



PCA responds to fact-finding exercise on access to Market Rent Only option

Paul Newby, the Pubs Code Adjudicator, has today responded to the results of an independent verification exercise into the accessibility of the Market Rent Only (MRO) option for tied pub tenants. The findings are now available on the PCA website (www.gov.uk/pca). He commissioned the exercise following concerns expressed by tenants about their experiences of taking up new rights under the Pubs Code.

The exercise has provided evidence of a number of issues and areas that tied pub tenants say are creating barriers to them accessing their MRO rights. Tenants have reported almost without exception that to varying degrees the pub-owning businesses are not acting within the spirit of the Code. To respond to this evidence the PCA has taken the following actions:

- ❖ He has asked each pub-owning business within the scope of the Code to provide further, detailed information about their processes and practices. It is also an opportunity for them to set out their positions. The PCA will discuss the responses with the pub-owning businesses and is ready to take further regulatory action as necessary.
- ❖ He has issued a series of statements with the intention of encouraging positive negotiation on MRO options and explaining how the PCA will approach arbitrations. The aim is to increase the number of cases that are settled and do not therefore become disputes for arbitration. These include advice on the PCA's position on MRO Notices and challenges to Independent Assessor determinations. The statements are detailed below.

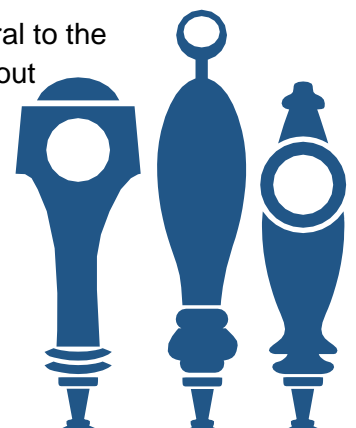
PCA statements

Principles of PCA arbitrations

The PCA is committed to arbitrating each case with an open mind and every referral to the PCA will turn on its own facts. However, there are some overarching principles about how the PCA will approach arbitrations that he receives. These are:

❖ MRO Notice

The MRO verification exercise has revealed that a significant proportion of the MRO Notices served by tied pub tenants are being rejected by their pub-owning businesses. Many have been rejected on the grounds of incorrect and/or missing information.



In line with the core Pubs Code principle of fair and lawful dealing, the PCA expects pub-owning businesses to take a reasonable and proportionate approach to how they treat MRO Notices. The purposes of the required elements of a MRO Notice, set out in Regulation 23 of the Pubs Code, are: to ensure that the pub-owning business has sufficient information to be able to contact the tied pub tenant making the MRO request; to identify the pub to which the notice refers; and to understand the reason why the right to request a MRO proposal arises. It is not the intention of the Pubs Code that this requirement should permit pub-owning businesses to rely on technicalities to avoid accepting a MRO Notice.

The PCA is likely to consider a MRO Notice to be effective if it has sufficient information to enable the purposes of Regulation 23 to be fulfilled. The PCA has provided a template in [Factsheet 4 \(MRO Notice\)](#), available on the PCA website. Tied pub tenants are encouraged to use this template to ensure that their MRO Notice includes all of the relevant information.

The PCA is aware that some MRO Notices have been rejected by the pub-owning business without providing the tied pub tenant with an explanation of that rejection. The PCA considers this to be unhelpful and unacceptable behaviour that is contrary to the core Code principle of fair and lawful dealing.

Where technicalities arise, the PCA expects pub-owning businesses to provide their tied pub tenants with the reasons for any rejection of a MRO Notice at the time of that rejection. They should communicate rejections in sufficient time to enable the tied pub tenant, where possible, to rectify the MRO Notice.

❖ **Form of the MRO tenancy**

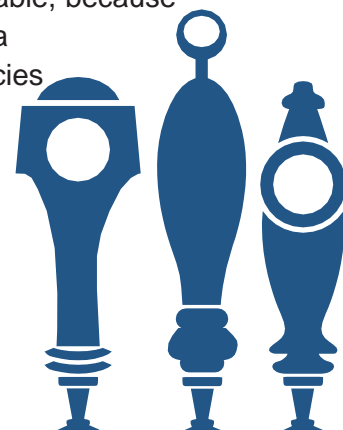
The verification exercise has provided evidence that the effect of pub-owning businesses requiring a MRO tenancy to be by way of a new agreement is building up a series of hurdles to accessing MRO that, taken together, tenants consider to be insurmountable.

The law does not expressly provide for a MRO proposal to be by way of a new agreement. In line with the core Pubs Code principle of fair and lawful dealing, in all MRO-compliant lease cases the PCA requires the pub-owning business to be able to show how the approach they have taken in respect of the MRO proposal does not constitute an unreasonable term or condition in respect of each individual tied pub tenant.

❖ **Unreasonable / uncommon terms**

The Pubs Code states that terms that are not common ones in free-of-tie agreements will be regarded as unreasonable for the purposes of MRO – and may therefore not form part of a MRO-compliant proposal. The PCA's verification exercise has provided evidence that tied pub tenants consider a number of terms and conditions in pub-owning businesses' proposed MRO tenancies to be practical barriers to their ability to pursue MRO.

The question of whether a term included in a proposed MRO tenancy is unreasonable, because it is not a common one or for any other reason, will be considered by the PCA on a case-by-case basis. The PCA will do this not just in the context of the MRO tenancies offered by pub-owning businesses since the introduction of the Pubs Code, but with reference to the whole of the relevant market for free-of-tie tenancies, including the approach prior to the Code coming into force. Where a tied pub tenant challenges a term in the proposed MRO tenancy, the onus will be on the pub-owning business to show why that term is not unreasonable.



❖ Market rents

The MRO verification exercise highlighted the experiences of a number of tied pub tenants who believed that they had received MRO rent offers that did not reflect the true free-of-tie market rental value of their pub. Tied pub tenants also reported that there had been no opportunity to engage in meaningful negotiations on the proposed MRO rent before referring it for independent assessment under the Pubs Code.

The PCA stresses that the Pubs Code MRO option is one that contains both fair commercial terms and in that context a fair market rent. It should not be based on pub-owning businesses maintaining their existing tied profit margins under the new MRO tenancy.

Where no negotiated agreement of the MRO rent is possible, the Pubs Code gives tied pub tenants the right to have their MRO rent determined by an Independent Assessor. This is the Pubs Code mechanism for ensuring that a fair market rent is achieved. The Pubs Code permits the determination of an Independent Assessor to be referred to the PCA, but the PCA is only likely to find that a determination is not the market rent where it is outside the range of what is reasonable.

The PCA is less likely to uphold arguments made on technicalities. Arguments based on technicalities may lead to the PCA issuing an award for costs – in particular where the technical challenge has been brought by the pub-owning business.

PCA launches videos on Pubs Code rights

The PCA has produced six short videos which provide information to tied pub tenants on their Pubs Code rights and explain the role of the Adjudicator. The videos cover the following parts of the Pubs Code:

- ❖ Overview of the Pubs Code and the Pubs Code Adjudicator
- ❖ Referrals and arbitration process
- ❖ Rent Assessment Proposals and Rent Proposals
- ❖ MRO option
- ❖ MRO: understanding the procedure
- ❖ Independent Assessors

The videos are available on the [PCA website](#). We encourage tied pub tenants to watch these videos so that they are aware of their rights under the Code and the strict time limits that apply when exercising these rights.

PCA Enquiry Line

The Enquiry Line is staffed by dedicated caseworkers who can provide specialist information about your new rights, the 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 caseworkers.

