



April 2019

## PCA publishes guidance on beer duty and waste

The PCA has published guidance on beer waste and duty following a consultation, during which it received responses from tied tenants, trade bodies and tenant representatives and pub companies. The guidance can be found [here](#).

The guidance requires pub-owning businesses to provide tied pub tenants with upfront accurate information during rent reviews on the duty paid on the alcohol supplied under their tied tenancies and the saleable volumes of keg and draught cask beers they offer. This information is important to tenants when they draw up their business plans, helping them calculate turnover and profit margins.

The PCA will adopt a proportionate approach to compliance in accordance with its published enforcement guidance. In particular, where a pub-owning business has taken reasonable steps to obtain the information required under Excise Notice 226 and the associated information on volumes from third party suppliers, and where those suppliers have failed to provide the pub-owning business with that relevant information, a Schedule 2 profit and loss forecast calculated without reference to this information is not non-compliant with this guidance for that reason. Reasonable steps include POBs working with suppliers to help them to provide this information to limit the circumstances in which the information is not reasonably available. Reasonable steps do not include de-listing.

## PCA publishes arbitration awards

The PCA has taken an important step in bringing greater transparency to the arbitration process by publishing further arbitration awards covering a range of Pubs Code issues – including MRO-compliance, the right to request a rent assessment proposal and the nature of the stocking requirement. The awards can be found [here](#).

These awards set out the position taken by the Pubs Code Adjudicator and Deputy Pubs Code Adjudicator on the law and matters of statutory interpretation in a number of individual cases. Publication will help level the playing field for tied pub tenants, in particular by bringing pressure to bear on POBs to resolve or avoid disputes with their tenants and to bring matters to a conclusion both promptly and fairly under the Code.

This transparency is particularly important in respect of MRO negotiations, which are not taking place in the open market and where pub companies should not take advantage of the more limited negotiating power that a tenant requesting a MRO proposal will normally have.

The PCA will continue to publish awards to ensure that all parts of the industry, and tied pub tenants in particular, have an equal understanding of the decisions made by the Pubs Code Adjudicator (PCA) and Deputy PCA on the application of the Pubs Code.

## Arbitration update: PCA introduces 'initial stay' in MRO cases

The PCA is trialing the offer of an 'initial stay' period during which the terms of the MRO proposal are referred for arbitration. This is designed to allow parties, where they agree, the freedom and time to conduct meaningful negotiations and to incentivise early settlement without recourse to formal arbitration proceedings.

If the parties negotiate a settlement during the stay, the referral for arbitration will be withdrawn and the following special arrangements will apply:

- ❖ There will be no arbitrator's costs to pay.
- ❖ A sum of £50 for administration costs will be deducted from the referral fee by the PCA with the balance of £150 being returned to the payee.
- ❖ The case will be considered by the PCA as a referral only and not a formally accepted arbitration case. This will mean that the pub-owning businesses will not be charged for the referral for the purposes of the levy apportionment if they reach agreement within this time period.

The PCA encourages all parties referring disputes on the terms of a MRO proposal to take all available opportunities to negotiate and reach a settlement in support of the continuing business relationship.

## MRO questionnaire

The PCA remains keen to hear the experiences of all tied pub tenants who have received a MRO proposal via its MRO questionnaire. Every tenant who has received a MRO offer should also have been given a copy of the questionnaire by their pub-owning business. If you have not received this, the questionnaire can also be accessed via the PCA website: <https://www.gov.uk/government/news/pca-mro-questionnaire>

As well as understanding tenants' experiences of the MRO process, the PCA wants to know whether they feel they have had a genuine choice between remaining tied and going free of tie. There has been an encouraging level of feedback so far, but the more responses the PCA receives the better informed it will be about its future regulatory interventions in this area.

**If you haven't completed the questionnaire already, please take the time to fill it in. The PCA values your views and all responses will be treated in confidence.**

## PCA Enquiry Line

The confidential enquiry line is staffed by dedicated caseworkers who can provide specialist information about tied tenants' rights under the Pubs Code and its processes.

Call **0800 528 8080** Monday to Thursday 9.30am to 5pm and Friday 9.30am to 4pm to speak to the team.

