Pubs Code Adjudicator

# Factsheet 15
# Arbitration Costs

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**Arbitrator's fees**

1. The Pubs Code legal framework requires the pub-owning business (POB), in most cases, to pay the reasonable fees and expenses of the arbitrator[1]. In addition, the arbitrator can make an award that one party to the arbitration pays the costs of another party incurred in relation to the dispute (party costs).

**Parties' costs**

2. Only costs that have been properly incurred and are due to be paid by a party can be subject to a costs award.

3. The decision on whether and how much to award in party costs is for the arbitrator, taking into account the circumstances of each case. This will usually be in line with the principle that costs follow the event (in other words the unsuccessful party pays) unless there are circumstances where the arbitrator considers this is not appropriate.

4. Before deciding whether to make a costs award, the arbitrator will ask for 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.

5. In most cases the arbitrator cannot order a tied pub tenant (TPT) to pay more than £2,000 towards a POB's costs. There is no such cap in relation to costs which the arbitrator can award against a POB. Where the arbitrator considers that the TPT made a vexatious referral or their conduct in connection with the arbitration resulted in an unreasonable increase in costs, the maximum amount the TPT may be ordered to pay is the POB's full costs of the arbitration.[2]

6. The Civil Procedure Rules (CPR) make up a procedural code to be followed in the Courts of England and Wales. Although the arbitrator is not bound by the CPR, parties may wish to have regard to its provisions when making their case about costs.[3]

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[1] For costs relating to Market Rent Only, see Reg 3(3) of the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016 (Fees Regs 2016) (https://www.legislation.gov.uk/uksi/2016/802/contents/made). For other costs, see section 51(6) of the Small Business, Enterprise and Employment Act 2015.

[2] See Regs 3(4)-(6) and 4(3)-(5) of the Fees Regs 2016

[3] https://www.justice.gov.uk/courts/procedure-rules/civil/rules

**Approach to parties' costs**

7. The arbitrator can award costs which are recoverable, reasonable and proportionate.

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

**What to include in a request for costs**

9. When a party asks the arbitrator to make a costs award in their favour, they should provide to the arbitrator and the other party a statement of costs, setting out:
   - a description of each activity included in the claim
   - details of how the costs have been incurred (including a breakdown of the different activities and tasks undertaken, identifying the time spent on each and the hourly rate proposed) to enable the arbitrator to make a decision as to whether the costs are reasonable and proportionate with regard to the dispute.

10. For example, in relation to work done by legal representatives, this is likely to include a detailed breakdown of the different activities and tasks undertaken, identifying the time spent by the representative on each, including an hourly rate at which the work has been charged. To enable the arbitrator to easily see where costs have been incurred, it is advised, particularly if the case is complex, that costs be displayed in a schedule.

11. The costs submission should also include evidence that the sums claimed have been properly incurred and will be payable by the party (e.g. letters of instruction, invoices).

12. Legal representatives will likely have experience of preparing such statements of costs. If you are not represented by a solicitor, your statement of costs should be sufficiently clear to show these matters, or you may be directed by the arbitrator to submit the information in a schedule form.

**Unrepresented parties**

13. Where a person has represented themselves in the arbitration, they may be entitled to claim costs for the activities they have reasonably and proportionately undertaken.

14. An unrepresented party seeking an award that the other party pay their costs should set out a breakdown of costs as set out at paragraph 9 above.

15. The types of activity for which an unrepresented party can claim are usually the types of work for which costs would have been allowed if carried out by a legal representative acting on their behalf. The arbitrator may have regard to the fact that an unrepresented party is not a legal professional when assessing the reasonableness of time spent on activities.

16. The arbitrator will consider what a reasonable hourly rate might be for an unrepresented party. Parties may find it helpful to consider the approach to costs that the court considers as set out in the CPR. Unless an unrepresented party can clearly demonstrate (with evidence) a specific financial loss (such as loss of earnings) relating to time reasonably spent on doing work on the case, the CPR currently provides the rate for an unrepresented party as £19 per hour.

17. The arbitrator may award costs to an unrepresented party in respect of legal or professional assistance in relation to the arbitration which does not involve full representation in the dispute (for example, for advice or assistance in drafting documentation).

**This factsheet is for information only. Nothing in this factsheet is a substitute for a party to an arbitration taking independent legal advice. Nor does it restrict a party from making arguments on the law to the arbitrator that different considerations should apply in their case.**