Pubs Code Adjudicator

Consultation on proposals to issue statutory guidance on matters relating to the operation of the Pubs Code: Response Document

Closing date for responses: 10 December 2021

The consultation document is available online.

Please return completed forms to:

Email to: office@pubscodeadjudicator.gov.uk

Write to:
Office of the Pubs Code Adjudicator
4th Floor
23 Stephenson Street
Birmingham
B2 4BJ

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the UK General Data Protection Regulation, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

Please note that the Pubs Code Adjudicator intends to publish all responses to this consultation subject to any redactions we may make for legal reasons. If you want the information that you provide to be treated as confidential please tell us, preferably giving reasons, but be aware that we cannot guarantee confidentiality in all circumstances.

If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

We will publish all responses, subject to any redactions made for legal reasons, together with a summary on GOV.UK. The published information will include a list of business names or organisations that responded, but not people's personal names, addresses or other contact details.

I want my response to be treated as confidential ☐

Comments:

Details

Name: [redacted]

Organisation: Admiral Taverns

Position: [redacted]

Postal address:4th Floor, HQ, 58 Nicholas Street, Chester, CH1 2NP

Email: [redacted]

	Tied Pub Tenant
	Non-tied tenants (please indicate if you have previously been a tied tenant and when)
X	Pub owning business with 500 or more tied pubs in England and Wales
	Other pub owning business (please describe, including number of tied pubs in England and Wales)
	Tenant representative group
	Trade association
	Consumer group
	Business representative organisation/trade body
	Charity or social enterprise
	Individual
	Legal representative
	Consultant/adviser
	Trade union or staff association
	Surveyor
	Other (please describe)

Chapter 1: Proposals of rent in the MRO process

Questions

1	**Would an obligation to provide transparent information in support of a proposed MRO rent offer be useful to TPTs in understanding and/or negotiating the proposed rent in an informed manner? Would this better facilitate the progression of the MRO procedure?**
Response:	Following the Government's response to the statutory review of the Pubs Code, and the resulting draft statutory instrument amending the Pubs Code, we feel that the publication of this consultation to be ill-timed and somewhat rushed and question whether it would have been more appropriate to delay this consultation until the proposed legislative amendments have been made. It is also worth noting that Admiral have had far less exposure to the MRO Independent Assessor (IA) process when compared to other Pub-Owning Businesses, with just one referral made since the introduction of the Pubs Code. Notwithstanding, when issuing an MRO offer we provide a shadow profit and loss account which sets out not only the proposed MRO rent but also what we feel is sufficient information for a licensee to understand how the proposed MRO rent has been calculated, including estimates of income and expenditure and barrelage assumptions. We have not seen any evidence to support the level of information being proposed by the consultation to be provided to a licensee when issuing an MRO offer, nor do we see the need to bring forward the provision of information under Schedule 3 of the Pubs Code. Preparing an MRO Full Response that meets the requirements of the Pubs Code and the Regulatory Compliance Handbook is already an involved and time-consuming process – providing the Schedule 3 information as part of that process will require further time and resource to meet the 28 day window for response, especially when there is no evidence that it will aid negotiations. We are hopeful that the proposed introduction of the 3 month resolution period will function as intended by the Government and allow the parties to negotiate both the MRO rent and terms freely without the pressure imposed by strict time constraints.
2	**Does the above represent useful and appropriate information needed to understand how a proposed MRO rent has been calculated and so enable a TPT to better understand and/or negotiate the proposed MRO rent?**
Response:	As noted above, we already provide a shadow profit and loss account as part of our MRO offers. This includes the information set

	out in the consultation at points 4.4 to 4.6. However, for the reasons set out above we do not agree that the information set out in Schedule 3 of the Pubs Code (reproduced as points 4.1 to 4.3 of the consultation) should be provided from the outset. There is also the likelihood for confusion between a reasonable forecast for the next 3 years (as proposed under 4.2) and the licensee's genuine expectations of their trade performance over the same period. Moreover, we do not agree that information required under 4.7 regarding any comparable evidence should be provided. The information held in this respect is often commercially sensitive, may be subject to pre-existing confidentiality agreements and may also contain personal data covered by GDPR where the disclosure of such may be prohibited.
3	**Would any other supporting information be considered helpful and, if so, what?**
Response:	We do not feel that further supporting information will prove helpful when negotiating MRO rents. Indeed, there is the risk that providing too much information could overwhelm a licensee and hinder negotiations. However, we repeat our comments from the previous Pubs Code consultation in that we firmly believe that the key to successful rent negotiations is ensuring that licensees are receiving consistent and reliable independent advice from advisors with relevant industry experience and sufficient time to fully review the information provided.

Chapter 2: Removing uncertainty of potential financial barriers in the MRO procedure

Rent payments/ rental deposit

Questions

1	**Where an increase in deposit and/or rent in advance terms are reasonable, would an incremental approach to reaching that increased rent deposit and/or rent in advance, other than in exceptional circumstances, provide stability for the POB in the management of its estate?**
Response:	Whilst we already offer an incremental approach to an increased rent deposit and rent payments where reasonable and appropriate to do so, this approach does not offer any stability in the management of our estate. Indeed, until the required deposit has been reached in full

	the landlord's financial exposure is increased. Such an arrangement is only beneficial to a licensee and not to a landlord. When considering whether to offer an incremental approach, it would be useful to understand what may be deemed an 'exceptional circumstance', and we therefore welcome greater clarity in that regard.
2	**Is a period of not less than a year appropriate as a reasonable transition period for the build-up of rent deposit and/or rent in advance payments? Otherwise, what minimum period may be appropriate?**
Response:	We do not feel that a minimum period is appropriate and if a licensee is in a position to be able to meet the required up front costs in full then they should. There may also be occasions where only a small sum is required to increase the deposit from the existing deposit held and requiring repayment over a minimum period of 12 months may be therefore disproportionate. By imposing a minimum period there is a risk that the minimum period will become the default position, which could place future licensees that elect to exercise their MRO right at a disadvantage as opposed to the current approach based on reasonableness and licensee's individual circumstances.
3	**Would such an approach provide clarity for a TPT on what to expect from the MRO procedure and afford them better access to the MRO option?**
Response:	Whilst removing upfront financial burdens will on the face of it create a more attractive proposition for licensees, it is important to note that the financial burden has not been removed completely but instead spread across a greater period in the form of a debt due to the landlord. A licensee entering into an MRO arrangement should still therefore satisfy themselves that they are able to fully meet their obligations in this regard.
4	**Are there other considerations the PCA should take into account in considering this issue?**
Response:	Considering the introduction of minimum periods for deposit builds and rent payment frequency further establishes a 'dual market' of MRO agreements granted by regulated POBs and other free of tie agreements granted elsewhere in the market, which we do not believe was the intention of the Government when it created the legislation.

Dilapidations

Questions

1	**Are there any reasons why the PCA should not, other than in exceptional circumstances, prohibit as unreasonable terminal dilapidations during the MRO procedure and/or prohibit the requirement of completion or agreement to completion of statutory compliance as a condition of entry into a MRO tenancy?**
Response:	As noted above, it would be useful to understand what may be considered to be an 'exceptional circumstance'. Notwithstanding, where statutory compliance falls within the licensee's obligations under the terms of the tied agreement we feel that in line with good estate management a landlord should be satisfied that the property is in a safe, legal and compliant state before proceeding to enter into another contractual arrangement in the form of an MRO agreement. Therefore, we feel that a landlord should be entitled to insist on sight of all necessary statutory compliance documents as part of the MRO process.

Chapter 3: Transparency and fair dealing with decisions in respect of the Landlord and Tenant Act 1954 in connection with the MRO process

Questions

1	**Would these proposed requirements for recording of decisions and BDM conversations on taking back provide greater assurance for TPTs in considering whether to seek the MRO option?**
Response:	Since the introduction of the Pubs Code, we have not sought to oppose a renewal under section 30(1) of the 1954 Act based on taking the site back for our own occupation and are therefore unaware of the scale of any perceived issue in this area. However, where discussions are held between the parties any decision made by a landlord regarding whether to oppose a renewal under section 30(1) of the 1954 Act would meet the requirement to be documented in accordance with regulation 41 (4) (iv) of the Pubs Code and should be recorded accordingly. It is also important to note that jurisdiction in this area sits with the Court via the 1954 Act renewal process, where the burden of proof is

	placed upon the landlord to demonstrate firm intentions and to satisfy the Court that those intentions are genuine.
2	**Are there any other potential transparency requirements that would provide greater assurance for TPTs in considering whether to instigate the MRO process?**
Response:	We are not aware of any further transparency requirements that may provide greater assurance for licensees considering instigating the MRO process.

Chapter 4: MRO rent – considering disregards for tenant's improvements

Questions

1	**Would requiring a POB to be clear as to how it is treating tenants' improvements in any MRO rent proposal assist in TPT understanding and in reducing undue delay and potential uncertainty in the MRO process?**
Response:	We include allowance in both our tied profit and loss account and MRO profit and loss account for licensee improvements. However, as noted above we have been involved in one IA referral and are therefore unaware of the scale of any issue in this area arising from the drafting of the 2015 Act.
2	**Should the POB's position in respect of tenants' improvements be made clear to the IA where a referral to the IA is made?**
Response:	We believe that we make it clear to the licensee when proposing an MRO offer and therefore in the event that an IA is appointed to decide the MRO rent it should be evident to the IA from the information supplied as part of that process as to how licensee improvements are being regarded.
3	**Are there circumstances in which it would be appropriate to not disregard the value attributable to relevant tenant improvements in respect of a proposed MRO rent?**
Response:	We believe that it would be appropriate to disregard tenant improvements where they have not been authorised by the landlord or where the rental value of the property is diminished as a result of the improvements.