



Pubs Code
Adjudicator

RESPONSE 9





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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): [REDACTED]

Address: [REDACTED]
[REDACTED]

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 checked="" type="checkbox"/>
Interest group, trade body or other organisation	<input 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?

If historic lack of enforcement by the PCA Office were to continue in the same fashion, no. I believe that given the PCA's tendency to arbitrate rather than adjudicate, the POB's will just continue to ignore any guidance the PCA Office puts out, as they have largely done so far.

Unless the PCA actually starts to conduct investigations that lead to enforcement, and financial penalties upon the POB's for failure to conduct themselves fairly and lawfully, it will remain business as usual, as exemplified by the lack of action undertaken by the PCA on Schedule 2, 5a and c, and its handing back of the Levy in the first year.

For nigh on 3 years since notification of this issue to the PCA Office, it wasn't taken seriously. The sclerotic pace of action has allowed TPT's to continue to be financially damaged, by in my opinion, what can at best can be described as dishonest miss-selling and at worst deliberate and unlawful enrichment, going back several decades.

In essence the suggestion that providing notification of EN226 via barrel stickers is too late and too little. The TPT will or has by then, already signed the contract and lost money via overcharge, under-pricing and over inflated rent.

The PCA has a duty to go further than the HMRC EN226 by way of “**Fair** & Lawful Dealing”

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

Obviously POB's & Brewers should comply with EN226 as per P.6.4. However, for the TPT or especially the prospective TPT, notification of the volume of saleable beer should be the minimum standard, but it doesn't necessarily educate them. The TPT should be fully informed prior to purchase so that they can knowingly and knowledgably plan their business, account for all operational wastage and assess G.P's and price point accordingly. Compared with Free of Tie operators, TPT's are on incredibly tight margins. Without this info they are doomed to fail.

Transparency in Marketing, Roadshows, Advertising, Property Sales Particulars,, Wholesale Price Lists (pricelists should be published), and GP Calculators must be made clear to anyone contemplating or entering into negotiations with a POB to take a lease or tenancy. It is not sufficient to expect TPT's or prospective ones to join up complex legislation that has been withheld or shrouded in mystery.

Accountancy standards should be applied and extend to RIC's and the way that Estate Agents such as Mr Newby's former business Fleurets promote and advertise Pub's on behalf of POB's.

Currently Ei;

- a) Did not issue a sediment list to TPT's until Feb 2016 (even then, without announcement, and on their website). Implying that they didn't have the information previously. Having talked to various Brewers in the supply chain, I know this not to be true.
- b) Only supply a list for Core Products not SIBA.
- c) They claim the sediment has been accounted for in their 'Wholesale Pricelist', but how can they account for something they claim was "unknown" to them previously?
- d) Continue to under-estimate wastage and line cleaning considerably
- e) Still supply invoices based on container size only, despite EN226 information provided to them, and yet base flow-moinitoring fines on exact volumes.

- f) Insist that Ullage cannot be claimed under 7 gallons, which as far as I am aware is not a HMRC ruling but an implied term.
- g) Seem to apply a conscious conspiracy that the TPT is to blame and should somehow operate a degree of clairvoyance to guess how much beer they have been sold by the POB

With these issues in mind, the failure of the Code, its application, and current law, I do not believe the POB's should be allowed to be the arbiter of the information supplied to the TPT. Sediment info should be collated and verified independently. Either under investigation and publication by the PCA or by a published declaration list by HMRC. TPT's should have independent training as to what it means, not Pubco accredited or sponsored organisations such as BII, FLVA, ALMR, VIANET, Cask Marque, and SIBA.

As per Q.4 POB's cannot be trusted to be truthful in their handling of waste and sediment so it should either be taken away from them and independently verified, or calculated by a professional not influenced by the POB business model, particularly where waste is concerned and calibration of line cleans is necessary.

Due to the lack of power balance in the negotiation, for the purposes of valuation I consider that sediment should be considered at the highest point declared, and rounded down to the nearest pint. A remaining 0.16 of saleable beer cannot be legally sold, just as the chances of the last half pint is extremely unlikely to be ordered to coincide with the end of the barrel. And a pints worth of further allowance should be added to cover the denaturing of condition towards the end, customers returning beer out of condition or upon seeing the subsequent pint hit the end of the barrel. I.E if Greene King declare only 66.16 pints of saleable IPA the profit should only be counted against 65 pints.

I understand that SIBA will submit a belief that there should be a blanket 6% allowance but you can clearly see the above Greene King declaration is 8.11% sediment. With operation wastage such as tasters, returns, spillage, overfill, fobbing due to lively condition etc it would, in light of Greene Kings declaration, not be unfair to conclude the loss of one pint per gallon to the TPT. If an aggregate figure is used it should be weighted in favour of the TPT to prevent any further detriment.

N.B If as POBS claim, they did not know of the Brewers HMRC EN226 declarations, I believe it is safe to say that every "Liquified Damage Claim" they have levied at a TPT for breach of supply tie, from data figures collated to 2 decimal points by a so-called and national flow-monitoring company, were all potentially fraudulently presented. Something the PCA may wish to take up with Trading Standards and the National Measurement & Regulation Office.

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?

Lack of enforcement, POB litigation against your decision creating costly timewasting to protect their unlawful profiteering, and attempts to re-coup any losses elsewhere.

IFBB brewers may attempt (if they are not doing so already), to pass off heavily filtered, centrifuged beer, or bright beer (hardly any live yeast present), as cask conditioned ale in an attempt to recoup losses from this action. Constant and vigilante investigation will be required of the major producers.

Accounting for Waste

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

YES, it is essential.

I have commissioned extensive analysis of our line cleaning activities at [REDACTED] by an Independent Expert with PhD BA (Hons) CMath MIMA MIET or Fluid Dynamics Expert for short.

Based on [REDACTED] we have assumed a line clean on a cask percentage of sales mix of approximately [REDACTED] of turnover as opposed to our last years operational sales mix [REDACTED] of [REDACTED]. Assuming a widely accepted weekly clean on keg products, and an end of barrel clean on cask with associated wastage at disconnect and reconnect. Acknowledging the potential for error in the estimated losses on disconnect and reconnect, a provisional but conservative reduction of half a pint has been considered and applied to this estimate of losses.

Considering the frequency of barrel changes reflected in the [REDACTED] of draught turnover in the [REDACTED] the conclusion of this study are:

The value of losses incurred at [REDACTED] would be in the region of [REDACTED]

These losses **exceed** the estimated value of losses considered [REDACTED] for use in their rent calculations by [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Whereby [REDACTED] held the Chair [REDACTED] that set guidance on Pub Valuation whilst being [REDACTED] [REDACTED] I believe that these outcomes are not coincidental and the whole RICS conflict of interest policy and appointment processes within the TVRG needs

reviewing just as RICS valuations should be held to proper accountancy standards.

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?

As per above- and only with proper enforcement and investigation, and the fair and lawful dealing intention of the Pubs Code being upheld. Description of Containers instead of contents must stop, it's not allowed in any other area of the sector.

The MMC Report of 1989, 5 Select Committees, The MRO Consultation and subsequent Pubs Code debacle have repeatedly highlighted the same issues- an industry completely unwilling to change with unwieldy, contemptuous, callous and indifferent attitudes to both TPT's and Regulators.

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

The action needs to be backdated to the inception of the Code in July 2016 to now. All previous RAP's should be deemed invalid as untruthful and the damage to TPT's. All RAP's should be re-issued fully compliant with an explanation as to why the previous offer was inflated by the failure to truthfully account for sediment and wastage properly.

The PCA's egregiously sclerotic failure to act should not be to the TPT's detriment as they are the victims in this, not the POB's, and so an equitable approach should be taken, not one that balances the needs of the perpetrator.

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?

It is accepted by Gov't that the Tie was only allowed by the original EU block exemption on the grounds of countervailing benefits or SCORFA (Special Commercial or Financial Advantages), to offset to the tenant the higher price for

beer than in the normal open market. The rent or other SCORFA was supposed to be reduced to offset the eye watering beer prices.

As benchmarking by Christies & Co shows; this is clearly not the case as POB's have ensured via their RICS agents that tied rents have been higher than FOT rents for 5 consecutive years and yet in the OFT's response to the Vince Cable's MRO Consultation they stated SCORFA was only worth on average £1500. I would therefore suggest that none of those valuations cannot have possibly taken these issues into account, least of all the operational losses to the TPT's.

It is hopefully clear that there is massive reluctance by POB's to comply with any legislation to date, this will be no different. There is no justification for this behaviour to go unchecked and essential for the sector to thrive that they are forced to justify their profit share on the rents by accurate calculation and declaration of operational losses.

Continued misguiding of TPT's needs to be put under proper scrutiny by the PCA

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?

As above

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

As above

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?

Only if the PCA continues to disregard the campaigners and tenants that forced the Code and ergo their jobs into being.

Training and Support

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

Make it impartial, non sponsored and independent from POB's.

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

[REDACTED] I had no idea how nefarious the Tied sector is. The title of a BDM (Business Development Manager) is a total contradiction in terms inflicted upon TPT's by corrupt morons only interested in their own bonuses not the development of their TPT's.

Of those I have met they have no skills in business development, growth, or SWAT analysis. The understanding of the business needs of TPT's is negative. Aside from one or two that I have heard of who have honourably resigned and moved on, most are trained to encourage, seek and recruit for churn (turnover of naïve tenants).

As regards training, the whole culture would need to change and I do not believe that the POB's can afford to due to their poor debt leveraging decision making.

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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