



**Pubs Code  
Adjudicator**

**What Tied Pub Tenants Need To Know**

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# **Pubs Code Arbitration Disputes**



## How to use this factsheet:

This factsheet is for tied pub tenants who want to know about arbitration conducted under the Pubs Code.

It provides information to support tenant understanding. It is not a substitute for the Pubs Code legal framework.

Our website also contains other useful information about accessing your Pubs Code rights and the PCA's role as regulator in enforcing those rights: [www.pubscodeadjudicator.org.uk](http://www.pubscodeadjudicator.org.uk)

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## At a glance...Pubs Code arbitration:

If you have a dispute with your POB about your Pubs Code rights, that dispute can be referred to the PCA to be decided by an arbitrator.

There are strict time limits within which to make an arbitration referral to the PCA.

This factsheet explains what arbitration is and what disputes may be referred. It also describes the rules relating to the costs of arbitration and who pays them.

## Terms and abbreviations

Term/abbreviation	What it means
Code	The Pubs Code etc. Regulations 2016
Fees Regulations	The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016
MRO	Market Rent Only
MRO Option	The option for you to occupy the tied pub under a MRO-compliant tenancy and to pay a rent you have agreed with the
PCA	Pubs Code Adjudicator
POB	Pub-owning Business (often referred to as pub company)
Pubs Code Framework	The legal framework that regulates the relationship between the large pub-owning businesses and their tied pub tenants. It is made up of the Small Business, Enterprise and Employment Act 2015 (Part 4), The Pubs Code etc Regulations 2016, and The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016.
Rent Assessment	An assessment of the rent you must pay in relation to an existing tenancy
RAP	Rent Assessment Proposal (a proposal made in line with Part 4 of the Pubs Code)
TPT	Tied Pub Tenant



## Arbitration referrals

### What is an arbitration under the Pubs Code?

If you have a dispute with your pub-owning business (POB) about how it is applying the Code or about your Pubs Code rights, and you cannot resolve it, that dispute may be referred to the Pubs Code Adjudicator (PCA) to be decided by an arbitrator. Under the Code, the PCA can arbitrate that dispute or appoint another person to do so.

Arbitration gives you an independent decision on a dispute instead of going to court. Arbitration is the dispute resolution method for the Code. The party referring the dispute is the 'claimant'. The other party is the 'respondent'.

If you do not think the POB has complied with the Code, you may be able to resolve matters without the need for arbitration. You can raise any Code matter with your POB's Code Compliance Officer, whose role it is to verify the POB's compliance with the Pubs Code.

The contact details for each Code Compliance Officer are available [here](#).

The PCA expects the POB to attempt to resolve the issue to avoid the need for arbitration. **Even after a referral for arbitration is made, wherever possible you and the POB should continue to negotiate about the matter in dispute to try and resolve it.**

When the arbitrator makes a decision in the case, their decision is called an award. The parties may instead reach an agreement between them, and the arbitrator may then issue an 'agreed award'. An arbitration award is legally binding, which means that if an arbitrator orders your POB to take an action, it must do it.

Both the arbitration process and the award are confidential between you and the POB, unless you both agree otherwise. Where consent is given, the PCA routinely [publishes awards](#) made in Pubs Code arbitrations, and may otherwise publish summaries of awards, to help the industry understand how the Code is being applied in individual cases.

### What disputes may be referred to the PCA?

Disputes about the Market Rent Only (MRO) process may be referred by either the tied pub tenant (TPT) or the POB. All other disputes may be referred only by a TPT.



## Market Rent Only disputes

If a dispute arises between you and the POB about your request for a MRO option this can be referred for arbitration. This includes if:

- You and the POB disagree about whether you are entitled to request MRO
- You think the POB's MRO full response is incomplete
- You and the POB disagree about whether the MRO tenancy terms it has offered you are MRO-compliant, including if you think they are unreasonable
- You or the POB think that the rent amount determined by an Independent Assessor is not the MRO market rent

Full details of the MRO procedure and what issues can be referred for arbitration can be found in the PCA's [factsheet](#).

## Other Code disputes

Other disputes under the Pubs Code (in most cases) may be referred for arbitration and include:

- The **rent assessment** process and rent assessment proposals
- Duties of a POB to provide a **rent proposal**
- What a POB is required to do in connection to **new agreements** and at a **tenancy renewal**;
- The **investment exception**
- Duties of a POB about transparency of **insurance requirements**
- Duty of a POB not to subject a TPT to any detriment on the grounds that the TPT attempts to exercise rights under the Code
- Some duties of a POB around the conduct of a **Business Development Manager**
- A claim that a POB has subjected you to any detriment or imposed any liability on you solely as a result of a reading taken from a flow monitoring device.



## When should I make a referral to the PCA for arbitration?

### Market Rent Only disputes

There are strict time limits for when a referral for arbitration can be made at different stages of the MRO procedure. Full details of the MRO procedure and the timings of when issues can be referred for arbitration can be found in the PCA's [factsheet](#).

### Other Code disputes

**See Small Business, Enterprise and Employment Act 2015 – sections 48 and 49**

To make a referral about a dispute (which is not part of the MRO process) you need to take the following steps:

1. Notify the POB of the issue and the fact that you think it has not complied with the Code
2. Wait 21 days, beginning with the day that you notify the POB
3. Make the referral to the PCA after the end of the 21 days. To be accepted you **must** make the referral within 4 months beginning with the first date on which the dispute could have been referred

Information about the PCA's view on the time limit for a TPT to refer a dispute for arbitration (other than MRO disputes) can be found [here](#).

### Worked example

Your POB has provided you with a Rent Assessment Proposal (RAP) on 1 July. If you do not think it complies with the Code, you must give the POB written notice of this. You must then give the POB 21 days to resolve the issue before you can refer the dispute to the PCA. The earliest date on which you could give written notice to the POB is 1 July and so the earliest you could make a referral is 22 July.

You have four months to make a referral beginning with the first day on which you could have made that referral - so you would have up to and including 21 November to make a referral to the PCA.



## See Pubs Code - regulation 60

Your tenancy agreement may have its **own dispute resolution provisions**. If your POB starts arbitration proceedings under the tenancy in relation to a matter which is about MRO, you may appoint the PCA to arbitrate the dispute.

In those circumstances you must give written notice of this request to both the POB and the PCA within 21 days of the arbitral proceedings beginning. Where the contractual arbitration arrangements provide for someone other than the TPT or the POB to appoint the arbitrator, the TPT must give this notice within 21 days from the date they are told who is being proposed as arbitrator.

## How do I make a referral for arbitration to the PCA?

Pubs Code arbitration referrals are managed by the Chartered Institute of Arbitrators (CIArb) on behalf of the PCA. If you are making a referral you will need to:

- Complete a [referral form](#) and send this to the CIArb Dispute Appointment Service team. The form can be emailed to [pca@ciarb.org](mailto:pca@ciarb.org)
- Pay a referral fee of £200.

Full details of the form to complete and how to pay the referral fee are on the [CIArb website](#).

## Is it possible to appeal an award made in a Pubs Code arbitration?

### See Arbitration Act 1996 – sections 67 to 71

Yes, you can appeal the award to the High Court, but only on limited grounds. These include a challenge to the jurisdiction of the arbitrator, a challenge on a point of law (in some limited circumstances) or if there has been a serious irregularity affecting the arbitrator, the proceedings or the award. For example, a serious irregularity may be alleged if the arbitrator has either failed to deal with all the issues that were before them or has gone beyond what they have the power to do.

If you are considering pursuing an appeal, you may wish to take independent legal advice.



## Arbitration costs

See Fees Regulations – regulations 3 and 4

Also see, Small Business, Enterprise and Employment Act 2015 – section 51(6)

### What costs might I or the POB have to pay in connection to an arbitration?

#### Referral Fee

When a referral is made the person making the referral will need to pay a £200 referral fee.

#### Arbitrator's costs

The arbitrator is entitled to charge for their work done in arbitrating the dispute. The Pubs Code framework says the **POB must pay the reasonable fees and expenses of an arbitrator**. The exception to this is if the arbitrator decides that your referral was vexatious, in which case they can require you to pay some or all of their fees and expenses.

The arbitrator's expenses include the fees and expenses of any experts, legal advisers or technical assessors that the arbitrator appoints.

#### Parties' costs

If you instruct a professional adviser to act for you in an arbitration, you will be responsible for their fees. Information about what to consider when instructing a professional adviser can be found in the PCA's [factsheet](#).

You and the POB can agree between you whether one of you should pay some of the other's costs incurred in the arbitration. If you do not agree, the arbitrator can order that one party pays the costs of another party. This includes the costs of a professional adviser to act in the arbitration.

The arbitrator will decide whether and how much to award in costs taking into account the circumstances of each case. The usual position is that the party who was unsuccessful in the arbitration pays some or all of the costs incurred by the successful party, unless there are circumstances where the arbitrator considers this is not appropriate.



Before deciding whether to make a costs award, the arbitrator will ask the parties to explain their views on which party (if either) should pay the costs of the other and what the appropriate amount of costs awarded should be. If a party is asking that the other pay their costs, they should usually provide to the arbitrator:

- a description of each activity included in the claim; and
- details of how the costs have been incurred.

Note: If you have not instructed a professional adviser to represent you, you may be able to claim costs from the POB for your time spent on an arbitration.

The types of activity for which you can claim are usually the types of work for which costs could have been claimed if a legal representative had carried them out on your behalf.

When deciding whether to order that one party pays the costs of the other, and how much they should pay, the arbitrator is likely to consider the complexity of the case and whether:

- the activities claimed for were necessary or appropriate in the circumstances of the case;
- the amounts claimed for those activities are reasonable;
- the level of costs is proportionate to the sums in dispute;
- the party complied with orders and directions issued by the arbitrator; and
- any other factors which the arbitrator in their discretion considers relevant.

### **Is there a maximum amount I could be required to pay in connection to the POB's costs?**

If the arbitrator decides that you should pay some of the POB's costs, **usually the maximum they can order you to pay is £2,000**. They can only order you to pay more if they decide that:

- your referral was vexatious, OR
- your conduct (including that of any representative acting for you in the arbitration) in connection with the arbitration resulted in an unreasonable increase in the costs of the arbitration.

There is **no maximum that a POB can be ordered to pay** – if the arbitrator thinks it appropriate, they can order that the POB pays all of your costs of the arbitration.



## Worked example – costs

**Note: the purpose of this worked example is to illustrate the operation of the costs process and should not be taken as any kind of advice or an indication of the potential outcome in any individual arbitration.**

The arbitrator has found that the POB's Rent Assessment Proposal (RAP) did not comply with the Code. The TPT argued in the arbitration that the RAP was not compliant with the Code for three reasons. The arbitrator accepted one of these reasons was correct and ordered the POB to send a new RAP. But the arbitrator rejected two of the reasons the TPT had put forward.

The TPT and the POB are given the opportunity to send written arguments to the arbitrator about who should be required to pay costs and how much.

The TPT had paid fees of £3,500 to a professional adviser who represented them in the arbitration. They prepare and send arguments to the arbitrator saying that as the TPT was successful in the arbitration the POB should be required to pay all the TPT's costs. They include a breakdown of how the fee was incurred, including the hourly rate, the activities carried out in the case and how long each activity took.

The POB argues that it should not be required to pay 100% of the TPT's costs because not all its allegations about the RAP were successful and because it claims the representative's fee is unreasonably high for the work done.

The arbitrator will look at all the circumstances, including the breakdown of activities carried out by the professional adviser and the degree to which the TPT was successful in their arguments. The arbitrator will decide whether to reduce the costs the POB has to pay, for example, to exclude the cost of any activities carried out by the TPT's professional adviser that were not necessary, reasonable or proportionate.

The arbitrator's fees and expenses were £6,000. The arbitrator must order the POB to pay the whole of these costs unless the TPT's referral was vexatious.



## Questions about this factsheet

For **general queries** about the information in this factsheet, you may contact our enquiry service.

Please note, we can provide information about your rights, the Code and our processes. We cannot advise you about your case.



Complete our [online enquiry form](#)



Email: [office@pubscodeadjudicator.gov.uk](mailto:office@pubscodeadjudicator.gov.uk)



Call 0800 528 8080 to request a call back

This factsheet provides information to support tenant understanding. It is not a substitute for the Pubs Code framework.

**You may find it helpful to take independent professional advice before making any decisions that may affect you and your business.**

## Find out more

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[Access all PCA factsheets here](#)

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