FW: Meeting with Tim Page - Chief Executive CAMRA

04 August 2015
15:01

From: Normand Caroline (CCP)
Sent: 02 February 2015 19:06
To: McLynchy Julie (CCP); [redacted]
Subject: Meeting with Tim Page - Chief Executive CAMRA

I met Tim Page this afternoon (his meetings with ministers and officials were cancelled too late so he was keen to meet someone while in London). I was very clearly in listening mode and Jonathan Mail who joined will be at the meeting on Wednesday.

CAMRA had 4 key points in order of priority:

1) potential loophole if a tenant signs an MRO it puts them outside the scope of the code and its protections. Likewise if a big pubco sells a pub to a smaller company the tenant would no longer be protected.

2) trigger points - CAMRA want the list of trigger points in primary legislation to be preceded by a "must" not a "may". While they understand detail of triggers would appear in secondary, there is concern that a new Minister with different views might row back in secondary unless firmly committed in primary.

3) PRA should be available in more situations and is a vital to the tenants decision whether to opt for MRO or not.

4) Threshold of 500 tied pubs should be 500 pubs of any kind.

I commented on some of these (need to consult in secondary to get things right, need a legally watertight bill etc) but largely deferred to you the experts.

Finally we discussed the "lack of" consultation where I explained the timeline facing officials before Lords Committee.

Caroline

Caroline Normand
Director, Consumer and Competition Policy, BIS
[redacted]

FW: Meeting following Lords Committee

04 August 2015
15:30

From: Tim Page [redacted]
Sent: 02 February 2015 17:40
To: McLynchy Julie (CCP)
Cc: [redacted]; Normand Caroline (CCP); Jonathan Mail
Subject: Re: Meeting following Lords Committee

Dear Julie

To confirm what I told Caroline Normand when we met this afternoon, I cannot at this short notice rearrange a day in Oxford on Wednesday to attend the meeting myself. As a result CAMRA will be represented on Wednesday by Jonathan Mail, Head of Public Affairs.

I hope that we can meet separately, once you have assimilated what Jonathan and others have said regarding the Pubs Code and Adjudicator proposals contained in the recent Government amendment. CAMRA, not representing breweries, pubcos or tenants and with no specific axe to grind, is keen to work with the Department to develop legislation that will enable the preservation of viable pubs that serve the best interests of their customers.

With kind regards

Tim Page
Chief Executive
CAMRA

Sent from my iPhone

On 30 Jan 2015, at 17:24, McLynchy Julie (CCP) <[redacted]> wrote:

> Dear Tim, Simon, George, and Dave
>
> Following the Lords Committee debate on Wednesday, we are arranging further consultation meetings with our stakeholders to talk through in more detail concerns with the MRO clauses (in particular) and areas where you think we should be considering making government amendments. I'm keen to meet as soon as we can and to that end would like to invite you to a meeting at BIS on Wednesday 4 Feb from 1.30-2.30. The meeting will be with officials (me and my team and our lawyers). We are keeping these meetings deliberately smaller than the roundtables we've previously held but because of time constraints we are proposing to meet in small groups rather than lots of individual meetings.
>
> We do not have a list to talk through, rather in the light of the current draft of the Bill we'd like:
>
> - a sense of the issues which are your top priorities,
> - those which are more of a 'nice to have' and
> - given that issues were raised in Committee on both sides of the argument, any thoughts you have on issues where we might try to find common ground among the different positions in the sector.
>
> I hope we will see you on Wednesday – please let me know whether you can make it (I am out on Monday however so will come back to you on Tuesday if there are any problems)

Kind regards
Julie

[redacted]

FW: Today

12 August 2015
11:52

From: Kate Nicholls [redacted]
Sent: 04 February 2015 22:00
To: McLynchy Julie (CCP)
Subject: RE: Today

Not a problem – Brigid has been in touch and I will speak to her tomorrow.

Kate Nicholls
Chief Executive

[redacted]

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From: McLynchy Julie (CCP) [redacted]
Sent: 04 February 2015 21:36
To: Kate Nicholls; [redacted]
Subject: RE: Today

Kate

Many thanks indeed for this and for your contributions today which were very helpful. I'm afraid I did a very bad job of trying to test out on the pubcos this afternoon your idea of a PRA for exceptional rent reviews that don't trigger MRO. It was the end of a long day. Brigid said she would give you a call so that all is clear and so she can then give us a considered reaction to it. [redacted] And a joint note from you, Martin and Tim will also be very useful - thank you.

We'll be in touch tomorrow to sort out next week and that diary information is helpful so thank you.

Best wishes
Julie

Sent from my Windows Phone

From: Kate Nicholls

Sent: 04/02/2015 21:21

To: McLynchy Julie (CCP); [redacted]

Subject: Today

Thank you for your time today – I have spoken subsequently to Tim and Martin and we have agreed that we will table a joint note as a follow up. Hope that is helpful.

In terms of a meeting next week, I know that we are struggling with Martin away in Harrogate on Wednesday and I have a Board meeting on Thursday from 11-3 and another pencilled in immediately after. I could therefore meet early on Thursday morning or preferably Wednesday and

we will liaise with Martin.

Best
Kate

Kate Nicholls
Chief Executive

[redacted]

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FW: SMALL BUSINESS BILL - PART 4 - MARKET RENT

30 July 2015
11:51

Subject	**FW: SMALL BUSINESS BILL - PART 4 - MARKET RENT**
Attachments	[ATTACHMENT WITHHELD - EXTRACT FROM 'Landlord and Tenant Act 1954 Pt II, s34' - ALREADY PUBLISHED] [ATTACHMENT WITHHELD - PERSONAL INFORMATION] [ATTACHMENT WITHHELD - EXTRACT FROM 'RICS RED BOOK - ALREADY PUBLISHED']

From: Simon Clarke
Sent: 04 February 2015 09:37
To: McLynchy Julie (CCP); [redacted]
Subject: SMALL BUSINESS BILL - PART 4 - MARKET RENT

Dear Julie

I know we have much to discuss today and possibly not much time for issues that might be considered more 'tidying up' amendments so rather than take up valuable time today with this I thought it better to drop you a note.

I notice at 43(10) there is a definition of 'Market Rent'. [redacted] The problem with a four line definition is that it is incredibly wide and risks dispute in the future. Market rent is well defined in existing legislation, existing agreements the RICS practice statements and guidance notes and I think it might be helpful to all to ensure this definition is emulated, and not diluted, in the new Bill.

I attach an excerpt from the Landlord and Tenant Act 1954 Pt II, s34 (you'll see it is a page long), an existing agreement excerpt with a typical definition (two pages long but emulating the 54 Act and the RICS defintion taken from the Red Book (the RICS valuation 'bible').

I look forward to discussing the issues of gravest concern to us later in the day but should you wish to discuss this matter in any further detail please let me know.

Regards.

Simon Clarke

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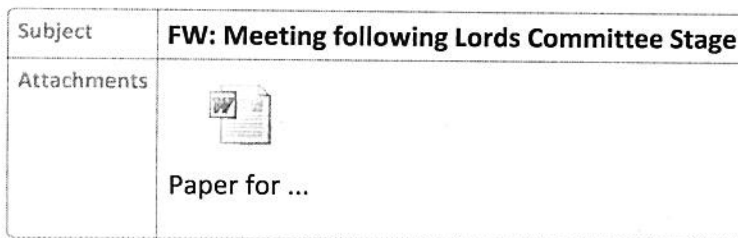
FW: Meeting following Lords Committee Stage

04 August 2015
16:12



Subject	FW: Meeting following Lords Committee Stage
Attachments	Paper for ...

From: [redacted]
Sent: 04 February 2015 09:53
To: McLynchy Julie (CCP)
Cc: [redacted]
Subject: Meeting following Lords Committee Stage
Importance: High

Dear Julie

Tim Hulme has requested I send the enclosed paper to you.

Kind regards
[redacted]

www.bii.org
www.biiab.org

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BII

BRITISH INSTITUTE OF INNKEEPING

From : British Institute of Innkeeping (BII)

To: Department for Business, Innovation & Skills

Date: 4 February 2015

Subject: Pubs Code & Adjudicator Legislation

Meeting: Stakeholder Consultation

Issues considered to be our top priority

1. Timescales / Negotiation period

On the proposed current timescales, a tenant only has 28 days from start to finish to discuss the OMO, although they can request an extension of time which the landlord company can refuse. Notwithstanding the Lords extension to 49 days, it still doesn't match the timeframe set out in the current Industry Framework Code (IFC).

Proposal:
Stipulate a period of 90 days for negotiations to be concluded. This would provide a fair negotiation period for a pub company to agree a free of tie rent, and importantly, this would be the same period as that which the draft Bill gives the independent assessor.

The principle here is to ensure that the tenant receives a fair and robust assessment from the pub company and is not forced, through lack of time, to accept a rent or simply wait it out (three weeks is not a long time).

2. Investment

In terms of common ground, the area the BII is most fearful of is the impact of the Bill on investment expenditure.

If a tenant elects to go MRO part way through an investment return period, the landlord's earnings are very likely to be immediately diluted and the return on the investment will be put at significant risk.

On the face of this, it's very likely that landlord companies would terminate further investment in the pub (why would shareholders continue to approve on-going investment if there is no guarantee on the return).

The tenant is unlikely to have access to funds to invest to the same level or frequency as the landlord company and so the retail offer / consumer experience will not be maintained and the business risk increases over time.

The Lords did not support an opt out for investment and the BII understands the reasons why – there is a view that if you allow an exemption this provides a way to "game" the code and it is further recognised that the legislation has to try and provide a framework that works on the lowest common denominator.

Proposal
The BII would be happy with an opt out with a time limit which we think is sensible and workable.
Furthermore, the BII would ask BIS to consider the tangible risk to the future of a local pub and how relevant it can remain in the absence of sufficient investment.

3. Parallel rent assessments – (*in support of the comments made by Kate Nicholls in her e mail dated 30.1.15)* The BII is of the view that PRAs should be made available to all tenants not able to call for an MRO for transparency purposes (not just new lets). This would see a tenant automatically receive two valuations, a 'tied' and 'free of tie' in order to make an informed decision.
This means pub companies will have to adapt their ways of working in order to show the true value of the SCORFA benefit provided to the tenant for free of tie rent comparison purposes.

Perhaps the RICS should be asked to provide clearer guidelines on PRA

4. "Being genuinely free of tie" – what does a "commercial lease" mean

The other area the BII remains very concerned about is the lack of clarity over what constitutes a truly commercial free of tie lease. The government amendment has provision for a new MRO agreement being "MRO compliant" with defined T&Cs.

The BII is concerned here that the T's & C's will not be specific enough and in addition, that it is not a hybrid of tied/not tied.

Greater clarity is required which emphasises that it is a new free of tie Commercial lease with no SCORFA and therefore to be treated the same way in which you would approach leasing a shop or factory space for example – these are straight rent agreements, often with upwards only clauses and don't provide any support from the landlord. There is one pub company who has around 800 'commercial leases' and who still enforce upwards only rents as a condition of the lease.

5. Renewals

The other area where additional clarity is needed is what constitutes a "renewal".

Once the tenant has vacated the pub, the landlord company should have a fair opportunity to re-let the pub and the MRO should not apply here. As noted above though, both options should be given to the incoming tenant to make an informed decision.

The BII would however caution against the potential behaviours of the landlord company allowing, through a lack of support, the failure of the incumbent tenant in order to re-let the pub on more favourable commercial terms.

6. Tenancy at Will Agreements (TAWs)

The BII is also of the view that TAWs need to be addressed. By their nature, they provide a solution when a pub finds itself in trouble and in many instances, this can involve a tenant 'walking away' from an agreement.

TAWs are quick to implement to keep pubs trading however if they are covered by the code, it could further delay trading with typical consequences to all stakeholders. The BII would want to see further clarity perhaps with a condition that these agreements should be underpinned by a maximum longstop period of 5-6 months.

7. Ensuring the tenant is appropriately informed, advised and guided

The BII would urge a greater focus in ensuring that a tenant has received appropriate information, advice and guidance in order for them to make an informed decision. As an absolute minimum, the advice should reflect the key issues contained in all agreements, i.e legal, property and financial support.

We feel that a tenant 'self-declaration' of receiving professional advice isn't robust enough and it's likely that some pub companies would take advantage of this.

Proposal.
Could the adjudicator have oversight of a nationally accredited professional network of lawyers, surveyors and accountants?

Potential Areas of Common Ground

Joint Venture Agreement

In looking forward, the BII feels the focus should be on establishing a landlord and tenant solution based upon a joint venture and there are many good examples currently happening in the sector

The broad principle is a "joint venture agreement" where the landlord co-invests and provides the economies of being 'free of tie'

The JV agreement does not have rent reviews or annual RPI rent charges. Instead the landlord company's earnings is as a % of sales. A small margin can also be applied to drink.

The Tenant is supported with the crucial element of cash flow and thus the % paid to the landlord company fluctuates according to sales.

Critically, there is no high fixed rent cost in the business. This friction point is removed.

(Conversely, it's worth noting at this point the risks that will come with a normal commercial free of tie agreement with landlords who aren't concerned with an inability to pay the high fixed cost rent which comes with a free of tie lease)

The joint venture agreement focuses on the offer, how the offer is delivered and ensuring that guest experience is paramount. Both parties are therefore trying to build the business, not fight over legacy areas such as compliance or getting a high rent paid!

We would refer you to an article in the PMA this week which looks at the approach of one pub company and relates to a tenant of theirs who also has a free of tie pub with a different pub company as well. The tenant has been able to compare both approaches; one retaining a shared/aligned business interest and profit share and one with a landlord with no interest in the business other than a high rent being paid and up upwards only rent reviews being levied.

Because of our role in supporting tenants, the BII has modelled this agreement and there's strong evidence to suggest that with the shared risk and reward model, although the tenants remain "tied" the pub company can still make the margins on their barrel and the tenant is also receiving the lion share of the discount negotiated by the pub company due to their scale with suppliers. The tenant's wet GP moves into the high 60s / early 70s and their profitability is improved. Crucially the pub company doesn't penalise the tenant with a high fixed cost in its place; (from the cases the BII supports, we know that this is the biggest issue which leads to business failure when sales fall as the business is strangled)

The joint venture is an agreement where both parties are only interested in growing sales across all categories as both take a % of all turnover including food.

Importantly the pub company still invest, support, train and provide all the SCORFA benefits whilst the tenant is for all intents and purposes "free of tie" in terms of price.

For the BII, this seems a very sensible model. The pub company is sharing scale more appropriately. The tied model is imperfect as we know and this agreement really looks at setting the profitability agenda right for both parties at the start with a greater balance of profit than before.

With their expertise, the pub company (in partnership) model the cost of operation that the tenant is looking to run and then agree the % of sales they will charge.

FW: TIED TERMS IN LEASES

12 August 2015
11:51

Subject	**FW: TIED TERMS IN LEASES**
Attachments	[ATTACHMENTS WITHHELD - PERSONAL INFORMATION]

From: Simon Clarke
Sent: 05 February 2015 12:39
To: McLynchy Julie (CCP); [redacted]
Subject: TIED TERMS IN LEASES

Dear Julie

Please convey our thanks to the team we met yesterday.

I am concious you have plenty to go on, and we were encouraged that consideration is being given to some positive proposed amendments to deal with our concerns particularly in respect of PRA, MRO trigger on Sale of Title and threshold. It dawned on me that the attached may help demonstrate the problem that occurs with tied terms in pub leases.

As your legal colleague [redacted] indicated, a new purchaser of the pub owning companies title would be bound by the terms of the lease but the supply terms, or purchasing terms, outlined in the agreements are incredibly onerous (vague) as they offer the pub owning company total control over price and range of products.

This example has been brought to your teams attention before but what puts it in perspective is the restrictive change in product range now forced upon the tenant.

[redacted]

Whether a brewer or a rapacious developer or supermarket seeking vacant possession this is why we are so keen on an MRO on sale - perhaps the tenant could be offered the opportunity to MRO on notice of a proposed sale the prospective purchaser would then be in a position where they would have to 'sell' their tied agreement to the tenant or accept the tenant may be FOT for the remained of the agreement term. This hopefully overcomes the prospect of the MRO applying to the regional brewers, under the threshold, once they have acquired as it would be initiated before the acquisition whilst still in the hands of the company to which the bill, code and MRO option applies.

[redacted]

Simon

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FW: MRO TRIGGER ON SALE OF TITLE

12 August 2015
11:38

From: Simon Clarke
Sent: 06 February 2015 09:30
To: McLynchy Julie (CCP); [redacted]
Subject: MRO TRIGGER ON SALE OF TITLE

Dear Julie and [redacted]

I've been thinking a little further in relation to the trigger points for the MRO.

We discussed the issue of administration when we last met and think we appreciate that in so far as the administrator has to perform the landlord's obligations in contracts with tenants then perhaps we may not need to consider the actual event of administration itself as a trigger point. What's more important is the issue of sale of the title interest in the pub from a pub owning company, or indeed the administrator as that may be a route he takes with some or all of the pubs in his administration.

Focusing on the issue of sale as a trigger point then I think we need to consider the position of the tenant and we are already discussing whether the wording in relation to the trigger point needs to relate to the tenant's "trade", "viability" or "profitability". In some ways these might all be hard to refine into an adequate clause or definition. Because of this I started to think about what the problem for the tenant actually was and how they would come to be susceptible to damage in the event of a sale of the freehold interest to a third party.

When a tenant takes on a tied pub – either as a new lease or an assignment – they are required to submit a business plan to the pub owning company which is the landlord and this business plan will have regard to the range of products they can buy from the pub company. The tenant is being enticed by the range of beers and particularly are likely to be incorporating this in their retail offer to their customers – in simple terms that they can provide a fairly wide ranging, changing, selection of beers, emulating the advantages of the freehouse operator, albeit with inferior retail margins and responding to consumer demand. The range of beers is likely to be a cornerstone of their business case and a reason for their own investment in to it. The larger range of beers on offer through the tie (all be it a fraction of that available in the free market) from the large pub companies has been used by them as a marketing tool for many years.

So the tenant takes the lease and invests in their retail business. The pub company then sells on the freehold to a family brewer or an independent non-brewing pub company and the tenant is told in blunt terms that they no longer have the previous, relatively wide, range of beers to choose from and sell. They can simply choose from a tightly constricted and perhaps inferior list ([redacted]). The retail offer of the tenant is compromised and in many cases ruined. Where developers have bought pub freeholds with a tie in place they have actively used this mechanism to drive the tenant out of business and it can be argued that the same is being used by some of the family brewers.

The tenant is sold on the idea of large range of beers, invests in the business, and is then ruined by the actions of the new owner. Surely it would be unthinkable of a Small Business Bill not to protect a small business from the summary actions of a new property owner previously unconnected with their pub and its operation.

On this one we may be back at the position where the legislation could put a choice before the property owner. Just because they take on the freehold of a tied pub they are not obliged to restrict the choice of beers to the point where the tenant's business is ruined and their investment lost. The legislation could provide for the sale of the freehold interest to be a trigger point where the continuity of the tenant's business would be negatively affected by the restriction of choice of product range by the new owner. The new owner would effectively have the choice of continuing to supply the beers required by the tenant (which they are, to my knowledge, all able to do) or, if not, then be faced with a tenant who may exercise their MRO in order that they can continue to purchase on the open market the larger range of beers they need to sustain their business model. Helpfully this also makes a distinction between tenants who have actually chosen a family brewers product range as part of their business plan and those who have had it forced upon them - providing a rationale and logic to making MRO available to the latter tenants and not the former.

Another cornerstone of the Bill is that the treatment of the tenant must be fair and reasonable and that the tied tenant should be no worse off than if MRO compliant. It can't be reasonable to accept a tenant's business plan based upon the range of beers sold to them as available at the outset and then to subject the small business to a severely curtailed list which may only include products from one brewer and unsuitable for the business model and local market of the tenant.

Regards

Simon

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FW: PART 4 - PUBS CODE - PRIMARY PRINCIPLES

12 August 2015
11:40

From: siclarke
Sent: 06 February 2015 17:24
To: McLynchy Julie (CCP); [redacted]
Subject: PART 4 - PUBS CODE - PRIMARY PRINCIPLES

Dear Julie and [redacted]

I appreciate you will have heard enough from me but I spotted an issue that I hope is better raised now to give you a moment to consider than at the meeting and put you on the spot.

Please consider 42(3)(b) :

the principle that tied pub tenants should not be worse off as a result of any product or service tie.

You will appreciate we would probably have expected :

the principle that tied pub tenants should not be worse off than if they were free of tie.

I think the problem here in the future could be that there is no comparable in the definition as to what the tied tenant must no be worse off than. The pubco could argue that the tied tenant should be no worse off than another tied tenant, for example.

Sorry to sound pedantic but after agreeing what I thought was clear RICS guidance for rent assessment with pubco representatives we later found they claimed to have an altogether different 'understanding' of what we had reached and had a different interpretation of the wording leading to the confusion of interpretation that has plagued valuations ever since and was identified by select committee and indeed BIS.

Better wording might be :

the principle that tied pub tenants should be no worse off than if their agreement were not subject to any product or service tie.

Regards.

Simon

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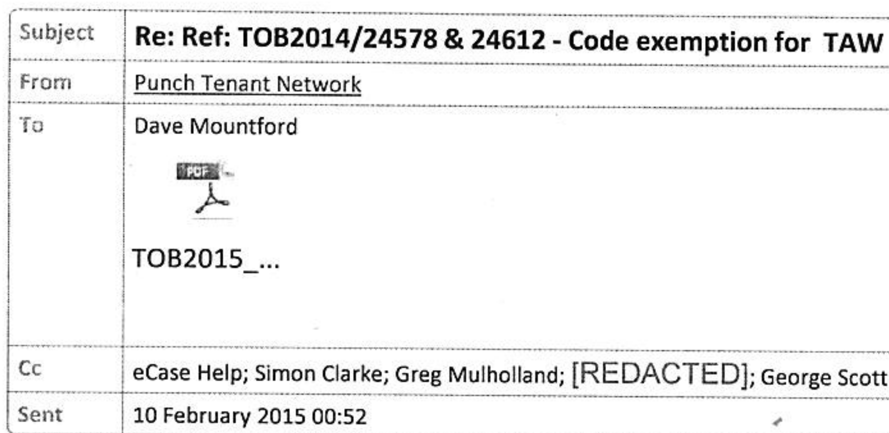
Re: Ref: TOB2014/24578 & 24612 - Code exemption for TAW

18 August 2015
14:30



Subject	**Re: Ref: TOB2014/24578 & 24612 - Code exemption for TAW**
From	Punch Tenant Network
To	Dave Mountford TOB2015_...
Cc	eCase Help; Simon Clarke; Greg Mulholland; [REDACTED]; George Scott
Sent	10 February 2015 00:52

No need to apologise Dave.
The burden of the response I received two months after I contacted BIS on October 31st after Griffiths first tried to exclude TAW was that the government was still thinking about this "complex matter". And would update in the Lords which as far as I can see didn't happen - just more "thinking" going on.
Obviously we have no idea what you and others are discussing with BIS or what is on the agenda and we are just chipping in as a group of concerned tied tenants with something to say in the matter.
I was shocked to find 15% of the [REDACTED] estate is TAW and that TAW is deemed a substantive agreement by [REDACTED] when reporting to its bondholders. [REDACTED]The argument advanced [REDACTED] that TAW is essential to try to preserve Pub businesses when unexpectedly abandoned is well made, and overmuch process in these cases will be a threat to the preservation of Pubs.
However it is quite clear that [REDACTED] is using TAW for quite another purpose or indeed several purposes . I am not sure that BIS understand this yet. I believe that there should be a presumption that a TAW is covered by the code after a very strictly limited period.
People who get involved in the emergency TAW situation such as the Bar Manager etc. should have some protection but not excluded from benefitting from such personal goodwill as they might already have in preserving the business, this is a difficult one as there is scope for that to be exploited and as we know if it can be, it will be.
The compliance issues you are concerned about are very valid and it is highly probable that a significant proportion of suddenly abandoned pubs will have issues.
We shall continue to press our observations and those of the Punch Tenants Network in any way we can. Our pledged members of MALT will expect us to get involved in this area and as one of our outline objectives will be to be an independent repository of compliance information about pubs we believe we might possibly have a role to play here.
We are delighted you too are concerned and are pressing your views on this - hopefully before too long we will have a properly constituted body which will enable tenant representation to be all joined up.
Best of luck to your efforts
Chris
Chris Lindesay
[REDACTED]

On 9 Feb 2015, at 22:47, Dave Mountford [REDACTED] wrote:

> Chris
> Apologies – I felt sure this issue was covered by myself as its something very close to my heart.
> We met with BIS officials last week and will see them again on Wednesday.
> TAW's were one of the agenda items.

At this moment in time, TAW's along with Franchises are covered by the code. As far as Bis are concerned this will stay the same.
We took the opportunity to reiterate the importance of this remaining the case, both from the point of view of the obvious use of TAW's to get round the legislation , but also the fact that we see, so often the lack of due diligence regarding Health and Safety in TAW's, as this becomes the responsibility of the Pubco at this point.
Both these points were rammed home and I see no reason for this to change.
I hope that clears up your concerns
Dave
From: Punch Tenant Network [REDACTED]
Date: Monday, 9 February 2015 20:59
To: [REDACTED], Simon Clarke [REDACTED], Dave Mountford [REDACTED]
Cc: 'Greg Mulholland' [REDACTED], [REDACTED], 'George Scott' [REDACTED]
Subject: Ref: TOB2014/24578 & 24612 - Code exemption for TAW

Further to my previous (unanswered Message) on the subject of TAW in the Pubs Code.

I have been interested to note that in the estate analysis Published by [REDACTED] during their refinancing revealed the following profile:

Standard Leases	2048
Tenancy Agreements	978
Tenancy at Will	583
Foundation Tenancy	107
Not Trading	69
Other Agreements	50
Total estate	3835

At 583 pubs let on "tenancy at will" this represents some 15% of the estate.
If as we have been told these agreements are short term stop gap measures lasting from say 3 months to 12 months then one is forced to conclude that 583 pubs represents the number of pubs that have become vacant unexpectedly with no succession plan in place in the average of say 9 months.
This represents an unexpected emergency situation arising in approximately 65 pubs per month 775 pubs per year = that is 20% of the estate.

This rate of attrition is hard to reconcile to other statistics extracted from [REDACTED] and suggests that in reality TAW is a much longer term arrangement than is suggested.

Note that [REDACTED] regularly claims 98% of the estate is let on "substantive" leases that statistic can only be true if TAW is regarded as a substantive arrangement not short term or emergency at all.

It would possibly be a solution if Pubcos were to reconcile their estate reporting to their shareholders and bondholders with reporting to Government.

It may be worthwhile allowing true emergency TAW situations to be exempt from the code, but these must be of a very limited duration max 3 months perhaps and may not be reported as "Substantive" when exempt from the code is claimed.
If a Pubco seeks to claim pubs let on a substantive arrangement then all of those pubs must be subject to the code.

Pubs operating with code exemption should be specifically identified and subject to scrutiny from the adjudicator who should be briefed to monitor lengthy TAW arrangements.
While one could conceive of a situation where it is convenient to operate a pub under a

Tenancy at will style of mutual commitment these must be protected by the Code.

Best regards

Chris Lindesay
[REDACTED]

From: Punch Tenant Network [REDACTED]
Sent: 19 January 2015 21:03
To: [REDACTED]
Cc: Greg Mulholland; '[REDACTED]'
Subject: FW: A response to your recent enquiry - Ref: TOB2014/24578 & 24612
Importance: High

Oh boy you guys certainly like to make it easy.

Black mark I am afraid.

Best regards

Chris Lindesay
[REDACTED]

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eCase Request Failed - Thank you for your email.

Unfortunately, this email address is unable to receive replies. If you would like to respond to our recent correspondence to you, please use the email address below.

Please forward your query to: [REDACTED]

From: Punch Tenant Network [REDACTED]
Sent: 19 January 2015 20:58
To: [REDACTED]
Cc: Greg Mulholland; [REDACTED]
Subject: FW: A response to your recent enquiry - Ref: TOB2014/24578 & 24612
Importance: High

Dear John,

Many thanks for your response – even if it took two months – I note that in the next week amendments are being proposed in the Lords to attempt to exclude the TAW from the bill with no mechanism to filter the aspirant from the sophisticated player, who may be able to keep the beer flowing pro tem while a properly qualified and briefed tenant is sought.

I realise that I must read between the lines of your reply and be impressed that I have had a response at all, but I regret that I am not.

I fear as ever that what we will see is the public face of TAW "keeping pubs open and preserving jobs" while the reality is more akin to "hooking up someone with experience who can keep the beer flowing on a soft deal while we figure out the medium and longer term".

You can get this from this:
http://www.morningadvertiser.co.uk/General-News/Enterprise-defends-actions-after-couple-

left-heartbroken-at-pub-exit?nocount

One tenant bankrupted, a second partner allowed to continue on a TAW until someone whose resources have not been extinguished buys it out. About par for the course but the play book has many options.

That this capability exists means that Pubcos can enforce their ruinous and onerous contracts on existing tenants to extract the maximum, while preparing for a future where new and inexperienced tenants might or might not survive on terms that the newly bankrupted would have relished. This is denied but were the natural reticence "not to comment on individual cases" removed that is exactly what will be regularly found.

My understanding of the other amendments on eligibility are to exclude existing tenants on the basis that they cannot afford to challenge their leases and by the time new leases might become eligible we will have come up with new contracts so the law is irrelevant.
The currently developing strategy from the Pubcos can be summarised thus

"Apparently, the strategy going forward is to develop a core managed estate of 1000 in the coming years, taking back identified sites as leases and tenancies expire, or buying tenants out where it's really required. The rest will be disposed of or retained on tightly drawn 3 and 5 year leases and franchises which allows them to be disposed of or taken back in house as and when they fancy. Specifically, this is intended to avoid rent reviews and MRO where possible with tightly drawn arrangements and short term contracts."

The recognised reality is that big business can be much more agile than government and will act to make whatever is proposed irrelevant – one would expect no other.

I believe that there is woefully insufficient consultation and representation of actual tenants in this discussion and far too much evidence of vested interest displayed by people who have the time and capability to engage. This is particularly evident in the lords amendments proposed while the MRO proposal is the most moderate and gradual that could have been conceived.

This is an issue which must be addressed at many levels and work is in hand to improve the representation of actual practising tenants in these circles, I trust they will not have to wait two months for a response as has been the case while "round tables" and suchlike have been held with limited invitees on the ground of expediency and lack of time.

Together with DCLG, BIS is presiding over the wholesale destruction of the british pub at present BIS is making many of the right moves with FDFYL in close attendance but I fear that after so many years and enquiries the instinct to find some middle ground is aberrant.

[REDACTED] I would ask whether that situation fills you with confidence for the future of the great British Pub, which after the royal family is the biggest draw for people to visit the UK.

This is your watch and if you fail you will never be forgiven.

Best regards

Chris Lindesay
[REDACTED]

From: [REDACTED]
Sent: 19 January 2015 18:53
To: Chris Lindesay

Subject: A response to your recent enquiry - Ref: TOB2014/24578 & 24612
Importance: High

Dear Mr Lindesay,
Please find attached our response to your enquiries regarding the Pubs clauses in the Small Business Enperprise and Employment Bill

Regards
[REDACTED]

Department for Business Innovation & Skills

1 Victoria Street
London
SW1H 0ET

Chris Lindesay

T +44 (0) 20 7215 5000
E enquiries@bis.gov.uk

e-mail

www.gov.uk/bis
Our ref: TOB2015/02910
Your ref:

11th March 2015

Dear Chris,

Thank you for your further email of 19 January to me regarding the issue of Tenancies at Will (TAWs) agreements and how they should be treated by the Pubs Code. I apologise again that it has taken some time to respond but this allows me to update you on the latest state of play with our legislation.

You may have seen that Baroness Neville Rolfe announced during the House of Lords Committee Stage on 28 January, that the Government intends to use the power in Clause 68 (now 71) to exclude TAWs from the statutory Pubs Code (see annex A for the Hansard excerpt). This is because we accept that they can have a useful function.

In using this power the Government will only exempt TAWs that are below a certain duration. This is to ensure that agreements that are meant to be temporary do not run on for long periods of time as a way of avoiding the Code. I should clarify that the Bill continues to provide that TAWs are in scope of the Code as the exemption will be provided for in secondary rather than primary legislation. In preparing the secondary legislation the Government will first consult on the length of agreements that are to be exempted and the legislation will only be made following debate in both Houses of Parliament.

You may also have seen that the pubs measures in the Bill were further debated at Lords Report stage on Monday 9th March. The issue of TAWs was not raised in the debate and there were no changes proposed by any Lords to the Government's position.

I can also report that we have carried out extensive engagement on our measures with stakeholders from all sides, especially since Lord Committee stage and this was recognised in the debate on Monday. As I say above, we will also consult widely on the length of any exemption period before bringing forward regulations.

I hope that this is helpful in clarifying our position.

Yours sincerely

Pubs Code and Adjudicator Team

Annex A – Hansard, House of Lords 28th January, 2015

Baroness Neville-Rolfe: My Lords, I thank my noble friend Lord Hodgson for his amendments on tenancies at will. I was very glad also to hear from the noble Lord, Lord Snape, given his great experience in the industry.

I agree with my noble friend that tenancy at will agreements are important in enabling pub companies to cover short-term gaps, to keep pubs trading in between tenants. They also allow the company time to complete due diligence on a new longer-term tenant. Temporary agreements can be useful to a prospective tenant as a trial run, prior to committing to a longer-term agreement. I have known ex-senior civil servants who have taken on pubs and found them quite a challenge.

In the other place, my honourable friend Jo Swinson committed to consider calls to exempt genuinely short-term agreements from the Pubs Code. These calls came from pub companies and some tenant groups. I can announce today that the Government will use the power in Clause 68 to exclude from the code tenancies at will and temporary agreements that do not extend beyond a certain limited period. This is to ensure that agreements that are meant to be temporary do not run on for long periods of time as a way of avoiding the code. This does not require an amendment to the Bill but, as part of the consultation on secondary legislation, we will consult on the length of agreements that should be exempted.

We have heard different views from stakeholders as to the length—including 12 months, as proposed by my noble friend—but we have also heard calls for six and nine months. Therefore, we will consult more widely on the length of any exemption period before bringing forward regulations. I hope my noble friend will feel able to withdraw his amendment.