Pubs Code Adjudicator

RESPONSE 1

Pubs Code Adjudicator

Guidance: Accounting for duty paid on alcohol and volumes of unsaleable draught products in Pubs Code forecast profit and loss statements

Consultation under section 61(4) of the Small Business, Enterprise and Employment Act 2015

Response Form

Annex C: Response Form

Name: [redacted]

Organisation (if applicable): Punch Tenant Network
Steering Group Member of the British Pub Consortium and Subject Lead on Cask Sediment and Operational Waste.

Address: [redacted]

Tel: [redacted]

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Please tick the box below which best describes you as a respondent to this consultation:

Pub-owning business with 500 or more tied pubs	
Tied pub tenant	
Interest group, trade body or other organisation	X
Other (please describe)	

Accounting for Duty Paid

Question 1: Do you believe that these proposals will ensure that tied pub tenants are fully informed of the duty that has been paid on the alcohol supplied to them under their tied agreement?

This proposal is clearly carefully crafted and will go some way toward making information more available. But our researches have clearly shown that there is very limited knowledge about this topic throughout the industry, particularly in brewers and Pub Owning Businesses (PoBs). While compliance with the HMRC regulation (EN226) is patchy, there is a general lack of understanding in both breweries and PoBs as to why HMRC have made the regulation and its importance to pub operators.

A total cultural change is required in the industry so that PoBs begin to demonstrate that they have the interests of their tenants at heart, as they have always claimed.

It is quite clear that the systemic failure of Brewers and PoBs to comply with EN226 has had very significant financial implications for Tied Pub Tenants (TPTs), whether experienced or not.
It is quite clear that tied pricing for cask ale is too high and the guide pricing as expressed in forecast Profit and loss statements too low to sustain the rent assessments demanded.

When PoBs have adjusted their pricing and rents, and have changed their price lists to include the Projected Yield (Py) of the ales they make available to their TPTs, then the process of explaining and training TPTs in how this information should be used in their businesses and planning can commence. Only when this has happened can one begin to believe that TPTs will have been "fully informed".

Question 2: If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.

While the proposals achieve a degree of compliance with HMRC EN226 11.3.5 and is welcome it is only a small step in the right direction if the recipient of the information has already been subjected to a barrage of misinformation, whether by accident or design, and is ill prepared to process the information. Being *fully informed* involves much more than making information available.

The volume agreed with HMRC for duty payment purposes is the maximum baseline volume from which must be deducted all unavoidable operational waste before the TPT can begin to plan to convert what remains into cash in the till.

To be *fully informed* the TPT and prospective TPT must be made aware that he must consider this volume as a baseline from which a sensible allowance for operational waste must be deducted before making pricing decisions and in business planning and rent negotiations.

This awareness must be built into the fundamental process whereby PoBs advertise and offer tenancies and leases for their venues and into all negotiations and business discussions long before a TPT makes a commitment to operate a pub and begins to purchase cask ale.

At present misrepresentation of both sales volumes and pricing is widely present on the PoB tenancy offer websites where completely inexperienced but aspiring TPTs can begin to be deceived as to the potential earnings available from a high risk, long term commitment to a tied tenancy. Where misrepresentation is not present it is largely because any information provided is only at a summary level where it is impossible to work out the basis and provenance of the underlying numbers in the assessment.

The PCA should make it clear that transparency in this area is paramount. PoBs must assume that the baseline knowledge of their assumed target recipient is nil in this vitally important but somewhat technical area and a fully detailed explanation must be given.

Industry professional advisers such as the FLVA and BII have demonstrably failed to reflect both sediment and operational waste in the advice they have been giving TPTs for decades. The apps and calculators they have made available are fatally flawed as they are built around the container descriptions and not the saleable volume. (see Q12 below) It is impossible to fully comprehend the far reaching and damaging consequences of this failure of the industry to comply with government regulation and of government to enforce its own regulations.

The current position of most of the PoBs is quite extraordinary.

1) On sediment allowances:
    a. They seem to claim that they knew nothing about sediment during the past decades when evaluating cask ale revenues and profits in tenanted pubs on the basis of 72 pints in a Firkin when making rent assessments.
    b. They also claim that the net saleable volume of cask ale was "factored in" to their wholesale prices when setting prices.
    c. They do not explain how the same information was both known or not known to them depending on which position best suits the PoB's financial interests.
    d. In legal pleadings some seek to suggest that a TPT is to blame for failing to realise that the PoB was short shipping saleable ale. They claim stock records would have revealed the true position and their stocktakers and RICS professional advisers would have been responsible for discovering the true position. They do not realise that these advisers are also evidently unaware of this issue and its implications.(see Q12 below)

e. In our experience a convenient myth of “Overfilling” has frequently been deployed when a TPT queries low yields and profits on Cask Ale. It is now clear that this myth is also unfounded.

From the approach that has been taken to this required declaration, it is quite clear that the industry, both brewers, PoBs and even so-called “Tenants Representative Bodies” and RICS qualified professional advisers, have developed extremely poor, misleading and unfair practises. As a result, brewers and Pub Companies have benefitted from disproportionate revenues arising from inflated rents and increased sales volumes because TPTs have under-priced cask ale on the basis that they were led to believe that a full 72 pints could be sold from each cask. The outcome is that the cost of the reduced profits from which an inflated rent must be paid falls on the TPT.

When ALL other costs are settled including the PoBs wet and dry rents the TPT can hope to earn something for themselves and their pensions. It is not fully appreciated that although the rent setting mechanism is overtly based on a “profit share” mechanism, the TPT is shouldering the lion’s share of the risk in this arrangement and has very limited resources to bring to bear on risk management. What seems like a trivial 5% shortage of input volume translates into 25 to 50% reductions in the “take home” profit of a TPT.

This makes it particularly important that the information and quality of training provided to TPTs must be of the highest quality and all organisations aiming to profit from a TPTs industry must take responsibility and accountability for the information and services they provide.

The business tied model is a very unusual anti-competitive business model which is only permitted subject to the practitioner taking responsibility for their behaviour. It places a significant responsibility on PoBs to behave in a way that does not exploit the asymmetry of the relationship. It is not surprising that numerous Parliamentary enquiries have concluded that these companies have been behaving, as one would expect, in a way that significantly advantages the PoB over the TPT. Because of this imbalance the Pubs Code and Adjudicator have been created by Parliament. What is surprising and deeply disappointing is that the Adjudicator has, in over two years, failed to identify and tackle any of the business practices he was appointed to regulate.

HMRC regulation EN226 can only require disclosure of the agreed duty paid volume. Ensuring that EN226 is complied with, arguably addresses the PCA responsibility for *lawful* dealing, however, the responsibility of the PCA goes further, and is to ensure that TPTs are dealt with *fairly* as well as lawfully.

Fairness in this context means that the PCA should require PoBs, whether brewer or not, to ensure that their tenants and prospective tenants fully understand the implications of EN226 to their business decisions. In the case of prospective tenants, this can only be achieved by ensuring that FMT volumes and assumed pricing and revenues MUST reflect the practical reality. PoBs and their staffs must not misguide TPTs and prospective TPTs into unrealistic pricing and revenue expectations based on volume derived from container description rather than net saleable volumes after both sediment and all other operational waste is accounted for that a “reasonably efficient operator” exercising due, but not exceptional, care can be expected convert into cash in the till.

There is a very frequent view expressed by uninformed lay people, politicians, journalists, PoB apologists and even government ministers, that they believe that TPTs are in some way authors of their own misfortune. They are said to be to blame because “You signed the contract” presumably without taking basic professional advice from someone who would have exposed this kind of exploitation– the assumption being that the “contract” fully spelled out the terms and conditions and there is any worthwhile professional advice available, unfortunately there is significant doubt on this particular point.

TPTs and aspiring tenants are encouraged to seek professional advice, but when the advice that they might seek, and the professionals advising them are either unaware of this issue or content to treat every client and venue as an “industry average” to avoid having to do the job they are being paid to do, it is unsurprising that many TPTs have fallen foul of this disgraceful, and widespread industry practice. (see Q12 below)

It is particularly galling that the PCA himself spent his first year in post denying that this matter was a problem unworthy of formal investigation, but when the exact same evidence was presented to the Deputy PCA a glacial and lengthy process was initiated to move directly to a consultation on binding guidance to be issued by the PCA coming some three years after the matter was first drawn to his attention.

It has been our view that the misguidance endemic to the industry should have been treated as an emergency with significant and high profile action taken to correct it. It is very regrettable that no PoB whether brewer or not has made any significant response to the reiterated guidance issued by the BBPA.

Two government departments, HMRC and Trading Standards, when we brought it to their attention, acknowledged that this failure to disclose duty paid volume was in contravention of government regulations, and quite possibly criminal. Their solution was to influence the Pubs Code regulations by inserting Schedule 2 5c, such that the issue became clearly one for the PCA to address.

The requirement that the PCA would need to step in to issue guidance on this matter was highlighted in our submission to the SBEE committee made in October 2015 [1]. It is highly regrettable that it has taken more than three years since this point was made for anything to be achieved.

Non-compliance with EN226 is not restricted to the regulated PoBs, it is very widely found across the industry, but the impact of the non-compliance is most damaging in the tied pub sector, where trading margins are much smaller, allegedly to compensate PoBs for the special commercial and financial advantages they supposedly contribute to the relationship.

PoBs who have been accorded the arcane privilege of being permitted to contractually require their tenants to buy stock in trade at prices literally set at whim with no regulatory oversight, must be required not to abuse this privilege.

PoBs have continued to flout this regulation despite representations and the matter being brought to their attention by the BBPA in January 2016[2] when brewers were reminded of their obligations in this matter. There has been very limited change in PoB and Brewery behaviour in this regard and some of the worst offenders are supposedly “blue chip” multinational companies.

We are disappointed that despite having received specific assurances from a PoB CEO[3] that new procedures had been put in place to deal with this matter, we find that they have not been implemented consistently, if at all, in that PoB.

We believe the PCA must require PoBs to provide significantly more training and “helpful” online advisory documents and apps. These must provide full advice on how to make the appropriate calculations of their potential profit and to highlight in full all of the other considerations and risks. We are very much in favour of the development of a Khan Academy style of training regime where TPTs and other participants in the industry can upgrade their skills and knowledge in a wide area of topics and at their own pace. This training material should be made available for accreditation by an industry wide panel of assessors who can be trusted to understand how the business model of tied pub operation works and has evolved. It is vital that these calculations must be made as simple as possible.

In addition, the PCA should encourage the provision of online apps that enable a TPT to model the implications of variable yield and wastage on business outcomes, these apps and calculators should be accredited as accurate by an appropriate cross industry body, the development of this training and business support deliverables should be funded by PCA Levy funds.

[1] Appendix 1: SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL - WRITTEN EVIDENCE - PBC (Bill 011) 2014—2015 p 138

[2] Appendix 2: BBPA on Sediment

[3] Appendix 3 Punch Wastage Assessment Clarification

Question 3: Can you foresee any unintended ways in which these proposals might have a detrimental effect on tied pub tenants? If so, how might such effects be mitigated?

We are concerned that in 6.4 in requiring cask and keg product labelling with details of duty paid is going further than required by the original regulation. HMRC EN226 only requires duty paid declarations for Cask Conditioned Ale in Large Pack and then only where the sediment concession is taken by the brewer. In cases where the concession is not applied the previous mechanism of "return for credit" is still, theoretically, available.

We believe that the PCA is unwise to build his own regulations on top of those of another department, as in the case of HMRC EN226. However, there should be no obstacle to the PCA building his own compliance regime building alongside the HMRC framework and in the process providing a valuable resource for the entire industry. There are significant precedents for government using the "joined up online" environment to benefit citizens and simplify compliance with regulations.

We are unconvinced that requiring Cask labelling, which is mentioned by HMRC and preferred by BBPA as a potential mechanism for disclosure will add very much to informing TPTs as they have very limited scope for decision making if they are informed only "at the point of receipt" which the cask label disclosure supports. At present where the required duty paid volume disclosure is made, it appears to be done in a "lip service" fashion seemingly without drawing attention to the matter. Cask ale is unique and a very special product that is only available in the UK on-trade pubs. This should be regarded as a "unique selling point" and much more could and should be made of the sediment as part of the theatre of the management and service of cask ale, now that it is no longer in the interests of PoBs to pretend it does not exist. Hopefully the PCA can contribute to progress being made on this front.

The information on duty paid/ saleable volume must be available to a TPT when deciding to place an order for an ale – it is not worth expending much energy on informing TPTs only on delivery and focusing on this as a compliance option, while valid when complying with EN226 does nothing to support the notion of "fair dealing". It is very surprising that there are reports that many breweries are either unable or unwilling to provide this information when asked directly to do so.

Since the implementation of the Pubs Code and appointment of the PCA, some Brewery PoBs and Non- Brewing PoBs have already sought to avoid making the required disclosure on the ground that it is not "reasonably available" and they also have protested that the duty paid volume changes from time to time and they have no way of knowing the exact amount of duty paid on a cask supplied two or three years ago.

In the case of Star Pubs and Bars (SPB) every tenancy offer on their website has a disclaimer on their "Rent Model" sheet stating. "We are unable to confirm the volume on which duty was paid." This is a direct challenge to the Pubs Code and the PCA must immediately require the disclaimer to be removed from all SPB rent models and the required information provided. The SPB rent models themselves all feature the issues of incorrect pricing and overestimated net profits and rents. It is unacceptable that this company, a subsidiary of Heineken, a multinational brewery that seeks to impose stocking rights as a brewery on newly acquired pubs purchased from Punch, refuses to comply even with EN226. Heineken must be required to make significant changes to its modus operandi on pain of a very significant financial penalty that the PCA is empowered to impose.

The reality is, it is quite clear from the HMRC regulation that if EN226 11.3.5 was being complied with then the information would be a matter of record in all brewers. Our research indicates that this is the case, but the information has not been processed correctly in PoBs who could not be bothered to pass this information on to their business partners, even after the matter was brought to their attention. Whether this was by accident or design is a matter that the PCA must now investigate – but in any event it must be terminated immediately.

However, as we know that in the vast majority of cases EN226 has been routinely ignored by brewers, it may well be that a pragmatic solution should be to recognise that in complying with

Schedule 2 in respect of Cask Ale where PoBs claim an absence of “reasonable availability” of the Duty paid volumes the PCA should direct that a simple percentage say 94% or 68 pints of cask ale supplied may be assumed to be the maximum duty paid volume. this volume should be taken as the default value for the purposes of evaluating operational waste and eventually establishing pricing, revenue, gross profit, divisible balance and rents.

If a PoB felt that this assumption was invalid in a specific case then they would be entitled to put forward a detailed rationale to the PCA for some other volume to be used which the PCA could consider and approve on a case by case basis.

At the present time all PoBs use a default assumption in calculations that all 72 pints are duty paid (and by implication saleable). This, we all now know, is manifestly not the case. We would contend that the PCA should immediately injunct the use of this default value and state that any further use of 72 pints in any marketing calculation, assessment or other purpose will attract a financial penalty.

We applaud the PCA for finally deprecating the “Overfilling” fiction that is widely supported in the industry that somehow there is more capacity to fill a cask than is admitted to HMRC and this means the PoBs are justified in demanding their share of the profit from selling this “excess” volume. Our detailed investigation shows that this is simply untrue and even if it were the PoB should restrict itself only to basing revenue and profit assumptions on volumes that are legally compliant and agreed between the brewer and HMRC. PoBs who have no role in brewing, transporting or selling the beer are not entitled to make invalid assumptions as to physical volumes of which they have no experience.

Accounting for Waste

Question 4: Please indicate whether you agree with the proposal to account for sediment and operational waste separately.

We agree that it is essential that sediment, which is liquid volume that is never saleable, and operational waste, defined as volume that might have been sold but was not, and will not be, for a variety of reasons, are accounted for separately.

There are clear training benefits from separate accounting as each type of waste has different implications and mitigation approaches which should be covered in TPT training and the implications for profitability makes the topic highly relevant.

In the case of sediment waste, this is never saleable, and must be excluded from any financial calculations. There should be immediate penalties imposed on companies who fail to exclude sediment from revenue calculations.

In the case of operational waste, there will always be an irreducible amount of such waste, but this will vary in accordance with the “style and configuration” of the pub and, to an extent, will represent a volume that can be expected from a “hypothetical reasonably efficient operator” – this will be less than an incompetent operator and can be somewhat mitigated by a highly efficient operator.

In the latter case the PoB is not entitled to consider the financial implications of the efficiency of the highly efficient operator in the divisible balance. Nor would it be fair to assess that a “reasonably efficient” operator would be able to operate with only minimal operational waste beyond waste arising from weekly cleaning of dispense lines. A TPT is entitled to benefit from any exceptional skill he brings to the operation and a PoB is not entitled, under the RICS guidelines, to assume that a “reasonably efficient” operator is one that achieves a zero operational waste performance. Therefore, a formula must be developed which considers specific characteristics of the venue and

develops a waste profile and allowance based on these factors. The consequent waste profile and allowances should be explicit for each venue and specifically arbitrable.

We strongly believe that all unsaleable volumes whether operational, or sediment MUST be excluded from any calculations before pricing and revenue is assessed, as without this, pricing assumptions are distorted.

In this regard we applaud the practise of PoB Marstons, who exclude a percentage of FMT from evaluation when assessing revenue. Marstons, however exclude an inadequate but standard percentage to which we strongly object, but the principle of excluding unsold volume before evaluating revenue and price is very sound. The percentage excluded must be specific to each site, and should be calculated using a formula agreed by a cross industry body including PoBs, brewers, and TPTs or their representatives under the aegis of the PCA.

In the case of the inexperienced TPT, unused to the reality of pub operations, the one point of "real world" reference available is the retail price of a pint. For these to be understated in marketing "*invitations to treat*" is inexcusable, and through the device of deducting wastage after revenue evaluation in every case PoBs are misguiding prospective TPTs as to the competitive position of the pub on offer. The fact that wastage, whether operational or sediment, represents unsold volume but is included using an incorrect retail price in the revenue calculation and deducted later, is simply wrong at any level of abstraction.

It is perverse to use a price and volume calculation in the certain knowledge that both are incorrect. This should be banned on pain of heavy financial penalty.

Question 5: If not, please explain your objections.

N/A

Sediment Waste

Question 6: Do you believe that these proposals will ensure that tied pub tenants have a clear and consistent approach to information about the volume of cask ales supplied under their agreement that will be unsaleable for reasons of sediment waste?

Not entirely, HMRC EN226 require TPTs to "be made fully aware of the quantity of beer on which duty has been charged" not the volume that will be unsaleable. TPTs must be trained to understand how much beer that they can hope to sell, subject to operational waste. It is sufficient that a TPT understand that there will be a certain volume of unsaleable sediment, but the focus should always be on the ***saleable*** volume.

There is a potential issue which has been raised as an objection by PoBs that the sheer number of ales and potential variability in sediment declarations will impose a significant and unnecessary burden on PoBs. We have recommended a very simple and effective means to eliminate this burden, and doing so benefitting the entire industry

Question 7: If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.

We believe that it is a minimum requirement that TPTs should be provided with detailed information on Projected Yield (Py)[4] on price lists which can be used on a day to day basis for purchasing and pricing decisions.

[4] Projected Yield - PY

For business planning and revenue assessments, we see no objection in principle for developing a theoretical consolidated allowance covering cask ale in rent assessments, proposals and shadow P&Ls. Where a consolidated allowance is to be used, this should be consistent across the industry and should be a realistic factor researched and published by the PCA, with full reasoned justification. If the factor is ever changed the rational for the change should be given. As the factor will be an integer it is unlikely that changes will be required very frequently. PoBs should not be permitted to propose their own factors to be used in these calculations, this is not an appropriate place for PoBs to "compete" for TPTs by claiming increased profitability arising from their sediment factors.

A weighted average sediment allowance based on the sediment declarations of (say) the ten highest volume ales by volume and sediment allowance would represent a sensible figure which could be used by all PoBs in their assessments. Using this factor would not require any further scrutiny from the PCA.

If PoBs choose not to use this factor then 7.8 could apply but if the PCA offered a reasonable alternative it should significantly reduce compliance burden. We believe that this approach will minimise the "cost of compliance" while maximising the "fairness" in dealings between PoB and TPT.

Question 8: Can you foresee any unintended ways in which these proposals might have a detrimental effect on tied pub tenants? If so, how might such effects be mitigated?

The main problem will be in PoBs seeking to further obfuscate and confuse matters now that this opportunity has been brought to light. The fundamental reality of the industry is still clear, the industry is in decline, PoBs will continue to seek to extract more than a fair share of the profit and will use their overwhelming economic power to achieve this. By taking an excessively literal approach to compliance, PoBs have clearly been attempting to claim the requirements are unreasonable, and seek to default to misguiding revenue for 72 pints on this basis.

Applying a version of the Pareto principle to the matter it will be possible to arrive at a sensible volume to be assumed as sold after wastage allowances of all sorts and then the price at which this "sold volume" was sold can be evaluated based on local competition conditions and venue style – thus arriving at revenue and gross margin.

It is quite clear that any reluctance or objection from PoBs is only motivated by a desire to continue to misguide their TPTs into believing that the prices they are charging will lead to the revenue and profit PoBs suggest and by implication to justify the profit share rent.

There is no basis on which this can be justified, and it is quite clear that this whole issue has, to date, been conducted to maximise PoB benefit to the significant detriment of TPTs.

Operational Waste

Question 9: Do you believe that these proposals will ensure that tied pub tenants have clear and consistent information about the volume of draught products supplied under their agreement that will be unsaleable for reasons of operational waste?

The proposals need to be comprehensive and adaptable

Providing separate figures for draught ales, stout, lagers and ciders is a minimum requirement

Each site must have a certified weekly wastage volume derived from the pub configuration and dispense equipment. This allowance should be arbitrable.

Research should be conducted by a cross industry working party on sources of all potential operational waste and these must be explicitly shown in the assessment and deducted from volume before sold volume is evaluated.

Question 10: If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.

It has been noted that some PoBs in recent years have dropped a separate line item for draught Stout. Some PoBs e.g. EI Group seek to only quote composite wet sales in an attempt to defeat analysis.

We believe that the market dominance of Guinness in this segment and the consequent intransigence of Diageo in not complying to PoBs demands for discounts has made this product line particularly unattractive from a gross profit perspective. By rolling stout volume into keg ale volumes PoB's are disguising the low margin potential of Guinness. We believe PoBs are attempting to ensure TPTs bear the full burden of their failure to negotiate volume discounts at anything like those available from the multinational lager brewers.

In a similar vein the recent trends to "craft ales" supplied in low volume "key keg" packs at premium prices and minimal discounts are being ignored by PoBs who seek to "average" their failures in securing volume discounts.

A venue that must compete in a market demanding modern "craft ales" will be massively disadvantaged by the inflexibility inherent in the product categories included in the summary P&L that PoBs will seek to implement.

We believe that compliance costs can be minimised elsewhere and the PCA must resist any attempt to homogenise product categories.
If the PCA accepts a rigid approach to product categories, then TPTs will be disadvantaged and unable to respond proactively to market shifts.

By their nature, innovations will attract premium prices and high-volume purchasing will not attract the kind of discounts that PoBs need to support their leveraged business model.

TPTs must be allowed to access fast moving market innovation and this needs to be recognised in the PoB / TPT relationship.

Question 11: Can you foresee any unintended ways in which these proposals might have a detrimental effect on tied pub tenants? If so, how might such effects be mitigated?

The consultation, as written, represents a comprehensive approach to addressing the issue of misguidance of TPTs on the topic of sediment and operational waste. Of itself, this can only benefit TPT's.

The main detriment to TPT's will arise from PoBs attempting to avoid the clear consequences of past misguidance which is that rents have been assessed incorrectly and pricing advice to TPTs has been wrong.

In order to mitigate the detriment already being experienced by TPTs it is necessary that all rents settled since the PCA became responsible for the regulation of PoBs must to adjusted to reflect the lower profit expectations inherent in the failure to account for both sediment and operational wastage correctly.

PoBs must also accept accountability for their pricing of cask ales and adjust pricing downwards by approximately 5% to reflect the lower volume of product available for sale. If this does not happen then it will be necessary for "newly enlightened" professional advisers to counsel their clients that a price increase of up to 20p per pint will be necessary.

One assumes that PoBs account for the price elasticity of demand for beer that is researched by HM treasury and "factor" this into their pricing calculations. They will therefore be very sensitive to the impact on volume that such significant increases will have. PoBs have a highly efficient and well-funded lobbying organisation in the BBPA who claim that a 10p increase in beer prices as a result of beer duty increases will cost 17,500 jobs. One must assume that any increases as a result of other factors will have the same effect, so TPTs attempting to retrieve their profit aspirations, absent price reductions from Pobs will be very damaging to employment in the industry.

It is therefore essential that PoBs must review their pricing and current rents in the light of the misguidance that has made this consultation necessary. They must be required to make amends for their misguidance acting immediately to provide relief to TPTs.

Training and Support

Question 12: Do you have any comments on the proposed approach to access to training for tied pub tenants?

The problem that this consultation seeks to tackle is an exemplar of the profound disdain that PoBs have for their TPTs and their failure to exercise their duty of care in protecting the TPTs best interests. This problem is endemic to the industry and a significant change of culture will be required before a POB can be trusted to act in a both fair and lawful way and not subject their TPTs to detriment.

TPT training has typically been developed by third parties on behalf of PoBs but these courses are not certified or accountable to any independent or competent standards body. Our research has shown the current training to be positively dangerous for the best interests of TPTs.

The PEAT course has been modified since 2014 when we first criticised the wholly misleading financial template given in the original course where a TPT contracting for the exemplar pub could not fail but lose over £4,000 directly as a result of implementing the implied advice.

The new course steers clear of giving any financial details at all. We regard this as a retrograde step. TPT training, particularly for new entrants MUST aim to equip an inexperienced TPT with enough tools to achieve a realistic view of the business opportunity on offer. It is insufficient to counsel that "professional advice" must be sought because in this field the "professional advisors" have been shown to be wholly inadequate.

By way of example:

1) The Institute of Licensed Trade Stock Auditors;
   This is a professional body who provide training and qualifications for the stocktaking profession who are often cited as the "professionals" who should be working with TPTs advising them on matters of yield. The ILTSA describes itself as "the only qualifying body for licensed trade stock auditors, if you are pursuing a stocktaking career the ILTSA exams are essential."
   In our research we have found no evidence that this profession has any knowledge of sediment and its impact on profitability. "Rules of thumb" and global adjustments appear to be much in use. The ILTSA publish on their website past exam papers (https://www.iltsa.co.uk/iltsa-exams.html) with model answers to assist aspiring stock auditors in gaining their qualification – a specific example of one of these can be found at appendix 5 [5]. An examination of these model answers reveals no questions that cover this

[5] ILTSA – Model exam papers

topic of sediment or operational waste or the implications of cask ale sediment for saleable volume and pricing, however forensic examination of the exam answers given reveals that there is no consideration of sediment in any of the ILTSA training, wherever it is possible to detect it there is an underlying assumption that a barrel of cask ale will contain 36 saleable gallons (288 pints) of product –

-eg 06-Exam-Paper-Oct-08.pdf
Question 7 – model answer suggests that 4069 gallons of bitter sold should be divided by 36 to equal 113.03 barrels when a client wants to know his barrelage for the purpose of negotiating better prices. A version of this question appears in all the ILTSA Exam papers that we have examined in detail.

– if sediment was understood by the ILTSA the model answer should reference the fact that at an average of say 67 pints sold per cask after operational and sediment waste is accounted for, sales of 4069 gallons was 32768 pints of fully conditioned beer, this would require the purchase of 32768/67= 489 firkins and negotiations with suppliers should be discussing a purchase volume of 122 barrels not 113 barrels as in the model answer.

Question 17 – when asked for advice on margin maintenance following a brewery price increase the model answer evaluates the increase based on 36 gallons in a barrel and 8 pints to a gallon resulting in the advised increase is 1p per pint lower than it should be to meet the brief. Considering the huge amount of lobbying effort expended by brewers and the PoB trade association to achieve a 1p reduction in beer duty charged to the beer drinker this 1p under-pricing advice by the "professional advisor" has very significant implications, if the BBPA is to be believed.

2) BII Rent Review Worksheet. [6]

The British Institute of Innkeeping is regarded by many including the PCA as a "Tenant Representative Body" offering "professional" advice to thousands of tenants, particularly to inexperienced tenants who are generally placed in the hands of the BII by the PoBs as a kind of training and mentoring organisation for new entrants with first year membership funded by the PoB. This process is often used by PoBs as absolving them of their duty of care to their inexperienced business partners on the ground that the BII will provide robust and impartial advice.

One of the vectors of "advice" provided by the BII is signposting to a stocktaking company called "Surestock" which describes itself as the "Home of the BII Business Doc" – Consultants, Stocktakers & Accountants

A new TPT might be forgiven for concluding that they might seek professional advice from the "BII Business Doctor" who can be relied upon to provide impartial advice to TPTs in a way that could be regarded as unimpeachable.

One of the many tools that has been provided in the past was the "Rent Review Workbook" which is directly relevant to this consultation. This workbook provides a relatively comprehensive platform whereby TPTs might be able to model and "practise" rent negotiations based on a tool helpfully provided as part of BII membership and built and supported by a professional consultant organisation endorsed by the BII.

To a TPT who might be struggling with poor profitability this kind of self help tool will be very attractive as it enables a TPT to explore the parameters of the business using spreadsheet tools which will be familiar to many new TPTs coming into the industry from other business related occupations, and who might be led to believe that this workbook could substitute for face to face advice which is charged on an hourly basis, and might be seen as unaffordable.

[6] Appendix 6 - BII – Rent Review Workbook

By working with a spreadsheet, a TPT can seek to develop their own understanding of an unfamiliar business model at their own pace. However, this approach relies heavily on the originator of the model having a comprehensive and valid understanding of the business process and the impact on profitability of the various risks to saleable volume such as operational and sediment waste.

The rent review workbook along with several other business planning and support tools were freely available to BII members and were even hosted on Marston's Tenant recruitment website as business planning tools for aspiring TPTs.

Unfortunately, analysis of the structure and logic of the workbook, which is password protected and hidden from its users, demonstrates that in the matter of sediment and operational waste the workbook is deeply flawed.

The calculation which takes the user through to modelling a rent bid based either on Volume or Sales Data takes no account of either Sediment or Operational Waste and makes no mention of these issues as important considerations affecting pricing and profitability.

One is forced to conclude that the pub that the BII BizDoctor bases his "professional advice" on sells only "bright" Cask ale and never cleans it's dispense lines, a situation that would be heavily criticised by anyone with even slight industry knowledge. Admittedly the Rent Review Workbook has a disclaimer and recommends the user to access the author who presumably will, when paid, offer different advice to that offered as a benefit of BII membership.

It is regrettable that this tool clearly shows that this formally constituted body recognised by the PCA as "Tenants Representatives" are demonstrably guilty of providing misleading "professional" advice and training to TPTs who have no other source of correct guidance and therefore have suffered over renting and low profitability through no fault of their own.

3) Federation of Licenced Victuallers Association

This body, like the BII, is recognised by the PCA as "Tenants Representatives". In the wider, more experienced TPT population the FLVA apparent alignment to EI Group (formally known as Enterprise Inns) and other regulated PoBs such as Admiral Taverns as evidenced by corporate sponsorship of FLVA events[7] and the Operations Director of the organisation having been appointed directly from his previous post as a regional manager for Enterprise Inns[8]. This means that the representations the FLVA makes are regarded with significant suspicion.

As a body they represent themselves as "Publicans Partner" and the "UK's premier licensed trade member support association" but the FLVA has been surprisingly uncritical of PoBs throughout the campaign that resulted in the Pubs Code and appointment of the PCA. If they were truly representing the interests of TPTs one would have expected a more robust approach to their participation in the "self-regulatory" process that was found inadequate for the PoBs with more than 500 tied pubs but persists in the unregulated TPT sector. One might also have expected this matter of sediment and waste to have been a matter that should have been included in the "Industry Framework Code" in which they claimed to be representing TPTs interests.

One is forced to conclude that until the matter was brought to their attention probably by the Deputy PCA at their meeting in June 2018 this body was blissfully unaware of the issue despite it having received relatively significant trade press attention two years earlier[9]. The PCA published meeting notes are not clear as they reference progress "since the previous meeting" whose notes are either unpublished or make no reference to the topic at all.

[7] Appendix 7 - FLVA newsletter SPRING-APRIL 2015

[8] Appendix 8 - Morning Advertiser 26th July 2009 "No Conflict for new FLVA boss".

[9] Appendix 9 - Morning Advertiser Jan 2016- "Undrinkable Ale Spat"

Evidence for this conclusion can be found in a helpful FLVA branded Gross Profit Calculator for Beer and Cider published by the FLVA and password locked by its author - the FLVA Operations Director Martin Caffrey[10].

The Punch Tenant Network has been researching Training and "professional" support deliverables on this matter ever since the fact of the HMRC Cask Ale sediment concession was first uncovered in October 2014. It is true to say that despite a detailed search we have yet to find any TPT oriented training material or other "professional advice" deliverable that addresses this matter. It must, therefore, be accepted that the industry training bodies have been woefully delinquent in the courses that they have delivered to date.

It is quite clear that the professional advice available to TPTs from both PoBs and supposedly "professional advisers" has been totally inadequate and as a result the TPT community has been misguided and suffered inflated rents, low profitability and worse.

The PCA should now insist on significantly more effective governance over the training delivered with PoBs taking accountability for the training that they either commission or delegate. It is by no means certain that the advice and training available from these organisations is adequate in every other respect or are there other significant issues that act to the detriment of TPTs.

Unfortunately, the "Tenants Representative Bodies" recognised by the PCA tend, in the main, to be managed by ex-executives from PoB companies, brewers and professional lobbyists who have no real experience of actually operating pubs and rely overmuch on long distant methods employed in the pre-beer order days, These methods are now no longer relevant to the modern industry where businesses are run to very fine tolerances and margins but business practise and controls have not developed appropriately.

The organisations who truly have TPT's interests at heart are frequently derided and discounted as "a noisy few campaigners". This is exactly how the PCA describes both the Pubs Advisory Service and The Punch Tenant Network who, with others, and with woefully limited resources, have managed to stimulate the Pubs Code and the appointment of the PCA. The institutionalised issues of which the "sediment and waste" matter is only the first, is in many ways the least complicated of the challenges that the PCA must face if he is to deliver his statutory mission.

It is a source of considerable concern that, far from tackling the matter when first brought to his attention, the PCA appears to have failed to appreciate that his own "industry experience" has blinded him to the reality of what has been happening in the industry. It is very clear that the Deputy PCA, without the "industry experience" has, like every other lay person, introduced to the topic, immediately identified the problem and caused the current consultation to be executed, regrettably without conducting a a statutory investigation which would have been helpful in responding to this consultation.

Question 13: Do you have any comments on the proposed training requirements in respect of BDMs?

This guidance seeks to change the culture of an industry that has shown itself to be hidebound, arrogant and highly resistant to both criticism and change. The industry "bodies" are seen to be "awards focussed" and self-congratulatory to an extent that is disgusting to the Tenant Representative groups the PCA refers to as "particular loud voices".

As has been noted in the regulations the role of the BDM in projecting PoB company policy is central, BDMs must be made aware that this failure in disclosure which has been prevalent throughout the industry is a criminal offence and any similar behaviour in future will not be tolerated.

[10] Appendix 10 – FLVA Beer-Cider-Calculation-Sheet.xls

BDMs in particular have a responsibility to ensure that they are not being required by their PoB to misguide tenants and take advantage of them through their exploitation of the asymmetric information available to both parties by virtue of the differential economic power available to both parties.

The PCA should provide a whistle-blower facility to any PoB staff including BDMs to enable any participant to discretely bring new unfair practices that are being introduced to the attention of the PCA to enable the PCA to be proactive in ensuring he delivers his statutory mission.

Office of the Pubs Code Adjudicator

This document can be accessed at www.gov.uk/pca
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