

Lord Porter of Spalding, CBE,
Chair, Local Government Association,
Layden House,
76-86 Turnmill Street,
London,
EC1M 5LG

From: Ann Pope
Senior Responsible Officer

Case ref: 50243

22 November 2017

Dear Lord Porter,

LOCAL AUTHORITIES AS LANDOWNERS: PROPOSED CHANGES TO THE RULES OF THE SHOWMEN'S GUILD OF GREAT BRITAIN HAVE BEEN ACCEPTED BY THE COMPETITION AND MARKETS AUTHORITY

Further to the letter we sent you on 24 August 2017, I am writing to inform you of the outcome of the Competition and Markets Authority's (CMA) investigation into certain rules of the Showmen's Guild of Great Britain (the Guild).

As explained in our previous letter, the CMA was looking into whether some of the Guild's rules were a problem under competition law. The CMA identified competition concerns with certain of the rules and in response, the Guild proposed changes to these rules.¹ Accordingly, the CMA decided to publicly consult on whether the proposed changes to certain of the rules addressed the competition concerns identified by the CMA. The consultation ended on 3 October 2017. Having reviewed all of the submissions received in response to the consultation, the CMA has reached the conclusion that the proposed changes, once implemented, will address its competition concerns, while still allowing the Guild to carry out the very important functions that fairgoers and showmen value.

Therefore, on 26 October 2017, the CMA published a decision accepting the Guild's proposed changes to certain of their rules.²

We think that the changes listed below will be of interest to local authorities which let land to members of the Guild for the purposes of organising fairs.

¹ As noted in our previous letter, these changes were offered by the Guild in response to a public statement by the CMA of December 2016 (<https://www.gov.uk/government/news/funfair-body-alleged-to-have-broken-competition-law>).

² The CMA's decision sets out its competition concerns and its assessment of the proposed changes. For a copy of our decision please see <https://www.gov.uk/cma-cases/leisure-sector-anti-competitive-practices>

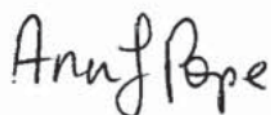
- Under the current rules, members of the Guild who have organised a fair for the previous two years, or have provided amusements on ground at a fair for the previous two years, have an established right to organise that fair, or occupy the ground in question at that fair, for the following year (this rule is known as the 'Established Rights Rule'). As a result, the holder of an established right may maintain forever this right to organise that fair, or occupy that ground, unless the landowner decides to cancel the entire fair or replace the organiser with a non-Guild member. The proposed changes will enable a local authority to replace an incumbent fair organiser or amusement operator at a fair on grounds of the incumbent's poor performance. In such circumstances, the incumbent's established rights will not apply so as to prevent their replacement by another showman, whether or not a Guild member. Poor performance shall mean performance falling below the standards which the local authority could reasonably expect in terms of (i) the raising of revenue and/or (ii) quality standards (including innovation) and/or (iii) compliance with relevant legislation including but not limited to consumer protection and health and safety legislation. It shall be a matter to be judged by the local authority, although a decision by a local authority may be appealed to the Guild's Appeals Tribunal, at which decisions are taken by an independent barrister.
- The proposed changes will remove the restrictions that currently prevent members of the Guild from (a) letting ground to non-members and (b) taking ground at fairs from non-member showmen (the 'Non-Members Rule'). This will enable non-member showmen to compete with members of the Guild, for example when a local authority decides to replace a poorly performing incumbent member of the Guild and open up its ground to competition.³
- Notwithstanding the above, as it will be stated in the revised Guild's rules, a local authority may expressly request in writing, for its own reasons, that a fair shall comprise of members only (ie an 'all-Guild' fair). The CMA would stress, however, that local authorities should always be free to decide whether they want an 'all-Guild' fair or whether they prefer to allow non-members showmen attending the fair alongside Guild members. The CMA encourages local authorities to consider the implications in terms of choice, innovation and attractiveness of service for fair-goers when making their decision as to whether to request an 'all-Guild' fair, and exercise their discretion accordingly. The reason for this provision in the Rule Book is simply to ensure that a Guild fair organiser is able to provide an 'all-Guild' fair if specifically requested by a local authority.

³ There are certain exceptions to this rule which relate to, for example, the letting of ground by a Guild member to a non-Guild member who has an unspent criminal conviction.

- The distance within which Guild members are prevented from attending rival fairs will be reduced from two miles to a maximum of one mile of an existing Guild fair, so reducing the geographical area covered by the restriction by three quarters (the Time and Distance rule). In addition, the proposed changes will prevent regional Sections from imposing through their bye-laws time or distance limits that exceed the national maximum.
- As a result of the proposed changes, an up to date copy of the Guild's 'rule book' will be published on the Guild's website for the first time as from end of March 2018. This will enable local authorities to have a clearer understanding of how the rules operate, how they may impact a fair, and therefore be better able to structure contractual terms which are affected by the Guild's rules.
- Please note that the above amendments to the rules will only be implemented in January 2018 following a vote in favour of the proposed changes by the Guild members. If the Guild members vote against these proposed changes then the CMA may reopen its investigation. We will write to you in early February to explain what has happened.

If you have any further questions please contact my colleague Simon Nichols who directed this project (simon.nichols@cma.gsi.gov.uk).

Yours sincerely

A handwritten signature in black ink that reads "Ann Pope". The signature is written in a cursive, slightly slanted style.

Ann Pope
Senior Responsible Officer