



## **PCA Advice Note**

# **Tied rent review dispute resolution clauses and disputes during the MRO procedure**

**April 2020**



## ***What does this Advice Note address?***

This Advice Note addresses the use of a contractual dispute resolution clause during the market rent only (MRO) procedure to identify the tied rent upon a rent review where it cannot be agreed. It also deals with related matters concerning the agreement of the tied rent in writing during the MRO procedure.

## ***Rent assessment proposals and the tied rent review***

1. The Pubs Code gives a tied pub tenant (TPT) rights to information about their tied rent review. This information is provided in a Rent Assessment Proposal (RAP) supplied by the pub-owning business (POB). The Code does not prescribe a procedure for assessing that tied rent. To find the procedure they should follow the parties must look to the contract, which may contain an agreed dispute resolution process. Such a process is therefore part of the tied agreement.

## ***The tied rent review and the MRO procedure***

2. Receipt of a RAP gives the TPT the right to request a MRO option. The Pubs Code envisages that where there is a rent assessment the new tied rent can be identified and compared with the MRO option (and rent), so that the TPT can consider them both side-by-side and choose between them. Wherever possible, the parties should of course seek a negotiated outcome of the contractual tied rent review, but where they cannot agree the Pubs Code does not prevent the contractual rent review procedure from being followed (including through a dispute resolution process).
3. In some cases, the TPT will want to compare the tied rent against the MRO option and rent. However, in others the TPT may not – and may wish to consider either the final available MRO terms and rent without knowing for certain what the new tied rent would be, or vice versa. Where the TPT does not wish to conclude the tied rent review before deciding whether to accept the MRO terms and rent, a question arises as to whether the POB is able to trigger a contractual dispute resolution clause during the MRO procedure to force the identification of the tied rent, remembering that (if the tenant chooses the MRO option) the POB will never be able to recover any increase in the tied rent<sup>1</sup>. This question is addressed in the following paragraphs.

## ***Triggering During the MRO Procedure***

4. Triggering the contractual tied rent dispute resolution clause, though not prevented by the Pubs Code, may cause cost and delay to the TPT. The POB and TPT should act reasonably to avoid unnecessary costs and procedures. The POB should consider the views of the TPT, and particularly take into

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<sup>1</sup> Regulation 28 of the Pubs Code prohibits any **recovery** of an increase in tied rent during the MRO procedure. This prohibition becomes permanent where at the end of the MRO procedure the tenant takes the MRO option. The PCA has published statutory advice about the operation of this provision [here](#).

account the effect which triggering the dispute resolution clause might have on a TPT's Pubs Code rights, and that the TPT may have limited resources. The PCA expects that the POB should also take particular care to ensure that by its actions it will not place the TPT at risk of penalty or forfeiture for breach of the particular contractual rent review provisions.

5. The PCA's view is that this type of dispute resolution clause should not be used by a POB in a way that frustrates or prevents a TPT from accessing their Pubs Code rights. The parties must act reasonably during the MRO procedure and that may include, in many cases, a POB not triggering a tied rent dispute resolution clause until after the TPT has had an opportunity to consider an undisputed MRO proposal and rent (where the TPT wants to know what the MRO option will be first)<sup>2</sup>. For a POB unilaterally to trigger a tied rent dispute resolution clause before then would be an exceptional step for which there should be robust justification, for example, such as where a TPT is obviously behaving unreasonably to delay the MRO procedure in order to frustrate or postpone the rent review process.
6. The refusal by a TPT to agree the tied rent in writing will not on its own be sufficient justification for a POB to unilaterally trigger a dispute resolution clause. The PCA would expect the POB not to unilaterally trigger a tied rent dispute resolution clause while there is an ongoing arbitration relating to the RAP<sup>3</sup><sub>POB</sub>.
7. Should a POB decide to take the exceptional step of unilaterally triggering a tied rent review dispute resolution clause during the MRO process, it will bear the responsibility of being able to demonstrate that it has acted reasonably in doing so. The PCA has powers to arbitrate Pubs Code disputes, and to investigate suspected breaches of the Pubs Code.

### ***Agreement of the Tied Rent During the MRO Process***

8. The MRO procedure will end where a tenant agrees, in writing, the new tied rent<sup>4</sup>. Consistent with the core Code principles, the POB should ensure at the end of the rent review that the parties are able to establish the final tied rent figure without bringing the MRO procedure to an end. Furthermore, the POB must make clear to the tenant the effect on their Pubs Code rights of any agreement in writing to a new tied rent and must make sure that any such written agreement states that it ends the MRO procedure. The POB must not attempt to trap an unwary tenant by seeking their agreement to a new tied

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<sup>2</sup> An undisputed MRO proposal arises either following the end of the negotiations between the parties or following receipt of an Independent Assessor (IA) determination where no referral for arbitration has been made – 21 days is the period the TPT would have to accept or reject the MRO proposal and rent following the IA's determination if there was no ongoing rent assessment.

<sup>3</sup> A TPT has the right to refer to the PCA for arbitration a dispute relating to the RAP, for example where they do not consider that the information provided in the RAP complies with the requirements of Schedule 2 of the Pubs Code.

<sup>4</sup> In accordance with regulation 39(4)(g) of the Pubs Code.

rent figure (such as to end the MRO procedure) without warning in writing of the effect it will have on the MRO procedure<sup>5</sup>.

9. The PCA would not expect a POB which has not complied with paragraph 8 above to assert under challenge that it has entered into an agreement which has the effect of bringing the MRO procedure to an end under regulation 39(4)(g).

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<sup>5</sup> This also applies to any offers made to settle the tied rent (including any offers made “without prejudice save as to costs” intended to offer costs protection if the offer is not accepted or bettered in arbitration). As with paragraph 8 above, where the POB makes or wishes to accept any such offer it should before any written agreement is reached make sure in writing that the tenant is clear as to the effect of acceptance.