



**Pubs Code 2016**

**Compliance Report**

**For the period:**

**21/07/2016 - 31/03/2018**

**Report Issue Date:** 19<sup>th</sup> July 2018

## PUBS CODE: OUTLINE REGULATION 43 COMPLIANCE REPORT

### **Section 1: Audit Committee Statement on Compliance**

**A declaration that the statutory requirements in Regulations 43(5), (7), (8) & (9) have been complied with:**

Regulation 43(5) - It is confirmed that the Chair of the Audit Committee has approved a copy of this report.

Regulation 43(7) – Reports have been made available to the Audit Committee to ensure they have an understanding of the pub-owning business's compliance with these Regulations.

Regulation 43(8) – A summary will be included in the next Annual Report which is planned for publication in December 2018.

Regulation 43(9) – Not applicable as we produce an Annual Report.

## **Section 2: Estate Summary**

<b>As of 31 March 2018, total numbers of:</b>	
Pubs Code Agreements	<b>3,824</b>
<ul style="list-style-type: none"><li>• Agreements contracted in to the Landlord &amp; Tenant Act</li></ul>	<b>1,934</b>
<ul style="list-style-type: none"><li>• Agreements not contracted in to the Landlord &amp; Tenant Act</li></ul>	<b>1,890</b>
<ul style="list-style-type: none"><li>• Short Agreements under Regulation 14</li></ul>	<b>402</b>
<ul style="list-style-type: none"><li>• Pub Franchise Agreements under Regulation 55</li></ul>	<b>0</b>
<ul style="list-style-type: none"><li>• Qualifying Investments under Regulation 56</li></ul>	<b>3</b>

### **Section 3: Code Compliance**

**Part I: Investigations** - Narrative report on how the POB has co-operated with the PCA in respect of any investigations under section 53 SBEE into that POB or any combination of POBs during the reporting period. Where an investigation has concluded, the action taken by the POB as a result of that investigation. If none – enter N/A.

N/A

**Part II: Enforcement** - Narrative report on the steps the POB has taken to comply during the reporting period with any enforcement measures taken by the PCA in respect of it under sections 55-58 SBEE. If none – enter N/A.

N/A

**Part III: Guidance & Advice** - Narrative report on the steps the POB has taken in response to any guidance issued by the PCA under section 61(3) SBEE or advice given by the PCA under section 60 SBEE during the reporting period.

We regularly encourage BDMs to use the PCA website for updates. At induction training we recommend that BDMs request alerts from the PCA website to make them aware of new advice as soon as it is published. In addition, company-wide communications are prepared which notify employees of publications. We brought the Regulatory Handbook to the attention of all our staff as soon as the PCA published it, emphasising the need for meaningful negotiations of both tied and FOT terms whilst continuing the tied relationship on a business as usual basis.

We have responded in writing to a PCA advice note, issued on 2 March 2018, by sending the PCA a letter before action ahead of a possible application to Court for judicial review. We have also been asked to allow the publication of past and future PCA arbitration awards which we think would be counter-productive; we continue to hope that the PCA will produce thematic advice arising from the decided arbitrations in the form of Golden Threads.

#### **Update since 31/03/2018**

EIG has issued a claim for permission to proceed with a Judicial Review of the publication and this was served on the PCA on Friday 1st June. The court's and parties' approach to Judicial Review is different from normal litigation and the issue of the claim should not be seen as an adversarial step by EIG. Judicial review is a public forum for the issues to be debated and an opportunity for the PCA, EIG, interested parties and others to assist the court in deciding whether the PCA has adopted the correct approach and interpretation of the SBEE and the Code.

**Part IV: Unfair Business Practices** - Narrative report on the steps taken by the POB in response to any representations from the PCA during the reporting period about business practices that have been the subject of a report on avoidance to the Secretary of State under section 71A SBEE. If none – enter N/A.

N/A

## Section 4: Tied Agreements

Part I: Code Tied Agreements	
<i>During the reporting period, numbers of:</i>	
New Agreements	759
<p><b><i>Narrative report on how the POB has complied with Code pre-entry requirements:</i></b></p> <p>New substantive agreements where the letting process commenced on or after 21/07/16 have met pre entry requirements. This includes the obligations in Part 2 ; Section 9 – PEAT, Section 10 – Sustainable Business Plan, Section 11 –Schedule 1 Information, Section 13 – Premises and where applicable Part 3 – Clause 7 ; Duty to Provide a Rent Proposal.</p> <p>There were a number of new agreements that were either in progress or awaiting completion at the time of Pubs Code introduction. Where imminent completions were due to occur, we notified the publican of the introduction of the Pubs Code and gave them the option to cancel completion and re-start the agreement process.</p> <p>In other cases, where completion dates had not been agreed but business plans were submitted prior to 21/07/16, transitional arrangements were put in place where the publican was informed of Pubs Code and was given two options to avoid detriment:</p> <ul style="list-style-type: none"> <li>• They could cancel the current agreement process and re-start, or</li> <li>• They could be supplied with Schedule 1 information and asked to supply additional business plan information to meet the requirements of Section 10.</li> </ul>	
Assignments	107
Forfeitures	55 (1% of estate *)
Legal Surrenders	559 (8% of estate *)
Abandonments	134 (2% of estate *)
Code Rent Reviews	822
<p>*based upon annualised activity for the tied pub estate subject to the Pubs Code.</p> <p><b><i>Narrative report on how the POB has complied with the Code requirements to provide statutory information:</i></b></p> <p>Statutory information was provided in all rent reviews with the exception of the Schedule of Condition required under Schedule 1, where we confirmed to each pub that we would deliver one upon their request. The PCA were informed of this process change following agreement at the joint tenant CCO meeting in March 2017.</p> <p><b>Note:</b> No Schedules of Condition have been requested since 28/08/2016. This is the date from which we stopped issuing the Schedule of Condition as standard.</p>	
Renewals	<p>Renewal Leases : <b>9</b></p> <p>DOVs To Extend the Term : <b>46</b></p>

***Narrative report on how the POB has complied with the Code requirements to provide statutory information:***

Statutory information was provided for these renewals.

***Please explain the approach you have taken to agreeing terms in renewals to deal with assessments of terminal dilapidations:***

A schedule of dilapidations is prepared for all renewals 18-24 months before the contractual end date of the lease. Surveys are prepared by suitably qualified external surveyors who identify the work that needs to be completed by the publican to comply with the terms of their lease. All such surveys are carried out having regard to the dilapidations protocol.

A copy of the schedule of dilapidations is issued to the publican, giving them adequate time to complete the necessary works before the end of the term. Any points disputed by the publican or their surveyor will be negotiated by both parties with a view to reaching agreement on what needs to be done.

Progress of outstanding works is monitored up to the end of the term. Whilst all agreed work should be completed prior to the end of the lease, some work may be rolled over into the new lease term, for example, it may be agreed that the external decoration due in the final year is carried out in the first year of the new term if it is in reasonable condition.

Where there is substantial disrepair and the publican fails to make satisfactory progress, EIG may object to a request for a new lease under Ground A of S25 of the Landlord & Tenant Act 1954. If, however, the publican subsequently makes satisfactory progress with outstanding works, the objection under Ground A would be withdrawn.

Investment Exceptions agreed under Regulation 56

**3**

## Part II: Code Rent Assessments

*During the reporting period, numbers of:*

Total Rent Assessments conducted under terms of the tenancy	755
Total number of Rent Assessment Proposals requested by tenant	61
<ul style="list-style-type: none"><li>By reason of no rent review concluded in last 5 years</li></ul>	48
<ul style="list-style-type: none"><li>By reason of a significant increase in price</li></ul>	0
<ul style="list-style-type: none"><li>By reason of a trigger event</li></ul>	10
<b>Added by EIG:</b> <ul style="list-style-type: none"><li>By reason of disputed RAP validity</li></ul>	3

### ***Narrative report on how the POB has complied with the statutory Code deadlines:***

The Pubs Code deadlines for RAPs delivered under the terms of the tenancy were met. Out of the RAPs delivered to publicans following their request, one was delivered two days late. There were four requests for RAPs which were rejected, however during negotiations it was agreed for a new RAP to be issued. In these cases the deadline for the original RAP request was not met due to the initial rejection. The delivery of a RAP was delayed in one case due to negotiations with the publican under a PCA referral which was already in place. After negotiations a RAP was delivered. There was a further case where the PCA ordered the issuing of a new RAP following referral by the publican where the deadline was met.

Total number of requests for Rent Assessment Proposals rejected	54
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### ***Narrative report on the reasons for rejecting requests for Rent Assessment Proposals:***

#### **Rent Review completed in the last 5 years (15)**

This rejection reason related only to requests for a RAP under the no rent review for 5 years rule and were rejected on the basis that there had been a rent review in the last 5 years.

#### **Pre Code Rent Review unresolved (12)**

In these cases a RAP had been delivered before the Code implementation and remained unresolved.

#### **No valid event (12)**

Numerous sub categories fell under this rejection reason including:

- Local circumstances where the information provided by the publican did not support a valid event as defined by the Code
- Agreements where there was no provision for a rent review in the lease
- Publicans disputing the validity of our original RAP and requesting a new one, where their request was refused on the basis that our original RAP was valid.
- RAPs which were part of the transitional requote requirement of the Code and were rejected on the basis that a RAP would be sent as per the Code in due course.

**Applied too soon (10)**

These rejections all related to requests for a RAPs due to no rent review for five years. The sub categories which fell into this rejection reasons included: - publicans applying before implementation of Pubs Code, rent review quotes being due in the near future and a lease completing within 5 years of the request.

**Missing information (3)**

The publican had failed to provide the necessary information as stipulated in the Pubs Code.

**Pre Code Event (2)**

The event the publican referred to was before the implementation of the Code and therefore not relevant.



### Part III: Renewals under the Landlord and Tenant Act 1954

*During the reporting period, numbers of:*

Section 25 (S25) Notices issued opposing a new tenancy on the grounds of an intention to take the pub back into occupation	<b>18</b>
Section 26 (S26) Notices opposed on the grounds of an intention to take the pub back into occupation	<b>6</b>
LTA court proceedings related to an intention to take the pub back into occupation	<b>4 (All in progress)</b>
<ul style="list-style-type: none"><li>Of which, the number of objections to a new tenancy that were upheld</li></ul>	<b>0</b>
<ul style="list-style-type: none"><li>Of which, the number of objections to a new tenancy that were dismissed</li></ul>	<b>0</b>

#### ***Narrative report on:***

- The preparatory work done to identify which pubs to take back into management***
- The documentation and process that is then completed to confirm the intention to take a particular pub back into management prior to service of the relevant notice***

#### **Preparatory Work**

##### **Two Years Prior To The End Date Of The Lease:**

- We commission an external terminal schedule of condition.

##### **One Year Prior To The End Date Of The Lease:**

- Our in-house surveyor re-inspects the property to assess whether the work has been done or is in progress.
- Our Regional Manager prepares a tied rent assessment for approval by the Divisional Director and the RICS-qualified Licensed Trade Valuer.
- We ask our Managed house and Joint Venture teams to assess the potential of the pub to be run by us at a higher total income than we would expect upon a lease renewal.
- We ask our Estates team to review the potential to maximise capital value by redevelopment.

##### **Nine Months Prior To The End Date Of The Lease:**

- We collate the assessments at our Asset Optimisation Panel and decide whether to serve a S25 notice at all; and if we do, whether it should be an opposed notice.

#### **Documentation & Process**

- The authority to serve S25 notice (or reply to a S26 notice) is recorded by our Asset Optimisation Panel (AOP) minutes.
- The AOP minutes are given board approval by the CEO and CFO.
- The relevant notices are then prepared by our Legal team and duly served on the lessee.
- The process is the same whether or not our plan is to take the pub into our own management.

## Section 5: MRO

<b>Part I: MRO Notices</b> <i>During the reporting period, numbers of:</i>	
Total number of MRO Notices received and acknowledged	<b>338</b>
<ul style="list-style-type: none"> <li>Following receipt by a tenant of a Rent Assessment Proposal</li> </ul>	<b>288</b>
<ul style="list-style-type: none"> <li>In relation to the renewal of a tenancy</li> </ul>	<b>5</b>
<ul style="list-style-type: none"> <li>Requested in response to a significant increase in price</li> </ul>	<b>0</b>
<ul style="list-style-type: none"> <li>Requested in response to a trigger event</li> </ul>	<b>6</b>
<b>Added by EIG:</b> <ul style="list-style-type: none"> <li>By reason of 'Other' (Includes claims where there is no valid event or the sale of alcohol is not the main activity)</li> </ul>	<b>39</b>
<b><i>Narrative report on the nature of the circumstances relied upon by tenants in support of claims of trigger events:</i></b>  <p>Six claims have been made in relation to trigger events. One case (determined by the PCA) related to the only remaining EIG leased estate pub in a town where the two other pubs owned by EIG had recently been converted to direct management. A second case (awaiting a decision by the PCA) relates to a major town centre development close to the subject pub. Four further trigger event claims for delivery of a RAP were rejected (one because it was prior to the Code, one because there was no valid MRO event and two because the required information was not provided) and those publicans took no further action. These have been included in the total number of rejected RAP requests.</p>	
Total number of MRO Notices accepted	<b>256</b>
Total number of MRO Notices rejected	<b>82</b>
<ul style="list-style-type: none"> <li>Following receipt by a tenant of a Rent Assessment Proposal</li> </ul>	<b>35</b>
<ul style="list-style-type: none"> <li>In relation to the renewal of a tenancy</li> </ul>	<b>2</b>
<ul style="list-style-type: none"> <li>Requested in response to a significant increase in price</li> </ul>	<b>0</b>
<ul style="list-style-type: none"> <li>Requested in response to a Trigger event</li> </ul>	<b>6</b>
<b>Added by EIG:</b> <ul style="list-style-type: none"> <li>By reason of 'Other' (Includes claims where there is no valid event or the sale of alcohol is not the main activity)</li> </ul>	<b>39</b>
<b><i>Narrative report on the reasons for rejecting MRO Notices:</i></b>  <p>At the launch of the Code we rejected a number of premature claims, some of which were re-submitted as valid claims after we had issued the transitional RAPs.</p>	

A common reason to reject claims has been publican applicants who do not cite an event date in their notice or cite the wrong event – the rent review instead of delivery of the RAP. When there is still time we point out the error and a corrected claim is then submitted. A very small number of claims were made by someone who was not the tenant, and who was not acting on behalf of the tenant. Those were rejected, however we have not rejected claims on a technicality where only phone numbers or e-mail addresses are missing.

There have also been a small number of MRO claims lodged too long after the RAP was delivered. There is no discretion to extend the Code timetable so those were rejected.

Total number Full Responses to MRO Notices issued	326
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***Narrative report on how the POB has complied with the statutory Code deadlines:***

We have created an interactive Excel model to highlight the POB's critical timetable dates arising from the dates that publicans have made their applications or submissions. It is used by our Pubs Code Administration Manager to remind BDMs and other managers about these case specific deadlines.

**Part II: MRO Negotiations***During the reporting period, numbers of:*

MRO Negotiations undertaken with tenants

**244**

***Narrative report, in order of frequency and enumerated, on which are the 10 terms most often included in a draft MRO proposed tenancy sent to a TPT who has sent an MRO Notice but not included in the executed MRO tenancy:***

<b>Lease term</b>	<b>Number of times removed</b>	<b>Number of times included</b>
Non – assignment period	5	10
R&M fund	4	11
Pre-emption upon assignment	4	11
Pay as you go utilities	1	14
Alterations to be to L/L's <b>reasonable</b> satisfaction	1	14
In all other respects MRO leases were completed on the same terms as first sent.	0	15

Times that each of the regularly challenged terms above has ultimately appeared in a completed MRO agreement (please list and enumerate)

**See table above**

MRO tenancies agreed

**15**

- By a New Agreement

**15**

- By a Deed of Variation

**0**

Total number of tied settlements following MRO negotiations

**154**

- Of which number of new tied tenancies agreed

**1**

- Of which number of tied rent reviews concluded

**140**

- Of which number of tied tenant departures

**13**

### Part III: MRO Independent Assessment

*During the reporting period, numbers of:*

Total Independent Assessor appointments	<b>28</b>
• Of which number that were appointed jointly in agreement with the tenant	<b>23</b>
• Of which number that were appointed by the PCA	<b>5</b>

***Please list the Independent Assessors appointed during the reporting period, and for each Independent Assessor the number of appointments:***

<b>Independent Assessor:</b>	<b>No. of Appointments</b>
Christie & Co	4
Cobbs Consultancy	8
Davis Coffey Lyons (MRO)	2
Eddisons Taylors	1
Fleurets	1
James A Baker	1
Porters Chartered Surveyors	1
Savills (UK) Ltd	3
Shelley Sandzer (MRO)	4
Vickery Holman Property Cons.	1
Walton Goodland	1
Westlake & Co	1
<b>Total</b>	<b>28</b>

Independent Assessments challenged ( <b>By TPT</b> )	<b>1</b>
Independent Assessments challenged ( <b>By EIG</b> )	<b>11</b>
○ <b><i>Of which were challenged prior to the PCA publication on 15/12/2017</i></b>	<b>11</b>
○ <b><i>Of which were challenged after the PCA publication on 15/12/2017</i></b>	<b>0</b>
Any second challenges to Independent Assessments	<b>0</b>

***Narrative reporting on the reasons for the challenging by the POB of independent assessments:***

- The assessed rent is not the correct open market rent for the agreed form of FOT lease;
- Rental valuation was not undertaken in line with the statutory rent basis set out in s43(10) of the Act;
- The publican did not deliver to the IA the information required in Schedule 3 of the Code;
- The IA did not take into account the information that had correctly been delivered by both parties under Schedule 3;
- The IA's determination was unclear or inconsistent; and
- Lacking a right of reply to the lessee's information delivered to the IA, which we knew to be inaccurate or misleading, it seemed our only recourse is to appeal the resulting IA determination.

## **Section 6: Other Code Reporting**

### **Part I: Code Part 10 Provisions**

*For the reporting period, narrative reports on compliance with:*

#### **Regulation 46 – Insurance provisions.** *Please provide details of the types of policies purchased; whether by the POB or by the tenant; and any intermediaries involved*

Ei Group (EIG) purchase a number of different corporate insurance policies. The main insurance cover is for property which is arranged for all tied pubs in accordance with their agreement obligations. In addition, EIG, as an Appointed Representative of the broker, provide an insurance scheme to certain publicans covering specific business risks including employer's liability and public liability.

PCA has been notified that Ei Group does not insure each site for property related insurances on an individual policy basis. The policy is placed on a block basis with a third party, unconnected reputable insurer and insurers agree the premium allocation methodology to property level. The block arrangements are reviewed on an annual basis to ensure the policy structure continues to provide significant advantages to our publicans in terms of policy coverage (including very minimal exclusions) and claims service in a cost effective manner.

The arrangement of these policies, together with ongoing administration and claims handling, is placed through external third party insurance brokers, who are authorised and regulated by the Financial Conduct Authority. The gross premium payable to insurers is recharged across the estate. All premiums are paid in full by EIG split into two biannual upfront payments, but recharged to publicans over a 12 month period, monthly or quarterly, to help publicans manage their financing of the insurance cost.

We have a clearly defined procedure for publicans to challenge the Insurance recharges, which is set out in the publican renewal letters. Upon request, all relevant additional data is provided to enable each publican to obtain "like for like" quotations in the market and we offer a price match guarantee. If and when a publican submits a like for like quotation that is lower than the recharge proposed by ourselves, we price match our recharge to the publican's quotation, backdated to the start of that annual insurance period if the challenge is received within 30 days of the start of the policy or from the date of receiving the like for like quotation challenge thereafter.

We believe the above approach complies with the spirit of the primary legislation to ensure fair and lawful dealing between us and our publicans as well as preventing the unnecessary introduction of further costs to those publicans and the industry.

#### **Regulation 47 – Gaming Machines**

##### **Our Leases & Tenancies**

With the sole exception of the Whitbread Publican Partnership ('WPP') leases, all our current and legacy leases and tenancies contractually prohibit publicans from bringing machines onto the premises. The WPP leases contain a schedule setting out the terms for supply of machines, if required by the lessee, which has the same effect as a machine side agreement.

### **Our Machine Side Agreements**

Other than where we have already permitted a publican to operate machines on a FOT basis, any publicans who wish to bring machines onto the premises must sign a machine side agreement setting out a list of the approved suppliers, the permitted numbers of machines and the share terms. Most of our machine agreements are now on “K terms” whereby the total cash in box (after Amusement Machine Licence Duty and VAT) is split 33% to the publican and 67% to Ei Group, from which we pay rent to the machine supplier. It is possible that on occasions our share of the income is insufficient to cover the rent in which case the publican’s share could be reduced, potentially to zero, although if such circumstances were to persist it is likely that we would then withdraw machines from the business. Laurel lease machine agreements deliver 100% of the net take to the lessee, giving us some control over the nominated machine supplier, but giving no financial benefit to us.

### **The Pubs Code**

The complete text of the Pub Code states that ‘A pub owning business – a) Must not enter into a new tenancy or licence; and b) Must not renew a tenancy or a licence, which requires a tied pub tenant to purchase or rent gaming machines’. None of our property agreements do this and nor does our machine side agreement. If we are aware that a publican does not want to install machines we just do not complete a machine agreement.

### **Machine Tie Release Fees**

We state the following in our marketing material:

*“This rent is quoted on the basis that we will agree to share the gaming machine income between us on terms set out in a side agreement. This agreement will be completed at the same time as your tenancy agreement and will persist for the duration of the tenancy. It will result in you receiving one third of the gaming machine takings net of VAT and duty, without paying us any extra rent or machine rental. If, on the other hand, you consider that you have the expertise to optimise your machine’s performance through your own independent management and wish to rent your own machines from a reputable machine supplier, then we are willing to provide an alternative, higher pub rent quote which reflects that option.”*

### **Regulation 48 – Requests for blank profit and loss templates**

A link to a copy of the Business Plan template is supplied to all publicans on the letter they receive from the business at the start of the process. There is also a copy available for download from the Publican Partnerships website should it be required.

[www.eipublicanpartnerships.com/Documents/business-plan.pdf](http://www.eipublicanpartnerships.com/Documents/business-plan.pdf)

### **Regulation 49 – Sale of freehold or long leasehold (including numbers)**

Since the introduction of the Code, all tied tenants have been informed of our disposal activity in accordance with the requirements of Regulation 49. This is normally in writing, however it has been conducted verbally in a very small number of cases, where there is greater confidentiality and sensitivity involved, for example the sale of a tied pub with a non-disclosure agreement.

Regulation 49 does not specify that tied tenants are required to be advised in writing. Where 'disposals' have been by way of a head lease expiry, where we have chosen not to renew and hence our tied tenant becomes the direct tenant of our landlord, this is not technically a disposal under Regulation 49 and therefore tied publicans have been informed verbally of our intention not to renew, but not in writing. Where disposals have been to tied publicans in occupation (i.e. the publicans have purchased the pub they occupy) it is not considered appropriate to advise them in writing.

Going forward, in order to provide consistency and remove any possibility of misunderstanding, thereby removing any risk of failing to comply with Regulation 49, we have taken the decision to write to all tied tenants at the appropriate point in time, in respect of all disposals (including sales of pubs with non-disclosure agreements, but only following exchange of contracts) and head lease expiries.

#### **Disposals with a tenant in situ:**

Between 21<sup>st</sup> July 2016 and 31<sup>st</sup> March 2018 there were **25** sales of freehold or long leaseholds where there was a tenant in situ. Two sales were made to the existing tied publican whilst an MRO claim was active, however none of these were sold to a third party whilst an MRO claim was being undertaken.

#### **Regulation 50 – No tenant detriment from exercising Code rights (including action in response to any finding of detriment)**

We do not subject tied pub tenants to any detriment on the ground that a tenant exercises, or attempts to exercise, any right under the regulations. BDM training supports this stance, with references to Regulation 50 being included in our sector training in July 2017. It should also be noted that the PCA have not found any detriment in referrals assessed within the reporting period.

#### **Update since 31/03/2018**

Further BDM training was conducted in May 2018, which also supports this stance. In addition, this was included in the presentation delivered to BDMs by the Pubs Code Adjudicator in May 2018.

#### **Regulation 51 – Flow Monitoring Devices**

Ei Group operates flow monitoring devices in the majority of our tied outlets and employs a field based Loss Prevention team to visit pubs to investigate potential breaches of the purchasing obligations by performing cellar checks and bottle/container audits. While the output of the flow monitoring devices is used in this process, we do not raise any charges to publicans without additional, corroboratory evidence relating to the alleged breach. There are a number of different types of additional evidence of purchases outside of the tie requirement, such as photographic or documentary proof of such purchases, financial accounting information and ordering patterns inconsistent with the observed sale of products. In addition all proposed charges are discussed, and invariably agreed, with publicans before any charges are confirmed.



## Part II: Extended Protection

*During the reporting period, numbers of:*

Tied pubs where title has been transferred to the ownership of a person who is not a landlord of 500 or more tied pubs

**8**

### ***Narrative report confirming that:***

- ***(Where applicable) the POB has informed the PCA and its tenants of any change during the reporting period to its status as a landlord of 500 or more tied pubs as required by Regulation 45***
- ***The POB has in each case met its obligations under Regulation 49 and taken steps to inform the tenant of plans to sell the pub***
- ***For each transfer, informed the PCA of:***
  - ***The identity of the new landlord***
  - ***The end date of the tenancy under which the tied pub is currently occupied***
  - ***The date of the conclusion of the last rent assessment for the tied pub***
  - ***The date of the next scheduled rent review for the tied pub under the current tenancy agreement***

Since the introduction of the Code, all tied tenants have been informed of our disposal activity in accordance with the requirements of Regulation 49.

## **Section 7: Reporting on Tenant Complaints, Code Breaches and Arbitration**

### **Part I: Breaches of the Code identified by tied pub tenants**

#### ***Narrative report on Code-related complaints by tied pub tenants during the reporting period covering:***

- ***The total number of complaints***
- ***The parts of the Code concerned***

Thirteen complaints have been received relating to alleged breaches of the Pubs Code, in particular BDM behaviour, of which five were raised as PCA referrals and eight were processed through the internal complaints process. These all related to SBEE 2015 Section 42(3) (a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants. Of these, all bar one internal complaint, which was not referred to PCA, have been closed without further action being sought by the publican concerned.

## Part II: Steps taken in relation to complaints

### ***Statement on internal procedures for handling complaints about breaches and alleged breaches of the Code:***

Code related matters are managed by the BDMS, (Operations, Property and Business Development teams). If issues are not resolved this way, there is an official complaints process which is administered by a dedicated team. Complaints may be received through external email, post, telephone or from company personnel. If the complaint is taken by phone, a written summary is requested to ensure all details are correct.

There is an email address on the EIPP website under 'contact us', opsadmincentral@eigroupplc.com, which can be used to submit complaints. The Pubs Code email address pubscod@eigroupplc.com is also effective in receiving complaints relating to the Code. Details are distributed to the Operations Planning Director, Director of Internal Audit and subject matter experts for investigation and response. Progress is monitored and managed by the Operations Administration team, with oversight by senior management and the CEO.

### ***Narrative report on actions in response to complaints detailed in Part I covering:***

- ***Handling (including details of formal referrals to the PCA)***
- ***Outcomes (including cases unresolved at the end of reporting period)***
- ***Breaches upheld:***
  - ***Internally***
  - ***Following referral to PCA***

The complaints detailed in Part I followed the standard process above. In addition, where there is a referral through PCA, the investigation will also include the services of Gosschalks, the Ei Group solicitor.

There are four PCA referrals which remain outstanding at the date of this report and one has been withdrawn. All other complaints, using the internal process have been investigated and closed, (bar one), without further action being sought by the publican concerned. Specific details are included in Part I.

No breaches have been upheld internally or following referral to PCA.

### Part III: Self-notification of breaches

*Narrative report on any cases during the reporting where the POB has self-notified the PCA of breaches of the Code (including steps taken to prevent further occurrences):*

None.

#### Part IV: Referrals for arbitration

*During the reporting period, numbers of:*

Total MRO cases referred to the PCA	<b>121</b>
Referrals of MRO terms on grounds that they are non MRO-compliant	<b>105</b>
<ul style="list-style-type: none"><li>Of which number where breaches of the Code were found by the PCA</li></ul>	<b>3</b>
Referrals of void or unenforceable terms under Regulation 57(2)	<b>0</b>
Referrals of all other non-MRO Code matters	<b>15</b>

***Please describe and enumerate the cases where breaches of the Code were found by the PCA:***

There were three cases where breaches of the Code were found by the PCA.

PCA Adjudication on a rejected RAP request (One case)

PCA ruled to issue a RAP based on no review for 5 years. The outstanding rent review was deemed as not concluded by the PIRRS award until after the publican's request for a RAP. The PCA also found that the PIRRS determination would not end the MRO process; only a rent review memorandum signed by the publican could have that effect.

PCA Adjudications on lease terms (Two cases)

(Please see notes in section below)

***Please describe and enumerate all referrals relating to any Code issue on which the POB has previously been found to be in breach of the Code by the PCA:***

Following the two PCA adjudications on lease terms and the guidance notes released by the PCA in December 2017 and March 2018 our MRO lease has been amended as per the following:

- Full responses issued from 15/01/18 had the R&M Fund removed from the proposed MRO lease;
- Full responses issued from 01/03/18 had the following clauses removed from the proposed MRO lease (including the R&M Fund):
  - Non-assignment period clause
  - Remove Assignment condition (no adverse trading style)
  - Keep Open provision (opening hours)
  - Access to emails
  - Pay as you go utility meters
  - Tenant to pay insurance valuation

The amendments to our proposed MRO lease do not include all of the terms that the PCA ruled to be removed from either of the two leases, as these were not consistent with each other. We will continue to make our case in future defences to MRO claims that those other terms are not uncommon terms in commercial leases of pubs. We continue to seek meaningful communications during all outstanding claims.

Our full response also confirms that Without Prejudice to our rights to object to renewal or to plead reasons for the Court to grant a shorter renewal lease that should the question of the length of term of a renewal lease under s.33 of the Landlord and Tenant Act 1954 come before the courts, the fact that the tenant has converted from a previous tied lease to the present Free of Tie lease under the Pubs Code 2016 shall not be taken into account, so that the term of the present lease is to be read as if commencing at the start of the previous lease.

This is the correct legal position under the Landlord & Tenant Act 1954 but, by providing this specific assurance, we aim to avoid the TPTs making MRO claims based on a misunderstanding about this.

## **Part V: Other complaints made by tenants**

### ***Narrative report on the nature and volume of complaints about their tenancy by tied pub tenants during the reporting period not specifically reported on elsewhere:***

During the reporting period there were 253 (4% annualised) written complaints made through our official complaints process, by tied pub tenants which have not been reported elsewhere. All bar three complaints from the reporting period have been closed without further action being sought by the publican concerned.

## **Section 8: Corporate Compliance Structures**

### **Part I: Compliance Officer**

***A declaration, evidenced as necessary, that the POB has met in full its duty under Regulation 42 to appoint and empower a Compliance Officer and maintained written records of training received:***

We confirm that we have met in full our duty under Regulation 42 to appoint a Compliance Officer whose role is to verify the pub-owning business's (POB's), compliance with the Pubs Code.

- Resources are made available to carry out the role.
- BDM access is permitted.
- Publican access is available through the Pubs Code email address on the website. This includes the ability to coordinate the discussions of decisions made by the POB through subject matter experts.
- The reporting line is not through a BDM function.
- Contact with PCA is encouraged.
- Written records of BDM training are maintained.



## Part II: Business Development Managers - Training

***A declaration that the POB has published – and sent the latest version to the PCA – the document required by Regulation 41(5) specifying:***

- ***its commitment towards the continuous professional development and improvement of its BDMs and how it proposes to fulfil that commitment, referring where appropriate to relevant qualifications and training***

We have published the document required by Regulation 41(5) which is available on our website:

<https://www.eipublicanpartnerships.com/Documents/business-development-manager-roles.pdf>

***Narrative report confirming that:***

- ***all BDMs in post when the Code came in to force or appointed since received a copy of the Code before liaising with tied pub tenants on pub matters***

We can confirm that all BDMs in post when the Pubs Code came into force and BDMs that have since been appointed, have received a copy of the regulations before liaising with tied pub tenants on pub matters.

Existing BDMs received a copy of the Code as soon as it became available following introduction. All new starters receive a copy during our Company induction. New starters are also required to sign to confirm that they have received a copy and this is scanned and stored in their training record.

***Schedule of BDM Code training and guidance during the reporting period including:***

- ***outlines of the various forms of training delivered to BDMs – including whether it is delivered internally or externally; and how it is accredited***
  - ***confirmation that all BDMs who are responsible for conducting rent assessments have received appropriate training before doing so (including reporting on exceptions and remedial action)***
- ***schedule of all Code updates and guidance issued to BDMs***

The following Pubs Code training has been delivered to all BDMs:

- Pubs Code training was delivered internally to all BDMs in May 2016 prior to the launch of the Code;
- Annual refresher training was delivered to all BDMs using an external industry expert between May and August 2017.
- New starters receive internally delivered Pubs Code training as part of their induction, including training on conducting rent assessments; and
- We issue Business Bulletins providing informal updates to BDMs about Code publications.

### **Update since 31/03/2018**

- Annual refresher training was delivered to all BDMs using internal subject matter experts in May 2018. A presentation was also delivered to BDMs by the Pubs Code Adjudicator in May 2018.

### Part III: Business Development Managers - Conduct

#### ***Statement of how the POB ensures that BDMs act in a manner that is consistent with the core Code principle of fair and lawful dealing in relation to tied pub tenants:***

All BDMs have been trained in the requirements of the Pubs Code. The need for compliance is reviewed regularly at team meetings. Refresher training is also provided to relevant personnel on an annual basis. The last sessions were held in May 2018. Pubs Code compliance requirements are covered in the induction of all new BDMs before they are allowed to interface with publicans. In addition, line managers will observe the manner in which BDMs deal with publicans during accompanied visits to ensure that they act appropriately.

#### ***Confirmation of the processes in place to ensure that BDMs:***

- ***make appropriate notes of discussions with tied pub tenants in connection with:***
  - ***rent proposals***
  - ***rent assessments / assessments of money payable in lieu***
  - ***repairs to the pub***
  - ***matters relating to the tenant's current or future business plans***
- ***provide the tenant with records of the above within 14 days of the discussion***
- ***Inform the tenant that they should respond to the BDM within 7 days of receiving the record if they disagree with any aspect of it.***

All BDMs have been trained in the requirement to issue appropriate notes of discussions with tied pub tenants within 14 days of the meeting and request that the publican responds within 7 days if they do not agree with any aspect of the record.

#### **To support this requirement:**

- A Minutes App has been developed which is used by BDMs to capture the meeting content and agreed actions with timings. Copies are emailed to the publican after the meeting. The template includes a reminder to the publican that they have 7 days to respond.
- There has been training and there is an e-learning module.
- This is also included in induction training
- The quality of minutes is verified by their managers on a sample basis and refresher training is provided, if required.
- The BDM objectives include a requirement for quality, timely minutes.
- There is a disagreements process.

For the reporting period, the number of challenges by tenants about the non-provision or content of a BDM record.

Out of a total of **36,132** meeting minute records produced during the reporting period, we are aware of the following challenges:

- Non-Provision of Meeting Minutes: **0**
- Content of meeting minutes: **35**

***Steps taken by the POB to resolve disagreements and any consequential changes to BDM reporting protocols:***

Wherever possible BDMs request a signature to confirm the accuracy and relevance of the contents of the minutes before leaving the pub as this minimises the risk of later disagreements. This is not, however always possible.

When disagreements with the minutes are raised by the publican, the BDM typically discusses the nature of the disagreement or misunderstanding with the publican and either reissues an updated version of the minutes to reflect the agreed position or emails a response.

There have not been any changes to reporting protocols as this process has been in place since the launch of the Code and has been shown to be effective.