

Punch Tenant Network

From: Punch Tenant Network <[Redacted]> 31 August 2016 23:40
Sent: 'Pubs Code Adjudicator Office'
To: RE: Beer duty - Schedule 2, paragraph 5(c).
Subject:

Thank you [Redacted]

I have noted that you have accessed the archive.

Be aware that I am no longer monitoring your access to the archive so you can do what you will with the content. The matter is very serious from a tied tenant perspective and every day tenants are suffering as a result of these abuses.

The PCA has been created to deal with this kind of thing and his existence has been made possible at considerable cost to tied tenants we all are hoping he will deliver, but fearing he will not.

We are agnostic but very sensitive to what he does, as you will expect.

Regards

[Redacted] Punch Tenant Network

From: Pubs Code Adjudicator Office [mailto:[Redacted]]
Sent: 31 August 2016 13:54
To: Punch Tenant Network <[Redacted]>
Subject: Beer duty - Schedule 2, paragraph 5(c).

Dear [Redacted]

Thank you for your emails of 24 August at 16:20 and 16:23.

We acknowledge receipt of your file. It is currently be reviewed and we will contact you again in due course.

Yours sincerely

[Redacted]

From: Punch Tenant Network [[mailto:\[Redacted\]](mailto:[Redacted])]
Sent: 24 August 2016 16:20
To: Pubs Code Adjudicator Office
Subject: RE: Undrinkable Ale

Dear [Redacted]

I am concerned that the PCA office seems to have no knowledge of the history and rationale behind the necessity that the PCA Office exists. Surely it is not your view that you have a totally blank page and everything must be created from fresh?

In the specific Case of Schedule 2 5c. This is not a matter that can be discussed on a bilateral basis it is wholly on the

plate of the PCA for him to deal with personally and for the benefit of the whole industry. This is nothing to do with "Particular circumstance" it is wholly a matter of abusive industry practise which must be dealt with.

This has been a particular investigation project undertaken by me as coordinator of the Punch Tenant Network - this specific matter has been researched in detail and discussed, in detail, with the heads of policy at HMRC and with Trading Standards both of which bodies agree that what has been going on over the past decades [Redacted]

As soon as the matter was discovered The Punch Tenant Network made two submissions at the committee stage of the bill enacting the PCA before the MRO debate – the context of the submissions was to point out the absolute necessity for a body such as the PCA to investigate and deal with matters of this nature as they are widespread in the industry, have particular significance to Tied tenants in making them worse off than free of tie and also have aspects of unlawfulness, [Redacted]

It was also felt important to highlight the requirement for an independent and externally audited methodology in rent assessment rather than "leaving it to the RICS experts" which was the RICS position.

You can read the submissions here.

<http://www.publications.parliament.uk/pa/cm201415/cmpublic/smallbusiness/memo/sb48.htm>

<http://www.publications.parliament.uk/pa/cm201415/cmpublic/smallbusiness/memo/sb73.htm>

There is no doubt in anyone's mind [Redacted] The implications for Free of Tie trade are less significant because prices are negotiable, margins are much higher and there is a good deal of free product exchange when things go wrong with cask ale, but in the tied trade the implications are devastating, potentially costing a tied tenant thousands of pounds each year in wasted beer, incorrect pricing, rejected ullage claims and over-renting, all in a wholly undetectable way.

[Redacted]

In discussion with the various government departments we found that the only way to address this matter cost effectively has been for schedule 2 5c to be inserted in the code, this was done at the behest of HMRC, and the code and regulations gives the necessary power, focus, mandate and obligation to the PCA to ensure that POB's both obey the law and do not continue to exploit their contractual asymmetry in this area. It is seen as a matter for the PCA to deal with as he is wholly responsible for the implementation of the code in the tied sector and where these failures do the most damage to tied tenant profitability making them significantly worse off than free of tie. It is therefore highly targeted, focused and proportionate.

The requirement for POBs to provide this 2 5c information in their rent assessments is aimed at eliminating their penchant for assessing rent and profit on cask ale at 72 pints per firkin and this has significant implications for their pricing strategies and for their rent assessments, tenant training, professional advice etc...

It was even more concerning that in our investigations we have found 100% understanding of these points among brewers concerned with the interface with HMRC and beer duty and 0% understanding of the implication of these points among POBs and their management and indeed the RICS surveyors "professionals" who hold themselves out

as advisers to Pub Tenants. The Industry bodies who have participated in the “Self-regulatory” system such as the supposed tenants representatives [Redacted] were all demonstrably ignorant of this issue and indeed were promoting the PEAT course for incoming tenants which is blind to the matter but presented financial information which guaranteed that a tenant would inevitably achieve a profit £4000 lower than indicated in their training course. Hence we are interested in how the PCA is monitoring and accrediting the training material being used by POBs and training bodies.

Some progress has been made with the BBPA including the removal of reference in EN226 to a Code of Practice on Large Pubs which simply did not exist.

The usual response is that this is dealt with in “wastage” which is patently and arithmetically not the case.

It is especially frustrating that it has taken 22 MONTHS to get to this point and the PCA appears now to be refusing to do anything until he has consulted on matters which are patently obvious to everyone including lay politicians, lawyers and ordinary citizens.

This is partially why some in the trade were taken aback by the particular choice of adjudicator as it is his professional body which has signally failed to recognise and deal with this issue hitherto and which is insisting that their special expertise, which is blind to this matter, is required to be brought to bear on it.

Whichever way the PCA deals with the problem now he will be in an awkward position as he must either agree that his expertise to date has totally failed to register this issue for tied tenants and he must agree that he was wrong and also blindsided along with all his professional colleagues - which will unleash huge potential liability and professional indemnity issues of compensation for tenants both tied and free of tie. This would however go some way towards indicating that he really has “thrown his hat away and now has a new hat”.

Alternatively, he will try to bring people together and arbitrate an escape for POBs and professional advisers from the implications of this abuse which has been visited on tied tenants for decades. I imagine he will initially rely on his blindness to anything that has happened prior to his formal existence, but given that the offences continue unmitigated with every cask delivered to every tied pub every week and every rent assessment that are now being delivered to tenants without compliance it is now very firmly in his domain to deal with – everyone is waiting to see what he does about it. [Redacted]

Meanwhile every tied tenant in the country is potentially over rented, being charged too much of cask ale and the Brewery POBs are refusing even to obey the existing regulations, never mind the new law, presumably they are hoping that HMRC will not enforce on them and make them pay all the duty that they have underpaid HMRC are looking to the PCA to mitigate their embarrassment. The Non-brewery POBs are caught in a dilemma of saying

(a) they knew about this and it is “Factored in” to their pricing which seems to be [Redacted] position though how it can be factored in to their online calculator which is hardwired to 72 pints is hard to figure but making changes [Redacted]

(b) Alternatively a POB might argue that they didn’t know about this and it is all the brewers fault which seems to be the [Redacted] position - either way they both have horrible difficulties which can only be resolved by a reduction in price of cask ale to existing tenants and a compensatory rebate of overcharged rent.

As it is nobody is doing anything much waiting to see how the PCA deals with it.

The PCA is required to ensure the code is implemented.

In none of the assessments we have seen to date is the full requirements of schedule 2 being met and specifically in the case of 5c. This has been reported to the PCA.

We are advised in writing by a POB that they do not intend to provide 2 5c and that they have informed the PCA of this.

This is an offence under the code and must be dealt with firmly.

I will by subsequent email provide access to all the briefing papers and other evidence on what we have called the "Schrodinger project" and will do so by sending you a link to the Jumpshare archive containing the evidence we have amassed in support of the project, our BIS submissions and to Trading Standards and HMRC and Treasury. [Redacted]

Be advised that this link will document whether or not you access this information, so whatever you do with it will tell its own story and do not come back to me with "IT" rules not allowing you to access external archives – it has not caused a problem for any other government department so far.

I look forward to observing how you deal with this matter but please do not expect me to come to a meeting to "discuss the level of information the PCA would find helpful to have in order to consider what action it may be appropriate to take." This archive contains all the information he needs to decide IF there is a problem and how damaging it is, and I look forward to hearing what he is proposing to do about it.

If you need any more information or guidance through the archive then one might consider engaging in a consultative capacity, if acceptable terms of reference can be agreed.

You may not regard this as a response to your consultation as you propose to publish all responses, and I do not want this research published as it has been amassed at significant cost of time and trouble and no little treasure considering the complete lack of resources available to us. However, you must regard this as Input in support of the PCA establishing an investigation.

Best Regards

[Redacted] Punch Tenant Network

From: Pubs Code Adjudicator Office [[mailto:\[Redacted\]](mailto:[Redacted])]
Sent: 23 August 2016 12:08
To: Punch Tenant Network <[\[Redacted\]](mailto:[Redacted])>
Subject: RE: Undrinkable Ale

Dear [Redacted]

Thank you for your email from of 18 August at 20.09 hrs.

The PCA has regulatory powers which it will deploy as appropriate. In relation to its statutory powers on investigations and enforcement, the exercise of its powers will be in a manner consistent with its statutory guidance once published. The consultation on that guidance has now been launched and we hope you will respond to it. However, the PCA will always expect parties to continue discussions to resolve a dispute even after any formal arbitration proceedings may have been commenced.

We are concerned to hear that schedule 2 information may not be being provided to tenants. However we do need to understand in more detail the nature of the information that appears to be missing and the approach the relevant pub companies are taking in the particular context. Clearly the more detailed the information, the easier it will be to establish whether there may have been a breach in the particular circumstance. We would like to meet with you and discuss the level of information the PCA would find helpful to have in order to consider what action it

may be appropriate to take. Please do get in touch with dates that you would be free to meet in order to discuss further.

Yours sincerely

[Redacted]

From: Punch Tenant Network [[mailto:\[Redacted\]](mailto:[Redacted])]

Sent: 18 August 2016 20:09

To: Pubs Code Adjudicator Office

Subject: RE: Undrinkable Ale

Dear [Redacted]

I am delighted that the PCA is going to implement the Code as now in force – we would expect nothing less.

I am also very well aware of how the code came to be enacted as this outcome was something on which I and my colleagues have expended an enormous amount of time and treasure over more than a decade. Much of that time was spent educating both BIS and Parliament on what needed to be in the Code which now needs to be implemented exactly as enacted.

Your notion that you expect Pub Companies and other bodies on all sides to discuss this amongst themselves and resolve issues is surprising and worryingly naïve. If this had been remotely possible at any stage in the past decade we would not have had any need for regulation or a PCA.

That it is not possible is a reflection of the massive imbalances in this industry which the has led to the creation of the PCA. We have had numerous “last chance saloon” self-regulatory attempts to “to resolve issues acceptable to all” and these have all failed because the Pub Owning Companies simply have no intention of “resolving these issues” but would rather drag feet and delay and obfuscate for as long as possible and this well practised approach seems to be continuing despite the implementation of the Code. Continuing previous bad habits learned before the installation of the PCA should not be encouraged.

I understand that the PCA is already in receipt of what you call “substantive information” from tenants to the effect that they have not received anything remotely resembling the information required in schedule 2 and in particular 5c.

I am also advised by the PubCo involved that they have informed the PCA that they have no intention of supplying the information because it is “difficult”.

As I see it there is a need for the PCA office to reiterate to all Pub Owning Bodies that failure to provide complete information as set out in schedule 2 will be an offence against the Pubs Code and the adjudicator has certain obligations to fine those companies a proportion of turnover if and when (and every time) these offences are committed. I am sure it is in order, if not necessary, to issue such general guidance immediately as the Minister made it very clear that there was to be no transitional arrangement or backsliding and the whole code is effective as of day one.

It would also concentrate minds a little as a 1% of turnover fine per infraction might seem sustainable but after 20 or 30 instances as we seem to have already on file it might begin to smart a bit if the PCA is intent on exercising his powers, as you say he is.

I look forward to hearing by means of a communication that gives some evidence that the matter has been given some thought, rather than an anodyne generic brush off (including the exact same grammatical errors) that you have sent to others concerned in this and other matters concerning PoBs failure to comply with the code.

I would like to hear that the PCA has made this point clear to the Pub Owning Companies who might not have

noticed that these are statutory rules that must be observed and not doing so because of “difficulties” is not an option.

Best regards

[Redacted] Punch Tenant Network

From: Pubs Code Adjudicator Office [[mailto:\[Redacted\]](mailto:[Redacted])]

Sent: 18 August 2016 14:10

To: Punch Tenant Network <[\[Redacted\]](mailto:[Redacted])>

Subject: RE: Undrinkable Ale

Dear [Redacted]

Thank you for your email.

The content of the Code was consulted upon by the Department for Business and approved by Parliament. The PCA’s role is to implement the Code as now in force.

At this point the PCA does not intend to interpret the Code in a manner that might have the effect of restricting the rights of tied tenant’s in relation to any part of the Code. This would include the nature of the information to be supplied in relation to a rent proposal or a rent assessment proposal, generally and in relation to the particular matter you raise.

In the first instance we would expect the pub companies to be discussion particular arrangements with their tenants, tenant bodies, and amongst themselves, to resolve issues acceptable to all and to ensure that the Code is respected and complied with by those covered by the Code.

The PCA would welcome receipt of substantive information relating to potential breaches of the Code by one or more pub-owning businesses so that the PCA can consider what, if any, action it may be appropriate to take over and above any referral for arbitration that may be made.

Yours sincerely

[Redacted]

From: Punch Tenant Network [[\[Redacted\]](mailto:[Redacted])]

Sent: 17 August 2016 16:48

To: Pubs Code Adjudicator Office

Subject: Undrinkable Ale

Dear Pubs Code Adjudicator

I am becoming increasingly concerned that many of the Companies subject to the Pubs code are struggling to produce all of the information required by the regulations.

Of particular concern to the Punch Tenant Network is that there seems to be a difficulty in providing the information on the volume of beer on which duty has been paid as required in schedule 2 5c.

This is surprising as this volume exactly equates the volume of saleable beer supplied to the tenant over the 3 year period which is the maximum amount that the tenant could have possibly converted to cash unless it suffered a mishap often referred to as “wastage” but where beer duty cannot be reclaimed. Without knowing this information it will be impossible to produce an accurate revenue assessment as required by RICS guidelines.

We understand that you may be approached by these companies seeking a waiver from providing this information.

I have to inform you that any waiver in this area will NOT be acceptable as it is the reckless overstatement of revenues arising from this noncompliance with HMRC regulations that has been estimated to cost tied tenants selling cask ales around £10,000 per year in lost profit and over-renting. This topic has been a special project of the Punch Tenant Network and many of us were shocked at the widespread ignorance of government regulation which has resulted in this serious and hidden compromise of tied tenant profitability.

We would regard it as a serious failure of the code if the PCA Office allowed any concession in this area.

However - we need to be pragmatic and if PubCos genuinely cannot provide this information then we might consider a revenue (before wastage allowance) assessed at 90% of the cask ale volume delivered over the previous three years as a reasonable approach to a quasi-compliant assessment – this will enable the process to move forward but does not reward the industry’s failure to comply with HMRC Regulations at the expense of tied tenants.

It is a significant source of concern to us that PubCos have in the past been offering advice to their tenants on Pricing and profitability which has been totally wrong because they had no perception of the undrinkable ale element of a Cask ale.

I would be interested to hear your views on this matter so that I can advise my members on how best to deal with this issue when it arises.

Please confirm receipt and give me a timescale by when I might expect a response.

Best regards

[Redacted] Punch Tenant Network
