



New chapter of Regulatory Compliance Handbook: Market Rent Only (MRO) proposals

The Pubs Code Adjudicator and Deputy PCA have issued a [new chapter](#) to the PCA's Regulatory Compliance Handbook. It sets out the regulator's expectations as to the minimum steps which the pub-owning business (POB) must take each time it prepares a Market Rent Only (MRO) proposal. The 'MRO Compliance Record and Declaration' must be completed by the POB and signed by the Code Compliance Officer to show that these steps have been taken. The POB must satisfy itself in each case that its proposed MRO terms comply with the Pubs Code tests on commonality and reasonableness and be in a position to show how they have done this.

The PCA urges tenants who have completed the MRO process to fill in the questionnaire to help the regulator understand if it is running smoothly and giving them the right to see if they are no worse off than if they were free of tie, as Parliament intended.

Taking the MRO option – regulation 28

In June 2019 we issued our [advice note](#) on the operation of regulation 28 - "Taking the MRO option - Tied rent considerations".

Since publishing that statutory advice, and following our interventions, the office of the PCA has secured repayments by Ei Group totalling at least £111,000 plus interest, to 68 tied tenants of tied rent increases recovered from them by their pub-owning business while they were going through a Market Rent Only (MRO) process.

The repayments followed interventions by the PCA with pub-owning businesses on how they were interpreting and applying the provisions in Regulation 28 of the Pubs Code governing how the tied rent must be dealt with during and at the conclusion of the MRO process. We continue our work to embed Code compliance in relation to this provision.

This is obviously a welcome outcome for the tenants involved, whose Pubs Code rights have been enforced; but it also sends a clear signal to all tenants about what they should expect if they choose to exercise their MRO option. If there are any tenants who have been affected by these issues, but have not received a refund, they should contact their pub company and the PCA.

Further considerations – Tied rent dispute resolution clauses

In our [July 2019 bulletin](#) we discussed different but related considerations that may apply to the interaction between contractual tied rent review provisions and the MRO procedure. Though regulation 28 prohibits the **recovery** of rent increases after service of a MRO notice unless the tenant remains tied, it does not prohibit the contractual rent review procedure from being **used**, including through a contractual dispute resolution process, to identify the new tied rent. A question arises therefore as to when that process can reasonably be used. We said we were seeking a wider understanding of industry views and practice to inform what further regulatory steps may be appropriate to support the rent assessment and MRO processes in accordance with the core Code principles. We invite industry observations on the topics raised, including as to the circumstances in which a pub-owning business could reasonably trigger a tied rent dispute resolution clause.

Pubs Code documents purportedly served ‘without prejudice’

The Adjudicator and Deputy Adjudicator have engaged as regulators with the regulated pub-owning businesses about halting the practice of describing rent assessment proposals or rent proposals as being provided on a ‘without prejudice’ basis.

The Adjudicator and Deputy Adjudicator have made clear to pub-owning businesses that it is not Code compliant for a rent assessment proposal or a rent proposal to be served on a ‘without prejudice’ basis. These are statutory documents that must be provided by law. Compliance requires a level of openness and transparency, and purporting to provide them ‘without prejudice’ is clearly inconsistent with those principles.

All six pub-owning businesses governed by the Pubs Code have now confirmed that they either do not, or will not in the future, mark their rent assessment and rent proposals as being ‘without prejudice’. In each and every ongoing rent assessment or rent review where these documents have been issued on a ‘without prejudice’ basis the pub-owning businesses concerned have undertaken to contact the tenant concerned to clarify that they are to be treated as not being without prejudice.

The office of the PCA is closely monitoring the compliance of the pub-owning businesses concerned with these commitments.

New series of ‘What Tied Pub Tenants Need to Know’ factsheets

The Office of the PCA has published two further factsheets in its series explaining ‘What Tied Pub Tenants Need to Know’.

Designed to answer the major questions that tenants ask the PCA about the Pubs Code and its processes, these latest factsheets cover:

- the duties of pub-owning businesses in relation to rent assessments and when providing their tenants with a rent assessment proposal; and
- tenants’ rights under the Market Rent Only (MRO) option.

All of the factsheets in the ‘What Tied Pub Tenants Need to Know’ series can be found on the PCA [website](#).

You can still access the PCA’s original factsheets as technical guides. Please note that PCA publications are not a substitute for the Pubs Code legal framework.”

PCA publishes response to statutory review of the Pubs Code

The office of the Pubs Code Adjudicator has published its [submission](#) to the statutory review of the Pubs Code and Adjudicator by the Department for Business, Energy and Industrial Strategy (BEIS).

The response by the Pubs Code Adjudicator and Deputy Adjudicator explores issues that have commonly arisen in both Pubs Code arbitration cases and in other evidence on Code compliance, in particular in relation to the Code's Market Rent Only (MRO) provisions and the suitability of arbitration as a way to resolve Pubs Code disputes.

BEIS is currently considering the responses it has received to its consultation on the statutory review.

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How to contact us



Go to the PCA's website – www.gov.uk/pca and complete an online enquiry form



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