


# FW: Letter to Jo Swinson

04 August 2015  
15:54

Subject	<b>FW: Letter to Jo Swinson</b>
Sent	23 July 2015 13:45
Attachments	 doc20141...

[redacted]

-----Original Message-----

From: [redacted]  
Sent: 22 October 2014 14:27  
To: Swinson MPST  
Subject: Letter to Jo Swinson

Dear [redacted]

Further to Tim Hulme's recent email please find enclosed a copy of the letter mentioned. I will also put a hard copy in the post today.

Kind regards  
[redacted]

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[www.biiab.org](http://www.biiab.org)

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Jo Swinson MP  
Minister for Employment Relations and Consumer Affairs  
Department for Business, Innovation & Skills  
1 Victoria Street  
London SW1H 0ET

21<sup>st</sup> October 2014

Dear Jo

### **Pubs Code and Adjudicator Measures: Small Business, Enterprise and Employment Bill**

I write following the first meetings of the select committee tasked with reading through the Small Business, Enterprise and Employment Bill and in particular the proposals to establish a Statutory Code and Adjudicator for the pub industry.

The purpose for writing to you is not to persuade you on elements of the proposed statutory code, rather to express my disappointment at the lack of opportunity which has been afforded to the British Institute of Innkeeping (BII).

You will recall that in recent years, the BII has been called to give evidence to successive Commons Select Committees and I can only hope that our lack of involvement now, is a simple oversight by your department.

I would firstly stress that the BII is wholeheartedly supportive of the proposals to introduce a Statutory Code and Adjudicator, however we believe we are in a position to add a level of detail to the macro vision set out in the draft Bill.

### **Who are the BII and what do we do?**

Of all the current bodies and other organisations who represent our sector, the BII has the longest track record. Unlike the BBPA and ALMR, the BII isn't a trade body or lobbying organisation. We are the industry's nominated professional membership body, representing around 10,000 individual licensees, the majority of whom are tied tenants and lessees. As a charity, our mission is very clear and is focused on the provision of support, benefits and products for our members. Our current membership package which costs licensees just £10 per month includes inter alia, a high quality legal, licensing and HR helpline which is monitored 24/7 and supported by Capita Services

In addition, over the years the BII has committed a great deal of time and energy in developing a diverse and unique range of qualifications with the aim of promoting industry standards. One of those qualifications is the Pre-Entry Awareness Training (PEAT) course which members of your department have had access to. The current industry framework code stipulates PEAT as a mandatory programme for all new entrants to our industry. For information, the BII is also an Ofqual Regulated Awarding Organisation (BIIAB) and this year, we will certificate nearly 100,00 qualifications in licensed retail. I am at a loss to understand why the Government would not seek to engage the BII given the above facts.

Moreover, in recent years, and in an attempt to improve the landlord and tenant relationship, the BII, as one element of the Pub Governing Body, has worked tirelessly to bring about improvements to the Industry Framework Code and over the past two years, the self-regulatory functions and services of PIRRS and PICAs have made a real difference to the tenants and lessees who have used them. Likewise through BIIBAS, the BII has led on the accreditation of the Pub Company and Breweries Codes of Practice, which underpin their landlord and tenant agreements. Through BIIBAS, the BII has dedicated itself to setting standards with Landlord Companies and Breweries by thoroughly vetting and scrutinising individual company codes of practice prior to awarding benchmarked status. BIIBAS has ensured that Landlord Companies have complied with the necessary requirements imposed upon them by the Pub UK Industry Framework Code of Practice (IFC) and provided advice and guidance to licensees where it is perceived that their Landlord Companies have not acted in accordance with these codes.

In more recent years the BII has administered both the Pubs Independent Rent Review Scheme (PIRRS) and the Pubs Independent Conciliation and Arbitration Service (PICA-Service) on behalf of the then PIRRS Board, and subsequently the Pub Governing Body (PGB).

As well as the above, the BII funds entirely a national network of mentors who are industry professionals and best placed to provide information, advice and guidance to licensees.

### **The BII's view on the statutory code**

As stated, the purpose for writing to you is not to attempt to influence or persuade your department to radically alter the proposals particularly as the draft underpins the current standards contained within the Industry Framework Code and furthermore, it seeks to restore the balance of power between licensee and landlord.

I would however make the following 6 recommendations as areas which I feel would strengthen the Statutory Code and these include:

- Specifying PEAT as the pre-entry accredited training to be undertaken by prospective tenants and lessees
- Being clearer about the timeframes within which the landlord companies must train their Business Development Managers (by the way the BII's Ofqual accredited BIIAB Level 4 Certificate in Multiple Licensed Premises Management is currently being re-drafted to reflect the proposals contained within the Code)
- Abolition of minimum purchasing order/ minimum barrelages;
- Commitment on the Landlord Companies to advise contracted-out tenants of the intention to renew, or otherwise, 6 months ahead of the agreement expiry date;
- Specific timescales to be required in which Landlord Companies must conclude investigations of complaints under their internal grievance procedures; and lastly
- The retention of PIRRS and PICA-Service, or failing that the creation of some form of support function to the adjudicator, as a first stage 'gateway' to the process.

### **Benefits of retaining PIRRS & PICAS in support of the Adjudicator**

You may be aware that the BII, act as a Clerk to the Pub Governing Body (PGB), and as such act as the administrators of the PIRRS and PICA-Service. Through the self-regulatory regime, PIRRS and PICA-Service, provide parties with an alternative low cost form of settling disputes other than litigation or arbitration. These services, were they not to exist, would reduce a licensee's options to pursue a complaint against their landlord company to one, namely, litigation. As litigation is a costly and timely process many licensees would not be able to bear the expenses or time to pursue such an action, and with the uncertainty as to costs many licensees would be prevented from taking issue against their landlord company. By providing such a form of alternative dispute resolution, it gives tenants and lessees a greater choice on which method they will seek in an attempt to resolve the complaint.

In recent months the service has recorded a rise in the number of applications and we believe this to be linked to the recent amendments made to the service which primarily increased the levels of transparency available under PIRRS. Traditionally, PIRRS had followed other forms of ADR such as independent experts where determinations were not reasoned, however, after canvassing the independent experts involved in PIRRS the PGB decided to implement a number of changes which would increase the transparency. These were namely:

- Right to request a reasoned determination
- PIRRS ability to record on the website both the passing rent and the determined rent

It is acknowledged that, specifically, for the PICA-Service there have been some criticisms of the service in that it does not go far enough. However, we believe that the work PICA-Service has undertaken has allowed tenants and lessees to escalate their grievances to an external body outside of their landlord company and seeks to deliver independent arbitration. If the committee were so minded to introduce the PICA-Service within the Statutory Code of practice, it could sit under the adjudicator and provide a function by which it helps the adjudicator to sift through complaints received. Furthermore, by placing PICA-Service within the auspice of the adjudicator, the adjudicator could provide an appeals mechanism for aggrieved tenants/lessees or landlord companies thus strengthening both the adjudicators powers and the PICA-Service procedure.

There is, furthermore, anecdotal evidence available that suggests that PIRRS operates to assist rents reviews and lease renewals in being concluded without cases progressing to a full determination by an Independent Expert. Evidence available from PIRRS shows that cases are more likely to be settled by the parties through negotiations and mutual agreement once they have entered into PIRRS proceedings than they are to be determined by PIRRS.

Finally, I would like to highlight the major cause for concern which exists in the industry and why, despite the self-regulatory regime, so many tenants and lessees get themselves into difficulties.

The BII fields and administers over 3000 calls each year and it's very evident that prospective licensees are at times, failing to take appropriate independent professional advice in the areas of legal, property and finance. It's at this stage that advice in these arenas is critical and I would urge you to include pre-entry advice and guidance as a fundamental element and mandatory condition of the Statutory Code.

I recognise the difficulties of policing this as a condition, however I would offer the support of the BII in administering this, which would after all be an extension of the role we currently carry out.

Because of the importance of the pre-contract stage, we are currently developing a BII / Industry Passport which includes a bespoke 'off the shelf' pre- entry pack of advice, support and training for the prospective licensee. This includes:

- **a 13 module PEAT course** (which members of your department has undertaken and passed)
- **Property advice:** in the form of a condition survey carried out by an independent surveyor, highlighting to the prospective licensees the condition of the building and what they may be expected to do to the property throughout the tenure;
- **Legal advice:** on basic elements of the contract, i.e. repairing obligations, purchasing obligations, whether it is possible to issue notice to terminate and avenues for resolving disputes; and
- **Financial advice:** assistance on putting together a business plan and interpretation of Landlord Companies shadow profit and loss (P&L) and cashflow

At the BII, we genuinely believe that if the industry were to embrace the concept of the above passport, and agreed not to sign any prospective licensee on a substantive agreement until they had the passport stamped, it would significantly reduce licensee failure.

Finally, as a gesture of the BII's commitment to this initiative, we would commit £25k of development funds to establish a tried and tested pre-entry regime for all new licensees

Given the opening to my letter, I would welcome an opportunity to discuss the contents of my letter with the Committee. I duly look forward to your earliest reply.

Yours sincerely

PP M. Bernardo


Tim Hulme  
**Chief Executive**

Cc: Andrew Griffiths MP  
Toby Perkins MP  
Sir Peter Luff MP

# FW: To See - ALMR Letter

04 August 2015

16:30

Subject	<b>FW: To See - ALMR Letter</b>
Attachments	 BIS Minist...

[redacted]

Kate,

Thanks for your message and attachment below and for your earlier points on the Code, it is all useful and we are considering it all carefully. We are glad that you also feel that the proposals represent a proportionate response.

Thanks also for your offer to work with us going forward, I think we will want to take you up on your offer of meeting with your members. I will get back to you to discuss the right timing, which for us will probably be after Commons Committee.

[redacted]

[redacted]

**From:** Kate Nicholls [redacted]

**Sent:** 21 October 2014 16:41

**To:** [redacted]

**Cc:** [redacted]

**Subject:** RE: Small Business, Enterprise & Employment Bill

[redacted]

Further to my email below and the commentary we provided on the Government's proposals and the draft code, we have now given oral evidence to the Bill Committee and I attach a follow up letter which will now be sent to the two BIS Ministers on the amendments which have been tabled.

Our position remains as at the last time we spoke – we support the Government's proposals as being a pragmatic compromise which will deliver something for all and therefore will allow a line to be drawn under this issue. We are fearful that efforts to unpick this – for example by exempting large sections of the industry from its scope – will undermine this and lead to further protracted debate. It will certainly delay implementation.

As you are aware, we already proposed to your colleagues back in August that certain elements of the draft Code could be moved to the enhanced version to address concerns around proportionality, and we continue to believe that this would be more effective than the proposed exemption.

Please let me know whether it would be helpful for us to meet again as the Bill goes through Parliament and whether you would welcome the suggestion I made about ALMR convening a small group to review Code content ahead of consultation.

I should also be happy to meet with Ministers if that would be appropriate.

Kind regards  
Kate

**Kate Nicholls**  
**Chief Executive**

[redacted]

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**From:** Kate Nicholls [redacted]  
**Sent:** 28 September 2014 17:27  
**To:** '[redacted]'  
**Subject:** RE: Phone call

[redacted]

Apologies, I was out of the office on Friday and had not picked up your message.

It would appear from your email that you didn't receive mine of last week with this attachment and annotated comments on the Draft Code. [redacted]

I hope that the attached is clear. Draft Pubs Code is a commentary on your current proposals in Annex F of the Government's response to the consultation. Draft new industry code is a set of proposals drawn up by ALMR, GMV, FLVA and BII earlier this Spring.

In the main, there are minor reinforcements and the substantive points relate to TAW (which is more a Bill point than a Code point) and the need to reinsert a small number of phrases to avoid reducing the current level of protection and support available to lessees. If anything is unclear, please do not hesitate to contact me.

Kind regards  
Kate

**Kate Nicholls**  
**Chief Executive**

[redacted]

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**From:** [redacted]  
**Sent:** 26 September 2014 08:21  
**To:** Kate Nicholls  
**Subject:** Phone call

Hi Kate,

We spoke a couple of weeks ago about your thoughts on the draft code and particularly where it hadn't replicated protections in the existing industry code. I was going to give you a call to see where



you were, as it would be really helpful to get a sense of your topline issues today.

Are you around today to speak or I'd there something you can send? (in draft is fine)

Many Thanks

[redacted]

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Via email: [mpst.swinson@bis.gsi.gov.uk](mailto:mpst.swinson@bis.gsi.gov.uk)

21 October 2014

Jo Swinson MP  
Minister of State  
Department for Business Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

Dear Minister

### **SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL – COMMITTEE STAGE AMENDMENTS**

We have been liaising closely with your officials during the drafting of Section 4 of the above Bill and in particular the proposed content of the Statutory Code. We also very much welcomed the opportunity to provide Oral Evidence to the Bill Committee and affirm our support for the Government's proposals, which we believe will result in material benefit to tied lessees and crucially allow a line to be drawn under this protracted and divisive issue.

There were, however, three issues which were raised during the evidence session which give us cause for concern and where some confusion may have arisen. We would therefore like to clarify some points which were made and reiterate our belief that the Government's overall approach is correct and that it is critical for the delicate balance and compromise achieved post-consultation to be maintained.

#### **1. A statutory pub code applying to all**

The ALMR wholeheartedly supports the Government's commitment to introduce a statutory code to provide protection to the lessees of all pub owning companies. While the compliance requirements have varied according to the size of company and type of agreement, it has been a fundamental tenet of the self-regulatory regime that all tied lessees are treated equally. We believe it would be unhelpful to move away from this principle.

There was much discussion in the oral evidence session on 16<sup>th</sup> October as to whether certain companies and organisations should be exempt from a statutory code (including family brewers and companies with less than 500 tied pubs). We note that there was no consensus around this proposal and indeed even those organisation in support of the principle would only agree to it if more widespread amendments were made to the Bill and the Code. The question of threshold can therefore not be considered in isolation.

The ALMR is of the strong opinion that the principles and provisions of a statutory code should apply to all pub companies regardless of size. Concerns about proportionality and cost are best addressed by means of the content of the basic and enhanced code (see below). We fear that, if a threshold is introduced, it will create a two tier system which will both undermine the market stability and certainty that tenants need to invest and, more importantly, will result in ongoing and protracted debate. Furthermore, exempting some companies and organisations from the code framework will only provide

encouragement to those who would like to revisit free of tie discussions and make provision for such options via elements of the bill, such as placing Tenancies at Will on a free of tie basis or securing market rent only options alongside Parallel Rent Assessments.

***For all these reasons we would oppose any amendments which sought to create exclusions to the size and type of companies covered by a statutory pub code. We would also oppose any amendments which sought to apply the code to companies with over 500 pubs rather than companies with over 500 tied pubs. As such we oppose the amendments tabled by Richard Fuller in clause 36 and clause 60 as these reintroduce an arbitrary threshold and would deprive a large number of tenants of protection.***

## **2. Proportionate and fair regulation – basic & enhanced code**

While there was no clear, unequivocal support amongst the panel of witnesses giving oral evidence about exemptions from the statutory regime, there was unanimous support for a two tier Code – a basic code applying to all which essentially enshrines existing voluntary good practice; and an enhanced code only applying to larger pub owning companies. We urge the Government to stick to the proposals set out and justified in the consultation response and address any concerns about proportionality through code content: discussions which we have already commenced with officials over the summer.

The ALMR has proposed moving certain provisions in the basic code to the enhanced code including measures around the RICS sign-off, the compliance reports and the compliance officer. All of those measures are currently built in to the current voluntary regulation system only for tied leases and the internal compliance provisions only apply to companies issuing 100 or more tied leases. If these measures were moved to the enhanced code, it would mean that family brewers and smaller pub companies would be subject only to the same obligations as are already required under the voluntary self-regulatory framework. This would result in a proportionate, pragmatic and measured approach to the tenants and lessees and the landlords of the smaller companies.

***We believe that this will deliver the intent of the amendments tabled by Richard Fuller without denying any tenant the right to statutory protection.***

## **3. Removal of tenancies at will from the legislation**

We believe that some of the assertions made at the Oral Evidence session about the use of TAWs was misleading, implying as it did that TAW were primarily used to introduce new tenants to their pub or allow them to try before they buy or a measure to allow pub companies to avoid the Code requirements. Our experience and understanding contrasts with this markedly.

TAWs are an expedient measure to keep a pub trading in unforeseen circumstances and in the overwhelming majority of cases are granted effectively as a licence to operate/occupy to experienced management companies who specialise in such situations or to experienced operators who can provide a stop gap service. This relies on a low cost, quick fix and the professional management company is well versed in assessing the risk. Very occasionally, a TAW will be offered on a temporary basis to an incoming tenant pending the completion of due diligence procedures but at no point could a new tenant be kept on a TAW on a long term basis or convert it to a substantive agreement without the Code's due diligence mechanisms taking effect. One agreement ends and the other takes over. There is therefore no risk in removing Tenancies at Will from the scope of the legislation and their inclusion will result in pubs closing temporarily, which is unhelpful for the sector as a whole and investment generally.

***As such we support the amendments tabled by Andrew Griffiths MP in respect of clause 61 – tenancy at will.***

In conclusion, we urge the Government to maintain the pragmatic, measured compromise it set out post-consultation as the best way to ensure robust protection for the greatest number of tied lessees and to allow a draft Code to be swiftly implemented and enforced. This is vital to bring back confidence and investment to this segment of the market and further protracted debate about thresholds and potential statutory market interventions on commercial terms will not be helpful.

We trust this supplementary briefing is helpful when you consider amendments during Committee Stage of the Bill and it supports our detailed clause by clause recommendations we have already provided to officials. We would be pleased to discuss any aspect of our briefing further and look forward to talking further with your office as appropriate.

Yours sincerely

Kate Nicholls  
Chief Executive  
ALMR

cc. Matt Hancock, BIS [mpst.hancock@bis.gsi.gov.uk](mailto:mpst.hancock@bis.gsi.gov.uk)



# TO Bespoke - Pubco (1)

18 August 2015

13:11

Subject	<b>TO Bespoke - Pubco</b>
From	[REDACTED]
To	[REDACTED]
Sent	03 November 2014 12:38



TOB2014\_...

[REDACTED]

**From:** Punch Tenant Network [REDACTED]  
**Sent:** 31 October 2014 15:48  
**To:** Enquiry Enquiry (Other Government Departments)  
**Subject:** FW: Pubs Code and Tenancies at Will

As requested

**From:** Punch Tenant Network [REDACTED]  
**Sent:** 31 October 2014 15:46  
**To:** [Jo.swinson.mp@parliament.uk](mailto:Jo.swinson.mp@parliament.uk)  
**Subject:** Pubs Code and Tenancies at Will

Dear Mrs Swinson

In trying to keep on top of what is being proposed by way of amendment to the Pubs Code Bill I admit to being somewhat bemused by the detailed process by which legislation is evolved.

In reviewing the debate on Thursday Morning I was startled to see that there were moves to exclude Tenancies at Will from being covered by the code.

At one point I see that Andrew Griffiths MP sought to present an apparent difference in testimony between ALMR and Simon Clarke when he said

“The Minister quoted Simon Clarke, who said that tenancies at will quite often roll over. Earlier, she prayed in aid Kate Nicholls from the ALMR, whose evidence the Minister has, and it specifically stated that that is not the case: that tenancies at will are not rolled over, but are short-term individual contracts to fix a problem. She supported Kate Nicholls last time, so why does she not accept what the ALMR is saying this time?”

I thought your answer was robust but a point seems to be missing in the debate about TAW. As is so often the case in this industry the abusive or dangerous practices are hidden behind apparently benign ones – the supposedly highly paternalistic Family Brewers using the tie “nicely” and concealing the rapacious “PubCos” activities behind a figleaf of respectability being a case in point.

In the case of the TAW there is a requirement when, unfortunately, a publican fails for an immediate response to keep the pub open almost within hours in order to maintain the business potential. A Punch Pub local to mine has been a “revolving door” on many occasions and I for one would welcome these immediate arrangements as important for the

preservation of Pubs.

However the TAW leading to a 5 year non repairing tenancy which is not renewable is the mechanism whereby PubCos can identify recruits who, at their own expense, gain experience in the industry renting back from the pubco their own goodwill until at end of the process a tenant is forced either to walk away from a thriving and committed business or commit to an onerous long FRI lease which ensures maximum value us retained by PubCo.

As I understand it only the leases are protected under the L&T act.

This mechanism is the one which is the entry point into the revolving door with inexperienced entrants becoming entrapped.

One feels that there may be scope for distinguishing between an emergency arrangement such as was being described by the ALMR and the PubCo recruiting technique, both called Tenancies at will but both with very different objectives and outcomes.

In financial circles we have concepts of sophisticated and unsophisticated investors with different levels of protection and perhaps that model may be appropriate here.

Please do not allow the ALMR model to disguise the "PubCo recruitment model"

Best regards

Chris Lindesay  
[REDACTED]

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## TO Bespoke - Pubco (2)

18 August 2015

13:18

Subject	<b>TO Bespoke - Pubco</b>
From	[REDACTED]
To	[REDACTED]
Sent	03 November 2014 11:03

[REDACTED]

**From:** Punch Tenant Network [REDACTED]  
**Sent:** 31 October 2014 17:55  
**To:** Enquiry Enquiry (Other Government Departments)  
**Subject:** Pubs Code and Upwards only Rent Reviews

Sirs

Part of the function of the Punch Tenant Network is to try to surveil the highly complex activities of the company and bring to the attention of members matters of potential significance.

One of these has cropped up which is quite far reaching. In reviewing some of the enormous volume of documents that have been generated at fantastic cost in support of the Refinancing of Punch Taverns we have found a section which addresses possible risks that investors in the new company may face.

one section that seems of interest and reads as follows.

**The Punch A Securitisation share of Partners' profits is linked to fixed rental payments for each rent review period**

The Punch A Securitisation receives fixed rental payments from each of its Partners, at a rate negotiated when the lease or tenancy agreement is signed. Rental rates for a given pub are assessed by the Punch A Securitisation on the basis of its likely level of retail trading. If the Punch A Securitisation initially underestimates the likely level of retail trading for a pub, it may under such circumstances receive a smaller overall share of the pub's profits until the next rent review.

The tenancy agreements and leases to which certain of the pubs in the Estate are subject contain open market rent review provisions. Some of these are on an upwards only basis with reference to the initial rent or the rent fixed at the previous open market review date (as the case may be). Those leases may also provide for annual rent reviews by reference to movements in the annual price index. In any event, legislation to be introduced by the Government provides for an open market rent review for all tied tenants if they have not had one for five years. Therefore, it is possible that rents in respect of certain pubs which have unqualified upwards only provisions or annual price index increase provisions could nonetheless fall if the open market rental value at the time of review is below the rent then payable.

It was my understanding that one of the very few achievements of the years of inquiries into these companies was firm commitment by PubCos to eradicate the upward only rent review from their agreements and where they existed to ignore them. This document intended to investors in Punch equity and bonds appears much more circumspect and seems to suggest that their agreements with the UORR clause may have that right modified only if the legislation to be introduced by the government provides for an open market rent review for tied tenants who have not had one for 5 years.

I note that IFC Version 6 clause 67 states:

Some existing agreements may contain UORR clauses and, in such circumstances, company codes of practice will make it clear they will not enforce them. In addition, if tenants want a side letter/deed of variation to that effect it can be provided though at the tenant's expense. Companies will also provide tenants with the opportunity to convert to new agreements without an UORR at no less favourable commercial terms if terms can be agreed.

I have some difficulty reconciling the statement to investors stating that legislation may result in UOPRR clauses being unenforceable and the commitment to not enforcing UORR clauses through accepting the IFC V6 and its predecessors.

[REDACTED]

I trust that the minister will use this bill to build on past commitments, not have to start all over again.

Best regards

Chris Lindesay

[REDACTED]



Department  
for Business  
Innovation & Skills

1 Victoria Street  
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SW1H 0ET

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[REDACTED]  
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[www.gov.uk/bis](http://www.gov.uk/bis)  
Our ref: TOB2014/24578 &  
Your ref:

19/01/2015

Dear Mr Lindsay,

Thank you for your e-mails of 31st October regarding upwards only rent reviews and tenancies at will agreements in the context of the Government's legislative proposals for a Pubs Code and Adjudicator.

The Minister receives a large amount of correspondence every day and is unable to respond to each one personally. I have been asked to reply and please accept my apologies for the significant delay in doing so.

Upwards only rent reviews

In the context of documents related to [REDACTED] you raise the question as to whether the Statutory Pubs Code will build on past commitments in the voluntary code and rule out the use of upward only rent reviews.

I can confirm that this is indeed the Government's intention. As you may be aware the Government published a draft Pubs Code in June 2014 as part of the Government Response to the 2013 consultation. This was updated at the time of the Committee stage of the Small Business Enterprise and Employment Bill (SBEE) in November 2014. Part 7 of these draft Codes sets out that: "Upwards only rent reviews and/or renewals shall be considered invalid and unenforceable."

The Government will continue to refine the Code during the passage of the SBEE Bill to ensure that it properly reflects the Bill and that the wording works in practice. It will then consult on a final draft of the Code following Royal Assent.

## Tenancy at will agreements

You raise a concern that the use of TAWs as a recruiting mechanism can lead to problems for tenants. You illustrate with the incidence where a tenant may be forced to “either walk away from a thriving and committed business or commit to an onerous long FRI lease which ensures maximum value us retained by PubCo.”

At the same time you recognise that there is a role for TAWs in emergency circumstances and welcome them as important for the preservation of Pubs. You go on to suggest there may be scope for distinguishing between these two purposes of TAWs in the legislation and draw on an example from the financial sector.

You may be aware that as well as in the evidence sessions the issue of TAWs was discussed in the House of Commons Committee sessions that considered the Pubs clauses in the Small Business Enterprise and Employment Bill. The Minister accepted that this was a complex issue, as you also illustrate in your e-mail, and promised to consider further the issue of the inclusion of such agreements within scope of the Code. Government will update on these considerations during the passage of the Bill through the House of Lords.

We are grateful for your comments and suggestions on these important legislative proposals as they pass through Parliament and I trust that this response is helpful in clarifying the Government’s position.

Yours sincerely,

[REDACTED]

Pubs Code and Adjudicator Team

# FW: Small Business Bill – Report Stage – Tuesday 18th November

04 August 2015  
15:12

[redacted]

This is the email sent from the CAMRA Chief Executive to potentially supportive MPs.

Greg Mulholland MP  
MP for Leeds North West

[www.gregmulholland.org](http://www.gregmulholland.org)

Begin forwarded message:

**Subject: FW: Small Business Bill – Report Stage – Tuesday 18th November**

**From:** Tim Page - CAMRA Chief Executive [redacted] **On Behalf Of** Tim Page - CAMRA Chief Executive

**Sent:** 10 November 2014 13:48

**To:** MULHOLLAND, Greg

**Subject:** Small Business Bill – Report Stage – Tuesday 18th November

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**CAMPAIGN  
FOR  
REAL ALE**

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## Small Business Bill – Report Stage – Tuesday 18th November

Dear Mr Mulholland,

Having recently taken on leadership of the CAMRA team, I am writing to ask for your support on Tuesday 18th November to deliver a sustainable future for Britain's pubs. CAMRA would like you to support a cross party attempt to amend the Small Business Bill to insert a new clause that will, over time, allow tied tenants of large pub companies to choose between remaining on a tied agreement or opting for a non tied agreement at an open market rent (the market rent only option).

As a supporter of the Fair Deal for Your Local campaign I very much hope you will agree to

add your name to the **new Bill Clause (NC2: Pubs Code: Market Rent Only Option)** forward onto the Table Office and then of course vote for it on Tuesday 18th November!

Whilst we fully support the Government's decision to introduce a Pubs Code and Adjudicator we feel this does not go far enough and may prove unworkable unless accompanied by a right for tied tenants to choose between a tied agreement or a market rent only agreement. The market rent only option is a market solution to the problem of the large pub companies forcing their tenants to purchase beer at prices inflated by a typical 50% - 70%.

Allowing tenants to review their choice of agreement at rent review will create a very powerful market incentive for pub companies to reduce tied beer prices to competitive levels and to ensure that any remaining difference is fully accounted for by lower rents and business support. We would anticipate that as pub companies improve their deals to better compete with new free of tie options, only a minority of existing licensees would opt for the market rent only option.

The regional family brewers, who, on the whole, operate the beer tie in an equitable and sustainable manner will be entirely exempt from the market rent only option which will apply only to companies with 500 or more pubs.

If you feel it would be useful I would be delighted to discuss this with you in person over the coming days. I am contactable on [t](#)

Yours sincerely,

Tim Page

CAMRA Chief Executive

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# FW: Incorrect and Misleading Evidence from Shepherd Neame - Small Business and Enterprise Bill Committee

30 July 2015  
15:22

Subject	<b>FW: Incorrect and Misleading Evidence from Shepherd Neame - Small Business and Enterprise Bill Committee</b>
Attachments	 Response ...

[redacted]

**From:** Dave Mountford [redacted]

**Sent:** 12 November 2014 07:46

**To:** PERKINS, Toby; GRIFFITHS, Andrew; MURRAY, Sheryll; CATON, Martin; CROWTHER, Sybil; DORRIES, Nadine; BLACKWOOD, Nicola; COLVILE, Oliver; DOUGHTY, Stephen; ESTERSON, Bill; GARNIER, Mark; GILBERT, Stephen; GILMORE, Sheila; HANCOCK, Matthew; [info@andymcdonaldmp.org](mailto:info@andymcdonaldmp.org); MORRIS, AnneMarie; MURRAY, Ian; SIMPSON, David; STRIDE, Mel; SWINSON, Jo; WHITE, Chris; WRIGHT, Iain

**Cc:** CLARK, Greg

**Subject:** Incorrect and Misleading Evidence from Shepherd Neame - Small Business and Enterprise Bill Committee

Dear Sir/ Madam,

Please find attached a letter regarding the written evidence placed before the Bill Committee, by the small family Brewer Shepherd Neame.

Please do not hesitate to contact me regarding this communication.

Yours sincerely

Dave Mountford

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11<sup>th</sup> November 2014

Dear Bill Committee Member,

Re: Small Business and Enterprise Bill Committee Evidence

Whilst I am aware that we have passed the date for submissions to the Bill Committee regarding the Small Business and Enterprise Bill, on the advice of the scrutiny unit I have taken the opportunity to write to every member of the committee regarding Shepherd Neame's written evidence.

Further to my oral evidence on 14<sup>th</sup> October and Shepherd Neames subsequent written evidence I would like to bring to your attention the following points:

The response, **Supplementary written evidence submitted by Shepherd Neame (SB 49)** provided to the committee regarding oral evidence I and others gave on the 14<sup>th</sup> of October from Shepherd Neame contains substantial material inaccuracies which, taken at face value may mislead members of the committee.

My areas of concern fall under the following categories.

1. The claim that "at our financial year end, our estate was fully let".
2. The average tenure quoted for licensees.
3. Number of business failures
4. Fulfilling repair obligations/Code of Practice
5. Incident at
  - a. Written complaint by Parish Council
  - b. Completion of works
  - c. Major Electrical Fault
  - d. Falling guttering
  - e. Misinformation regarding licensees at
6. Independent Surveys
7. Parish Council written complaint regarding

## 1. The claim that “at our financial year end, our estate was fully let”.

The Shepherd Neame financial year ended on 28<sup>th</sup> of June 2014. At that date at least two pubs, and : were unlet.

### The Harrow.

As reported in the Kent and Sussex Courier on May 3<sup>rd</sup> this year closed its doors in May 2014. A couple who booked the venue for their wedding on 14<sup>th</sup> of June were forced to find somewhere else at short notice. A spokesman for Shepherd Neame gave the following quote:

Shepherd Neame’s property and tenanted trade director George Barnes said: “We were very sorry to hear that the departure of the tenants at , has resulted in the cancellation of celebrations at the pub.

Unfortunately we have not been able to find new licensees in time for the event. We understand that the licensee has made a full refund of the deposit to the couple.”

Shepherd Neame were therefore actively looking for a tenant in May. The pub was put up for sale and has remained closed to date. It is only now (03/11/2014) listed as under offer.

The April 14<sup>th</sup> minutes of The Parish Council noted that had closed. DCC refers to Dover District Council:

“It was reported that had been closed and is currently boarded up – this stands in the Conservation Area and Clerk asked to advise DDC.”

The May 14<sup>th</sup> minutes added:

“DDC advised re – untidy site – they have opened file.”

Minutes from the monthly meeting of the parish council on the 9<sup>th</sup> of June 2014 said:

“Cllr asked if anything further had been heard from DDC re – Clerk confirmed that since they had advised they had “opened a file” on the poor state of the site, nothing further heard. Cllr will investigate nominating the public house as a community asset”.

The was advertised as having possibility for development subject to planning permission and is now (03/11/2014) under offer.

The reporting of the untidy nature of the site opens the possibility that it could be the subject of a Section 215 notice under the Town and Country Planning Act 1990.

## 2. The average tenure quoted for licensees.

The more appropriate indicative measure should be the average tenure for tenants rather than all licensees.

### 3. Number of Business Failures

Shepherd Neame claim that out of all the tenancies only five were as a result of business failure. I find this hard to believe on the evidence. In the case of [redacted] alone we are aware of 4 cases of business failure resulting in at least three bankruptcies.

As regards the other two sites I am aware of a further four cases of business failure involving at least one bankruptcy.

### 4. Fulfilling repair obligations/Code of Practice

The document gives the misleading impression that repairs are voluntary rather than a contractual obligation. The responsibilities for both Shepherd Neame and the tenant are clearly laid out in Appendix B: Guide to Inventory Ownership/Repair Liability Standard Tenancy to the Code of Practice.

### 5. Incident at

#### **Written Complaint by Parish Council**

The Shepherd Neame submission makes the following claim:

“We have had one incident, [redacted], where the Parish Council wrote to ask us to carry out work which we have now done.”

[redacted] Parish Council did not write to Shepherd Neame regarding [redacted] nor have ever received any correspondence from them regarding the building. Their concerns were channelled through Tunbridge Wells Borough Council.

The work recently carried out at [redacted] was carried out at the behest of Tunbridge Wells Borough Council

As publicly available documents show, Shepherd Neame have not responded to [redacted] main concern which is the state of the roof.

It may be that there is a level of confusion regarding different [redacted] establishments. The following comment by Shepherd Neame also does not appear to be applicable to [redacted]

***“In this particular instance we were in discussions with a third party to acquire adjacent property which may have resulted in a significant development of the pub. Sadly, this did not subsequently materialise.”***

The site of [redacted] abuts the High Street to the West, the village hall to the South, the river [redacted] to the North and land owned by [redacted] to the East. Over the river to the North is what was a pub, [redacted], which has been converted into a successful Italian restaurant. The freeholder has confirmed that at no point has he entered into any form of communication with Shepherd Neame.

An example of Shepherd Neame reacting to a written complaint from a parish council is given later, however regarding [redacted]

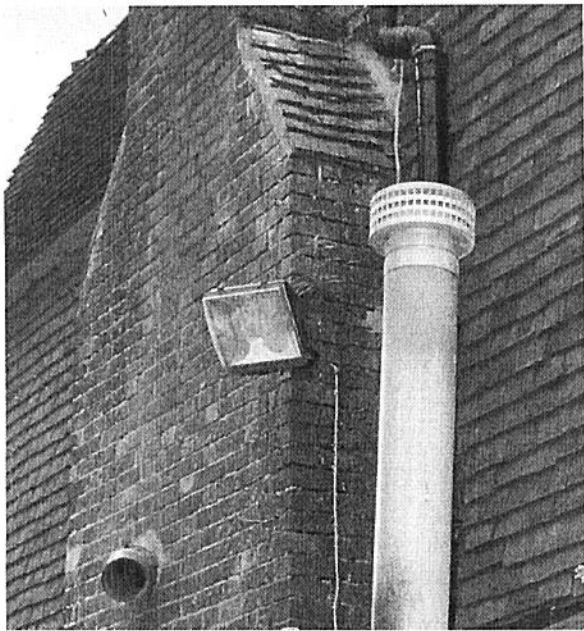
**a. Completion of Work**

As to the necessary work being carried out, the following is an extract from the English Heritage publication 'Stopping the Rot', reflecting best practice in enforcement actions to save listed buildings

At paragraph 2.1 the guide says:

*"External signs that remedial works may be needed include blocked gutters and plant growth in masonry, loss of slates or tiles, cracking or other evidence of significant structural movement, or indications of vandalism and illegal entry".*

Below is a photograph of an area of the eastern elevation of [redacted] taken on the 12<sup>th</sup> of September 2013. It shows the growth of a small buddleia just to the right of the chimney and above the spotlight.



The following image of the same buddleia was taken on the 11<sup>th</sup> of November 2014 after the work was 'done'.



The fact is that only part of the building was done. Much of the northern elevation remains untouched. The roof itself, the most important, and, potentially expensive matter raised by the Conservation officer has never been addressed in any shape or form.

**b. Major Electrical Fault**

The poorly maintained condition of the electrical circuitry internally was also underlined when some electrical work was recently carried out on the property by contractors appointed by Shepherd Neame. It is my understanding that this resulted in blowing of a large number of fuses, destruction of the CCTV system and other internal electronics as well as guest's electrical equipment.

**c. Falling Guttering**

Another recent incident following the work being done resulted in a heavy cast iron down pipe falling on to the path used by, amongst others, children going to and from the local school, at the front of . The pipe had been held in place using grey duct tape which had been painted black.





**d. Misinformation regarding licensees at t**

Shepherd Neame challenge my claim that there have been eight licensees at t and the figure of five tenants given for t I accept that we were out by one as regards t however I stand by the figure for t Licensee details are given in Appendix A.

**6. Independent Surveys.**

In the penultimate sentence to their submission Shepherd Neame say the following:

“In a 2009 survey of our tenants conducted by Elliott People 88% agreed or strongly agreed that they were happy with their relationship with Shepherd Neame. In a 2013 HIM survey 94% of our tenants stated that they think the company ‘sticks to the Code of Practice’.”

However for these figures to be statistically significant, i.e, actually mean something, certain things have to be in place.

We have to know the size of the population being surveyed and their characteristics. The response rate and that the questions area validated. This means do the questions actually lead to the answers claimed?

So statements such as, “88% agreed or strongly agreed that they were happy with their relationship with Shepherd Neame” are completely meaningless unless we know the sample size, the number of respondents and the phrasing of the question.

To achieve what is known as a confidence level which refers to how accurately the sample reflects the views of the population it is necessary to achieve a number of responses out of the available pool.

For there to be a 95% confidence level, an industry norm, the survey of 299 tenants would have to attract 168 responses, a return rate of 56%. It is highly unlikely that these surveys reflect that figure.

This is without even getting to consider the validation of the questionnaire itself. As is now more widely recognised following the Scottish referendum, how questions are phrased materially affects the decision making process and thereby the result.

The survey results quoted by Shepherd Neame are therefore statistically meaningless.

#### **7. Parish Council written complaint regarding**

The following is a series of extracts from [redacted] Parish Council documenting a complaint and its eventual solution, requiring the intercession of Managing Director Jonathan Neame regarding

#### **Minutes of the 8<sup>th</sup> of July 2013**

"18. AOB

Concern had been raised about the state of the toilets at [redacted] and advice had been sought from [redacted]. The village has lost many amenities and Members were anxious to support the new tenants. It is a listed building and in urgent need of repairs. The [redacted] in Bloom Group have been working hard to raise the profile of the village and the state of the building does not set a good standard.

It was AGREED for Cllr [redacted] to draft a letter to Shepherd Neame expressing the Council's concern about the state of the building."

Minutes of the 9<sup>th</sup> September 2013

ii. [redacted] Toilets

Cllr [redacted] reported that he has drafted and circulated a letter to be sent to Shepherd Neame expressing concern about the toilets. It was AGREED to send the letter.

ACTION: Clerk to send letter

Minutes of the 14<sup>th</sup> October 2013

ii. [redacted] Toilets

Cllr [redacted] advised Members that Jonathan Neame had written advising that he is aware of the matter and that it will be dealt with in the not too distant future. Cllr [redacted] told Councillors that soon after moving in the new tenants had problems with the boiler which they had to rectify at their own expense.



### **Minutes of the 11<sup>th</sup> of November**

#### 14. OBTAINING AN AVC FOR

Cllr informed members that it had been agreed for the Parish Council to apply to register as an Asset of Value to the Community and that he also has backing from CAMRA and Hugh Robertson MP. The document had been emailed to Members prior to the meeting for comments. It was AGREED UNANIMOUSLY to send the application.

ACTION: Clerk to send application on behalf of the Parish Council.

Cllr informed members that Environmental Health Officers had visited and the gents toilets have been condemned and that they have three months to resolve the issues.

Cllr PROPOSED that the Parish Council should write to Jonathan Neame in relation to this;

SECONDED by Cllr AGREED UNANIMOUSLY

ACTIO: Clerk to write to Jonathan Neame.

### **Minutes of the 13<sup>th</sup> December**

#### 16. OBTAINING AN AVC FOR

Cllr advised Councillors that all documents have been submitted and there should have a decision within 8 weeks (end of January)

#### 18. CORRESPONDENCE

Letter from Shepherd Neame stating they are not aware of any enforcement notice on toilets.

Cllr informed Councillors that the work on the toilets should be finished next week.

### **Minutes of the 13<sup>th</sup> January 2014**

#### v. AVC FOR

Cllr informed members that has been listed as a Community Asset.

Cllr thanked Cllr on behalf of Parish Council and on behalf of the village for all his hard work in nominating to be listed as a Community Asset.

#### 14. TOILETS

Cllr reported that the toilets have been refurbished and requested that Parish Council write a letter of appreciation to Jonathan Neame. It was AGREED UNANIMOUSLY to thank Mr Neame.

ACTION: Clerk to write a letter of thanks to Mr Neame

was advertised as available for lease in March 2014, previously having been advertised in April 2013

Regarding Shepherd Neame also makes the following observation:

: 5 tenants since 2007 (the tenant prior to 2007 had been at the pub for more than 20 years)"

The tenants of twenty years standing were I understand that they used Jonathan Neame's influence to have long needed extensive repairs done to the roof.

Their immediate successors, were interviewed on July 24<sup>th</sup> 2008. The couple, whose business failed were introduced in the following terms:

*and must have thought they had used up their life's allocation of bad luck after . They returned to Britain bankrupt and, took on the tenancy of at , a village near , Kent. They are struggling to build up the business."*

*is quoted "The previous tenants had been there 20 years and they just ran out of steam," says. ,"*

I hope this puts the response of Shepherd Neame in context.

Yours sincerely

Dave Mountford