There are five items of correspondence that are within scope of Freedom of Information Request FOI2014/22075. They are as follows (NB: All the text of the fifth document is also contained within the second document):

1. **Response to Greg Mulholland and his further questions**
2. **Greg Mulholland to Vince Cable**
3. **Jo Swinson response to Greg Mulholland**
4. **Jo Swinson to MPs who spoke in the 2nd Reading debate in the House of Commons**
5. **Open Letter Greg Mulholland to Vince Cable**

Document 1

Response to Greg Mulholland Questions

11 July 2014

1. **What options do we provide the adjudicator to take action in the case where a parallel rent assessment shows that a tied landlord is in fact worse off so that they won't be worse off?**

   The 'No Worse Off' principle means that the tied tenant's projected profit under the tied scenario should be equal to or greater than the projected profit that the tenant would receive under the free-of-tie scenario. If this is not the case, the pub owning company must provide a reasonable justification as to why the tied balance is lower.

   What reasonable justification could there be? How will the adjudicator decide if it is 'reasonable'? Whether it is deemed reasonable or not, allowing a lower than FOT profit means the tied tenant is worse off...so the core principle if not delivered.

   If the tenant believes that justification is unreasonable or if he thinks that the PRA itself is unfair and does not comply with the requirements of the Code then he will be able to refer this as a potential breach of the Code to the Adjudicator for arbitration. If the Adjudicator finds that there has been a breach of the Code in relation to the PRA then one of the remedies available to him is to set the tied rent figure so that the projected profit is equal to or greater than under the free-of-tie scenario.

   *So the Adjudicator **can** set the rent? This appears to say so.*

2. **What types of tied pubs will benefit from the proposed measures and will the duties apply to pubcos with 500 tied pubs or 500 pubs in total?**

The Code has two elements – Core and Enhanced provisions. The Core Code will protect all tied tenants, including those with 'franchise' agreements, providing them with increased transparency, fair treatment, the right to request a rent review if circumstances change (or if they have not had one for five years) and the right to take disputes relating breaches of the requirements of the Code to a new independent Adjudicator.

It is wrong to have the code only apply to 'tied' pubs, it needs to apply to all tenanted, leased and franchised pubs or a loophole to exploit FOT tenants and lessees through excessive rents is created.

The Enhanced elements of the Code, which provide tenants with the right to request a parallel free-of-tie rent assessment if rent negotiations fail, will apply only to tied tenants of pub owning companies with 500 or more tied pubs. Any tied pubs owned by a pub-owning business that is a 'micro-business' i.e. has 10 employees or less, will be exempt from the Code.

That doesn't make sense. A company of less than ten people could own and lease hundreds of pubs! This needs revisiting.

3. How will we make sure that the pubcos can't unreasonably delay their complaints process that we are requiring tied landlords to go through before they complain to the adjudicator?

In most cases we hope that the pub owning company and tenant would be able to resolve the dispute between themselves. That is why the Bill states that the tied tenant and pub owning company have a period of 21 days from when the tenant reports a breach of the Code to the pub owning company directly, before the tenant may bring a case to the Adjudicator.

This talks about reporting a breach of the code. What people want to refer to the adjudicator is the fact that they believe they are paying too much rent on a tied lease. How and when does this become a breach of the code?

This timeframe will give pub owning companies an opportunity to make a genuine effort to resolve the dispute. However, if after 21 days the tenant feels that the breach hasn't been resolved in-house, he or she can refer the alleged breach to the Adjudicator.

The Code requires that pub-owning businesses provide a rent assessment six months before a tenancy renewal or scheduled rent review is due for completion. This is to allow enough time for negotiation and, if there is a dispute, for referral to the Adjudicator if the tenant believes the rent assessment is unfair and not in accordance with the requirements of the Code.. If six months' notice is not provided the tenant can refer this as a Code breach to the Adjudicator.

How soon after being provided with the rent assessment can it be referred to the adjudicator? Is there any process that has to be gone through here.

In addition the Secretary of State has the power to make regulations that could rule as void or unenforceable any provision of a tenancy or other agreement which tries to penalise a tenant for requiring the pub-owning business to act in accordance with the Code.

What does this mean in practice?

Document 2

Mr Bosroke Pubco – Swinson (by letter)
assign to CCP.

All Party Parliamentary Save the Pub Group

Received in Central Drafting Unit
21 JUL 2014

SAVE THE PUB

The Save the Pub Group is an all party group of MPs and peers all committed to protecting and promoting pubs which we believe are vital community institutions and part of our national heritage.

Rt Hon. Vince Cable MP
Secretary of State
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

DATE RECEIVED
17 JUL 2014
BERR MCU

15th July 2014

Dear Vince,

Statutory Code of Practice for Pubs and Pubs Adjudicator – Small Business, Enterprise and Employment Bill

I am writing to you on behalf of the Save the Pub Group regarding the Government's plans to introduce a statutory code of practice and an adjudicator in the pub sector, in advance of the second reading on Tuesday 15th July.

The Save the Pub Group strongly support the introduction of a statutory code of practice for the large pub owning companies, which is well overdue and much needed to address the fundamental problem of pubco overcharging and the endemic abuse of the beer tie which has done so much damage to pubs.

However we are at the moment concerned that the plans as publicised do not address this, nor deliver the Government's clear and unequivocal commitments to deliver two 'core principles' of fair and lawful dealing and to ensure that the tied licensee is not worse off than the free-of-tie licensee.

So we need to ask you as a matter of urgency a very simple question:

In the plans as published, what is the mechanism for delivering the Government's commitment to ensure that the tied licensee is not worse off than the free of tie licensee?

We ask this because, having studied the Bill, we cannot see an effective mechanism, that will deliver this, i.e. that will stop the large companies taking too much from pub profit, which is the fundamental problem (as you acknowledge by including the second core principle in the first place).

Greg Mulholland MP, Chair
Brian Binley MP, President
Grahame Morris MP, Vice Chair
Caroline Nokes MP, Vice Chair

All Party Parliamentary Save the Pub Group
c/o Greg Mulholland MP, House of Commons, London, SW1A 0AA email: savethepub[illegible].org.uk

A parallel rents assessment has been proposed which I believe all parties to this dispute have agreed, for different reasons, is unworkable. The tenant organisations have highlighted that, whilst a useful informative tool in the right hands, the method is time consuming and complex and should only be used in conjunction with the market rent-only (MRO) option as a mechanism to calculate which agreement (tied or free of tie) would deliver the most likely sustainable/profitable future for the tenant. The pubco representatives have been against the method from its first suggestion during the Royal Institution of Chartered Surveyors (RICS) redrafting of the rent assessment guidance notes, presumably because it actually demonstrates the massive effect of over-inflated tied product price on a pubs profitability.

In fact on reading the written responses to the consultation we have yet to find one organisation or submission that proposes the parallel rent assessment method "**on its own**" to be the a potential mechanism to deliver fairness or the 'no worse off' principle.

Considering that BIS have been claiming that there is insufficient support for the market rent only option (which is not true - the BIS consultation survey showed that in 67.6% are in favour!) it is very puzzling that you have chosen a mechanism that no-one supports!

So the four fundamental problems with the Bill as drafted as follows - which will actually mean that the Bill, Code and Adjudicator will not work – are as follows:

1. There is currently no apparent effective mechanism for dealing with the fundamental problem, which is the unfair split of pub profit, so there is no mechanism to actually deliver the Government's commitment to ensure that the tied licensee will not be worse off than the free of tie licensee. If you look through responses to the BIS consultation, you will not find **ANY** key stakeholder or interested party who believes the parallel rent assessment will deliver this.

2. The proposal is for the enhanced code to apply to companies with 500 or more *tied pubs*. This is a big mistake and loophole as it allows continued overcharging through excessive above-market dry rents - and therefore means the plans will not tackle the problem or deliver its two core principles. The size limit is clearly about market share and power, as with the Beer Orders, so **the code must apply to all companies with 500 or more pubs, to their *tenanted, leased and franchised pubs (not 'tied pubs')*.**

3. The basis for the establishment for the adjudicator is confused and flawed, with no clear role – talking simply about dealing with 'breaches of the code' when the code does not yet exist and may have nothing in it to deal with the

fundamental problem: to stop pub-owning companies taking too much from pub profit. If the Code fails to include a mechanism to stop the overcharging – and we can't see one, the parallel rent assessment being an informative tool not an effective solution - then dealing with 'breaches of the code' is meaningless and will not deliver the Government's commitments in the Bill. Even if it is the role of the Adjudicator to do this – and it clearly must be –the Adjudicator will be faced with a massive quandary, if ever a tenant survives long enough for them to draw a conclusion. If pubcos propose maintaining their current levels of over inflated tied product prices, the rent of the average tied pub will be zero, in some cases less. This places the Adjudicator in an impossible, and possibly overwhelming position which we foresee will increase the costs of and burden on the Adjudicator. If the Adjudicator is able to actually determine tied rents and bows to pubco influence, like we believe the RICS have for the past 15 years or so, they will be pointless and a waste of time and money (though of course without dealing with overcharging, you can be sure that the levy on the pubcos to pay for the Adjudicator will all be passed on to tenants!).

4. Finally and our most serious concern, is the time this procedure of rent assessment will take. Typically we see tenants either in rent review lease renewal or court action failing due to being out litigated or pressed into financial collapse before a determination. A pubco can increase prices and restrict product choice over simply using the tied terms contained within the agreement, the tenant can be forced into liquidation within weeks if a pubco desire it. What is there in the Bill to restrain this activity that simply circumvents the intention of Government?

The Adjudicator **must** have the power to swiftly, specify and enforce what a fair tied rent should be, to deliver the commitment to ensure that a tied licensee is not worse off than if they were free of tie. We cannot see that this would be practically possible in reality under the proposed measures and remain firmly of the opinion that only a MRO option, empowering the tenant to almost immediately choose to buy products in the open market in exchange for a fair rent, should the pub company be acting unfairly in their opinion. Having made the choice the rent can be assessed and established by the Adjudicator if necessary and back dated to the option take-up date, disabling the pubcos' power to force the tenants into business failure.

So a second question we would like answered:

Will the Adjudicator be able to deal with the fundamental problem, which is the pubcos taking too much from pub profit and if so, how will they do this when dealing with a case?

On point two, we are staggered that the Government has fallen into the trap of the enhanced code applying only to tied pubs. This is clearly absurd. What this means is that pubco lessees who may have what is described as 'free of tie' price matching but are being seriously overcharged through excessive dry rent will have no recourse - and of course gives the large companies an obvious loophole, all they have to do is to put lessees onto wholly unfair and excessive rental only agreements (that do not reflect market rent), so they continue to extract the same excessive proportion of profit, yet they are not subject to the code!

This is self-evidently nonsense - but also by doing this the Government is immediately undermining its commitment to fairness. The tenanted and leased model gets abused in different ways, tied, part-tied and rent-only and all must be stopped - or pubco overcharging will continue and the code will have failed. Similarly, as the Save the Pub Group has made clear, the enhanced code must apply to all companies who own 500 pubs, on their leased, tenanted and franchised pubs, not on companies who have 500 or more "tied" pubs. What about part tied pubs? What about free of tie pubs on an unreasonable rent? Or tied pubs with so called free of tie pricing?

To have the code apply to tied pubs makes no sense as this means continual monitoring of companies and on what model they are operating all of their pubs. Companies do agree different terms with their lessees from time to time. This is not realistic or sensible, whereas basing on pub ownership is. Again, the Government 500 limit is about market share (just like the Beer Orders) not specific business model and it is there to capture the larger companies in the sector and not the family brewers. So the Government has fundamentally misunderstood this whole point and must ensure that the published code has the enhanced code with a remit of applying to any company with 500 or more pubs, but only being in force and subject to the per pub levy for the tied leased, tenanted and franchised pubs (i.e. it is managed pubs, where managers are excluded, not any lessees/tenants all of whom must be covered to stop overcharging).

The other big concern we have at the moment is the flawed basis on which the adjudicator is being established - and is potentially the most serious flaw - the Bill as drafted simply talks about the Adjudicator arbitrating on breaches of the code and only on breaches of the code, but this is meaningless if (1) the code does not include an effective mechanism to stop the overcharging/adjudicating on tied rent levels and (2) if the adjudicator does not have the power to impose such settlements.

So these two things must be clearly in there in the enhanced code applying to all large companies (owning 500 pubs or more, to all their leased/tenanted pubs) or Government are leaving the Adjudicator with an impossible task of delivering the commitments with no enforcement power.

So it needs to be clear and on the face of the Bill how the Adjudicator will ensure that the tied tenant will not be worse off than a free of tied tenant. Simply giving them power to expose overcharging through a parallel rent assessment without then the power to correct it will clearly not deliver either core principle in the Bill. The Adjudicator must have the power to impose fair rents.

Can you also clarify what is envisaged in terms of fines? To have any teeth and to be effective in the way the Government have promised, fines must be equivalent to the amount of excess profit taken by the pubco over the course of the dispute period (from when the tenant/lessee first raised this with the pubco). Anything else would be tokenistic, would clearly not redress the wrong and would not be a deterrent to the pubcos.

The industry has suffered almost four years of toothless regulation in the form of PICAS and PIRRS and a couple of years before that under BIIBAS we do not need another ineffective regulator.

What also seems very odd in the legislation is the use of the word 'may'...the Code 'may' require large pubcos to provide parallel rent assessments; may confer functions on the adjudicator in relation to them etc. Could you clarify why this is the case, rather than actually laying down in law what the code *will* deliver – which is surely the purpose of primary legislation?

Finally can you also clarify when the actual Statutory Code would be drafted and how will that be approved by Parliament? When does the Government envisage this actually coming into force?

We look forward to hearing from you.

Yours sincerely,

Greg Mulholland MP
Chair
Save the Pub Group

Caroline Nokes MP
Vice Chair
Save the Pub Group

Grahame Morris MP
Vice Chair
Save the Pub Group

Document 3

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Our ref: 2014/16309

Greg Mulholland MP
House of Commons
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13 August 2014

Dear Greg,

Thank you for your letter of 15 July to the Secretary of State, on behalf of the Save the Pub Group, about the Government's plans to introduce a Statutory Code of Practice and an Adjudicator in the pubs sector. I am responding as this matter falls within my portfolio.

I welcome the Save the Pub Group's support for the introduction of a Statutory Code and Adjudicator. The measures in the Small Business, Enterprise and Employment Bill are a huge step forward for tied tenants - for the first time they will have a Code of Practice they can rely on, with independent enforcement and with real sanctions attached. It is through the excellent work of the Save the Pub Group and the BIS Select Committee over the years that we are now legislating and I consider the measures a proportionate and targeted response to the long-standing problems in the pubs industry.

I understand your disappointment that the Government has not gone as far as some campaigners would wish, as articulated by you and other members of the Group at the Bill's Second Reading on 16 July. Your letter raises a number of issues and questions which I address in turn below and which we will no doubt debate further as the Bill goes through Parliament.

You ask about the mechanism for delivering the commitment that a tied tenant should be no worse off than a free-of-tie tenant. The Statutory Code will empower existing and prospective tied tenants by giving them the information they need to negotiate a better, fairer deal. They will have the right to request a rent review if they have not had one for five years, if the pub-owning company significantly increases drink process or if an event occurs outside the tenant's control. We will consult further on the precise definition of these provisions. When a rent review does take place, pub-owning companies will have to make clear how they have calculated the rent payable. This greater transparency will allow tenants to see what information their pub company has used and decide whether the rent is unfair and should be challenged.

For the first time, tied tenants will have a Statutory Code of Practice to rely on, with an independent Adjudicator to enforce it. They will have the right to take disputes to the Adjudicator for arbitration and he or she will also be able to launch investigations into suspected wider abuses. Where the Adjudicator finds that there has been a breach of the Code the Adjudicator will be able to determine financial redress for the tenant and he or she will have the power to fine if an investigation proves that wider abuses have taken place.

The Enhanced Code, which applies to pub-owning companies with 500 or more tied pubs, additionally provides tied tenants of these companies with the right to a parallel rent assessment if their rent negotiations fail. This will set out the equivalent free-of-tie rent calculation for the pub and will compare the projected profit under the tied and free-of-tie scenarios and it is expected that this will demonstrate that the tied tenant is no worse off than they would be if they were free-of-tie. If this is not the case then the pub-owning company must justify it. If the tenant believes that either the parallel rent assessment or the justification for it is unfair, he may refer this as a potential breach of the Code to the Adjudicator for arbitration. If the Adjudicator finds that there has been a breach of the Code in relation to the parallel rent assessment then one of the remedies available to him or her is to set the tied rent figure so that the projected profit is equal to or greater than under the free-of-tie scenario.

You are right that the parallel rent assessment proposed in last year's consultation document was criticised by some respondents to the consultation. As the Government Response made clear, we have listened to concerns that it was too mechanistic and did not take into account the diversity of pub-owning company practice in the sector. To remedy this, our intention is that parallel rent assessments should be carried out on an individual pub basis. Pub-owning companies will have to follow Royal Institution of Chartered Surveyors (RICS) guidance to produce a free-of-tie rent assessment for the particular pub in question. That will then form the basis for projections of the likely profit for the tenant were they not subject to the tie.

The parallel rent assessment does not need to be complex. The same information would have been required to assess a free-of-tie market rent if we had opted for the mandatory free-of-tie route. The parallel rent assessment should ensure that pub-owning companies offer their tied tenants a rent that means they are no worse off than they would be if they were free-of-tie but without creating the uncertainty that could undermine the tied model itself.

The draft Code which was published with the Government Response sets out the minimum requirements for a parallel rent assessment. * We will be consulting again on the precise wording of the Code once the Small Business Bill has received Royal Assent. I would be pleased to look at suggestions for rewording the Code to ensure we get it absolutely right.

Let me turn to the coverage of the Code. You comment that "the size limit is clearly about market share and power, as with the Beer Orders..." and that "... the code must

* A copy of the Code is provided with this letter and is accessible online at www.gov.uk.

apply to all companies with 500 or more pubs, to their *tenanted, leased and franchised pubs (not 'tied pubs')*." We have been clear that we are not intervening on competition grounds as the Office of Fair Trading found that the market is competitive for consumers. Our intervention is about ensuring that tied tenants are treated fairly and that they are no worse off than their free-of-tie counterparts.

Our core measures will apply to all 20,000-plus tied tenants in England and Wales, giving them the protections of the Code and Adjudicator. This is wider than our original consultation proposal and ensures that everyone operating a tied pub receives the protections of transparency and fairness. Tied pubs and tied tenants are defined in the Bill so as to include publicans with tied leases, tenancies and franchise agreements, regardless of whether their landlord is a small family brewer or a large pub-owning company.

The Enhanced Code provisions for a parallel rent assessment are targeted at that part of the industry about which we have received most complaints and, because of market share, they are best able to bear the cost of the measure. It is a proportionate approach and the Enhanced provisions will cover approximately 15,000 tied tenants.

The Code will not apply to free-of-tie tenants nor to those running pubs directly managed by a pub-owning company. As we made clear in the Government Response to last year's consultation, we do not have evidence of a problem in the free-of-tie pub market and it is not our intention to legislate in this area. It is abuse of the beer tie that is the problem and this has been echoed by the BIS Select Committee in its reports over the years.

Let me address your comment that "the basis for the establishment for the adjudicator is confused and flawed ..." and clarify the role of the Adjudicator. The Bill sets out that the Adjudicator's role is to enforce the Code. A Statutory Code needs an independent Adjudicator to enforce it. He or she will be able to arbitrate individual disputes where tied tenants allege that their pub-owning company has breached the Code. The Adjudicator will also have the power to investigate systemic breaches of the Code. This is an important power – where the Adjudicator has reasonable grounds to suspect a breach that is more widespread than an individual case, he or she can launch an investigation and, if appropriate, impose financial penalties.

The Adjudicator can arbitrate in rent disputes where the tenant alleges unfairness. If a tied tenant thinks his or her rent is unfair and does not comply with the requirements of the Code then he or she will be able to take their case to the Adjudicator. If the Adjudicator finds that there has been a breach of the Code then he or she will have the power to set a new rent. Alternatively the Adjudicator might decide to correct certain assumptions underpinning the rent calculation and ask the parties to renegotiate based on those corrected assumptions. That will be for the Adjudicator to decide according to the facts and circumstances of each case.

The Adjudicator will assess each case on its merits and it is theoretically quite possible that if a pub-owning company charges very high drinks prices to a tied tenant, the rent

could be zero or even a negative rent to offset this. There is nothing to stop the Adjudicator from reaching such a conclusion if that is what the evidence points towards.

You refer to the time that the rent assessment process can take and how, through this potentially lengthy process and the pub-owning company's behaviour, tenants can be left in financial difficulty. I expect that the existence of a Statutory Code and a powerful Adjudicator will act as a deterrent to this kind of behaviour. If the Adjudicator receives evidence of bullying, he or she will be able to investigate those breaches of the Code by the pub-owning company. In addition the Bill will give the Secretary of State the power to regulate to make void or unenforceable a term of a tenancy or other agreement which penalises a tenant for requiring its pub-owning company to comply with the Code. The Adjudicator also has the power to award redress to the tenant in cases where there has been a breach of the Code by the pub-owning company which has resulted in the tenant suffering loss.

The rationale for Government intervention is to address the unfairness in the relationship between pub-owning companies and their tied tenants. The Statutory Code and Adjudicator will deliver greater protection than the voluntary regime, with independent enforcement and real sanctions attached. We intend to cap the cost of arbitration to the tenant at the same level as the current voluntary maximum for rent disputes (£2000). In most cases we hope that the pub-owning company and tenant would be able to resolve the dispute between themselves. That is why the Bill provides a period of 21 days from the tenant reporting a breach of the Code directly to the pub-owning company, before the tenant may bring a case to the Adjudicator. This timeframe will give pub-owning companies an opportunity to make a genuine effort to resolve the dispute, whilst ensuring that tenants have a right to prompt recourse to the Adjudicator.

The draft Code requires that pub-owning businesses provide a rent assessment six months before a tenancy renewal or scheduled rent review is due for completion. This is to allow enough time for negotiation, followed by referral to the Adjudicator if the tenant believes the rent assessment is unfair and not in accordance with the Code. If six months' notice is not provided, the tenant can refer this as a Code breach to the Adjudicator.

You comment that "... the Code fails to include a mechanism to stop the overcharging..". I am afraid I cannot agree. The draft Code published alongside the Government Response does include measures to prevent overcharging. Delivering fairness is at the heart of the Code. For example, in requiring pub-owning companies to set out a detailed justification for the rent offer and making this arbitrable, it will expose attempts at overcharging. If a tenant believes he/she is being treated unfairly he/she can refer his or her case to the Adjudicator by referencing a provision in the Code which has been breached – for example, if he/she has not been provided with the required information to justify and explain the rent calculation. It also addresses other risks to unfairness by setting out a minimum frequency of five years for rent reviews, the other circumstances in which a rent review must take place and prohibiting upward only rent reviews.

You ask for clarification on fines. The level of financial penalty imposed on a pub-owning company following an investigation will be for the Adjudicator to determine,

the Arbitration Act 1996, the Adjudicator will have wide powers of remedy. As noted above, these include the power to award redress to tenants in arbitration cases where there has been a breach of the Code by the pub-owning company which has resulted in the tenant suffering loss.

The Government expects the Bill to complete its passage through Parliament by the end of March 2015. The Bill provides that the Pubs Code must be introduced within a year of commencement of the legislation and is subject to the affirmative resolution procedure. The Code we published as part of the Government Response is near final and takes on board policy decisions made after reviewing the consultation evidence. We will reflect on further feedback on the Code from all stakeholders and of course from Parliament to ensure that the precise drafting delivers the policy set out in the Government Response. If appropriate, we will provide a further update of Code drafting in time for Committee Stage in the Autumn.

I should also add that the Bill provides for both the Code and Adjudicator to be reviewed after the first two years of existence, and then every three years thereafter. This will allow the Government to ensure that the measures are having the desired impact. If, following a review, there is evidence that they are not delivering fairness for tied tenants, the Government will take action to remedy any problems identified.

I am copying this reply to Caroline Nokes MP and Grahame Morris MP, Vice Chairs of the Save the Pub Group.

I hope this response is helpful.

JO SWINSON MP

Jo Swinson MP
Minister for Employment Relations and Consumer Affairs

Document 4

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5 August 2014

Dear colleague,

PUBS CODE AND ADJUDICATOR

I was grateful to you for your interest in the measures to introduce a Pubs Code and Adjudicator during the Second Reading of the Small Business, Enterprise and Employment Bill on 16 July.

I welcome the generally positive response for the introduction of a Statutory Code and Adjudicator. The measures are a huge step forward for tied tenants – for the first time they will have a Code of Practice they can rely on, with independent enforcement and with real sanctions attached. The measures are a proportionate and targeted response to the long-standing problems in the pubs industry.

As Matthew Hancock did not have the opportunity to respond to every point or question raised in his closing speech, the attached note is a response to some of the specific issues raised during the debate.

I hope this is helpful.

JO SWINSON MP

Jo Swinson MP
Minister for Employment Relations and Consumer Affairs

PUBS CODE AND ADJUDICATOR:

RESPONSE TO POINTS RAISED AT SECOND READING, 16 JULY 2014

Mandatory free-of-tie

1. As outlined in the Government Response to last year's consultation, published on 3 June, the Government recognises that some tenant groups and campaigners support a mandatory free-of-tie (or 'market rent only') option. We looked carefully at whether to introduce this measure. Responses to our consultation raised concerns that it would create uncertainty for pub-owning companies and have an unpredictable impact on the wider pubs sector, which could undermine the tied model as a whole. This was raised during the debate in terms of whether it would really be viable for pub-owning companies to switch to using Real Estate Investment Trusts. What is clear however is that we cannot predict with any certainty what the outcome would be for the industry of introducing mandatory free-of-tie. Even among the polarised views in the industry, there is strong support for the tie as a business model. What is important to the Government is that there are protections in place so that the tied model operates fairly. The reforms being taken forward in the Small Business Bill will rebalance the relationship between pub-owning companies and their tied tenants, without threatening the balance of the wider industry.

Parallel rent assessment

2. We are ensuring that tied tenants of large pub companies (who own 500 or more tied pubs) have the right to a parallel rent assessment if their rent negotiations fail. This will set out the equivalent free-of-tie rent calculation for the pub and will compare the projected profit under the tied and free-of-tie scenarios and it is expected that this will demonstrate that the tied tenant is no worse off than they would be if they were free-of-tie. If this is not the case then the pub-owning company must justify it.

3. If the tenant believes that either the parallel rent assessment or the justification for it is unfair and not in accordance with provisions of the Code, he may refer this as a potential breach of the Code to the Adjudicator for arbitration. If the Adjudicator finds that there has been a breach of the Code in relation to the parallel rent assessment then one of the remedies available to him is to set the tied rent figure so that the projected profit is equal to or greater than under the free-of-tie scenario.

4. We listened to concerns that the parallel rent assessment proposed in last year's consultation was too mechanistic and did not take into account the diversity of pub-owning company practice in the sector. To remedy this, our intention is that parallel rent assessments should be carried out on an individual pub basis. Pub-owning companies will have to follow RICS guidance to produce a free-of-tie rent assessment for the particular pub in question. That will then form the basis for projections of the likely profit for the tenant were they not subject to the tie.

5. The parallel rent assessment does not need to be complex. The same information would have been required to assess a free-of-tie market rent if we had

opted for the mandatory free-of-tie route. The parallel rent assessment should ensure that pub-owning companies offer their tied tenants a rent that means they are no worse off than they would be if they were free-of-tie but without creating the uncertainty that could undermine the tied model itself.

6. The draft Code which was published with the Government Response sets out the minimum requirements for a parallel rent assessment. We will be consulting again on the precise wording of the Code once the Small Business Bill has received Royal Assent. I would be pleased to look at suggestions for rewording the Code to ensure we get it absolutely right.

Core principles

7. The Code has at its heart two core principles – fairness and that a tied tenant should be no worse off than a free-of-tie tenant. The Code will empower existing and prospective tied tenants by giving them the information they need to negotiate a better, fairer deal. They will have the right to request a rent review if they have not had one for five years, if the pub-owning company significantly increases drink prices or if an event occurs outside the tenant's control. We will consult further on the precise definition of these provisions. When a rent review does take place, pub-owning companies will have to make clear how they have calculated the rent payable.

8. This greater transparency will allow tenants to see what information their pub company has used and decide whether the rent is unfair. If the rental figure has not been worked out in accordance with the provisions of the Code, the rental dispute can be referred to a new independent adjudicator for arbitration. Where a tenant is successful in an arbitration, the Adjudicator will be able to determine what financial redress is appropriate in the circumstances. The Adjudicator will also be able to launch investigations into suspected wider abuses and will have the power to fine if an investigation proves that wider abuses have taken place.

9. The parallel rent assessment requirement will deliver the 'no worse off' principle by providing additional protection for tied tenants whose pub company owns 500 or more tied pubs, as that is the sector that has attracted most complaints.

Coverage of the Code including family brewers

10. During the Second Reading debate several Members questioned whether we were right to extend the Code to all pub-owning companies who own tied pubs. Some Members also stressed that the Code should not be restricted to tied tenants but should include also tied lessees and franchisees. Under the Bill, the 'Core Code' will apply to all 20,000-plus tied tenants in England and Wales, giving them the protections of the Code and Adjudicator. Tied pubs and tied tenants are defined in the Bill so as to include publicans with tied leases, tenancies and franchise agreements, regardless of whether their landlord is a small, family brewer or a large pub-owning company.

11. This is wider than our original consultation proposal and ensures that everyone operating a tied pub receives the protections of transparency and fairness. We have received evidence of complaints of unfair treatment of tied tenants by smaller pub-owning companies; complaints are not restricted to tenants of larger

pub-owing companies. It is also vital that we safeguard all tied tenants from potentially losing the protections they currently have under the industry self-regulation scheme. Evidence suggests that the larger pub-owning companies may no longer continue to fund the voluntary code once they are covered by the Statutory Code, which could soon render the voluntary system unviable.

12. There was some concern expressed about the compliance burden on smaller companies. Much of the Statutory Code is based on the existing industry voluntary code, to which most pub companies and breweries with tied tenants are already signed-up, and, unlike the voluntary system, there will be no requirement for companies to develop their own individual codes and have these accredited.

13. Some Members expressed particular concern about the compliance cost for smaller companies of the requirement for a Code Compliance Officer. The intention is that the Code Compliance Officer will play a key role in ensuring the pub-owning company complies with the Code, including being a point of contact for stakeholders who have queries about the company's compliance with the Code and ensuring there is clear reporting of the compliance record to senior management in the company. Although pub-owning companies will be required to designate one member of staff as the Code Compliance Officer, this need not be a full time role and could be combined with other roles. The only proviso is that the role must be independent of, and the postholder must not be managed by, a Business Development Manager.

14. In ensuring that the burden on smaller companies is proportionate, the requirement to prepare an annual report outlining a company's compliance with the Code will apply only to pub-owning companies with 100 or more tied pubs. This is in line with the current industry framework code and so does not constitute an additional burden.

15. Some Members raised concerns about the requirement to use a RICS qualified surveyor. The requirement in the Bill is not that all rent assessments are carried out by a RICS member but rather that they sign off the assessment. This is an important safeguard for fair rents – because valuers who are RICS members have the greatest incentive to follow the RICS guidance on fair valuations.

16. There was some debate during Second Reading about whether pub franchises should be covered by the Code. This is something we have given a great deal of thought to. Our conclusion is that they should be covered by the Code because all the franchise models we are aware of include the tying of beer and other products. Therefore although they may include different means of charging a tenant, the potential for abuse still applies as it does with other tied pubs.

17. There was also debate over the inclusion of short-term temporary agreements and Tenancy at Will agreements. Having looked at this carefully, our view is that these are tied agreements and the tenants using them should therefore receive the same Code protections as other tied tenants. In reality this will not impose significantly new burdens on pub-owning companies – for example, the right to request a rent review is unlikely to be made during a genuinely short-term agreement. We are also aware that Tenancy at Will agreements can last for longer

than a year therefore increasing the risk to tenants. We want to avoid any potential for the legislation to be exploited – for example by Tenancy at Will agreements being used either as long-term agreements or on a rolling basis, and with tenants not having the protection of the Code.

18. If you have any drafting suggestions to help improve the application of the Code to short-term temporary or Tenancy at Will agreements, then please feed them in to the Department.

19. The Code will not apply to free-of-tie tenants or to those running pubs directly managed by a pub-owning company. As we made clear in the Government Response to last year's consultation, we do not have evidence of a problem in the free-of-tie pub market and it is not our intention to legislate in this area. It is abuse of the beer tie that is the problem and this has been echoed by the BIS Select Committee in its reports over the years.

Guest beer option

20. One element of our consultation was to gather views on whether a 'Guest Beer Option' could improve the balance of risk and reward for tenants. The evidence indicated that, while it would reduce some costs, the impact would depend on which beer the tenant chose to buy outside of the tie. Buying a low volume seller would bring the tenant little benefit. The biggest potential cost savings for tenants would come from having their biggest selling beer as the 'Guest Beer' – typically a draught lager. If this happened on a wide scale it could damage the ability of pub-owning companies to maintain their purchasing arrangements and might then undermine the tied model itself. As noted above, it has never been the Government's intention to abolish the tied model – what we want to see is it operating fairly.

Gaming machine tie

21. The Bill provides a right for tenants to *choose* whether to be tied for gaming machines. Responses to the consultation demonstrated that the concerns that historically led to criticism of the gaming machine tie have largely been addressed by pub-owning companies. It was also clear that some tenants wish to remain tied to their pub-owning company's suppliers as they preferred to avoid the 'hassle factor' of managing their own machines and appreciate the benefit they can receive from the tie. The 2010 BIS Select Committee recommended that tenants be given a choice of whether to be tied and we consider that to be the fairest option. Where tenants choose to exercise the option to be tied, the income from machines will form part of the 'divisible balance'.

Role of Adjudicator

22. As set out in the Bill, the Adjudicator's role is to enforce the Code. He or she will be able to arbitrate individual disputes where tied tenants allege that their pub-owning company has breached the Code. The Adjudicator will also have the power to investigate systemic breaches of the Code. This is an important power – where the Adjudicator has reasonable grounds to suspect a breach that is more widespread than an individual case, he or she can launch an investigation and, if appropriate, impose financial penalties.

23. Many tenants have told us that for them the rent negotiation process works well and clearly we do not want to get in the way of this. The Adjudicator will be independent and where he/she arbitrates on a rent dispute the Adjudicator will provide an impartial assessment. The Adjudicator can arbitrate in rent disputes where a tied tenant alleges his rent is unfair and does not comply with the requirements of the Code. If the Adjudicator finds that there has been a breach of the Code, then he or she will have the power to set a new rent. Alternatively he or she might decide to correct certain assumptions underpinning the rent calculation and ask the parties to renegotiate based on those corrected assumptions. That will be for the Adjudicator to decide according to the facts and circumstances of each case.

24. During the Second Reading debate some Members argued that some tied rents should in fact be zero and questioned how the Adjudicator would manage this. The Adjudicator will assess each case on its merits and it is theoretically quite possible that if a pub-owning company charges very high drinks prices to a tied tenant, the rent could be zero or even a negative rent to offset this. There is nothing to stop the Adjudicator from reaching such a conclusion if that is what all the evidence points towards.

25. Members also expressed concern that a pub-owning company could put a tenant out of business during a lengthy rent negotiation and/or adjudication process. We would expect that the existence of a Statutory Code and a powerful Adjudicator will act as a deterrent to any such behaviour. If the pub owning companies' behaviour amounted to a breach(es) of the Code, this could be investigated by the Adjudicator. In addition the Bill will give the Secretary of State the power to regulate to make void or unenforceable a term of a tenancy or other agreement which penalises a tenant for requiring its pub-owning company to comply with the Code.

Fines, and Redress and Costs for tenants

26. The level of financial penalty imposed on a pub-owning company following an investigation will be for the Adjudicator to determine depending on the facts and seriousness of each case, subject to a maximum level. We will be consulting on the maximum level of financial penalty shortly. Under the Arbitration Act 1996, the Adjudicator will have wide powers of remedy in individual arbitration cases. These include the power to award redress to tenants where there has been a breach of the Code by the pub-owning company which has resulted in the tenant suffering loss. We intend capping the cost of arbitration to the tenant at the same level as the current voluntary maximum for rent disputes (£2000).

Prompt action

27. In most cases we hope that the pub-owning company and tenant would be able to resolve the dispute between themselves. That is why the Bill provides a period of 21 days from the tenant reporting a breach of the Code directly to the pub-owning company, before the tenant may refer the case to the Adjudicator. This timeframe will give pub-owning companies an opportunity to make a genuine effort to resolve the dispute, whilst ensuring that tenants have a right to prompt recourse to the Adjudicator.

28. The draft Code requires that pub-owning businesses provide a rent assessment six months before a tenancy renewal or scheduled rent review is due for

completion. This is to allow enough time for negotiation, followed by referral to the Adjudicator if the tenant believes the rent assessment is unfair and not in accordance with the Code. If six months' notice is not provided, the tenant can refer this as a Code breach to the Adjudicator.

Commencement of the Code

29. The Government expects the Bill to complete its passage through Parliament by the end of March 2015. The Bill provides that the Pubs Code must be introduced within a year of commencement of the legislation and is subject to the affirmative resolution procedure. The Code we published as part of the Government Response is near final and takes on board policy decisions made after reviewing the consultation evidence. We will reflect on further feedback from all stakeholders and of course from Parliament to ensure that the precise drafting delivers the policy set out in the Government Response. If appropriate, we will provide a further update on Code drafting in time for Committee Stage in the autumn.

Review

30. The Bill provides for both the Code and Adjudicator to be reviewed after the first two years of existence, and then every three years thereafter. This will allow the Government to ensure that the measures are having the desired impact. If, following a review, there is evidence that they are not delivering fairness for tied tenants, the Government will take action to remedy any problems identified.

Document 5

OPEN LETTER FROM GREG MULHOLLAND/SAVE THE PUB GROUP TO VINCE CABLE PUBLISHED IN PUBLICAN MORNING ADVERTISER, 14 JULY 2014

In the plans as published, what is the mechanism for delivering the Government's commitment to ensure that the tied licensee is not worse off than the free of tie licensee?

- The Statutory Code will deliver fairness and increased transparency for all tied tenants. We are empowering existing and prospective tied tenants by giving them the information they need to negotiate a better, fairer, deal. We are giving them the right to request a rent review if they have not had one for five years and requiring pub-owning companies to make clear how they have calculated the rent payable.

- The Enhanced Code, which applies to pub owning companies with 500 or more tied pubs, additionally provides tied tenants of these companies with the right to a Parallel Rent Assessment if rent negotiations have broken down. This will set out the equivalent free-of-tie rent calculation for the pub. It is expected that this will demonstrate that the tied tenant is no worse off than they would be if they were free of tie. If this is not the case then the pub company must justify it. If the tenant believes that either the parallel rent assessment or the justification are unfair he may refer the case to the Adjudicator.

A parallel rent assessment has been proposed…… The tenant organisations have highlighted that, whilst a useful informative tool in the right hands, the method is time consuming and complex

- The Parallel Rent Assessment does not need to be complex. It is about providing tenants with information so they can ensure they are no worse off than their free of tie counterparts. It is worth noting that the same information would be required to assess a free of tie market rent in the Market Rent Only option.

- The draft Code which was published with the Government Response sets out the minimum requirements for a Parallel Rent Assessment. If the Hon Gentleman thinks that what we have set out there is unworkable I would be grateful if he could set this out in more detail in writing to my Department so we can ensure we get the Code absolutely right.

- We will be consulting again on the precise wording of the Code once this Bill has received Royal Assent. I would be pleased to look at suggestions for rewording the Code to ensure we get it absolutely right.

The pubco representatives have been against the method from its first suggestion during the Royal Institution of Chartered Surveyors (RICS) redrafting of the rent assessment guidance notes, presumably because it actually demonstrates the massive effect of over inflated tied product price on a pubs profitability.

- If the Parallel Rent Assessment ensures that pub owning companies offer their tied tenants a rent that means they are no worse off than they would be if they were free of tie then the parallel rent assessment will have been a success and done its job.

… all parties to this dispute have agreed, for different reasons, [that the PRA] is unworkable. In fact on reading the written responses to the consultation we have yet to find one organisation or submission that proposes the parallel rent assessment method "on its own" to be the a potential mechanism to deliver fairness or the 'no worse off' principle. The Parallel Rent Assessment should only be used in conjunction with the MRO [market rent only] option as a mechanism to calculate which agreement (tied or free of tie) would deliver the most likely sustainable/profitable future for the tenant. Considering that BIS have been claiming that there is insufficient support for the market rent only option (which is not true - the BIS consultation survey showed that in 67.6% are in favour!) it is very puzzling that you have chosen a mechanism that no-one supports!

- You are right that the parallel rent assessment proposed in last year's consultation document was criticised by respondents to the consultation. As the Government Response makes clear, we have listened to concerns that it was too mechanistic and did not take into account the diversity of pub-owning company practice in the sector. To remedy this, we intend that parallel rent assessments should be carried out on an individual pub basis. Pub-owning companies will simply have to follow RICS guidance to produce a free-of-tie rent assessment for the particular pub in question. That will then form the basis for projections of the likely profit for the tenant if they were not subject to the tie.

The proposal is for the enhanced code to apply to companies with 500 or more tied pubs. This is a big mistake (...) The size limit is clearly about market share and power, as with the Beer Orders, so the Code must apply to all companies with 500 or more pubs, to their tenanted, leased and franchised pubs (not 'tied pubs').

- We have been clear that we are not intervening on competition grounds as the Office for Fair Trading found the market is competitive. Our intervention is about ensuring that tied tenants are treated fairly and that they are no worse off than their free-of-tie counterparts.

- Our core measures will apply to all 20,000 plus tied tenants giving them the protections of the Code and Adjudicator including the right to request a rent review when circumstances change and greater fairness in their dealings with the pub owning company. The Parallel Rent Assessment is targeted at larger companies because of market share AND because it is there where most need for the PRA measure was found. It will cover approximately 15,000 tied tenants.

- The 500 threshold is designed to capture those companies about whom the majority of complaints have been received by BIS and focuses the cost of complying with the requirement to offer parallel tied and free-of-tie rent assessments on that part of the industry about which we have received most complaints.

- The Core Code applies to <u>all</u> tied tenants. This is wider than our original consultation proposal and ensures that all tied tenants receive the protections of transparency and fairness. Tied pubs are defined in the Bill so as to include franchise arrangements as well as tied tenancy and tied lease agreements. 'Tied pubs' is shorthand for that and when we speak of 'tied tenants' that includes publicans with tied lease, tenancy and franchise agreements. (cont'd)

- The Enhanced Code applies to those pub owning companies with 500 or more tied pubs. Again this includes tied tenancies, tied leases and franchises. We are limiting the application of the Enhanced Code to these companies as this is the part of the sector where we have evidence of the biggest problems. It is a proportionate approach.

- As the Government Response to last year's consultation makes clear, we do not have evidence of a problem in the free-of-tie pub market and it is not our intention to legislate in this area. It is abuse of the beer tie that is the problem.

The basis for the establishment for the adjudicator is confused and flawed, with no clear role – talking simply about dealing with 'breaches of the code' when the code does not yet exist and may have nothing in it to deal with the fundamental problem, to stop pub owning companies taking too much from pub profit.

- The Bill sets out that the Adjudicator's role is to enforce the Code. He or she will be able to arbitrate individual disputes where tied tenants allege that their pub owning company has breached the Code. The Adjudicator will also have the power to investigate systemic breaches of the Code. This is an important power – where the Adjudicator has reasonable grounds to suspect a breach that is more widespread than an individual case, he or she can launch an investigation and, if appropriate, impose financial penalties.

- The draft Code was published by my Department as part of the Government Response to the Consultation. As we said there, we will consult on the precise wording of the Code once the Bill has received Royal Assent. This will enable us to ensure that the Code reflects any changes made to the Bill by Parliament and that we get the wording absolutely right.

- The Code needs to be workable. I am very happy to receive suggestions of drafting changes to the Code which I can consider as we finalise the wording ready for that Consultation. Once that consultation is complete the Code will be introduced by secondary legislation.

If the Code fails to include a mechanism to stop the overcharging – and we can't see one, the parallel rent assessment being an informative tool not an effective solution - then dealing with 'breaches of the code' is meaningless and will not deliver the Government's commitments in the Bill.

- The Code does include measures to prevent overcharging. Delivering fairness is at the heart of the Code. For example, it sets out the information that a pub owning company must provide to their prospective and current tenants when taking on a pub and at rent reviews. It sets out a minimum frequency of five years for rent reviews, the other circumstances in which a rent review must take place and prohibits upward only rent reviews. If a tenant believes he is being treated unfairly he can refer his case to the Adjudicator by referring to a provision in the Code which has been breached – for example if he has not been provided with the required information to justify and explain the rent calculation.

The Adjudicator will be faced with a huge quandary (…) by the numbers if pubcos propose maintaining their current levels of over inflated tied product prices the average tied pub in the cotries rent will be zero, in some cases less. [sic]

- The Adjudicator will assess each case on its merits. It is theoretically quite possible that if a pub owning company charged very high drinks prices to a tied tenant that the rent could be zero or even a negative rent to offset this. But that will be for the Adjudicator to determine in each case. There is nothing to stop the Adjudicator from reaching such a conclusion if that is what all the evidence points towards.

The levy on the pubcos to pay for the Adjudicator will all be passed on to tenants!

- To comply with the Code and the Bill, pub companies will need to ensure that their tied tenants are treated fairly and that they are no worse off than a free of tie equivalent. That will be the law and there can be no getting away from it. Pub owning companies will pay a levy to finance the Adjudicator and this is the right thing to do – we are only regulating because the industry has failed to do so effectively itself, despite being given multiple opportunities to do so. They cannot simply pass on the levy costs to their tenants since they will be obliged to treat their tenants fairly in accordance with the Code.

Finally and our most serious concern, is the time this procedure of rent assessment will take. Typically we see tenants either in rent review lease renewal or court action failing due to being out litigated or pressed into financial collapse before a determination. A pubco can increase prices and restrict product choice over simply using the tied terms contained within the agreement, the tenant can be forced into liquidation within weeks if a pubco desire it. What in the to restrain this activity that simply circumvents the intention of Government? [sic]

- If there is any bullying, it is unacceptable. If the Adjudicator receives evidence of bullying they will be able to investigate those breaches of the Code by the pub owning business.

- In addition the Secretary of State may make regulations to make void or unenforceable a term of a tenancy or other agreement which would penalise the tenant for requiring the business to comply with the Code.

- We would hope that the existence of a Statutory Code and a powerful Adjudicator will act as a deterrent to this kind of behaviour where it is happening. The rationale for Government intervention is to address the unfairness in the relationship between pub companies and their tied tenants.

- The Statutory Code and Adjudicator will deliver greater protection than the voluntary regime, with independent enforcement and real sanctions attached. We intend capping the cost of arbitration to the tenant at the same level as the current voluntary maximum (£2000).

- The Adjudicator has the power to award redress to the tenant in cases where there has been a breach of the Code by the pub owning business which has resulted in the tenant suffering loss.

Will the Adjudicator be able to deal with the fundamental problem, which is the pubcos taking too much from pub profit and if so, how will they do this when dealing with a case? It needs to be clear and on the face of the Bill how the Adjudicator will ensure that the tied tenant will not be worse off than a free of tied tenant. Simply giving them power to expose overcharging through a parallel rent assessment without then the power to correct it will clearly not deliver either core principle in the Bill. The Adjudicator must have the power to impose fair rents.

- Yes. The Adjudicator can arbitrate in rent disputes where the tenant alleges unfairness. If the Adjudicator finds in favour of the tenant he or she has the power to set a new rent. Alternatively he or she might decide to correct certain assumptions underpinning the rent calculation and ask the parties to renegotiate based on those corrected assumptions. That is for the Adjudicator to decide based on the facts and circumstances of the case.

We are staggered that the Government has fallen into the trap of the enhanced code applying only to tied pubs. This is clearly absurd. What this means is that pubco lessees who may have what is described as free of tie price matching but are being seriously overcharged through excessive dry rent will have no recourse - and of course gives the large companies an obvious loophole, all they have to do is to put lessees onto wholly unfair and excessive rental only agreements (that do not reflect market rent), so they continue to extract the same excessive proportion of profit, yet they are not subject to the code!
This is self-evidently nonsense - but also by doing this the Government is immediately undermining its commitment to fairness. The tenanted and leased model gets abused in different ways, tied, part tied and rent only and all must be stopped - or pubco overcharging will continue and the code will have failed.

- If I have understood the Hon Gentleman correctly he seems to be suggesting that the Code should apply to all non-managed pubs, including those which are free of tie. As the Government Response to last year's consultation makes clear, we do not have evidence of a problem in the free of tie pub market and it is not our intention to legislate in this area. It is abuse of the beer tie that is the problem. However I can reassure the Hon Gentleman that the Code applies to publicans with tied agreements, whether they are a party to a lease, tenancy or franchise agreement. It excludes those publicans who run free of tie or managed pubs.

Can you also clarify what it envisaged in terms of fines? To have any teeth and to be effective in the way the Government have promised, fines must be equivalent to the amount of excess profit taken by the pubco over the course of the dispute period (from when the tenant/lessee first raised this with the pubco). Anything else would be tokenistic, would clearly not redress the wrong and would not be a deterrent to the pubcos.

- The level of financial penalty imposed on a pub owning company following an investigation will be for the Adjudicator to determine, subject to the maximum level set, and will be dependent on the seriousness of the breach. We will be consulting on the maximum level of financial penalty shortly.

- Under the Arbitration Act, the Adjudicator will have wide powers of remedy. The Adjudicator will have the power to award redress to tenants in arbitration cases where there has been a breach of the Code by the pub owning business which has resulted in the tenant suffering loss.

Finally can you also clarify when the actual Statutory Code would be drafted and how will that be approved by Parliament? When does the Government envisage this actually coming into force?

See Q&A