

# RESPONSE 45

01 September 2016

14:04

Pubs Code and Adjudicator Team.

Dear [REDACTED]

Here is my PERSONAL list of concerns regarding important points which I believe must be considered if the original principle to ensure that Tied Tenants will be NO WORSE OFF than Free of Tie Tenants is to be delivered. Which surely includes the ideal that all tenants should have EQUAL RIGHTS.

## 1/ Main Trigger point.

A definitive date, from the legislation launch due in May, must be agreed as the Trigger Point for consultation for all tenants. It is totally unfair that the main trigger should be at rent review, when these review dates are set in original contracts and therefore vary by such a long time period. It could simply mean that a tenant with review in March/April 2016 would have to wait for five years for consultation, whereas a tenant with a review date in June/July could have immediate consultation rights.

This is therefore a MOST IMPORTANT issue as it could be far from creating FAIR & EQUAL OPPORTUNITIES. Pub Companies have already been given twelve months from the date the Law was originally passed to evaluate these Legislative changes and to deny consultation rights for up to another five years cannot be seen as delivering the original principle.

## 2/ Rent increases.

It is also unfair to suggest that no consultation will be allowed unless the Pub owning company are requesting an increase in rent and this should be removed from the legislation altogether.

If the Pub company only has to leave rents alone to deny MRO / FOT it will be against the original principle of the entire proposal and tied tenants will remain worse off, and in exactly the current situation. Many tenants already pay rents which are close to Market Rent values and most, if not all, are subject to annual increase through RPI or CPI and I propose that this in itself is an increase ongoing.

## 3/ PRA.

The suggestion that PRA was to be removed from your proposal concerned me but I recently read a report in our trade paper, The Morning Advertiser, where you confirmed assurances that you believe the MRO detail will replace the PRA to an equal standard and providing this can be done we must trust in your confidence. Otherwise I believe PRA should remain, as a workable system must be in place.

## 4/ Wholesale price alternative.

The proposal that a WHOLESale PRICE INCREASE could become an alternative method to Trigger consultation would BECOME UNESSESARY if the original proposals regarding the MRO offer were adhered to and this COMPLEX idea should be removed altogether.

An example of why this would never work satisfactorily and therefore create a raft of arbitration cases is given here. This has already become an ongoing issue between myself and my Pubco.

I.E. I am tied to [REDACTED] and in March of last year 2015 they increased prices to me, due to what they described as production cost increases. These increases were not passed on to current FOT tenants known to me locally and others with whom I have a business interest. [REDACTED] have also not increased prices (as at December) in any managed

division outlets surrounding me, including their [REDACTED]. Bar prices in some of these outlets were even discounted during this period. (These outlets form my main competitors and I am waiting to see what happens this new year and intend to report to you if they make further increases in this way.)

It could therefore become possible under this method for the Brewer to increase cost prices to their Pubco, and by keeping just below your agreed levels of increase above wholesale prices, deny us consultation. The Pubco could then add your agreed percentage, (5% suggested) adding two increases.

In my case [REDACTED] would be able to control my cost prices and not be open to any investigation or controls within the act, whilst giving advantage to competition by simple discounting terms. (A system favoured by Brewers to give lower purchase prices to current Free Of Tie customers, who operate from privately owned premises.) These discounts taken off stated wholesale price lists differ, depending on the purchasing power of the customer and their bargaining ability. This would again remove the statement, NO WORSE OFF, unless complete transparency was enforced, which would be impossible if MRO was not negotiable.

#### 5/ Significant investment.

The objectives, regarding a Waiver from MRO for Significant Investment, and Repair and Maintenance Obligations should be linked.

My lease is Full Repairing and I receive no assistance. I have [REDACTED] left on my original lease, with Landlord & Tenant Act rights to extend this period. Any consideration to agree waiving MRO for a company investment offer would have to include an ONGOING REPAIR AGREEMENT from my Pubco or I would still have to bear the ongoing repair costs for the duration of my lease without an opportunity to increase net income. My agreement includes these responsibilities and these costs have been partly responsible for draining my net profit margins throughout the last five years. A period which has seen a general downturn in the pub trade, added to by the effect of recessionary cuts. The whole idea of MRO/FOT for leaseholders like me was surely to give us the opportunity to produce a fair net profit to both enable servicing our contracts responsibly during the agreed term, and earn a fair profit for our efforts. Short term contracts and T.A.Ws are totally different by design and don't usually carry repair/renewal obligations for the operator.

#### 6/ Adjudicator fees.

Again I was concerned that average Tenants would be unable to instigate mediation through the Adjudicator, unless fees were within their budget. To read, again in our trade press, that you intend to set these fees at £200 to initiate arbitration is therefore welcomed and in line with the BII's current charges. Any increase from this could deter arbitration applications, and the possibility of a Tenant being charged up to £2000 for vexatious or unreasonable claims should ensure that only worthwhile grievances receive a full hearing.

#### 7/ Maximum Financial Penalties for Code breaches.

It is difficult to evaluate maximum financial penalties for code breaches, as the enforced loss could vary enormously, due to the number of different contracts currently being operated by Pubco's. All of the current Pubco's are now engaged in swift changes to Tenancy agreements and the following recent statement by [REDACTED] indicates that they are considering even more contractual changes ongoing and it would seem clear that code breaches will have to be dealt with by the adjudicator on merit for the interim period, and until this whole changeover has concluded.

[REDACTED]

Your recent suggestion of a possible 1 % of a company's total turnover as a fine, has obviously been considered by BIS ministers as fair, but it is most important that compensation to tied tenants is made appropriately and that any changes give a fair opportunity to all.

I have been in the Pub trade since the late [REDACTED] and was [REDACTED] during the

[REDACTED], which simply means to me that I want to see this new legislation administered in a fair and responsible manner.

I am currently [REDACTED] and as such I am watching with interest the discussion/ proposals and representations being made to you prior to the Jan 18th deadline.

Regards, [REDACTED]

