



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