



Pubs Code
Adjudicator

RESPONSE 25



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.

Submission of Brighton & Hove Licensees Association following the full consultation of all members and agreement of all members on the final submission.

Brighton & Hove Licensees Association represents licensees throughout the South East of England, with a particular interest in The Brighton & Hove Area and surrounding counties, including both Tied Pub Tenants affected by the Pubs Code.

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

The proposals are certainly a step forward and one that is long overdue. The TPT has long been disadvantaged through the use of misleading information (see Appendix 1 Picture). One of our members reported asking POB about this very issue back in 2010 and it is clear from the reply that the POB was being made aware that there was no longer a built in ullage contained within the majority of cask ales. It would be of interest to know when the POB's were made aware of this by the brewers because it will have made a difference to their negotiations with the brewers they were purchasing cask ale from and that they were not passing this information on to their tenants. This is not just a POB issue, of course brewers supply to a wide range of customers, but the issue is exacerbated because of the rent assessment method used by POB's and that they will have mislead their tenants in the achievable profit by overstating the margin and profit from each cask accounted for in the rent assessment.

At present our members do not believe they are fully informed of the duty that's been paid on the alcohol supplied to them. Members report that when negotiating rents there is no specified accounting for the actual amount of saleable beer (that on which duty will have been paid) and that volumes of cask ale are simply reported in number of barrels purchased, when looking at a trading history, and not on the amount of cask ale upon which duty has been paid.

The Code, if enacted properly and in line with the proposals will go some way to ensuring TPT's are better informed and consequently better able to negotiate with their POB. The requirement of the Regulations 16 and 20 in conjunction with paragraph 5(c) of Schedule 2 to the Code that the forecast profit and loss statement to be provided by the POB's as part of a rent proposal or rent assessment proposal must include the volume of alcohol in respect of which duty was paid during the last three years if this figure is different from the actual volume of alcohol purchased by the TPT during the same period is already in place and clearly not being observed in some cases. This leads us to believe that many rent reviews completed since the Code came into place will have been conducted without the TPT's having the correct information and may well have led to inflated rents being agreed at through negotiation. It is also possible that any rent assessment arrived at through arbitration may also be similarly inflated if the arbitrator hasn't also accounted for the inflated barrelage figures that are being produced in rent assessments.

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

The code does make it incumbent on the POB to ensure the TPT is fully aware of the issues surrounding cask ale and the amount of saleable beer upon which duty is paid that they are being supplied, at present this appears to be being done in a rather ad hoc manner. Whilst the information may well be available on request TPT's do not in many

cases appear to be being made aware of it and our members believe there is more that can be done.

Excise Notice 226: Beer Duty states:

11.3.5 What about cask conditioned beer

Duty need not be charged on any undrinkable sediment in your cask-conditioned beer, provided:

your customer (for example, the publican) is made fully aware in writing, at or before the time of receipt, of the quantity of beer on which duty has been charged. If, for example, a barrel (163.7 litres) contains 2.3 litres of undrinkable sediment, the customer must be made aware, by a statement on the label, delivery note or price list and so on, that duty has been charged on 161.4 litres (a copy of the notification to customers must be retained)

This requirement of the brewer to their customer, the POB, is prescriptive and we believe should be pushed further down the line from supplier (the POB in the case of a TPT) to their customer. Indeed we believe that the step of placing the information on a price list alongside the product should happen without delay. It is not a difficult task as the supplier already puts the size of the container and indeed in so doing may well be misleading the customer and to either replace this or add alongside the actual amount of saleable beer would seem a sensible approach. This information can also easily be added to invoices ensuring the TPT can accurately forecast their profit margins and also ensure that correct stock control reporting is carried out.

3. Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?

The first and most obvious way in which we believe these proposals may have a detrimental effect on the TPT is that of the POB increasing the price of the beer so they can maintain their margin. When one considers the already inflated price of beer sold by many POB's with the "wholesale price" used as the base price, which in reality bears little or no relation to the market price for the beer then any increase will further push the cost of a pint at the pump beyond many customers. The 2018 Cask Marque report noted beer sales in the on-trade were down 1.8%, however cask ale sales were down 6.8% over the last year. This is a serious decline and we would want to ensure a close eye is kept on the wholesale price especially as any increase of an inflated price is exacerbated, an inflationary increase to the wholesale price as a percentage is a greater increase to the price than the same inflationary increase to the perceived market price.

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

Yes we agree with the proposals that the sediment and operational waste are accounted for separately. This makes for a clearer picture available to the TPT and can only serve to assist them in any negotiation.

5. If not, please explain your objections.

N/A

6. Do you believe that these proposals will ensure that TPTs 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?

It is our belief that the proposals correctly highlight the need to account for the amount of draft beer and cider that will not be sold separately and not simply through the gross margin calculation. Currently we have seen many examples where the Gross Margin calculation used in rent assessments is based on a full yield (usually 72 pints from a 9G

firkin) when up to 4 pints of this may not actually be saleable beer. This inflates the gross profit margin and consequently the achievable profit indicated in the rent assessment unless the sediment and operational waste are accurately recorded. There are complications here though and the best method would be the use of actual achievable margins applied to the rent assessment, we feel that this would be open to possible abuse leading to inflated rent assessments and that separate reporting will at least allow for definite consideration of the effect of sediment and unsaleable beer.

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

N/A

8. Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?

As in the answer to Q.3 there is the risk that the POB will simply adjust their rent bid to account for their lost margin. What might have been a 50% rent bid of the divisible balance suddenly become a 51% rent bid. Where there are historic rent reviews in place this can be identified, for example a 50% rent bid in 2013 becomes a 51% bid in 2018 on review. However where there is no review history this will be almost impossible to monitor and with the average churn being below 10 years for most POB's there will be little history to allow this to be monitored. We also envisage POB's returning pubs to their own portfolio for managed house operation where a TPT has historical reviews rather than renewing leases under The Landlord and Tenant Act.

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

It is our belief that the proposals will go along way to ensuring the TPT has clear and consistent information on the amount of unsaleable beer for reasons of operational waste. This is easily calculable in the case of draught line and cellar arrangements at a site specific level and a calculation based upon a weekly line clean based upon the volume of beer in the line. Consideration may also need to be given to the operational style of the site in question. Some sites will have constantly rotating cask ale lines and cider lines through beer engines and this may have some bearing on the calculation.

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

Cask waste and sediment is not the only unsaleable volume within a cask as well as waste from the regular line cleaning regime a little focused on practise, that is widely used, is where on the changeover of a cask, that the line will be flushed through. The best practise would be to flush the line with water on the change over of a cask, even of the same beer, there is potential that ale in the line will be contaminated with some element of sediment from the bottom of the cask. It is also best practise for a different colour, ABV or flavour of ale to flush through to avoid contaminated flavours, colours etc. One member notes that even if water isn't used to flush through and the next cask is immediately connected and used to flush through, the act of pulling through the new ale into the old ale will lead to unsaleable product – they estimate 2 pints minimum per change of keg the equivalent of 2.8% sub yield for this alone. This will be exacerbated by the style of operation as we allude to in our answer to Q9, especially where high volume cask sites operate or the site has constantly rotating ales and guest ales.

Another complication we envisage is where the TPT uses an external line cleaning company that deep cleaned lines on a less regular basis than the traditional publican's line cleaning regime. Whilst this will cut down on waste the service comes at a cost and would

need to be accounted for elsewhere in the rent assessment if the POB calculates the operational waste on this basis. However we see this as a minor detail and one which is easily overcome and envisage most POB's calculating the operational wastage on that of a traditional line clean regime and that most TPT will be satisfied with this.

11. Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?

As in our previous answers to Q3 and Q8 the only area of concern we have is that the POB will attempt to maintain their operational margin and profit from the TPT through increases elsewhere and that this should be monitored.

12. Do you have any comments on the proposed approach to access to training for TPTs?

We fully support the proposals in respect to TPT training and on-going support. Whilst we are aware that pre-entry training has greatly improved in recent years through the adoption of PEAT, we are not convinced that this is always being followed up with access to ongoing training and where it is the provision is patchy and evidence from our members suggests it is very dependent on the efficiency and ability of the BDM or Regional Manager. We would also like to ensure that any provision of training isn't seen as yet a further income stream for the POB but a commitment by them to ensuring quality publicans with leads to an enhancement of their own profitability through increased revenues as a consequence of addressing the issues of declining sales. At worst any courses should be subsidised, currently we are aware that some POB's offer services to their TPT's that are available for the same price or cheaper on the open market and not passing on the advantages of their buying power to their TPT's

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

The training of the BDM or Regional Manager of any POB is essential and the requirement of an industry standard is to be encouraged to allow TPT's to be assured that the representative of the POB that they deal with most is fully aware of the issues. At present this doesn't seem to always be the case. One member has reported to us their experience when asking for duty details and outlining their concerns regarding under filled casks or casks with less than the noted amount of saleable beer was to provide the BDM with evidence. This member notes that the information when requested from the BDM is by exception and only when you can evidence your assertion. This is a concern because either the BDM isn't aware of the issue, or if they are they are seeking to ignore or sidestep it.

Of course while there is an incentive to produce inflated rent assessments through under-reporting of waste and sediment issues then no training of the BDM will outweigh the importance of the TPT being armed with the appropriate information and training to be able to fully appreciate, assimilate and negotiate on the rent assessment they are provided with. It is our belief that an industry standard TPT course which could easily be provided through an external supplier explaining the issues surrounding waste and sediment be provided for at PEAT and with regular refresher courses to allow the TPT to re-familiarise themselves with the issues.

Appendix Image:

An online GP calculator provided by a POB that clearly shows a yield of 72 pints (highlighted) as “selling units” when the reality is it is not a yield of 72 pints sellable units. This picture was taken week commencing 25th November 2018. Product and price redacted to protect the identity of the member who provided the picture.

Retail Selling Price and Gross Profit Calculator

[Redacted] 9 CASK

Selling Unit:

Purchase Price: £ [Redacted]

Promotional Discount: £

Selling Units Per Package Type:

Find your suggested selling price

Gross profit percentage:

Your suggested selling price is:

Find your gross profit %

Retail selling price:

Gross profit: %

Allergen

This product contains the following allergens:

Gluten

Barley

Please Note

When purchasing cask beer, please note that all brewers have different sediment allowances which have been reflected in the wholesale prices shown. The calculator is a guide only and is based on standardised maximum yields for different products. When calculating RSP and GP for cask beer it is advisable to bear in mind the actual yield based on the relevant product selected. Sediment allowance information is available [here](#).