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[REDACTED]

4 January 2021

[REDACTED]

[REDACTED]

Thank you for your email, received on 2 December 2020, in which you requested information from the office of the Pubs Code Adjudicator (PCA) under the Freedom of Information Act 2000 (the FOI Act).

The Act entitles you to:

- know whether the information you have requested is held by the PCA; and
- be provided with that information, subject to any exemptions in the Act which may apply.

You made the following request:

*“With reference to your Investigation into Stars (point 27) we note 6 weeks has passed and there has been nothing published.*

*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.***

*So under an FOI can you please send us:*

- *a copy of the Stars “plan” and*
- *copies of the correspondence between the PCA Stars during the six week “planning period” i.e. 15<sup>th</sup> Oct – to 25<sup>th</sup> Nov”*

We have interpreted your request to be for a copy of any information contained in a plan from Star Pubs & Bars Limited (Star) setting out how it proposes to comply with the recommendations made by the PCA in her report of the investigation into Star published by the PCA Office on 15 October 2020, and for any correspondence between the PCA and Star

between 15 October and 25 November 2020 relating to the production and implementation of such planning document(s).

It may firstly be useful to you to note that the investigation report does not envisage that a planning document is to be published or that details of implementation measures will be publicly announced within 6 weeks of the publication of the report. The six-week timescale set out at paragraph 27 is the time within which the PCA required Star to report to the PCA on its proposed measures to comply with the recommendations made in the report, rather than any complete and approved plan. The PCA is currently engaging with Star as set out at paragraph 27 of the report to ensure that her recommendations are implemented effectively. This work is ongoing.

I can confirm that the office of the PCA does hold information relevant to your request.

### **Section 31 of the FOI Act**

I can advise that the information requested is exempt under s.31(1)(g) and s.31(2)(c) of the FOI Act. These sections provide that information is exempt from disclosure if such disclosure would or would be likely to prejudice the exercise by the public authority of its function to ascertain whether circumstances which would justify regulatory action exist or may arise.

As a result of the investigation published on 15 October 2020 the PCA found several breaches of the Pubs Code and made a number of recommendations (under s.56 of the Small Business, Enterprise and Employment Act 2015) to Star intended to address the harms to tenants identified in the report, and to outline a path to compliance. Engagement between the PCA and Star as to the ways in which Star will implement and comply with the recommendations of the investigation report is a live and ongoing issue.

The PCA has been entrusted with the functions of investigating a pub-owning business where there are suspected breaches of the Pubs Code, or where a pub-owning business has failed to comply with any recommendation she has made under s.56 of the 2015 Act. Therefore, if the PCA had reasonable grounds to suspect that Star was failing to appropriately comply with a recommendation in the report the PCA would be empowered to investigate and subject to the outcome of that investigation to impose financial sanctions. The PCA needs a safe space to fully engage with Star at this time in respect of its requirement to put together a robust implementation plan and of the PCA assessing their compliance with the recommendations without concern that such considerations will enter the public domain at this early stage of development.

In addition, the disclosure of the correspondence which has been provided by Star would be likely to discourage this business and other POBs from cooperating with the PCA and supplying the information she needs to carry out her role as a regulator. The PCA needs regulated businesses to be open with her when discussing their practice and conduct in order to ascertain whether there are circumstances which would justify regulatory action.

I therefore consider that disclosure of the requested information would be likely to prejudice the exercise by the PCA of her statutory function to ascertain whether circumstances exist or may arise which would justify regulatory action in pursuance of the Pubs Code legislation.



## Pubs Code Adjudicator

### Section 36 of the FOI Act

The Pubs Code Adjudicator, Ms Fiona Dickie, in her capacity as the “qualified person” under the FOI Act, having considered the circumstances of this case, is of the opinion that the exemptions under sections 36(2)(b)(i)(ii) and (c) of the Act apply to the information you have requested. This is because disclosure would:

- inhibit the free and frank provision of advice,
- inhibit the free and frank exchange of views for the purposes of deliberation and/or
- otherwise prejudice the effective conduct of public affairs.

### Public interest

I am of the opinion that the public interest favours withholding the information requested.

The PCA recognises that there is a legitimate public interest in transparency in respect of the operation of the PCA as a public authority. There is also a public interest in the general public, and in particular stakeholders who may be impacted by the subject matter of the report, being informed of Star’s compliance with the recommendations designed to address harms done to those affected. To ensure that this transparency is achieved the PCA has put in place a number of measures. Firstly, the investigation report itself contains significant detail (running to 174 pages). The report also contains the following requirement (at paragraph 25):

*“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.”*

This public announcement by Star will ensure that both affected tenants and the wider industry are fully informed of the impact of the report and the action Star will be taking to implement it, including how it plans to comply with the recommendations. The announcement will be made after the implementation plan is finalised. However, it is not in the public interest for earlier discussions between Star and the regulator about how Star will comply with the report to be released into the public domain, particularly before the implementation and compliance plan is finalised and in use. Release of early considerations, particularly at this stage, would risk confusion and uncertainty and would not be in the public interest. The public interest will be served by release of the public letter by Star which the PCA will require them to publish subsequent to the finalisation of the implementation plan.

The PCA has made public statements about the progress of the investigation and dialogue with Star in order to ensure that the public is informed as appropriate, and intends to publish suitable updates on progress relating to Star’s implementation plan in due course.

If you do not believe that the office of the PCA has provided an appropriate response to your request, as set out above, you are entitled to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be made in writing, quoting the above reference, to [office@pubscodeadjudicator.gov.uk](mailto:office@pubscodeadjudicator.gov.uk).



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If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

