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# Rent assessment proposals are no longer deemed to be “without prejudice”

## What that means and why that’s important

**It has recently come to the Forum’s attention, that a Rent Assessment Proposal, issued by a pub owning business to a tied tenant should not be labelled “without prejudice”, according to the Pubs Code Adjudicator.**

This is an issue that we have raised with the PCA, from the very early stages of the Code being implemented and, despite not being officially notified, we have seen communication from both Ei Group and Heineken (Stars & Bars) in which they state that the Rent Assessment Proposals they have supplied should not have been labelled “without Prejudice” and any going forward will not be labelled so.

### **What is a “Rent Assessment Proposal” or RAP?**

A RAP is the offer of a new tied rent, either at set period defined by the Tied Tenants agreement or every 5 years.

A RAP is one of the most common triggers for the ability to request a Market Rent Only offer, which enables the TT to seek to go free of tie.

### **Why is this important?**

The final stage of the MRO process is the agreement of the MRO rent.

This process requires the Tied Tenant to agree and Independent Assessor from a list provide by the PCA.

Both the tied tenant and the POB put forward certain information in support of their opinion on what the MRO rent should be. These documents cannot include “without Prejudice” material.

The POBs seek to justify an artificially inflated MRO figure, and the commonest way of doing that is to inflate the turnover of the Pub in question, by increasing the Fair Maintainable Trade (FMT).

On many occasions we are seeing incidents in which the FMT of the MRO offer being much higher than the FMT in the original RAP, but have been unable to use this glaring inconsistency as the RAP is denied to the Independent Assessor as it was classed as “Without Prejudice”

As the PCA have now written to the POBS stating that “in their opinion, RAPs should not be issued under the cover of confidentiality, this will enable Tied Tenants to show that the original Fair Maintainable Trade used in the tied RAP, should be the same for the MRO offer.

It is a vital piece of information that all tied tenants should be aware.

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