

Investigation into Star Pubs & Bars Limited

Paul Newby and Fiona Dickie today launched an [investigation](#) into Star Pubs & Bars Limited – part of the Heineken Group.

This is the first investigation by the Pubs Code Adjudicator and Deputy Pubs Code Adjudicator and follows a period of engagement with Star. The Adjudicators have reasonable grounds to suspect that Star has failed to comply with the Pubs Code by using unreasonable stocking terms in proposed free-of-tie Market Rent Only (MRO) tenancies.

The investigation will cover the period from 21 July 2016 when the Pubs Code became law to 10 July 2019.

Paul Newby, the Pubs Code Adjudicator, said:

Fiona Dickie and I have decided to launch this investigation to understand the extent to which the Pubs Code may have been breached and the potential impact on Star tenants.

Fiona Dickie, the Deputy Pubs Code Adjudicator, added:

“Where tenants of a brewer business regulated by the Pubs Code exercise their right to ask to go free-of-tie they may still be required to stock that brewer’s beer or cider within limits set out under the Pubs Code. This investigation concerns whether Star has been going beyond those limits by offering non-compliant terms.

“It is important that Star tenants and other interested parties provide us with information to support this investigation. Their information will help us to determine whether the Pubs Code has been broken and, if so, what further action should be taken.

“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.”

As part of this call for evidence, the Pubs Code Adjudicator and Deputy Adjudicator are particularly keen to hear from any Star tenants who have been offered tenancy terms following service of a MRO notice that included the following, whether they accepted them or not:

a) A requirement for all (or virtually all) of the keg beer stocked to be produced by Heineken.

b) A requirement to stock brands produced by businesses other than Star or group undertakings of Star.

c) Any other requirement to stock an unreasonably high proportion of Heineken brands or brands in which Heineken has a commercial interest.

d) A term that seeks to influence the retail selling price of Heineken brands or brands in which Heineken has a commercial interest.

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. The deadline for submission of evidence is 5pm on 7 August 2019. Evidence should be sent to investigations@pubscodeadjudicator.gov.uk

For further information, contact PCA media on 0121 695 7769.

The Pubs Code and Pubs Code Adjudicator

1. The creation of a statutory Pubs Code and the appointment of a Pubs Code Adjudicator to enforce it is provided for in Part 4 of the Small Business, Enterprise and Employment Act 2015. Paul Newby was appointed as the first Pubs Code Adjudicator on 3rd May 2016. The first Deputy Pubs Code Adjudicator, Fiona Dickie, took up her appointment on 1st November 2017.
2. The Adjudicator and Deputy Adjudicator oversee the Pubs Code introduced in July 2016 which regulates the contractual relationships between all pub-owning businesses with 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. There were around 9,680 such tied pub tenants on 31 December 2018.
3. Six pub companies are currently covered by the Pubs Code: Admiral Taverns Ltd, Ei Group Plc (formerly Enterprise Inns Plc), Greene King Plc, Marston's Plc, Punch Taverns Limited and Star Pubs & Bars Limited.
4. The Pubs Code has two over-arching principles – to ensure
 - a) fair and lawful dealing by pub companies in relation to their tied tenants; and
 - b) that individual tied tenants should not be worse off than they would be if they were free of the tie (the 'no worse off' principle).

Market Rent Only option

1. The Pubs Code gives tied tenants the right to request a Market Rent Only (MRO) option from their pub-owning business. Under a MRO compliant tenancy, a tenant pays only a commercial rent for the pub premises and

is free to buy beer and other products and services on the open market. A pub-owning business that is also a brewer is permitted by the 2015 Act to require a MRO tenant to continue to stock its products, but such 'stocking requirements' may not require these to be purchased direct from the pub-owning business and may not exclude competitor brands and must be reasonable.

Investigation and enforcement by the PCA

1. Section 53 of the 2015 Act provides that the Pubs Code Adjudicator may carry out an investigation if the Adjudicator has reasonable grounds to suspect that a pub-owning business has either failed to comply with the Pubs Code or has failed to follow a recommendation previously made to it by the Adjudicator.
2. Where the Adjudicator is satisfied that a pub-owning business has breached the Code, the PCA may take one or more of the following enforcement measures: make recommendations to the pub-owning business; require them to publish information; and/or impose a financial penalty of up to 1 percent of total UK turnover.
3. The Pubs Code Adjudicator will exercise these investigatory and enforcement functions in accordance with its published statutory guidance of 1st November 2016 which can be viewed [here](#).