

## A Tied Pubs & Lease Renewal Factsheet for You

### Introduction

Our Tied Pubs & Lease Renewal factsheet provides information covering a range of legal issues surrounding tied pubs and lease renewals for pub owners, landlords and tenants.

### Regulations

In July 2016 the Pubs Code etc Regulations 2016 came in to force regulating the relationship between large pub owning businesses (those with at least 500 tied pubs) which rent premises and supply tied products to tied pub tenants.

The regulations are extremely complicated, but the basic effect is to give tied pub tenants the right to break free of the tie, so they can choose from whom they purchase their products.

The advantage to them is the ability to purchase products more cheaply on the open market and thus make a greater profit.

The disadvantage is that by opting to remove the tie they will have to pay a market rent for the premises which will almost certainly be significantly more than the discounted rent they presently pay to the pub owning business.

### Lease Breaks & the Market Rent Option

There are a number of occasions, known as 'trigger events', when a tied pub tenant can seek to break free of the tie. The most common of these, and the one addressed in this factsheet, is on lease renewal.

For the reasons set out below, if the tied pub tenant is considering the market rent option ('MRO'), it is important to start preparing at least 18 months before the end of the lease.

It is also vital to understand that the MRO procedure under the Pubs Code is in addition to the normal lease renewal procedure under the Landlord & Tenant Act 1954, so there will be 2 procedures



running side by side which are inextricably linked but with different time tables.

The large pub owning businesses are not keen to lose their tied tenants who provide a source of considerable income and life has been made difficult for many tenants who have indicated the desire to break free of their tie.

One tactic is to serve the tenant with a lengthy schedule of dilapidations (repairs) relating to the premises which must be done if the tenant is to qualify for a new lease. Tenants can be proactive in this regard inviting the landlord to serve a schedule 18 months or so before the end of the lease so that they can do the works and remove that potential ground of objection.

Another tactic is for the landlord to state that it intends to object to the lease renewal on the ground that it will elect to take the premises back and operate the pub under its own management. This is known as a 'Ground G' objection. The tenant will not know whether this is genuine or a bluff until a formal notice is served under the Landlord & Tenant Act 1954, but the tenant could ask to see copies of the relevant minutes of the board meeting in which the alleged decision was made or contracts of works required for the premises. The landlord is not obliged to disclose them at this stage but a reluctance to do so may indicate its true intention.

Having addressed these matters, the tenant can turn his attention to breaking free of the tie.

### Professional Assistance

The assistance of an accountant will be needed to calculate what additional profit can be generated by selling tie free products from the premises. There is a [useful calculator provided by the Pubs Advisory Service](#) which is a good starting point. Advice will also be needed from a surveyor to assess the likely market rent of the premises free of tie.

### Serving Notice

If the tenant's assessment is that the MRO is likely to be beneficial, the next step is for him to contact his solicitor to prepare and serve the relevant notices on the landlord. If the landlord has already served a Section 25 notice under the Landlord & Tenant Act 1954 then the tenant will have 21 days from receipt of that notice in which to serve his MRO notice. There are strict requirements as to the content of the MRO notice.

If the landlord has not served a notice under the Landlord & Tenant Act 1954 then the tenant should serve a Section 26 notice under the Landlord & Tenant Act 1954 and at the same time serve his MRO notice. Within 28 days of receipt of the MRO notice, the landlord should provide a full response containing its MRO proposal which will include the proposed market rent.

### Assessment & Adjudication

Following receipt of the landlord's MRO proposal there is a 28-day moratorium for the parties to try to negotiate the market rent. If they are unable to agree, the tenant has a further 28 days in which to notify the landlord of his intention to refer the proposed rent for determination by an independent assessor. The landlord and the tenant then have 28 days from that notification in which to jointly appoint an independent assessor or to notify the Adjudicator of their failure to do so in which case the Adjudicator will appoint an independent assessor.

The landlord and tenant have 28 days from his appointment to submit their evidence to the independent assessor. The independent assessor has 21 days from receipt of all the information from the landlord and tenant to make a decision on the market rent. If either the landlord or the tenant does not agree with the independent assessor's determination they may refer the matter to the Pubs Adjudicator within 14 days of the determination being communicated to them. The Pubs Adjudicator will then arrange for a further assessment of the open market rent. If neither party makes a reference to the Pubs Adjudicator in connection with the independent assessor's rent determination, the tenant has 21 days to accept or reject the landlord's market rent proposal.

If the tenant does nothing he is deemed to reject the MRO tenancy and that process comes to an end. He will be left to pursue his tied rent renewal under the Landlord & Tenant Act 1954. If either party makes a reference to the Pubs Adjudicator for another rent assessment, the tenant is again given 21 days following communication of the rent determination for the tenant to accept or reject the MRO tenancy.

The length and complexity of the assessment and adjudication procedures has caused considerable difficulties because the requirements of the Landlord & Tenant Act 1954 mean that an application has to be made to the court for a new tenancy and this is governed by a strict timetable. Clearly, if the outcome of the MRO procedure is not known (i.e. the proposed open market rent) the tenant is not in a position to know whether it wants an MRO compliant lease or to renew on the existing tied basis.

As a consequence, the civil procedure rules governing court applications have been amended so that the details of the MRO procedure must be referred to in the claim form, and most importantly, the court now has a duty to consider whether to stay a claim pending the outcome of the MRO procedure. Once the MRO procedure has been completed and the tenant knows what the proposed open market rent for the premises is, he can then make a decision (following the time limits set out above) about whether to accept that rent and a new MRO (tie free) lease or to renew the existing tied arrangement.

## How can PowellsLaw help?

It is evident that the whole procedure for lease renewal for tied pub tenants is fraught with difficulty and seeking professional advice at an early stage is essential. If you have a tied pub lease which is coming to an end, contact the Commercial team at PowellsLaw today.

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