



## Pubs Code Adjudicator

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3 November 2017

Dear Ms Reeves

Thank you for your letter of 10 October 2017.

The Pubs Code came into force on 21 July 2016 and since that time, my office has responded to over 620 enquiries and received 212 referrals for arbitration, mainly from tied-pub tenants afforded rights under the Code. In total, 174 referrals relate to the Market Rent Only (MRO) option and of these, 152 have been accepted by my office as valid referrals. The Pubs Code offers tenants, for the first time, the option to break their tie with a pub-owning business and the number of referrals we have received suggests that many tenants want to explore this option but feel that their right to do so is being hampered. This is technical, new law and is being tested significantly by all sides of the pubs industry.

### Arbitrations

I am currently arbitrating a total of 109 cases; of these, 20 are presently stayed at the request of the parties involved to allow them to deal with particular matters. The remaining cases are at different stages of the arbitration process. The time taken to complete an arbitration is dependent on a number of different factors but is primarily driven by the parties themselves. I am aware of and understand the frustrations expressed by some tenants regarding the arbitration process and am constantly looking for opportunities to accelerate this process. This includes raising awareness and understanding of both the operation of the Code and the arbitration process to prevent unnecessary delays. I am also delighted that the Secretary of State for Business, Energy and Industrial Strategy has appointed Fiona Dickie as Deputy Pubs Code Adjudicator. Ms Dickie will support me in enforcing the Pubs Code and arbitrating cases in a timely manner.

### MRO-related arbitrations

You have asked how many tenants have been through the MRO process, obtained an independently assessed rent and, subsequently, a new MRO agreement. The information held by my office does not provide a complete picture of MRO negotiations or agreements across the industry as in the ordinary course of events many of these take place directly between tied pub tenants and their pub-owning business, and my office is not involved. Of the 152 MRO referrals accepted by my office, I have issued 61 awards (up to 10 October 2017). Under arbitration rules, awards are issued to complete cases. Awards may be issued by me which determine the issues in

dispute, because the parties have settled the dispute (which may be because they have agreed a MRO or a new tied rent arrangement) or because a referral has been withdrawn. In those circumstances there is no legal requirement for parties to inform me of their reasons for any settlement made. Awards may also terminate the proceedings where an event occurs that makes the arbitration no longer possible or necessary (for example agreeing a new tied rent in writing which brings to an end an existing MRO process for that tenant).

The independent MRO verification exercise I commissioned during the summer gathered information from the six regulated pub-owning businesses on their MRO activity. This information was included in the report I published on the Pubs Code Adjudicator (PCA) website on 23 August 2017. I attach a copy of this information at Annex A for reference. It shows that very few MRO notices served by tied pub tenants convert into MRO tenancies, and that bilateral negotiation and agreement between pub-owning businesses and tied pub tenants appear to be by exception.

### MRO verification exercise

The MRO verification exercise provided evidence of issues and areas that tied pub tenants consider are creating barriers to them accessing their MRO rights. In response to this evidence, I asked each pub-owning business to provide further, detailed information about their processes and practices. In a series of meetings held in September and October 2017 I further challenged each pub-owning business to demonstrate their compliance and commitment to the principles of the Pubs Code. I am resolutely committed to responding to the findings and will publish my response in the coming weeks. I am ready to use my statutory enforcement powers to ensure compliance, if necessary.

I have additionally issued a series of statements explaining how I will approach arbitrations with the intention of encouraging positive negotiation on MRO options. My aim is to increase the number of cases that are settled and reduce the need to arbitrate. These include my position on MRO notices and challenges to Independent Assessor determinations. I will provide more advice as clear themes emerge from cases that I have arbitrated and hope to do this shortly. There are also more than 40 products on the PCA website providing information and advice to the industry on both the Code and PCA activities.

I have received a number of enquiries about whether I will make a report on unfair business practices to the Secretary of State for Business, Energy and Industrial Strategy as a result of the MRO verification exercise. This power relates to the effectiveness of the Pubs Code rather than its enforcement. It is a mechanism by which I, as the PCA, can make recommendations to ministers about business practices that I believe are unfair to tied pub tenants but are not breaches of the Pubs Code. I will, of course, make such recommendations where I am satisfied that any action of a pub-owning business meets this definition.

More broadly, section 46 of Small Business, Enterprise and Employment Act 2015 requires the Secretary of State to review the operation of the Pubs Code within a specified timescale. I am determined to make the detail and intent of the Code a reality for tied pub tenants and will provide all necessary evidence as to whether the Pubs Code is consistent with the principles set out in the 2015 Act, and my recommendations for any necessary revisions, at the point of this review.

My aim is to help re-shape the culture of this industry, which also faces many other challenges, so that pubs can thrive for the benefit of all. I am confident that this second year of the Code is the year when it comes into its own, and demonstrates the tangible benefits and real options it gives to tied pub tenants.

I welcome the opportunity to meet with you and discuss the operation of the Pubs Code further, and will be in contact to arrange a meeting.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Paul Newby', written over a horizontal line.

**Paul Newby**  
**Pubs Code Adjudicator**

## **Annex A**

### **Summary of MRO data provided by pub-owning businesses to the PCA (MRO verification exercise – report on evidence and initial analysis)**

	<b>Total</b>	<b>Admiral Taverns</b>	<b>Ei Group</b>	<b>Greene King</b>	<b>Marston's</b>	<b>Punch Taverns</b>	<b>Star Pubs &amp; Bars</b>
MRO notices served by tied pub tenant	497	6	247	90	27	88	39
MRO notices accepted by pub-owning business	341	6	171	63	16	53	32
MRO notices rejected by pub-owning business	153	-	75	27	11	35	5
MRO notices withdrawn by tied pub tenant	7	3	1	1	-	-	2
MRO tenancies agreed	11	1	4	3	0	3	0
Referrals to PCA about terms of MRO tenancy	90	0	58	15	2	12	3
Referrals to PCA about independent assessment of MRO rent	44	0	17	13	0	12	2

Data covering period 21 July 2016 - 30 April 2017