



Pubs Code
Adjudicator

RESPONSE 17





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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): Pubs Advisory Service Ltd

Address: Dallacombe Farm Totnes TQ9 7AH

Email: [REDACTED]

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

Pub-owning business with 500 or more tied pubs	<input type="checkbox"/>
Tied pub tenant	<input type="checkbox"/>
Interest group, trade body or other organisation	<input checked="" type="checkbox"/>
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?

No as it doesn't fully inform tenant, making information available isn't the same thing. Also, we think the PCA should be reviewing how regulated firms got to be using containers instead of the contents in the first place, we could be forgiven for thinking POBs have been universally directed to conceal the contents of cask. The PCA stated months ago the POB's were using different methods to hide the contents of cask but so what as the result was always the same to the tenant. The failure to disclose the true contents of cask ale in whatever way damages tenants' profitability for years at a time. There is a failure of the PCA to accept the practice early on and uphold Schedule 2 (5) (a) and (c) of the code. Action on this issue has always been problematic to the PCA in a regulatory blind spot they have created, any response we have has been glacial, despite clear evidence and acceptance in March 2017 of the damage it causes to pubs. The PCA failed throughout 2016, 2017 and 2018 the most crucial test of its purpose and instead showed it was by default unwilling to use its powers, apply the law as written and most worryingly for tenants, turn the other cheek and deny access to any meaningful redress for damaging practices when approached by them or their representatives. The PCA door was indeed opened in July 2016 but their mind was closed. Given the expertise and experience in the PCA office it can only have been a deliberate policy to allow this practice to continue for as long as it has in clear breach of what was written in the Pubs Code Regulations 2016. The approach to the PCA in 2016 was rebuffed quite insultingly in Dec 2016 as not being "a breach of the code" yet in May 2017 Mr Newby was

to be found speaking with tenants at pub company roadshows telling them he was concerned about 72pints and give the full impression to those he spoke to that he was still looking into the practice yet knew full well he had dismissed it a few months earlier. It wasn't until Nov 2017 when we again wrote to the new DPCA asking for a second opinion on 72pints that it forced their hand. Clearly the introduction of someone from outside of the trade with no vested interest or baggage was the ice-breaker and a series of meetings began which lead up to the creation of this draft guidance. In the meantime many tenants have lost money as a result of the PCA's problem in stopping unfair practices and upholding fair and lawful dealing.

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

Point 6.4 in the draft guidance needs expanding beyond just cask labels and must include price lists, websites, delivery notes, invoices and training materials, current training is not appropriate which is also a breach of regulations. Once again, the PCA office is found wanting here too as they have failed to investigate or assess training courses despite clear promises to representatives that they would do so. Reliance upon cask stickers alone is worse than useless and does not ensure a new tenant is fully aware until well after they've signed the agreement and bought their first barrel which by then is far too late to do anything about. See training Q 12 & 13 below.

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?

Not overly so long as the PCA must ensure tenants are not just "informed" by the guidance but are in fact "fully aware" however we must ask why the PCA did not act sooner and or enforce Schedule 2 of the Pubs Code as it has clearly been breached since day one of the code coming into force. The PCA has always had the responsibility to ensure the unique privilege of operating a beer tie by the 6 companies is not abused. Yet the whole trade can see they stood still in face of widespread breaches of the law and POB's continued to describe containers and not the actual contents in their rental calculations. It is not good enough for the PCA to say they didn't know or needed more evidence as they were fully informed in August 2016 by tenant representatives outlining the continued concealment of the contents of cask ale under the code.

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

Yes, it is long overdue and has been in plain sight of the PCA, enquiries to RICS indicate waste is tackled as a separate issue by RICS qualified surveyors following RICS published guidance and if not being done is a breach of their guidance. Note the RICS guidance is now embedded into the code Regulations 16, 20 & 21 so any failure to tackle waste is arbitratable. This is very clear from analysis of any of the rent offers made under the code they show a continued use of containers and not the contents.

Question 5: If not, please explain your objections.

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?

Yes, as long as they are rigorously enforced and the widespread use of containers instead of contents is ended. There was sufficient evidence, statutory power and tools open to the regulator to stamp out the practices in 2016 yet they lacked the will and nerve to end this practice and instead allowed the damage to continue to long after the PCA was made “fully aware” themselves in 2016. There would have been far fewer victims if regulatory action had been taken sooner, as it is the guidance only comes about after another huge delay, the numbers of those effected has been solely down to the PCA. It might get messy restoring all those tenants’ rights but that is solely down to the PCA failing to act sooner when there was fewer non-compliant offers being created. The good news is the extra costs of tackling the mess can be added to the levy and paid for by the POB’s so resources are not an issue and never have been. Resources are only an issue when they are not spent as seen with the PCA “investigations” budget which was handed back unspent. Tenants have no chance of a level playing field or access to reform if the regulator refuses to do their job.

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

The approach needs to ensure the guidance is fully backdated to cover the period July 2016 to now, this will make just and fair amends for the PCA failure to tackle the issue which has damaged tenants. Tenants who had a rent offer after July 2016 should receive by default a new fully compliant rent offer with an explanation that the previous offer was non-compliant by the failure to take into account sediment and wastage and do the Schedule 2 (5) (a) & (c) calculation. The PCA's failure to act in 2016 should not be paid for by the tenants who are blameless and went out of their way to inform the PCA.

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?

Yes if they are not enforced, the PCA need to enforce the law and use all the tools they have not just try to look busy and acquire new tools as a distraction for failing to act and use statutory powers in the first place. In 2 ½ years the PCA have failed to tackle the issue despite being made fully aware of the problem in 2016. The new tools are always welcomed but they already had enough tools to stop tenants being damaged but didn't use them and pushed the complaints away.

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?

Yes but with caveats see Q10, it should be noted that the TPT's right to the information was already in statue both by Schedule 2 and the embedding of RICS guidance into the Pubs Code, the problem persisted longer than was lawful because PCA internal policy was not to enforce Schedule 2 calculation 5 (a) & (c) since July 2016 or to act on the dossier of evidence presented to them in 2016.

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

The PCA should hold centrally information on the duty paid by the brewers on a Government web page which is promoted to all TPT's at rent review or new lettings. Evidence we have obtained from brewers we have written to has shown that a POB who published a list of declarations failed to go on to accurately report the values declared to them by the brewer. POB has claimed the information on duty given to them by brewers was subject to many changes and would be unreliable for anyone to use, yet brewers explained to us that their declarations on duty had not changed for years, sometimes the entire life of their business and that where values had changed it was because the POB had made an error.

Furthermore, brewers indicated that they had been fully informing the POBs for many years about the level of duty paid and this hadn't just started in 2016. This supports the assertion made in Q1 that companies acted in unison by failing to disclose the contents of containers and continued to do so long after the code came into force despite the PCA being fully aware of the practice and being asked to put a stop to it.

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?

Yes if they are ignored and the damaging practices allowed to continue as outlined in Q7 Q8 Q9 & Q10

Training and Support

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

Yes, there needs to be penalties for anyone caught using or basing calculations for cask sales revenue on 72 / 144 or 288 pints in any of the training or promotional materials related to running or renting a pub, this is not exhaustive but should include face to face classroom training, trade events, printed materials, online calculators, web advertising, training hosted by third party providers and forecasts / offers produced by RICS surveyors, third party accountants or business planners. It is the POB responsibility to ensure third parties whether employed or promoted by them do not use misleading values i.e. containers and not the contents in their reports. No POB

should be allowed to accept a plan based on 72 either, this should extend to tied, free of tie rent offers and or new lettings made to any existing or prospective tenants. There are never 72 pints you can drink or sell from cask ale therefore this figure (or its derivative 288 pints / a brewer's barrel) cannot be used for cask as it simply stating the container size and not the actual contents which are far lower. To use the container and not the contents misleads and distorts pricing, revenue, rent and the profit share to the clear detriment of the publican rented under any such assessment.

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

Yes, there needs to be stiff penalties for any BDM using, promoting or basing calculations on 72 / 144 or 288 pints in any disclosure made to a TPT (or prospective tenant) be that verbal or written.

Office of the Pubs Code Adjudicator

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

If you require this information in an alternative format or have general enquiries about the Pubs Code Adjudicator and its work, contact:

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