



HOUSE OF COMMONS
LONDON SW1A 0AA

Anna Soubry MP
Parliamentary Under-Secretary of State
Department for Business, Innovation and Skills
1 Victoria Street
London, SW1H 0ET

26th January 2016

Dear Anna,

Pubco reform and the Pubs Code

Thanks for meeting with me last week to discuss the Pubs Code.

I have to say, however, that the meeting has made me much more concerned about the apparent BIS position on this - and I now strongly share the collective concerns of tenant and consumer groups (twelve of whom are in the British Pub Confederation/Fair Deal for Your Local campaign) that BIS are likely to produce a Pubs Code that undermines the legislation and the clear will of both Houses of Parliament.


Your claim that the pubcos have "changed"

You again made the claim in the meeting that you believe that "things have changed" and suggesting that the problems in the tied pubco sector are in the past, something you have also said on the floor of the House. You also repeated praise for Punch Taverns (and also said that you believed that all but one company had changed). You also again cited examples of a pub or pubs in your own constituency that you believed demonstrated that one or more of the pubcos had been positive in terms of investment.

Licensee groups, consumer groups and I are concerned that BIS are taking at face value claims made by pubcos, particularly how much they have "changed" when nothing has actually changed with regard to the fundamental issue of split of pub profits.

We are very concerned that you are making decisions on the Pubs Code based on the flawed assumption that somehow "things have changed" and that the fundamental problem has gone away. This assumption bears no relation to the actual experience of tenants nor the evidence of tenants' groups.

So can you please write to me, as Chair of the Save the Pub Group, to tell me on what basis you believe that most of the pubcos, including specifically Punch Taverns have "changed", in what ways specifically they have changed and if and how they have changed their model so that tenants are now taking a fair share of their pubs' profit and are "no worse off" than if they had a Market Rent Only



agreement. Please do share any evidence that has been supplied to you, sent in or handed to you and officials in meetings, to back up your claim.

Can you also please let me know which pub or pubs in your constituency are the ones you keep referring to. I am sure you will be happy to identify them, considering that you have mentioned this publicly in the parliamentary record and considering that it appears to be influencing your and BIS's decision making on the content of the Pubs Code.

The fact is that whatever "changes" that some companies are making, they are not tackling the fundamental problem of an unfair and unsustainable split of pub profits between the large and small businesses. Non-brewery property companies (including Punch Taverns) and some large pubcos who brew are continuing in many cases to take more than a fair or sustainable share from individual pub profits, which causes the tenant to fail through insufficient income (despite being a viable, profitable pub). If the Pubs Code distorts the Market Rent Only option and is weak in other ways, it will not prevent that and it will not deliver what BIS set out to deliver – which are the two principles of fair dealing and that the tied tenant should be no worse off than the free of tie tenant.

The BIS perception and potential distortion of the Market Rent Only option

I also left very concerned at the perception of your apparent Market Rent Only option. This is very simply the option for tied publicans to only pay a fair, independently assessed market rent to the pub owning company - a 'market rent only' option. The licensee has the right to trigger the process at the points laid down in the Small Business Act (and there must not be conditionality to change that - as there is now). It is nothing to do with "dispute resolution" as you suggested it did in the meeting. The purpose of the all-important Market Rent Only option is to end what has been the endemic abuse of the unregulated beer tie, by the property companies who do not brew beer yet charge their so called business partners hugely more than the price that you or I could buy it at (a very strange business model for a Conservative Minister to appear to support!).

I was concerned therefore at your appearing to argue suggestions that whatever rent the two parties might agree was the Market Rent. As I tried to make clear, the two parties can of course agree any rent figure that they are both happy with (and this could of course be on a tied, part tied and free of tie basis, not just a free of tie basis which is what the current flawed flowchart produced by BIS implies).

However the point is that the tenant has the right to seek an independent assessment of what their commercial rent should be, without any supply ties, and to be able to assess if their tied agreement is a fair one - and they then have the knowledge and the right to pursue a free of tie arrangement or to decide to agree a positive tied or part tied deal (which is why the Market Rent Only option is NOT 'abolishing the tie'. It is giving the option of the independent assessment to ensure transparency and the ability to negotiate a fair deal whether tied, part tied or free of tie).

Whether you and BIS like it or not, the Market Rent Only option concept is one that was developed by the Fair Deal for Your Local coalition, building on the recommendation by the Business, Innovation and Skills Select Committee. The phrase Market Rent Only option was devised by me, to explain that this concept meant the commercial rent for a pub in current trading conditions – set according to existing guidelines. By its very nature, this has to be assessed following these guidelines and proper procedure and is not therefore the same as the amount a pub owning company would like to charge to compensate for a loss of tied product profit and cannot be 'agreed' to establish it as it can only be established through assessment based on existing guidelines and procedure.

So I and we are very concerned that BIS appears to be seeking to change the definition of the Market Rent Only option which is completely unacceptable and a breach of trust, as well as a clear attempt to



flout the will of both Houses of Parliament and what was voted for in both Houses. As the people who conceived the Market Rent Only option, if BIS do distort and change the meaning of this simple concept, then we will consider judicial review as the mean to rectify this, but we sincerely hope that BIS are proceeding now in good faith and are being honest when they say that they will ensure the Pubs Code adheres to the intention and the will of both Houses of Parliament.

So to be clear, the Market Rent Only option means very simply, *the right for tenants to seek an independent assessment of their commercial rent on a free of tie basis and then to have the right to pay that sum and only that to the pub owning company.*

Can you please reply to say that you and BIS understand and accept this – and that the Pubs Code will deliver this right at the trigger points laid down in the Small Business Act and without further conditionality?

The financial reality of the leased, tied non brewery pubco model

I am also concerned that you got very agitated when I said something that is a truism, that the discredited tied property company model is not sustainable. The fact that you found it so outrageous that I might point this out is simple bizarre. This is the view of many in the sector.

The true entrepreneur, Tim Martin who created the Weatherspoon's Empire, said back in 2009, "*I don't think that long leases from the pubcos are sustainable. The pubcos now are between a rock and a hard place because they have taken on so much debt...*"

Notably Mr Martin set up Wetherspoon's not through golden handshakes after the Thatcher Government Beer Orders and an irresponsible debt fuelled acquisition spree, the way the leased pubcos did, but from nothing. Notably they are expanding and opening new pubs all the time - and all their staff are decently paid and trained.

The reality of Punch Taverns' finances has been well documented in the media, this from Nathalie Thomas, The Telegraph, (4 Feb 2014)

"Punch Taverns, Britain's second biggest pubs group, will warn its lenders on Wednesday that failure to pass a controversial debt restructuring deal could lead to at least five years of "mess" and "uncertainty". The company, which has 4,000 pubs in the UK, has been wrestling with its lenders and shareholders over the last 14 months over how to restructure its complex £2.3bn debt pile, built up during an acquisition spree last decade".

So I seriously hope that BIS, as well as sticking to their promises, will support business not failure and will listen not to the pubcos and their trade association but to the Federation of Small Businesses and the Forum of Private Business, the UK's two leading small business organisations who are also concerned at apparent attempts to water down the Pubs Code and the Market Rent Only option. When you took office, they like me had hoped that you would be a Conservative who believes in entrepreneurialship, in small business, in the free market. So I am baffled why it seems that once again there is an move in BIS to do the will of these property companies who borrowed billions, bought up pub properties to artificially inflate share values and abused the traditional beer tie by moving to 25-year fully repairing and insuring leases whilst charging eye wateringly above market prices to their own tenants for beer they don't brew.

It is a failed model, that is not in dispute and the model must change (but that is not the same as saying that the companies must go bust). All sustainable companies will adapt and offer fair and actually competitive tied agreements (as they claim to do so now, but largely don't). Some tenanted pubs may become managed, certainly some pubco pubs will, as they are now, or be bought by the



many successful and expanding small pub companies and breweries, which is where the real opportunity lies – and this in itself will lead to a more diverse, competitive and healthy pub sector. None of these things is any reason to seek to undermine, water down or neuter the aim of the Small Business, Enterprise and Employment Act – indeed we want to see many more people owning pubs, fewer pubs owned by the giant pubcos and more competition in the market, which is good for consumers as well as publicans.

To reassure you, in case you misunderstood, my position is exactly the same as that expressed by Secretary of the British Pub Confederation in the Metro on 5th November 2013: "...campaigners insist their goal is not to see the end of the pubco but to make it work. Mr Clarke said: "*My objective is to see pubs are able to trade on a level playing field and have a chance of sustainability and viability. That's it.*"

The aim of the Pubs Code and legislation – more viable pubs, more pubs succeeding and a boost to the economy

In our meeting, I tried without success to explain to you that the point of the reforms was very simply to stop the endemic overcharging of tied pubco tenants, by these indebted companies, to allow licensees to take a fair share of the profits they generate in the pub. I explained that this would (as research has shown) lead to many more individual pub businesses being viable, employing people, paying taxes.

I was very concerned in the meeting when you said, in reply to this said, "why do we want more viable pubs?". This is deeply worrying and again, suggests a lack of understanding of the very problem that BIS have committed to deal with.

The reality is that many pubs that are failing are only doing so because of the terms of the pubco lease, which is preventing the licensee from making a living, despite a decent turnover, because the pubco (due to their debt levels and complete lack of regulation) are taking too much from the pub's profit.

The reason that this needs to be tackled is clear – so that the tenants can make a living, succeed, employ people, contribute to the local economy and pay taxes – and this also makes the pub sustainable as well as viable and profitable, so the pub is not at risk of closing due to tenant failure.

There is huge economic benefit of stopping the overcharging of tenants, research by the Federation of Small Businesses has shown this to a total benefit of £78,489,772 to the UK economy:

<https://pubaliciouspubs.wordpress.com/2013/12/12/federation-of-small-businesses-research-shows-the-huge-benefit-to-the-uk-economy-if-the-government-implements-a-fair-deal-for-pubs/>

Confusing pubcos charging a higher rent due to investment with a tenant agreeing to sign away the right to take the Market Rent Only option.

I also tried without success to explain my and our concerns about the waiver for investment for before a tenant has taken a pub. As I was trying to say, much pubco investment is spent on empty properties rather than existing tenancies and often is simply pubcos making pubs fit for a new tenant. To quote from BIS' own impact assessment of the pubs code and adjudicator, paragraph 141: "*However, a FSB survey of their members found 68% hadn't had any investment from their pub company in the last 12 months.*" It is the pubcos' responsibility to make pubs fit for new tenants and perform maintenance while there is no tenant, and the tenant should not have to pay for this work done before they took on the pub and certainly must not be asked to sign away their right to the Market Rent Only option for



this happening. This is not acceptable, for it will encourage pubcos to withhold any investment from sitting tenants and rather only invest once they have gone.

So I was very concerned that you were confusing the paying of a higher rent with tenants signing over right to MRO to prevent exploitation. Your example was saying, "well if a pubco invests in and improves a pub, why shouldn't they be able to charge a higher rent?". As I made clear, they can (and do) charge a rent based on the condition of the pub (and there is no issue with that) but this is completely different from a waiver that asks a tenant to sign away their rights to trigger the Market Rent Only option for investment before they have taken on the pub!

So can you please write back to me to say that you now understand this – and give me BIS's position on this?

BIS must surely understand that in reality pubco investment is really more of a loan, with the money spent by the pubco then added on to rent and tied pricing, to ensure the pubco recoups the amount spent, rather than being simple investment in the real sense. Most investment is also co-investment with the tenant also making a significant contribution. We are not opposed to any exception for truly significant investment, as long as this is taken into account and also that the waiver is limited, reasonable and entered into willingly by both parties and not something that a tenant is pushed into.

Conclusion

The twelve British Pub Confederation organisations (including the Federation of Small Businesses and the Forum of Private Business) share the same concerns as I am raising with you here. All we want is for the Government to honour promises made, from the Prime Minister downwards, to implement the legislation - and a non-watered down Market Rent Only option and abide by the will of both Houses of Parliament.

So again, thank for you the meeting, but I am sure you can understand the concerns I and we have raised. I and we fear that the Government is in real danger of falling for the spin of some pubcos and their lobbyists that they have changed, that reform will stifle investment (when it is the pubco model that has done that) and that the Pubs Code will be written so as to allow them to carry on taking too much from pub profits.

This is exactly the mistake the Conservative Government led by Margaret Thatcher then John Major made, following the announcement to introduce the Beer Orders. They were both correct and bold to introduce the Beer Orders to break the anti-competitive stranglehold that the 'Big 6' brewers had on the pub sector and in doing so have allowed hugely greater choice and a renaissance of British beer. However, as a fillip to the big brewers and their trade association, the Government bowed to pressure and allowed the disastrous loophole, agreeing to exempt non-brewing companies from the Beer Orders. This led to golden handshakes, sweetheart deals as large chunks of the estate were handed over to new property companies who committed to continue to buy the breweries' beer. Then, with no limits on ownership, these companies used and abused the beer tie to borrow vast sums, largely in the form of bonds, to go on a reckless acquisition spree, buying up pubs to grow estates and artificially inflate share values which made the city boy bosses filthy rich yet when the property market collapsed, exposing the utterly illusory nature of this model, fuelled by an overvaluation scam that has proved disastrous for thousands of pubs and publicans.

I quote BIS' impact assessment of the pubs code and adjudicator once more, paragraph 127, which says: "*Some specific risks include: That pub owning companies find a loop hole in the statutory code that allows them to continue acting as they do currently. To mitigate this risk the rules will be written in terms that are difficult to game. The code, which is likely to be set out in secondary legislation, will*



be amendable in certain circumstances which will allow it to reflect new developments in the industry and close any loop holes that are found.” You must be clear that BIS will draft the code to prevent loopholes and to prevent gaming - however we are concerned that contrary to this, there appears to be a danger that BIS are actually including loopholes, requested by the pubcos and their trade association, the BBPA, and that this will allow the pubcos to continue behaving as they have done.

Therefore I and we urge you not to make the same mistake, not to give into self-interested and misleading lobbying by the pubcos, their lobbyists and supporters. If you create additional loopholes for the pubcos to use to continue to exploit their tenants, undermining the legislation and the purpose of the Market Rent Only option and tenants’ right to take it as laid down in the legislation, you will be held responsible. On the other hand, if you do the right thing, stick to clear promises and abide by the clear will of both Houses of Parliament, you can go down in history as the Minister who finally put right the mistake of the Beer Orders’ disastrous loophole and at last introduce a freer, more open pub sector to go with our competitive brewing sector.

I do note that at the end of the meeting as you brought the meeting to a conclusion, you did say that it was your and BIS’ intention to ensure that the Pubs Code did abide by the legislation and the will of the Houses of Parliament. I hope we can hold you to that – which means a clear Market Rent Only option as explained here and in previous correspondence.

As I made clear, I am not making the content of our discussions public nor publishing this letter, but due to the importance of this and the level of concern, I am sharing this with Charlotte Leslie, who is the Conservative Vice Chair of the Save the Pub Group and with Government whips Steve Barclay and Charlie Elphicke, both of whom are clear on the reality of the giant pubcos and how they behave as well as with Mark Pawsey who I will continue to discuss this with. I remain willing, as do the British Pub Confederation, to work with BIS to ensure that the final Pubs Code delivers as set out above.

Yours sincerely,

Greg Mulholland MP
MP for Leeds North West

cc Mark Pawsey MP, PPS to Anna Soubry
Charlotte Leslie MP, Vice Chair, Save the Pub Group
Charlie Elphicke MP, Government Whip (Lord Commissioner of HM Treasury)
Steve Barclay MP, Assistant Government Whip