



Campaign for Pubs

Promote, Support and Protect Pubs

Fiona Dickie
Pubs Code Adjudicator
Lower Ground
Victoria Square House
Victoria Square
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4th September 2020

Dear Fiona,

Your Article in the Morning Advertiser

We are writing in response to your first monthly column in the Morning Advertiser and the claim that the PCA can help with the dire situation that many pub tenants find themselves in as a result of the Covid 19 closure and the serious impact this is having on trade.

The sad reality is that the Pubs Code and the way it is operated means that it is of very little use in dealing with Covid 19. The grounds for complaint are too narrow, the process is too contrived and complicated in relation to those narrow grounds, the process takes far too long (which Government promised would not be the case) and the remedies are wholly inadequate.

There are many pubs facing a drastic loss of trade following months of enforced closure and they desperately need help. Taking pubs in city centres as an example, they are suffering badly due to lost revenue from office workers, theatre-goers, sports stadiums and concert venues. Their rent was calculated based upon that trade which no longer exists. **In these cases, the situation is very clearly grounds to be able to trigger a Market Rent Only Rent review, according to the intent of the original legislation as it constitutes a significant material change to trading conditions.**

Yet experience is that pub-owning businesses will resist this as they have done since the Pubs Code came into operation. This means that a PCA arbitration is likely to take place to determine whether a tenant will be eligible for MRO in these circumstances which, considering the clear and significant change in trading conditions, is a farce and is one of many examples of how tenants have been badly failed and how the system we have doesn't deliver what Government promised nor what Parliament intended.

This arbitration will take a minimum of 6 months with the tenant paying the unaffordable pre-Covid rent throughout. If the tenant wins the right to obtain MRO, there will be another process to agree costs for the arbitration they won.

The pub-owning business is then likely to make an 'MRO offer' that involves the requirement for a costly new lease with some onerous terms and conditions. This will require a further arbitration taking a minimum of another 6 months and with another battle for the tenant to recover their costs if they win. Again, the tenant has to pay the pre-Covid rent during this process.

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There then follows a rent valuation process taking 3 months and a costly and time-consuming lease transfer process. So a further 6 months gone with the tenant paying the unaffordable pre-Covid rent throughout.

So, in summary, a tenant who is adversely affected by Covid and who should be entitled to a MRO rent within 120 days, as passed by Parliament in 2015, can expect as a minimum to have to pay their full unaffordable rent for 18 months, pay for and go through two laborious arbitration processes with subsequent battles to recover their costs, pay for and go through a rent valuation process and then to pay for the closure of their current lease and to establish a new lease. This assumes that the process goes smoothly and the pub-owning company does not require further arbitrations and appeals.

This is the appalling reality of the MRO process and it is this that is denying tenants their legal right to move to a Market Rent Only agreement in a reasonable timescale and at reasonable cost. This is absolutely not what Parliament intended, something that has been made clear to you before.

The fact is that the Pubs Code as it is and the way you as PCA is overseeing it is not only failing tenants, but is actually denying the legal right to a genuine Market Rent Only agreement as intended by Parliament and promised by Government.

So your article gives a wholly unrealistic picture of how you, the Pubs Code and the MRO can help tenants. Rather than circulating such questionable information, we urge you to be honest and admit publicly that the Pubs Code is not working and tenants do not have access to adequate, cost effective and timely dispute resolution and/or the Market Rent Only option as Parliament intended and Government promised.

In our view, rather than giving an unrealistic picture, the Pubs Code Adjudicator needs to be honest about the flaws and limitations of the current situation and call for substantial improvements to the legislation.

We believe that it is clear that the Covid-19 closure and changes to trading conditions should be an MRO Trigger in all circumstances. So we would urge you to make a real effort to help all tenants by joining with us in making representations to the Government that all tenants should be eligible to trigger the MRO process if they are unable to come to a mutually agreed rent to deal with Covid 19.

We look forward to hearing from you.

Yours sincerely,



Gary Murphy
PCA Liaison Officer



Greg Mulholland
Campaign Director