



Department  
for Business  
Innovation & Skills

Greg Mulholland MP  
House of Commons  
London  
SW1A 0AA

The Rt Hon Anna Soubry MP  
Minister of State for Small Business,  
Industry and Enterprise

1 Victoria Street  
London  
SW1H 0ET

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

[www.gov.uk/bis](http://www.gov.uk/bis)

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*Dear Greg,*

Thank you for your letter of 26 January, about the Government's draft proposals for the introduction of the statutory Pubs Code, following our meeting on 18 January.

You raised concerns that the Government 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. I assure you that this is not the case.

While we recognise that the self-regulatory approach constituted a step in the right direction, the Government believes that the positive change in the industry has not gone far enough in addressing the unfairness that can exist for tied tenants in their relationship with large pub-owning companies. Indeed, we are legislating to ensure that more positive changes are made, to ensure that we see a fundamental rebalancing of risk and reward between pub-owning companies and tenants.

In establishing the Pubs Code and Adjudicator, we are making policy decisions based on evidence. The recent consultation set out draft proposals to implement the Pubs Code. Its purpose was to consider the views of all interested parties on those proposals and whether any of them should be changed or strengthened. We want to ensure that the process provides high quality evidence for the secondary legislation to ensure we can deliver an effective Pubs Code, with our principles of fair dealing and that the tied tenant should be no worse off than the free-of-tie tenant at the heart of our decision making.

You also mentioned your concerns around what you see as a potential distortion of the Market Rent Only ("MRO") option, particularly that the initial offer by a pub-owning company to a tenant will not necessarily be the market rent.

The Pubs Code will require a pub-owning company to offer the tenant an MRO compliant tenancy with their assessment of the market rent. The tied tenant can choose to accept this assessment. As you say in your letter, the MRO option provides the right for tenants to seek an

independent assessment of the 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 – and our proposals provide for exactly this.

As we explained in part two of the consultation, under our proposals for the MRO procedure, a tenant can request a free-of-tie rent offer alongside a tied rent review proposal which must include certain information; they can refer the tied rent offer to the Adjudicator where they feel there is a breach of Code and refer the free-of-tie rent proposal to an independent assessor if agreement on rent cannot be reached. The tenant has the real option to choose to pay a market rent only figure which would enable the tenant to source the products at free-of-tie price. The tenant will have the right to refuse the free-of-tie offer at any time; to terminate the MRO option process; and to remain tied if they so choose.

I trust you will find this confirmation reassuring. In addition you will have seen that the Rt Hon Sajid Javid MP confirmed in Second Reading of the Enterprise Bill on 2 February that we are withdrawing the proposal that a tied tenant would have the right to MRO at rent assessment only in the event of a proposed rent increase. This initial proposal was not intended to make a radical difference to the number of tenants entitled to MRO, but evidence we received in the responses to our consultation showed that that was likely to be the effect. Therefore that proposal will not go forward into the draft regulations. Further to this on 3 February, the Government tabled a tidying amendment to Clause 33 of the Enterprise Bill to enshrine in primary legislation that the right to an MRO option will be available at a rent assessment “whether or not it results in a proposal that the rent, or amount of money payable, should increase”.

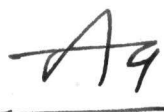
I note your comments regarding “The Pubco model” and regarding the overall aims of the legislation and the Pubs Code. I believe that pubs play a vital part of life in this country. They are community hubs, play a positive role in the experience of visitors to this country and contribute positively to UK GDP. Therefore it is important that pubs can operate in an environment that is fair and that is what our proposals seek to achieve.

You raise concerns about our proposals for implementing the provisions in the SBEE Act related to the MRO waiver for significant investment. You state in your letter that you are not opposed to a waiver from MRO for truly significant investment, as long as the waiver is limited, reasonable and entered into willingly by both parties and not something that a tenant is pushed into.

Our proposals for the investment waiver try to achieve a balance between providing some level of certainty of return on investment for pub-owning companies and ensuring that tied tenants retain the protections of the Pubs Code – including the other eligibility criteria for the MRO option. We have proposed to achieve this by setting qualifying criteria for the investment, imposing a limit on the length of the waiver period, and requiring other conditions to be met, such as seeking independent advice. I can also reassure you that the intention of our proposals is not oblige a tied tenant to agree an MRO waiver.

In all of our proposals, we have adopted a proportionate approach, with the aim of fulfilling the requirements in the Act that the Pubs Code must deliver the principles of fair and lawful dealing and that a tied tenant should not be worse off than a free-of-tie tenant. We have done so in a way that minimises as far as possible the new burdens being placed on businesses – both pub-owning companies and tenants – and seeks to ensure that tied tenants do not receive any lower level of protection under the statutory Code than they currently have under the voluntary Industry Framework Code.

We are currently analysing responses to the consultation and will carefully consider all of the comments, suggestions and evidence which have been submitted in relation to our proposals. We will publish a full Government response in due course. We can look forward to Parliamentary debate and scrutiny of the implementing legislation which will follow.

A handwritten signature in black ink, appearing to read 'Anna'.A handwritten signature in black ink, appearing to read 'A9'.

**THE RT HON ANNA SOUBRY MP**

