



LEGAL

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Any nearer to breaking the Pubs Code?

Suzanne Davies updates readers on the now long-running Pubs Code saga

A Westminster Hall debate took place in January to assess whether the Pubs Code was working as it should. The consensus was 'no', with blame being levelled against both the six pub companies subject to the code and the Pubs Code Adjudicator (PCA) Paul Newby for not exercising the code in a robust, impartial and expeditious manner and for failing to use his enforcement powers.

In response, Pubs Code policy minister Richard Harrington said that the government would not ignore the problem.

Subsequently, Ei Group withdrew a High Court appeal against a decision of the PCA because further rulings by the PCA on Market Rent Only (MRO) tenancies had given it "helpful clarity" and, on 2 March, the PCA published an advice note on MRO-compliant proposals, described by the PCA as giving: "A strong yet simple steer on what pub-owning businesses can reasonably ask from their tenants in a MRO-compliant tenancy."

All was looking rather more positive. Indeed the deputy PCA Fiona Dickie went so far as to say: "I am confident that the arbitration process will now more efficiently and proportionately resolve any remaining MRO disputes where the parties cannot reach an agreement."

On 22 May, it was announced that, in order to review the operation of the Pubs Code, the Business, Energy and Industrial Strategy (BEIS) Committee would hold a one-off evidence session on 26 June with the PCA and his deputy.


However, just a week later, it was reported that Greene King were judicially reviewing the PCA's MRO advice note.

So, the stage was well and truly set for the oral evidence session. The PCA told the BEIS Committee: "We are at a point where the law is far from settled and we are still being challenged... the advice note itself is the subject of a legal challenge. A key part of our role is to get to a point where there is clarity about what this code actually means in legal terms." His deputy added: "There is a significant caseload and neither of us have a magic wand."

They also expressed concern that, even though the Arbitration Act requires a PCA decision to remain confidential unless all parties to it agree to its publication, keeping awards confidential is "plainly not right", describing Ei Group and Greene King as "intransigent" on this.

Their words struck home. Just days later, the six pub companies subject to the Pubs Code wrote to the Minister agreeing to waive their right to confidentiality in arbitration decisions made by the PCA. The BBPA said this decision "highlights the fact we

remain committed to working with tenants and the PCA to ensure the code is delivered as parliament intended", also suggesting that "each company MRO agreement is accredited by the PCA to ensure that the system is more open, transparent and provides clear guidance to licensees".

The BII welcomed the pub companies' action, saying it believed "transparency of awards made by the PCA is... one of the ways that will speed up decisions which can only benefit those tenants applying for MRO". UKHospitality agreed, adding that the PCA must speed up the arbitration process "as businesses are at risk of going bust while cases are being heard". As I write this, the PCA's response is awaited. 



QUESTIONS & ANSWERS

Q: Is display of food hygiene ratings going to become compulsory?

A: It already is compulsory in Wales and Northern Ireland, and may become compulsory in England too if the government acts on the words of the Food Standards Agency (FSA) CEO, who said in the FSA's recent annual report that: "Mandatory display of FHRS drives up food safety compliance and therefore provides better public health protection." Encouragingly, he also said that more than 95% of food businesses in England, Wales and Northern Ireland now have a 'Generally satisfactory' rating or higher (3 or above) and 68% have a hygiene rating of 5 ('Very good').

Q: Can hiring illegal workers put your licence at risk?

A: The answer is most certainly yes, as was proved in a recent case concerning a restaurant in Bexhill-on-Sea that hired a number of kitchen staff who had no permissions to work and no legal basis to remain in the UK. Not only was the owner fined £15,000, but the premises licence was revoked at a review hearing because the crime prevention licensing objective had been undermined and the Licensing Committee was not confident that the restaurant management would not prevent a recurrence.

Q: What has prompted the Scottish government's consultation on MUP for wholesalers?

A: According to the Scottish government, it's because of a technical issue related to the interpretation of how minimum unit pricing operates in respect of trade sales by wholesalers who have opted, for whatever reason, to hold a premises licence. A less charitable answer may be that it's because of a mistake in the drafting of the relevant legislation. Shona Robison, cabinet secretary for health and sport, has said: "Wholesalers also selling to the public require a premises licence, and all sales (other than to a person for the purposes of their trade) must comply with minimum unit pricing." The anticipated outcome is that wholesalers selling to trade only are not required to hold a premises licence with the consequence that MUP does not apply.