



## Code Clarification

The Pubs Code Adjudicator is often asked for an interpretation of what the new Pubs Code means. We have published detailed information already, and it is available on our website [www.gov.uk/pca](http://www.gov.uk/pca) in a series of Factsheets. This should be the first port of call for anyone who wants to understand the Pubs Code better.

For more information you can also call our Enquiry Line 0800 528 8080, Monday to Thursday, 9:30am to 5pm and Friday, 9:30am to 4pm. The Enquiry Line can provide further information on different aspects of the Pubs Code and direct you to which Factsheet might be most useful.

The PCA can provide information about the Pubs Code and its processes, but not advise about individual circumstances. In particular, once a tenant has considered the PCA information, they may wish to take appropriate advice about how the Pubs Code applies in their case. Some trade bodies provide an initial advice session at no cost, whether tied pub tenants are members or not.

There are some specific issues we have been asked about repeatedly over recent weeks and the following information about the Code might help. We will provide further information as these issues develop.

### MRO-compliant agreements

The Pubs Code does not expressly provide the vehicle for a market rent only (MRO)-compliant tenancy. The market is therefore free to choose how the parties achieve this. However, the legislation does not expressly require a MRO-compliant tenancy to be a completely new tenancy.

The Pubs Code does provide (among others) that the terms and conditions of the proposed MRO tenancy should be regarded as unreasonable if they are not common terms in agreements between landlords and pub tenants who are not subject to product service or ties.

It is open to a tied pub tenant to challenge whether a MRO proposal made on the basis of a new arrangement includes unreasonable terms and conditions and to refer the proposal to the PCA for arbitration.

### Stocking requirements

Premises are not tied just because the tenancy or licence contains a stocking requirement.

A stocking requirement is defined in the Small Business Enterprise and Employment Act 2015. This is a term that relates to either beer and/or cider produced by the landlord (or a group undertaking) and does not



require the tenant to buy that beer or cider from a particular supplier, nor prevent that tenant from selling beer or cider produced by another (whether or not it restricts such sales).

Tied pub tenants can refer a MRO proposal to the PCA for arbitration if they consider the proposal not to be MRO compliant. So, for example, if a tenant considers the stocking requirement to be unreasonable they can refer the case for arbitration.

The arbitrator will consider whether it is unreasonable on a case-by-case basis.

## Timescales in MRO cases

We have been asked a number of questions about timescales and deadlines.

- If a tied pub tenant wishes to exercise their right to request a MRO option, the MRO notice must be received by their pub-owning business within 21 days of a MRO event (one of which is receipt of a rent assessment proposal).
- The pub-owning business must provide a full response within 28 days, starting from the day they receive a MRO notice from the tenant. When the tenant receives the full response this triggers the 56-day negotiation period.
- The tenant has a 14-day window to refer the proposal for arbitration. This starts the day after the end of the 28-day period that the pub-owning business has to provide their full response. A second 14-day window may also be triggered if the tenant receives a subsequent proposal from the pub-owning business during the negotiations. Where that is the case the 14-day window to refer a subsequent proposed tenancy starts the day after the tenant receives that subsequent proposal.
- If the matter goes to arbitration, the 56-day negotiation period under the Code is effectively put on hold (although the PCA encourages continued discussion between the parties). One of the following occurs depending upon the outcome of the arbitration:
  - If the arbitrator rules that no failure has occurred with the response, that response is deemed to have been received by the tenant on that day. The 56-day negotiation therefore commences on this date;
  - If the arbitrator rules that a revised response must be provided then the pub-owning business has 21 days to provide that full response (or by the day specified in the arbitrator's ruling).

## The right to request a rent assessment

Up to 21 July 2021, the Pubs Code enables a tied tenant to request a tied rent assessment where they have had neither:

- A concluded rent assessment before the date of the request; nor
- A concluded rent review within the last 5 years.

Receipt of a rent assessment proposal entitles a tied tenant to request a MRO option.

