholders the PCA Office considers



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whether it relates to a matter that falls within the provisions of the Pubs Code. If it does it is managed within the PCA's powers in enforcing the Code. If it does not fall within the ambit of the Code, the PCA will consider whether the matter may amount to an unfair business practice.

In order to advise and assist I set out below how usual correspondence received by this Office is handled. The PCA Office receives correspondence from tied pub tenants and a wide range of other stakeholders connected with the industry. This is often seeking the assistance of the PCA as regulator and may highlight what the writer considers to be a breach of the Pubs Code, or other conduct by a pub-owning business. Upon receipt of such correspondence, the PCA would firstly consider whether there is sufficient information to understand the issue and whether it is possible and appropriate to address any issues within her powers under the Pubs Code. If an issue is not covered by the Code, the PCA may then consider whether the Code avoidance provisions in s.71A may be relevant. An unfair business practice is separate, and mutually exclusive from, a breach of the Pubs Code. Where evidence or information is presented to the PCA (whether this is in respect of a new issue or new evidence in relation to an issue previously reported) the PCA will consider this as appropriate. If the information is not sufficient the PCA will usually ask for further information or evidence of the statements made. Any next steps will be considered within the context of the PCA's regulatory work, time and resources. The PCA will not make a referral to the Secretary of State under s.71A unless she is satisfied that the criteria in s.71A(4) are met, but this is not because she has "rejected" any issue as being definitively not an unfair business practice; this will depend on the information and evidence before her.

In respect of your third request, the PCA does not hold this information. As detailed above, where the PCA considers that there is an unfair business practice under s.71A of the 2015 Act she must and will provide a report to the Secretary of State. It is the evidence itself that will be used to determine if an unfair business practice has occurred; for this reason we are unable to provide a list of any issues which could constitute an unfair business practice but for which the PCA has not yet seen sufficient evidence.

If you do not believe that the Office of the PCA has provided an appropriate response to your request, as set out above, you are entitled to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be made in writing, to office@pubscodelistadjudicator.gov.uk or:

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If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

[Redacted signature block]