Pubs Code Adjudicator

Pubs Code Adjudicator
Investigation into Star Pubs & Bars Limited

15 October 2020

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On 10 July 2019, along with the then-Pubs Code Adjudicator, I announced an investigation into whether, and if so how, Star Pubs & Bars Limited has failed to comply with the Pubs Code by using unreasonable stocking terms in certain of its proposed MRO tenancies. In doing so, I sought to understand what impact any failure to comply has had on Star's tenants. The period under investigation was 21 July 2016, when the Pubs Code came into effect, until 10 July 2019. My investigation is now complete.

I have concluded that Star did use unreasonable and non-compliant stocking obligations in its proposed MRO tenancies over a significant period of time following the introduction of the Pubs Code. These included stocking obligations that failed to meet the statutory conditions for a stocking requirement outlined in the legislation. Star did not act in a timely, consistent or transparent way to correct what it was aware, or ought to have been aware, were instances of non-compliance, even after numerous regulatory interventions and arbitral findings.

The role of the MRO process at the core of the Code cannot be understated. It is the critical route by which the "no worse" off principle can be delivered, and by which tied pub tenants can instigate meaningful negotiations with pub owning businesses in respect of both their tied and free of tie options. The process is dependent upon compliant MRO proposals forming the foundation upon which fair negotiations between tied pub tenants and pub owning businesses can occur. The offer of non-compliant MRO terms compromises that foundation and undermines the effective working of the Code.

Star's policies and patterns of conduct served as structural barriers to MRO, as demonstrated by the evidence I reviewed. Protracted negotiations over unreasonable stocking terms would present a deterrent to tied tenants from exercising effectively their right to MRO. I am also aware that some of Star's free of tie tenants are already subject to terms that I do not consider were compliant with the Code. This has resulted in a number of unreasonable terms ending up in the market.

A range of issues within Star led to these breaches of the Code, all overlaid with a culture in which Star was unwilling to acknowledge the changes that the Code was designed to herald for regulated pub-owning businesses. Star failed to empower its compliance function to verify compliance, as required by the Code. Star did not have suitable systems and processes in place to support, record and evidence decisions in a Code-compliant manner. In particular, a period of maladministration meant that tenants received non-compliant terms that should never have been issued – yet Star continued to defend these non-compliant terms in negotiations and arbitration proceedings, and did not inform each of its affected tenants following discovery of its errors.

Finally, in relation to every issue within the scope of the investigation, Star's senior leadership was unable to produce a satisfactory rationale for its decision-making, and only provided very limited documentary evidence of its attempts to take Code-compliant decisions in respect of individual tenants. Underlying this was a lack of respect by Star for its Code responsibilities, or for tenants' rights in relation to MRO.

In response to my initial findings, Star proposed some measures to improve its approach to compliance. I welcome these, and expect Star to make appropriate investment of time, cost and resource to implement its proposals effectively. Star must also follow the recommendations I have outlined, to ensure fairer outcomes for tenants in accordance with the core Code principles.

This report sets out the investigation process and my detailed findings. It also explains my decision why it is appropriate to use enforcement measures, including making recommendations, imposing information requirements and imposing a financial penalty on Star.

Fiona Dickie
PUBS CODE ADJUDICATOR

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Introduction

1. The office of the Pubs Code Adjudicator and the roles of the PCA and DPCA

1.1 The statutory office of the Pubs Code Adjudicator (the "**PCA**") was established by section 41 of the Small Business, Enterprise and Employment Act 2015 (the "**Act**" or "**2015 Act**"). Paul Newby took office as the PCA on 3 May 2016 and Fiona Dickie took up appointment as the Deputy Pubs Code Adjudicator ("**DPCA**") on 1 November 2017. Under the Act, the DPCA has the power to carry out any of the functions of the PCA. On 3 May 2020, Fiona Dickie succeeded Paul Newby as the PCA.

1.2 The work of the PCA is to carry out the functions prescribed in the Act, including overseeing the statutory Pubs Code etc. Regulations 2016 (the "**Pubs Code**" or "**Code**"), which were introduced on 21 July 2016.

2. Background to the Pubs Code

2.1 The Pubs Code regulates the contractual relationships between all pub-owning businesses with 500 or more tied pubs in England and Wales (the "**pub-owning businesses**" or "**POBs**") and their tied pub tenants. Tied pub tenants covered by the Code are those who are obliged to purchase some or all of the alcohol to be sold at their pubs from their pub-owning business (or its group undertaking), or a person nominated by that business or group undertaking.[1]

2.2 Section 42 of the 2015 Act required the Secretary of State to enact the Code and seek to ensure that it is consistent with two underlying principles:

(a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants; and

(b) the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie.

2.3 At the date the investigation was launched, the Pubs Code applied to six POBs: Admiral Taverns Limited, Ei Group PLC, Greene King PLC, Marston's PLC, Punch Taverns Limited and Star Pubs & Bars Limited.[2]

2.4 The full text of the Pubs Code can be accessed at **Annex D**.

[1] A tied pub may be operated under either a lease or a tenancy. The Pubs Code regulates both tied leases and tied tenancies. A tied lease will typically be for a longer period and may include a right to renew under the Landlord and Tenant Act 1954, but is likely to make the tenant fully responsible for repairs to the premises during the lifetime of the lease. A tied tenancy will typically be for a shorter period and with no statutory or contractual right for the tenant to renew. The tenant is likely to have less onerous repairing obligations. Throughout this report the term 'tied tenant' is used to denote publicans who hold either a tied tenancy or a tied lease; and the term 'tenancy' is used to denote both tied leases and tied tenancies regulated under the Code.

[2] As of the date of publication of this report, the Code continues to apply to Admiral Taverns, Ei Group, Greene King, Marston's, Punch Taverns and Star Pubs & Bars.

3. The "market rent only" option and the stocking requirement

3.1 The Code creates a new statutory right for tied pub tenants to request a market rent only ("**MRO**") compliant option at certain points in the tied tenancy, and to use that to compare and decide whether they wish to stay tied or become free of tie. The ability of the tied tenant by these means to compare the tied and free of tie options is important to the "no worse off" principle. Under a MRO-compliant tenancy, a tenant is free to buy alcohol and other products and services on the open market, and will pay an agreed rent for the premises (or, failing such agreement, a market rent). The terms of the MRO-compliant tenancy must be reasonable.[3]

3.2 Some POBs are brewing POBs, in that they produce their own beer and cider products which they may wish to market to tenants. Other POBs do not brew their own products. A POB that also has beer or cider brewing operations may include "stocking requirements" in its MRO tenancies.[4] These are contractual terms that require a tenant to stock the POB's beer or cider, but do not require the tenant to buy that beer or cider from a particular supplier.[5] Stocking requirements can include reasonable restrictions on – but must not prevent – the sales of beers or ciders produced by other brewers.

4. The PCA's legislative powers and Statutory Guidance in relation to investigations

4.1 The Act provides the PCA with the power to investigate any POB(s) that she has reasonable grounds to suspect of breaching the Code.[6] As required by section 61(1) of the Act, the PCA published Statutory Guidance in November 2016 on the conduct of investigations, and application of the enforcement powers specified under the Act (the "**Statutory Guidance**").[7]

4.2 Where the PCA finds there has been a breach of the Code, the formal enforcement actions she can take are to make recommendations, require information to be published, and impose financial penalties.[8] The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016 provide for a maximum fine of 1% of the relevant pub-owning group's annual UK turnover. The "pub-owning group" is defined as the POB and its group undertakings.[9]

5. The PCA's investigation into Star Pubs & Bars Limited

5.1 On 10 July 2019 the PCA and DPCA (together the "**D/PCA**") announced that they would be commencing an investigation into Star Pubs & Bars Limited ("**Star**"). Star is the entity responsible for operating the pub estate business of Heineken UK Limited ("**Heineken UK**" or "**HUK**"). In addition to its existing estate of around 900 tied pubs, Heineken UK acquired approximately 1,900 further tied pubs from Punch Taverns in August 2017. Shortly prior to the launch of the investigation, Star operated an estate of 2,226 tied pubs out of some 9,680 regulated tied pubs in England and Wales.

[3] 2015 Act, section 43(4)(a)(iii).

[4] Ibid, section 68(6).

[5] Ibid, section 68(7).

[6] Ibid, section 53(1)(a).

[7] The publication of the Statutory Guidance followed the publication of draft guidance for consultation in August 2016.

[8] 2015 Act, section 55(1).

[9] The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016, regulation 5.

5.2 The investigation was launched to consider whether, and if so how, Star failed to comply with the Pubs Code by using unreasonable stocking terms in certain of its proposed MRO tenancies, and what impact any failure to comply with the Code has had on Star's tenants. The period under investigation was from the introduction of the Code, on 21 July 2016, to 10 July 2019, the date the PCA launched the investigation.

5.3 The Notice of Investigation, which was published when the PCA launched the investigation, can be accessed at **Annex E**.

6. Relevant legislation

6.1 The following paragraphs summarise the legislation applying to the MRO process, including the law regarding the reasonableness of the terms of the proposed MRO tenancy (or "**MRO proposal**"). The relevant legislative provisions relating to the reasonableness of stocking requirements in MRO proposals are regulation 29(3) of the Code (read together with section 43(4)-(5) of the Act), regulation 31(2)(c) of the Code and section 68(7) of the Act.

6.2 **Annex B** to this report explains in more detail the provisions that relate to each specific issue within the scope of the investigation, along with any relevant statutory advice and guidance issued by the PCA.

Beginning the MRO process

6.3 A tied pub tenant is entitled to request the MRO option on the occurrence of a specified event in the tied tenancy.[10] The tenant must notify the POB formally within 21 days of the event that they would like to receive the MRO option (the "**MRO notice**").[11]

6.4 Regulation 29(3) of the Pubs Code *(Effect of tenant's notice)* states:

'Where the pub-owning business agrees with the tied pub tenant's opinion under regulation 23(3)(e), the pub-owning business must send the tenant—

(a) a statement confirming its agreement;

(b) where the MRO notice relates to a tenancy, a proposed tenancy which is MRO-compliant;
[…]

6.5 The MRO-compliant tenancy must be provided as part of the "full response" to the tenant within 28 days, starting the day the POB receives the MRO notice.[12]

[10] Pubs Code, regulations 24-27. The specified events are:
(a) the tenant receives a rent assessment proposal, showing the new rent payable under the existing tied tenancy;
(b) the tied tenancy is renewed;
(c) there is a significant increase in the price at which a tied product or service is supplied to the tenant; or
(d) the tenant sends a relevant analysis to the POB demonstrating a trigger event has occurred that will have a significant impact on trade.

[11] Ibid, regulation 23.

[12] Ibid, regulation 29(7).

The inclusion of stocking requirements in MRO proposals

6.6 A brewing pub-owning business may include a "stocking requirement" in a MRO proposal. Under section 68(7) of the Act, a contractual obligation is a "stocking requirement" if:

'(a) it relates only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord,

(b) it does not require the tied pub tenant to procure the beer or cider from any particular supplier, and

(c) it does not prevent the tied pub tenant from selling at the premises beer or cider produced by a person not mentioned in paragraph (a) (whether or not it restricts such sales).' [13]

6.7 Any obligation relating to stocking which does not meet the definition in section 68(7) is not a "stocking requirement".

Meaning of a "MRO-compliant" tenancy

6.8 A tenancy will be MRO-compliant if (in addition to meeting further requirements), taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy, it does not contain any unreasonable terms or conditions.[14] The test of reasonableness applies to all terms, including a term that meets the statutory definition of a stocking requirement.

6.9 The Code may specify descriptions of terms and conditions which are to be regarded as reasonable or unreasonable.

6.10 The PCA issued statutory advice on Stocking Requirements in March 2017, which confirmed that the reasonableness of a stocking requirement will be considered in the particular circumstances of the case, taking into account all relevant considerations.[15]

6.11 The PCA issued statutory advice on MRO-compliant proposals in March 2018, which confirmed that whether a term will be regarded as unreasonable or not will depend on all the circumstances (and not just on whether or not it is uncommon), and that the approach taken by a POB to a MRO proposal must be consistent with the core principles that underpin the Pubs Code.

[13] The Explanatory Notes to this section elaborate that: *'The stocking requirement also allows the pub-owing business to impose restrictions on sales of competing beer and cider in line with prevailing competition law, so long as the restrictions do not prevent the tenant from selling such products.'*

[14] 2015 Act, section 43(4).

[15] The PCA has the power to issue statutory advice under section 60 of the 2015 Act.

Disputing MRO terms

6.12 The tied pub tenant and the POB must, until the end of the MRO procedure, seek to agree a tenancy that is MRO-compliant.[16] There is a formal 56 day negotiation period over the terms of the MRO tenancy, starting on the date the tenant receives the proposed MRO-compliant terms.[17]

6.13 Where there is a dispute, either party may, in certain circumstances, refer the proposed terms to the PCA for arbitration. The tenant may make a referral if it considers that the proposed tenancy is not MRO-compliant. It must do so in relation to an initial proposal within 14 days, starting the day after the end of the 28-day response period, or within 14 days after it receives any subsequent proposal.[18]

6.14 The arbitrator may find that no failure has occurred in connection with the full response, or, that the POB must provide a revised response (i.e. amended terms) to the tenant.[19]

[16] Pubs Code, regulation 34(2).

[17] Ibid, regulation 34(4).

[18] Ibid, regulations 32(2) and 35(1).

[19] Ibid, regulation 33.

The investigation process

7. Pre-investigation regulatory engagement with Star

7.1 Prior to launching the investigation, the D/PCA had reasonable grounds to suspect that:

(a) Star included purported stocking requirements in its MRO proposals, the terms of which prevented the tied pub tenant from selling beer or cider produced by persons who are not the landlord or its group undertakings, contrary to the statutory definition of a stocking requirement set out at section 68(7)(c) of the 2015 Act. The relevant term required that 100% of the keg products stocked by the tenant be produced by the Heineken group, except where Star gave consent for the stocking of competitor brands.

The D/PCA first found in three separate arbitration awards in 2018 that such a term both did not meet the definition of "stocking requirement" and was unreasonable.[20] After those awards, the "100% keg" term continued to be the subject of a number of other arbitration referrals involving Star.

(b) Star had included purported stocking requirements in its MRO proposals that did not relate only to beer or cider (or both) produced by the landlord, or by a person who is a group undertaking in relation to the landlord. This was contrary to the definition of a stocking requirement in section 68(7)(a) of the 2015 Act.

In the "Helliwell 2" arbitration award in December 2018, the DPCA found that a stocking obligation relying on a definition in the MRO proposal of "Landlord Brands" that went beyond the provision in section 68(7)(a) did not meet the definition of a stocking requirement and was unreasonable.[21] Separately, when a MRO proposal was provided to the PCA during other proceedings, the PCA became aware that Star was also proposing purported stocking requirements that used a definition of "group undertaking" wider than that set out in section 72 of the 2015 Act.[22] There were subsequently a number of arbitration referrals that evidenced Star's use of similar extended definitions.

(c) Based on its use of template tenancies, Star had included purported stocking requirements in its MRO proposals without regard to each pub's circumstances, which in reality could require the tenant to stock an unreasonably high proportion of brands covered by the term.

(d) Star had included terms in purported stocking requirements that may influence the re-selling price of products covered by the term. Such a term may not comply with the Code because a stocking requirement must be referable only to the stocking of beer and/or cider and not to its resale, and must neither directly nor indirectly control or influence the resale price of non-landlord group-produced beer and/or cider products at the premises.

[20] The award in ARB/WH/17/HELLIWELL ("**Helliwell 1**") delivered on 13 March 2018, and two further awards of 16 March 2018 and 2 May 2018.

[21] The award in ARB/103756/HELLIWELL ("**Helliwell 2**"), delivered on 3 December 2018.

[22] Section 72 refers to the definition of a "group undertaking" used at section 1161 of the Companies Act 2006.

In Helliwell 2 and other proceedings, terms in the purported stocking requirement required the tenant to ensure that landlord cask and keg brands were *'offered for sale at a reasonable market price taking into account the location and circumstance of the Property and being reasonably commensurate with the pricing of other Products offered for sale'*.

7.2 The D/PCA engaged with Star via correspondence and in meetings between September 2018 and June 2019 in relation to the issues set out above, beginning with correspondence from the DPCA in September 2018 concerning Star's continued use of the "100% keg" term.

7.3 In October 2018, Star replied to the DPCA stating that it had made amendments to its template MRO tenancy applying from 12 September 2018, following the D/PCA's arbitration awards. The D/PCA remained concerned by:

(a) the time taken by Star (several months) to implement amendments to its template MRO tenancy after the D/PCA's first arbitration awards on the issues;

(b) Star's confirmation that following arbitral rulings on the lawfulness of certain terms, it did not seek to revisit the terms of proposals that were subject to pending arbitration proceedings or currently in negotiation; and

(c) Star's references to a '*legacy lease issue*' whereby tenants who sent MRO notices were issued with non-compliant terms.

7.4 On 1 February 2019, Star wrote to the D/PCA regarding the outcome of the Helliwell 2 arbitration award, requesting '*an open discussion between Star and the Office of the PCA with regard to the content of the stocking requirement offered by Star to its tenants*.' Star expressed that this would bring an end to what it considered a '*trial and error*' process of setting the boundaries of what should and should not be considered as a reasonable stocking requirement through continued referrals and awards.

7.5 Following a meeting that took place on 14 February 2019 at the request of Star, and after further correspondence, in a letter dated 13 March 2019 Star committed unconditionally to ensuring that the stocking requirements in its current and future MRO proposals and negotiations complied with the Code. It then failed to take prompt steps to give effect to the commitments, and subsequently sought to make the commitments conditional on further acceptance or approval by the D/PCA.

7.6 On 17 April 2019, the D/PCA wrote to Star referring to Star's claim that it *'has always considered that it proposes and defends the terms of its stocking requirement based on its understanding of the law and policy at the time'*.[23] The D/PCA noted that contrary to Star's statement, following the ruling in Helliwell 1 in March 2018 that a 100% keg stocking term was non-compliant, the same term had nonetheless been subject to a number of further arbitration referrals.

[23] Star had made this statement in its 13 March 2019 letter, and a similar comment in its 1 February 2019 letter that noted *'Star has always sought to act in accordance with both the 2015 Act and Pubs Code* […]*'*.

7.7 On 10 May 2019, the D/PCA wrote to Star regarding Star's March 2019 commitments to ensure *'that the terms relating to stocking included in any existing and proposed Star MRO lease, including those currently in arbitration, are compliant'*. Star had also committed to *'communicate with any recipient of an offer now in existence including a definition of Landlord Brand in the terms described* […] *to openly acknowledge to the tenant (and the arbitrator where arbitral proceedings are ongoing) that the purported stocking requirement was not compliant.'* The D/PCA in their capacity as arbitrators had not, by that date, received such a communication in any relevant arbitration proceedings.[24]

7.8 Star confirmed to the D/PCA on 16 May 2019 that it would *'now proceed to implement all necessary changes to our business processes and draft leases'*. Notwithstanding the changes that Star said it was making to its practices, the D/PCA continued to have significant concerns about the potential impact on Star's tenants of its historic use of non-compliant terms in purported stocking requirements, and about Star's ongoing approach to MRO proposals. The D/PCA considered that continued engagement with Star via correspondence alone would not enable them to obtain an effective understanding of the totality of Star's conduct and the experiences of its tenants, or to verify the sometimes inconsistent information Star had provided.

8. The impact of arbitration awards

8.1 As outlined at paragraph 6.13 above, sections 45 and 48-52 of the 2015 Act, and Part 14 of the Pubs Code, provide for circumstances where the PCA may arbitrate Code-related disputes between POBs and tied pub tenants.

8.2 Though arbitrations generally only bind the parties in relation to their specific agreements, the outcomes of awards can clearly have wider implications insofar as they provide an interpretation of the law and principles to be followed. In some cases, the findings of awards may have considerable importance for a particular industry.[25]

8.3 Arbitration having been provided as the statutory form of dispute resolution under the Pubs Code, the PCA would expect a regulated POB to consider its understanding of the law in light of each award that makes a relevant finding on the interpretation of the statutory framework, and to adjust its behaviour towards tenants as appropriate. The 2015 Act and the Code are complex – and were, at the start of the period under investigation, new – pieces of legislation. In that context, the outcomes of awards can be key in assisting any POB in ensuring its approach is compliant on a continuing basis. This is particularly true where common issues are addressed in successive awards that relate to fundamental principles of the Code, and where no binding decisions from the courts exist on relevant points of law.

[24] As noted at paragraph 38.6 below, the PCA received evidence during the investigation showing that Star did communicate in such terms to some tenants from April 2019 onwards.

[25] Section 69(3)(c)(ii) of the Arbitration Act 1996 provides a gateway to appeal an award on the basis that *'the question is one of general public importance* […]'. For example, in *Punch Partnerships (PTL) Ltd & Anor v The Highwayman Hotel* [2020] EWHC 714 (Ch), the High Court held that this test was satisfied in relation to an appeal to an arbitration award delivered by the then-DPCA.

8.4 In accordance with this position, on 15 March 2018 the PCA wrote to all POBs proposing to make its awards public and seeking their consent to do so.[26] [27] On 19 April 2018, Star responded in favour of this, stating: *'Star Pubs & Bars has long supported the idea of drawing "golden threads" from arbitration decisions.'* This and other evidence show that Star understood and supported the notion that it should take learnings from awards and adapt its behaviour.[28]

8.5 The awards delivered by the D/PCA regarding the compliance of stocking terms are explained in more detail at **Annex B** to this report. The D/PCA's successive findings that Star had offered unreasonable and non-compliant stocking terms to tenants increased their suspicions that Star may have committed wider breaches of the Code.

9. The decision to launch an investigation

9.1 The PCA has adopted a modern regulatory approach, engaging with POBs to respond to issues raised by tied pub tenants and others, and ensure Code compliance. The PCA takes a targeted and proportionate approach to using her formal powers, prioritising the issues likely to have the most significant impact on tenants and their Code rights to decide whether to commence, when to commence and whether to continue any investigation.

9.2 As explained at paragraphs 7 and 8 above, the D/PCA held a reasonable suspicion that Star had breached the Code. They concluded that an investigation was necessary to understand fully and to determine the extent to which the Code may have been breached, any impact on tenants and the causes of the issues. The PCA is satisfied that it was proportionate in all the circumstances to pursue this action, in accordance with her four prioritisation principles:

(a) impact;

(b) strategic importance;

(c) risks and benefits;

(d) resources.[29]

[26] This position was also advocated by government ministers. On 9 July 2018, Richard Harrington MP, Minister for Energy and Industry, wrote to Rachel Reeves MP, Chair of the Business, Energy and Industrial Strategy Committee, noting: *'real headway can be made in publishing arbitrations and pulling out the key messages from them and I have made it clear to the pub owning businesses that I expect to see progress in this area.'*

[27] The PCA's letter stated: *'The Regulator's position is that the confidentiality that ordinarily applies to commercial arbitrations between consenting parties who agree to arbitrate the matter between them is not the same as the situation that arises in respect of Pubs Code statutory arbitrations. There is little, if any, commercial confidentiality in the approach to lease arrangements between a pub-owning business and its tied tenant in Pubs Code disputes, and the public interest in ensuring a level playing field between the parties in matters which fall within the purview of the Pubs Code outweighs any such considerations.'*

[28] Star's "Stocking Discussion Paper", produced in February 2019, noted the outcomes of arbitration awards and set out a timeline of versions of its MRO tenancy that were *'developed after PCA awards'*. Star included comments on learnings such as: *'PCA definition of reasonable has to be applied in each case – no one size fits all.'* The PCA understands that the paper was not intended to be a formal documented policy, but did capture Star's general approach to stocking.

[29] The four prioritisation principles are explained in full at Chapter 1 of the PCA's Statutory Guidance.

9.3 Eight months into the investigation, HM Government ordered the UK-wide closure of pubs following the COVID-19 outbreak. This resulted in significant disruption to the pub industry, and the PCA prioritised resources to address the effects of the outbreak on the interaction between pub companies and their tenants. The PCA considered that, notwithstanding the emergency, it was proportionate to continue and complete the investigation for the benefit of the industry. The PCA agreed to allow Star longer timescales for disclosing certain evidence and to review the draft of the investigation report, to take into account the impact of the outbreak on the business.

10. The period under investigation

10.1 The investigation covers the time period from the introduction of the Pubs Code on 21 July 2016 to 10 July 2019, the date of the Notice of Investigation. This period enabled the PCA to obtain an understanding of how Star's approaches and practices relevant to the issues under investigation may have changed, and of the scale and impact of any non-compliance. The PCA's findings as to whether Star breached the Code are based only on information she received relating to this period.

11. Evidence relevant to the investigation

11.1 The PCA is mindful of the need to separate her dual roles of regulator and arbitrator, and act in accordance with her Conflicts of Interest policy. The PCA considered evidence for the purposes of the investigation that was obtained from the following sources:

(a) Star and its personnel in response to Disclosure Notices and further requests for information;

(b) Star's tenants and interested parties who responded to the PCA's call for evidence;

(c) regulatory correspondence and meeting notes with Star that the PCA held in her capacity as regulator; and

(d) publicly available information (such as published arbitration awards).

11.2 The PCA ensured that requests for information were proportionate by requiring disclosure of sufficient information to conduct a thorough investigation, while seeking to minimise the burden on the recipients. She is grateful for the assistance of all of those who provided information.

11.3 The evidence relied upon by the PCA in relation to each issue within the scope of the investigation is detailed in this report at **Annex B**.

11.4 The PCA took the following approach to obtaining and reviewing evidence:

Requests for information from Star and interviews with relevant personnel

11.5 The PCA exercised her statutory powers to compel the disclosure of written and oral information from Star and its senior personnel.[30] She obtained evidence on matters including:

[30] The relevant statutory powers are set out at paragraph 19(1) of Schedule 1 to the 2015 Act.

(a) Star's internal and corporate structure, including its relationships with other (i) Heineken entities, (ii) Punch Taverns entities, and (iii) brewers;

(b) Star's executive decision-making, including the role of its leadership and compliance functions;

(c) Star's commercial and stocking policies;

(d) Star's engagement with tenants in relation to MRO proposals, and in particular the issuing and negotiation of stocking terms;

(e) arbitration proceedings that related to the compliance of stocking terms included in Star's MRO proposals;

(f) Star's administrative systems and record keeping; and

(g) the procedures in place to train staff on Code compliance matters.

11.6 The PCA issued six Disclosure Notices to Star during the investigation.[31] Star provided narrative responses and accompanying documentation in response to each. The PCA reviewed this material and decided at every stage whether she needed to make further, targeted requests to Star to understand its practices, or if she required explanations of specific documents from Star's personnel. Staff from the Office of the PCA interviewed three of Star's senior personnel across five interview dates.

Star's tenants and interested parties who responded to the PCA's call for evidence

11.7 As part of the Notice of Investigation, the PCA made a public call for any evidence relevant to the investigation. The purpose of the call for evidence was to give any individual or organisation the opportunity voluntarily to provide the PCA with information that may assist the investigation.[32]

11.8 The PCA received 24 submissions from tenants and other interested parties which she considered to be in-scope in respect of the issues under investigation. These related to 44 individual pubs that had been the subject of a MRO procedure, i.e. roughly 36% of the pubs within Star's estate that received a MRO proposal containing stocking obligations during the period under investigation.[33]

11.9 The PCA sent follow-up communications to all respondents by email. Following her review for relevance of all material provided, the PCA conducted telephone interviews with respondents who provided in-scope evidence to verify their identities and the substance of the information they had provided. Any third parties claiming to represent tenants were required to confirm their authority to act on behalf of the relevant tenant.[34] The PCA asked any necessary clarificatory questions and, where appropriate, requested follow-up documentary evidence. Where possible, information provided by respondents was also corroborated against evidence disclosed by Star (including in all cases the terms of MRO proposals issued to the relevant tenants).

[31] The dates of these were 15 July 2019, 24 January 2020, 28 April 2020, 12 June 2020, 24 June 2020 and 7 October 2020.

[32] The PCA also sent by email copies of the Notice of Investigation to tenants who had previously contacted the Office of the PCA, or referred a case for arbitration, in relation to the issues potentially relevant to the investigation.

[33] This is based on Star's own assessment of the MRO notices it received that it considered to be "valid" (i.e. that then required a full response).

[34] Some tenants' representatives also shared with the PCA first-hand accounts produced by their tenants.

11.10 The PCA has received a wide range of evidence from a diverse group of tenants and interested parties from across England and Wales. This evidence has enabled a better understanding of the direct impact of Star's policies on tenants across its estate who entered into the MRO process. The material received assisted the PCA in deciding what further information was needed from Star and, ultimately, with reaching the findings and conclusions on impact set out in this report.

11.11 The PCA assured respondents that they would not be identified in the report. No tenant or individual is named in this report or described in a way that might enable them to be identified, with the exception of information relating to arbitration awards that are published on the PCA's website, and where tenants provided consent to the inclusion of particular information in the report.

12. Information the PCA received during the course of the investigation which was outside its scope

12.1 Any information the PCA received during the course of the investigation that does not fall within its scope has not been considered for the purposes of making findings. This information has been retained for consideration as part of the PCA's regulatory engagement with the POBs.

13. References to Star and its personnel

13.1 Under the Act, the PCA may decide whether to make public the name of the POB(s) under investigation. In this instance the PCA decided that it was necessary to name Star to enable tenants and others to decide whether or not they held information that might be relevant to the investigation.

13.2 As Star is identified in the report, it has been given a reasonable opportunity to comment on a draft of the report before publication. As certain personnel working at Star may be identifiable from the report by reference to their roles, they have also been provided a reasonable opportunity to comment on a draft of the report prior to publication.

14. Conduct of the investigation

14.1 The then-PCA and DPCA undertook the investigation jointly, until the appointment of Fiona Dickie as PCA on 3 May 2020. From 3 May 2020, decisions in relation to the investigation were taken by the PCA solely. The PCA was assisted in her investigation by the law firm Fieldfisher.

14.2 The PCA has now concluded the investigation. The remainder of this report sets out her findings and reasoning for these, and her decision on whether to use enforcement measures and the reasoning for this.

Summary of findings from the investigation

15. The findings below relate to terms that Star included in its MRO proposals over different periods of time within the overall period under investigation. A summary of the terms of Star's template MRO tenancies between 21 July 2016 and 10 July 2019 is set out at **Annex A**. The PCA's detailed findings in relation to the issues within the scope of the investigation are set out at **Annex B**.

16. Findings on stocking obligations which require that all of the keg products stocked by the tenant be produced by the Heineken group (unless Star consents otherwise)

16.1 Star proposed identical stocking terms to every tied tenant who sent a MRO notice from August 2016 to August 2018, which provided that 100% of the keg products stocked by tenants be produced by the Heineken group, unless Star consented otherwise.

16.2 The effect of Star's 100% keg stocking term was to prevent the stocking of beer or cider of that type produced by a non-Heineken group undertaking. Given that Parliament provided in section 68(7)(c) of the Act that a stocking requirement cannot prohibit the sale of competing products, the relevant stocking terms failed to meet the statutory test, and were therefore not stocking requirements and were unreasonable. On 13 March 2018, the DPCA delivered the first of a number of arbitration rulings against Star (none of which Star appealed) on the basis of this principle.

16.3 POBs are under a statutory duty to ensure that the terms included in MRO proposals are reasonable. The PCA has consistently informed the industry – and Star specifically – that the reasonableness of the stocking requirement included in a MRO proposal depends on the circumstances of the case.

16.4 Contrary to this, Star aggravated its conduct by adopting a template approach that entailed proposing 100% keg stocking terms to every tenant who requested MRO, thus failing to demonstrate that it considered the circumstances of any individual case. The PCA is particularly concerned about the impact of Star proposing 100% keg stocking terms to at least two former tied pub tenants of Punch Taverns, who purported to have zero existing representation of Heineken brands at the time they served the MRO notice. This means that each would have needed to change a substantial amount of their product range to comply with the terms.

16.5

The PCA finds that Star's inclusion of 100% keg stocking terms in 96 MRO proposals from 2 August 2016 to 22 August 2018 was unreasonable and non-compliant in all cases. These terms served as an absolute prohibition on stocking competitor keg products. Star ought to have been aware that this approach was non-compliant from early in the life of the Code, and in any event did know from receipt of the DPCA's March 2018 arbitration awards. Efforts made by Star to comply with the Code were not credible, and it refused or failed to change its approach after relevant D/PCA rulings in awards.

16.6 The Code sets out that the tied pub tenant and the pub-owning business must, until the end of the MRO procedure, seek to agree a tenancy that is MRO-compliant. A POB that sought to obtain agreement to terms that it understood were non-compliant would be in breach of this duty.

16.7 Star failed to revise existing offers in negotiations after the D/PCA's rulings on the relevant legal principles in three arbitration awards between March and May 2018, and continued to defend the same terms in a number of arbitration proceedings thereafter.

16.8 From March 2018 there were consistent, unambiguous rulings that a 100% keg term was not a stocking requirement, and was not MRO-compliant. Star's:

(a) change in approach in September 2018;

(b) internal acknowledgement by May 2018 of the need for such a change;

(c) correspondence with one tenant in April 2018 noting that its terms amounted to a prohibition on stocking competitor brands; and

(d) choice not to appeal any of the three relevant awards;

demonstrates that it had accepted the principles from those arbitrations. It nonetheless failed promptly and transparently to review its position in other ongoing negotiations.

16.9 Star's conduct also came at a real, unnecessary and disproportionate cost to tenants who chose to defend their Code rights and dispute the terms – including in at least six cases post-March 2018 where 100% keg terms were referred for arbitration.

16.10

The PCA finds that from receipt of the DPCA's March 2018 arbitration awards, Star breached the Code requirement to seek to agree a tenancy that is MRO-compliant in all cases where it continued to seek to impose 100% keg stocking terms.

17. Findings on stocking obligations that in reality can require the tenant to stock an unreasonably high proportion of brands covered by the terms

Star's "tiered" 40%, 60% and 75% keg stocking obligations, and terms relating to "must stock" brands

17.1 From September 2018, Star determined the percentage stocking requirement in its MRO proposals on a "tiered" basis, according to tenants' current stocking levels. In principle, some form of tiered stocking policy could play a part in striking an appropriate balance between a blanket approach, and offering entirely bespoke terms in every single case – albeit every case requires consideration of the circumstances of the pub.

17.2 Star's approach meant, for example, that a tenant who stocked no Heineken keg products at the time they served their MRO notice would receive a MRO proposal requiring them to stock 60% Heineken keg products within one year. This crude policy did not constitute a reasonable and compliant approach to stocking. It required some tenants to change more than half of their keg products, and served as a barrier to MRO for tenants who did not consider the stocking obligations offered by Star to be commercially viable.

17.3 While certain developments in Star's stocking policy – including the introduction of a 40% keg stocking term in May 2019 – pointed to Star developing a more nuanced approached to stocking, it remains the case that for the period under investigation, Star was unable to disclose documentation showing how it arrived at any of the keg stocking percentages in question. Star's template approach did not sufficiently take into account all of the circumstances of individual pubs, nor did it heed various considerations outlined repeatedly by the D/PCA.

17.4 The almost complete absence of contemporaneous evidence from Star demonstrating how it developed and implemented its stocking policy over time shows a lack of care for, or interest in, ensuring it was issuing MRO-compliant stocking requirements.

17.5

From September 2018 to July 2019, Star failed to consider the circumstances of individual pubs beyond taking a crude, tiered approach, which was not sufficient to ensure compliance. The PCA finds that Star breached the Code requirement to propose MRO terms that are reasonable in individual cases, and did not deviate from this pattern of conduct in its MRO full responses.

17.6 Until its introduction of a 40% stocking term in May 2019, Star issued MRO proposals containing 60% keg stocking terms to tenants who had an existing representation of Heineken products of between 0-75%.

17.7 Within that pool of tenants were those who had zero or very low representation of Heineken products, and who were consequently faced with changing a substantial part of their offer. This created a commercial deterrent for tenants to going free of tie. Even though tenants who stocked less than 50% Heineken UK products were allowed a year to build up their Heineken brand representation, the stocking obligations were not tailored to the relevant pub, meaning that the impact on the product offer may have been unfair.

17.8

The PCA finds that the stocking terms included in Star's MRO proposals issued between September 2018 and May 2019 gave rise to breaches of the Code requirement to propose MRO terms that are reasonable. This was particularly the case where tenants with low or zero existing representation of Heineken products at the time of the MRO notice would be obliged to increase their Heineken keg brand representation to 60% within one year.

17.9 Star also included terms in its MRO proposals requiring tenants to stock two or three specific keg products ("must stock" brands). These terms formed part of Star's template MRO tenancy from September 2018 to May 2019, although Star continued to include them in proposals until July 2019.

17.10 The PCA saw evidence that Star included the "must stock" terms in its MRO proposals even where tenants had very low existing representations of Heineken brands, and stocked very few or none of the "must stock" brands. This included former Punch Taverns tenants, in relation to whom Star did not differentiate its approach.

17.11 The specification of "must stock" brands combined with a percentage keg stocking requirement exacerbated the issue: for some tenants, the proportion of Heineken keg products they would actually have been required to stock was materially higher than the percentage stated in the MRO proposal. For example, one tenant with four keg taps received a MRO proposal containing a 60% keg stocking requirement with three "must stocks" specified. To comply with this obligation, the tenant would have needed to stock not less than 75% Heineken keg products.

17.12

The PCA finds that Star's approach to including "must stock" terms between September 2018 and July 2019 gave rise to breaches of the Code requirement to propose MRO terms that are reasonable. This was particularly the case where such terms resulted in substantially higher stocking obligations in practice than were stated in the tenancy, or did not take into account the circumstances of the pub and were wrong for the pub, which may have been more likely where tenants had never stocked the relevant products.

Star's 60% cask stocking obligations

17.13 Star proposed identical cask stocking terms to every tenant who requested MRO prior to 20 April 2018. These provided that 60% of the cask products stocked by tenants must be from a defined cask range.

17.14 Star provided no evidence that it ever considered the circumstances of particular pubs when deciding on the terms of its MRO proposals, including where tenants stocked no Heineken cask products at the time of sending their MRO notice, or where the 60% stocking requirement in reality would have required them to stock more than 60% Heineken cask products because of limitations on taps / hand pulls in their pub.

17.15 In addition, the nature of the brewer landlord's own business is a relevant factor when considering a reasonable stocking term. Star's cask product range was very limited. Meeting the 60% requirement was therefore predicated on tenants being able to stock Theakston products as well, which are not produced by Heineken group undertakings and so could not be included in a compliant stocking requirement.

17.16 As with other terms within the scope of the PCA's investigation, when asked, Star failed to produce a rationale for its 60% requirement. In respect of its reliance on Theakston products within its "Landlord Cask Brand" range, Star purported that this was down to a '*misinterpretation*' of the legislation.

17.17 During the investigation, it became clear that a 60% cask stocking term would have been unlikely to be reasonable for almost all pubs without a reliance on tenants stocking non-"Landlord Brand" products that could not be included in a compliant stocking requirement.

17.18

The PCA finds that from 2 August 2016 to 20 April 2018, Star's inclusion of 60% cask stocking obligations in its MRO proposals, which was predicated on tenants being able to stock products that it was not entitled to include in a stocking requirement, gave rise to breaches of the Code requirement to propose MRO terms that are reasonable. Given the surrounding circumstances, the 60% requirement would have been likely to be unreasonably high in almost all individual cases.

Star's reinstatement of a cask stocking requirement and obligations on tenants to stock Theakston products

17.19 Having removed the cask stocking requirement in April 2018, Star reinstated a cask stocking requirement in its template MRO tenancy in September 2018. Between September and October 2018, and on one occasion in March 2019, Star included obligations in its MRO proposals that tenants must stock Theakston products or another specified Heineken beer.

17.20 As outlined above, Star's obligations to stock Theakston products were not stocking requirements, because these products are not produced by a Heineken group undertaking. A requirement that tenants stock products where the landlord has only a shareholding interest – or specification of such products in an exhaustive list of what the tenant can stock – is not a stocking requirement, and not MRO-compliant.

17.21

The PCA finds that Star's obligations in its MRO proposals for tenants to stock Theakston products were not stocking requirements, and breached the Code requirement to propose MRO terms that are reasonable in all cases.

Release of stocking terms on sale of the tenancy by Star to a new landlord

17.22 Star's introduction into the market of stocking terms that were not reasonable via MRO proposals and tenancy terms, was entrenched because it did not consistently make provision to ensure that the stocking terms would fall away in the event that a tenancy was sold to another brewer landlord.

17.23 A stocking obligation that may be reasonable in view of the nature of the seller landlord's business, taking into account their product portfolio of beer and cider, may be unreasonable in light of the buyer landlord's business and different product range.

17.24 In MRO proposals issued to all but four of a total of 122 pubs over the period 21 July 2016 to 10 July 2019, there was no provision for the removal of the stocking terms on the sale of a tenancy.

17.25

The PCA finds that the term to the effect that the stocking requirement continues to apply on sale of the tenancy to another brewer landlord breached the Code requirement to propose MRO terms that are reasonable. This term was included in MRO proposals issued to all but four pubs over the period 21 July 2016 to July 2019. Such a term also failed to meet the statutory definition of a stocking requirement by applying not only to landlords who did not produce beer and cider, but to a wider range of landlords who produced other intoxicating drinks, or who supplied or procured the supply of these.

18. Findings on stocking obligations relating to non-"Landlord" group undertakings

18.1 Star included purported stocking requirements in its template MRO tenancies from July 2016 to March 2019, which did not relate only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord. The terms referred variously to "Landlord Brands" as products '*manufactured*' by the landlord, or as products produced by a brewery in relation to which the landlord had '*control*'. These terms were not the same as, and could be capable of wider interpretation than, the specific wording of the legislation, and resulted in obligations to stock products that were not limited to those produced by group undertakings of the landlord.

18.2 Star additionally included non-template terms in several MRO proposals that extended the definition of "group undertaking" to include parties with whom the landlord had a joint venture or brewing partnership agreement.

18.3 In all of these cases, Star's proposed terms were contrary to the criterion for a stocking requirement set out at section 68(7)(a) of the 2015 Act.

18.4 In the Helliwell 2 award in December 2018, the DPCA concluded that where a term is not within the statutory definition of a stocking requirement, or where it is not a reasonable term, it cannot be rendered compliant and reasonable by extending the definition in a way which manipulates the policy intention of protecting the brewer's route to market and using the term to protect (or increase) the non-brewing elements of the landlord's business.

18.5 Though in some cases the analysis may appear to involve technical differences, these terms did not mirror the statutory framework and therefore had the potential to create disputes throughout the life of the tenancy. Following the Helliwell 2 award (which Star did not appeal) Star should have immediately appreciated the need to consider the compliance of the definitions of terms in its template MRO tenancies, and all MRO proposals in existence. However, it did not amend its template MRO tenancy until March 2019, nearly four months after the Helliwell 2 award and following subsequent regulatory correspondence from the D/PCA and arbitration awards. Star showed a casual attitude to compliance, which compounded the PCA's concerns around its behaviour and capacity to apply consistent and compliant processes.

18.6

The PCA finds that the definitions of Landlord Brands included in Star's template MRO tenancies from 2 August 2016 to 13 March 2019, and in one further proposal issued on 22 March 2019, were in all cases not stocking requirements, and were unreasonable and non-compliant terms.

18.7

The PCA also finds that Star breached the Code requirement to seek to agree a tenancy that is MRO-compliant in all cases where, following the DPCA's award in Helliwell 2, it continued to seek to impose terms that extended the definition of a stocking requirement beyond the statutory definition.

19. Findings on stocking obligations which may influence the re-selling price of products covered by the terms

19.1 Star included terms in the "stocking requirement" schedules to its MRO proposals specifying that Landlord Brands must be offered for sale at a reasonable market price. A term which relates to the conditions of resale, in particular resale price, is not a stocking requirement. A stocking requirement must be referable only to the stocking of beer and/or cider and not to its resale, and must neither directly nor indirectly control or influence the resale price of non-landlord group-produced beer and/or cider products at the premises.

19.2

The PCA finds that terms referring to the resale prices of products covered by the purported stocking requirements in MRO proposals were not stocking requirements, and were unreasonable and non-compliant terms in all cases.

20. Star's culture and engagement with the Code

20.1 The PCA gave careful consideration to the roles and behaviours at Star, the culture within relevant areas of the business and the approach to Code compliance that resulted in the breaches identified in this report. Understanding and acknowledging underlying cultural issues is critical to setting Star on a future course that is compliant with the Code.

Star's approach to negotiating with tenants

20.2 Star's use of template tenancies, without individual adaptation, for MRO proposals meant that non-compliant stocking terms were both a structural disincentive for tenants considering going free of tie, and a commercial encumbrance for those that set off on the MRO route. In only very limited instances did Star issue an initial MRO proposal that included variations on one of its templates in use at the time. Star was frequently unwilling to negotiate meaningfully on its proposed terms by proposing materially amended offers, whether informally or in a subsequent formal proposal.

20.3 When Star's personnel who dealt with tenants did negotiate, the PCA has seen evidence of them failing to do so in a transparent and fair way. For example, Star did on occasion remove terms from its MRO proposals that it had been told (in then-confidential arbitration awards) were non-compliant, yet informed tenants that it was taking such action in a '*spirit of compromise*' or '*spirit of negotiation*'.

The role of Star's compliance function

20.4 Each POB must appoint a compliance officer whose role is to verify compliance with the Code. The role of the Code Compliance Officer ("**CCO**") as established by Star did not cover these statutory responsibilities effectively.

20.5 The failure of the job description to reflect the statutory functions of the CCO adequately, coupled with the absence of corporate structures designed to support the CCO to undertake the role without conflict, and of records of meaningful discussions in relation to Star's approach to stocking requirements over time, suggests that Star was not committed to taking Code compliance seriously. It also indicates that procedures were not in place to enable Code compliance to be suitably considered as part of Star's decision-making. The PCA came across only limited recorded examples where the CCO was enabled to bring challenge to Star and its personnel in respect of its compliance with the Code.

20.6

The PCA finds that Star's inclusion in the CCO's job description of the responsibility '*to ensure the Code is interpreted to the commercial benefit of HUK*' breached the Code requirement to appoint a compliance officer whose role is to verify compliance.

Star's administrative systems and record keeping in relation to MRO proposals

20.7 Star failed to put in place adequate systems and processes that were essential to ensuring the compliant conduct of a regulated business. For more than two years from the introduction of the Code until September 2018, Star did not keep an accurate record of the MRO proposals issued to tenants. As a consequence, Star could not adequately account to the PCA for its decisions in respect of compliance during that period.

20.8 This resulted in confusion for Star's tenants, and wasted costs and time when those tenants referred the relevant proposals for arbitration. Star knew that certain MRO proposals issued to tenants were likely to have been on unreasonable, non-compliant and outdated terms; it also knew that tenants lacked this information relevant to compliance, yet it unfairly failed to share this information with tenants routinely, or in a timely way.

20.9 Furthermore, in the absence of any meaningful record of the MRO proposals issued to tenants, it is very difficult to see how Star's management, and the CCO in particular, would have been able to discharge effectively their responsibilities to ensure compliance with the Code.

Star's Pubs Code training

20.10 It is to be acknowledged that Star's annual Pubs Code training and testing applies to all of its employees, that higher standards are set for personnel in roles relevant to Code matters, and that Star takes follow-up action if personnel do not meet training standards.

20.11 However, the PCA is concerned by references in Star's evidence to a lack of meaningful engagement by staff with training. The PCA does appreciate that Star acknowledged issues, and took a pro-active approach to improve its staff engagement with further training.

20.12 The content of Star's training in relation to stocking requirements did not always reflect a MRO-compliant position (albeit the PCA recognises that this was not a function or failure of the training, insofar as Star considered its approach at any relevant time to be compliant).

Star's engagement with the PCA

20.13 Star's failure to comply with the Code over a period of more than two years, during which non-compliant and unreasonable terms became "normalised", was compounded by its failure in part to engage frankly with the PCA in response to the regulator's interaction in respect of stocking terms (this is regardless of whether Star could be said to be a responsible business in other respects that were not the focus of the investigation, or that do not fall under the remit of the Code and PCA).

20.14 During an extended period of regulatory correspondence that preceded the launch of this investigation, Star made statements to the PCA about matters of importance that were inaccurate and inconsistent, including:

(a) on 3 October 2018, Star told the PCA in regulatory correspondence that after identifying that some tenants had received the wrong template terms, it '*sought to replace the lease* […] *as soon as possible following the issue becoming apparent and has provided an explanation to the tenant.*' However, no standard correspondence was in fact issued to tenants, nor did Star replace the proposal in situations where it did not consider it to be relevant to its negotiations with certain tenants. In some cases where Star did inform tenants of the errors, it took two and a half months to do so after becoming aware of the problem;

(b) on 13 March 2019, Star wrote to the PCA claiming that it had always considered that it proposed and defended the terms of its stocking requirements based on its understanding of the law and policy at the time. In conflict with this assertion, following the D/PCA's awards that Star's stocking terms did not meet the statutory definition of a stocking requirement and were non-compliant and unreasonable, Star had continued to defend identical terms in pending arbitration proceedings, and in ongoing negotiations; and

(c) in the same letter in March 2019, Star gave the PCA a number of unconditional commitments to change various practices identified as being non-compliant. Several days later, Star issued a MRO proposal containing stocking terms that contravened those commitments. Then, on 29 April 2019, Star wrote to the PCA seeking to make its commitments conditional on further acceptance or approval by the PCA.

20.15 This demonstrates a lack of respect and regard for the core Code principles, and for Star's duties as a regulated entity.

21. Impact

21.1 The impact of Star's non-compliance is significant and multi-layered. Its policies applied across its whole tied estate, and had the potential to impact upon any tied tenant who had the right to request MRO. Negative impacts create a disincentive to individual tenants seeking to exercise their statutory right to MRO, frustrating Parliament's intention to create a viable alternative to the tied option. These impacts ripple out to other tenants seeking MRO, and then more widely into the pool of tenants who might in the future consider this option, but may be deterred by the experiences of other tenants. For many individual tenants, decisions about whether to exercise a right to go free of tie are major business decisions and life choices. Non-compliant behaviour by regulated POBs such as Star undermines the ability of tenants to exercise their Code rights in a fair and informed way.

21.2 The PCA received accounts from tenants stating that Star's proposed terms were inappropriate for the nature, size, location and trade of their pubs. They feared that they would lose their ability to react to local conditions and changing tastes over the durations of their tenancies. They also noted that there was little demand for some products, including "must stocks", and that it would be a significant commercial risk to swap out currently popular products to make way for Heineken brands.

21.3 Several tenants and representatives reported that Heineken's cask product range was very limited, and unlikely to be popular where pubs specialised in offering local products. Some considered that the stocking terms would have removed their pubs' distinctive selling points, and potentially harmed sales volumes and competitiveness. Other respondents noted that it was not within Star's right to require tenants to stock Theakston products. This information was unsurprising to the PCA, given the consequences that can naturally be expected to arise from a template approach that does not take into account the circumstances of any individual tenant.

21.4 Where Star proposed non-compliant and unreasonable stocking terms, informed tenants that these were non-negotiable, negotiated unfairly, or defended the compliance of such terms in arbitration proceedings (including after findings in other awards that the same terms were non-compliant), this imposed a substantial time and cost burden on the individual tenants concerned. This meant that tenants were often being required to push back in negotiations against, and ultimately challenge through arbitration, MRO proposals that included stocking terms that Star either knew or ought to have known were non-compliant. All the while those tenants remained subject to tied rent and tied prices.

22. Star's response regarding third party evidence

22.1 Star's response to the draft of the report stated that, where the PCA referred to third party evidence (namely evidence from tenants and interested parties), the report '*sets out only very limited information about the source, which is insufficient to allow Star properly to respond*'. Star claimed that this approach overrode its '*rights of defence*'.

22.2 The PCA disagrees with Star's submission for the following reasons:

(a) the PCA complied with the statutory obligation to provide Star with a reasonable opportunity to comment on the draft of the report before publication;[35]

(b) the PCA has obligations to keep information it receives confidential. These are found in Part 9 of the Enterprise Act 2002, and the PCA's Statutory Guidance also states that *'any complainants will not be identified in the report without their consent'*.[36] Further, the PCA provided express assurances to respondents to the call for evidence – in the Notice of Investigation and again following any responses – that they would not be identified in the report without their consent;

(c) the PCA is not aware that it received any third party evidence that was exculpatory for Star, which is not referred to already in the report.[37] No additional tenant spoke up favourably regarding any aspect of Star's approach to stocking, and almost every respondent perceived a potential detrimental impact from Star's terms. Insofar as any response to the call for evidence is not referred to at **Annex B**, this is because the PCA did not consider particular evidence verifiable, and has not taken it into account in the investigation (none of this particular evidence was exculpatory);

[35] 2015 Act, section 54(4).

[36] Statutory Guidance, paragraph 2.27.

[37] See for example paragraphs 33.3 and 64.8(c).

(d) the evidence on which the PCA ultimately relied in support of her findings was obtained from Star itself, including disclosure of its policies and practices, recorded interactions with tenants and documentary evidence of its conduct during arbitrations. The responses to the call for evidence served to corroborate Star's evidence, and enabled the PCA to have a useful insight into the experiences of tenants.

22.3 The PCA considered that the most balanced and fair approach was to include the information about the responses to the call for evidence at **Annex B**, to give Star sufficient information to understand and respond to the substance of any criticisms against it. In addition, in the interests of full transparency, Star's material responses to the evidence from tenants and interested parties referred to in this report are reproduced at **Annex C**. These have been included with Star's consent.

Enforcement measures

23. The PCA's decision on enforcement

23.1 The forms of enforcement available to the PCA as a result of finding a breach of the Code are outlined at paragraph 4.2 above. In deciding whether to use any enforcement measures, and if so which ones, the PCA has taken into account the Statutory Guidance.

23.2 The PCA has received information about changes Star has made or is proposing to make in respect of a number of issues within the scope of the investigation. This includes a number of governance, policy and personnel reforms that Star has developed in response to the findings of the draft report. These are a welcome acknowledgement by Star of the need for change. The PCA expects Star to provide further detail on all of its proposed changes as part of its implementation plan (see further below). The PCA has also been mindful of Star's commitments when determining whether and if so how to apply enforcement measures.

23.3 The PCA has devised a package of enforcement measures that are proportionate to the nature and seriousness of Star's breaches. These have been considered in light of the principles on effective sanctions set out in the PCA's Statutory Guidance, which are that a sanction should:

(a) aim to change the behaviour of the offender;
(b) aim to eliminate any financial gain or benefit from non-compliance;
(c) be responsive and consider what is appropriate for the particular offender and the regulatory issue;
(d) be proportionate to the nature of the offence and the harm caused;
(e) aim to restore the harm caused by regulatory non-compliance where appropriate; and
(f) aim to deter future non-compliance.[38]

24. "Informal" means of enforcement – the issuing of statutory advice and guidance

24.1 The PCA has engaged with all pub-owning businesses – including Star – since prior to the introduction of the Code. The PCA does not consider that issuing further advice or guidance at this stage would be an appropriate or effective measure.

[38] The six principles are based on the recommendations from Professor Richard B. Macrory's report on *Regulatory Justice: Making Sanctions Effective* (November 2006).

25. Requirement to publish information

25.1 The report contains the information that the PCA considers is relevant to Star's compliance with the Code, and makes this information publicly available.

25.2 Nonetheless, to increase awareness of the findings from the investigation, and to ensure that tenants are as informed and empowered as possible regarding their Code rights, the PCA requires Star to write an open letter addressed to all tenants within its estate, explaining the twelve findings identified in the report, the measures Star is taking to address these (including in response to the PCA's recommendations below), and how these will affect tenants in practical terms. Star must make this letter available on its website.

26. Recommendations

26.1 The following recommendations are designed to direct Star on what it must now do to address the harms to tenants identified in the report, and to outline a path to compliance for the benefit of the industry:

26.1.1 **Recommendation 1: Star must, when, issuing a MRO proposal:**

(a) have evidenced grounds for the reasonableness of any stocking requirement included in the proposal;

(b) take into account and record properly all factors relevant to reasonableness; and

(c) ensure that any proposed stocking requirement is in line with statutory advice and guidance issued by the PCA.

26.1.2 **Recommendation 2: Star must (in line with statutory advice and guidance issued by the PCA) provide transparency in its negotiations with tenants regarding stocking requirements. In particular, the evidence supporting each ground for reasonableness should be made available to tenants or their representatives, for their review when a MRO proposal is issued and in the course of negotiations.**

26.1.3 **Recommendation 3: Following:**

(a) receipt of an arbitration award;

(b) the outcome of an investigation; or

(c) the issuing of statutory advice or guidance, or regulatory correspondence;

that relates to the compliance of MRO terms, Star must proactively consider whether MRO proposals that are either subject to negotiation, or have been referred for arbitration, contain non-compliant stocking terms. If Star considers that any existing offer is non-compliant, it must, as soon as reasonably practicable:

(a) openly inform the tenant(s) of the non-compliance;

(b) make a new offer to the relevant tenant(s) on compliant terms;

(c) subject to any obligations of confidentiality, inform the relevant tenant(s) about the reason for its amended offer; and

(d) ensure that its stocking policy, and any template tenancies in use, are updated as appropriate.

26.1.4 **Recommendation 4: Star must ensure that any conflict between the statutory responsibilities of the CCO, and objectives relating to the profit-making functions of Star, is managed appropriately. In particular:**

(a) Star's CCO and compliance function must be afforded sufficient routes through Star's governance structures to challenge decisions made by Star employees (whether directly or indirectly) – including its leadership, Business Development Managers and Estates Managers – that may be non-complaint with the Code; and

(b) Star must satisfy itself that the objectives and job description of the CCO are consistent with the requirements of regulation 42 of the Code. Star should amend the job description of the CCO to refer to the relevant statutory provisions, and ensure that they have primacy above any other business objectives.

26.1.5 **Recommendation 5: Star's monitoring of compliance performance must be formalised to support the CCO's duty to ensure compliance, in a way that enables independent monitoring of the effectiveness of Star's Code compliance approach, the recommendation of further opportunities for improvement and the creation of a framework where evidence-based assurance can be demonstrated.**

26.1.6 **Recommendation 6: Star's administrative and record-keeping systems must support and evidence Code compliance.**

26.1.7 **Recommendation 7: All Star personnel must be trained in the findings from the investigation in Star's next annual training cycle.**

26.2 The PCA is aware that some of Star's tenants are already subject to non-compliant tenancy terms, and that these tenants may be experiencing an ongoing adverse impact, or could experience such impacts in the future. The continued existence of these terms in the market poses a direct risk to those tenants, and risks normalising non-compliant terms more widely. For this reason, the PCA considers it appropriate to make the following recommendation aimed at restoring actual or potential harms to tenants:

26.2.1 **Recommendation 8:** **Star must undertake a compliance audit of its executed MRO tenancies to identify existing non-compliant terms. Star must offer to affected tenants to vary or remove, or confirm to those tenants that it will not enforce, the following types of terms:**

(a) terms that fall outside the definition of a stocking requirement:

(i) any existing term that in practice serves as an absolute prohibition on stocking any individual type of competitor brands;

(ii) the definitions of "Landlord Keg Brands", "Landlord Cask Brands", "Group Undertaking" and any associated definitions, insofar as amendments are necessary to reflect the statutory definition of a stocking requirement included in the 2015 Act;[39]

(iii) terms referring to the re-selling prices of products covered by the stocking requirements; and

(iv) terms to the effect that the stocking requirement continues to apply on sale of the tenancy to another brewer landlord.

(b) terms that may fall within the definition of a stocking requirement, but, in light of the findings of the report, are unreasonable and non-compliant. These may include terms where tenants are required to stock 60% Landlord Cask Products.

Any actions taken by Star to remove or vary tenancy terms (should tenants agree to this), must be without cost to tenants.

Where Star provides side letters to tenants in order to comply with this recommendation, these should be in the form of binding and enforceable variations to existing MRO tenancies.

[39] In the case of Recommendation 8(a)(ii), where any variation would place a more onerous stocking obligation on the tenant, Star must either offer to remove the obligation, or offer a reasonable alternative stocking requirement to the tenant (in the manner set out at Recommendations 1 and 2).

27. Requirements of Star to enable the PCA to monitor compliance with the recommendations

27.1 The PCA requires Star to provide a detailed plan within six weeks of the publication of this report setting out the measures it proposes to undertake to comply with the recommendations at paragraphs 26.1-2 above, and the timescales for implementing such measures. This must include specific assurance on how the stocking requirements will be decided in response to MRO notices received during and after the planning period. The PCA will engage with Star throughout this six week planning period and beyond, to ensure that the recommendations are implemented efficiently and effectively.

27.2 The PCA initially requires a response from Star to the recommendations on a quarterly basis, and will set reporting metrics for this purpose once she has considered its proposed implementation plan. The PCA reserves the right to update these reporting requirements as Star makes progress implementing the recommendations.

28. Financial penalties

28.1 Where the PCA chooses to enforce through imposing financial penalties, that means imposing a penalty on the pub-owning business of an amount not exceeding the maximum amount equal to 1 percent of the annual UK turnover of the "pub-owning group" (meaning Star and its group undertakings). The PCA will use the power to impose a financial penalty on a POB to reflect the seriousness of the breach(es) of the Code.[40] The PCA may choose to impose a financial penalty where she considers that this will constitute a serious and effective deterrent – both to the specific POB concerned and to any other POB – against future activities that may constitute a breach of the Code.

28.2 The PCA considers that the nature and seriousness of Star's breaches of the Code merit a financial penalty.

28.3 Star's breaches of the Code were serious because they frustrated the core Code principles of fair and lawful dealing in relation to tied pub tenants, and that tied pub tenants should be no worse off than if they were not subject to any tie.

28.4 The MRO process is the critical route by which the "no worse off" principle can be delivered, and by which tied pub tenants can instigate meaningful negotiations with pub owning businesses in respect of their tied and free of tie options. The process is dependent upon compliant MRO proposals forming the foundation upon which fair negotiations between tied pub tenants and pub owning businesses can occur. The offer of non-compliant MRO terms compromises that foundation and undermines the effective working of Code.

[40] Statutory Guidance, paragraphs 4.13-4.15.

28.5 It is not possible to determine definitively the reason why any of Star's tenants chose to withdraw from the MRO process, or why others may have settled on the tied terms that they did, or decided not to pursue the option altogether. Star's use of standard approaches across its whole tied estate was bound to give rise to breaches in individual cases and this was therefore foreseeable. The PCA received documentary evidence from Star of its interactions with individual tenants in negotiations and arbitration proceedings, supported by accounts from a wide range of tenants who had requested MRO, demonstrating that tenants perceived detrimental impacts from Star's stocking terms. The PCA is satisfied that Star's proposed terms served as a structural barrier to MRO.

28.6 The PCA considers that issuing recommendations and information requirements alone are inadequate to address Star's conduct, because Star has been a repeat offender in respect of serious infringements. As set out in more detail at **Annex B**, throughout the period under investigation Star received opportunities to set itself on a compliant path, but intentionally or negligently failed to do so. It failed to heed statutory advice, the PCA's regulatory engagement, and learnings from arbitration awards. It did not engage frankly and transparently with its tenants, or meet the standards required of a regulated business when engaging with the PCA. Where it did change its approach, the efforts it made to comply were for the most part inadequate and not credible. Throughout the investigation, Star maintained a stance that it had always sought to be compliant, yet it could produce little evidence to support the decisions it took.

28.7 Star must change its mind set, to be proactive in its approach to compliance. This can best be achieved through the imposition of a sanction that will serve as a deterrent to future non-compliant conduct by Star and other POBs.

28.8 The PCA has issued a Penalty Notice to Star, explaining in further detail the grounds for imposing a financial penalty, and setting the amount of the penalty at £2,000,000.00.

Annex A
Iterations of Star's stocking obligations

Iteration	Period operational	Changes to stocking obligations	
1	July 2016 - April 2018	**Keg:**	100% Landlord Keg Brands (but Tenant may request the Landlord's consent to stock other Keg Brands). "**Landlord Keg Brands**" means any brands or denominations of Keg Brands which are manufactured by the Landlord or a Group Company of the Landlord (including Heineken UK Limited) from time to time during the Term; "**Group Undertaking**" has the meaning given by s.1161 of the Companies Act 2006; "**Group Company**" means a company which is a member of the same group of companies as the Tenant (as defined in section 42(1) of the Landlord and Tenant Act 1954);
		Cask:	60% of Cask Brands to be Landlord Cask Brands. "**Landlord Cask Brands**" means any brands or denominations of Cask Brands (or variants thereof) which are manufactured by a Landlord Cask Brewery; "**Landlord Cask Brewery**" means any brewery which is either owned by the Landlord or a Group Undertaking of the Landlord or in which the Landlord or a Group Undertaking of the Landlord has Control; "**Control**" means in relation to a Landlord Cask Brewery either where the Landlord or a Group Undertaking of the Landlord holds a majority of the voting rights or has the right to exercise a dominant influence;
		Packaged:	Two Landlord "PPB Own Beer" brands, and two Landlord "PPB Own Cider" brands, with 50% shelf space and 50% shelf visibility.
		General:	Obligation upon the Tenant to ensure that Landlord Keg Brands, Landlord Cask Brands and Landlord packaged brands are offered at a reasonable market price, commensurate with the pricing of other products.

Iteration	Period operational	Changes to stocking obligations	
2	April - August 2018	**Keg:**	As per the previous version, but with additional clauses added to allow: (1) the Tenant to request consent to stock Guinness from a Keg (Landlord to consent within 10 days of request); and (2) the Tenant to request consent for other Keg Brands to be stocked where evidence is submitted that popular within the local area (Landlord to consent subject to another Landlord Keg Brand being stocked).
		Cask:	Cask stocking requirement removed.
3	September - October 2018	**Keg:**	Amended to provide for the Tenant to stock either 60% or 75% Landlord Keg Brands from the Keg taps, with either two or three "must stock" Landlord Keg Brands. The Tenant can change the must stock brands with another Landlord Keg Brand after the second anniversary of the Term Commencement Date, with consent. The Tenant is to ensure that the Landlord's Keg Brands are provided with equal prominence with other Keg Brands, and offered for sale at a reasonable market price taking into account the locality of the Property, and the price of other products offered for sale.
		Cask	Cask stocking re-implemented, with an obligation that the Tenant stocks one of either Theakston or Caledonian at all times. The Tenant is to ensure that the Landlord's Cask Brands are provided with equal prominence with other Cask Brands, and offered for sale at a reasonable market price taking into account the locality of the Property, and the price of other products offered for sale. Definition of "Control" removed from Landlord Cask Brand definition.

Iteration	Period operational	Changes to stocking obligations	
4	October 2018 - January 2019	**Cask:**	Updated to remove specific reference to Caledonian and Theakston and replace this with a more generic obligation for the Tenant to stock "at least one Landlord Cask Brand".
5	January - March 2019	**General:**	Updated definition of "Landlord Keg Brands" to replace the reference to a "Group Company" of the Landlord with a reference to a "Group Undertaking" of the Landlord. Similar change made in the Miscellaneous provisions of the schedule.
6	March - May 2019	**General:**	Updated description of stocking provisions in Preamble. Amended definition of "Beer", "Cider", "Landlord Keg Brands", "Landlord Cask Brands", "PPB Own Beer Brands", "PPB Own Cider Brands" to track the language used in the 2015 Act. Inserted a percentage interpretation clause, to clarify how the percentage stocking obligation is to apply where application of that obligation to a fixed number of taps results in a decimal figure. Updated Miscellaneous provisions to reflect the 2015 Act and the definition of a stocking requirement. Removed reference to an obligations upon the tenant to ensure that Landlord Keg Brands, Landlord Cask Brands and Landlord packaged brands are offered at a reasonable market price, commensurate with the pricing of other products.
7	May 2019 onwards	**Keg:**	Incorporated option for 40% stocking requirement. Removed reference to must stock brands and any associated clauses.
		General:	Inserted a right for either party to request a review of the stocking obligations at each rent review (with notice to be provided between 9 months, and twelve months, before the relevant rent review date).

Annex B
Detailed findings from the investigation

29. Issues within the scope of the investigation

29.1 The investigation focused on the following issues:

(a) stocking obligations which require that, unless permission is given by Star for the tenant to stock competitor brands, all of the keg products stocked by the tenant be produced by the Heineken group (Star being a member of the Heineken group);

(b) stocking obligations that in reality can require the tenant to stock an unreasonably high proportion of brands covered by the terms;

(c) stocking obligations which relate to products produced not only by Star, or by entities that are group undertakings in relation to Star, but also by other entities in which either Star or a group undertaking in relation to Star has a shareholding interest, or has entered into any joint venture, partnership agreement or similar arrangement (a "group undertaking" in relation to Star means an undertaking which is: (a) a parent undertaking or subsidiary undertaking of Star; or (b) a subsidiary undertaking of any parent undertaking of Star);

(d) stocking obligations which may influence the re-selling price of products covered by the terms; and

(e) the culture at Star that could have led some or all of these issues to develop.

29.2 In reaching her findings the PCA has considered carefully all of the information provided by Star and its personnel, and by tenants and other interested individuals and organisations during the course of the investigation.

29.3 The PCA has not considered every provision included in Star's purported stocking requirements for the purposes of the investigation.[41] The absence of comment or a finding by the PCA on any particular practice in the following sections of the report does not imply that the PCA accepts that Star has complied with the Code. It remains incumbent on Star to ensure that all aspects of its proposed stocking terms are reasonable.

[41] For example, the PCA has conducted no substantive assessment of Star's terms in relation to packaged / "PPB" brands.

Stocking obligations which require that, unless permission is given by Star for the tenant to stock competitor brands, all of the keg products stocked by the tenant be produced by the Heineken group

30. Introduction

30.1 The D/PCA launched the investigation because they had reasonable grounds to suspect that Star included purported stocking requirements in its MRO proposals that would have prevented MRO tenants from selling beer or cider produced by persons who were not the landlord, or a group undertaking in relation to the landlord. Such a term would not meet the statutory definition of a stocking requirement set out in section 68(7)(c) of the 2015 Act. The terms in question required that 100% of the keg products stocked by the tenant be produced by the Heineken group. This was save for in limited situations where the tenant sought consent from Star.

30.2 The investigation has focused on the following issues:

(a) Star's template approach to keg stocking across multiple iterations of its MRO tenancy;
(b) Star's use of 100% keg stocking terms; and
(c) Star's approach to negotiations with tenants following the D/PCA's arbitration awards.

31. Relevant legislation and interpretation

31.1 The following paragraphs outline the legal provisions that are relevant to the requirement that MRO terms must be reasonable, which the PCA has applied to her analysis at paragraphs 32-51 of this report.

Conditions for a stocking requirement

31.2 The conditions for a stocking requirement are found in section 68(7) of the Act. To fulfil the definition of a stocking requirement, the contractual obligation cannot require the tenant to procure beer or cider from any particular supplier, or prohibit the sale of beer or cider produced by other brewers. A stocking requirement can include reasonable restrictions on the sales of beer or cider produced by other brewers.

31.3 A tenancy is MRO-compliant if it does not contain any unreasonable terms or conditions.[42] This requirement applies to all the terms of the proposed MRO tenancy, including the purported stocking requirement.[43]

[42] 2015 Act, section 43(4)(iii).

[43] While regulation 31(2)(c) of the Code states that terms are unreasonable if they are *'not common terms in agreements between landlords and pub tenants who are not subject to product or service ties'*, the PCA approached her analysis of Star's purported stocking requirements on the basis that the relevant terms would not be unreasonable simply by virtue of being uncommon in tie-free agreements. This is because for the period under investigation, stocking requirements were by their nature uncommon in free of tie tenancies, being the product of a new legislative framework. To determine every such term to be non-compliant for this reason would defeat the intention of the primary legislation to provide for a stocking requirement, and the Pubs Code legislation should be interpreted consistent with that intention. The list of terms that are to be regarded as unreasonable in regulation 31(2) is illustrative, rather than exhaustive.

Advice issued by the PCA and engagement with the industry regarding the adoption of a template approach to stocking

31.4 On 28 October 2016, the then-PCA wrote to the British Beer and Pub Association ("**BBPA**"), the trade association representing 90% of UK brewers, including all six regulated POBs. The PCA's letter sought to clarify the interpretation of the Pubs Code, and explained in relation to stocking requirements that '*to adopt a blanket approach may not be reasonable in every case'.*

31.5 The PCA issued statutory advice on Stocking Requirements in March 2017, which states as follows:

'6.1 *Where a tenancy/licence includes a stocking requirement, it could be considered unreasonable in the particular circumstances of the case. This must be judged in the light of the primary legislation which recognises that a stocking requirement may exist without making premises tied.*

[…]

'6.4 Whether a stocking requirement is unreasonable will be considered by the PCA in the light of all relevant considerations.'

31.6 The PCA's statutory advice of December 2017 on complying with the principles of the Pubs Code provides that POBs *'are expected to take a pro-active approach to ensuring meaningful engagement and negotiation with the tied pub tenant throughout the MRO process', including by 'entering into meaningful negotiations with the tied pub tenant on the terms of the MRO-compliant agreement'*.

31.7 The PCA's statutory advice of March 2018 on MRO-compliant proposals states that an uncommon term is only one example of an unreasonable term. As such, in order to be MRO-compliant, a term that is common must still be reasonable in the more general sense.

31.8 On 26 April 2018, the senior leadership from Star and the PCA held their bi-annual meeting. The PCA reiterated to Star that the facts of each case would be relevant when considering the reasonableness of terms included in MRO proposals. This was because:

(a) tied pub tenants are in a different position from other tenants in the open market; and

(b) Parliament did not provide in the legislation for a standard MRO tenancy.

31.9 The PCA acknowledged that bespoke agreements were not expected in every case.

The importance of proposing reasonable stocking requirements in the context of the legislative intention

31.10 One of the founding principles of the Pubs Code's introduction was that there should be a fairer allocation of risk and reward between pub companies and their tenants.[44] The MRO option was intended to ensure that there would be a reasonable tie-free deal available for the tenant to compare with the existing tied tenancy, at the point when the tenant has the choice to negotiate the tied rent. The ability of the tied tenant to compare these two options and make the most of these in negotiations is central to the delivery of the core Code principle that tied tenants should be no worse off than if they were free of tie.

[44] Pub Companies and Tenants: Government Response to the Consultation – June 2014. See further comments made to Parliament by Toby Perkins MP at *Hansard* HC Deb. Vol.635 col 164WH, 24 January 2018 [Online]. Available from: https://www.parliament.uk/.

31.11 A proposed stocking requirement that presents an unreasonable commercial risk for a tied tenant is likely to disincentivise that tenant from exercising their statutory right to the MRO option. An unreasonable proposed stocking requirement that causes a tenant to decide to remain tied, or restricts the tied tenant's negotiation strength at rent review, may therefore frustrate Parliament's intention.[45]

31.12 The assessment of reasonableness must also be mindful of the risk profile that the terms will represent for the tenant. The potential adverse consequences for a POB of proposing unreasonable stocking requirements are smaller, when compared to the range of possible risks for a tenant: from a tenant whose negotiating strength at rent review has been limited not being able to access the best tied rent, to in the worst case scenario the failure of the free of tie pub and reversion of the lease to the POB.

32. Evidence: Star's approach to keg stocking requirements – 21 July 2016 to 22 August 2018

32.1 The following paragraphs summarise the evidence that the PCA received during the course of the investigation, illustrating the terms included in Star's MRO proposals, as well as its approach to stocking requirements as represented to stakeholders.

Star's approach to the keg stocking requirement in MRO proposals – 21 July 2016 to 20 April 2018

32.2 From the implementation of the Pubs Code on 21 July 2016, upon receipt of a valid MRO notice Star would issue the tied pub tenant with a MRO full response enclosing what Star referred to as a *'blank copy of the MRO lease.'* Star purported in response to the PCA's Disclosure Notices that this was a template intended to allow the tenant to view the document upon which further negotiations would take place.

32.3 From 21 July 2016 to 20 April 2018, all versions of Star's template MRO tenancy contained the same provisions obliging tenants to stock:

(a) 100% keg products that were "Landlord Keg Brands" (as defined in the tenancy), with the ability for the tenant to request consent to stock other brands;

(b) 60% cask products that were "Landlord Cask Brands" (as defined in the tenancy); and

(c) two Premium Packaged Beers / Premium Packaged Ciders produced by the landlord, taking up at least 50% of any available, visible display space on shelves or in fridges used for displaying those types of products.[46]

32.4 The proposals that Star issued after a tenant sent a MRO notice followed these template formats. They were not adjusted for each tenant. Star produced no evidence to suggest that any consideration was ever given to amending the initial stocking terms proposed to reflect the circumstances of individual tenants.

[45] See Parliament's discussion of the PCA's August 2017 MRO Verification Exercise (which did not focus on stocking or on Star's conduct in particular), that noted *'it is clear* […] *that the pub companies are using their legal expertise and superior bargaining power to perpetuate the status quo and to thwart the intended objectives of the pubs code [sic] legislation'* (*Hansard* HC Deb. Vol.635 col 161WH, 24 January 2018 [Online]. Available from: https://www.parliament.uk/.

[46] **Annex A** to this report sets out how Star developed its stocking obligations during the period under investigation.

32.5 Star issued MRO proposals containing these terms to 65 different pubs, in response to MRO notices sent by tenants between 2 August 2016 and 20 April 2018.[47]

32.6 Star told the PCA that it sought early engagement with government stakeholders to inform its approach to, and interpretation of, the Pubs Code and the 2015 Act. This included a meeting on 23 January 2015 (18 months prior to the commencement of the Code) with '*officials*' from the then-Department for Business, Innovation & Skills, where Star purported it was advised that it would, in theory, be able to draft a stocking requirement that would make it '*very difficult for a tenant to stock competitor brands*'.[48] Star also pointed to comments made during Parliamentary debates regarding the concept of the stocking requirement, that were silent on the limitations of, and application of the requirement of reasonableness to, such terms.[49]

32.7 Star noted that it sought legal advice on '*how best to implement the stocking requirement in a lease that is fair and reasonable both on it and its tenanted estate*',[50] given the strategic importance of this matter to its business. This advice was provided to the PCA in correspondence dated 31 May 2016, and again on 3 October 2018.[51]

Star's approach in relation to former tied pub tenants of Punch Taverns – 29 August 2017 to 22 February 2018

32.8 The impact of Star's 100% keg stocking obligations was particularly important in the context of its acquisition of circa 1,900 tied pubs from Punch Taverns.

Star's public engagement with stakeholders on its approach to stocking

32.9 In November 2017, Star engaged with the All Party Parliamentary Pubs Group regarding its acquisition of the pubs from Punch Taverns. A briefing note circulated among senior personnel at Star prior to the meeting with MPs highlighted the following talking points:

- *'Will always start at what is right for the pub – wouldn't do anything that was detrimental to licensees.*
- *We will work with Punch licensees to introduce our brands where appropriate and to make sure that the right products are offered in their pubs. Where it makes sense, we will sell competitor brands in our pubs, as we do in our existing pubs.'*

32.10 Following the acquisition, Star produced a booklet for the new tied pub tenants within its estate entitled "Welcome to Star Pubs & Bars". This included the following statement:

> *'Our starting principle on stocking is that we will do what's right for each individual pub.* […] *In the longer term any changes to the stock of a particular pub will only come about as a result of discussions and agreement with you – again, based on the principle of prioritising what's right for the pub.'*

[47] This included 19 MRO proposals issued by Punch Taverns containing Star's template stocking obligation – see further paragraph 32.12.

[48] Extract from Heineken UK meeting note.

[49] *Hansard* HL Deb. col 433, 9 March 2015 [Online]. Available from: https://www.parliament.uk/.

[50] Extract from Star's advice.

[51] The advice did not discuss other terms that were included within the "Stocking Requirements" schedules of Star's template MRO tenancies, such as the definitions of Landlord Brands (see paragraph 52 onwards) or provisions around the re-selling prices of products (see paragraph 58 onwards).

32.11 Star was referring to its approach to former Punch Taverns tenants under the tie, and not discussing stocking obligations in the context of the MRO option specifically in either case. The matters articulated here demonstrate an understanding within Star (and a desire to reassure stakeholders including MPs) that the range of products available under the tie, and changes to them, must be right for the particular pub. Star could reasonably have been expected to apply these principles to the stocking terms included in its MRO proposals.

Star's stocking policy in practice

32.12 For six months from 29 August 2017, Star's acquisition of pubs from Punch Taverns was subject to a Transitional Services Agreement ("**TSA**") dated 15 December 2016, between Vine Acquisitions Limited (on behalf of Punch Taverns and Punch Partnerships (PTL) Limited) and Heineken UK (on behalf of Star). During this time, the pubs were owned by Star but continued to be operated by Punch as Star's agent. Any responses to MRO notices that were sent by tenants during this time were issued by Punch, using Star's template MRO tenancy that included a 100% keg stocking obligation. Between 29 August 2017 and 22 February 2018, under the TSA, Punch received MRO notices from 19 tied pub tenants, and in each case issued proposals containing identical stocking obligations.

32.13 Star did not act to introduce stocking requirements in any MRO process where the MRO notice was sent by a Punch Taverns tenant prior to the TSA, but negotiations between Punch and the tenant were ongoing when the TSA took effect.

Arbitration awards relating to the reasonableness of MRO terms, including stocking requirements – February-April 2018

32.14 In February 2018, the DPCA issued an award in an arbitration involving a disputed stocking requirement.[52] [53] The DPCA outlined the following points on the application of the core Code principles to proposed MRO terms:

(a) a term will be judged to be unreasonable or not based on all of the circumstances, as they are known (or ought to be known) to the parties, and each case will turn on its own facts;

(b) an offer of unreasonable terms would contravene the core Code principles because:

(i) if the POB could obtain more favourable terms from the tied pub tenant using the MRO procedure than it would on the open market, this would not be fair dealing;

(ii) the tied pub tenant would be worse off in having a choice to accept terms which were worse than would be available to a free of tie tenant; and

(iii) the proposed new tenancy would be unreasonable and inconsistent with Pubs Code principles if it represented an unreasonable barrier to the tenant taking a MRO option, and thus frustrated Parliamentary intention. Unlike when a POB offers a new tenancy on the open market, the tied pub tenant (except at renewal) does not have the right to walk away or contract elsewhere. It only has the right to keep its current tied deal or to accept the offer.

[52] The specific stocking requirement issues were addressed in a later award in the same proceedings.

[53] The DPCA acted as arbitrator in this and other proceedings, carrying out the functions of the then-PCA, Paul Newby.

32.15 The DPCA issued two separate arbitration awards on 13 and 16 March 2018 involving Star, which found that a 100% keg stocking obligation was unreasonable and non-compliant. These were the first awards relating to stocking requirements in MRO proposals. In both cases, the DPCA set out the following reasoning behind this determination:[54]

(a) the meaning of section 68(7) of the Act is that no beer or cider produced by another person may be prohibited for sale. In any particular case the simple and correct way to approach the matter is to ask "is this product beer or cider produced by another person?". If the answer is yes, and if the tenancy term prevents its sale, then the term does not fall within the definition of a stocking requirement (paragraph 21);

(b) a stocking term requiring the landlord's consent to stock brands other than the landlord's is a prohibition on sales of competitor brands, as it in effect prevents such sales unless the landlord dictates otherwise (paragraph 28);

(c) the stocking requirement is subject to the test of reasonableness in section 43(4)(a)(iii) of the Act (paragraphs 34-37);

(d) the reasonableness of a stocking requirement will be determined having regard to all the circumstances of the case, including, for example, the nature and trade of the pub. What is a reasonable stocking requirement for one pub may not be a reasonable stocking requirement for another pub in another location, operating in a completely different market, with a different existing offer and clientele (paragraph 37); and

(e) being a prohibition in conflict with Parliamentary intention, and not within the definition of a stocking requirement, the 100% stocking term was unreasonable and therefore non-compliant in all of the circumstances (paragraph 39).[55]

32.16 The DPCA also found on the facts that Star had not explained, in response to substantive challenges to reasonableness, why it was reasonable that the tenant should have no absolute right to stock certain types of cider, or why it was reasonable to impose greater contractual restrictions on the tenant than under the existing tied tenancy (paragraphs 43; 44).

32.17 Between 19 March 2018 and 20 April 2018, Star issued MRO proposals to four different pubs that contained identical 100% keg stocking obligations.

[54] Paragraph references from the Helliwell 1 award, issued on 13 March 2018.

[55] The relevant paragraphs of the D/PCA's awards contain an erroneous reference to a prohibition on 'cask ales'. The PCA considers that it is clear from the context of the award and the reference to the provisions of the MRO proposal that the text of the award was referring to keg stocking obligations.

Further developments – 20 April 2018 onwards

32.18 For proposals issued after 20 April 2018, Star decided on the following amendments to the stocking terms included in its template MRO tenancy:

Term	From	To
Cask stocking policy	60% Heineken cask products.	Remove stocking policy.
Keg stocking policy	100% Heineken keg products. Changes subject to tenant's request (Guinness consented to if asked).	100% Heineken keg products. Proactively confirm in MRO proposal that Guinness will be allowed if requested. Proactively confirm in MRO proposal that Star will, where presented with satisfactory evidence and a written request, grant consent to permit a non-Landlord Keg Brand to be offered for sale, subject to a requirement to offer a named Landlord Keg Brand too (e.g. Amstel). Consent was at Star's discretion, although with a stipulation that it act '*reasonably*'.

32.19 Star's personnel informed the PCA during interviews that Star took the decision '*to pragmatically adjust* [the] *stocking policy*' in this manner as a '*response to*' the DPCA's two March 2018 awards. The PCA has seen evidence of Star offering 60% and 75% keg stocking obligations to tenants in April 2018 – in one case following one of the March awards, and in another after a separate arbitration referral. The PCA did not receive an explanation from Star as to why it was considered appropriate to remove the 100% keg stocking term in certain cases, but not from its template MRO tenancy, at this point.

32.20 The then-PCA issued an arbitration award on 2 May 2018 involving Star, which again found that a 100% keg stocking term was non-compliant. The relevant proceedings were ongoing prior to the Helliwell 1 award, and the award related specifically to the original version of the stocking requirement included in Star's template MRO tenancy (which had not been withdrawn or conceded by Star following the awards by the DPCA), rather than the amended version described at paragraph 32.18 above. The PCA reached the same conclusion on the interpretation of the law as the DPCA had done in her February and March 2018 awards, and stated the following points:

(a) the types of factors, but not exclusively those, that may be relevant to reasonableness, would include: the nature of the trade at the pub, its location and market; the relevance of the existing trading arrangements to the business/goodwill; customer expectations and demand; how a stocking requirement might present a business risk to the tied pub tenant; how a stocking requirement might support the business as well as reasonably protect the legitimate route to market for the POB; and

(b) the 100% stocking term, being a prohibition on stocking competitor keg brands in conflict with Parliamentary intention, and not within the definition of a stocking requirement, was unreasonable and therefore not compliant.

32.21 Star issued MRO proposals to 21 different pubs in response to MRO notices received between 4 May 2018 and 22 August 2018. Although Star told the PCA that its intention had been to issue the contemporaneous version of its MRO tenancy in response to any notice received, it could not confirm the actual terms that were included in every proposal issued to tenants post-May 2018, as a result of administrative errors (see further paragraphs 68-70 below).[56]

32.22 From 12 September 2018, Star further revised its template MRO tenancy to remove the 100% keg stocking term. It also reinstated a cask stocking term in every proposal so that tenants would have to stock one cask product, regardless of the number of existing cask taps.

32.23 On 3 October 2018, Star informed the PCA that it only applied its changes to the template stocking obligation to tenants involved in arbitrations raised from the date of introduction of the relevant amendments. It did not attempt to revisit pending cases to make offers based on these amendments, nor was it Star's policy or practice to inform tenants who were in the process of negotiating terms proactively about the relevant changes.

33. Evidence: impact on tenants resulting from Star's conduct

33.1 Star issued MRO proposals containing 100% stocking terms to 86 pubs between 2 August 2016 and 22 August 2018, including to 19 former Punch tenants under the TSA.[57] In addition, Star issued 10 amended proposals to these pubs containing the same term, meaning that Star issued 96 MRO proposals in total that contained a 100% keg stocking obligation.

33.2 In response to the call for evidence issued on 10 July 2019, the PCA received submissions from Star's tenants, tenant representatives and other interested parties, which reported either an actual or potential detrimental impact on individual tenants' businesses as a result of the relevant terms. Some specific issues highlighted for eight pubs were as follows:

(a) a number of tenants claimed that Star's keg stocking terms were inappropriate for the circumstances of their pubs, including because those tenants stocked a significantly lower proportion of Heineken products than the percentage required by the stocking term, and that Heineken's keg product range was unsuitable for their market, where demand existed for smaller, local brands;

(b) one tenant commented that the 100% keg obligation was, in their view, '*so unreasonable*' that they could not agree to the term. They said that *'it became obvious'* there would be a *'protracted fight with Star'* in order to achieve acceptable terms. Another tenant who eventually agreed to a MRO tenancy noted that it took a period of just over two years to obtain acceptable terms, after an initial proposal containing a 100% keg stocking term;

(c) a representative commented on the particular impact of Star's stocking obligations on former tied pub tenants of Punch Taverns. As Punch was not a brewer, any tenants who requested MRO prior to the TSA would have received no stocking requirement. However, *'in a matter of weeks or months'* those ex-Punch tenants who requested MRO under the TSA received 100% keg stocking obligations; and

[56] This meant that while all tenants who requested MRO would have received 100% keg stocking terms, some would not have received the updated version of those terms referred to at paragraph 32.18 and **Annex A**.

[57] During this period, Star considers that it received invalid MRO notices from tenants in respect of 18 different pubs.

(d) in at least two cases, both involving former Punch tenants, Star proposed the 100% keg obligation to tenants who did not stock any Heineken group products at the time they received the MRO proposal. The tenants would have been required to change every keg tap on the bar if they accepted Star's stocking terms, risking a loss of custom and potential wastage if there was low customer demand.

33.3 One further tenant said that they did not have an issue with Star's stocking terms (and eventually negotiated a tied deal). However, it can be seen that many tenants perceived unreasonable commercial barriers to the MRO option as a result of Star's terms. In some cases, tenants were deterred from MRO, while others only achieved acceptable terms after protracted periods of time.

34. Assessment of Star's conduct – 21 July 2016 to 22 August 2018

Star's inclusion of 100% keg stocking terms in its MRO proposals

34.1 A term prohibiting the sale of competing products is not a stocking requirement. Any stocking term seeking to do so would be unreasonable.

34.2 Star purported that from the implementation of the Pubs Code in 2016, it was transparent in its approach to stocking, which was based on its understanding of both the policy and the drafting of the legislation, and informed by legal advice.

34.3 The PCA recognises that Star was, at the time of the introduction of the Code, willing to be open with the PCA about its approach in respect of this particular version of its stocking policy. However, Star should have recognised from the DPCA's first substantive award on stocking in March 2018 that a 100% keg stocking term constituted a prohibitive approach to stocking competitor brands, and could not therefore be compliant. Star was entitled to seek leave to appeal awards on a question of law from the Chancery Division of the High Court under section 69 Arbitration Act 1996 (as applied to these statutory arbitrations by section 94 of that Act) but did not do so.

34.4 The changes Star made to its template keg stocking terms in April 2018 were not sufficient to ensure those terms were compliant. Star retained the default prohibition on the stocking of non-Heineken keg products, and control over granting consent for the stocking of any other competitor brands.[58] This is notwithstanding that Star highlighted to the PCA evidence of three pubs where consent to stock Guinness was in practice granted.

34.5 Even after three arbitration awards between March and May 2018 determined repeatedly that a 100% keg stocking term was not a stocking requirement and therefore unreasonable, Star took a number of months to remove this obligation from its template MRO tenancy. Star told the PCA during the investigation that, in respect of a number of MRO proposals issued shortly after the PCA's first March award (see paragraph 32.17), it was under a statutory obligation to comply with the timescales for issuing a full response to certain tenants, and did not have time to agree and implement changes to its template MRO tenancy. The PCA accepts that Star needed to comply with statutory timeframes; however, it would have been in its power to reissue amended proposals shortly afterwards to the affected tenants, and to provide tenants with an explanation as to the non-compliance of its initial proposal. Star did not put forward any reason why it chose not to do so.

[58] Star would have therefore breached the Code even if it were not for the version control errors discussed at paragraphs 68-70 below.

34.6 The PCA has seen internal Star presentations, prepared in May 2018 and shared with all Star personnel, which refer to the changes to brand stocking that were eventually made in September 2018, namely to introduce '*a personal agreement based on the licensee's individual circumstances*'. Again, the PCA has not received any satisfactory explanation as to the length of time it took to implement the changes from this date.

Star's template approach to stocking

34.7 Rather than considering what stocking requirement would be reasonable in each case, Star issued non-compliant terms that failed to meet the statutory test for a stocking requirement to every tenant who requested MRO during this period. Star's adoption of an entirely uniform approach to setting stocking terms (namely the 100% keg term) in its MRO proposals – without any variation whatsoever, or consideration of individual tenants' circumstances – perpetuated its unreasonable conduct.

34.8 The PCA confirmed early in the life of the Code that the test of reasonableness will apply to proposed stocking requirements, and informed the industry consistently that the reasonableness of such terms depends on the circumstances of the relevant pub. While the PCA does not necessarily expect to see a bespoke proposal issued in every instance (so long as the POB can show it first considered the circumstances of the case and can demonstrate on evidenced grounds that its approach is justified), POBs – and Star specifically in some cases – were cautioned repeatedly against a blanket approach in:

(a) the PCA's letter to the BBPA on 28 October 2016;

(b) the PCA's statutory advice on Stocking Requirements, issued in March 2017;

(c) three arbitration awards between 13 March 2018 and 2 May 2018, where the arbitrator found that Star failed to consider all the circumstances of the case and breached the Code requirement of reasonableness; and

(d) the PCA's bi-annual meeting with Star on 26 April 2018.

34.9 Irrespective of any early understanding Star held, it ought to have been aware from these interventions of its responsibility to take reasonable and compliant decisions in relation to individual tenants.[59] No (pre-Code) view stated by '*officials*' can fetter the determination of the independent regulator. Likewise, Star should have reconsidered the advice it received when it was made clear that a stocking requirement cannot prohibit sales of any individual type of beer or cider, and that even where a term does meet the definition of a stocking requirement, the terms offered to individual tenants must be reasonable.

[59] Star stated to the PCA that, having received no challenge from the PCA around the time it shared its legal advice in May 2016, it '*was entitled to assume, and did assume, that the PCA had no concerns with (i) the legal advice provided and (ii) Star's consequent approach to 100% keg stocking requirements*.' It is correct that Star's advice was not challenged at that specific time. However, the PCA's silence on any particular issue does not, and cannot, entitle a POB to assume that there can therefore be no compliance concerns. It is necessary for the PCA to take a targeted approach to regulation to prioritise and address issues effectively, and it may not be feasible to deliver an immediate response on all areas of concern. The Office of the PCA made clear its position in a letter to the Code Compliance Officers of all POBs in August 2016:

'c) At this point we do not intend to agree to anything which might have the effect of restricting the rights of tied tenants in relation to any part of the Code.

d) Similarly, notifying us of an intent to interpret the Code in a particular way should not be read as having our agreement to that interpretation.'

In addition, it is important to note that the PCA must be mindful to avoid conflict in its dual role of regulator and arbitrator, and in this case it was the arbitrator at various points on disputes that related to stocking issues.

34.10 The PCA has seen no evidence of any attempt by Star to vary the stocking terms included in any initial MRO proposals issued as part of the "full response" between the introduction of the Code and its change in stocking policy in September 2018, or a sufficient explanation from Star to contend that its approach was reasonable. In no contested arbitration proceedings determined by an arbitrator since the DPCA's first award on stocking requirements on 13 March 2018 did Star seek to mount a reasoned, satisfactory defence of the 100% keg stocking term as compliant with the Code.

34.11 The PCA was particularly concerned by Star's approach where tenants noted significant demand for local, high-provenance products, which would have been prohibited by the stocking term, or where at least two former Punch tenants, who purported to have zero existing representation of Heineken brands, were offered MRO tenancies containing identical 100% keg stocking terms.

34.12 For historic trading reasons, former Punch tenants were unlikely to have stocked comparable levels of Heineken products (if any at all) as pubs in Star's existing tied estate. At the time of its acquisition of pubs from Punch, Star publicly confirmed to tenants and Parliamentary stakeholders that it would act proportionately when introducing Heineken products to its expanded tied estate, and endeavour to do what was right for individual pubs. The PCA has seen no evidence that Star applied this approach when proposing MRO stocking terms to former Punch tenants.

34.13 Based on evidence that Star disclosed relating to arbitration proceedings, and which the PCA has received from tenants – and in light of the Code duties to serve a reasonable and compliant MRO proposal, and the PCA's regulatory advice on what a POB must do to meet this duty – the circumstances of different pubs were such that Star should clearly have varied its proposed stocking terms in individual cases. Star had successive opportunities to set itself on a compliant path. Instead it continued a pattern of unreasonable behaviour by failing to change its approach in any scenario.

Star's approach to negotiating with tenants

34.14 Star disclosed internal documents purporting that the versions of the template MRO tenancy from this time period were *'intended to be a starting position for negotiation with the licensee'*. This approach ignored and therefore failed to comply with the statutory duty the Code imposes on the POB – in every case – to serve proposed MRO terms that are reasonable and compliant in the first instance. The Code places the responsibility for proposing MRO terms on the POB. It does not permit the POB to use this privilege to fail to properly consider reasonableness at the outset; or to rely on non-compliant terms being made compliant through a process of negotiation. Doing so is an example of exactly the type of asymmetries in information and negotiating power between tied tenants and POBs that the Code was enacted to redress.

34.15 Further, contrary to Star's internal policy, bilateral negotiation of terms does not appear to have occurred in all cases. Star issued amended proposals to 16 out of a total of 86 pubs who had received 100% stocking terms initially. In 13 of these cases the tenant had sought recourse through arbitration. This may indicate an overall unwillingness by Star to change its position in negotiation, unless arbitration proceedings were ongoing. Ordinarily the arbitrator's, as well as the POB's own, costs would eventually fall to the POB, although during proceedings the tenant remains tied on their existing terms and rent. Star, given its resources, was better able to weather the arbitration process.

34.16 The PCA accepts that some tenants would have made referrals as a protective step to preserve their Code rights. This can in some cases be a practical option for tenants to preserve their statutory position, given that the strict statutory timetable may leave them with little or no time to engage with their POB in respect of compliant terms. Notwithstanding this, Star told the PCA that since changes to its stocking policy post-dating the period under investigation (which it claimed were based on an assessment of the pub on an individual basis) there has been a reduction in the number of arbitral referrals based on challenges to the stocking requirement offered in any Star MRO Response. This does suggest that Star's stocking policy and negotiating stances during this period were a factor in the number of arbitration disputes, and is not inconsistent with evidence the PCA received from tenants regarding the protracted nature of arbitration proceedings (see paragraph 33.2(b) above). The prospect of long and costly legal proceedings can be understood to be a factor in a tied tenant pursuing the MRO process or abandoning it altogether, and the PCA was not surprised to see accounts from tenants of this during the investigation.

34.17

The PCA finds that Star's inclusion of 100% keg stocking terms in 96 MRO proposals from 2 August 2016 to 22 August 2018 was unreasonable and non-compliant in all cases. These terms served as an absolute prohibition on stocking competitor keg products. Star ought to have been aware that this approach was non-compliant from early in the life of the Code, and in any event did know from receipt of the DPCA's March 2018 arbitration awards. Efforts made by Star to comply with the Code were not credible, and it refused or failed to change its approach after relevant D/PCA rulings in awards.

35. Evidence: Star's failure to revise existing offers following findings of non-compliance – 13 March 2018 to 4 April 2019

35.1 Regulation 34(2) of the Code requires that *'the tied pub tenant and the pub-owning business must, until the end of the MRO procedure, seek to agree a tenancy or licence that is MRO-compliant.'*

35.2 Although making a referral for arbitration in respect of a MRO full response has the effect of suspending the statutory 56 day negotiation period, regulation 34(2) applies the duty to seek to agree a MRO compliant tenancy until the end of the MRO procedure.

35.3 A POB that sought to obtain agreement to terms that it understood were non-compliant would be in breach of regulation 34(2).

Star's approach to amending its stocking terms after arbitration awards

35.4 As noted at paragraph 34 above, following the D/PCA's findings of non-compliance in awards, Star failed to revise promptly existing offers containing the 100% keg stocking term, when those proposals were either subject to negotiation or had been referred for arbitration.

35.5 Following a March 2018 arbitration award, Star offered a 75% keg stocking obligation to the relevant tenant, informing them as follows:

> *'We note the DPCA's findings* […] *that paragraph* […] *of the Draft Lease amounts to a prohibition on stocking competitor keg brands. We have amended the relevant paragraph in view of that determination to permit the Claimant greater flexibility in connection with products in this category which may be offered for sale.'*

35.6 Similarly, during arbitration proceedings in March 2018, the DPCA informed Star that she disagreed with its interpretation of the legislation on stocking. Star then amended its proposed stocking terms in that case (from 100% to 60% keg).

35.7 Star appeared to understand that a 100% stocking term amounted to a prohibition on stocking competitor brands, yet continued to defend the same terms in separate negotiations and proceedings.

36. Evidence: impact on tenants as a result of Star's conduct

36.1 In response to the PCA's call for evidence, one tenant commented that prolonged negotiations over a 100% stocking obligation resulted in months of delays and costs associated with the negotiation and arbitration process.[60] Another respondent representing three pubs issued with 100% stocking terms noted that Star refused to amend voluntarily its standard provisions to reflect other (then-confidential) awards on stocking requirements. The respondent noted that this necessitated tenants having to refer the MRO proposals to the PCA for arbitration, with the associated costs that entailed. This is supported by the fact that between the D/PCA's two March awards and mid-September 2018, at least six tenants made arbitration referrals on the basis that Star's "full response" – which contained identical 100% keg stocking terms – was unreasonable.

37. Assessment of Star's conduct

37.1 After the DPCA raised the matter in her regulatory capacity in correspondence, Star sought to justify its conduct in its reply dated 3 October 2018. This stated:

> *'any changes to the stocking requirement* […] *have been applied solely to arbitration raised from the date of introduction of the relevant amendments.*

[60] Evidence disclosed by Star shows that over five months passed between the tenant sending its MRO notice, and receiving an amended offer from Star that removed the 100% keg stocking term.

While negotiations have continued with a number of tenants, which in some instances have resulted in deviations from the stocking requirement […] *to suit particular properties and the circumstances of particular tenants, we have not sought by default to revisit pending cases to make offers based on* [the September 2018 template MRO tenancy] *amendments.*

The principal basis upon which we have adopted this approach is based on the PCA's subjective approach to reasonableness, which we have seen in the past to have the effect that the same provision (in that instance, Star's stocking requirement in relation to cask) may be reasonable in relation to one lease but unreasonable in relation to another.

On this basis, Star has taken the view that where an award is pending, in many instances the preferable approach is to await the outcome of that decision and thereafter determine whether it is necessary or appropriate to make any of the aforementioned changes in response.'

37.2 Star's letter failed to address the D/PCA's findings that the 100% keg term is not a stocking requirement at all, because it does not fall within the statutory definition in section 68(7) of the Act. Star did not therefore advance any justification for having chosen to maintain and defend the inclusion of stocking terms which it had been told were not stocking requirements, and which conflicted with Parliamentary intention.

37.3 Even on Star's own misconceived explanation, the fact that the reasonableness of a term can depend on the particular circumstances of the pub is precisely why Star should have revisited its template approach to proposals already issued. Star should have satisfied itself, in each case and on the basis of grounds that could be evidenced, of the reasonableness of its stocking terms.

37.4 Star claimed prior to and during the investigation that the terms of its stocking requirement were always based on its understanding of the law and policy at the time. Yet in respect of 100% keg stocking obligations, from March 2018 there were consistent, unambiguous rulings that such a term was not a stocking requirement, and was not MRO-compliant. Star's change in approach in September 2018, its internal acknowledgement by May 2018 of the need for such a change, and correspondence with one tenant in April 2018 noting that its terms amounted to a prohibition on stocking competitor brands, indicates that it had accepted the principles from those arbitrations. There was no justification for awaiting the outcomes of pending cases to determine the necessity or appropriateness of revisiting existing offers.

37.5 Star ignored clear rulings on the law, and contravened the core Code principles of "fair dealing" and "no worse off" in its approach to existing proposals by leaving tenants with a choice to accept terms which represented an unreasonable barrier to the MRO option. Star's conduct also came at a real, unnecessary and disproportionate cost to tenants who chose to defend their Code rights and dispute the terms – including in at least six cases post-March 2018 where 100% keg stocking terms were referred for arbitration – and may ultimately have deterred some from MRO.

37.6

The PCA finds that from receipt of the DPCA's March 2018 arbitration awards, Star breached the Code requirement to seek to agree a tenancy that is MRO-compliant in all cases where it continued to seek to impose 100% keg stocking terms.

38. Evidence: Star's refusal to concede the non-compliance of its "100% keg" term during arbitration proceedings

38.1 A separate issue arose in four arbitration proceedings that proceeded to final awards (each of which also found that 100% keg terms were not stocking requirements and were unreasonable).[61]

38.2 In each of these cases, the final awards were made on the basis of the original proposed stocking terms, rather than successive MRO offers made throughout the course of negotiations between the parties (in one case, negotiations had continued with the tenant in respect of tied rent while the outcome of the MRO dispute was pending). The reason for this was that the D/PCA took the view that their statutory jurisdiction to arbitrate a dispute and to make an order that the POB serve a revised response arose from the referrals of the initial full responses, rather than any revised tenancies that had since been discussed between the parties.

38.3 Although Star offered amended terms to the relevant tenants in each case, it refused to concede the non-compliance of its original proposed 100% keg terms. This led the DPCA to state in the Weedon award that on 13 March 2019 that:

> *'It is not appropriate for a regulated POB neither to concede nor to defend the terms of its full response, thus putting* [the] *arbitrator to the task of issuing an award in respect of the matter.'*

38.4 The DPCA also commented in her final award in Dunnell on 4 April 2019 that:

> *'One of the impacts of a POB defending a non-compliant position is that it can have an unfair impact on negotiations owing in part to the costs and risks associated with litigation.'*[62]

[61] The awards were ARB/100022/MILLSYSCAFEBAR ("**Millsy's Café Bar**"), ARB/105165/WEEDON ("**Weedon**"), ARB/000177/PRITCHARD ("**Pritchard**"), and ARB/100836/DUNNELL ("**Dunnell**"), delivered by the D/PCA between 8 February 2019 and 4 April 2019. The awards in Millsy's Café Bar, Weedon and Dunnell all stated that: *'Given that Parliament provided that a stocking requirement cannot prohibit the sale of competing products, for any stocking term to seek to do so would in my view clearly be unreasonable.'*

[62] The DPCA outlined the background as follows at paragraph 14 of her award: '*The Respondent confirmed on 27 February 2019 that they do not intend to make any further submissions in relation to the full response. On 26 March 2019 I invited the parties to notify me if there had been any change in position. I have considered the parties' replies dated 28 March 2019. The Respondent has not conceded that the proposed purported stocking requirement is not compliant.'*

38.5 By refusing to concede the non-compliance of the stocking terms included in its "full responses" in these four cases, Star was offering amended terms as a concession rather than an obligation, and failing to acknowledge that it knew the original MRO proposals that had been referred to arbitration were on non-compliant terms.[63] This had the potential to impact on the fair negotiating environment between the parties, including as to costs of the proceedings. It is another example of how Star exploited asymmetries in information and failed to be transparent with its tenants.

38.6 The PCA has seen evidence from mid-April 2019 onwards that Star began to inform tenants of the non-compliance of various stocking obligations, and offer updated terms to those tenants. This met the PCA's expectations of transparency in these cases.

[63] Pursuant to the High Court judgement in *Punch Partnerships (PTL) Ltd & Anor v The Highwayman Hotel* [2020] EWHC 714 (Ch) the non-compliance of the original offer would not have empowered the DPCA to determine the terms of the revised response [109].

Stocking obligations that in reality can require the tenant to stock an unreasonably high proportion of brands covered by the terms

39. Introduction

39.1 The D/PCA launched the investigation because they had reasonable grounds to suspect that Star included obligations in its MRO proposals that would have required tenants to stock an unreasonably high proportion of brands covered by the terms.

39.2 The investigation has focused specifically on:

(a) Star's use of "tiered" stocking requirements from 12 September 2018 to 10 July 2019, where the keg stocking requirements included in a MRO proposal would depend on the tied pub tenant's existing representation of Heineken group brands. These proposals also often included requirements that tenants "must stock" specified keg brands;

(b) Star's consistent use of 60% cask stocking terms from 21 July 2016 until 20 April 2018, and reintroduction of its cask stocking terms from 12 September 2018, where in both cases there was a reliance – or an express obligation – on tenants to stock Theakston products; and

(c) the effect of Star's stocking requirements on sale of the tenancy to another landlord.

39.3 Unlike a 100% keg stocking term, the terms discussed below would not fall outside of the statutory definition of a stocking requirement by virtue of imposing absolute prohibitions on stocking non-landlord products, as they permitted the stocking of competitor products.

39.4 It has not been the PCA's intention for the purposes of the investigation – nor was it necessary or proportionate – to review the context of all MRO proposals issued to tenants, and make individual determinations regarding whether every offer was reasonable or not. Rather, the PCA has assessed Star's approach to the stocking requirements in its MRO proposals to consider whether it was such as would lead to breaches of the Code. The evidence Star disclosed about the circumstances of individual cases, and substantial qualitative evidence from tenants, has been sufficient to enable the PCA to assess whether Star breached the Code in particular cases, as well as whether there was any impact on tenants.

40. Evidence: Star's use of tiered keg stocking requirements from 12 September 2018 to 10 July 2019

40.1 The following paragraphs summarise developments to Star's keg stocking policy from September 2018 until the date the PCA launched the investigation, as well as Star's interactions with the PCA and its tied pub tenants during this time period.

Star's changes to its keg stocking policy

40.2 From 12 September 2018, Star developed a revised approach to keg products, so that the stocking term in its MRO proposals would vary depending on the tenant's existing overall representation of Heineken products under their tied tenancy. The percentage requirement would also be combined with a term that the tenant "must stock" particular keg brands. In summary, the updates to Star's template MRO tenancy were as follows:

Tenant's existing representation of HUK keg brands under tie	Star's proposed MRO stocking obligation – keg products
< 50% HUK keg brands	60% of keg taps to dispense brands from Heineken group portfolio, including two "must-stock" brands designated by Star. In this case, Star would permit tenants a period of one year from the date of the lease to build up its drinks offering to a level that complied with the stocking obligation relating to keg products.
50-75% HUK keg brands	60% of keg taps to dispense brands from Heineken group portfolio, including three "must-stock" brands designated by Star.
75%+ HUK keg brands	75% of keg taps to dispense brands from Heineken group portfolio, including three "must-stock" brands designated by Star.

40.3 Star informed the PCA in regulatory correspondence dated 3 October 2018 that it introduced these changes *'to more accurately reflect the principle that the form of lease issued with any full response should adequately reflect the particular tenant's individual circumstances*'.

40.4 Star's senior personnel told the PCA that Star considered the approach to be consistent with the Code, by recognising that the keg stocking percentage should be based on the volume of Heineken keg brands already sold at the pub, and that the right brands for each pub needed to be considered. They noted to the PCA that the minimum keg stocking obligation of 60% would enable Star to preserve its route to market.

40.5 During the investigation, the PCA requested copies of "Heineken UK's stocking requirement policy", and the minutes of any Star leadership team meetings that addressed the subject of stocking requirements prior to, and during, the period under investigation. Star's response confirmed that no formal documented policy existed, other than the general approach outlined in various training materials and presentations, and a "stocking discussion paper".[64] According to Star, senior-level discussions regarding changes to Star's stocking policy would have taken place within a specialist Pubs Code sub-group, although no notes of discussions and decisions taken were disclosed or referred to by Star during the investigation.[65]

[64] A member of Star's leadership team who prepared this document (dated February 2019) noted that it was prepared for '*internal debate*', rather than designed to reflect a formal policy. This was particularly insofar as the document referred to proposed future approaches to stocking.

[65] Star claimed that no relevant minutes from its leadership team meetings existed other than an action point from May 2018 noting '*MRO stocking policy to change*'. The PCA has also seen minutes from an Estates Team meeting in August 2018, which note in similar terms that changes to the stocking requirement had been agreed.

40.6 Star produced training materials in February 2019 which set out how Estates Managers should measure tied pub tenants' existing stocking levels to calculate the proposed MRO stocking requirement in line with its tiered approach: '*the stocking requirement will vary depending on the current HUK brands sold in the outlet. It is therefore important to note during your inspection the product range and the number of taps / hand pulls'*.

40.7 The slides highlighted the need for Star to take into account the full circumstances of the pub when preparing a MRO proposal:

- *'Going forward we will need to keep a record of how we assessed the terms of the MRO lease issued*

  […]
- *Guidance will be issued with a tick list but initial discussions with PCA highlighted need to have regard to the original lease, discussions between tenant and Star and the individual circumstances of the tenant*
- *Need to provide evidence that person instructing the lease knows the full circumstances of the pub'* [66]

40.8 On 13 March 2019, Star wrote to the PCA explaining its overall approach to stocking terms in MRO proposals. Star committed in the letter *'to demonstrate in each case why that particular stocking requirement is reasonable in all the circumstances'*.

40.9 Star issued MRO proposals adopting its tiered approach in response to 36 MRO notices from tied pub tenants between 19 September 2018 and 2 July 2019 (the final MRO notice Star received prior to the launch of the investigation). The MRO proposals Star issued – when taking into account subsequent, revised proposals – included 26 containing a 75% keg stocking term, and 51 containing a 60% keg stocking term.

Arbitration awards involving Star – December 2018 to April 2019

40.10 On 3 December 2018, the DPCA issued an arbitration award involving Star in the Helliwell 2 proceedings. This related to a number of proposed stocking terms issued to a tenant that included an initial 75% keg stocking requirement, and subsequent offers of 70% keg, and 8/11 keg taps. Star relied on witness and other evidence to support its case that these terms were reasonable for this particular pub, and sought to respond to previous awards of the D/PCA in which factors affecting the test of reasonableness were identified. However, the DPCA determined that all of these were unreasonable in the circumstances.

40.11 The DPCA made the following points in particular:

(a) she referred the parties to a non-exhaustive indication of factors that may be relevant to assessing reasonableness, set out in earlier awards (paragraph 43);

(b) in this case, the 14 year length of the proposed MRO tenancy was a relevant factor to the reasonableness of stocking terms: this was a very significant period over which to try to predict what it would be reasonable to stock in the pub, and a business should be ready to respond to changes in the market over time (paragraph 54);

[66] While the content of these slides is encouraging, the PCA notes that they were produced 11 months after the D/PCA's original arbitration awards, and two and a half years after any 'initial discussions' had taken place with the PCA about avoiding a blanket approach to stocking.

(c) as in Helliwell 1, Star had failed to provide an explanation as to why it was reasonable to impose increased restrictions from the pub's tied position, bearing in mind the local market in which it operated, and the products which that market demands (paragraph 67); and

(d) while Star was entitled to reasonable protection for its route to market, and then-current sales showed a demand for Heineken products, there was more merit in the tenant's evidence regarding the need to respond to its customer base's interest in craft and local products (paragraph 81).

40.12 The Dunnell, Weedon, Pritchard and Millsy's Café Bar awards, which the D/PCA delivered between 8 February and 4 April 2019, concerned matters which included previous versions of Star's stocking terms (100% keg and 60% cask). Nonetheless, the learnings from those awards remained relevant to Star's approach to stocking requirements, and the D/PCA made observations on Star's subsequent offers to each tenant, in which the percentage of keg brands to be stocked was reduced from 100%. The D/PCA reiterated the following list of factors relevant to the assessment of reasonableness:

> *'In considering reasonableness matters which may be relevant include the existing pub offer; the nature of the landlord and its business; the nature of the tenant and its business; the nature and location of the pub and its local market; any other relevant matters (such as any ability to vary over the length of the term of the lease). Parliament provided in the stocking requirement for an exception to the ability of free of tie tenants to do exactly as they please in relation to stocked products. There must therefore be a reasonable balance between the free of tie tenant's commercial freedom and the protection of the brewer POB's route to market. Good and fair reasons would be required to justify as reasonable a restriction on the stocking of a proportion of products actually demanded and consumed by the local market, as demonstrated by recent sales during the term of the existing lease.'* [67]

40.13 In the Pritchard award, the then-PCA found that in seemingly seeking to adopt a standard approach to stocking requirements across its estate, there was no evidence to show what consideration Star had given to what would be reasonable requirements for the particular tenant at the particular pub. On this basis, the proposed stocking terms had not been shown to be MRO-compliant.[68]

Star's inclusion of terms relating to "must stock" keg brands in its MRO proposals – 19 September 2018 to 22 May 2019

40.14 Star's terms relating to "must stock" keg brands required the tenant to stock a specified number of identified brands, and were used in combination with a percentage keg stocking requirement. Star's starting point for calculating the number of "must stocks" would depend on the proportion of Heineken brands which the tenant stocked under its tied tenancy, as set out at paragraph 40.2 above.

40.15 Star issued MRO proposals that specified "must stock" brands to 35 pubs.

[67] Dunnell (Appendix D, paragraph 23); Millsy's Café Bar (Appendix C, paragraph 23); Weedon (Appendix D, paragraph 23); Pritchard (Appendix 4, paragraph 15).

[68] Pritchard (paragraphs 74-75). The PCA's finding was in relation to a 60% cask stocking term, but there is no reason why the learning would not apply equally to a 60% or 75% keg stocking term.

40.16 Senior personnel at Star told the PCA that Star decided to include "must stock" terms as a means of protecting its route to market, and to prevent tenants from replacing products that sold in high volumes with low volume products (which Star considered was the case in respect of certain tenants). Star was also attempting to introduce brands to pubs that would be "disruptive", to create different consumer segmentations by replacing non-Heineken products with competitor Heineken group brands.

40.17 An internal presentation prepared by Star in June 2018 indicated that the "must stock" terms would apply equally to ex-Punch tenants.

40.18 Star's internal correspondence and correspondence with tenants indicated that there was both potential for variation, and some actual variation, to the precise "must stock" products specified in MRO proposals:

(a) an email from an Estates Manager to a tied pub tenant dated 19 November 2018 regarding a MRO proposal noted: *'There is a must stock obligation for Birra Moretti, Amstel and Symonds Cider, this can vary upon tenant request.'* It was not specified in the email whether the variation could be to the brands specified in the stocking term, or to the number of "must stock" brands. Nor did the email specify at which point during negotiations following a MRO notice could the tenant request such a variation, or how such a request would be handled; and

(b) an email from an Estates Manager to a tenant's representative regarding an amended MRO proposal following negotiations said: *'As confirmed in* […] *email of the 25th April your offer including the 40% stocking requirement is not acceptable. However in the interest of trying to reach agreement we would be willing to move this down to 50% plus the 3 must stocks.'*

40.19 Star personnel told the PCA in interviews that the specific "must stock" brands were chosen by reference to their performance in a local market. Star provided the example that if it has a high-performing brand in a particular local area – for instance, Fosters in a London pub – Star would specify that brand as a "must stock". Star claimed that these were local decisions which would be made on a pub-by-pub basis.

40.20 Star's template MRO tenancy in use during this period stated as follows, in relation to changes tenants could request to "must stock" brands:

> *'Notwithstanding the terms of clause* […]*, on any date after the date which is the second anniversary of the Term Commencement Date, the Tenant may replace one or any of the Must-Stock Brands with another Landlord Keg Brand subject to obtaining the Landlord's prior written consent (such consent not to be unreasonably withheld).'*

40.21 On 3 December 2018, the DPCA found in the Helliwell 2 award that insufficient reason had been put forward by Star for seeking to impose "must stock" brands in that case. There was also insufficient evidence that the brands chosen would be right for the relevant pub at the time of the award, or over the duration of the 14 year tenancy (which did not contain any mechanism for the review of the stocking terms over time).

40.22 Training slides designed for Estates Managers dated February 2019 stated that '*disruptive / premium lager / highest volume brands must be specified by HUK in agreement'*. The slides also provided: *'Small variations to stocking policy (e.g. pub with small number of taps - must stocks may not work)'*. The PCA has seen evidence that Star did remove the "must stock" obligations in various amended MRO proposals issued to tenants during this period, although the provisions were always included in its initial proposals.

40.23 In two MRO proposals dated 30 October 2018 and 4 March 2019, Star specified that the "must stock" brands include Theakston products, which it was not entitled to include in a stocking requirement (see paragraph 43.5 onwards below).

Star's changes to its approach – 22 May 2019 onwards

40.24 From 22 May 2019, Star amended the stocking terms in its template MRO tenancy. The relevant changes:

(a) inserted a right for either party to request a review of the stocking obligations at each rent review (with notice to be provided between nine and twelve months before the relevant rent review date);

(b) incorporated an option for a 40% keg stocking requirement;

(c) removed references to "must stock" brands;

(d) included percentage interpretation provisions to explain how any percentage stocking provision is to apply to a fixed number of taps; and

(e) provided for certain parts of the stocking requirement to be suspended, where Star ceases to produce the relevant type of product.

40.25 The PCA has seen evidence of one initial MRO proposal from May 2019 where a tenant was offered a 40% keg stocking term for a specified number of taps in their pub. If the number of taps increased over a certain amount, the keg stocking requirement would increase to 50% for those additional taps. The PCA has also seen two revised MRO proposals from May 2019 that included similar terms.

40.26 Star told the PCA that the removal of the "must-stock" provisions in Star's template MRO tenancy from May 2019 was its commercial decision – while it had considered these provisions to allow it to protect its route to market whilst maximising the sales potential of its pubs, they were often contentious and disputed by its tenants in a number of cases. Star had by this stage agreed to remove the relevant obligations during the course of certain arbitration proceedings, in what it purported to be a *'compromise* […] *to narrow the scope of dispute between the parties.'*

40.27 Star continued to rely on "must stock" obligations in some MRO proposals that were subject to negotiation by the end of the investigation period; although it confirmed to the PCA during the investigation that it has removed – or intends to offer to remove – the relevant terms prior to executing the tenancies.

41. Evidence: impact on tenants resulting from Star's keg stocking and "must stock" brands policy

41.1 Between 19 September 2018 and 2 July 2019, Star issued MRO proposals to 36 different pubs after adopting its tiered keg stocking and policy. 35 of these pubs received stocking requirements that specified "must stock" brands (including some pubs after Star's May 2019 policy change).

41.2 In response to the PCA's call for evidence, tenants, representatives and other interested parties identified the following concerns about Star's MRO proposals during this period:

(a) several tenants contended that the "must stock" terms would ensure that their tenancies were not future proofed, and remove tenants' flexibility to adjust their ranges in accordance with changing market conditions, fashions and brand reputations;

(b) tenants also commented on the lack of suitability of the particular "must stock" brands for their pubs. Some products were purportedly not appropriate in certain premium sites, or equally were too "premium-priced" for the nature of the pub, where there was little demand for such products. In these cases, the tenants did not offer in their existing range – or had never offered – the "must stocks", and considered there would be a commercial risk from stocking them;

(c) further tenants commented more generally on Star's failure to consider the circumstances of their pubs, including that the pub only stocked one Heineken product at the time of receiving the MRO proposal. Another tenant viewed that Star's stocking obligations did not make sense for smaller pubs, where removing a Heineken cider would mean also having to remove one non-Heineken product, to ensure the pub still stocked the correct proportion of Heineken brands.[69] The customer base for this particular pub – which specialised mainly in cask products – was older and much of the available product range was purportedly unsuitable to cater to their tastes;

(d) a representative confirmed that they had seen no variation to Star's tiered approach across numerous proposals, which suggested to them that Star did not take into account the circumstances of any individual pub in those cases;

(e) some tenants were concerned about a negative commercial impact if there was no customer demand for the new products. This included one former tied pub tenant of Punch Taverns who claimed their position was *'so precarious, that [they] felt forced to accept the 60% keg requirement, as [they were] not comfortable to endure potentially over 12 months of delay with an arbitration process, relying on costly quarterly extensions*.' Although in negotiations Star agreed to remove some of the original obligations, the tenant was still forced to remove their two best-selling lagers to comply with the terms of the tenancy, as the pub only had a very limited number of keg taps. The tenant now faced a *'risk to the trade at the site'*, as they viewed Heineken products to be unpopular in the particular region where they operated;

[69] For example, if a pub stocked 10 keg products and had a 50% keg stocking requirement, it would need to stock five Heineken products. If it removed one of these, to comply with its stocking requirement it would also need to remove a non-Heineken product, resulting in the stocking of eight keg products in total, four of which would be Heineken brands.

(f) one tenant who agreed the terms of a MRO proposal containing a 75% stocking obligation claimed that they had done so after seeing no end in sight to the negotiation process. They told the PCA that the obligation had since affected their business negatively, owing to the limited choice they could make available to customers; and

(g) multiple tenants commented on the potential commercial impact of Star's stocking terms beyond the risk of a fall in demand. Two said that a 60% keg stocking obligation with "must stock" brands specified would limit their ability to seek sponsorship and support from other brewers. Another expressed a similar concern about *'a wholesale change from having complete freedom'* on stocking, which affected their ability *'to have meaningful'* conversations with suppliers about offering a percentage of supply.

41.3 Star also provided evidence of tenants noting perceived risks on account of their circumstances during negotiations. In one case, a tenant claimed that both a proposed 100% keg stocking obligation, and an amended term specifying a 60% keg obligation, were unreasonable, as the site did not at the time stock a single Heineken keg product. Each offer would have required changing *'more than half the keg products currently available, which* […] *represent[ed] an unfair level of risk to the site's trade.*' In addition, that particular pub did not stock any of the proposed "must stock" brands, which in the tenant's view represented a risk that customers may not enjoy the products, and that the pub could not adapt to emerging trends. During both negotiations and arbitration proceedings, Star denied that its 100% keg term was non-compliant (see paragraph 38.1 above), or that there was a risk to trade at this particular site from its proposed terms, asserting merely that the stocking term had been reasonable while referring to its amended offer.

41.4 In another case, the practical impact of a 60% keg stocking requirement with four "must stock" brands was that the tenant in question would be required to stock four lagers, including two from the same category – which it noted was '*excessive for a village pub*'. In that case, Star's responded initially to maintain that its offer was reasonable, but did not support this with evidence or explanation.

41.5 Finally, for a number of pubs, the amount of keg taps meant that the tenants would be required in reality to stock a higher percentage of Heineken keg products than specified in the tenancy, because of the limited number of taps in their bar. This was noted by a respondent to the call for evidence, and by tenants in evidence disclosed by Star.

42. Assessment of Star's conduct – 19 September 2018 to 2 July 2019

Star's use of tiered stocking requirements

42.1 The PCA has significant concerns about Star's approach to issuing MRO proposals from September 2018, even if template keg stocking obligations were purported by Star to be "tiered" on the basis of the tied pub tenant's existing representation of Heineken group brands. In reality, this meant that a tenant who stocked no Heineken keg products at the time they served their MRO Notice would receive a MRO proposal requiring them to stock 60% Heineken keg products within one year. The PCA does not accept that this crude policy constitutes a proportionate approach to framing a reasonable and compliant keg stocking requirement for each individual case.

42.2 The D/PCA told Star in eight arbitration awards between March 2018 and April 2019 that it must take into account all the circumstances of the pub, and listed the non-exhaustive factors relevant to this assessment.

42.3 The tiered keg stocking obligations were referable to tenants' current stocking levels, and this is one factor which may be relevant to reasonableness. The PCA recognises that in principle, some form of tiered stocking policy could play a part in striking an appropriate balance between a blanket approach, and including entirely bespoke terms in every single case. Ultimately, every case requires consideration of the circumstances of the particular pub concerned, before the MRO proposal is issued.

42.4 However, during the investigation Star was unable to disclose documentation showing how it devised its approach. While Star claimed that its lack of formal records of its decision-making were typical of a large commercial business, this meant that the PCA has had no sight of its rationale for arriving at the percentages in question, or making decisions in respect of individual pubs.[70]

42.5 The PCA saw no evidence that Star varied its 60% or 75% keg stocking requirements in respect of a single initial MRO proposal issued to any tenant prior to May 2019. The PCA has seen evidence that Star occasionally departed from its template in use at the time when making revised offers (see paragraph 64.3 below). However, while negotiation during the MRO process is of course crucial, Star's actions must be viewed in light of the duty on the POB to make an offer that is compliant at the time of issue. Evidence of Star's correspondence with tenants during negotiations and arbitrations, and comments from respondents to the call for evidence, suggested that in some cases Star did not listen to concerns that the proposed stocking terms would be inappropriate for the nature, size, location and customer bases of various pubs. This indicates a lack of fair dealing in relation to certain tied pub tenants who requested MRO.

42.6 As outlined at paragraph 41.2(e) above, in one case the tenant would, under the terms of the proposed stocking requirement, have been forced to remove their two best-selling keg beers from sale. Based on the evidence it has reviewed, the PCA considers that the MRO terms offered to this particular tenant were unreasonable. The PCA is especially concerned that this tenant felt forced to accept terms it considered to be detrimental commercially.

42.7 The PCA recognises that the introduction of a 40% keg stocking tier could point to Star developing a more nuanced approach to stocking. However, it remains the case that for the period under investigation – including from May 2019 to July 2019 when Star introduced the 40% keg term – there appears to have been a wholesale lack of process to demonstrate when, how or why decisions were taken in a compliant manner, especially in the face of tenants raising legitimate concerns and challenges. Without evidence of a robust, considered process, the PCA cannot be assured that Star adopted a compliant position at any time during the period under the investigation.

[70] As set out at paragraph 66.10 below, irrespective of whether certain practices may or may not have been normal for average commercial businesses, from July 2016 Star should have been cognisant of its duties as a newly regulated business under the Code, and the need to have processes and proper record-keeping in place to support compliance.

42.8 Whereas the close business relationship under the tie can facilitate appropriate adjustments to the product range available to the tenant in light of market changes, there is no such close relationship when free of tie. Nonetheless, it is necessary for a stocking requirement to remain sufficiently relevant, flexible and fair during the course of a potentially long tenancy to avoid an unknown commercial risk to the tenant.[71] This is another reason why all the terms of the proposed stocking requirement must be reasonable, taking into account the particular long term risks of a potential lack of flexibility to change the wrong product mix, and absence of management that is characteristic of a free of tie tenancy.

42.9 In this context, Star's stocking review mechanism that it introduced in May 2019 did not appear sufficient to address the mischief of stocking terms that might not be compliant over the lifetime of the tenancy, in the absence of a fair and reasonable initial stocking requirement. In particular, if the landlord refused to agree to variations, the same stocking obligations would continue to apply – potentially over the life of a decade plus tenancy – without any effective recourse for the tenant (Star suggested during the investigation that a tenant could, in theory, bring a claim for breach of contract on the basis that the landlord had not used good faith and reasonable endeavours to reach an agreement).

42.10

From September 2018 to July 2019, Star failed to consider the circumstances of individual pubs beyond taking a crude, tiered approach, which was not sufficient to ensure compliance. The PCA finds that Star breached the Code requirement to propose MRO terms that are reasonable in individual cases, and did not deviate from this pattern of conduct in its MRO full responses.

42.11 The PCA is particularly concerned by Star's policy until 22 May 2019, which required tenants who stocked zero Heineken products to increase their representation to 60% within a year (with two "must stock" products specified). Such a term is unreasonable and non-compliant because:

(a) Parliament's intention when introducing the stocking requirement was to provide a reasonable means of retaining a brewer's route to market when one of its tied pubs takes the MRO option. This is not the same as enabling the brewer POB to have effectively a mechanism for a guaranteed and systematic increase in its market share regardless of the circumstances of particular pubs. The test of reasonableness still applies. Given the potential commercial risk to any tenant of a substantial and inappropriate change to its offer, a proposal that will result in increasing the free of tie pub's existing share of landlord products should only be made on the basis of good and fair reasons, following careful consideration of the nature of the particular pub, its market, and other relevant circumstances;

(b) a build-up period of a year cannot guarantee that any risk will be mitigated sufficiently for every pub. Star noted during the investigation in respect of former Punch pubs, that had those tenants not taken the MRO option, they would, over time, have been encouraged to stock a higher proportion of Heineken brands. The flexibility in being "encouraged" to increase stocking "over time" can be compared to a mandatory contractual requirement to increase stocking over the defined period of a year;

[71] See further paragraphs 41-42, and 54, of the DPCA's award in Helliwell 2.

(c) Star purported to the PCA during the investigation that '*it would not be inherently unreasonable for Star to include a stocking requirement for a pub that has been recently acquired by Star, even if HUK products were not previously stocked there, provided that the stocking requirement is supported by analysis of the individual pub.*' The PCA does not disagree with this in principle. However, in light of the evidence the PCA received, there is nothing to suggest that Star did undertake sufficient consideration of the reasonableness of such a substantial stocking change for any pub in respect of its initial proposed stocking terms. It appeared to rely on the scope of the Heineken brand portfolio.[72] This factor, though a relevant consideration, is not determinative that such a change is reasonable when looking at any pub in any market;

(d) to apply the same crude approach to both a pub selling no landlord products, and another that sells, for example, 49%, is wrong in principle;

(e) cliff edges within the policy demonstrate the potential for arbitrary, unreasonable and non-compliant outcomes. There is also no clear rationale for increasing the brand representation of some pubs under the policy while allowing others the ability to stock fewer brands than their existing offer. For instance:

(i) a tenant with 76% current Heineken product representation would be required to stock a minimum of 75%, whereas a tenant with 75% current Heineken product representation would benefit from the flexibility of a lower minimum stocking obligation of 60% landlord brands;

(ii) a tenant currently stocking 50% Heineken products under the tie and another stocking 75% under the tie would both be required to stock 60% as a minimum;

(iii) a tenant currently stocking 50% Heineken products would be required to increase its Heineken keg brand portfolio to 60% immediately regardless of any impact on the business, whereas a tenant with a 49% current representation of Heineken products would be permitted a year to build up to 60%;

(f) even over the course of the year (as in the last example above), for a tenant to change over half of its keg taps to comply with the terms of their MRO tenancy could create an unduly onerous burden. This was the explicit reason why at least one tenant told the PCA that they were dissuaded from accepting the terms of the MRO tenancy (other tenants did accept this term, but expressed their concern to the PCA about its commercial impact); and

(g) the application of this tiered stocking requirement policy to newly acquired former Punch pubs which may have had no history of stocking Heineken products is particularly concerning, and contrasts starkly with Star's statements to MPs set out in paragraph 32.9 above as to its approach to stocking changes in these tied pubs.

[72] During the course of some negotiations and arbitration proceedings, Star did highlight further considerations when presenting its reasoning for proposing various stocking terms.

42.12 In one case, a tenant who only stocked one Heineken product was issued with a proposal containing a 60% keg stocking requirement and requiring that they stock three "must stock" brands. The relevant MRO proposal did not contain a term to explicitly allow the tenant one year to build up their representation of brands. This contravened Star's stated policy at the time.

42.13

The PCA finds that the stocking terms included in Star's MRO proposals issued between September 2018 and May 2019 gave rise to breaches of the Code requirement to propose MRO terms that are reasonable. This was particularly the case where tenants with low or zero existing representation of Heineken products at the time of the MRO notice would be obliged to increase their Heineken keg brand representation to 60% within one year.

Star's inclusion of terms relating to "must stock" brands in its MRO proposals

42.14 The PCA understands that Star included "must stock" terms in MRO proposals to protect its route to market, and to prevent tenants from substituting high volume products for low volume products. In Star's view, specific "must stock" brands were chosen by reference to their performance in a local market, which was highlighted in training delivered to Estates Managers.

42.15 However, a number of the responses to the PCA's call for evidence referred specifically to concerns tenants had regarding the "must stock" brands they were asked to offer on keg taps, and in particular that Star's chosen brands presented a significant commercial risk. In some cases, the "must stock" brands were too expensive for the relevant pub, whilst in others the specified products were not considered to be premium enough. This indicates that the degree of differentiation in Star's approach was insufficient to account for the variations in tenants' circumstances.

42.16 Star included the "must stock" terms in its MRO proposals even where tenants had very low existing representations of Heineken brands, and stocked very few or none of the "must stock" brands. This included former Punch Tavern tenants, in relation to whom Star did not differentiate its approach. The PCA is concerned that Star's practices had a disproportionate impact on those tenants, who would not have been subject to a tie to Heineken, prior to Heineken UK's acquisition of their pubs from Punch Taverns, and would therefore have been less likely to have a significant Heineken brand representation (see for example paragraphs 34.11-12 above).[73]

42.17 The right to request a change to the "must stocks" after two years was afforded to tenants in every case where such brands were specified in the terms of the tenancy. The PCA does not accept that this was an adequate mechanism to address the key factor of being able to "future proof" the terms of the tenancy:

[73] Whilst Star told the PCA during the investigation that it adopted an indiscriminate approach in the interests of '*fairness*' and '*consistent estate management*', this was not quite the position Star articulated to stakeholders when discussing its purchase of the tied estate (who it informed that it would *'work with Punch licensees to introduce our brands where appropriate and to make sure that the right products are offered in their pubs'*).

(a) the potential for detriment was compounded by the absence of adequate consideration of reasonableness at the outset. A MRO tenant could, in theory, be forced to spend two years stocking brands that were inappropriate for their pub, before only being allowed to request a change subject to Star's consent;

(b) while tied or free of tie tenants might not necessarily change their brands more frequently than every two years, there is at least the flexibility to adapt quickly to changes in the local market;

(c) the review clause also only applied to "must stock" brands. Until May 2019, Star included no mechanism in its proposed tenancies that would allow for a review of the stocking terms more widely.

42.18 There is evidence of Star allowing for some variation to the "must stock" terms included in its MRO proposals in subsequent negotiations with tenants, which the PCA accepts can demonstrate compliance with regulation 34(2) of the Code in some instances. However, as set out elsewhere in this report, an openness to negotiate on particular terms cannot absolve a POB of the responsibility to ensure that the initial proposal is MRO-compliant.

42.19 Finally, the specification of "must stock" brands combined with a percentage keg stocking requirement, meant that for some tenants, the proportion of keg brands they would actually have to stock would be materially higher than the overall percentage stated in the MRO proposal. For example, one tenant with four keg taps received a MRO proposal containing a 60% keg stocking requirement with three "must stocks" specified. To comply with this obligation, the tenant would have needed to stock not less than 75% Heineken keg products. Star's approach here was clearly unreasonable. Star contended to the PCA during the investigation that the consequence in this instance was '*inadvertent and unintended*'. The PCA considers this to be disappointing justification for Star's conduct. As an experienced commercial operator of pubs, Star should have been aware of the practical consequences of its proposed terms. This was particularly the case where Star was under an obligation to consider the reasonableness of its terms in light of each pub's circumstances, and where Star's own internal policy was that it was '*important to note* […] *the number of taps / hand pulls*' in each pub (see paragraph 40.6).

42.20

The PCA finds that Star's approach to including "must stock" terms between September 2018 and July 2019 gave rise to breaches of the Code requirement to propose MRO terms that are reasonable. This was particularly the case where such terms resulted in substantially higher stocking obligations in practice than were stated in the tenancy, or did not take into account the circumstances of the pub and were wrong for the pub, which may have been more likely where tenants had never stocked the relevant products.

43. Evidence: Star's use of 60% cask stocking terms from 21 July 2016 to 20 April 2018

Star's cask stocking policy

43.1 The following paragraphs summarise the evidence the PCA received in relation to Star's uniform inclusion of 60% cask stocking requirements in its MRO proposals.

43.2 From 21 July 2016 until 20 April 2018, all MRO proposals issued by Star included the same 60% stocking term in respect of cask products.[74]

43.3 Senior personnel who were involved in devising Star's stocking requirement told the PCA that although the Heineken group produces a strong portfolio of keg brands, cask brands are not an area of strength for the group. They also noted that cask products are different in nature to keg products. The former comprises '*seasonal beer*', in relation to which it would be impractical to require tenants to constantly request changes subject to the landlord's consent. However, Star's personnel could not provide the PCA with an explanation as to why 60% had been chosen as the appropriate percentage for its cask brand stocking term, nor was there any documentary evidence to support how the percentage had been arrived at and agreed.

43.4 On 20 April 2018, Star amended its template MRO tenancy to remove the cask stocking requirement. On 12 September 2018, Star amended its template MRO tenancy again to reintroduce a cask stocking term that required a minimum of one cask hand pull to dispense a defined cask product.

Star's inclusion of Theakston brands within the range of cask products available for MRO tenants

43.5 A contractual obligation is a stocking requirement if it relates only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking (as defined in section 1161 of the Companies Act 2006) in relation to the landlord. Prior to launching the investigation, the PCA suspected that Star included cask stocking obligations in its MRO proposals that required tenants to stock products not produced by a group undertaking.

43.6 The PCA asked Star to identify all products not produced by a group undertaking (i.e. the Heineken group), which it considered to qualify as "Landlord Cask Brands" (i.e. products that Star told tenants they could stock to meet the stocking requirement) during the period under investigation. In response, Star listed the following products that were available on an ongoing basis, all of which were produced by T & R Theakston Limited ("**Theakston**"):

(a) Theakston Old Peculiar;
(b) Theakston XB;
(c) Theakston Lightfoot;
(d) Theakston Black Bull Bitter;
(e) Theakston Best Bitter.

[74] See paragraph 32.3 above for an outline of Star's full MRO stocking policy during that time period, and **Annex A** to this report.

43.7 In addition, Star rotated on a monthly basis 22 additional cask brands produced by Theakston.

43.8 Evidence from Star's price lists, filtered to show only the products it considered to be included in the stocking requirement – and thus telling tenants what could be stocked under a MRO tenancy – shows 14 cask products available at various points, produced by three brewers: Caledonian (five products), John Smiths (one) and Theakston (eight).[75]

43.9 Heineken UK holds a minority shareholding in Theakston. Consequently, Theakston does not amount to a group undertaking of Star, and no Theakston product could be considered a brand that a tenant could stock to meet Star's stocking requirements.

43.10 Star did not differentiate in the information provided to tenants between brands produced by Heineken group undertakings and Theakston products.

43.11 In multiple arbitration proceedings, Star did not seek to show on any evidence or argument why Theakston fell within the statutory definition of beer or cider produced by the landlord or its group undertaking.

43.12 Senior personnel at Star informed the PCA during interviews that they saw Theakston *'as a Heineken UK brand'*, but purported *'that was a misinterpretation of the legislation'*.

The D/PCA's arbitration findings on cask stocking

43.13 In her Helliwell 1 award on 13 March 2018, the DPCA accepted the tenant's explanation that a 60% cask stocking term was more restrictive than their existing representation of such products under the tied tenancy. Finding on the facts and arguments put forward by the parties in this case that the cask stocking requirement was unreasonable, the DPCA stated:

> *'In the absence of explanation by* [Star] *as to why it considers it is reasonable, given the trade at this particular pub, to impose what in practice are increased restrictions, I find the terms* […] *are unreasonable. Good and fair reasons would be required to justify as reasonable a restriction on the stocking of a proportion of products actually demanded and consumed by the local market, as demonstrated by recent sales during the term of the existing lease.'*
>
> (paragraph 46)

43.14 In an award issued on 16 March 2018, the DPCA found that the tenant had not explained why a 60% landlord cask brand restriction was unreasonable.[76] The PCA reached a similar conclusion in another award issued on 2 May 2018. In both awards, the D/PCA reiterated the key learning that good and fair reasons would be required to justify a restrictive stocking requirement.

[75] This particular price list dates from October 2017. A price list from September 2018 continues to show 14 cask products available, produced by Theakston (nine), Caledonian (three) and John Smiths (two).

[76] The Claimant normally has to put forward an arguable case before the other party must answer it. In the case of *Jonalt* [2020] EWHC 1376 (Ch), the High Court upheld an appeal on the basis that this traditional application of the burden of proof applies to statutory arbitration under the Pubs Code.

44. Evidence: impact on tenants resulting from Star's conduct

44.1 Star issued MRO proposals for 65 pubs between 2 August 2016 and 20 April 2018. None of these varied the stocking terms included in Star's template MRO tenancy at the time, and each contained 60% cask stocking obligations.

44.2 In response to the PCA's call for evidence, tenants, their representatives and other interested parties identified the following concerns:

(a) several respondents told the PCA that Star's cask range was very limited. One representative considered that Star may have used its cask stocking obligations as a negotiation tool to show concessions to tenants. They reported a pattern where Star was typically more willing to reduce cask than keg obligations, following an initial proposal;[77]

(b) a number of tenants commented that Star's cask stocking terms were inappropriate in the circumstances of their pubs:

(i) two respondents to the call for evidence claimed that they did not stock any Heineken cask products at the time they received the relevant MRO proposals from Star;

(ii) the number of cask taps in one of these pubs in fact meant that they would be required to stock substantially more than 60% Heineken cask products, even if the tenancy only specified a 60% obligation. The relevant tenant considered Star had '*refused to acknowledge*' their particular circumstances, including that their pub was situated close to another Star tied pub that had other commercial advantages. The tenant claimed that the obligation would have removed a distinctive selling point, and potentially harmed sales volumes and competitiveness;

(iii) two tenants commented that Theakston products would not be appropriate for their pubs, considering respectively that the range was '*exclusively regional*' and a '*poor choice indeed for us*'. Similarly, in arbitration proceedings, another tenant noted that it operated on a market influenced by local craft beers. From Star's available cask range, Caledonian products were brewed in a different region of the UK, and Theakston was produced hundreds of miles away; and

(c) the PCA has also seen evidence that the issue was raised in arbitration proceedings that Theakston brands were not Heineken group products, and that it was not in Star's right to force tenants to sell them.[78]

44.3 Star provided evidence of another tenant in arbitration who purported not to stock a single Heineken cask product. Cask sales amounted to a significant proportion of the pub's overall turnover, and the existing selection had been chosen on the basis of what products the tenant considered to be well received and in demand. In its Statement of Defence, Star offered to replace the 60% cask stocking obligation, with a requirement for the tenant to stock one Heineken cask brand.

[77] This claim appeared to be supported by an internal email sent by a senior staff member at Star, discussing a tenant's complaint that stocking 60% HUK cask products would be *'impossible from buying locally'*. The email stated: *'In terms of stocking we are much more focused on draft keg products as that where our portfolio strength is. Across the range we have strength in al* [sic] *categories. Cask is less of an issue for us, so therefore we are looking for less representation on the bar, this is a negotiation point. I'm happy case by case to flex this.'*

[78] In these proceedings, Star did not seek to show on any evidence or argument why Theakston could be included in a stocking requirement.

44.4 Star disclosed further evidence showing that tenants had attempted to draw the attention of senior personnel to the negative impact of what were in their view unreasonably high cask stocking requirements. In May 2018, a tenant's representative emailed a senior employee of Heineken UK, saying that the tenant had been put off from considering MRO in 2017, in part because they had been informed by a Business Development Manager that they:

> *'would be required to stock 50% of your Company's cask ales, which would damage* [their] *business as* [they are] *currently not tied for cask as your available choice is not liked by* [their] *customers'.*[79]

45. Assessment of Star's conduct: Star's use of 60% cask stocking terms from 21 July 2016 to 20 April 2018

45.1 The use by Star of a 60% cask stocking term could be problematic in similar ways to the standard percentages of keg products that are discussed at paragraph 42. For example, where there are only one or two hand pulls in the pub the term will act as an absolute prohibition on the sale of any competitor cask brands unless the tenant can and does add, respectively, two or one additional cask hand pulls. The term would also equate to a stocking requirement of more than 60% where there were three or six hand pulls (the requirement would be 66.7%), or four hand pulls (the requirement would be 75%). Only where there were five hand pulls (or multiples of five) would the stocking requirement in practice not be more than the percentage term in the proposed tenancy. These scenarios are foreseeable and ought to have made it apparent to Star that it needed to consider the circumstances of each pub. The potential for the cask stocking requirement to be unreasonable without such consideration is clear.

45.2 The PCA saw no evidence that Star considered the particular circumstances of any pubs, including when tenants' existing brand representations were such that in fact they would under the proposed stocking term have been required to stock more than 60% Heineken cask products. On at least two occasions, Star issued 60% cask stocking proposals to tenants who at the time stocked no Heineken cask brands.

45.3 The nature of the landlord's business is a relevant factor when considering the stocking percentage in a MRO proposal. None of Star's evidence demonstrated how it determined that the 60% figure was reasonable in the context of the Heineken cask product range at the relevant time, which it noted was not an area of strength. Tenants who responded to the PCA's call for evidence commented on Star's limited cask offering, and consequent difficulties in meeting the 60% cask stocking requirement.

45.4 Star's cask stocking obligations also appeared to be predicated on tenants stocking Theakston products, which it was not entitled to include in a stocking requirement. This was by virtue of the fact that Theakston brands were, throughout the period when 60% cask stocking terms were used, treated wrongly by Star as if they were Heineken brands. These products comprised the majority of Star's already limited cask range – without them it would have been extremely difficult in practice for tenants to meet Star's 60% stocking obligations.

[79] Star's stocking policy throughout 2017 was to require tenants to stock 60% Heineken UK cask brands, not 50% as purported by the tenant.

45.5 Star benefited commercially from its sales of all beer and cider products – whether produced by Heineken group undertakings or not. Incentive schemes for personnel within Star were also at various points linked to overall and regional sales of such products. Additional benefits would have accrued to Heineken UK as a result of its shareholdings in various entities, irrespective of whether or not they were group undertakings. These are all basic elements of a POB's commercial functioning, with which there is nothing wrong in theory provided the POB conducts its business in a way that complies with the Code.

45.6 However, any stocking requirement will be unreasonable if it relies on the stocking of products in a way that subverts the policy intention of retaining the brewer's route to market, to sustain elements of the landlord's business involving non-group undertakings. Star appeared to give no thought or recognition to this principle in its approach to stocking, in light of its interest in tenants selling Theakston products.

45.7 Star failed to instil a culture of compliance to ensure that the business and its personnel would be mindful of Code compliance when negotiating MRO tenancies, and pursuing relevant financial benefits. Given that Star's incentive schemes related to both Heineken and non-Heineken brands, more care should have been taken to ensure that stocking terms were considered in a Code-compliant manner.

45.8 When challenged, Star failed to produce a rationale for its cask stocking percentage, or a reason for its inclusion of Theakston products within its "Landlord Cask Brand" range. In the latter case, it purported what it termed to be a '*misinterpretation*' of the legislation.

45.9 In two arbitration cases, the D/PCA did not accept – on the facts and arguments before them – the cases for unreasonableness as made out by the claimants. During the investigation, the PCA obtained from Star a much broader range of evidence, including as to its purported rationale for its 60% cask stocking term, template approach towards its estate, cask product range, reliance on tenants stocking Theakston products, and the circumstances of certain tenants. It became clear that a 60% cask stocking term would have been unlikely to be reasonable for any pub without a reliance on tenants stocking products that could not be included in a compliant stocking requirement.

45.10

The PCA finds that from 2 August 2016 to 20 April 2018, Star's inclusion of 60% cask stocking obligations in its MRO proposals, which was predicated on tenants being able to stock products that it was not entitled to include in a stocking requirement, gave rise to breaches of the Code requirement to propose MRO terms that are reasonable. Given the surrounding circumstances, the 60% requirement would have been likely to be unreasonably high in almost all individual cases.

46. Evidence: Star's changes to its cask stocking policy and obligations on tenants to stock Theakston products – September 2018 onwards

46.1 Star reinstated a cask stocking term in its template MRO tenancy from 12 September 2018. From this date until July 2019, multiple versions of Star's template MRO tenancy required the tenant to stock one cask brand from the Heineken group portfolio.

46.2 When Star re-implemented its cask stocking policy in September 2018, it included for a short period of time the following term in relation to Cask Brands:

'4.1 The Tenant may in its absolute discretion stock and offer for sale any Cask Brands which it deems appropriate from time to time throughout the Term provided that at all times the Tenant ensures that either of the following Landlord Cask Brands is made available for sale at the Property:

4.1.1 Caledonian; or

4.1.2 Theakstons.'

46.3 Star issued MRO proposals to four different pubs between 12 and 24 September 2018, which included this term.

46.4 In October 2018, Star updated its template MRO tenancy to remove specific reference to Caledonian and Theakston and replace this with a more generic obligation for the tenant to stock *'at least one Landlord Cask Brand'*. The PCA has seen correspondence from senior personnel at Star confirming at the time that *'We are not able to include Theakstons so the reference should be to HUK Cask only i.e. Caley'*.

46.5 Nonetheless, on 26 November 2018, Star told a tied pub tenant during discussions prior to commencing the MRO process that to meet a cask stocking obligation, *'1 cask HEINEKEN product must be supplied, which would be Caledonian product but could be Theakstons where we have a shareholding.*' Despite expressing this position in these discussions, Star did not ultimately issue a proposal to the relevant pub that included Theakston products.

46.6 Star issued MRO proposals for two different pubs on 30 October 2018 and 4 March 2019, which specified that the tenant stock '*Theakstons*' as a "must stock" keg brand. The latter proposal was issued three months after the Helliwell 2 award determined that Star was only entitled to impose a stocking requirement in relation to products that it brewed.

46.7 The PCA has not seen any other MRO proposals that expressly included stocking terms in respect of Theakston products. In a May 2019 presentation prepared for a meeting with representatives from HM Government, Star noted that Theakston products *'should not be in stocking requirement'*.

47. Evidence: impact on tenants as a result of Star's conduct

47.1 In response to the call for evidence, the PCA received evidence from tenants, representatives and interested parties commenting on the overall choice of cask products offered by Star, and reliance on Theakston products within its cask range. This is discussed extensively at paragraph 44. None of the call for evidence responses reported specifically on Star's September 2018 stocking term requiring tenants to stock one cask product.

48. Assessment of Star's conduct

48.1 In MRO proposals issued to at least six pubs prior to March 2019, Star included terms either requiring tenants to stock Theakston products, or offering the choice between Theakston and one other cask product. This included three cases where such proposals were sent to tenants after the DPCA issued her award in Helliwell 2, which confirmed that Theakston could not be included within a stocking requirement.

48.2 The PCA has a number of concerns around Star's approach:

(a) as outlined at paragraph 45.4 above, any obligation imposed by Star to stock products (such as Theakston) where the landlord merely has a shareholding interest is not a stocking requirement;

(b) in providing a choice between Caledonian or Theakston products as a Landlord Cask Brand in certain proposals, Star did not technically force the relevant tenants to stock Theakston products (albeit that the alternative of Caledonian is a regional Scottish brand that may not be suitable for pubs in England and Wales if, for example, their focus is on locally brewed products). Indeed, this was a concern raised by a tenant at paragraph 44.2(b) above; and

(c) a provision that requires the MRO tenant to stock either a Theakston or a Heineken group product is not a contractual obligation that '*relates **only** to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord*' (section 68(7)(a) of the 2015 Act; emphasis added). Such a term is not a stocking requirement under the Act.

48.3 The number of cases in which such non-compliant terms were issued to tenants is relatively small. The relevant template was in use for a very short period before Star withdrew it in October 2018, at a time when it appeared to accept internally that it could not include Theakston in a stocking requirement. However, Star did not take sufficient care as to the products that could lawfully be specified in a stocking requirement. Star's failure to have implemented clear principles of law after the Helliwell 2 award demonstrates an inadequately controlled approach to ensuring Code compliance. Yet again, Star failed to act with diligence, by continuing to issue or negotiate on unreasonable terms that it already understood to be non-compliant.

48.4

The PCA finds that Star's obligations in its MRO proposals relating to the stocking of Theakston products were not stocking requirements, and breached the Code requirement to propose MRO terms that are reasonable in all cases.

49. Evidence: Release of stocking terms on sale of the tenancy by Star to a new landlord

49.1 Prior to the commencement of the investigation (and as set out below), the PCA made observations in a number of arbitrations involving Star commenting on the absence of any provision in its MRO tenancies to ensure that any stocking term would cease to have effect in the event that Star sold their interest in the pub to another landlord who was also a brewer.

49.2 During the course of the investigation, the PCA became concerned that Star may not have consistently included, or begun to include in response to learnings from these arbitrations, such a provision in its MRO proposals. The PCA considers that this is a factor relevant to the reasonableness of any proposed stocking requirement.

49.3 Where a tenancy specifies a percentage of brands produced by the landlord that must be stocked, if the stocking requirement does not fall away on disposal of the pub, it could become unreasonable over the duration of the tenancy. For instance, an obligation for the tenant to stock a certain proportion of landlord keg brands may be reasonable if Landlord A produces a large portfolio of beer and cider, but unreasonable if Landlord B only produces a small handful of products, as the term would effectively become far more restrictive.

Star's policy and practice – 21 July 2016 to 10 July 2019

49.4 The following paragraphs examine the development of the relevant terms in Star's template MRO tenancy, as well as Star's purported intentions behind the term.

49.5 All iterations of Star's template MRO tenancy included a term providing that the tenant would only be required to observe and perform the stocking requirements for as long as the landlord met the definition of "Brewer", as defined in the tenancy. The effect of such a clause is that, whilst the stocking requirements would not be "removed" on the sale of Star's reversionary interest in the property, such obligations would cease to have effect insofar as the relevant purchaser of that interest did not meet the definition of "Brewer".

49.6 "Brewer" is defined in Star's template MRO tenancy as '*a person who produces or supplies or procures the supply of intoxicating Drinks for resale*'. This is a broad definition not restricted to Heineken group undertakings in any way, and which could include a large variety of natural or legal persons who may purchase a pub. The definition is also not limited to the producer of beer or cider – as required by section 68(7)(a) of the Act – but could encompass the producer of other intoxicating drinks, or a natural or legal person who does not produce any intoxicating drinks but merely supplies them or procures their supply.

49.7 In an arbitration award delivered in March 2018, the DPCA made the following comments:

> *'There is no argument before me as to the effect on the stocking requirement of any sale to another brewer, which might affect the business and its value.* […] *Whilst not issues raised in the arbitration, the parties might wish to consider "future proofing" the lease term which imposes the stocking requirement.'*

49.8 These were echoed in similar comments made by the PCA in an award in May 2018, which also stated that '*it must of course be borne in mind* […] *that the landlord could change with the sale of the pub.*' In each set of proceedings, this was not an issue raised by the parties – the D/PCA therefore did not have party submissions on the point, nor did they make formal determinations on it.

49.9 Star proposed an additional term to four tenants between May 2018 and February 2019, confirming that the relevant obligations would apply only insofar as Star remained the landlord under the tenancy, and that they would cease to apply upon any disposal of the property. In correspondence with two of these tenants in May 2018, Star proposed the same term '*to address any concerns which the* [tenant] *may have in relation to "future proofing" the lease'*.

49.10 The issue of "future proofing" was raised again in the Pritchard award delivered by the PCA on 26 February 2019. The award related to Star's first version of its template stocking requirement with effect from July 2016 until April 2018. The PCA did not comment directly on the presence or absence of a term that the stocking requirement would fall away on sale of the tenancy. However, the award noted:

> *'The Claimant also questions what happens if the Pub is sold to another POB with a more limited product choice which may then affect the value of their lease, and have other consequences that would be better avoided by having no stocking requirements. The Claimant argues that this would result in "partially tied pubs" which could ultimately be left worst off out of all scenarios, which was not the intention of the legislation, and is therefore unreasonable. I consider that the Claimant makes a good point here, particularly given that the proposed term of the MRO lease is 15 years in this case.'*
>
> (paragraph 68)

49.11 Star's senior personnel told the PCA in interviews that it was never Star's intention to migrate the stocking obligation when the tenancy was sold. The PCA has also seen internal Star presentations from May 2018 alluding to a policy where '*if HUK sells pub brand stocking policy removed*'. However, it appears that at no point during the period under investigation was a term to this effect included in Star's template MRO tenancy.

49.12 Star informed the PCA that it does not believe any general information was prepared for the benefit of tenants to explain how the stocking requirement would operate on sale of the tenancy, although it claimed that it was possible that this point was discussed on a case-by-case basis with tenants.

49.13 In total, Star offered a term giving effect to the removal of the stocking requirement to four pubs, whereas in relation to 118 pubs there was no such term. In practice, Star only sold the landlord's interest to another brewer in relation to one property during the period under investigation, whose tenancy included the additional clause that the relevant obligations would cease to apply upon disposal of the property.

50. Evidence: impact on tenants as a result of Star's conduct

50.1 Between 21 July 2016 and 10 July 2019, Star never sold a tenancy containing a term with the effect that the stocking requirements would continue to apply on sale to another brewer. This meant that no tenant experienced the potential adverse consequences of such a term, which are explored above. The PCA is concerned however about the level of uncertainty that the absence of an appropriate term might have brought, which was expressed by the claimant in the Pritchard arbitration proceedings.

50.2 A further consequence was that Star's introduction into the market of stocking terms that were not reasonable via MRO proposals and tenancy terms, was entrenched because it did not consistently make provision to ensure that the stocking terms would fall away in the event of sale of the tenancy.

51. Assessment of Star's conduct

51.1 Star told the PCA that it never had any expectation or intention for the stocking terms to continue to have effect on disposal of the pub, and said that there was no commercial value to this for Star or any potential purchaser.

51.2 The inclusion of the relevant term in Star's template MRO lease however reflects a lack of care and consideration that could potentially have resulted in confusion and/or adverse consequences for tenants. For example, it is unclear how an obligation to stock named brands in the lease would be affected. Purchasers in the market would not be aware automatically that the term was intended to fall on sale of Star's interest.

51.3 Stocking requirements are specific obligations, not developed by the market but introduced by statute, relating to the stocking of POB brewed beer and cider. These terms must be reasonable over the lifetime of the lease – that means not continuing the term where the landlord is no longer a regulated POB (because the legislation allowing for a stocking requirement no longer applies) and securing a mechanism to future proof the term where the landlord remains a POB.

51.4 The PCA considers it poor practice that when a particular issue came to light relating to stocking requirements that risked detrimental outcomes for tenants, Star offered an additional term to some of its tenants in acknowledgement of concerns over "future proofing", but did not implement any amendments to its template MRO tenancy. As such, no other tenants would have benefited from the additional term. There is no good reason for Star not to have done so, especially after the issues were brought to light (albeit not in the context of formal rulings on the relevant term) in a number of arbitration proceedings. While passing comments in arbitral rulings will not typically have wider application as general principles, in this instance Star had identified the need for an appropriate term and included it in a small number of MRO proposals, but did not reflect learnings more widely, nor was it pro-active on an issue that was of potential disadvantage to its tenants. Not only was there a failure of foresight by including the relevant term in the first place, but there was no consistency in the way the issue was remedied.

51.5 At the very least, Star should have had greater attention to detail to ensure that its tenancy terms were consistently updated. A compliant POB would ensure expressly that any stocking term will cease to apply on sale of the tenancy to any person other than a group undertaking in relation to the landlord.

51.6

The PCA finds that the term to the effect that the stocking requirement continues to apply on sale of the tenancy to another brewer landlord breached the Code requirement to propose MRO terms that are reasonable. This term was included in MRO proposals issued to all but four pubs over the period 21 July 2016 to July 2019. Such a term also failed to meet the statutory definition of a stocking requirement by applying not only to landlords who did not produce beer and cider, but to a wider range of landlords who produced other intoxicating drinks, or who supplied or procured the supply of these.

Stocking obligations relating to non-"Landlord" group undertakings

52. Introduction

52.1 The D/PCA launched the investigation because they had reasonable grounds to suspect that Star included purported stocking requirements which did not relate only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord. This would be contrary to the criterion for a stocking requirement in section 68(7)(a) of the 2015 Act.

52.2 The PCA has considered in particular the definitions of "Landlord Keg Brands" and "Landlord Cask Brands" (together "**Landlord Brands**") included in Star's MRO proposals.

53. Relevant legislation and interpretation

53.1 The following paragraphs outline the legal provisions that are relevant specifically to the products that may be included within a compliant stocking requirement, and the PCA's analysis at paragraphs 54-57 of this report.

53.2 A stocking requirement applies only to beer and cider produced by the landlord or by a person who is a group undertaking in relation to the landlord.[80] Any obligation relating to stocking that does not meet the definition in the Act is not a stocking requirement.

53.3 Section 72 of the Act provides that "group undertaking" has the meaning given by section 1161 of the Companies Act 2006 (the "**2006 Act**"). This provision states at subsection (5) that "group undertaking", in relation to an undertaking, means an undertaking which is—

'(a) a parent undertaking or subsidiary undertaking of that undertaking, or

(b) a subsidiary undertaking of any parent undertaking of that undertaking.'

53.4 Under section 1159 of the 2006 Act, a company is a subsidiary of its holding company, if the latter—

'(a) holds a majority of the voting rights in it, or

(b) is a member of it and has the right to appoint or remove a majority of its board of directors, or

(c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it.'

53.5 No other form of commercial relationship between corporate entities (such as a shareholding, joint venture or partnership agreement), where there is no subsidiary or parent relationship, meets the statutory definition of a "group undertaking" in section 72. Therefore, no product produced under any commercial arrangement that fails to meet the definition in section 72 can be the subject of a stocking requirement, because a purported stocking obligation that relates to products produced by a non-group undertaking will not fall within the statutory definition of a stocking requirement.

[80] 2015 Act, section 68(7)(a).

53.6 In summary, only a pub-owning business which is a brewer (or the group undertaking of a brewer) may impose a reasonable stocking requirement in a proposed MRO tenancy, and only in relation to its own beer and cider.

54. Evidence: the definitions of Landlord Keg Brands and Landlord Cask Brands in Star's MRO proposals

Definitions of Landlord Brands included in Star's MRO proposals

54.1 The PCA has seen definitions of Landlord Brands in Star's template MRO tenancies, and in non-template proposals, which could result in the extension of the proposed stocking term to include beer or cider other than Heineken group brands.

Extended definitions of Landlord Brands in bespoke MRO proposals

54.2 On 25 May 2018, Star included the following definitions in an amended MRO proposal, which was offered to a tenant who was involved in arbitration proceedings at the time:

> *'"Group Undertaking" means either (1) any party which falls within the meaning given by s.1161 of the Companies Act 2006 or (2) any party with whom the Landlord or a Group Company has entered into a brewing partnership agreement;*
>
> *"Landlord Cask Brands" means any brands or denominations of Cask Brands (or variants thereof) which are manufactured by a Landlord Cask Brewery;*
>
> *"Landlord Cask Brewery" means any brewery which is either owned by the Landlord or a Group Undertaking of the Landlord or in which the Landlord or a Group Undertaking of the Landlord has Control;*
>
> *"Landlord Keg Brands" means any brands or denominations of Keg Brands which are manufactured by the Landlord or a Group Company of the Landlord (including Heineken UK Limited) from time to time during the Term;*
>
> *"PPB Own Beer Brands" means packaged Beer brands owned or exclusively licensed by the Landlord or a Group Undertaking of the Landlord;*
>
> *"PPB Own Cider Brands" means packaged Cider brands owned or exclusively licensed by the Landlord or a Group Undertaking of the Landlord;'*

54.3 Star issued five amended MRO proposals to another pub between 29 May 2018 and 8 January 2019, and one MRO proposal to a further pub on 15 February 2019, which all contained definitions that were identical to the above.

54.4 In these MRO proposals the relevant definitions had the effect of creating obligations in relation to stocking that applied to products not produced by the Landlord or a group undertaking of the Landlord, by bringing such products within the definitions of Landlord Cask Brands and Landlord PPB Brands (but not Landlord Keg Brands).[81]

[81] Only the definitions of "Landlord Cask Brewery", "PPB Own Beer Brands" and "PPB Own Cider Brands" make reference to "Group Undertaking", so this extended definition would appear to apply solely to these products and not to Landlord Keg Brands. However, "Group Company" is undefined in the relevant MRO proposals.

54.5 Also on 29 May 2018, Star issued a further amended MRO proposal to another pub (the revised response having been issued on 3 April 2018). That proposal contained the following definitions:

> *'"Group Undertaking" has the meaning given by s. 1161 of the Companies Act 2006;*
>
> *"Landlord Keg Brands" means any brands or denominations of Keg Brands which are manufactured by the Landlord or a Group Company of the Landlord (including Heineken UK Limited and any company or other trading entity in which either the Landlord or a Group Undertaking has a shareholding interest or has entered into any joint venture or other partnership agreement) from time to time during the Term;'* [82]

54.6 This particular definition (involving parties with whom the Heineken group had a joint venture or partnership agreement) did not form part of any of Star's template MRO tenancies.

Star's template MRO tenancies – other definitions

54.7 The first four iterations of Star's stocking obligations, which were included in MRO proposals issued to tenants from 21 July 2016 and January 2019, included obligations that the tenant stock a percentage of "Landlord Keg Brands", as thus defined:

> *'"Landlord Keg Brands" means any brands or denominations of Keg Brands which are manufactured by the Landlord or a Group Company of the Landlord (including Heineken UK Limited) from time to time during the Term;*
>
> *"Group Undertaking" has the meaning given by s.1161 of the Companies Act 2006;*
>
> *"Group Company" means a company which is a member of the same group of companies as the Tenant (as defined in section 42(1) of the 1954 Act);'* [83]

54.8 The first iteration of Star's stocking requirement, which was in use from 21 July 2016 to 20 April 2018, and the third, fourth and fifth iterations used from 12 September 2018 to March 2019, included obligations that the tenant stock a percentage of "Landlord Cask Brands", as thus defined:

> *'"Landlord Cask Brands" means any brands or denominations of Cask Brands (or variants thereof) which are manufactured by a Landlord Cask Brewery;*
>
> *"Landlord Cask Brewery" means any brewery which is either owned by the Landlord or a Group Undertaking of the Landlord or in which the Landlord or a Group Undertaking of the Landlord has Control;*
>
> *'"Control" means in relation to a Landlord Cask Brewery either where the Landlord or a Group Undertaking of the Landlord holds a majority of the voting rights or has the right to exercise a dominant influence;*
>
> *"Group Undertaking" has the meaning given by s.1161 of the Companies Act 2006;'*

[82] The extended definition applied only to Landlord Keg Brands in this proposed tenancy, and not to Landlord Cask Brands or PPB brands.

[83] A summary of every iteration of Star's template MRO stocking terms is at **Annex A**.

54.9 For the reasons set out in paragraph 53, none of the aforementioned terms fall within the definition of a stocking requirement set out in the 2015 Act. These definitions enable Star to impose stocking obligations relating to products other than those brewed by the landlord or its group undertakings, i.e. non-Heineken group brands.

(a) Analysis of the definition of "Landlord Cask Brands"

54.10 The Landlord Cask Brand stocking term set out at paragraph 54.8 above does not fall within the definition of a stocking requirement as a stocking requirement can relate '*only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord*'. This is because the definition of "Landlord Cask Brewery" applied by Star includes not only the landlord and its group undertakings, but any brewery in which the Landlord or its group undertaking has "Control" as defined in the tenancy.

54.11 Star's definition of "Control" has no basis in the Pubs Code statutory framework. It has the effect of including within the tenancy definition of "Landlord Cask Brewery" any brewery in which the landlord or its group undertaking '*holds a majority of voting rights or has the right to exercise dominant influence*'. The term "Control" does not reflect the full definition of a "subsidiary" found in section 1159 of the 2006 Act.[84] It is not appropriate to seek to summarise or amend the statutory language that is used to determine the scope of a stocking requirement.

54.12 In versions of Star's template MRO tenancy that were issued between September 2018 and March 2019, "Control" is not defined at all.

(b) Analysis of the definition of "Landlord Keg Brands"

54.13 The definition of "Landlord Keg Brands" included in Star's template MRO tenancies (see paragraph 54.7) refers to products "manufactured" rather than "produced" by the landlord. This could create a potential difference in meaning than that set out in the statutory framework. Star continued to make reference to brands "manufactured" by Heineken group undertakings in all versions of its template MRO tenancy until January 2019. POBs should use and respect the exact statutory terms, to avoid the possibility of legal disputes over the meanings of the wording of the tenancy that would be unnecessary if the statutory language was used, and the potential that an undefined, non-statutory term like "manufactured" could potentially cover a larger number of brands than a term relating to brands "produced" by the Landlord.

55. Evidence: Star's definitions of Landlord Brands following arbitration awards and regulatory correspondence from the PCA

55.1 Star issued MRO proposals to 99 pubs that sent MRO notices between 2 August 2016 and 30 November 2018, which contained definitions of "Landlord Brands" extending beyond the statutory definition of a stocking requirement.

[84] One of three tests in section 1159(c) of the 2006 Act for a company to be a subsidiary of another if it '*is a member of it and* ***controls*** *alone, pursuant to an agreement with other members, a majority of the voting rights in it*' (emphasis added). Star's use of the word "control" appears to ascribe a different meaning to the term.

55.2 On 3 December 2018, the DPCA explained in the Helliwell 2 arbitration award that a stocking term falling outside the statutory definition of a stocking requirement would in itself be a term that is non-MRO-compliant and unreasonable.[85] The award concerned among other issues "extended definitions" of Landlord Brands that required a tied pub tenant to stock brands manufactured by Star or a group undertaking, including any trading entity in which Star or a group undertaking had shares, or a joint venture or partnership agreement. This definition was included in various amended offers issued to the tenant from 29 May 2018 to 20 August 2018.

55.3 Subsequently, in the Millsy's Café Bar award issued on 8 February 2019, the DPCA found that Star's definitions of Landlord Brands included in a MRO proposal issued on 9 January 2018, also fell outside the statutory definition of a stocking requirement, and were unreasonable and non-compliant. The DPCA also commented on amended terms offered by Star on 25 May 2018 relating to the definitions of Landlord Cask and PPB Brands(see paragraph 54.2 above), stating:

> *'the definition of "group undertaking" is* […] *a statutory one and is found in s.1161 of the Companies Act 2006. An undertaking in which the Respondent merely has a shareholding, a joint venture or brewing partnership agreement also does not come within the statutory definition of "group undertaking" as there is no subsidiary or parent relationship. A requirement to stock beer or cider not produced by the landlord or its group undertaking does not come within the definition of a stocking requirement in s.68(7)'.*
>
> (paragraph 27(b))

55.4 Between 5 December 2018 and 13 February 2019, Star issued MRO proposals to a further nine pubs that included definitions of Landlord Brands that the PCA considers to be similarly outside of the statutory definition. This is because they extended the definition of a "Landlord Cask Brewery" to include breweries in which the Landlord or a Group Undertaking of the Landlord has "Control".

55.5 On 27 February 2019, the D/PCA wrote to Star setting out their expectations in relation to the definition of Landlord Brands, in light of the awards.[86] This followed a meeting with Star on 14 February 2019, where Star had accepted that a stocking requirement cannot relate to

[85] *'Where a term is not within the statutory definition of a stocking requirement, or where it is not a reasonable term, it cannot be rendered compliant and reasonable by extending the definition in a way which manipulates the policy intention of protecting the brewer's route to market and using the term to protect (or increase) the non-brewing elements of the Respondent's business. Whilst it may be easier for the Claimant to comply with the requirement if the extended definition is used, this serves the Respondent's market position in a manner which has nothing to do with the fact that it is a brewer. It then places it at an unfair advantage over its regulated competitors. The extended definition of "Landlord Keg Products" found in the Revised Offers 2-4 (and the extended definition of "Landlord Cask Products" in Revised Offers 3 and 4) does not therefore render these proposed stocking requirements compliant'* (paragraph 71).

[86] '[…] *that Star will not in an MRO proposal (or in MRO negotiations) propose a term which purports to be a stocking requirement which can be met by the purchase of products that are not produced by Star or its group undertakings as defined by statute. This includes (but is not limited to):*

(a) Not including within the scope of the requirement brands other than own-produced beer or cider;

(b) Not including within the scope of the requirement products produced by entities with which Star has an association other than as a group undertaking as defined by statute;

(c) When including definitions in the lease that relate to the scope of a stocking requirement:

(i) using words from the statute to describe concepts (e.g. "produce" not "manufacture") so as not to create a potential difference in meaning from that set out in the statutory framework;

(ii) not use definitions for terms in leases which differ from the relevant definitions set out in the statutory framework (e.g. use of a non-statutory definition of "group undertaking", so as to include things such as shareholding / controlling interest / brewing partnership etc.);

(iii) not introduce new definitions in leases that are not provided for in the statutory framework and which have the effect outlined in (ii) above (e.g. definition of "control" which extends the definition of "Landlord Brand").'

products not produced by a group undertaking, and that it would be expected to agree this in writing. The PCA has seen evidence that Star was internally acknowledging these issues in February 2019.[87] However, between 7 and 13 March 2019, Star received MRO notices from tenants and issued two further MRO proposals including definitions of Landlord Brands that were non-compliant, for some of the reasons already outlined.

55.6 On 13 March 2019, Star responded to the PCA's February letter to accept the commitments set out by the PCA, and draw '*the D/PCA's attention to the revisals* [sic] *made in its template MRO lease'*.

55.7 On 22 March 2019, Star issued one MRO proposal containing definitions of Landlord Brands that failed to meet the statutory definition, by virtue of the use of the terms outlined at paragraphs 54.7-8 above.

55.8 Between March and April 2019 the DPCA issued two further arbitration awards that found that Star's definitions of Landlord Keg and Cask Brands included in MRO proposals, fell outside the statutory definition of a stocking requirement.[88] This was because of references to products "manufactured" by the Landlord, and the use of the definition of a Landlord Cask Brewery outlined at paragraph 54.8 above.

55.9 On 17 April 2019, the D/PCA wrote to Star referring to two sets of ongoing arbitration proceedings, noting that the MRO proposals in these two cases contained some of the non-compliant terms that had been the subject of arbitration awards, and in relation to which the D/PCA had set out their requirements in their 27 February 2019 letter.

56. Evidence: impact on tenants as a result of Star's conduct from 21 July 2016 until 10 July 2019

56.1 Star issued MRO proposals for 110 pubs that included non-compliant definitions of "Landlord Brands" during the period within the scope of the investigation.

56.2 In response to the call for evidence, one tenant expressed confusion as to what brands were included in the extended definitions of Landlord Brands included in MRO proposals.

56.3 Other tenants did not raise concerns about this issue specifically in response to the call for evidence. There was therefore little evidence of a direct impact on tenants of Star's stocking obligations relating to non-Landlord group undertakings (although the potential could remain for disputes and confusion over non-compliant definitions, and what products fall within them, throughout the term of any affected tenancy).

[87] Star's internal "Stocking Discussion Paper" acknowledged '*only produced brands are covered by stocking – JV's where HUK own less than 50% have been deemed not to be group undertakings in awards.*'

[88] See the Weedon arbitration award, issued on 13 March 2019 and the Dunnell arbitration award issued on 4 April 2019.

56.4 Star claimed that the extended definition of Landlord Brands may not necessarily have resulted in a detrimental impact from individual tenants' perspectives.[89] The PCA rejects the premise of Star's argument: the terms "assisted" tenants only insofar as they enabled tenants to comply with stocking terms that were unreasonable, and which themselves did negatively impact tenants – see the findings outlined elsewhere in this report. Irrespective of whether or not there was known direct harm to tenants as a result of these provisions, a non-compliant term cannot be an appropriate remedy for another non-compliant term. Overall Star's approach might have made the term more accessible, but that did not make it lawful.

57. Assessment of Star's conduct

57.1 The definitions of Landlord Brands that were included in Star's template MRO tenancies from 21 July 2016 to 22 March 2019 did not meet the conditions for a stocking requirement. In addition, the PCA has seen variations of each definition included in MRO proposals that do not appear in any template, and which also failed to meet the statutory definitions set out in the Act.

57.2 Extending the definition of Landlord Brands so that it no longer meets the statutory definition of a "stocking requirement" cannot render an otherwise unreasonable stocking term compliant. Star's 60% or 75% stocking terms would not be reasonable simply because the tenant could then stock a wider choice of brands, including brands not produced by the brewer landlord. This subverts the intention behind the stocking requirement clause, and the wording of the legislation, which provided for a brewer to be able to retain its route to market, but not to increase the market share of brands that it does not produce.

57.3 In the Helliwell 2 award in December 2018, the DPCA considered Star's "extended" definition of Landlord Brands, and concluded that a stocking obligation falling outside the statutory meaning would be non-MRO compliant and in breach of the Code. This award made adverse findings regarding the extended definitions as found in Star's template MRO tenancy, and also definitions that had appeared in a small number of non-template proposals (such as those which outlined that a "group undertaking" could include an undertaking with which Star had a brewing partnership). While Star was aware by December 2018 that a variety of definitions included in its MRO proposals were non-compliant, it nonetheless:

(a) only amended its template MRO tenancy to be Code-compliant in March 2019 – nearly four months after the award and following subsequent regulatory correspondence and reminders from the PCA; and

(b) in several MRO proposals until 15 February 2019, "Group Undertaking" was defined in a way that seemed to envision tenants stocking Theakston products (with which Heineken UK had a brewing partnership agreement), despite the DPCA's award finding (and Star's internal recognition in October 2018 that this would not be compliant with the Code – see paragraph 46.4 above).

[89] Star made this comment in relation to the "extended definitions" that were the subject of Helliwell 2.

57.4 Star refused to concede non-compliance in other proceedings subsequent to Helliwell 2. In Weedon, the DPCA ordered Star to set out by 25 February 2019 why it continued to assert that its definitions of "Landlord Cask Brewery" and "Control" – which did not relate only to products produced by the landlord and its group undertakings as defined in statute – met the statutory definition of a stocking requirement, but it did not make submissions. Likewise, in Dunnell, the DPCA ordered Star to provide reasons why an extended definition of Landlord Brands was a stocking requirement, which it declined to do before the issue of the award on 4 April 2019.[90] Even after Star provided formal commitments on 13 March 2019 (following correspondence from the PCA on 27 February 2019) to amend its proposals, it issued one further proposal nine days later on 22 March 2019 containing a non-compliant definition.

57.5 Though in some cases the analysis may appear to involve technical differences, these terms did not mirror the statutory framework and therefore had the potential to create disputes throughout the life of the tenancy. Following the Helliwell 2 award, Star should have immediately appreciated the need to consider the compliance of the definitions of terms in its template MRO tenancies, and all proposals in existence. Given the regulator's concern over the 100% keg terms already expressed to Star by that point, Star's failures to take into account and act upon arbitration awards to date, and the ongoing regulatory interaction which had resulted, the fact that Star failed to act appropriately and consistently was unacceptable. Star showed a casual attitude to compliance, which compounded the PCA's concerns around its behaviour and capacity to apply consistent and compliant processes.

57.6 Star contended to the PCA during the investigation that:

(a) in respect of leases issued very shortly after Helliwell 2, it could not have been expected to have agreed and implemented appropriate amendments in time;

(b) in the three further months before Star changed its template MRO lease to be compliant, it was not ignoring the Code, but seeking to agree a way forward with the PCA to affirm the parameters of a reasonable stocking requirement.

57.7 While the PCA accepts that that Star needed to comply with the statutory timeframes, this would not have precluded Star from reissuing compliant MRO proposals to the relevant tenants and explaining to them the non-compliance of its original proposal. Although it is correct that Star did contact the PCA during this period, the principles from successive awards were sufficiently clear to enable Star to issue compliant proposals (as it seemed to be capable of doing from March 2019) without trying to make this conditional on further approval by the PCA.

57.8 The PCA recognises that following 22 March 2019 Star took steps to amend its template MRO tenancy definitions. Further, as noted at paragraph 38.6 above, the PCA has seen correspondence demonstrating that from 18 April 2019 Star began to make appropriate acknowledgement to tenants of its non-compliance.

[90] As set out at paragraph 38.2 above, the PCA acknowledges that in these proceedings Star had negotiated away from some of the terms included in its initial proposals.

57.9

The PCA finds that the definitions of Landlord Brands included in Star's template MRO tenancies from 2 August 2016 to 13 March 2019, and in one further proposal issued on 22 March 2019, were in all cases not stocking requirements, and were unreasonable and non-compliant terms.

57.10

The PCA also finds that Star breached the Code requirement to seek to agree a tenancy that is MRO-compliant in all cases where, following the DPCA's award in Helliwell 2, it continued to seek to impose terms that extended the definition of a stocking requirement beyond the statutory definition.

Stocking obligations which may influence the re-selling price of products covered by the terms

58. Introduction

58.1 The D/PCA launched the investigation because they had reasonable grounds to suspect that Star included terms that could influence the re-selling price of products within the scope of the purported stocking requirement.

58.2 The PCA focused specifically on the following provisions that were included in template MRO tenancies relating to "Landlord Keg Brands", "Landlord Cask Brands", "PPB Own Beer Brands" and "PPB Own Cider Brands":[91]

> '[Products] *are offered for sale at a reasonable market price taking into account the location and circumstance of the Property and being reasonably commensurate with the pricing of other Products offered for sale.'*

59. Evidence: Star's terms relating to the pricing of Landlord Brands

59.1 Star issued MRO proposals including such a term to 110 pubs between 21 July 2016 and March 2019.

59.2 On 27 February 2019, the PCA wrote to Star in relation to the term outlined at paragraph 58.2 above, stating that:

> *'Any stocking requirement must be referable only to the stocking of the landlord-produced product and not, for example, its sale, and in any event must neither directly nor indirectly control or influence the sale price of non-landlord-produced beer and cider products at the premises. We therefore have concerns about the compliance of this purported stocking requirement within the statutory framework.'*

59.3 Star committed in its response on 13 March 2019:

> *'Not to include in a MRO proposal or negotiations a term which purports to be a stocking requirement and which includes obligations that could influence the price at which products are sold; and*
>
> *'To ensure that all (then) current MRO offers in which a purported stocking requirement includes a term relating to price, that the proposals are Code-compliant – including revising its MRO leases to remove this term and inform tenants of the term relating to price and make the relevant amendments to their leases.'*

59.4 The PCA heard evidence from senior personnel at Star that this term was included in Star's template MRO tenancies to address a concern that MRO tenants might seek to '*game*' a stocking requirement through overpricing Heineken products so as to reduce sales of those products on site.

[91] "PPB Own Beer Brands" and "PPB Own Cider Brands" refer to the Premium Packaged Brands produced by Heineken group undertakings.

60. Evidence: impact on tenants as a result of Star's conduct

60.1 Two respondents to the call for evidence indicated that the relevant term was likely to have been designed to stop tenants increasing prices so that Star could ensure products sold in high volumes, although the PCA has not seen any direct evidence of tenants engaging in this conduct. One of these respondents commented that terms as to pricing in Star's MRO proposals were an *'unwarranted and open ended'* interference in setting the retail price. Price setting would subject tenants to undue pressure on a matter that should be at their discretion, and was characteristic of a managed pub operation rather than a free of tie arrangement.

60.2 The aforementioned responses to the call for evidence also suggested that such a term in a tenancy would reduce choice for tenants around resale prices of products to which the terms applied. The PCA considers that any reduced flexibility on price would risk affecting tenants' business performance in the long term.

61. Assessment of Star's conduct

61.1 Any obligation relating to stocking which does not meet the definition in section 68(7) of the 2015 Act is not a "stocking requirement", and therefore should not be included in a MRO proposal.

61.2 A term which relates to the conditions of resale, in particular resale price, does not meet the definition in the Act and is consequently not a stocking requirement. Star should not have included such a term as a purported stocking requirement in any MRO proposals.

61.3 Star told the PCA late in the investigation that the relevant provision was a commercial term relating to supply arrangements, and did not purport to be a stocking requirement.[92] However, Star included the term in a schedule to its MRO tenancy labelled "Stocking Requirements". In this way, it was presented to tenants – incorrectly – as a term that Star was entitled by statute to include in its MRO proposals. The term also applied only to beer and cider products falling within the stocking obligations, and thus presupposed a right under the tenancy to compel the stocking of landlord products. Star's position reflects a lack of understanding as to what terms amount to a stocking requirement under section 68(7) of the Act. Furthermore, the scope of the investigation considered whether terms purporting to be stocking requirements were in fact stocking requirements and were reasonable.

61.4 In addition, the PCA is concerned that this term may limit a tenant's ability to set its resale prices for certain products. The PCA has seen no evidence that Star engaged further with tenants to enforce this term, nor has the PCA seen evidence of the effect of this term on tenants.

61.4

The PCA finds that terms referring to the resale prices of products covered by the purported stocking requirements in MRO proposals were not stocking requirements, and were unreasonable and non-compliant terms in all cases.

[92] Were the term in question not a stocking requirement, it would still be subject to a test of reasonableness and of commonality under the Code. Star did not seek to suggest that this term is common in free of tie agreements.

Star's culture and engagement with the Code

62. Areas of focus for the investigation

62.1 An important aspect of the investigation has been to consider how the leadership, culture, management structures and processes in place at Star might have caused or exacerbated behaviours that contributed to the breaches of the Pubs Code identified in this report.

62.2 The PCA has identified areas where there is evidence that Star either attempted to comply or did demonstrate compliance with the Pubs Code. Throughout this report, the PCA has recognised where Star implemented changes in its approach between 21 July 2016 and 10 July 2019 designed to address shortfalls in compliance.

62.3 The PCA has, however, identified other areas where further improvements are required in Star's leadership, management structures, and processes and behaviour in relation to its tenants to demonstrate its ability to comply with the Code. Several procedural arrangements that are designed by the Code to ensure compliance warrant further comment insofar as they were relevant to Star's conduct under investigation, and the PCA has made findings and observations in this report in connection with these matters.

62.4 The PCA focused on the following aspects of Star's leadership and management culture:

(a) Star's approach to negotiating with tenants;

(b) the extent to which Star empowered the role of the Compliance Officer prescribed by regulation 42 of the Pubs Code, as well as the roles of other personnel assigned responsibilities for Code compliance;

(c) Star's administrative systems and record-keeping;

(d) the Pubs Code training provided by Star for its personnel – and in particular the extent to which it ensured that Business Development Managers ("**BDMs**") and other personnel who represent Star in negotiations with tenants receive appropriate training on the Pubs Code; and

(e) Star's engagement with the PCA.

Star's approach to negotiating with tenants

63. Introduction

63.1 Meaningful negotiation between the parties involves a willingness to obtain terms that work for both the POB and tenant, and allows the POB the opportunity to listen and respond to the tenant's position.

63.2 The tenant has limited negotiating strength in the MRO process. If the POB made a tenancy offer on the open market, the prospective new tenant would have various options available – including accepting the offer, negotiating different terms, negotiating better terms with one of the POB's competitors or, crucially, walking away. The commercial relationship between the tied pub tenant and the POB on service of a MRO notice is materially different in terms of the options open to the tied tenant, who has a binary choice between staying tied or accepting the MRO offer.

63.3 Where the tenant accepts initial unreasonable terms this might result in adverse trading outcomes that create commercial risks for the tenant, and ultimately lead to the failure of their business and the consequent reversion of the lease to the POB. Where a POB refuses to enter into meaningful negotiations with the tenant on its initial offer (especially where that offer has been non-compliant), this may result in an unnecessary prolonging of the MRO process, to formal dispute resolution via arbitration at the risk of significant cost to the tenant, or to the tenant abandoning the MRO process. Given that in those circumstances the tenant remains tied to the POB, paying a tied rent and tied prices,[93] there are fewer risks for the POB associated with their conduct of the MRO process and approach to negotiations (the costs of arbitration aside) than there are for the tenant.

63.4 The MRO option was introduced as a practical way to ensure that a tied tenant would be no worse off than they would be if they were free of tie. This principle was developed in response to the proven imbalances in risk and reward in the tied relationship. It therefore follows that, where it works as Parliament intended, the MRO provision might reasonably be expected to result in some financial cost to the POB.

63.5 The PCA's statutory advice has augmented Code processes by setting out that POBs must enter '*into meaningful negotiations with the tied pub tenant on the terms of the MRO-compliant agreement*'.[94] Further, POBs must conduct negotiations in '*good faith*'.[95] They:

> *'cannot take advantage of any limitations on the TPT's power to negotiate effectively. The PCA will be likely to find it unreasonable – and therefore not MRO-compliant - for the POB to offer unattractive MRO tenancy terms if the intention is to persuade the TPT to stay tied'.*

[93] Albeit with any required realignment in line with regulations 21 and 28 of the Code.
[94] See PCA statutory advice of December 2017 on complying with the principles of the Pubs Code. POBs must enter into meaningful negotiations to demonstrate compliance with the core Code principle of ensuring that tenants are '*no worse off than they would be if they were not subject to any product or service tie'.*
[95] See the PCA's statutory advice of March 2018 on Market Rent Only-compliant proposals.

64. Evidence: Star's negotiations with tenants

Star's willingness to negotiate stocking terms

64.1 Star's stated internal approach to negotiations was that the template MRO tenancy was intended to serve as a '*starting point for negotiations*' with tied pub tenants.[96] Star's internal policies note further that:

> *'If MRO is triggered the PCA want us to demonstrate meaningful negotiations during this period. If the other side won't engage we need to ensure we can demonstrate we have attempted to.'*

64.2 It is not clear what Star considered to amount to non-engagement by tenants.

64.3 There is evidence that Star shifted its approach away from its template stocking terms in some cases. For example, for the period from 13 March 2018 (the date of the Helliwell 1 award) until 10 July 2019, Star issued 56 initial MRO proposals to 30 pubs, and a further 45 revised MRO proposals to 22 pubs.[97] Star cited various reasons for these revisions, including that in certain cases it implemented changes following arbitration awards, and in other cases amendments arose as a result of '*negotiations*' with the tenant or their representative. The PCA is aware that in some cases Star would have made informal offers of MRO terms in the course of correspondence with tenants, which were not necessarily formalised as part of any MRO proposal.

64.4 The PCA has however seen evidence of Star refusing to engage with tenants. For example, in November 2018, a Star Estates Manager emailed a tied pub tenant's representative with a proposed 60% keg stocking obligation in accordance with Star's stocking policy at the time. Following a comment from the representative that '*the stocking obligation is noted and hopefully open to discussion depending on the rental level we can agree*', the Estates Manager replied to say:

> *'We will not negotiate on the stocking obligation, for obvious reasons this would set a precedent. Our proposal on this is what we consider to be reasonable in the context of the Pubs Code'* […].

64.5 This appeared to contravene Star's statement that the initial MRO proposal would be a starting point for negotiations, and communication to its personnel of the need for meaningful engagement. While Star commented during the investigation that it '*would be extremely concerned if any of its EMs was to represent the business in such terms*', its own disclosure showed that this was the case.

64.6 A number of respondents to the PCA's call for evidence purported as follows:

(a) a tenant perceived that 100% keg stocking obligations were less a negotiating stance and more of '*an instruction to* [Star's] *negotiator to just go in and maintain 100%*';

(b) four separate representatives acting for different tenants seemed to agree that Star characterised its MRO proposals as non-negotiable. The PCA was told that '*negotiations were mainly at a stalemate*' or that there were '*no negotiations*' prior to the proposal being referred to arbitration. One individual was under the impression that terms were agreed

[96] Star Pubs & Bars Rent Event Policies & Procedures guide.
[97] See paragraphs 34.14-16 above for comments on Star's negotiation of proposals containing 100% stocking terms.

with Star, before Star purportedly changed its position. The PCA is most concerned by a representative's claim that an Estates Manager handling negotiations with their tenant had informed them that it was '*company policy that* [Star] *wouldn't negotiate*' (which appears to be supported by the evidence cited at paragraph 64.4); and

(c) another representative who acted in relation to four pubs did say that while on one occasion Star negotiated reasonable terms, on another it '*point blank refused*' during months of attempts to negotiate.

64.7 In practice, Star's template stocking terms were often not a starting point for further negotiations. The evidence from tenants and representatives corroborates the evidence from Star of failures within the organisation to understand or adhere to the stated negotiating policy, and the requirement to negotiate meaningfully.

Star's behaviour towards tenants in negotiations

64.8 The PCA received a number of responses to its call for evidence describing how Star dealt with tenants during negotiations. The concerns these respondents identified were as follows:

(a) three separate tenants who were offered 100% keg stocking obligations referred to feeling '*bullied*' into either settling on terms with Star, or abandoning negotiations altogether. One of these tenants said as follows regarding an initial meeting with an Estates Manager:

> '[…] *I have never had to deal with a meeting like that and I was truly shocked and felt humiliated and bullied and we went away feeling furious and worried for our livelihoods.'*

(b) another tenant alleged that Star behaved intimidatingly, for example by threatening forfeiture of the lease, and raising their voice with the tenant in front of customers. A representative of multiple tenants made a similar claim, stating that although Star would not adopt an aggressive approach in writing, they would '*use getting rid of* [tenants] *at the end of the lease as a bit of a threat that* [they] *will be cast off*', and cited at least two instances where they had witnessed this behaviour; and

(c) a representative for four pubs commented that in their experience, Star's dealings through its external representatives had been professional. However, negotiations were a '*David and Goliath*' situation, with no level playing field between Star as a large commercial organisation, and tenants who often lacked the funds to pursue arbitration proceedings.

64.9 The PCA has not investigated any separate breaches of the Code, or made formal findings based on this evidence, which was not consistent from all tenants who responded to the call for evidence. The PCA nonetheless takes these comments very seriously. At the least they are sufficient to suggest that Star personnel could behave unprofessionally towards tenants, causing genuine distress in some cases. The PCA therefore reiterates in the strongest terms that to be compliant a POB must implement safeguards to ensure that tenants who assert their Code rights are treated fairly by its staff – in accordance with the requirements to negotiate in good faith, comply with the core Code principles, and the POB's regulation 41(4) duties to ensure that its BDMs keep appropriate records of discussions with tied pub tenants.

Transparency with tenants

64.10 The PCA has concerns that Star's Estates Managers, BDMs and other representatives who dealt with tenants often did not negotiate in a transparent and fair way.

64.11 During arbitration proceedings in August 2018 and October 2018, Star asserted that the 100% keg term was a compliant stocking requirement, but at the same time made lower offers in what it claimed to be '*a spirit of compromise*' or '*spirit of negotiation*'. In June 2018, Star had claimed in proceedings to '*reject* […] *any suggestion*' that its stocking requirement failed to meet the statutory definition, but noted it was '*prepared*' to amend its terms.

64.12 By this time, the 100% stocking term from which Star was purporting to be willing to negotiate down had already been found to be non-compliant in numerous arbitration awards (notwithstanding Star's continued commitment to defending it in subsequent proceedings, on which the PCA has made separate findings at paragraph 37.6). By August 2018, Star was in the process of amending its stocking policy in response to D/PCA arbitration awards, and by October these changes had been implemented.[98] What Star presented as '*compromise*' in place of its original 100% proposal was therefore a deliberate misrepresentation of the position – it merely stopped acting in a way that it already knew was non-compliant.

64.13 On 19 September 2018, a Star Estates Manager sent an email to a tenant during the MRO negotiation process, commenting as follows:

> *'The original Version 4 MRO lease that was provided to you was subject to 100% stocking on keg, 60% on cask and 50% on fridge space. We are willing to negotiate from this position, however the lowest I am going to be able to get approval on, would be 75% on Keg as I am not going to be able to agree anything below this level without taking further instruction. During a previous meeting we had discussed a 60% keg stocking, however I was unable to get approval at this level.*
>
> *In practice, you had 6 keg lines when I was last at your pub, 2 of which are Heineken products. You therefore had a 33% stocking level, so would need to alter the product range if you are to exceed the minimum of 75% required. To achieve the minimum requirement of 75% you would need to have 5 lines stocked with Heineken products.'*

64.14 The email omitted that Star had in fact entirely removed 100% keg stocking terms from its MRO proposals on the basis of findings that this was in breach of the Code. This mischaracterisation of Star's position indicates that Star was not dealing fairly with its tenants. In accordance with the policy Star had highlighted at the time to the PCA (see paragraph 64.1 above), the tenant should have been offered a 60% keg stocking requirement on the basis of its existing 33% stocking level.

[98] Action points from a Star Estates Team meeting on 7 August 2018 note that changes to the stocking requirement had been agreed.

64.15 The PCA has seen evidence from mid-April 2019 onwards that Star improved the transparency with which it presented amendments to its MRO proposals. For example, it noted to tenants that certain terms had been found non-compliant, and that it had made revisions in line with commitments provided to the PCA.[99] Accordingly, by the end of the period under investigation Star was meeting the PCA's expectations in at least these cases.

[99] For example, an email dated 18 April 2019 from Star's representatives to a tenant's solicitor stated:

'as a result of recent correspondence between my client and the PCA – my client has committed to ensuring that certain elements of its existing MRO lease precedent are updated, both going forward and in respect of any on-going MRO referrals and negotiations. With this in mind - and whilst I appreciate that the form of lease relating to this property has previously been agreed between the parties – I have updated the form of lease to reflect the commitments that my client has made to the PCA.

In line with the above, please note that the existing form of lease agreed between our clients is not compliant with the Pubs Code and the Small Business, Enterprise and Employment Act 2015, in that the definitions relating to the landlord's brands, and certain other terms, in the stocking obligations do not fully align with the scope and wording of that legislation. The revised form of lease attached seeks to address this and ensure that the form of lease is compliant.'

The role of Star's compliance function

65. Introduction

65.1 As part of the investigation, the PCA considered Star's statutory duties to appoint a compliance officer, whose role is to verify the POB's compliance with the Code.[100] An effective compliance function, implemented properly in accordance with the Code, is necessary to ensure the achievement of the fairness and no worse off principles in relation to Code matters, and to challenge potentially non-MRO compliant dealings with tenants.

65.2 The Code provides that a POB must ensure that a compliance officer:

(a) is provided with the resources necessary to carry out his or her role;

(b) is entitled to contact the BDMs to discuss matters relating to the Code;

(c) makes himself or herself reasonably available to tied pub tenants;

(d) is independent of, and is not managed by, BDMs;

(e) is entitled to discuss with tied pub tenants the reasons for any decisions made by the POB;

(f) is entitled to discuss with the PCA matters relating to the POB's compliance with the Code; and

(g) maintains records of the training received by BDMs.[101]

66. Evidence: The roles of Star's Code Compliance Officer and Code Compliance Manager

Star's Code Compliance Officer

66.1 From the commencement of the Code, Star assigned the duties of the Code Compliance Officer ("**CCO**") to its Property and Strategy Director. This role sits within the leadership team of Star, overseeing its real estate function, investment and repair team, and compliance team.

66.2 The job description in place from October 2016 – prepared and approved by Star's Managing Director – specifies that the role of the Property and Strategy Director includes:

(a) [to] *'lead the governance of organisational compliance to the Statutory code';* and

(b) *'influencing key stakeholders (internal and external) and the Pubs Code Adjudicator to ensure the code is interpreted to the commercial benefit of HUK'.*

66.3 These references to the Code form two out of 11 '*key responsibilities*', which otherwise refer to broader, business-focused objectives, including driving Star's real estate plan '*to generate EBIT'* and *'grow the value of the S&B pub portfolio through acquisition and disposal*'.

[100] Pubs Code, regulation 42(1).
[101] Ibid, regulation 42(2).

66.4 None of the '*priorities / objectives*' part of the job description makes reference to the Code, although a description of the '*organisational context*' for the role does state the responsibility of the CCO to maintain compliance with the Code on behalf of Star.[102]

66.5 A job description in place until October 2016 (i.e. three months after the commencement of the Code) contains no reference to Code compliance responsibilities at all.

Expansion of Star's compliance function

66.6 Although not stipulated by the Code, Star also appointed the role of Code Compliance Manager ("**CCM**") in early 2018, after the acquisition of Punch Taverns made clear the need for additional compliance resource. In late 2018, the current CCM assumed full responsibilities in the role.

66.7 The CCM job description, dated March 2017, includes a number of duties relating to advising on and maintaining Code compliance.[103] It also includes "*measures of success*" that focus on Pubs Code compliance issues, including '*overall SP&B compliance with the code measured by annual Code compliance report*', '*fine avoidance*' and '*number of upheld complaints from the PCA*'. These duties and measures of success do not appear in the CCO's job description.

66.8 Senior personnel at Star informed the PCA in interviews that the CCO role is focused on '*overseeing policies and processes and general compliance within the business*' and '*also engaging with PCA and other CCOs*', whereas the CCM role involves '*implementing and overseeing day to day process*'. Division of Code-related responsibilities can occur on an ad-hoc basis, taking into account the capacity of the CCO and CCM and the demands of the business.

66.9 Since Spring 2019, responsibility for the MRO issuing process sits entirely with the CCM and two direct reporting personnel, drawn from the wider Estates team.

Involvement of the CCO and CCM in the development of Star's stocking policy

66.10 Senior personnel at Star informed the PCA that the CCO would be involved, along with the rest of Star's leadership team, in decision-making regarding Star's stocking policy. The PCA has seen evidence of documents prepared by the CCO and CCM noting changes to Star's stocking requirements based on '*feedback*', regulatory correspondence and guidance from the PCA, and the outcomes of arbitration awards. However, as set out at paragraph 40.5, Star produced no policy documents formalising its approach to stocking outside of training presentations, and no substantive minutes of meetings. Star contended to the PCA during the investigation that its methods of decision-making were typical of a large commercial business, where one would not expect every discussion to be routinely minuted. However, from July 2016 it was incumbent on Star to meet the standards of a regulated entity, rather than an average commercial business. The result was that the PCA had no sight of any detailed process by which decisions relating to stocking were managed.

[102] The job description states: '*Numerous external factors to manage, most notably legislation (Pubs Code) to ensure this is implemented in the spirit of the legislation and ensure that at all times SP&Bs is compliant and leading this conversation.*

[103] These include: *'Working with the Code Compliance Officer to produce SP&B's annual Statutory Code Compliance report, ensure all the data is relevant, accurate and auditable* […] *Produce regular reports tracking compliance and activity against SP&B's procedures and policies, identify areas of risk and non-compliance;* […] *Provide advice and guidance to colleagues around all aspects of the pubs code, MRO process and SP&B's policies and procedures that are connected to it.'*

66.11 When asked whether the compliance of Star's strategy had ever been challenged at executive level, senior personnel told the PCA that such a situation had never arisen (although they said that appropriate reporting lines exist, and procedures are in place, if this were to occur).

66.12 The PCA has seen some evidence of challenge by Star's CCO to decisions proposed by Star's BDMs and Estates Managers. For example, on 10 October 2018, the CCO affirmed that cask products in a stocking requirement '*must be brewed by us* […] *We can't include Theakstons*'.[104]

67. Assessment of Star's conduct

67.1 Verifying Star's compliance with the Code in accordance with regulation 42(1) should be grounded in an objective assessment by the CCO. The role of a CCO entails robust challenge to decision-making within the POB. Where the POB as a whole will naturally be devoted to optimising its commercial agreements and increasing the revenue of its estate, it must enable the CCO to ensure that these aims are achieved in a Code-compliant way, including that no commercial goal or incentive will result in unfair dealing with tied tenants, or making those tenants worse off. The PCA does not consider that there is anything necessarily problematic about any individual within a POB holding both compliance and commercial roles – what is essential is that legal and statutory obligations take primacy, so that the compliance role is enabled within the organisation and not compromised in the pursuit of commercial objectives.

67.2 However, the "Key Responsibilities" section of Star's CCO job description makes only passing reference to applying the Code, and this is specifically in the context of interpreting the Code '*to the commercial benefit of HUK*'. There is consequently no management of any conflict between the statutory responsibilities of the compliance officer required by the Pubs Code, and the commercial objectives of Star's "Property and Strategy Director" role. Star translated the statutory responsibilities of the compliance officer in a subjective and partial way into the job description.

67.3 Further, the two job descriptions of the CCO – neither of which refer once to the title of '*CCO*' or '*compliance officer*' – are indicative that Star did not take the role as seriously as it should, and treated it as an after-thought in its business strategy.

67.4 Overall, the way in which Star framed the role implied that there were limitations on its CCO's ability to verify compliance, and that Star did not facilitate an appropriate level of independent scrutiny in relation to Code matters, including proper challenge to decision-making when necessary. The job description included conflicting objectives which were not managed within it, and there is no evidence of Star having understood and addressed this.

67.5 The PCA recognises that how a POB's compliance functions are carried out in practice is important. However, the PCA has seen only very limited evidence of the independence of the CCO role within Star, and of how Star – including its senior leadership team – empowered the CCO role to secure compliance throughout the business. The PCA recognises that aspects of a POB's day-to-day operations may not always be recorded formally. However, a regulated company should be able to demonstrate compliance when challenged, including

[104] This learning was not applied consistently by Star, as MRO proposals issued as late as March 2019 still included express obligations to stock Theakston products – see paragraph 40.23.

how the statutory compliance officer carries out their functions in practice. Star's wider breaches of the Code identified in this report, viewed alongside the limited examples of direct challenges by the CCO to evidence of non-compliant conduct, indicate that there were substantial issues of culture within the organisation that were unaddressed. This exacerbated the PCA's concerns that the CCO was not enabled to be sufficiently independent to implement and verify Code compliance effectively.

67.6 The PCA's concern about Star's laissez-faire approach to compliance is demonstrated in an email sent by Star's CCO on 23 April 2019. This commented on correspondence from the PCA from 17 April 2019 in relation to MRO proposals that contained non-compliant definitions of Landlord Brands:

> *'We got their letter on 27th Feb. The two MRO leases went out on 28th Feb and 1st March. What do they expect! Both have 60 % stocking – it's the definitions that are not 100% right. This can be amended (and frankly do the tenants care!). Our response is that both contained 60% stocking obligations (not 100%), the definitions were pre-changes to our lease document and only two days after the letter arrived. Changes in documents process are not immediate, we work as quickly as possible to implement changes. Assuming the PCA is happy with our proposed changes we will re-issue the lease. etc'*

67.7 This internal reaction to correspondence from the PCA reflects a lack of respect for Star's obligations under the Code. Star had known since arbitration awards in December 2018 that the relevant terms were in breach of the Code, and noted as such in its "Stocking Discussion Paper". The PCA expects CCOs to be enabled to provide independent internal challenge based on the POB's obligations and regardless of its commercial aims, which this email does not demonstrate and which Star's structures and job description for the role did not support.

67.8

The PCA finds that Star's inclusion of the role responsibility '*to ensure the Code is interpreted to the commercial benefit of HUK*' breached the Code requirement to appoint a compliance officer whose role is to verify compliance.

67.9 The PCA has not seen any evidence to suggest that Star has failed to implement effectively parts (b), (c), (f) and (g) of regulation 42(2) in respect of the role of the CCO.

67.10 Star has expanded the capacity of its Pubs Code compliance function through the creation of the CCM role, working in tandem with the CCO to oversee engagement with the PCA and the Code, as set out above.[105]

67.11 The CCM job description contains more direct references to the obligations set out in regulation 42 than that of the CCO. Although not prescribed by the Code, the CCM role can be considered an additional resource to assist the CCO, demonstrating an attempt by Star to ensure that regulations 42(1) and (2)(a) are implemented effectively. The PCA has seen encouraging evidence of the CCM working with the CCO to attempt to improve the understanding of Code compliance across the business (although the CCM has not been involved in strategic decision-making on Star's stocking policy).

[105] The CCO's job description does not appear to have been updated to ensure a consistent set of objectives for Star's compliance function.

Star's administrative systems and record keeping in relation to MRO proposals

68. Introduction

68.1 During the investigation, the PCA sought evidence from Star in relation to its administrative systems and record-keeping for MRO proposals.

68.2 The PCA's statutory advice of December 2017 on complying with the principles of the Pubs Code, gives guidance on how POBs can ensure that their administrative systems and record keeping comply with the Code. This includes that the PCA expects POBs to have robust internal systems in place to capture the issuing of Rent Proposals, Rent Assessment Proposals, MRO full responses and all records of visits to tied pub premises. The PCA also expects that details of, and actions arising from, Pubs Code conversations with tied pub tenants should be recorded, shared and agreed with the tenant in line with the requirements in regulation 41 of the Code.

69. Evidence: Star's record keeping and version control

69.1 Star told the PCA that prior to September 2018 it did not keep an accurate record of the MRO proposals issued to tenants, and in particular did not save a copy of each proposal as a matter of course. MRO proposals were sent out in hard copy only and not scanned onto Star's systems.

69.2 The PCA has seen evidence from April 2018 of Star Estates Managers requesting clarification from the CCO and CCM as to the correct version of the MRO tenancy in circulation at the time.

69.3 In May 2018, members of Star's senior leadership highlighted problems with the version control of template MRO tenancies. These emails referred to junior staff issuing the wrong template to tenants, issues around '*attention to detail*', and a need for more training on '*technical nuances*'. Star told the PCA that what it termed to be a '*legacy lease issue*' meant that tenants seeking to exercise the MRO option might have received an incorrect version of Star's template MRO tenancy in use at the relevant time.[106]

69.4 The PCA has seen evidence of Star sending older, potentially non-MRO compliant versions of its template MRO tenancy on specific occasions:

[106] In April 2018, Star introduced amendments to its template MRO tenancy, which included the temporary removal of the cask stocking obligation and ability for the tenant to request consent to stock one non-Landlord Keg Brand (see further **Annex A**). The updated template should have replaced all previous template tenancies and been the only template sent to tenants who requested the MRO option. However, Star could not confirm the exact version of any MRO template tenancy which was sent out to tenants who requested the MRO option any time prior to September 2018. In regulatory correspondence with the PCA in March 2019, Star said it had '*made the assumption that all MRO leases issued prior to September 2018 contained a 100% Keg stocking term*'.

(a) on 17 July 2018, Star's CCM sent an email commenting on two '*odd*' referrals for arbitration, and surmised that '*the old template has been sent again*.' Star informed the relevant tenant in one of these proceedings on 24 September 2018 – two and a half months after the initial referral for arbitration and following service of the Statement of Claim – that '*the incorrect form of lease was issued*';

(b) another tenant received the pre-20 April 2018 version of Star's template MRO proposal on 3 May 2018. This contained a 60% cask stocking term, which Star had by that point removed from its template. The tenant referred the proposal for arbitration on the basis that this obligation (along with other terms of the proposal, including a 100% keg stocking term) was unreasonable. Star served a Defence on 7 August 2018 contending that the stocking requirement was reasonable, without acknowledging that the wrong proposal had been sent, and that the stocking term it contained had not been current for almost four months. A week later, Star noted the error to the DPCA during a case management conference; and

(c) on 23 August 2018, Star's CCM noted again in an internal email that MRO proposals had been referred to the PCA '*on unfair terms, terms that would have been acceptable had the new lease been sent out.*' The CCM identified 10 pubs for which MRO negotiations were ongoing, that Star believed were affected. Star made no attempt to ensure that all of the affected tenants received the current version of the MRO template straight away and as a matter of compliance, but rather dealt with them on a case-by-case basis depending on Star's assessment of the state of negotiations with individual tenants.

69.5 Star's justification to the PCA during the investigation for not issuing standard correspondence to all of the tied pub tenants affected, was that in circumstances where negotiations on the terms of a tied tenancy were at a late stage, providing a newer version of the MRO tenancy would, in its opinion, have had no bearing on the negotiations and could simply have confused or prolonged matters unnecessarily, where parties had already reached (or were close to reaching) agreement on terms.

69.6 Star further argued that in cases where negotiations were at an earlier stage, and it was considered appropriate to provide a newer version of the MRO tenancy, any communication in relation to this issue was already likely to have taken place during face-to-face or telephone discussions with the tenants in question.

69.7 The PCA has seen some evidence of Star deciding to reissue the correct form of tenancy in a selection of – but not all – cases. In one instance, an Estates Manager noted that they would '*probably look to use the new lease as a negotiation tactic rather than simply sending it over*'.

69.8 From September 2018, Star's legal advisers, following instructions from the relevant Estates Manager, prepared each MRO proposal. Where previously the Pubs Support team would handle MRO notices, Star reports that its compliance team now retains oversight of the MRO process. It now also saves each individually issued MRO proposal to its document management system.

70. Assessment of Star's conduct

70.1 Star's administration in relation to MRO proposals was insufficient. It had poor systems in place to maintain records, and this seemed to be compounded by inadequate training or attention to detail on the part of its personnel.

70.2 These failures caused confusion around the MRO process for Star's tenants. They also led in part to the inclusion of unreasonable stocking terms in Star's MRO proposals.[107] Star's own administrative errors mean that the PCA cannot know for certain the contents of each MRO proposal issued to tenants. However, it is clear from the referrals for arbitration discussed at paragraph 69.4 above that the version control errors exacerbated some of Star's Code breaches, and had a negative impact on tenants.

70.3 Star's CCO claimed to the PCA in October 2018 that Star '*sought to replace the lease issued in such instances with a re-revised version as soon as possible following the issue becoming apparent*', which in most cases was on '*receipt of a PCA referral form*'.

70.4 The evidence demonstrates that this was an inaccurate representation of Star's conduct. Star failed for months to inform tenants or the PCA in arbitrations of its version control errors. This resulted in wasted time and costs for tenants. Star was aware of some of the specific tenants affected from at least July 2018, yet took two and a half months in one arbitration to notify the tenant, and in other proceedings served a Statement of Case without acknowledging that it was defending the wrong tenancy template. Its reactive response to the issue was inconsistent and insufficient. If Star had conceded the errors openly, this could have resulted in costs arrangements more favourable to tenants, and likely shorter negotiations and arbitration proceedings.

70.5 The PCA rejects as a matter of the core Code principles that it is ever fair for a POB to unilaterally decide to withhold information relevant to compliance from a tenant with whom it is in negotiations under a Pubs Code provision, on the basis that this information would be immaterial to the negotiations. A key objective of the Code is to ensure that a tenant pursuing both a tied and MRO rent in parallel will have an opportunity to compare offers. Star knew that certain MRO proposals issued to tenants were likely to have been on unfair, non-compliant and outdated terms, and that tenants lacked this information.

70.6 Further, the PCA rejects the suggestion that Star was in a better position in these circumstances to decide what a tenant did or did not need to see, or whether information would be useful to the tenant in the given circumstances. It was not for Star to make the judgement on behalf of tenants as to what was material to the tenant's choice. Such information might have caused a tenant who was about to conclude a new tied tenancy because the MRO offer on the table was unacceptable to reconsider that decision; and would have been relevant in all cases to the tenant's negotiation strength and to costs.

70.7 A compliant POB would have notified tenants of its errors, and the nature of these, as a matter of course, so that tenants could make their own judgements as to the effect, if any, on negotiations and in relation to the terms and costs of arbitration proceedings.

[107] Including 60% cask stocking terms between April and September 2018 that the PCA has found at paragraph 45.10 above to be unreasonable.

Star's Pubs Code training

71. Introduction

71.1 As part of the investigation, the PCA reviewed Star's approach to Pubs Code training. Regulation 41(1)(b) of the Code states that a POB must ensure that each of its BDMs – defined as including any person who represents the POB in negotiations with tied pub tenants on matters including rent, repairs and future business plans – is provided with appropriate training in relation to the requirements of the Code at least once every 12 months. Regulations 43(1) and (6)(d) require the compliance officer to prepare a compliance report, including a detailed and accurate account of training and guidance offered to employees in relation to the Code.

71.2 Training, when implemented effectively, should ensure that all employees of a POB act in accordance with the core Code principles, including in relation to devising stocking policies, and issuing and negotiating stocking terms. Sufficient training for appropriate members of staff can help to demonstrate fair and lawful dealing on the part of POBs.[108]

72. Evidence: Star's staff training

72.1 Star provided the PCA with evidence of the approach it adopted towards training BDMs and other staff. This included both mandatory on-boarding training and annual refresher training in accordance with its statutory duties, as well as less formal training at team meetings and similar sessions. Star's CCO has always had oversight of the content of Pubs Code training modules, and more recently the CCM has assisted with training. The PCA understands that, in accordance with Code requirements, Star's BDMs and Estates Managers are not allowed to engage in discussion with any tenant regarding tenancy matters until they have successfully completed Pubs Code training.

72.2 Star trained its personnel on negotiating MRO tenancies, the requirements of the Code for proposed MRO tenancies and Star's approach to stocking terms in MRO tenancies. The PCA saw evidence that Star's training policies and procedures are updated following changes to the legislation and guidance, and learnings by the business.[109] Many of Star's training materials provide examples of how the Code should be applied in practice, by referencing Star's stocking policies at the relevant time.[110]

[108] See the PCA's advice of December 2017 on complying with the principles of the Pubs Code.

[109] For instance, one email from Star's CCO commented in January 2018 that the content of Star's training would '*need to be updated to reflect*' new guidance by the PCA.

[110] For example, on 16 April 2018, around the time Star changed to Version 2 of its MRO stocking policy, all personnel at Star were emailed with a summary table of the amendments.

73. Assessment of Star's conduct

73.1 The PCA is satisfied that Star has attempted to institute a formal training programme adhering to the requirements of regulation 41(1)(b) of the Code. It is prima facie compliant that Star's annual testing applies to all of its employees, that higher standards are set for personnel in roles where the Code could apply, and that Star takes follow-up action where appropriate, if employees do not meet training standards. The PCA also accepts that Star sought to ensure that its training programmes reflected the latest guidance from the PCA.

73.2 The PCA is concerned however about the implications of some evidence regarding the actual effectiveness of Star's Code training programme. It is telling that, as identified by Star's own leadership team, '*real engagement*' by Star's staff was '*questionable*'.[111] This reflects evidence that the PCA has seen of a lack of understanding within the organisation of Star's stocking policy from across the period under investigation. By way of limited example, as noted in this report:

(a) on numerous occasions, as a result of its version control error or otherwise, Star issued MRO proposals including non-compliant terms that did not match its template in place at the time (see paragraphs 68-70). A greater grasp of Star's stocking policy across the business could have helped to mitigate the extent of these problems; and

(b) despite the correct understanding by Star from at least December 2018, and an internal decision not to specify Theakston in its MRO proposals from October 2018, Star proposed stocking requirements relating to Theakston products on 4 March 2019 (see paragraph 40.23).

73.3 This suggests that in the early life of the Code Star failed to provide suitably effective training, and that there was a lack of meaningful engagement with the training by staff. The PCA does appreciate that Star acknowledged issues, and took a pro-active approach to improve its staff engagement with further training.

73.4 In addition, the content of Star's training programme did not always reflect a Code-compliant position. Training materials should set out a POB's interpretation of the legislation, and the policies that are developed from that interpretation. As established in this report, Star adopted a non-compliant approach to stocking throughout the period under investigation. Star summarised its policy in its training materials; for example, a presentation dating from January 2017 entitled "New starter training" set out a '*Brand Stocking Policy*' that, with some exceptions, keg products would consist of '*exclusively Heineken UK brands*'. As such, for as long as Star's stocking policy remained non-compliant with the Code, an incorrect position was perpetuated by its training materials (albeit the PCA recognises that this was not a function or failure of the training, insofar as Star considered its approach at any relevant time to be compliant).

[111] An internal presentation from November 2018 circulated among Star's leadership team noted that '*all roles within SP&B undertook the online module but levels of "real" engagement levels* [sic] *questioned*'. The presentation noted a number of possible solutions, including: *'Re-brief to EMs and RES with requirements and consequences' Introduce compliance measurement in other areas of the business'.*

Star's engagement with the PCA

74. Evidence: Star's regulatory engagement with the D/PCA

74.1 For the reasons outlined already at paragraphs 31.10-12, for a POB the balance of risk and reward is likely to lie in favour of keeping tenants tied. It is therefore incumbent on the POB to behave reasonably and in line with Code requirements in its dealings with tenants who request the MRO option. The personnel most acutely aware of the POB's Code obligations – and therefore responsible for perpetuating a compliant culture across the organisation – will be its leadership.

74.2 The PCA acknowledges the evolution of Star's approach to compliance towards the latter end of the period under investigation. Various changes implemented by Star to its stocking policy are acknowledged at paragraph 40.24 In addition, the PCA understands (by way of limited example) that:

(a) in April 2018, Star began to centralise its communications internally and with tenants in relation to Pubs Code matters;

(b) in November 2018, strategic internal Pubs Code meetings commenced, including Star's CCO, CCM, senior in-house legal counsel and senior Star personnel; and

(c) structured fortnightly calls among Star's senior leadership (which included its compliance function and HUK legal counsel) to discuss Pubs Code issues and ongoing arbitration cases, began in January 2019. Prior to this time, the PCA was told that calls took place on an ad hoc basis.

74.3 Across the entire period under investigation however (and as noted at paragraph 40.5), Star was unable to produce a formal documented stocking policy, or minutes of any meetings among its leadership or "Pubs Code sub-group" discussing stocking requirement issues. The PCA is therefore unable to ascertain the degree to which compliance issues were raised and monitored at senior level, and the extent to which there were attempts to address these. Further, such failures of record-keeping made it difficult for the PCA to engage with Star prior to and during the investigation itself, about the rationale for its decision-making. The absence of records compromises the ability of Star to account to the regulator about how it has discharged its statutory duties.

74.4 Irrespective of the lack of documented discussions regarding stocking issues, failures of leadership and management are very likely to have contributed to the breaches identified in this report. Many instances of unreasonableness could have been avoided, if Star had devised a stocking policy mindful of tenants' Code rights and its obligations as a regulated entity, and implemented effective processes to ensure Code-compliant decision-making in respect of individual pubs.

74.5 Star's failure to comply with the Code over a period of many years was compounded by its failure to engage frankly with the PCA in response to the regulator's interaction in respect of stocking terms (this is regardless of whether Star could be said to be a responsible business in other respects that were not the focus of the investigation, or that do not fall under the remit of the Code and PCA). During an extended period of regulatory correspondence that preceded the launch of this investigation, Star made statements to the PCA about matters of importance that were inaccurate and inconsistent, including:

(a) on 3 October 2018, Star told the PCA in regulatory correspondence that since identifying that tenants had received non-compliant terms, it had '*sought to replace the lease* […] *as soon as possible following the issue becoming apparent and has provided an explanation to the tenant.*' However, no generic correspondence was in fact issued to tenants, nor did Star replace the proposal in situations where it did not consider it to be relevant to its negotiation with the tenant. In some cases where Star did inform tenants of the errors, it took two and a half months to do so after initially becoming aware of the problem. This incurred unnecessary costs where tenants referred the terms of the relevant MRO proposals for arbitration. In one case, an Estates Manager noted that they would use the correct form of MRO proposal as a '*negotiation tactic*' with the tenant;

(b) on 1 February 2019, Star stated to the PCA that in the absence of bilateral discussion as to the scope of Star's proposed stocking requirements, '*the boundaries of what should and should not be considered as a reasonable stocking requirement will take time to be established. / That process could take place by virtue of continued referrals and awards – effectively "trial and error"*'. While the PCA recognises that Star was seeking to engage with the regulator in relation to compliance, the PCA considers that there was no excuse for suggesting that there could be a '*trial and error*' approach to compliance, or that boundaries sought by Star were not yet established in relation to what should be considered as a reasonable stocking requirement. The D/PCA's awards had been consistent as to the approach POBs must take to considering reasonableness, and in their application of the law on stocking (including the statutory definition of a stocking requirement). Star had expressed 10 months earlier the importance of apprehending '*golden threads*' from awards. In light of the time, cost and disproportionate burden of arbitration on tenants, it was unacceptable for Star to suggest that arbitration could have been used as a means to test approaches to stocking (as opposed to proposing a reasonable stocking requirement at the outset);

(c) in a letter from Star to the PCA on 13 March 2019:

(i) Star claimed that it had always considered that it proposed and defended the terms of its stocking requirements based on its understanding of the law and policy at the time. Despite this, following the D/PCA's awards that Star's stocking terms did not meet the statutory definition of a stocking requirement and were non-compliant and unreasonable, Star had continued to defend identical terms in pending arbitration proceedings, and in ongoing negotiations (see paragraphs 35-37 above);

(ii) Star gave the PCA a number of non-conditional commitments to change various practices identified as being non-compliant. Several days later, Star issued a MRO proposal containing stocking terms that contravened those commitments (see paragraph 55.7 above). After further warnings from the PCA about its conduct on 29 April 2019, Star wrote to the PCA seeking to make its commitments conditional on further acceptance or approval by the PCA; and

(iii) Star also said that owing to the capabilities of its administration systems at the relevant time, it had unfortunately been impossible for Star to identify the exact terms of every MRO proposal issued to a tenant prior to September 2018, and that it had '*made the assumption that all MRO leases issued prior to September 2018 contained a 100% Keg stocking term*.' Previously, in its letter of 3 October 2018, in response to the DPCA's enquiry, it had provided an unequivocal answer that '*all of the MRO leases which Star have offered prior to September of this year contain a* [100% keg term].' It had not advised the PCA of its lack of records and its assumption that therefore underpinned this statement.

74.6 This demonstrates a lack of respect and regard for the core Code principles and for Star's duties as a regulated entity – duties which it failed take sufficiently seriously, to the detriment of tied tenants in its estate.

74.7 The PCA expects Star to make appropriate investment of time, cost and resource to ensure fairer outcomes for tenants in accordance with the core Code principles.

Annex C
Star's response regarding third party evidence

75. Star responded as follows to several paragraphs of the PCA's draft report:

75.1 Paragraphs 33.2(c)-(d):

> *'Whilst* […] *Star does not have access to the PCA's evidence file to be able to assess submissions received from tenants (including those reportedly received from former Punch tenants), the assumption should not be made that all former Punch premises were moving from a 0% stocking to a 100% stocking of HUK keg products overnight. Many of these premises already stocked Heineken brand products and, given the provenance and reputation of such products, were unlikely to be disadvantaged by being required to continue to stock these brands.'*

75.2 Paragraph 41.2:

> *In suggesting that Star's tiered approach had the potential to be detrimental to tenants, the PCA also refers to evidence received by the PCA from individual tenants during the course of the investigation. Whilst Star does not know the identity of the tenants or pubs referred to and therefore has not had the benefit of understanding the wider context of these particular claims and, in particular, any substantiated evidence that might sit behind them (if any), it would make the following points in respect of those concerns relating generally to the tiered approach:*
>
> […]
>
> *(ii) in respect of paragraph 41.2(d) of the Draft Report, Star considers that, without further specific evidence, this claim is too generalised, and insufficient, to support a finding that Star did not take into account the circumstances of any individual pub – indeed* […] *there are numerous cases that Star can point to where it actively engaged with the tenant to reflect its concerns; and*
>
> *(iii) in respect of paragraph 41.2(g) of the Draft Report, a tenant refers to the impact of a "wholesale change from having complete freedom" on stocking, albeit Star finds this difficult to reconcile with the tied relationship that the tenant would have been subject to prior to its MRO request, under which its stocking would (presumably) be limited to brands specified in the landlord's price list.'*

75.3 Paragraph 41.2(e):

> *'It is unclear to Star how a 60% keg requirement might require the tenant to (or indeed, why the tenant might choose to) remove its two best-selling lagers, especially in circumstances where the tenant would enjoy flexibility in respect of 40% of its keg brands. The basis of the tenant's belief that Heineken's products are "unpopular in the particular region" is also unsubstantiated and unrealistic given Heineken's range of keg brands. Notwithstanding this, Star considers that the evidence from this tenant that "… in negotiations Star agreed to remove some of the original obligations…" is supportive of Star's assertion that Star could (and often did) amend its stocking obligations in light of the tenant's concerns'.*

75.4 Paragraph 56.2:

'the PCA references one tenant having "expressed confusion as to what brands were included in the extended definitions of "Landlord Brands"" and notes that other tenants did not raise concerns about this issue specifically in the call for evidence […]*. On the narrative provided Star has no ability to test this assertion* […]*'*

75.5 Paragraph 64.6:

'The PCA refers to a single email exchange between an EM and a tenant (paragraph 64.4 of the Draft Report) to support this proposition, whilst Star also notes the PCA's reference to respondents to the PCA's call for evidence who provided commentary (paragraphs 64.6 (a) – (d) of the Draft Report). […] *Star is unaware of the identity of these respondents, and whether they relate to existing Star tenants / their representatives or other third parties. In the absence of this information, it is impossible for Star to make the necessary internal investigations to confirm whether or not, in any negotiations with any Star tenants who may have provided these comments, Star's proposals were treated as non-negotiable (paragraph 64.6(b) of the Draft Report). Star would be extremely concerned if any of its EMs was to represent the business in such terms.'*

75.6 Paragraphs 64.8-9:

'The PCA […] *states that evidence it has seen suggests "that Star personnel could behave unprofessionally towards tenants, causing genuine distress in some cases".*

Star is extremely concerned by this comment, as it expects the highest level of professionalism from its employees and takes very seriously any suggestion that any employee fell below the standards Star demands.

Star is, however, unable to properly assess, comment on or indeed internally address the alleged instances of unprofessional behaviour as the material on which the PCA relies in support of its assessment of Star's approach to tenants in negotiations has not been disclosed to Star.

However, Star is concerned that the comments reproduced at paragraph 64.8 of the Draft Report may not be objective, and appear to be selective. Star notes in particular that the quotation at paragraph 64.8 that a tenant had said that negotiations left them "shocked […] *humiliated* […] *furious and worried for* [their] *livelihoods" appears to pick out individual (negative) words from a longer statement. Star (and other readers) clearly cannot assess whether these comments are fair, or supportive of the PCA's conclusion, without viewing them in context."*[112]

[112] The PCA's final report now includes a fuller quotation from the affected tenant.

75.7 Paragraph 64.8(a):

> *'Star is unaware of any tenants who "abandoned the MRO process altogether" based on its "conduct…in protracted negotiation periods or arbitration proceedings", and absent knowledge of the identity of those tenants / premises, is unable to provide further commentary on this point, given the absence of this specific detail within the Draft Report.*
>
> […]
>
> *if it were correct that Star consistently "bullied" tenants, this would have been reflected in the responses from tenants.'*

Annex D
The Pubs Code etc. Regulations 2016

STATUTORY INSTRUMENTS

2016 No. 790

ENTERPRISE, ENGLAND AND WALES

The Pubs Code etc. Regulations 2016

Made - - - - 20th July 2016

Coming into force in accordance with regulation 1(b)

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SCHEDULE 1 — Information specified for the purposes of a new agreement etc.
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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 42(1) and (4), 43(1), (3) and (5) to (9), 44, 45, 47(1) to (3), 48(3), 69(6) and (8)(b), 71(1)(a) and (2) and 161(2) of the Small Business, Enterprise and Employment Act 2015(**a**).

In accordance with sections 73(1) and 161(4) of the Small Business, Enterprise and Employment Act 2015, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1
General

Citation, commencement and extent

1. These Regulations—

(a) may be cited as the Pubs Code etc. Regulations 2016;

(b) come into force on the day after the day on which they are made; and

(c) extend to England and Wales.

(**a**) 2015 c.26.

General interpretation

2.—(1) In these Regulations—

"annual percentage change in the consumer price index" means the annual change in the general index of consumer prices (for all items), as published by the Statistics Board(**a**) with the identifying code D7G7;

"business development manager" has the meaning given in regulation 41(6);

"commencement date" means the date on which these Regulations come into force;

"compliance officer" means a person who is appointed under regulation 42(1);

"fixed share of turnover" has the meaning given in regulation 55(4);

"full response" has the meaning given in regulation 29(5);

"gaming machine" has the meaning given in section 235 of the Gambling Act 2005(**b**);

"initial or revised rent" has the meaning given in regulation 16(1)(a);

"insurance charge" has the meaning given in regulation 46(1);

"investment agreement" has the meaning given in regulation 56(3);

"MRO notice" has the meaning given in regulation 23(1);

"MRO rent" means the rent or money payable in lieu of rent payable in respect of the tied pub tenant's(**c**) occupation of the premises concerned under an MRO-compliant tenancy or licence(**d**);

"new agreement" means a new tenancy of, or a new licence to occupy, premises which are, or are expected to be, a tied pub but does not include a short agreement or the renewal of a tenancy or licence;

"new rent" has the meaning given in regulation 20(1)(a);

"period of response" has the meaning given in regulation 29(7) to (9);

"protected 1954 Act tenancy" means a tenancy—

(a) to which Part 2 of the Landlord and Tenant Act 1954(**e**) applies, and

(b) which is not a tenancy in relation to which the provisions of sections 24 to 28 of that Act have been excluded by virtue of section 38A(1) of that Act;

"pub franchise agreement" has the meaning given in regulation 55(2);

"pubs entry training" has the meaning given in regulation 9(4);

"relevant share of turnover" has the meaning given in regulation 55(5);

"rent proposal" means a proposal made in accordance with Part 3;

"rent assessment proposal" means a proposal made in accordance with Part 4;

"rent review date" has the meaning given in regulation 21(12);

"revised response" has the meaning given in regulation 33(3);

(**a**) The Statistics Board is established by section 1 of the Statistics and Registration Service Act 2007 (c.18). In Welsh, the Statistics Board is known as Y Bwrdd Ystadegau.
(**b**) 2005 c.19.
(**c**) Section 70(1) of SBEEA 2015 defines "tied pub tenant".
(**d**) Section 43 of SBEEA 2015 defines "MRO-compliant". Section 70(2) of SBEEA 2015 defines "tenancy" and "licence".
(**e**) 1954 c.56. Part 2 was amended by: paragraph 29 of Schedule 1 to the Agriculture Act 1958 (c.71); sections 1 to 14 of the Law of Property Act 1969 (c.59); section 47 of, and Schedule 3 to, the Land Compensation Act 1973 (c.26); Schedule 26 to the Housing Act 1980 (c.51); paragraph 4 of Schedule 33 to the Local Government, Planning and Land Act 1980 (c.65); paragraph 3 of Schedule 13, and paragraph 21 of Schedule 14, to the Agricultural Holdings Act 1986 (c.5); section 149 of, and Schedule 7 to, the Local Government and Housing Act 1989 (c.42); sections 1 and 2(2) of the Landlord and Tenant (Licenced Premises) Act 1990 (c.39); paragraph 10 of the Schedule to the Agricultural Tenancies Act 1995 (c.8); paragraphs 3 and 4(2) of Schedule 1 to the Landlord and Tenant (Covenants) Act 1995 (c.30); sections 35(2) to (4) and 36(1) of the Small Business, Enterprise and Employment Act 2015 (c.26); and S.I. 1990/1285, 2003/3096, 2009/1307, S.I. 2009/1941.

"SBEEA 2015" means the Small Business, Enterprise and Employment Act 2015;

"Schedule of Condition" means the provisions in a tenancy or licence which specify the condition of the premises to which the tenancy or licence relates;

"short agreement" means—

(a) a tenancy at will which entitles a tied pub tenant to occupy a tied pub; or

(b) any other contractual agreement entitling a tied pub tenant to occupy a tied pub for no more than 12 months;

"significant increase", in relation to the price at which a product or service which is subject to a product or service tie(**a**) is supplied to a tied pub tenant, has the meaning given in regulations 3 to 6;

"subsequent proposed tenancy or licence" has the meaning given in regulation 35(2);

"the RICS" means the Royal Institution of Chartered Surveyors;

"the RICS guidance" means guidance issued by the RICS, as amended from time to time;

"trigger event" has the meaning given by section 43(9) of SBEEA 2015 and regulation 7.

(2) For the purposes of these Regulations, a tied pub tenant receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant when the tied pub tenant receives the invoice the issue of which constitutes such an increase.

Significant increase in price: beer

3.—(1) For the purposes of these Regulations, a "significant increase" in the price of a beer product ("the relevant product") supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product ("the relevant invoice") where—

(a) the relevant product has previously been supplied to the tied pub tenant,

(b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and

(c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A-B}{B}\times 100\right) > C+3$$

where—

A is the amount that comparison period beer would have cost the tied pub tenant if it had been invoiced at current period prices;

B is the amount that comparison period beer cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

(a) "beer product" means a product which is beer and which is supplied under a product tie(**b**);

(**a**) Section 72(1) of SBEEA 2015 defines "product or service tie".
(**b**) Section 72(1) of SBEEA 2015 defines "product tie".

(b) "comparison period beer" means all beer products invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any beer product for which no invoice was issued to the tied pub tenant in the current period;

(c) "current period" means the period of 4 weeks ending with the day on which the relevant invoice is issued;

(d) "the comparison period" means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;

(e) "current period price", in relation to a beer product, means the price of that product on the last invoice for that product issued during the current period;

(f) "invoice for a beer product" includes an invoice which covers (in addition to beer products) products other than beer products, or services; and references to a beer product being invoiced are to be read accordingly;

(g) "the relevant annual percentage change in the consumer price index" means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant product for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

(a) excluding value added tax and excise duty; and

(b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, beer products invoiced to the tied pub tenant are different beer products if—

(a) they have different names on the invoice or invoices in question, or

(b) they are invoiced in different units (for example, in units of different size or capacity).

Significant increase in price: alcoholic drink other than beer

4. For the purposes of these Regulations, a "significant increase" in the price of an alcoholic drink product ("the relevant product") supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product ("the relevant invoice") where—

(a) the relevant product has previously been supplied to the tied pub tenant,

(b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and

(c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A-B}{B}\times 100\right) > C+8$$

where—

A is the amount that comparison period alcoholic drink would have cost the tied pub tenant if it had been invoiced at current period prices;

B is the amount that comparison period alcoholic drink cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

(a) "alcoholic drink product" means a product which—

(i) is an alcoholic drink other than beer, and

(ii) is supplied under a product tie;

(b) "comparison period alcoholic drink" means all alcoholic drink products invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any alcoholic drink product for which no invoice was issued to the tied pub tenant in the current period;

(c) "current period" means the period of 4 weeks ending with the day on which the relevant invoice is issued;

(d) "the comparison period" means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;

(e) "current period price", in relation to an alcoholic drink product, means the price of that product on the last invoice for that product issued during the current period;

(f) "invoice for an alcoholic drink product" includes an invoice which covers (in addition to alcoholic drink products) products other than alcoholic drink products, or services; and references to an alcoholic drink product being invoiced are to be read accordingly;

(g) "the relevant annual percentage change in the consumer price index" means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant product for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

(a) excluding value added tax and excise duty; and

(b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, alcoholic drink products invoiced to the tied pub tenant are different alcoholic drink products if—

(a) they have different names on the invoice or invoices in question, or

(b) they are invoiced in different units (for example, in units of different size or capacity).

Significant increase in price: products other than alcoholic drink

5.—(1) For the purposes of these Regulations, a "significant increase" in the price of a non-alcohol product ("the relevant product") supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product ("the relevant invoice") where—

(a) the relevant product has previously been supplied to the tied pub tenant,

(b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and

(c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A-B}{B}\times 100\right) > C + 20$$

where—

A is the amount that comparison period non-alcohol products would have cost the tied pub tenant if they had been invoiced at current period prices;

B is the amount that comparison period non-alcohol products cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

(a) "non-alcohol product" means a product which—

(i) is a product that is not an alcoholic drink, and

(ii) is supplied under a product tie;

(b) "comparison period non-alcohol products" means all non-alcohol products invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any non-alcohol product for which no invoice was issued to the tied pub tenant in the current period;

(c) "current period" means the period of 4 weeks ending with the day on which the relevant invoice is issued;

(d) "the comparison period" means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;

(e) "current period price", in relation to a non-alcohol product, means the price of that product on the last invoice for that product issued during the current period;

(f) "invoice for a non-alcohol product" includes an invoice which covers (in addition to non-alcohol products) products other than non-alcohol products, or services; and references to a non-alcohol product being invoiced are to be read accordingly;

(g) "the relevant annual percentage change in the consumer price index" means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant product for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

(a) excluding value added tax; and

(b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, non-alcohol products invoiced to the tied pub tenant are different non-alcohol products if—

(a) they have different names on the invoice or invoices in question, or

(b) they are invoiced in different units (for example, in units of different size or capacity).

Significant increase in price: services

6.—(1) For the purposes of these Regulations, a "significant increase" in the price of a service ("the relevant service") supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that service ("the relevant invoice") where—

(a) the relevant service has previously been supplied to the tied pub tenant,

(b) the unit price of that service on the relevant invoice is higher than its unit price on the most recent previous invoice for that service issued to the tied pub tenant, and

(c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant service were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A-B}{B}\times 100\right) > C + 20$$

where—

A is the amount that comparison period services would have cost the tied pub tenant if they had been invoiced at current period prices;

B is the amount that comparison period services cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

(a) "service" means a service which is supplied under a service tie(**a**);

(b) "comparison period services" means all services invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any service for which no invoice was issued to the tied pub tenant in the current period;

(c) "current period" means the period of 4 weeks ending with the day on which the relevant invoice is issued;

(d) "the comparison period" means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;

(e) "current period price", in relation to a service, means the price of that service on the last invoice for that service issued during the current period;

(f) "invoice for services" includes an invoice which covers (in addition to services) products; and references to services being invoiced are to be read accordingly;

(g) "the relevant annual percentage change in the consumer price index" means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant service for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

(a) excluding value added tax; and

(b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, services invoiced to the tied pub tenant are different services if—

(a) they have different names on the invoice or invoices in question, or

(b) they are invoiced in different units (for example, in units of time of different lengths).

Trigger events

7.—(1) For the purposes of Part 4 of SBEEA 2015 (and so of these Regulations) an event is a "trigger event", in relation to a tied pub tenant, only if (in addition to meeting the conditions in section 43(9)(a) to (c) of SBEEA 2015)—

(a) conditions A and B are met; and

(b) either—

(i) the event does not affect pubs other than the tied pub; or

(ii) conditions C and D are met.

(2) Condition A is that the effect of the event is to decrease the level of trade that is reasonably expected to be achieved at the tied pub in each month over a continuous period of 12 months.

(3) Condition B is that the event is not—

(a) connected to the personal circumstances of the tied pub tenant;

(**a**) Section 72(1) of SBEEA 2015 defines "service tie".

(b) a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant;

(c) an extrinsic increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant;

(d) an event of a kind described in regulation 26 or regulation 27; or

(e) an event which the tied pub tenant could reasonably have prevented, or the effects of which it could reasonably have substantially mitigated.

(4) Condition C is that the event—

(a) affects other pubs in the local area; but

(b) is unlikely to affect all pubs in England or Wales.

(5) Condition D is that the event—

(a) is directly related to a change in the tie imposed by the pub-owning business(**a**) on the tied pub; or

(b) has an effect which is directly related to changes in the local area such as—

(i) changes to the local infrastructure;

(ii) changes to local employment;

(iii) long-term changes to the local economic environment;

(iv) changes to local environmental factors.

(6) An "extrinsic increase" in relation to a tied product or service means an increase in the price of the product or service due to circumstances beyond the control of the pub-owning business such as—

(a) an increase in the price at which the pub-owning business purchases the product or service;

(b) an increase in any tax or duty payable by the pub-owning business which arises from the pub-owning business's purchase of the product or service; or

(c) an increase in any other tax or regulatory cost payable by the pub-owning business which affects the costs of the pub-owning business.

Periods of time

8.—(1) This regulation applies where—

(a) a provision of these Regulations refers to a period of time; and

(b) that period is computed by reference to the occurrence of one or more of the following events—

(i) notifying, requesting, sending, providing or communicating changes, determinations, decisions, intentions, responses, proposals or other information;

(ii) the referral of a matter under regulation 59(6)(c) or (8);

(iii) receiving notices (including an MRO notice), notifications or requests.

(2) The time at which the events occur, for the purposes of that provision, is to be determined in accordance with the following table.

Method of notifying, requesting, accepting etc.	*Day on which notification, request, acceptance, receipt etc. is deemed to have occurred*
First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service

(**a**) Section 69 of SBEEA 2015 defines "pub-owning business".

	provider, provided that day is a business day; or, if not, the next business day after that day.
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider, provided that day is a business day; or, if not, the next business day after that day.
Delivering a document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30 pm, on that day; or in any other case, on the next business day after that day.
Fax	If the transmission of the fax is completed on a business day before 4.30 pm, on that day; or, in any other case, the next business day after the day on which it was transmitted.
Other electronic method	If the e-mail or other electronic transmission is sent on a business day before 4.30 pm, on that day; or in any other case, on the next business day after the day on which it was sent.
Personal service	If the document is served personally before 4.30 pm on a business day, on that day; or, in any other case, on the next business day after that day.

(3) The reference in paragraph (1)(b)(iii) to receiving notifications does not include receiving notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to a tied pub tenant.

(4) In this regulation, "business day" means any day except—

(a) a Saturday or Sunday;

(b) Good Friday or Christmas Day; or

(c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(**a**).

PART 2

Duties of pub-owning businesses in their dealings with their tied pub tenants: general

Pubs entry training

9.—(1) Before—

(a) entering into a new agreement with a tied pub tenant; or

(b) agreeing, with a tied pub tenant, the renewal of a protected 1954 Act tenancy,

a pub-owning business must advise the tied pub tenant to complete the appropriate pubs entry training.

(2) The pub-owning business's duty in paragraph (1) does not apply if the tied pub tenant meets at least one of the conditions in paragraph (3).

(3) The conditions are—

(a) that the tied pub tenant operates at least one other tied pub, other than a pub which is occupied under a short agreement, on the day on which the new agreement or the renewal is proposed by the pub-owning business or the tied pub tenant;

(**a**) 1971 c.80.

(b) that the tied pub tenant can demonstrate that the tenant has at least 3 years of relevant business management experience;

(c) that the pub-owning business has, at any time, granted the tenant a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with a short agreement.

(4) "Pubs entry training" means training which is designed to raise awareness of the matters involved in operating a pub and entering into product ties and other agreements with landlords(**a**).

A sustainable business plan

10.—(1) Before a pub-owning business—

(a) enters into a new agreement with a tied pub tenant; or

(b) agrees, with a tied pub tenant, the renewal of a tenancy which is not a protected 1954 Act tenancy,

the pub-owning business must ensure that the tenant has a sustainable business plan.

(2) A "sustainable business plan" is a business plan which—

(a) has been prepared following consideration of independent professional advice, such as business, legal, property and rental valuation advice;

(b) includes financial forecasts for the tenancy or licence period, including—

(i) estimates of income and expenditure;

(ii) a sensitivity analysis;

(iii) the impact of any indexation of rent or of other costs referred to in the new agreement or in the renewal; and

(c) contains a forecast of the income and net profit over the tenancy or licence period which, in the pub-owning business's opinion, is reasonable for the tenant and realistic.

(3) The pub-owning business must, before the tied pub tenant prepares the business plan—

(a) identify all reports which —

(i) are publicly available;

(ii) analyse the trading costs of tied pubs in the United Kingdom, or any area within it, and the costs of the tenancies and licences under which such pubs are occupied; and

(iii) provide relevant data against which the tenant can compare the performance of the tied pub for the purposes of preparing the business plan;

(b) advise the tenant to consult those reports; and

(c) provide to the tied pub tenant—

(i) the reports identified under sub-paragraph (a); or

(ii) information as to where, and how, the reports can be obtained.

(4) The pub-owning business's duty in paragraph (3)(c) does not apply in relation to a report which the tied pub tenant has confirmed to the pub-owning business the tenant has read.

(5) A "sensitivity analysis" is an analysis of—

(a) the potential business performance of the tied pub in the case of an increase or decrease in business income; and

(b) the effect of that increase or decrease on the tied pub's costs and profitability.

(6) The "tenancy or licence period" means the period which—

(a) begins with the day on which the tenancy or licence first confers on the tied pub tenant the right to occupy**;** and

(**a**) Section 70(2) of SBEEA 2015 defines "landlord".

(b) ends with the earliest of the following days—

(i) the day five years after the day mentioned in sub-paragraph (a);

(ii) the last day on which the tenancy or licence confers on the tied pub tenant the right to occupy;

(iii) the rent review date.

(7) Where a protected 1954 Act tenancy is renewed, the pub-owning business must—

(a) identify the reports mentioned in paragraph (3)(a), as if a sustainable business plan were being prepared;

(b) advise the tenant to consult those reports; and

(c) provide to the tied pub tenant, before the tenancy is renewed—

(i) the reports identified under paragraph (3)(a); or

(ii) information to the tenant as to where, and how, the reports can be obtained.

The required information

11.—(1) A pub-owning business must ensure that the tied pub tenant has received the information specified in Schedule 1 before the tenant considers the advice referred to in regulation 10(2)(a).

(2) The pub-owning business is not required to comply with paragraph (1) in respect of any information specified in Schedule 1 which—

(a) has already been provided to the tied pub tenant by the pub-owning business in connection with the current tenancy or licence; and

(b) has not changed materially since it was provided.

(3) The "current tenancy or licence" means the tenancy or licence in force at the time the tenant prepares the sustainable business plan.

Duty of pub-owning business where tenant intends to assign the tenancy

12.—(1) This regulation applies where the terms of a tenancy in relation to a tied pub permit the tied pub tenant to assign the tenancy to another person.

(2) Where a tied pub tenant notifies the pub-owning business that the tenant intends to assign the tenancy, the pub-owning business must, as soon as reasonably practicable—

(a) explain to the tenant and the proposed assignee the implications of the assignment for both; and

(b) provide the tenant with—

(i) information relating to any fees payable by the tenant in respect of the assignment;

(ii) information relating to any dilapidations which the pub-owning business requires to be remedied before, or as a condition of, the assignment; and

(iii) the information in Schedule 1 or, where that information has already been provided to the tenant under regulation 11(1), any information in that Schedule which has changed materially since it was last provided.

(3) Paragraphs (4) to (7) apply where the tenancy may not be assigned without the pub-owning business's agreement.

(4) Before agreeing to an assignment, the pub-owning business must be satisfied—

(a) that the proposed assignee has received the information which was provided to the tenant under regulation 11(1) or under paragraph (2)(b)(iii) of this regulation;

(b) that the proposed assignee has been advised to complete pubs entry training; and

(c) that the proposed assignee has been advised to seek independent advice, including advice from a qualified surveyor with professional experience relating to tied pubs.

(5) The pub-owning business's duty at paragraph (4)(b) does not apply if the assignee meets at least one of the conditions in paragraph (6).

(6) The conditions are—

(a) that the assignee operates at least one other tied pub other than a pub which is occupied under a short agreement on the day on which the notice mentioned in paragraph (2) is given;

(b) that the assignee can demonstrate that the assignee has at least 3 years of relevant business management experience;

(c) that the pub-owning business has, at any time, granted the assignee a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with a short agreement.

(7) Where the pub-owning business does not agree to the assignment, the pub-owning business must notify the tenant and the assignee as soon as reasonably practicable.

(8) Paragraph (9) applies where—

(a) the tenancy may not be assigned without the pub-owning business's agreement;

(b) the pub-owning business and the tied pub tenant have entered into an investment agreement; and

(c) the tied pub tenant proposes to assign the tenancy.

(9) Before agreeing to the assignment, the pub-owning business must be satisfied that the assignee—

(a) has been notified, in writing, of the investment agreement and the effect of that agreement on the assignee's right to request a rent assessment or an offer of a market rent only option(**a**); and

(b) has received a copy of that agreement.

Premises

13.—(1) Before entering into a new agreement with a tied pub tenant, a pub-owning business must advise the tenant to—

(a) conduct a thorough inspection of the premises to which the tenancy or licence relates, including any part of the premises intended to be used as the tenant's home; and

(b) obtain the advice of a qualified surveyor with professional experience relating to tied pubs.

(2) Paragraph (3) applies where—

(a) a tied pub tenant and a pub-owning business—

(i) enter into a new agreement; or

(ii) renew a protected 1954 Act tenancy; and

(b) before the renewal or before entering into the new agreement, the pub-owning business or the tied pub tenant agrees to carry out any maintenance, repair or improvement works to the premises.

(3) As soon as reasonably practicable after the works are completed, the pub-owning business must update the Schedule of Condition, in the light of the works.

(4) Where, under a tenancy or licence, a tied pub tenant is required to maintain or repair the premises, or any part of the premises, to which the tenancy or licence relates, paragraphs (5) and (6) apply.

(5) Before entering into a new agreement or renewing a protected 1954 Act tenancy, the pub-owning business must take the Schedule of Condition into account—

(**a**) Section 43(2) of SBEEA 2015 defines "market rent only option".

(a) during an assessment of any maintenance or repairs in respect of the premises; and

(b) before any obligations or liabilities in respect of the condition of the premises are agreed between the pub-owning business and the tied pub tenant.

(6) The pub-owning business must ensure that the Schedule of Condition is updated and reviewed—

(a) in accordance with the terms of the tenancy or licence; or

(b) where the tenancy or licence does not require such a review—

(i) following any significant alteration to the structure of the premises; and

(ii) at least 6 months before the end of the tenancy or licence.

(7) A survey of the premises which is carried out by a pub-owning business for the purposes of determining the dilapidations to the premises must be carried out—

(a) in accordance with the terms of the tenancy or licence; and

(b) at least 6 months before the end of the tenancy or licence.

(8) Paragraph (9) applies where a pub-owning business, or a person acting on its behalf, proposes to enter a tied pub for the purposes of —

(a) assessing repairs or maintenance required under the tenancy or licence;

(b) carrying out such repairs or maintenance; or

(c) assessing dilapidations in respect of the premises.

(9) The pub-owning business, or the person acting on its behalf, must not, except in an emergency, enter the pub without giving the tied pub tenant reasonable notice.

Short agreements

14.—(1) Before entering into a short agreement, the pub-owning business must provide the following information to the tied pub tenant—

(a) the amount of rent, or money payable in lieu of rent, which is to be paid under the short agreement;

(b) the information specified in paragraphs 12 to 17, 19, 20, 28, 32 and 34 of Schedule 1;

(c) the arrangements for the payment of utility bills.

(2) The pub-owning business must advise the tenant to complete pubs entry training before entering into a short agreement unless the tenant meets at least one of the conditions in paragraph (3).

(3) The conditions are—

(a) that, on the day on which the short agreement is proposed, the tied pub tenant operates at least one other tied pub other than a tied pub occupied under a short agreement;

(b) that the tied pub tenant can demonstrate that the tenant has at least 3 years of relevant business management experience;

(c) that the pub-owning business has, at any time, granted the tenant a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with another short agreement.

PART 3

Duties of pub-owning businesses in their dealings with their tied pub tenants: rent proposals

Duty to provide a rent proposal

15.—(1) Where any of paragraphs (2) to (7) apply, the pub-owning business must provide a rent proposal to the tied pub tenant.

(2) This paragraph applies where—

(a) the tenant receives a notice from the pub-owning business under section 25(1)(**a**) of the Landlord and Tenant Act 1954;

(b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the notice is received; and

(c) the pub-owning business has not—

(i) within the time ordinarily allowed, opposed under section 24(1)(**b**) of the Landlord and Tenant Act 1954, the tenant's application for a new tenancy; and

(ii) within the time ordinarily allowed, applied to the court, under section 29(2)(**c**) of that Act, for an order for the termination of the tenancy.

(3) This paragraph applies where—

(a) the tenant receives a notice from the pub-owning business under section 25(1) of the Landlord and Tenant Act 1954;

(b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the notice is received; and

(c) the pub-owning business—

(i) opposes the tenant's application under section 24(1) of that Act for a new tenancy; or

(ii) applies to the court, under section 29(2) of that Act, for an order for the termination of the tenancy.

(4) This paragraph applies where—

(a) the tenant makes a request for a new tenancy under section 26(**d**) of the Landlord and Tenant Act 1954;

(b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the request for a new tenancy is made; and

(c) the pub-owning business has not—

(i) within the time ordinarily allowed, opposed the tenant's application for a new tenancy under section 24(1) of that Act; and

(ii) within the time ordinarily allowed, applied to the court, under section 29(2) of that Act.

(5) This paragraph applies where—

(a) the tenant makes a request for a new tenancy under section 26 of the Landlord and Tenant Act 1954;

(b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the request for a new tenancy is made; and

(c) the pub-owning business —

(**a**) Section 25(1) was amended by S.I. 2003/3096.
(**b**) Section 24(1) was amended by section 3(2) of the Law of Property Act 1969 and by S.I. 2003/3096.
(**c**) Section 29(2) was substituted by S.I. 2003/3096.
(**d**) Section 26 was amended by S.I. 2003/3096.

(i) opposes, under section 24(1) of that Act, the tenant's application for a new tenancy under section 26 of the Landlord and Tenant Act 1954; or

(ii) applies to the court under section 29(2) of that Act.

(6) This paragraph applies where—

(a) there is a change in the amount of rent or money payable in lieu of rent payable by the tenant under the tenancy or licence except where the change is due to an annual or other periodic indexation of rent which was agreed by the tenant when the tenancy or licence was entered into; and

(b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the change is notified to the tenant.

(7) This paragraph applies where the pub-owning business notifies the tenant of a proposal to negotiate a new agreement with the tenant.

(8) A pub-owning business is not required to provide a rent proposal where—

(a) the event in paragraph (6) occurs; and

(b) regulation 19(1) applies in connection with the initial or revised rent.

Contents of the rent proposal

16.—(1) A rent proposal provided under regulation 15 must contain—

(a) a proposal for, or information about the change in, the rent, or money payable in lieu of rent, which is to be paid under the tenancy or licence ("the initial or revised rent");

(b) where a new tenancy or licence is proposed, any other terms of the tenancy or licence being proposed;

(c) the information specified in Schedule 2; and

(d) any other information which—

(i) the tenant requires to understand or negotiate the initial or revised rent in an informed manner; and

(ii) the pub-owning business would reasonably be expected to give to the tenant.

(2) A pub-owning business is not required to comply with paragraph (1)(c) in respect of any information in Schedule 2—

(a) which—

(i) has already been provided to a tied pub tenant in connection with the tenancy or licence; and

(ii) has not changed materially since it was provided; or

(b) which is not reasonably available to the pub-owning business.

(3) The pub-owning business must prepare the rent proposal in accordance with the RICS guidance, and the rent proposal, when provided, must be accompanied by written confirmation, from a member or fellow of the RICS, that the proposal has been so prepared.

When the rent proposal must be provided

17. A rent proposal provided under regulation 15 must be provided—

(a) where regulation 15(2) applies, within the period of 21 days beginning with the day on which the tenant requests the proposal;

(b) where regulation 15(3) applies, within the period of 21 days beginning with the day on which the court makes an order for the grant of a new tenancy;

(c) where regulation 15(4) applies, within the period of 2 months beginning with the day on which the tenant makes the request for a new tenancy under section 26 of the Landlord and Tenant Act 1954;

(d) where regulation 15(5) applies, within the period of 21 days beginning with the day on which the court makes an order for the grant of a new tenancy;

(e) where regulation 15(6) applies, within the period of 21 days beginning with the day on which the request is made;

(f) where regulation 15(7) applies, before the tenant considers the advice referred to in regulation 10(2)(a).

Further information and advice in relation to the rent proposal

18.—(1) The pub-owning business must—

(a) comply with any reasonable request which is made by the tied pub tenant, or a person acting on behalf of the tenant, for information which—

(i) is relevant to the negotiation of the initial or revised rent; or

(ii) may help the tenant to understand that rent, or

(b) provide to the tied pub tenant, within the period of 7 days beginning with day on which the request was received, a reasonable explanation why the information requested is not provided.

(2) The pub-owning business must advise the tied pub tenant to obtain independent professional advice in connection with the initial or revised rent before the tenant agrees that rent.

PART 4

Duties of pub-owning businesses in their dealings with their tied pub tenants: rent assessments

Duty to conduct a rent assessment or an assessment of money payable in lieu of rent

19.—(1) A pub-owning business—

(a) must conduct a rent assessment or an assessment of money payable in lieu of rent in connection with a rent review which is required under the terms of a tenancy or licence of a tied pub of which it is the landlord; and

(b) must conduct a rent assessment or an assessment of money payable in lieu of rent where a tied pub tenant of such a pub requests it under paragraph (2).

(2) A tied pub tenant may request a rent assessment or an assessment of money payable in lieu of rent if —

(a) such an assessment has not ended within the period of 5 years ending with the date of the request;

(b) there is a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant; or

(c) the tied pub tenant demonstrates that a trigger event has occurred by means of a written analysis of the level of trading which is forecast for a period of 12 months or more beginning with the day on which the tenant makes the request.

(3) A request under paragraph (2) must be made in writing and—

(a) in the case of a request made under paragraph (2)(b), must be received by the pub-owning business within the period of 14 days beginning with the day on which the tied pub tenant receives notification of the significant increase; and

(b) in the case of a request made under paragraph (2)(c), must be received by the pub-owning business within the period of 14 days beginning with the day on which the tied pub tenant sends the written analysis referred to in that paragraph to the pub-owning business.

(4) The following are not rent reviews for the purposes of paragraph (1)(a)—

(a) an annual or other periodic indexation of rent;

(b) a change in rent in connection with the receipt of a corresponding benefit from the pub-owning business;

(c) a change in rent in connection with the freeing of the tied pub tenant from a product or service tie;

(d) any discussions in respect of changes in rent which are carried out within a review of the business provided for under the terms of the tenancy or licence.

The rent assessment proposal

20.—(1) Where a pub-owning business is required to conduct a rent assessment or an assessment of money payable in lieu of rent under regulation 19(1), the pub-owning business must send the tied pub tenant a document ("the rent assessment proposal") containing—

(a) a proposal for the rent or money payable in lieu of rent which is to be paid under the tenancy or licence at the end of the assessment (the "new rent");

(b) the information specified in Schedule 2, if it is reasonably available to the pub-owning business;

(c) such other information as may be required to ensure that the tenant is able to negotiate, in an informed manner, the new rent.

(2) The rent assessment proposal must be provided to the tied pub tenant—

(a) in the case of an assessment conducted under regulation 19(1)(a), at least 6 months before the rent review date;

(b) in the case of an assessment conducted under regulation 19(1)(b), within the period of 21 days beginning with the day on which the tied pub tenant requests the assessment.

(3) The pub-owning business must prepare the rent assessment proposal in accordance with the RICS guidance and the rent assessment proposal, when provided, must be accompanied by written confirmation from a member or fellow of the RICS that the rent assessment proposal has been so prepared.

Conduct of the rent assessment or the assessment of money payable in lieu of rent

21.—(1) For the purposes of these Regulations, a rent assessment or an assessment of money payable in lieu of rent begins on the day on which a pub-owning business provides a rent assessment proposal to the tied pub tenant in accordance with regulation 20.

(2) A rent assessment or an assessment of money payable in lieu of rent must be conducted in accordance with the RICS guidance.

(3) During the rent assessment or assessment of money payable in lieu of rent, the pub-owning business must—

(a) comply with any reasonable request for further information which is relevant for the negotiation of the new rent and which is made by the tied pub tenant or by a person acting on behalf of the tied pub tenant; or

(b) provide to the tied pub tenant, as soon as reasonably practicable, a reasonable explanation why the information requested is not provided.

(4) Where a pub-owning business is required to conduct an assessment under regulation 19(1)(a), it must ensure that a person who is involved in the preparation of the rent assessment proposal on its behalf visits the tied pub within the period of 3 months ending on the day on which the rent assessment proposal is provided to the tied pub tenant for the purpose of gathering information about the location and layout of the pub.

(5) The pub-owning business must advise the tied pub tenant to obtain independent professional advice in connection with the new rent before the tenant agrees that rent.

(6) Paragraph (7) applies at the end of the assessment where—

(a) the rent, or money payable in lieu of rent, payable under the tenancy or licence is adjusted as a result of the assessment; and

(b) either—

(i) the rent review date has passed; or

(ii) more than 6 months have elapsed since the day on which the rent assessment proposal was provided to the tied pub tenant.

(7) Before the new rent is agreed by the tied pub tenant, the tied pub tenant and the pub-owning business must agree, in writing—

(a) that, where the recoverable rent is a positive amount, it is to be paid by the pub-owning business to the tied pub tenant;

(b) that, where the recoverable rent is a negative amount, it is to be paid by the tied pub tenant to the pub-owning business, and

(c) arrangements for making any payment under sub-paragraph (a) or (b).

(8) The tied pub tenant's agreement to the new rent must be given in writing.

(9) A member or fellow of the RICS must confirm that the rent assessment or the assessment of money payable in lieu of rent has been conducted in accordance with guidance issued by that institution.

(10) The "recoverable rent" means—

(a) the amount of the rent, or money payable in lieu of rent, which is payable as a result of regulation 22(1)(a) in respect of the rent recovery period; less

(b) the amount of the rent, or money payable in lieu of rent, which would have been payable in respect of that period if (instead of the rent or money payable in lieu of rent mentioned in sub-paragraph (a)) the new rent had been payable in respect of that period.

(11) The "rent recovery period" is the period which—

(a) begins—

(i) in the case of an assessment conducted under regulation 19(1)(a), with the rent review date;

(ii) in the case of an assessment conducted under regulation 19(1)(b), with the day after the period of 6 months beginning with the day on which the rent assessment proposal was provided to the tied pub tenant; and

(b) ends with the day on which the assessment ends.

(12) In these Regulations, the "rent review date" is the date from which the terms of the tenancy or licence require the rent, or money payable in lieu of rent, to be payable following a rent review.

Effect of the rent assessment or the assessment of money payable in lieu of rent

22.—(1) Where a pub-owning business conducts an assessment under regulation 19(1)—

(a) the rent, or money payable in lieu of rent, which is payable under the tenancy or licence at the beginning of the assessment remains payable until the end of the assessment; and

(b) the new rent is payable with effect from the day after the end of that assessment.

(2) For the purposes of these Regulations, a rent assessment or an assessment of money payable in lieu of rent ends—

(a) in the case of an assessment which is conducted under regulation 19(1)(a)—

(i) on the rent review date;

(ii) if later, on the date on which the tied pub tenant and the pub-owning business agree the new rent in writing;

(b) in the case of an assessment which is conducted under regulation 19(1)(b)—

(i) at the end of the period of 6 months beginning with the day on which the rent assessment proposal was provided to the tied pub tenant; or

(ii) if later, on the date on which the tied pub tenant and the pub-owning business agree the new rent in writing.

(3) But where—

(a) the tied pub tenant gives an MRO notice; and

(b) before the assessment is agreed, the tied pub tenant and the pub-owning business enter into a tenancy or licence,

the assessment ends on the day on which the tenancy or licence is entered into.

PART 5

Market rent only option: MRO notice

The MRO notice

23.—(1) A tied pub tenant may give a notice (an "MRO notice") to the pub-owning business where—

(a) the event specified in regulation 24 or 25 occurs; or

(b) the event specified in regulation 26 or 27 occurs and the investment exception does not apply (see regulation 56).

(2) The MRO notice must be—

(a) in writing; and

(b) received by the pub-owning business within the period of 21 days beginning with the day on which the event mentioned in paragraph (1) occurred.

(3) The MRO notice must include—

(a) the tenant's name, postal address, email address (if any) and telephone number;

(b) the date on which the notice is being sent;

(c) the name of the tied pub in relation to which the request for an offer of a market rent only option is being made and its address;

(d) the date on which the event mentioned in paragraph (1) occurred; and

(e) a description of that event which, in the tenant's opinion, demonstrates that it is an event specified in regulation 24, 25, 26 or 27.

(4) A tied pub tenant may not give an MRO notice to the pub-owning business where—

(a) the tenant has already given an MRO notice under paragraph (1); and

(b) the MRO procedure(**a**) which relates to that notice has not ended.

A significant increase in the price of a product or service

24. The event specified in this regulation is that the tied pub tenant receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant.

A trigger event

25.—(1) The event specified in this regulation is that the tied pub tenant sends the pub-owning business, during the relevant period, a relevant analysis which demonstrates that a trigger event has occurred.

(2) In paragraph (1)—

(**a**) Section 44(1)(a) of SBEEA 2015 defines "MRO procedure".

(a) "the relevant period" means the period of 56 days beginning with the day after that on which the trigger event occurred;

(b) "a relevant analysis" means a written analysis of the level of trading which is forecast for a period beginning with the day on which the trigger event occurred and ending at least 12 months later.

The renewal of a pub arrangement

26.—(1) The event specified in this regulation is that a pub arrangement is renewed.

(2) For the purposes of section 43(6) of SBEEA 2015 (and so of this regulation), a protected 1954 Act tenancy is renewed between the tied pub tenant and the pub-owning business—

(a) on the day on which the tied pub tenant receives the pub-owning business's notice under section 25(1) of the Landlord and Tenant Act 1954; or

(b) on the day on which the landlord receives the tied pub tenant's request under section 26 of that Act.

(3) For the purposes of section 43(6) of SBEEA 2015 (and so of this regulation), a tenancy which is not a protected 1954 Act tenancy is renewed between the tied pub tenant and the pub-owning business on the first day on which the tenancy may be renewed under the terms of the tenancy.

A rent assessment or an assessment of money payable in lieu of rent

27. The event specified in this regulation is that the tied pub tenant receives a rent assessment proposal sent by the pub-owning business under regulation 20(1) in respect of the tenancy or licence.

PART 6

Market rent only option: procedure to be followed in connection with an offer

Arrangements during the MRO procedure: rent etc

28.—(1) Where a tied-pub tenant gives an MRO notice, the pub-owning business must not—

(a) exercise any right to recover any rent, or money payable in lieu of rent, which subsequently becomes payable under the tenancy or licence if and to the extent that it is payable at a higher rate than was payable when the notice was given; or

(b) exercise any right to—

(i) make subject to a product or service tie any product or service that was not subject to such a tie at when the notice was given, or

(ii) disapply a product or service tie from a product or service that was subject to such a tie when the notice was given.

(2) Paragraph (1) does not apply where—

(a) the MRO notice states that the event specified in regulation 26 has occurred; and

(b) the tied pub is occupied under a protected 1954 Act tenancy.

(3) Paragraph (1) ceases to apply at the end of the MRO procedure if the tied pub tenant and the pub-owning business have not by then agreed a market rent only option.

Effect of tenant's notice

29.—(1) This regulation applies where a pub-owning business has received an MRO notice.

(2) The pub-owning business must send a written acknowledgement to the tied pub tenant as soon as reasonably practicable.

(3) Where the pub-owning business agrees with the tied pub tenant's opinion under regulation 23(3)(e), the pub-owning business must send the tenant—

(a) a statement confirming its agreement;

(b) where the MRO notice relates to a tenancy, a proposed tenancy which is MRO-compliant;

(c) where the MRO notice relates to a licence, a proposed licence which is MRO-compliant.

(4) Where the pub-owning business disagrees with the tied pub tenant's opinion under regulation 23(3)(e), it must send the tenant—

(a) a statement confirming its disagreement; and

(b) its reasons for disagreeing.

(5) A response under paragraph (3) or (4) is a "full response".

(6) The pub-owning business must send a full response within the period of response.

(7) The "period of response" is, subject to paragraphs (8) and (9), the period of 28 days which begins with the day on which the pub-owning business receives an MRO notice.

(8) Where—

(a) the tenant gives an MRO notice that the event specified in regulation 26 has occurred;

(b) the event is a renewal by virtue of regulation 26(2)(a); and

(c) the pub-owning business—

(i) opposes the tenant's application for a new tenancy under section 24(1) of the Landlord and Tenant Act 1954; or

(ii) applies to the court under section 29(2) of that Act, for an order for the termination of the tenancy,

the "period of response" is the period of 28 days which begins with the day on which the court makes an order for the grant of a new tenancy.

(9) Where the tenant gives an MRO notice that the event specified in regulation 26 has occurred, and the event is a renewal by virtue of regulation 26(2)(b), the "period of response" is the period of 28 days which begins —

(a) at the end of the period of two months after the day on which the tenant makes a request for a new tenancy under section 26 of the Landlord and Tenant Act 1954; or

(b) where the pub-owning business opposes the tenant's application for a new tenancy under section 24(1) of that Act, or applies to the court under section 29(2) of that Act, on the day on which the court makes an order for the grant of a new tenancy.

Terms and conditions required in proposed MRO tenancy

30.—(1) Paragraph (2) applies where—

(a) a tied pub tenant is subject to a tenancy ("the existing tenancy") granted by the pub-owning business;

(b) the tied pub tenant gives an MRO notice to the pub-owning business; and

(c) the pub-owning business sends a proposed tenancy ("the proposed MRO tenancy") to the tied pub tenant as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period(**a**).

(2) Where the MRO notice states that the event specified in regulation 24, 25 or 27 has occurred, the proposed MRO tenancy is MRO-compliant only if it contains provision the effect of which is that its term is for a period that is at least as long as the remaining term of the existing tenancy.

(**a**) Section 44(2)(b) of SBEEA 2015 defines "negotiation period".

Terms and conditions regarded as unreasonable in relation to proposed MRO tenancy etc

31.—(1) Paragraph (2) applies where—

(a) a tied pub tenant is subject to a tenancy ("the existing tenancy") granted by the pub-owning business;

(b) the tied pub tenant gives an MRO notice to the pub-owning business; and

(c) the pub-owning business sends a proposed tenancy ("the proposed MRO tenancy") to the tied pub tenant as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period.

(2) The terms and conditions of the proposed MRO tenancy, taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy, are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they—

(a) include a break clause in relation to the MRO tenancy which is exercisable only by the pub-owning business;

(b) impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the proposed MRO tenancy relates; or

(c) are terms which are not common terms in agreements between landlords and pub tenants who are not subject to product or service ties.

(3) Paragraph (4) applies where—

(a) the conditions in paragraph (1)(a) to (c) are met, and

(b) the existing tenancy is a protected 1954 Act tenancy.

(4) The terms and conditions of the proposed MRO tenancy, taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy, are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they exclude the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 in relation to the proposed MRO tenancy.

(5) Paragraph (6) applies where—

(a) a tied pub tenant is subject to a licence granted by the pub-owning business;

(b) the tied pub tenant gives an MRO notice to the pub-owning business; and

(c) the pub-owning business sends a proposed licence ("the proposed MRO licence") to the tied pub tenant as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period.

(6) The terms and conditions of the proposed MRO licence, taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the licence, are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the licence relates.

Failure to acknowledge the tenant's notice, provide a full response etc.

32.—(1) This regulation applies where a pub-owning business has received an MRO notice.

(2) Where—

(a) the pub-owning business does not send a full response under regulation 29(3) or (4) within the period of response;

(b) the tied pub tenant considers that the pub-owning business's full response does not comply with other requirements of regulation 29; or

(c) the tied pub tenant disagrees with the pub-owning business's statement under regulation 29(4)(a),

the tenant or the pub-owning business may refer the matter to the Adjudicator(**a**).

(3) Where the tied pub tenant or the pub-owning business intends to make a referral under paragraph (2), the tenant and the pub-owning business must notify each other, in writing, of their intention to do so before the referral is made.

(4) A referral under paragraph (2) must be made within the period of 14 days beginning with the day after the end of the period of response.

MRO procedure where a matter is referred to the Adjudicator in connection with the full response

33.—(1) Where—

(a) a matter is referred to the Adjudicator under regulation 32(2)(b) or (c); and

(b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that no failure has occurred in connection with the full response,

the full response provided by the pub-owning business under regulation 29(3) or (4) is deemed to have been received by the tied pub tenant on the day of the Adjudicator's ruling.

(2) Where—

(a) a matter is referred to the Adjudicator under regulation 32(2)(a) to (c); and

(b) the Adjudicator rules that the pub-owning business must provide a revised response to the tied pub tenant,

the pub-owning business must provide that response within the period of 21 days beginning with the day of the Adjudicator's ruling or by such a day as may be specified in the Adjudicator's ruling.

(3) A "revised response" is a response which includes the information mentioned in regulation 29(3)(a) to (c).

The negotiation period

34.—(1) This regulation applies where—

(a) the pub-owning business has provided the tenant with a full response under regulation 29(3) or a revised response under regulation 33(2); and

(b) the tied pub tenant continues to wish to pursue a market rent only option.

(2) The tied pub tenant and the pub-owning business must, until the end of the MRO procedure, seek to agree a tenancy or licence that is MRO-compliant.

(3) Where—

(a) the pub-owning business proposes a tenancy or licence to the tied pub tenant during the negotiation period;

(b) the tied pub tenant does not, during that period, communicate to the pub-owning business, in writing, a decision to accept or reject the proposal;

(c) the tenant does not make a reference under regulation 35 in relation to the proposed tenancy or licence; and

(d) the time allowed under that regulation for making such a reference has expired,

the proposal lapses on the day after that on which the time so allowed expires.

(4) The negotiation period is the period of 56 days beginning with the day on which the tied pub tenant receives—

(a) a full response under regulation 29(3); or

(b) if later, a revised response under regulation 33(2).

(**a**) Section 72(1) of SBEEA 2015 defines "the Adjudicator".

Failure to agree: right to refer to the Adjudicator or independent assessor

35.—(1) Where—

(a) the pub-owning business sends a subsequent proposed tenancy or licence to the tied pub tenant during the negotiation period; and

(b) the tenant considers that the tenancy or licence is not MRO-compliant,

the tenant may refer the matter to the Adjudicator within the period of 14 days beginning with the day after the day on which the subsequent proposed tenancy is received.

(2) A "subsequent proposed tenancy or licence" means a tenancy or licence which the pub-owning business has proposed to the tied pub tenant during the negotiation period.

(3) Where the pub-owning business sends a proposed tenancy or licence to the tied pub tenant (whether as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period) the tied pub tenant may refer the proposed MRO rent to an independent assessor(**a**) by sending a notice to the pub-owning business, in writing, of the tenant's intention to do so within the period—

(a) beginning with the day 28 days after the day on which the negotiation period begins; and

(b) ending with the day 7 days after the day on which that period ends.

(4) Where the tied pub tenant refers a matter to the Adjudicator under paragraph (1), no reference to an independent assessor may be made under paragraph (3) in relation to the same tenancy or licence until the matter has been determined.

(5) Where the tied pub tenant refers the proposed MRO rent under a tenancy or licence to an independent assessor under paragraph (3), no reference may subsequently be made under paragraph (1) in relation to the same tenancy or licence.

(6) No referral may be made under this regulation at any time after the end of the MRO procedure.

PART 7

Market rent only option: independent assessor

Appointment of the independent assessor

36.—(1) The Adjudicator must specify the criteria which a person must satisfy in order to be appointed as an independent assessor.

(2) The following provisions of this regulation apply where a tied pub tenant has sent a notice to the pub-owning business under regulation 35(3).

(3) The tenant and the pub-owning business must, within the period of 28 days beginning with the day on which the pub-owning business receives the tied pub tenant's notice under regulation 35(3) —

(a) jointly, appoint an independent assessor; or

(b) notify the Adjudicator in writing of their failure to make the appointment.

(4) Where the Adjudicator receives notification under paragraph (3)(b), the Adjudicator must, within 14 days of the notification—

(a) appoint an assessor; and

(b) notify the tenant and the pub-owning business of the appointment.

(5) The pub-owning business and the tied pub tenant must pay, in equal shares, the fees charged by the independent assessor in connection with the determination of the market rent(**b**).

(**a**) Section 72(1) of SBEEA 2015 defines "independent assessor".
(**b**) Section 43(10) of SBEEA 2015 defines "market rent".

Independent assessor: procedure

37.—(1) The tied pub tenant must, within the period of 28 days beginning with the day after the day on which an independent assessor is appointed under regulation 36, provide to the independent assessor the proposed tenancy or licence to which proposed MRO rent relates.

(2) Within the period mentioned in paragraph (1)—

(a) the tenant must provide to the independent assessor all documents listed in Schedule 3 which the tenant holds;

(b) the pub-owning business must provide to the independent assessor all documents listed in Schedule 3 which the pub-owning business holds.

(3) The independent assessor must—

(a) determine the market rent associated with the tenancy or licence provided under paragraph (1); and

(b) communicate that determination to the tenant and the pub-owning business.

(4) The independent assessor's determination of the market rent—

(a) must have regard to the documents listed in Schedule 3; and

(b) must be conducted in accordance with guidance issued by the Adjudicator, as amended from time to time.

(5) The tenant and the pub-owning business must provide to the independent assessor any other information which they consider relevant to the determination within the period of 28 days beginning with the day after the day on which the independent assessor is appointed.

(6) The independent assessor may require the tenant and the pub-owning business to provide any other documents or information held by them which the independent assessor considers relevant for the determination.

(7) The tenant and the pub-owning business must comply with any reasonable request made under paragraph (6) as soon as reasonably practicable.

(8) Where the tenant or the pub-owning business—

(a) provides information under paragraph (2) or (5); or

(b) complies, under paragraph (7), with a request for other documents or information,

they must also provide any such information to each other within the periods specified in those paragraphs.

(9) The independent assessor must communicate a determination of the market rent to the tied pub tenant and the pub-owning business within the period of 21 days beginning with the day after the end of the period described in paragraph (5).

(10) Where the pub-owning business or the tied pub tenant considers that—

(a) the rent determined under paragraph (3) is not the market rent; or

(b) the independent assessor has failed to comply with paragraph (4),

either of them may refer the matter to the Adjudicator within the period of 14 days beginning with the day on which the determination was communicated to them.

(11) Where the independent assessor has not communicated the determination within the period required by paragraph (9), the tenant or the pub-owning business may refer the matter to the Adjudicator within the period of 14 days beginning with the day after the end of that period.

(12) Paragraph (13) applies where—

(a) the independent assessor communicates a determination within the period required by paragraph (9); and

(b) neither the tied pub tenant nor the pub-owning business refers the matter to the Adjudicator under paragraph (10).

(13) The tied pub tenant must, by notice in writing to the pub-owning business, accept or reject the determination communicated under paragraph (12)(a) and the associated tenancy or licence provided to the assessor under paragraph (1) within the period of 21 days beginning with—

(a) the day on which the determination was communicated to the tied pub tenant; or

(b) if later, the day on which any rent assessment, or assessment of money payable in lieu of rent, being carried out in respect of the tenancy or licence ends.

(14) If the tied pub tenant does not comply with paragraph (13), the tenant is treated as having rejected the determination and the associated tenancy or licence on the final day of the period mentioned in that paragraph.

MRO procedure where a referral is made to the Adjudicator in connection with the independent assessor

38.—(1) This regulation applies where a matter is referred to the Adjudicator in connection with the independent assessor's determination of the market rent.

(2) Where the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b))—

(a) directs the independent assessor under regulation 59(3)(b)(ii) to make a second determination of the market rent; or

(b) appoints another independent assessor under regulation 59(3)(b)(iii) or (6)(c) to determine the market rent,

the independent assessor must communicate the determination of the market rent to the tied pub tenant and the pub-owning business within the period of 21 days beginning with the day on which the direction or the appointment, as the case may be, occurred.

(3) Paragraphs (4) and (5) apply where—

(a) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) makes a determination by virtue of regulation 59(3)(b)(ii) or (iii), (6)(b) or (c) or (7)(b); and

(b) the independent assessor determines the market rent in accordance with that determination.

(4) Where the pub-owning business or the tied pub tenant considers that—

(a) the rent determined is not the market rent; or

(b) the independent assessor has failed to comply with regulation 37(4),

either of them may refer the matter to the Adjudicator within the period of 14 days beginning with the day on which the determination was communicated to them.

(5) But if the tenant or the pub-owning business does not refer the matter under paragraph (4), the tied pub tenant must, by notice in writing to the pub-owning business, accept or reject the independent assessor's determination and the associated tenancy or licence provided to the assessor under regulation 37(1) within the period of 21 days beginning with—

(a) the day on which the determination of the independent assessor is communicated to the tenant; or

(b) if later, the day on which any rent assessment, or assessment of money payable in lieu of rent, being carried out in respect of the tenancy or licence ends.

(6) If the tied pub tenant does not comply with paragraph (5), the tenant is treated as having rejected the determination and the associated tenancy or licence on the final day of the period mentioned in that paragraph.

PART 8

End of the MRO procedure

End of the MRO procedure

39.—(1) This regulation applies where a tied pub tenant has given an MRO notice.

(2) Where the tied pub tenant communicates to the pub-owning business, in writing, a decision to accept a tenancy or licence proposed by the pub-owning business (including where the tenant accepts a tenancy or licence under regulation 37(13), 38(5), 59(2), (5) or (9)), the tenant and the pub-owning business must, as soon as reasonably practicable, enter into the tenancy or licence.

(3) Where the tied pub tenant and the pub-owning business fail to enter into a tenancy or licence in compliance with paragraph (2), either of them may refer the matter to the Adjudicator.

(4) The MRO procedure ends on the earliest of the following days—

(a) where the tied pub tenant and the pub-owning business enter into a tenancy or licence, on the day on which the tenancy or licence is entered into;

(b) where the tenancy or licence under which the tied pub is occupied at the time the MRO notice is given ends, on the day on which the tenancy or licence ends;

(c) where—

(i) the negotiation period ends;

(ii) the tied pub tenant does not, during that period, communicate to the pub-owning business, in writing, a decision to accept a tenancy or licence proposed by the pub-owning business;

(iii) the tenant does not make a reference under regulation 35 in relation to a tenancy or licence proposed by the pub-owning business during that period; and

(iv) the time allowed under that regulation for making such a reference has expired,

on the day on which the negotiation period ends or, if later, on the day after that on which time expires as mentioned in paragraph (iv);

(d) where the tied pub tenant rejects a proposed tenancy or licence under regulation 37(13) or (14), 38(5) or (6), or 59(2), (5), (9) or (10), on the day on which the tenant rejects that proposal;

(e) where—

(i) a matter is referred to the Adjudicator under regulation 32(2); and

(ii) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) does not consider that the circumstances are such that the pub-owning business must offer the tenant a market rent only option,

on the day of the Adjudicator's ruling;

(f) where—

(i) a matter is referred in connection with any other aspect of the MRO procedure; and

(ii) the Adjudicator rules that the MRO procedure ends on a specified day,

on the day so specified;

(g) where the pub-owning business conducts a rent assessment or an assessment of money payable in lieu of rent, on the day on which the tenant agrees, in writing, the new rent.

Disputes about rent etc payable during MRO procedure

40. Where the tied pub tenant and the pub-owning business disagree as to whether an amount has become recoverable by the pub-owning business at the end of the MRO procedure as a result of regulation 28(3), either of them may refer the matter to the Adjudicator.

PART 9

Business development managers and compliance officers

Business development managers

41.—(1) The pub-owning business must ensure that each of its business development managers—

(a) receives a copy of these Regulations before the business development manager liaises with tied pub tenants over any matters relating to the Regulations;

(b) is provided with appropriate training in relation to the requirements of these Regulations at least once every 12 months; and

(c) deals with tied pub tenants in a manner that is consistent with the principle referred to in section 42(3)(a) of SBEEA 2015.

(2) A pub-owning business must provide to its tied pub tenants information about—

(a) the role of the business development manager; and

(b) the support and guidance which the business development manager will provide to the tenants.

(3) Where a business development manager is responsible for conducting rent assessments or assessments of money payable in lieu of rent, the pub-owning business must ensure that the business development manager receives appropriate training before conducting any such assessment.

(4) A pub-owning business must ensure that the business development manager—

(a) makes appropriate notes of any discussions with tied pub tenants in connection with—

(i) rent proposals;

(ii) rent assessments or assessments of money payable in lieu of rent;

(iii) repairs to the tied pub premises;

(iv) matters relating to the tied pub tenants' current or future business plans;

(b) provides tied pub tenants with a record of any such discussions within the period of 14 days beginning with the day on which the discussion occurred; and

(c) requests that the tenant respond to the business development manager if the tenant does not agree with any aspect of the record within the period of 7 days beginning with the day on which the record was received.

(5) A pub-owning business must specify, in a document published by the pub-owning business—

(a) its commitment towards the continuous professional development and improvement of its business development managers; and

(b) how it proposes to fulfil such a commitment, referring where appropriate to relevant qualifications and training.

(6) A "business development manager" means—

(a) a person who is employed as such by a pub-owning business; or

(b) any other person who represents the pub-owning business in negotiations with tied pub tenants in connection with the matters listed in paragraph (4)(a).

Duty to appoint a compliance officer

42.—(1) A pub-owning business must appoint a suitably qualified employee to be the compliance officer, whose role is to verify the pub-owning business's compliance with these Regulations.

(2) The pub-owning business must ensure that the compliance officer—

(a) is provided with the resources necessary to carry out his or her role, including information relating to the pub-owning business's obligations under these Regulations;

(b) is entitled to contact the business development managers to discuss matters relating to those obligations;

(c) makes himself or herself reasonably available to tied pub tenants and any other persons acting on their behalf who may have a query relating to these Regulations;

(d) is independent of, and is not managed by, the business development managers;

(e) is entitled to discuss with tied pub tenants the reasons for any decisions made by the pub-owning business under these Regulations;

(f) is entitled to discuss with the Adjudicator matters relating to the pub-owning business's compliance with these Regulations;

(g) for the purposes of the annual compliance report, maintains records of the training received by the business development managers.

Annual compliance report

43.—(1) A pub-owning business must ensure that the compliance officer submits an annual compliance report to the Adjudicator relating to each financial year(**a**).

(2) The annual compliance report must be submitted to the Adjudicator within the period of 4 months beginning with the day after the end of the financial year to which the report relates.

(3) Paragraph (4) applies in relation to a person who, immediately before these Regulations come into force, is the landlord of 500 or more tied pubs.

(4) The person must ensure that the first annual compliance report required under paragraph (1) relates to the period—

(a) beginning with the day on which these Regulations come into force; and

(b) ending on the last day of the first subsequent full financial year.

(5) Before the annual compliance report is submitted to the Adjudicator under paragraph (2), the report must be approved—

(a) by the Chair of the Audit Committee; or

(b) if the pub-owning business does not have an Audit Committee, by the non-executive director of the pub-owning business responsible for carrying out the functions normally associated with an Audit Committee, or, in the absence of any such non-executive director, by the pub-owning business's Chief Executive Officer, Managing Director or equivalent.

(6) The annual compliance report must include a detailed and accurate account of —

(a) the pub-owning business's compliance with these Regulations in the period to which the report relates;

(b) any instances where a breach or alleged breach of these Regulations has been identified by a tied pub tenant;

(c) the steps taken in relation to any such breach, or alleged breach; and

(d) any steps taken during the period to which the report relates to ensure compliance with these Regulations, including details of training and guidance offered to employees in connection with the Regulations.

(7) The pub-owning business must ensure—

(a) that the compliance officer provides such other reports as are necessary to ensure that the pub-owning business's Audit Committee has an understanding of the pub-owning business's compliance with these Regulations; or

(**a**) Section 72(1) of SBEEA 2015 defines "financial year".

(b) that, if the pub-owning business does not have an Audit Committee, the compliance officer reports directly to the non-executive director of the pub-owning business responsible for carrying out the functions normally associated with an Audit Committee, or, in the absence of any such non-executive director, to the pub-owning business's Chief Executive Officer, Managing Director or equivalent.

(8) A summary of the annual compliance report must be included in the pub-owning business's annual report.

(9) If the pub-owning business does not produce an annual report, the summary of the annual compliance report must be published clearly and prominently on the pub-owning business website (if any) within the period of 4 months beginning with the day after the end of the financial year to which the report relates.

Provisions of these Regulations which are not arbitrable

44. For the purposes of section 48 of SBEEA 2015 (referral for arbitration by tied pub tenants) the following provisions are not arbitrable—

(a) regulation 41(1)(b), (3) and (5);

(b) regulation 42;

(c) regulation 43.

PART 10

Miscellaneous

Pub-owning business to notify Adjudicator and tied pub tenants of status under these Regulations

45.—(1) A person who, immediately before the commencement date, is the landlord of 500 or more tied pubs, must notify that fact to—

(a) the Adjudicator; and

(b) its tied pub tenants,

as soon as reasonably practicable after the commencement date.

(2) A person who, at any time on or after the commencement date, becomes the landlord of 500 or more tied pubs must, as soon as reasonably practicable after that date, notify the Adjudicator and its tied pub tenants, of that fact.

(3) A person who—

(a) gives notice under paragraph (1) or (2); and

(b) subsequently ceases to be the landlord of 500 or more tied pubs,

must, as soon as reasonably practicable, notify the Adjudicator and its tied pub tenants, of that fact.

Insurance

46.—(1) Paragraphs (2) to (4) apply where a pub-owning business intends to charge a tied pub tenant an amount ("the insurance charge") in respect of premiums for insurance in respect of the premises to which the tenancy or licence relates.

(2) The pub-owning business must inform the tied pub tenant whether—

(a) the insurance charge exceeds the amount payable by the pub-owning business in respect of premiums for insurance in respect of the premises under the insurance policy and, if so, the amount of that excess; and

(b) the pub-owning business, or any group undertaking(**a**) in relation to the pub-owning business, receives, or expects to receive, any commission or rebate in connection with that policy.

(3) Before the pub-owning business purchases, or renews, an insurance policy in respect of the premises, the pub-owning business must—

(a) provide to the tenant full details of that policy, including the cover which is provided, the charges payable and any contributions towards a claim which the tenant is required to make;

(b) provide to the tenant any additional information required to allow the tenant to compare the policy with other suitable, comparable policies which may be available; and

(c) where the tied pub tenant notifies the pub-owning business that it has identified a suitable and comparable alternative policy (the "tenant's alternative policy"), consider that policy.

(4) Where the pub-owning business is required to provide information under paragraph (3), the pub-owning business must do so—

(a) at least 21 days before the day on which the policy has effect; or

(b) if earlier, at least 21 days before the day on which the pub-owning business enters into the insurance.

(5) Paragraph (6) applies where the insurance charge is higher than the amount which it would be if the pub-owning business entered into the tenant's alternative policy (the "alternative insurance charge").

(6) The pub-owning business must—

(a) purchase the tenant's alternative policy; or

(b) agree, in writing, that any difference between the insurance charge and the alternative insurance charge is not payable by the tenant.

Gaming machines

47. 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.

Blank template for profit and loss account

48. Where the tied pub tenant so requests, the pub-owning business must provide to the tenant a blank template for completing the tied pub's profit and loss account.

Sale of freehold or long leasehold

49.—(1) Where the pub-owning business is aware that the holder of the freehold, or the superior landlord, of the premises to which the tenancy or licence relates has—

(a) taken any steps to advertise the sale of the freehold or the leasehold;

(b) placed the freehold or the leasehold on the market;

(c) employed an agent to sell the freehold or the leasehold; or

(d) entered into an agreement to sell the freehold or the leasehold,

the pub-owning business must comply with paragraph (2) as soon as reasonably practicable.

(2) The pub-owning business must provide to the tied pub tenant—

(**a**) Section 72(1) of SBEEA 2015 defines "group undertaking".

(a) details of any arrangements which have been made of the kind mentioned in paragraph (1)(a) to (c); and

(b) where an agreement of the kind mentioned in paragraph (1)(d) has been entered into, the name and address of the buyers.

(3) The pub-owning business is not required to provide the information under paragraph (2)(a)—

(a) if the sale is part of a sale and leaseback transaction; or

(b) if a disclosure under that paragraph would breach any obligation under or by virtue of any Act.

Tied pub tenant not to suffer detriment

50. A pub-owning business must not subject a tied pub tenant to any detriment on the ground that the tenant exercises, or attempts to exercise, any right under these Regulations.

Flow monitoring devices

51.—(1) A pub-owning business must not subject a tied pub tenant to any detriment, or impose any liabilities on the tenant, as a result of any reading taken from a flow monitoring device, without additional evidence in connection with the purchase and stock of alcohol at the tied pub.

(2) A "flow monitoring device" means a device which is at the tied pub at the direction of the pub-owning business—

(a) to measure the amount of alcohol(**a**) being sold by the tied pub tenant; and

(b) for the purposes of verifying that the tenant does not sell alcohol at the tied pub in contravention of the terms of the tenancy or licence.

PART 11

Extended protection under these Regulations

Extended protection to last until the end of a tenancy

52. Where a protected 1954 Act tenancy is renewed, the tenancy ends, for the purposes of section 69(5)(a) of SBEEA 2015—

(a) on the date on which the tenancy is renewed; or

(b) if earlier, on the date on which the tenancy was due to expire before it was renewed.

Extended protection to last until a rent assessment is concluded

53. For the purposes of section 69(5)(b) of SBEEA 2015, a rent assessment or assessment of money payable in lieu of rent is concluded when the tenant and the landlord who is no longer a pub-owning business agree the new rent in writing under regulation 22(3).

(**a**) Section 68(9) of SBEEA 2015 defines "alcohol".

PART 12

Exemptions from these Regulations

Short agreements

54. Where a pub-owning business and a tied pub tenant—

(a) enter into a short agreement (whether before, on or after the commencement date); and

(b) that agreement, together with all other short agreements (if any) previously entered into between the pub-owning business and the tied pub tenant entitle the tenant to occupy the tied pub for a total period of less than 12 months,

regulations 9 to 13 and Parts 3 to 10 of these Regulations do not apply to the dealings of the pub-owning business and the tenant in connection with that agreement.

Pub franchise agreements

55.—(1) The following provisions of these Regulations do not apply to the dealings of a pub-owning business with a tied pub tenant under a pub franchise agreement—

(a) Parts 3 and 4 to 8;

(b) regulation 47; and

(c) paragraphs 20(a) and (b) and 25 of Schedule 1.

(2) A "pub franchise agreement" means an agreement between a pub-owning business and a tied pub tenant for the tenant to occupy the tied pub which—

(a) grants the tied pub tenant a fixed share of turnover or a relevant share of turnover;

(b) requires the pub-owning business to offer marketing, training and other business support to the tied pub tenant;

(c) grants the tied pub tenant a right to use the relevant business model and may require the tenant to pay a fee in respect of the use of that model;

(d) does not require the tied pub tenant to pay to the pub-owning business any other amount in respect of the tenant's occupation of the tied pub;

(e) does not require the tied pub tenant to make any other payments to the pub-owning business in connection with the supply of products to the tied pub tenant or the services offered to the tenant unless the circumstances in paragraph (3) arise after the parties have entered into the pub franchise agreement; and

(f) grants the tied pub tenant a right to sell the business to a third party at market value.

(3) The circumstances mentioned in paragraph (2)(e) are that—

(a) the tied pub tenant accepts the pub-owning business's offer to supply, at cost price, a tied product or service which the business has not already agreed to supply under the pub franchise agreement; and

(b) the pub franchise agreement does not require the tenant to accept such an offer.

(4) A "fixed share of turnover" means a percentage of the tied pub's turnover, being a percentage which is fixed for the duration of the franchise agreement.

(5) A "relevant share of turnover" means a percentage of the tied pub's turnover which —

(a) is a percentage ("the original percentage") specified in the agreement; or

(b) is, where the tied pub's turnover increases beyond one or more thresholds specified in the agreement, the original percentage increased by an amount or amounts specified in the agreement.

(6) "Relevant business model" means a model for doing business at a pub which—

(a) the pub-owning business has used at two or more pubs for a period of 12 months or more;

(b) the pub-owning business can demonstrate has the potential to succeed when applied to the tied pub; and

(c) includes details of intellectual property rights held by the pub-owning business and methods, procedures and other technical and industrial know-how required for its use.

(7) For the purposes of paragraph (6)(b), a relevant business model has the potential to succeed if it has the potential to generate, from the tied pub, a reasonable profit for the tied pub tenant and the pub-owning business.

The investment exception

56.—(1) The investment exception applies where—

(a) a pub-owning business has made a qualifying investment;

(b) the pub-owning business and the tied pub tenant have entered into an investment agreement in relation to the qualifying investment; and

(c) the investment period has not ended.

(2) A "qualifying investment" is an investment in the premises of a tied pub—

(a) which is made in connection with a project which, when the investment agreement is signed, would be reasonably expected to—

(i) change the trading environment, the nature or the capacity of the premises; and

(ii) increase the trade and profit of the tied pub;

(b) which is not made in pursuance of any duty under the terms of the tenancy or licence under which the tied pub is occupied; and

(c) the amount of which is equal to or greater than—

(i) where the tenant was in occupation of the tied pub throughout the last complete financial year preceding the date on which the investment agreement was signed, twice the rent, or the money payable in lieu of rent, payable under the tenancy or licence in respect of that period;

(ii) where paragraph (i) does not apply but the tenant was in occupation of the tied pub throughout the period of 12 months preceding the date on which the investment agreement was signed, twice the rent, or the money payable in lieu of rent, payable under the tenancy or licence in respect of that period;

(iii) otherwise, twice the rent, or the money payable in lieu of rent, payable under the tenancy or licence in respect of the period of 12 months beginning with the date on which the tenancy or licence first confers on the tied pub tenant the right to occupy the tied pub.

(3) An "investment agreement" is a written agreement between the tied pub tenant and the pub-owning business which includes—

(a) a description of the proposed investment which demonstrates that it is a qualifying investment;

(b) a term specifying any proposed change to the terms of the tenancy or licence;

(c) a list of the works to be carried out in the premises as a result of the investment which includes—

(i) the dates on which those works are to be completed;

(ii) the estimated costs of the works; and

(iii) confirmation that the tied pub tenant has had an opportunity to obtain alternative estimates for the works;

(d) a term specifying the dates on which the investment period is to begin and end;

(e) a term specifying—

(i) that at least one rent review will be conducted during the investment period; and

(ii) the date of that review; and

(f) confirmation that the tied pub tenant has obtained independent professional advice in relation to the agreement.

(4) Before the investment agreement is signed by the pub-owning business and the tied pub tenant, the pub-owning business must provide to the tenant information which, in the pub-owning business's opinion, is necessary to demonstrate to the tenant how the investment would be reasonably expected to achieve the outcomes described in paragraph (2)(a)(i) and (ii), such as a reasonable forecast profit and loss statement for the tied pub for a period of 2 years.

(5) For the purposes of paragraph (1) the investment agreement—

(a) is of no effect unless the pub-owning business complies with paragraph (4); and

(b) ceases to have effect if the works mentioned in paragraph (3)(c) are not completed—

(i) within the period of 12 months beginning with the day on which the investment agreement is signed by the pub-owning business and the tied pub tenant; or

(ii) if later, by the date agreed by the parties in the investment agreement.

(6) But paragraph (5)(b) does not apply where, after the investment agreement has been signed by both parties—

(a) an event occurs which is beyond the reasonable control of the pub-owning business;

(b) the event is likely to delay the date on which the works are completed;

(c) the pub-owning business notifies the tenant, in writing, within the period of 14 days beginning with the day on which the event occurs, of a new date by which the works are to be completed; and

(d) that new date is reasonable, given the nature of the event.

(7) In that case, the investment agreement ceases to have effect if the works mentioned in paragraph (3)(c) are not completed by the new date mentioned in paragraph (6)(c).

(8) For the purposes of paragraphs (5)(b) and (6), the works are completed when the pub-owning business provides the tenant with a practical completion notice.

(9) Where a tied pub tenant considers that the investment agreement is of no effect for the purposes of paragraph (1) because the pub-owning business has not complied with paragraph (4), the tenant may refer the matter to the Adjudicator.

(10) Where a tied pub tenant considers that the investment agreement has ceased to have effect for the purposes of paragraph (1)—

(a) because the works specified in that agreement are not completed within the period, or on the date, specified in paragraph (5)(b) or (6)(c); or

(b) because the new date mentioned in that paragraph is not reasonable,

the tenant may refer the matter to the Adjudicator.

(11) Where a tied pub tenant and a pub-owning business have entered into an agreement but disagree as to whether it is an investment agreement, either of them may refer the matter to the Adjudicator.

(12) The "investment period" is the period which—

(a) begins with the day on which the investment agreement is signed by the pub-owning business and the tied pub tenant; and

(b) ends with a date agreed between the tenant and the pub-owning business, being a date—

(i) which is reasonable in the light of the value of the qualifying investment;

(ii) which is no later than 7 years from the day on which the investment agreement is signed.

(13) For the purposes of paragraph (4)(a) a "reasonable forecast" is a forecast which is based on an assessment of the level of trading at the tied pub after the investment if it were operated by a reasonably efficient tenant.

PART 13

Void or unenforceable terms

Void or unenforceable terms of a tenancy or licence

57.—(1) A term of a tenancy or other agreement between a tied pub tenant and a pub-owning business (whether entered into before or after the commencement date) is void if it purports to—

(a) penalise the tenant for requiring the pub-owning business to act, or not act, in accordance with Parts 2 to 10 of these Regulations; or

(b) provide that a rent review or a review of money payable by the tenant in lieu of rent in relation to the tied pub—

(i) may be initiated only by the pub-owning business; or

(ii) may only determine that the rent or money payable in lieu of rent is to be increased.

(2) A dispute in relation to a term which is unenforceable, in that it purports to exclude, limit or otherwise modify the processes or the obligations of pub-owning businesses required under Parts 2 to 10 of these Regulations, may be arbitrated in accordance with an arbitration agreement(**a**).

PART 14

Disputes

Referrals to the Adjudicator in connection with the MRO procedure

58.—(1) Paragraph (2) applies where a matter has been referred to the Adjudicator under—

(a) regulation 32(2) (disputes in connection with the full response);

(b) regulation 35(1) (disputes in connection with the negotiation period);

(c) regulation 37(10) or (11) or 38(4) (disputes in connection with the independent assessor);

(d) regulation 39(3) (disputes in connection with a tenancy or licence after proposal agreed);

(e) regulation 40 (disputes in connection with recovery of rent etc after MRO procedure);

(f) regulation 56(9), (10) or (11) (disputes in connection with the investment agreement).

(2) The Adjudicator must either—

(a) arbitrate the dispute; or

(b) appoint another person to arbitrate the dispute.

(3) Except where this Part makes different provision, the arbitration must be conducted in accordance with —

(a) the rules regarding arbitrations issued from time to time by the Chartered Institute of Arbitrators; or

(b) the rules of another dispute resolution body nominated by the arbitrator.

Referrals to the Adjudicator in connection with the independent assessor

59.—(1) Where—

(a) a matter is referred to the Adjudicator under regulation 37(10); and

(b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that the alleged failure has not occurred,

paragraph (2) applies.

(**a**) Section 72(1) of SBEEA 2015 defines "arbitration agreement".

(2) The tied pub tenant must, by notice in writing to the pub-owning business, accept or reject the determination provided under regulation 37(9) and the associated tenancy or licence provided under regulation 37(1) within the period of 21 days beginning with—

(a) the day on which the determination is communicated to the tenant; or

(b) if later, the day on which any rent assessment or assessment of money payable in lieu of rent being carried out in respect of the tenancy or licence ends.

(3) Where a matter is referred to the Adjudicator under regulation 37(10), and the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that the alleged failure has occurred, the Adjudicator (or a person appointed under regulation 58(2)(b) or 60(4)(b)) must—

(a) give an explanation, in writing, as to why the failure has occurred; and

(b) having regard to the nature of the failure—

(i) substitute a figure for the market rent himself or herself and provide an explanation for that substitution;

(ii) direct the independent assessor to make a second determination of the market rent in the light of that explanation within 21 days beginning with the day on which the direction is made; or

(iii) make such other determination as the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) considers appropriate.

(4) When making a determination under paragraph (3)(b)(iii), the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) may, in exceptional circumstances, appoint another independent assessor to conduct an assessment of the market rent; and where such an appointment is made, the appointee must determine the market rent within the period of 21 days following the appointment.

(5) A substitution of the market rent made by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) under paragraph (3)(b)(i) is final and, once it has been communicated to the tied pub tenant, the tenant must, by notice in writing to the pub-owning business, accept or reject the substitution and the associated tenancy or licence provided under regulation 37(1), within the period of 21 days beginning with—

(a) the day on which the substitution made by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) is communicated to the tenant; or

(b) if later, the day on which any rent assessment or assessment of money payable in lieu of rent being carried out in respect of the tenancy or licence ends.

(6) Where a matter is referred to the Adjudicator under regulation 37(11), the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) must—

(a) determine that the independent assessor requires additional information to complete the determination of the market rent;

(b) direct the independent assessor to make the determination within a period of time specified by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)); or

(c) appoint another independent assessor within the period of 14 days beginning with the day of the referral to make the determination.

(7) Where the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) makes a determination under paragraph (6)(a), the Adjudicator must—

(a) require the tied pub tenant or the pub-owning business to provide any additional information to the independent assessor; and

(b) direct the independent assessor to complete the determination within a period of time specified by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)).

(8) Where a matter is referred to the Adjudicator under regulation 38(4) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) may, within the period

of 21 days beginning with the day on which the referral is made, make a further determination of the market rent which is final.

(9) Where the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) makes a final determination of the market rent, the tied pub tenant must, by notice in writing to the pub-owning business, accept or reject the final determination and the associated tenancy or licence provided under regulation 37(1) within the period of 21 days beginning with—

(a) the day on which the determination is communicated to the tenant; or

(b) if later, the day on which any rent assessment or assessment of money payable in lieu of rent being carried out in respect of the tenancy or licence ends.

(10) If the tied pub tenant does not comply with paragraph (2), (5) or (9), the tenant is treated as having rejected the determination and the associated tenancy or licence on the final day of the period mentioned in that paragraph.

Arbitration commenced by pub-owning business

60.—(1) This regulation applies where—

(a) there is an arbitration agreement between a tied pub tenant and a pub-owning business;

(b) the pub-owning business commences arbitral proceedings about a matter which is, or which includes, an MRO dispute between the pub-owning business and the tied pub tenant; and

(c) the tied pub tenant would have been able to refer the MRO dispute to the Adjudicator (were it not for the commencement of arbitral proceedings by the pub-owning business) under —

(i) regulation 32(2) (disputes in connection with the full response);

(ii) regulation 35(1) (disputes in connection with the negotiation period);

(iii) regulation 37(10) or (11) or 38(4) (disputes in connection with the independent assessor);

(iv) regulation 39(3) (disputes in connection with a tenancy or licence after proposal agreed);

(v) regulation 40 (disputes in connection with recovery of rent etc after MRO procedure);

(vi) regulation 56(9), (10) or (11) (disputes in connection with the investment agreement).

(2) The tied pub tenant may, by giving notice in writing to the pub-owning business and the Adjudicator, appoint the Adjudicator to arbitrate the MRO dispute.

(3) A notice under paragraph (2) must be given—

(a) where the arbitration agreement provides for the arbitrator to be appointed by a person other than the pub-owning business or the tied pub tenant, within the period of 21 days beginning with the day on which that person notifies the tied pub tenant of the person proposed to be appointed as arbitrator;

(b) otherwise, within the period of 21 days beginning with the day on which arbitral proceedings commenced.

(4) Where the Adjudicator is appointed to arbitrate the MRO dispute (whether under paragraph (2) or otherwise) the Adjudicator must—

(a) arbitrate the MRO dispute; or

(b) appoint another person to arbitrate that dispute.

(5) Section 14 of the Arbitration Act 1996(**a**) makes provision about the commencement of arbitral proceedings.

(6) An "MRO dispute" is a dispute relating to the offer of a market rent only option.

(**a**) 1996 c.23.

Information required by the Adjudicator

61.—(1) If the Adjudicator appoints another person as arbitrator under regulation 58(2)(b) or 60(4)(b), the Adjudicator may require the arbitrator, or the pub-owning business and the tied pub tenant concerned, to provide information to assist the Adjudicator in carrying out functions under this Part.

(2) The Adjudicator may enforce any requirement to provide information under this Part by bringing civil proceedings to obtain an injunction.

PART 15

Group undertakings

Adjudicator's determination during referral of a dispute

62.—(1) This regulation applies where—

(a) a tied pub tenant has referred a dispute between the tenant and a pub-owning business ("P") to the Adjudicator under section 48 of SBEEA 2015; and

(b) there is evidence before the Adjudicator which suggests that a group undertaking ("U") in relation to the pub-owning business—

(i) discharges, has discharged, exercises or has exercised, influence over any of P's obligations under the tenancy or licence to which the dispute relates; or

(ii) is responsible for, or exercises influence over, the terms of that tenancy or licence, the financial arrangements, the charging policies or any other administrative, managerial or executive decisions of P, which affect the tied pub tenant,

in a way which is relevant to the dispute.

(2) Where this regulation applies, the Adjudicator may determine that U is to be treated as a pub-owning business, as well as or instead of P, for the purposes of the arbitration.

(3) Before the Adjudicator makes a determination under paragraph (2), the Adjudicator must consider representations from U.

(4) The Adjudicator may disregard a request from a tied pub tenant for U to be treated as a pub-owning business, where—

(a) U is not identified by the tenant in such a way that the Adjudicator is able to establish U's name, business address and its relationship with P;

(b) the tied pub tenant has not notified U in writing of the dispute; or

(c) the tenant has not forwarded a copy of the request to U.

Investigations by the Adjudicator

63.—(1) This regulation applies where—

(a) the Adjudicator is conducting an investigation of a pub-owning business ("P") under section 53 of SBEEA 2015; and

(b) in the course of that investigation, evidence becomes available to the Adjudicator which suggests that a group undertaking in relation to P—

(i) discharges, has discharged, exercises, or has exercised, influence over any of P's obligations under the tenancy or licence to which the investigation relates; or

(ii) is responsible for, or exercises influence over, that tenancy or licence, the financial arrangements, the charging policies or any other administrative, managerial or executive decisions of P, which affect the tied pub tenant,

in a way which is relevant to the investigation.

(2) Where this regulation applies, the Adjudicator may determine that the group undertaking is to be treated as a pub-owning business, as well as, or instead of P, for the purposes of an investigation under sections 53 to 61 of SBEEA 2015.

Adjudicator's determination in relation to UK businesses only

64. The Adjudicator may not determine that a person who is a group undertaking in relation to a pub-owning business is to be treated as a pub-owning business unless the person—

(a) carries on a trade or business in the United Kingdom; or

(b) is a UK-registered company within the meaning of section 1158 of the Companies Act 2006(**a**).

PART 16

Transitional provisions

Rent proposals

65.—(1) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(2), unless the event mentioned in regulation 15(2)(a) occurs on or after the commencement date.

(2) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(3), unless the event mentioned in regulation 15(3)(a) occurs on or after the commencement date.

(3) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(4), unless the event mentioned in regulation 15(4)(a) occurs on or after the commencement date.

(4) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(5), unless the event mentioned in regulation 15(5)(a) occurs on or after the commencement date.

(5) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(6), unless the event mentioned in regulation 15(6)(a) occurs on or after the commencement date.

(6) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(7), unless the notification mentioned in regulation 15(7) occurs on or after the commencement date.

Rent assessments

66.—(1) The reference in regulation 19(1)(a) to a rent review which is required under the terms of a tenancy or licence does not include—

(a) a rent review where the rent review date falls before the commencement date; or

(b) a rent review which is concluded before the commencement date.

(2) A tied pub tenant may request, on or before the 5-year anniversary date, a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(a) if, and only if—

(a) no rent assessment or assessment of money payable in lieu of rent has been concluded before the date of the request; and

(b) no rent review has been concluded within the period of 5 years ending with the date of the request.

(**a**) 2006 c.46.

(3) A tied pub tenant may not request a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(b) unless the tenant first receives notification of the significant increase on or after the commencement date.

(4) A tied pub tenant may not request a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(c) unless the tenant sends the written analysis mentioned in that paragraph on or after the commencement date.

(5) Paragraphs (6) and (7) apply where—

(a) a pub-owning business is required to conduct a rent assessment or an assessment of money payable in lieu of rent under regulation 19(1)(a); and

(b) the rent review date falls before the end of the period of 6 months beginning with the commencement date.

(6) Regulation 20(2)(a) does not apply; instead, the pub-owning business must provide the rent assessment proposal to the tied pub tenant before the end of the relevant period.

(7) In paragraph (6) "the relevant period" means—

(a) where the rent review date falls before the end of the period of 3 months beginning with the commencement date, the period of 6 weeks beginning with the commencement date;

(b) otherwise, the period of 12 weeks beginning with the commencement date.

(8) For the purposes of this regulation—

(a) a rent review is concluded when the rent, or money payable in lieu of rent, is agreed in writing between the pub-owning business and the tied pub tenant;

(b) a rent assessment is concluded when it ends (see regulation 22).

(9) In this regulation, the "5-year anniversary date" means the date which is 5 years after the commencement date.

Market rent only option: the MRO notice

67.—(1) References in regulation 23(1) to an event occurring do not include an event which occurred before the commencement date.

(2) The reference in regulation 25(1) to a relevant analysis which demonstrates that a trigger event has occurred does not include a relevant analysis which demonstrates that a trigger event has occurred before the commencement date.

PART 17

Review

Review of Parts 11 to 16

68.—(1) The Secretary of State must, for each review period, carry out a review of Parts 11 to 16(**a**) (and of Part 1 so far as it applies for the purposes of those Parts).

(2) As soon as practicable after a review period, the Secretary of State must publish a report of the findings of the review for that period.

(3) The first review period is the period beginning on the commencement date and ending 2 years after the following 31 March.

(4) Subsequent review periods are each successive period of 3 years after the first review period.

(**a**) Parts 2 to 10 of these Regulations are made under sections 42 to 44 of SBEEA 2015 and are, accordingly, "the Pubs Code" for the purposes of SBEEA 2015 (see section 42(2)). Section 46 of SBEEA 2015 requires the Secretary of State to review the Pubs Code.

Margot James
Parliamentary Under Secretary of State
20th July 2016 Department for Business, Energy and Industrial Strategy

SCHEDULE 1

Regulations 11, 12 and 14

Information specified for the purposes of a new agreement etc.

Regulations and code of practice

1. The Pubs Code etc. Regulations 2016.

2. Where the pub-owning business has a code of practice which is relevant to its dealings with the tied pub, a copy of that code.

The type of tenancy or licence

3. An overview of the different tenancies or licences offered to tied pub tenants by the pub-owning business.

4. Whether the tenancy offered by the pub-owning business is a protected 1954 Act tenancy and the process for the renewal of such a tenancy, or any other tenancy, including when notification to renew, or otherwise, must be given.

5. Whether there is a superior landlord and, if so, the name and address of the superior landlord.

6. The length of the tenancy, licence or relevant tie agreement offered to the tied pub tenant by the pub-owning business, including the date on which the tenancy, licence or relevant tie agreement is to begin and the date on which it is to end ("the end-date").

7. Whether the tied pub tenant or the pub-owning business may terminate the tenancy, licence or relevant tie agreement before the end-date.

8. Details of the pub-owning business's procedures for responding to any request by the tied pub tenant to terminate the tenancy, licence or relevant tie agreement before the end-date.

9. In paragraphs 6 to 8 a "relevant tie agreement" is an agreement of the kind described in section 43(8)(b) of SBEEA 2015 where the terms of that agreement are not included in the tenancy or licence offered to the tenant.

The premises

10. A full and clear description of the premises to which the tenancy or licence relates, including—

(a) details of the premises licence, within the meaning of section 11 of the Licensing Act 2003(**a**) and any licence conditions;

(b) details of any enforcement action taken by any public authority in connection with the tied pub during the previous 2 years, where known;

(**a**) 2003 c.17.

(c) details of any foreseeable material changes to the commercial conditions in the tied pub's local area and how these might influence the costs and trading environment of the tied pub tenant;

(d) details of any restrictions on the use of the premises, such as planning constraints, restrictions on types of trading, restrictions on access to the premises (including details of any shared access) and hours of trading;

(e) a Schedule of Condition;

(f) details of any specific problems in the premises.

11. Whether the fixtures and fittings in the tied pub are required to be purchased by the tied pub tenant under the tenancy or licence and, if so, the arrangements for the payment for such fixtures and fittings.

Maintenance and repair

12. The respective obligations of the pub-owning business and the tied pub tenant under the tenancy or licence or pursuant to any other document, such as a code of practice, in relation to repairing and maintaining the premises to which the tenancy or licence relates.

13. The pub-owning business's procedures for discharging its obligations to repair and maintain the premises under the tenancy or licence, including the procedure by which a tied pub tenant can raise concerns about the discharge of those obligations.

14. Where the tenancy or licence requires the tied pub tenant to repair or maintain the premises to which the tenancy or licence relates, confirmation that, unless otherwise specified in the tenancy or licence, the requirement is to keep or maintain the premises in the condition set out in the Schedule of Condition.

15. The procedures to be followed in connection with the respective obligations of the pub-owning business and the tied pub tenant under the tenancy or licence in relation to assessing and making good dilapidations, including—

(a) the time when the Schedule of Condition may be reviewed;

(b) if applicable, the process for agreeing the works which must be carried out in the light of a review of the Schedule of Condition;

(c) where the tenant is responsible for remedying, or paying for, any dilapidations, the period before the end of the tenancy when a survey will be carried out to determine the extent of dilapidations;

(d) the process for resolving a dispute in connection with any obligation under the tenancy or licence to maintain, repair and make good.

16. Where, before entering into a new agreement, a short agreement, or an agreement to renew a tenancy which not a protected 1954 Act tenancy, the pub-owning business is aware of any maintenance, repair or improvement works ("initial works") which must be carried out to the premises to which the tenancy or licence relates—

(a) a Schedule of Condition prepared before the initial works are carried out;

(b) a list of the initial works which must be carried out;

(c) the respective obligations of the tied pub tenant and the pub-owning business in relation to those works under the tenancy or licence;

(d) details of any initial works which are required to be completed before the agreement or the renewal is in force including whether the pub-owning business or the tenant will be responsible for carrying them out;

(e) where any of the initial works—

(i) are to be carried out to improve the premises significantly; or

(ii) require a significant investment of capital,

a sketch or an artist's plan (if any) of those works; and

(f) where any of the initial works are to be carried out after the agreement has been entered into or after the renewal has been agreed —

(i) whether the pub-owning business or the tenant will be responsible for carrying out the works;

(ii) the date on which the works must be completed; and

(iii) any penalty in respect of a failure to complete the works, or to complete them by a certain date.

17. Any requirements under the tenancy or licence in relation to the condition in which the premises to which the tenancy or licence relates are to be returned to the pub-owning business at the end of the tenancy or licence.

18.—(1) The pub-owning business's policy for investing in the premises to which the tenancy or licence relates by way of improvements and refurbishments to those premises, including any policy on joint investment with its tied pub tenants.

(2) Where, at the time the information under this Schedule is sent to the tenant, the pub-owning business is considering investing in the premises, the information required under sub-paragraph (1) includes details of the potential impact of any such investment on the rent, money payable in lieu of rent or other payments which the tied pub tenant must pay under the tenancy or licence.

19. The respective obligations of the pub-owning business and the tied pub tenant under any enactments in relation to—

(a) utilities at the tied pub, such as electrics, gas, water or sewerage; and

(b) environmental impact, health and safety.

Obligations in relation to the purchase of tied products and services

20. Details of any obligations to purchase products or services subject to a product or service tie including—

(a) the current price list for those products or services and notification of any imminent changes to that list;

(b) any discounts which may be available to the tied pub tenant in connection with the purchase of those products or services;

(c) whether the tenancy or licence authorises the tenant to purchase any food, drink or services which are not subject to a tie and, if so, the details of that authorisation;

(d) if gaming machines are offered to the tied pub under the tenancy or licence, the terms on which they are supplied, including details of the arrangements for the distribution of income from the machines and an outline of the trading, payment and credit terms in relation to them.

Assignment

21. In the case of a tenancy—

(a) whether the tenancy may be assigned or sold and, if so, the procedures which the tied pub tenant must follow to assign or sell the tenancy; and

(b) the procedures which the pub-owning business must follow where the tied pub tenant makes a request to assign or sell the tenancy.

Advice and support

22.—(1) The advice and support available to the tied pub tenant during the tenancy or licence, including advice and support in respect of—

(a) the capabilities and training needs of the tied pub tenant and the tenant's employees;

(b) licences and any relevant training requirements in relation to those licences;

(c) brand promotion and merchandising;

(d) provision and maintenance of dispensing equipment;

(e) pub promotion and marketing;

(f) other aspects of business management which are significant, in the pub-owning business's opinion;

(g) the benefits which the tied pub tenant may expect to enjoy as a consequence of the pub-owning business's ability to procure and supply products, services and expertise to the tied pub tenant;

(h) business rates; and

(i) the exterior decoration of the premises, the signs, repairs to the building, car parks and gardens (where relevant).

(2) The information required under sub-paragraph (1) is not required to be provided to a tied pub tenant who is already subject to a tenancy or licence granted by the pub-owning business in relation to a tied pub unless that information has changed since the tied pub tenant received it in connection with that tenancy or licence.

23. The pub-owning business's policy (if any) for dealing with requests for assistance from the tied pub tenant in cases of difficulties in respect of the tenancy or licence which are beyond the tenant's control.

24. The circumstances (if any) in which the pub-owning business may be willing to consider amendments to its standard terms.

25. The events, the occurrence of which, entitle the tied pub tenant, under regulation 23, to give an MRO notice.

Insurance

26. Whether, under the tenancy or licence—

(a) the pub-owning business is responsible for insuring the premises and, if so, whether the pub-owning business requires an insurance charge; or

(b) the tenant is responsible for insuring the premises.

27. Where the tied pub tenant is responsible for insuring the premises, any minimum requirements for insurance under the tenancy or licence.

Payment of rent and deposits

28.—(1) The arrangements for the payment of deposits, including—

(a) the amount of any deposit ("the deposit") payable by the tied pub tenant to the pub-owning business for the purposes of securing the tenancy or licence;

(b) the period for which the deposit is likely to be retained by the pub-owning business;

(c) the arrangements for paying to the tied pub tenant any interest accruing on the deposit;

(d) the circumstances in which the deposit may be required to be increased under the tenancy or licence;

(e) when and how the deposit will be repaid to the tied pub tenant;

(f) how the deposit is to be treated if the pub-owning business becomes insolvent.

(2) The information required under sub-paragraph (1) is not required to be provided to a tied pub tenant in connection with the renewal of a protected 1954 Act tenancy unless the pub-owning business proposes to change the arrangements for the payment of rent, money payable in lieu of rent and other deposits on the renewal.

29. Where the tenancy or licence provides that the rent or money payable in lieu of rent is to be varied by reference to an index—

(a) the index used;

(b) when the indexation rate will be assessed and applied; and

(c) an illustration of the impact which the indexation rate will have on the rent, or money payable in lieu of rent, during the tenancy or licence, using, by way of example, the indexation rate at the time the information under this Schedule is sent to the tenant.

30. In cases where damage to the premises to which the tenancy or licence relates impacts on the tied pub's potential for trading, the pub-owning business's policy in respect of the temporary suspension of—

(a) rent or money payable in lieu of rent; and

(b) minimum purchasing requirements under the tie.

31. Information in respect of other support available in cases where damage to the property impacts on the tied pub's potential for trading.

32. Details of any other fees, charges, including service charges, or financial penalties which the tied pub tenant may be required to pay during the tenancy or licence.

Additional information where new agreement is a pub franchise agreement

33.—(1) Where the new agreement being entered into is a pub franchise agreement—

(a) information about any initial and ongoing fees payable by the tenant to the pub-owning business under the agreement;

(b) details of the fixed share of turnover or the relevant share of turnover granted to the tied pub tenant;

(c) a description of the new agreement which demonstrates that it is a pub franchise agreement; and

(d) a forecast of a profit and loss statement for the tied pub for the period of 12 months beginning with the day on which the franchise agreement is proposed to be entered into ("the franchise forecast period").

(2) The statement required under sub-paragraph (1)(d) must include the figures and other information specified in paragraph 5(a) to (i) of Schedule 2 to these Regulations.

(3) For the purposes of the duty under sub-paragraph (1)(d), references in paragraph 5 of Schedule 2 to the "forecast period" must be read as references to "the franchise forecast period".

Other obligations

34. Information in respect of any obligation which the tied pub tenant may have in connection with the Transfer of Undertakings (Protection of Employment) Regulations 2006(**a**).

Breaches

35. The pub-owning business's procedures for establishing whether the tied pub tenant has breached the tenancy or licence.

36. Where a tied pub tenant is in breach of the tenancy or licence, the pub-owning business's procedures for informing the tied pub tenant that the tenant is in breach and whether the tenant will have opportunities to remedy the breach before any enforcement action is taken.

(**a**) S.I. 2006/246, amended by S.I. 2010/93, 2014/16, 2014/386 and 2014/853.

37. Information about the procedures which may be followed by the tied pub tenant in cases where the tenant considers that the pub-owning business has failed to comply with the provisions of these Regulations.

SCHEDULE 2

Regulations 16 and 20

Information specified for the purposes of a rent proposal or a rent assessment proposal

1. A summary of the methods which must be used under the tenancy or licence to calculate the initial or revised rent or the new rent including—

(a) the information which will be used to support those calculations;

(b) the justification for the use of such information.

2. An outline of the procedure to be followed during negotiations of the initial or revised rent or the new rent between the pub-owning business and the tied pub tenant.

3. A list of the matters which will be considered to be relevant and irrelevant in such negotiations.

4. Information in respect of the cost of service charges relating to the tied pub during the last 3 years.

5. A forecast profit and loss statement for the tied pub for the period of 12 months beginning with the day on which the initial or revised rent or the new rent is payable ("the forecast period") and the figures and other information which have been relied on to formulate that statement, including—

(a) the volume of alcohol, including the number of barrels of alcohol, purchased during the last 3 years from the pub-owning business or its agents;

(b) the percentage of the tied pub's turnover during the last 3 years which the sale of this volume of alcohol represents;

(c) if different from the figure in (a), the volume of alcohol in respect of which duty was paid during the last 3 years**;**

(d) a figure for the total estimated sales and gross profit margins of the tied pub for the forecast period, with a breakdown showing separate figures for the estimated sales, gross profit margins, for—

(i) draught ales;

(ii) draught lagers;

(iii) packaged beers;

(iv) draught ciders;

(v) packaged ciders;

(vi) wines;

(vii) spirits;

(viii) flavoured alcoholic beverages; and

(ix) soft drinks;

(e) the percentage of the pub's turnover for the forecast period which each drink in sub-paragraph (d)(i) to (ix) represents;

(f) an estimate figure for the volume of draught beer and cider which will not be sold during the forecast period (including draught beer and cider wasted, unfit for sale or dispensed in promotions) where that figure has not been accounted for in the gross profit margin;

(g) the estimated operating costs likely to affect the tied pub tenant's profit during the forecast period including, where relevant, the estimated cost of a manager during that year, where the tied pub tenant is not the manager of the tied pub;

(h) an explanation of how estimated income during the forecast period from any gaming machine, in the tied pub has been accounted for in the statement;

(i) a breakdown of any costs during the forecast period which have not been accounted for separately but have been included in the estimated figures for other costs (for example, the cost of cellar gas).

6. The figures which are provided under paragraph 5 must be provided net of value added tax or machine games duty (within the meaning of Schedule 24 to the Finance Act 2012(**a**)).

7. The profit and loss statement provided under paragraph 5 must refer to relevant and current data available publicly in connection with the typical costs of operating a tied pub in the United Kingdom and explain any variance between the costs referred to and the pub-owning business's costs estimate.

8. The statement, figures and other information which the pub-owning business provides to the tied pub tenant under paragraphs 5 to 7 must —

(a) be sufficiently clear and detailed; and

(b) include justification or supporting evidence for any assumptions,

to allow the tenant to understand the basis on which the estimated figures in the statement have been calculated.

9. Any information which the pub-owing business provides under paragraph 5, must be—

(a) accurate, wherever it refers to historical data; and

(b) reasonable, wherever it refers to projected data.

10. In paragraph 5(c) "duty" means any duty of excise charged on beer by section 36(1) or section 37(1) of the Alcoholic Liquor Duties Act 1979(**b**).

11. Any information in Schedule 1 which—

(a) the tied pub tenant has not already received; or

(b) has changed materially since it was provided to the tenant.

12. A timetable specifying the dates on which any other information will be made available to the tied pub tenant before negotiations begin.

SCHEDULE 3

Regulation 37

Documents to which the independent assessor must have regard

1. Documents held by the tied pub tenant or the pub-owning business which provide evidence of the tied pub's level of trading in the last 3 years.

2. Documents held by the tied pub tenant or the pub-owning business which present a reasonable forecast of the tied pub's level of trading for the next 3 years.

3. For the purposes of paragraph 2, a "reasonable forecast" is a forecast which—

(**a**) 2012 c.14. Schedule 24 was amended by section 124(2) to (4) of, and paragraph 31(2) to (4) of Schedule 28 to, the Finance Act 2014 (c.26).

(**b**) 1979 c.4. Section 36(1) was substituted by section 7(1) of the Finance Act 1991 (c.31) and then amended by paragraph 1(2) of Schedule 1 to the Finance Act 2002 (c.23). Section 37(1) was inserted by paragraph 1 of Schedule 1 to the Finance Act 2011 (c.11).

(a) is based on an assessment of the level of trading at the tied pub if it were operated by a reasonably efficient tenant; and

(b) may be based on an assessment of the pub's level of trading if it were not subject to a product or service tie.

4. Documents held by the tied pub tenant or the pub-owning business which describe any special commercial or financial advantages provided to the tied pub tenant under the terms of the tenancy or licence.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first to be made under sections 42 to 45, 48, 69 and 71 of the Small Business, Enterprise and Employment Act 2015 ("SBEEA 2015").

Section 42 of SBEEA 2015 requires the Secretary of State to make regulations about practices and procedures to be followed by pub-owning businesses in their dealings with their tied pub tenants. A "pub-owning business" is a landlord of 500 or more tied pubs. Parts 2 to 4 of these Regulations make provision in connection with such dealings.

Part 2 requires pub-owning businesses, before they enter into new agreements with their tied pub tenants, to advise tenants to complete appropriate training, to ensure that tenants have a sustainable business plan and to provide certain information to the tenants. This Part also places obligations on pub-owning businesses in relation to the maintenance of tied pub premises and in connection with a tenant's proposal to assign a tenancy.

Parts 3 and 4 require pub-owning businesses to provide rent proposals and rent assessments, respectively, to their tied pub tenants in certain specified circumstances and include provision about the contents and timing of such proposals and assessments.

Section 43 of SBEEA 2015 provides that regulations must be made requiring pub-owning businesses to offer certain tied pub tenants a market rent only option (an "MRO option") in circumstances specified in that section. An MRO option is an option for the tenant to occupy the tied pub under a tenancy or licence which is MRO-compliant and to pay, in respect of that occupation, a rent agreed between the parties or, failing such agreement, the market rent.

Part 5 describes the four circumstances in which a tenant may request an MRO option. Part 6 requires the pub-owning business to provide a full response to the tenant's request. It also describes the nature of an MRO-compliant tenancy or licence and the negotiation period which follows that response. Part 7 describes the involvement of the independent assessor where, during the negotiation period, the parties fail to agree the rent to be payable under the MRO-compliant tenancy or licence. Part 8 describes the point at which this MRO procedure ends.

Part 9 describes the obligations of pub-owning businesses in respect of their business development managers and requires pub-owning businesses to appoint a compliance officer who is to submit an annual compliance report to the Pubs Code Adjudicator ("the Adjudicator").

Part 10 places further obligations on pub-owning businesses in respect of matters such as insurance, gaming machines and flow monitoring devices.

A reference in SBEEA 2015 to "the Pubs Code" is a reference to Parts 2 to 10 of these Regulations.

Where a landlord ceases to be a pub-owning business, SBEEA 2015 provides that its tenants continue to have extended protection until the earlier of the end of the tenancy or licence concerned or until a rent assessment occurs. Part 11 of these Regulations describes, for these purposes, when a tenancy or licence ends and when a rent assessment occurs.

Part 12 exempts short agreements and pub franchise agreements from certain provisions of these Regulations. It also provides that the tenant may not request an MRO option in all four

circumstances described in Part 5, where an investment agreement has been entered into between a pub-owning business and a tied pub tenant.

Part 13 describes the terms of a tenancy which will render it void.

Part 14 makes provision for the Adjudicator's functions in connection with the resolution of disputes relating to the offer of an MRO option.

Part 15 describes the circumstances in which a person who is a group undertaking in relation to a pub-owning business may, if the Adjudicator so determines, be treated.

Part 16 makes transitional provision.

Part 17 requires the Secretary of State to carry out a review of those provisions which are not the Pubs Code.

An Impact Assessment has been prepared for these Regulations and is published at www.legislation.gov.uk.

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Annex E
Notice of Investigation

Pubs Code Adjudicator

Notice of Investigation

The PCA's statutory responsibilities

The Pubs Code Adjudicator (PCA) is the independent regulator responsible for enforcing The Pubs Code etc. Regulations 2016 (the Pubs Code). The Pubs Code regulates the relationship between all pub companies (referred to as pub-owning businesses or POBs in the Pubs Code) owning 500 or more tied pubs in England and Wales and their tied tenants. Tied tenants are those who are obliged to purchase some or all of the alcohol to be sold at their pubs from their pub-owning business (or its group undertaking), or a person nominated by that business or group undertaking.

The pub-owning businesses currently covered by the Pubs Code are: Admiral Taverns Limited; Ei Group PLC (formerly Enterprise Inns PLC); Greene King PLC; Marston's PLC; Punch Taverns Limited; and Star Pubs & Bars Limited.

Under section 53(1)(a) of the Small Business, Enterprise and Employment Act 2015 (the 2015 Act), the PCA may carry out an investigation if it has reasonable grounds to suspect that a pub-owning business has failed to comply with the Pubs Code.

PCA decision to launch an investigation

The PCA and Deputy Pubs Code Adjudicator have considered information obtained relating to Star Pubs & Bars Limited (Star) and have made an assessment of that information in accordance with the PCA's published *Statutory Guidance on Investigations & Enforcement* of November 2016.

The PCA has reasonable grounds to suspect that Star has failed to comply with the Pubs Code by using unreasonable stocking terms in proposed market-rent only (MRO) tenancies.

Following a period of engagement with Star, the PCA has applied its published prioritisation principles to the issues which have come to its attention and is satisfied that commencing an investigation at this time is a targeted and proportionate approach. The PCA has decided that an investigation is a targeted and proportionate next step to understand the extent to which the Pubs Code may have been broken and, if it has, the potential impact of Star's conduct on its tenants.

Accordingly, the PCA is launching an investigation into the use of unreasonable stocking terms by Star in proposed MRO tenancies under the following provisions of the Pubs Code:

> **Regulation 29(3): Effect of tenant's notice**
>
> *(3) Where the pub-owning business agrees with the tied pub tenant's opinion under regulation 23(3)(e), the pub-owning business must send the tenant—*
>
> > *(a) a statement confirming its agreement;*
> >
> > *(b) where the MRO notice relates to a tenancy, a proposed tenancy which is MRO-compliant;*
> >
> > *(c) where the MRO notice relates to a licence, a proposed licence which is MRO-compliant.*

Section 43(4) of the 2015 Act provides that a tenancy or licence will be MRO-compliant if (among other things), taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence, it does not contain any unreasonable terms or conditions.

Section 43(5)(b) of the 2015 Act provides that the Pubs Code may specify descriptions of terms and conditions which are to be regarded as reasonable or unreasonable for the purposes of section 43(4).

Regulation 31(2)(c): Terms and conditions regarded as unreasonable in relation to proposed MRO tenancy etc

(2) The terms and conditions of the proposed MRO tenancy, taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy, are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they–

(c) are terms which are not common terms in agreements between landlords and pub tenants who are not subject to product or service ties.

The PCA's advice note of March 2018 on Market Rent Only-compliant proposals confirms that whether a term will be regarded as unreasonable will depend on all the circumstances (and not just on whether or not it is uncommon), and that the approach taken by a pub-owning business to an MRO proposal must be consistent with the principles which underpin the Pubs Code: the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants and the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie.

A brewing pub-owning business may include a "stocking requirement" in an MRO proposal. Under section 68(7) of the 2015 Act, a contractual obligation is a "stocking requirement" if:

(a) it relates only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord,

(b) it does not require the tied pub tenant to procure the beer or cider from any particular supplier, and

(c) it does not prevent the tied pub tenant from selling at the premises beer or cider produced by a person not mentioned in paragraph (a) (whether or not it restricts such sales).

The PCA's advice note of March 2017 on Stocking Requirements confirms that the reasonableness of a stocking requirement will be considered in the particular circumstances of the case.

Any obligation relating to stocking which does not meet the definition in section 68(7) of the 2015 Act is not a “stocking requirement”.

Investigation scope

The investigation will consider whether, and if so how, Star has failed to comply with the Pubs Code by using unreasonable stocking terms in certain of its proposed MRO tenancies and what impact any failure to comply has had on Star's tenants. The investigation will cover, but may not be limited to:

- Stocking obligations which require that, unless permission is given by Star for the tenant to stock competitor brands, all (or virtually all) of the keg beer stocked by the tenant be produced by the Heineken group (Star being a member of the Heineken group);

- Stocking obligations which relate to beer produced not only by Star, or by entities that are group undertakings in relation to Star, but also by other entities in which either Star or a group undertaking in relation to Star has a shareholding interest or has entered into any joint venture, partnership agreement or similar arrangement (a "group undertaking" in relation to Star means an undertaking which is: (a) a parent undertaking or subsidiary undertaking of Star; or (b) a subsidiary undertaking of any parent undertaking of Star);

- Stocking obligations which in reality can require the tenant to stock an unreasonably high proportion of brands covered by the terms;

- Stocking obligations which may influence the re-selling price of products covered by the terms.

Pub-owning businesses to be investigated

The investigation will focus on Star and will not currently extend to any other pub-owning business. If, during the course of the investigation, the PCA becomes aware that the practices under investigation may have been carried out by any other pub-owning business, the PCA will consider and assess what action would be appropriate to take.

Time period covered by the investigation

The investigation will consider the conduct of Star from the introduction of the Pubs Code, on 21 July 2016, to the date of this Notice.

Call for evidence

The PCA calls for evidence relevant to its determination of whether Star has failed to comply with the Pubs Code by using unreasonable stocking terms in proposed MRO tenancies.

The PCA invites tenants and other interested parties to submit any evidence of Star offering tenancy terms (whether or not the terms were accepted by the tenant) following service of an MRO notice involving:

- Stocking obligations which require that, unless permission is given by Star for the tenant to stock competitor brands, all (or virtually all) of the keg beer stocked by the tenant be produced by the Heineken group (Star being a member of the Heineken group);

- Stocking obligations which relate to beer produced not only by Star, or by entities that are group undertakings in relation to Star, but also by other entities in which either Star or a group undertaking in relation to Star has a shareholding interest or has entered into any joint venture, partnership agreement or similar arrangement (a "group undertaking" in relation to Star means an undertaking which is: (a) a parent undertaking or subsidiary undertaking of Star; or (b) a subsidiary undertaking of any parent undertaking of Star);

- Stocking obligations which in reality can require the tenant to stock an unreasonably high proportion of brands covered by the terms;

- Stocking obligations which may influence the re-selling price of products covered by the terms.

The deadline for submission of evidence is 5pm on 7 August 2019. Submissions may be made on paper or in electronic form.

Evidence should be submitted to the PCA at:

Pubs Code Adjudicator (call for evidence)
Lower Ground
Victoria Square House

Victoria Square
Birmingham
B2 4AJ

E-mail to: Investigations@pubscodeadjudicator.gov.uk

If you are unsure about whether or not certain information that you hold may be relevant to the PCA's call for evidence, or if you have any questions in relation to the submission of evidence, please send your query to the e-mail address above.

Any tenants and other interested parties who provide information for the purposes of the investigation will not be identified in the investigation report without their consent.

10 July 2019

Pubs Code
Adjudicator