



**Pubs Code
Adjudicator**

PCA Advice Note

**Market Rent Only-compliant
proposals**

March 2018

CONTENTS

1. Summary	3
2. Form of the MRO-compliant agreement	4
3. Reasonableness	4
4. Negotiating in good faith	4
5. Negotiation should be the norm	5
6. Unreasonable terms	5

1. Summary

1.1 In the light of recent arbitration awards made by the PCA and Deputy PCA, the following advice is issued to tied pub tenants (TPTs), pub-owning businesses (POBs) and their representatives, under section 60 of the Small Business Enterprise and Employment Act 2015.

- A Market Rent Only (MRO) proposal does not have to be in the form of a new tenancy.
- The terms of the MRO proposal do not have to be the same as the tied tenancy but they do have to be reasonable.
- A MRO proposal should be consistent with the core principles of the Pubs Code (fair and lawful dealing, and no worse off).
- MRO is not the same as a negotiation on the open market and the POB should not take advantage of the fact that a TPT has limited negotiating power.
- The PCA will be likely to find it unreasonable for the POB to offer unattractive MRO tenancy terms if the intention is to persuade the TPT to stay tied.
- If the POB proposes a new tenancy for the MRO proposal without good reason, and this disadvantages the TPT, then the tenancy can be non-compliant for containing unreasonable terms or conditions.
- The PCA expects the POB to engage in reasonable and fair negotiations. Referral for arbitration should be the exception. Even if a case is referred, the PCA will expect both sides to carry on talking to each other, and to try and reach an agreement.

2. Form of the MRO-compliant agreement

2.1 There is nothing in the legislation which means that a MRO-compliant tenancy must be in the form of a new tenancy (or that it must be in the form of the existing tenancy varied by deed). Subject to its terms and conditions, either form is acceptable.

3. Reasonableness

3.1 The terms of the MRO-compliant tenancy (other than as to the rent and tie) do not have to remain the same as in the existing tied tenancy. They do however, individually and taken together, have to be reasonable. **A term being uncommon is only one way in which a term or condition may be unreasonable.**

3.2 Whether it is unreasonable in any other way will depend on the circumstances, but the approach in the POB's MRO proposal should be consistent with the core principles of the Pubs Code (fair and lawful dealing, and no worse off). Where a proper challenge is made, the arbitrator will consider on the evidence whether those terms and conditions proposed by the POB are unreasonable. The type of factors that the PCA will apply when assessing reasonableness are set out at paragraph 6 below.

4. Negotiating in good faith

4.1 The commercial relationship between the TPT and the POB on service of a MRO Notice is different to negotiations on the open market, and the core Code principles mean that the POB must act in good faith and cannot take advantage of any limitations on the TPT's power to negotiate effectively. The PCA will be likely to find it unreasonable – and therefore not MRO-compliant - for the POB to offer unattractive MRO tenancy terms if the intention is to persuade the TPT to stay tied.

4.2 If the POB proposes a new tenancy (rather than a deed of variation) for the MRO proposal without sufficient reason for doing so, and that choice disadvantages the TPT, then the tenancy can be non-compliant for containing unreasonable terms or conditions.

5. Negotiation should be the norm

5.1 The PCA expects POBs to engage in meaningful negotiation with the TPT in every MRO case and that consequently the parties will be able to agree reasonable terms in the vast majority of cases, and arbitration will be required only exceptionally. Even where making a referral to the PCA cannot be avoided (owing to the short time limit for doing so), the PCA expects the parties to continue negotiations with a view to reaching an agreement outside the arbitration process.

6. Unreasonable terms

6.1 It is not possible to set out all of the matters which might be relevant in deciding whether terms are unreasonable as they depend on the circumstances of each case, but they may include:

- a) Whether there are fair reasons for the POB's choice of MRO vehicle, and fair reasons for proposing any new terms and conditions. The PCA expects the POB to communicate these reasons to the TPT to reduce the likelihood of disputes.
- b) The terms of existing tenancies in the relevant market sector, bearing in mind matters such as the location of the pub and the nature of trade. The terms of the MRO proposal may also need to have regard to the existing contractual relationship between the parties.
- c) Whether there is an effective choice between staying tied and going free of tie available to the TPT.
- d) Where the POB's choice to offer the MRO proposal by way of a new tenancy adversely impacts the TPT, whether the tenancy terms should be drafted to reduce or remove that impact (for example whether there should be terms which spread or postpone the cost of terminal dilapidations that arise as a result of the termination of the existing tenancy).

PCA
March 2018

This Advice Note will be kept under review and updated as appropriate.