



Pubs Code and Pubs Code Adjudicator: statutory review

Response form

The consultation is available at: www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review

The closing date for responses is 22 July 2019.

Please return completed forms to:

Pubs Code Review Team
Department for Business, Energy and Industrial Strategy
1st Floor, Orchard 3, 1 Victoria Street, London SW1H 0ET

Email: PCAreview@beis.gov.uk

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Please be aware that we intend to publish all responses to this consultation.

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Comments: [Click here to enter text.](#)

About You

Name: [Redacted]

Organisation (if applicable): Fair Pint Campaign and British Pub Confederation
[Redacted]

	Respondent type
X	Tied pub tenants
<input type="checkbox"/>	Non-tied tenants (please indicate, if you have previously been a tied tenant and when)
<input type="checkbox"/>	Pub-owning businesses with 500 or more tied pubs in England and Wales
<input type="checkbox"/>	Other pub owning businesses (please describe, including number of tied pubs in England and Wales)
X	Tenant representative group
<input type="checkbox"/>	Trade associations
<input type="checkbox"/>	Consumer group
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Consultant/adviser
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Surveyors
<input type="checkbox"/>	Other (please describe)

Questions

Part A: The Pubs Code

Question 1

How well do you think the Pubs Code has operated between 21 July 2016 and 31 March 2019? What evidence do you have to support your view?

Comments:

“That is what this is about, because the balance of power between Tenants and the large brewery companies is very much in favour of the latter. The Mulholland amendment was designed to change that.....However, the Government through their consultation paper, now appear to have sabotaged that.” Lord Whitty

Despite assurances from Baroness Neville Rolfe and Anna Soubrey, the Code itself was not delivered on time by the BEIS. It started late in July 2016, whereas it should have been in force by 26th March 2016 (s42 (1) SBEE Act 2015). This delay to the code was unlawful and many tenants were denied an opportunity to access their rights and damaged as a result, due to the statutory deadline being broken. By pushing it into the next Parliamentary year, this unlawful delay meant that the pubs code review was also pushed back to 2019 when a review could have happened a year earlier in 2018 if the code had been delivered within the time set by the primary legislation. [Redacted], so we can only assume that the unlawful delay was a deliberate act by the then Minister as no further legitimate reason was ever given.

Delay and cost to Tied Pub Tenants (TPT's) seem to have been a core feature to how the Code has been implemented. Indeed the PCA don't appear to have a policy to prevent it. While far from perfect the Code itself has been implemented by a highly ineffective Pubs Code Adjudicator Office who have themselves misled TPT's with incorrect interpretation of the Code in their advice notes, most notably in the [Redacted].

The Code was rushed out, and operators were not given the opportunity to test run it's effectiveness. The Minister explained that any teething problems could be easily fixed- if the code was ever found not to be delivering on the core principles, it could be changed at any time under (s47 SBEE Act 2015).

We were told that the Code itself was based on the Groceries Code, however TPT's experiences have been more akin to the failed self regulatory Code (IFC) that had dogged the industry prior [Redacted], –the IFC only dealt with low hanging fruit. It was the MRO amendment offering the opportunity for TPT's to sever their Tied Terms and only pay an independently assessed market rent that gave the only meaningful breakthrough. This should have seen the transfer of profit envisaged by the BEIS impact studies via the prime principle that the Tied Tenant should be no worse off than a Tenant free of all product and service ties. While this principle was affirmed in evidence to BISCOMM in 2009 [Redacted] to be the correct

RICS interpretation of valuation guidance, the PCA has denied its existence until this legislation came into force. He has therefore never conducted a Rent Review properly prior to his acceptance of this legislation.

Unfortunately the only real measurement tool to assess a proper MRO for the TPT's was the Parallel Rent Assessment (PRA) that was also deleted from the legislation by the Minister. This, together with lack of knowledge of its existence, over complex timings, complexity of wording of the Code, that affords the opportunity for contrary interpretations, together with the failure of the PCA to clarify issues and the lengthy delays in PCA arbitrations, MRO has been rendered out of reach to all but a select few, as evidenced by the low take up.

Our personal situation has mirrored that of many TPT's. The PCA has chosen to arbitrate rather than adjudicate, thus creating no meaningful memory or "golden threads." The PCA office has claimed to TPT representatives that the Code affords them little by way of Adjudication powers, something that the former minister, Richard Harrington denied in the industry round table meeting of 2018.

From our experience, that of other TPT's and those evidenced in published awards it seems that the cost and delays (contrary to CiArb Rules and the Arbitration Act), are beating tenants into accepting "consent" awards rather than true MRO as defined by the original overarching principles.

But perhaps most tellingly many TPT's have not only been damaged by the lengthy delays and obfuscation at the hands of both Pub Owning Businesses and the cumbersome and sclerotic PCA, the PCA has failed to even address the many issues that after 3 years still dog the industry today. The issues raised in the PCA's own MRO Verification Report.

To date the PCA has not conducted any investigations despite having numerous reports of unfair and unlawful business practices issued to them, by the Forum For Private Business, Pubs Advisory Service, members of Fair Pint Campaign and other TPT's. The PCA has handed back all investigation budgets to the sum of ca £900,000.

Question 2

To what extent do you think the Pubs Code is consistent with the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants? What evidence do you have to support your view?

Comments: I would say that the core principles are not being upheld or enforced. When choosing to arbitrate on a case by case basis rather than adjudicate they are not creating any memory or "golden threads." They've seen the same issues time and time again but fail to close down POB's repeatedly using the same tactics to thwart TPT's exercising access to MRO.

This is evidenced in Q1, by the lack of action against repeat offences raised in the MRO Verification Report, and recorded in Code Compliance meetings such as failure to supply full and transparent Schedule 2 information for RAP's, evidence included in the Duty Sediment Consultation, and of course published awards.

The DPCA has admitted that the TPT's are in a much weaker negotiating position than a POB and yet expects the TPT to provide evidence that they cannot access or have limited access to, rather than the PCA demanding its disclosure from POB's. This is clearly evident in the issue relating to refusal by all POB's to grant a simple Deed of Variation (DoV) severing tied related terms, rather than allowing them to inflict a lengthy, costly new agreement on the TPT (with many onerous, hitherto unnecessary terms), based on the claim that it is common and reasonable for them to do so.

As my colleague, [Redacted] says, they may be common terms but Government created this law because all POB terms are unfair, that is why we have the Code.

A TPT will struggle to access examples of DoV. [Redacted] for instance claim not to have knowledge of [Redacted] DoV agreements for example, citing un-friendly relations.

[Redacted]

If the PCA had bothered to scratch below the surface and use adjudication rather than arbitration am sure that they could have unearthed plenty of evidence of DoV's severing tied terms.

[Redacted] claim they wish to have standardised agreements, when there are no such thing in commercial agreements. [Redacted] currently operate around 20 different Tied agreements. Its so-called MRO/Free of Tie agreements are far from standardised. Every one that we've seen so far has been "varied" in some way. They're own sale and leaseback leases vary significantly from those they seek to impose on their TPT's

In referrals where this is the main issue, a default position of DoV severing Tied Terms should be granted to the TPT. This will prohibit the use of new agreements being used by POB's as a block to MRO, virtually clear the backlog of referrals to the PCA, and alleviate prohibitive costs to the TPT.

In our case, a DoV issued through to completion would likely have taken a couple of months. Arguing the point through arbitration and new contract negotiation has taken nearly 3 years at considerable loss that we cannot currently retrieve.

Where domestic Landlord & Tenant Act protection is greater than Commercial L&T it is the same with Unfair Contract Terms Unfair (UCT). Much outrage has been expressed in Parliament at inflated domestic service charges and ground rents. It has been cited as a national outrage, a scam! Why is it that the PCA appears to consider small businesses are fair game?

The SBEE Act 2015 and Pubs Code 2016 put into place legal statutory instruments which Government claim were 'designed' to be consistent with the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants.

Following this to its logical conclusion, this should effectively mean the controls imposed by Unfair Contract Terms (UCT) legislation should also apply to all agreements between POB's and TPT's.

Whereas the PCA's apparent difficulty in defining the "fair dealing" principle has been oddly quite clear, adding UCT's to the legislation would render many of the reoccurring issues of commonality featured in most referrals redundant.

POB's already have a universal right in tied agreements to sever the tied terms (including for statutory intervention), with an immediate rent review to market rental value at any time. This is often conducted by way of a simple DoV or side letter, which is both cost and time efficient to prepare. This clause is a right to cancel the tie or vary its terms that is not shared by the TPT. It should be an equal right for both parties.

Question 3

To what extent do you think the Pubs Code is consistent with the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie. What evidence do you have to support your view?

Comments:

"I suspected that the Act, as the overarching 'heads of terms,' accepted by all sides of the House, would be followed, but this consultation follows nothing like it in how it deals with conditions on the Market Rent Only option and the parallel rent assessment- all this has changed.....This is wrong. It is not unfair to say we expected better." Lord Mendelsohn

The PCA and all four Ministers for the portfolio have repeatedly stated that TPT's are better off. But where is the measure? There isn't one. It doesn't exist and even if it did, it was not the original overarching principle to be slightly better off.

It was supposed to be as mentioned in Q2, "Tied Tenant no worse off than if they were free of all product and service ties" or Tied Tenant No Worse Off as it is commonly called (TTNWO). The only truly workable measure of this was the deleted PRA. Although we have seen from the evidence to the Duty Sediment Consultation and published awards how the POB's are blatantly misleading TPT's in figures calculated in RAP's, if PRA were to be re-introduced it would have to be insisted upon that they were prepared in accordance with Accountancy Standards and failure to do so would attract an immediate fine.

Contrary to Baroness Neville-Rolfe's doubtable assertion that PRA would cost POB's in the region of £600,000 to prepare (a small sum when considering the 6 regulated POB's collective turnover), a side by side PRA showing Tied Tenant No Worse Off GP vs Free of Tie Tenant GP and its impact on profit share via the Divisible Balance applying the

principles of Brooker vs Unique, is easily achieved on a simple spreadsheet calculator, taking minutes to prepare. This was supported in the BEIS impact studies.

Baroness- Neville Rolfe also confirmed to the Lords in consultation

“However, if experience of the Pubs Code in action produces evidence that the introduction of the PRA provisions would be a useful addition to the options available to tenants, this is something that the Government can of course reconsider. The point has been made. It is in the legislation.”

What we have instead is a swap of unfair Tied deals for unfair, non-prudent and compulsive free of tie horse-trades, the cost and delay in achieving negates any benefit of the intended profit transfer, if indeed there is one.

Question 4

What, if anything, do you think needs to change to make the Pubs Code operate more effectively and/or better support the principles?

Comments:

“I can assure the Committee that the Government are committed to making the market rent only provision workable and legally robust. That is why we have brought forward these amendments, which are needed to ensure that the benefit to pub tenants can be achieved.” Baroness Neville-Rolfe.

The Code needs simplifying and as per CiArb Arbitration Act a policy to prevent cost and delay to both parties should be forced upon the PCA with governance by CiArb.

PRA should be re-instated into the Code.

Equal contract terms and UCT's should be applied.

Deed of Variation as described previously, as default for TPT with MRO on demand

Sections 43(3) & (5) of the SBEE Act enables the secondary legislation (the Code) to effectively define how MRO is to be delivered. There appears to be no section within the Act restraining the Code from containing Regulations allowing TPT's similar rights to POB's existing contractual rights to terminate tied terms.

Simple rights such as those outlined above were proposed during the original consultation but were considered inappropriate at that time as it was thought they would open a flood gate of MRO applications that neither the POB's or PCA would be able to handle.

The reality is that they haven't handled what they received and the numbers that have achieved FOT status (not true MRO), is under 2% of the possible 7500 trigger events that could have occurred to date.

If a Deed of Variation or side letter were issued to the existing lease's the PCA's involvement would diminish considerably. It would even be simpler for POB's than the

expensive litigation that surrounds every attempt to thwart a tenant achieving their rights. Such a DoV would enable a TPT to assess more easily whether they are indeed no worse off than being free of product and service ties, thus potentially delivering the 'no worse off' principle.

The flawed PCA and DPCA appointments need to be reopened. Ideally a panel set up with 3 superior legal professionals, with extensive contract law experience, all members of the Bar, and members of CiArb (unlike Ms Dickie who I believe is a non-member with Alternative Dispute Resolution training).

Where the above perceived conflicts continue the TPT should be allowed to take the dispute to County Court if he/she feels the PCA Office are not acting in good faith.

In light of the Duty paid sediment consultation the de minimus of only companies with over 500 being covered by the Code should be removed to include all POB's operating the tied model, otherwise only the Big 6 regulated companies will be required to cease this [Redacted] and damaging behaviour.

Also in support of removing the de minimus limit is the continued and controversial use of the "Fifty Shades of Grey torture implements" of Brulines reports and cellar inspections that continue among the non-regulated companies. This equipment is not prescribed and is well documented as not fit for purpose.

Thought should also be given to the diversification of market share. It would be disastrous for consumers and micro-brewers alike for the UK Pub and licensed bar scene if it all became managed house ownership, with no flamboyant and independent operators working under a Free of tie tenanted model.

RICS surveyors should be monitored on their implementation of the TTNWO principle of RICS guidance. All awards should be published with only sensitive data redacted.

Loss of profits due to unreasonable delay should have a suitable remedy with the ability for restrospective claims

Part B: The Pubs Code Adjudicator

Question 5

How effective do you think the Pubs Code Adjudicator has been between 2 May 2016 to 31 March 2019 in enforcing the Pubs Code?

Don't you mean 21st July 2016?

Please comment in particular on:

a) Whether the PCA has sufficient and proper powers to enforce the Code effectively.

Comments:

Yes they do, but they repeatedly refuse to use them. In particular s47 of SBEE Act 2015 and s40 of the Enterprise Act 2016.

It would also appear that they are unable to do the job as they seem to lack the required skill set which under arbitration has been the requirement for drafting of legal contracts. Mr Newby being a valuer not a contracts lawyer.

The apparent ineptitude as mentioned previously with regard to Advice Notes is of considerable concern.

For all of the aforementioned reasons in Q.4 they're powers should be extended

b) How effective the PCA has been in exercising his powers. What has been done well and what do you think could be done differently.

Comments:

[Redacted]

The PCA has made "fence sitting" an art form. The lack of clarity arising from the office is highlighted in the drawn out, long-winded generality of their responses to enquiries.

As previously stated, no investigations and no fines plus egregiously slow arbitration with no memory, are equally pretty dire. The issue of whether MRO could be delivered by DoV or new agreement went un-confirmed for far too long, and gifted the POB's plenty of time to game the Code via extra cost pressures on TPT's and a further opportunity to gerrymander open market FOT rents to support their attempts to add the loss of the wet rent from the tie to dry rent.

In itself these delays, often caused by the PCA, seem to be a direct breach with the Arbitration Act 1996 s33(1)(b), which requires an arbitrator to avoid unnecessary cost and delay to the parties in arbitration. As did the PCA's silence on Article 34 of the CiArb Rules preventing POB's from appealing the arbitration award (they had hitherto agreed to be bound by), to the High Court, as was attempted twice [Redacted].

The PCA have powers to investigate. Issues have been reported from the beginning of the Codes inception but apparently none acted upon,

- Incorrect [Redacted] use of Dilapidations,
- POB behaviour on MRO proposals,
- POB attempts to circumvent MRO by effectively 'trapping' TPT's into agreeing a tied rent (contrary to the withdrawn advice note).

- POB's threatening third party referral of tied rents increasing intimidation and threatening unnecessary costs upon the TPT.
- None have been investigated. We do consider increased powers should be available to the PCA however an effective and efficient PCA is needed to enforce them.
- I witnessed Mr Newby confirm my colleague [Redacted] interpretation of the Statutory Cap on dilapidations at a meeting in May 2017. With 30 years in the industry I find it hard to believe he has no knowledge of how this is used incorrectly and unilaterally against existing and departing tenants. He agreed to set up a working party to investigate but has instead set up a working group (talking shop). His granting of the Dilapidations working party to the POB's secretariat the BBPA [Redacted]

The pretty Flow charts were good, until found to be incorrect.

c) How effective the PCA has been in enforcing the Code. In particular, how effective has the PCA been in undertaking the following:

- **giving advice and guidance;**
As above, too general and too slow. POB's have total disregard for the PCA advice as they have no fear of being fined or reprimanded. The recent misleading Advice Note withdrawal as per [Redacted] has financially damaged tenants demonstrably
- **investigating non-compliance with the Code;**
I'm not aware that the PCA has either found or investigated any non-compliance. The only example I'm aware of was for issuing non-compliant MRO agreements which were decided not to be a standalone breach. It seems the PCA's bar for evidence is too high.
My partner and I personally reported the Duty Sediment issue to Mr Newby at a Trade Show and he led us to believe that he was reviewing it. I later found out from colleagues at Punch Taverns Network that he had already told them it was not a Code Breach. After two years it was eventually placed under consultation but not investigation, virtually letting the POB's off the hook. About this time, Margot James MP, successor to Soubrey, stated in a debate in the Commons that she had been to Mr Newby's Office and "There are clearly instances of flouting the code going on and members are quite right to bring them forward. They are what the code is designed to root out" Quite!
<https://protzonbeer.co.uk/news/2017/01/29/minister-pubcos-are-flouting-the-code>
[Redacted] was then announced to the trade with great fan fare and optimism only to discover that [Redacted], and all the evidence supplied by TPT

representatives seemingly left to gather dust, un-resolved, un-investigated, as far as we are aware.

Having not spent the investigations budgets between July 2016 and March 2018 the subsequent budget was inexplicably doubled to £600,000. It is not known as yet how much of this has or will be spent as the PCA have only just announced an investigation into Heineken's stocking policy, an issue that again has been live in arbitration for some time prior. But to April of this year £800,000 of these investigation budgets has been handed back unspent.

Many of the issues raised in the MRO Verification Report remain an issue for TPT's.

where non-compliance is found, requiring publication of information, imposing financial penalties or making enforceable recommendations; and

The consultation into Duty Sediment Wastage was good but it should have been an investigation. So far POB's have continued to ignore the PCA's recommendations without fear of consequence, they continue to breach these recommendations as we reply to the review.

- **arbitrating disputes under the Code.**

Arbitration under the PCA is largely considered by many now to be a waste of time and money. Due to the cost of delay being significant, the outcome's poor. Many TPT's are settling for a horse traded tied deal as the MRO deals on offer from POB's have little or no value due to the lack of "Profit Transfer" as intended by the will of the House.

[Redacted]

It is no small irony that Kelly Tolhurst as part of former MP Iain Wright's Select Committee recommended to the SoS that the PCA appointment be re-opened and Mr Newby removed. I'm not aware of Ms Tolhurst's registering her dissent from that position.

Question 6

Do you think the regulations relating to costs, fees and financial penalties should be amended? If so, how and why?

Comments:

We are at this point due to the well documented and abusive behaviour set out in 4 Select Committees since 2004, and one of the most evidenced public consultations in living memory. Indeed investigations of unfair business practises in the sector resulted in the Beer Orders of 1989, and yet the PCA appear to be oblivious to all this history. The position is arguably worse today that it was in 2013.

Because of this I do believe that the POB's should pick up all the fees to prevent and discourage them from forcing a tenant into any delay in exercising their rights.

POB's have no fear of penalty as they have not been found guilty as yet of any wrongdoing by a seemingly blind PCA. Until this happens POB's behaviour will not change.

Unlike the Groceries Code where the Supermarkets allegedly see value in operating a better working relationship with their suppliers, POB's see no value in better relationships with their TPT's otherwise all the well documented, repeat offending behaviour, would have largely stopped. Instead it is as unfettered as before, if not worse.

Part C: Pubs Code Regulations

Question 7

There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016¹ and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016².

You may have commented on some of these provisions in response to questions in parts A and B of this consultation³, but please provide any additional views on the regulations. If you think changes are needed to the regulations, please explain why and how you think they should be changed.

Comments: As above

¹ <https://www.legislation.gov.uk/uksi/2016/790/contents/made>

² <https://www.legislation.gov.uk/uksi/2016/802/contents/made>

³ Some elements of the Regulations are covered by review provisions in the SBEE Act 2015, for example, Parts 2 to 10 of the Pubs Code etc Regulations 2016 make up the Pubs Code and must be reviewed under s.46 review provision in the SBEE Act. The review of the Adjudicator set out in s.65 of the SBEE Act states that the review may consider whether it would be desirable to amend regulations about costs, fees and financial penalties.

Part D: Impact Assessment and other information

Question 8

The review will consider the key assumptions made in the Impact Assessments⁴ which were published alongside the legislation and regulations. This will include wider impacts, non-monetised impacts or unintended consequences of the changes made. Specifically, we plan to consider any related impact on:

costs to businesses and potential pub closures;

The tenant bears the full cost by virtue of delay to accessing a free of tie deal. It will be comparatively greater for a TPT than the relatively huge resources available to POB's. In our case, three years loss of any profit transfer. POB's will have no doubt invested considerably in attempting to thwart or game the Code but this is just a defensive position which will be more that recovered from preventing TPT's taking MRO. All POB's will have adopted measures to limit MRO take up by making it as painful as possible for the tenants. Refusing to renew leases and serving S25 notices for owner occupation, issuing shorter leases or ramping up the behaviour that led to the Pubs Code's inception. There will still be pub closures due to the POB's insistence on maintaining a truly anachronistic and damaging cartel that will drive TPT's head long into insolvency assisted by a truly pathetic PCA.

[Redacted] Price list increases from 2009 to 2019 show an exponential increase in Tied prices above RPI for the same period. Whereas comparative prices in the Free Trade have stayed below RPI increases. This serves to show two blatant issues with the model.

1, Tied prices are not sustainable for the TPT and there will always come a point where costs will outweigh any sales profit uplift as they are selling on Duty to the tenant at twice the rate of increase, this is called Duty Exclusive Margin Maintenance

2, Brewery owned POB's are cross subsidising their FOT customers via their Tied Estates and therefore the FOT houses will be able to use a Tied House price point as their benchmark, and charge a little more for being able to invest and present their businesses with better amenity. Not exactly good for consumers.

redistribution of income from pub companies to tenants;

This was a core tenet of both the Code and all the impact studies. The fact that we have no measure of it or access to info, lies squarely with the deletion of PRA and the PCA who have not bothered to conduct an investigation into the numbers. One might be forgiven for thinking this was pretty fundamental stuff [Redacted]

⁴ <https://www.parliament.uk/documents/impact-assessments/IA15-002.pdf>
<https://www.legislation.gov.uk/ukdsi/2016/9780111146330/impacts>
<https://www.legislation.gov.uk/ukdsi/2016/9780111146323/impacts>

changes in industry structure or ownership status; and

Again, the PCA needs to be monitoring the industry more closely and observing who is buying who, and what supply agreements they have otherwise we could see the **Big 6** simply supplying the tied pubs they once owned by proxy i.e. under a new pub company who holds less than 500 pubs. The situation seems inevitable therefore we propose that the limit of 500 is removed.

Following [Redacted], ghosts of the past seem to be circling. At the outset it looks and smells just like the behaviour in 1989 after the Beer Orders. In those days it was [Redacted] and [Redacted] that controlled the game (Monopoly, as recognised by the MCC), the estates were all swapped into new vehicles of the day i.e Private Equity driven outfits, often with the same board members transferring over- think [Redacted]. The new boys became [Redacted] and [Redacted] and now it looks like those that will carry the baby will be [Redacted] and [Redacted].

The name of the game is the "Beer Tie" and the structure of ownership has to remain the same- a handful of companies who will maintain the restriction of routes to market for the Independent Family Brewers, in exchange for big discounts that they do not pass on to tenants. You only have to look at SIBA's market share staying static at 6.8% for 5 years to spot that one- but the CMA can't.

Pubco pubs are rarely sold to people who want to create a thriving pub business. Indeed most Pubco's have sought at one time or another to issue restrictive covenants to the sale to prevent this, it doesn't do to have Freeholders prove the Tied model doesn't work! I envisage that [Redacted] will restructure the estate, keeping the best for managed, selling the medium sized to another group or retain in a shell Hedge with all liability in the UK making it trade insolvent, while declaring "advisory fees" in the Caymans. This is now a popular scheme elsewhere but most notably brought into play with [Redacted] for a truly ridiculous and seemingly artificially inflated cap ex valuation. The rump of the estate will likely be sold for change of use.

[Redacted] figures, are really not to be trusted as has recently been highlighted by the Mayor of London's night-time economy survey and other ONS statistics showing how the [Redacted] include hotels and restaurants in their Pub statistics.

Without proper intervention as originally intended, POB's will continue to churn TPT's and close pubs for re-development and change of use such as [Redacted], Supermarkets etc. All because the Licensing market was opened up to anyone in 2003 but half the nations pubs were restricted to limited trade conditions vs truly open market competition via new entrants.

- **wider industry trends such as employment and investment.**

The PCA should also be monitoring all potential Code avoidance models and seeking affirmatory legal advice that is independent of Government and can be published. This should include but not be limited to:

- s25 Notices where owner occupation is in fact a joint venture with an existing but alternative TPT to the outgoing TPT. Whereby the POB enters into a Ltd company with a 51% stake and no actual day to day running or occupation of the business.
- self employed contractor/manager on percentage of turnover models, whereby the self employed contractor is by way of continual payment including during holidays, is in fact a manager, and with no other contract with other parties is by HMRC definition a self employed contractor
- TAW's who have been operating for over 12 months and any one with a franchise e.g. when the POB is no longer members of the British Franchising Association.

We welcome any evidence to support the analysis of these areas, or if there are any other elements of the Impact Assessments you think we should consider revisiting as part of this review.

Comments:

Why have there not been any follow up to the impact studies with assessment by the PCA?

Part E: Other comments

Question 9

Please add any points that you feel you have not been able to make in response to the earlier questions.

Comments:

In conclusion the operation of the Code & PCA has been so unhelpful, unwieldy and so apparently deliberately unworkable/unachievable for tenants that TPT's could be forgiven for thinking that [Redacted]. Unofficial policy seems to be something alluded to by Lord Whitty;

"The fact of the matter is that she (Baroness Neville-Rolfe), has clearly admitted that there has been a change of policy. As far as I can see from her responses to the various questions from my colleagues, that change of policy was not conveyed to the participants in this industry. In effect it changes the legislation, which certainly was not communicated to us the legislators"

It was envisaged by cross party amendment that the Code would provide a cheap resolution service that would ensure a transfer of profit and therefore a balance of the risk and reward between the two parties involved in tenanted agreements. What we got was expensive by both delay and unnecessary legal fees.

[Redacted].

- i) amend the MRO definition to make it clear that the tenant has a right to pay an independently assessed market rent, and only that rent, to the pubco; and
- ii) state that a Deed of Variation must be the default position in MRO cases (rather than brand new tenancy agreements being demanded) with the only changes being the severing of tied terms and rent being independently assessed.

MRO should be given on demand - product ties to be severed via a deed of variation to the existing tied agreement - coupled with the right to an open market rent review with a FOT rent supplied by the POB by a Parallel Rent Assessment to accepted accountancy standards.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

[Click here to enter text.](#)