

Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 08 February 2017 15:15
To: mpst.james@beis.gov.uk
Cc: toby.perkins.mp@parliament.uk; 'Greg Mulholland'; 'HUNT, Jeremy'; [Redacted]
Subject: RE: Urgent clarification requested concerning [Redacted] 17_02_08letterto
Attachments: [Redacted].pdf

Minister

I have to say that I struggle to extract any meaning from the attached response from the Pubs Code Adjudicator to my questions.

It seems that the crime must be committed before the policeman can determine if it is a crime. To add to the complete lack of any kind of adjudication from his office in 6 months.

For this lack of clarity to surround the livelihoods of 3300 very small businesses from a body which has been established to provide some rebalance in the asymmetric power of these Pub Owning companies is totally unacceptable.

The members of the Punch tenant Network are in universal opposition to this situation continuing a moment longer – the fears expressed over the adjudicators suitability for the role seems to be realised in full measure.

I hope you will take this opportunity once again to review the performance of the office and do something positive to correct matters

Best Regards

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 23 January 2017 11:04
[Redacted]
Subject: RE: Urgent clarification requested concerning [Redacted]
Importance: High

Dear Pubs Code Adjudicator

Further to my message below I would seek acknowledgement and an indication as to when you will address the points raised.

There has been some press comment over the weekend which quotes “A spokeswoman for the Department of Business Energy and Industrial Strategy” as follows:

“A spokeswoman for the Department of Business Energy and Industrial Strategy said tenants may only apply for an MRO during official contract renewals or rent reviews with their owner, or if there is a significant increase in supply

prices. Outside of these circumstances the pub would need to prove a substantial change to trade as a result of the tie.”

We regard this as a wholly inaccurate position, which seeks to raise the bar against tenants gaining access to the protections the Code was intended to deliver. It totally misstates the Regulations in the context of the current problem with the [Redacted]

- 1) Please could you clarify immediately that the MRO trigger is available when “*The event is directly related to a change in the tie imposed by the pub-owning business on the tied pub*” as stated Pub code Regulation 7 5(a)

We are of the view that [Redacted] exactly meets the circumstance envisaged when parliament inserted that condition into the Code.

It is very important to have clarity on this point as there is a very limited time window for making an MRO request after a trigger event and it is essential that the ground rules and procedures are fully understood in advance.

- 2) In addition, we see nothing in the Act or the Regulations requiring a “pub to **PROVE** a **SUBSTANTIAL** change to trade as a result of the tie”. The requirement as we understand it is set out at Regulation 7 2 “*that the effect of the event is to decrease the level of trade that is **reasonably expected** to be achieved at the tied pub in each month over a continuous period of 12 months.*”

“Levels of trade that are reasonably expected to be achieved...” are routinely used by POBs in establishing rental levels for new tenancies and reviews and there is no burden of proof or even compensation to tenants when the “reasonable expectation” is found to be wildly inaccurate. A “reasonable expectation” is just that, and we would request that you issue guidance for tenants as to how this “reasonable expectation” may be expressed by them in setting out their case for a MRO option reference .

- 3) I cannot find the word **SUBSTANTIAL** anywhere in the regulations and if it were there, we would seek a definition of the term SUBSTANTIAL. Please clarify immediately where in the Act or regulations the word substantial occurs in this context and if it does please define what it means. We see this attempt to nuance the code as a wholly unjustified attempt to “raise the bar” and make it more difficult for tenants to gain access to the rights and protections that parliament has granted them.

[Redacted]

IF BEIS Ministry spokeswomen can be deployed to give instant and inaccurate expositions on the code, it is incumbent on you to issue clear and unequivocal guidance which everyone can understand and which clearly sets out how the Code it is your responsibility to implement, will be applied in this matter.

We look forward to hearing from you without delay.

Best Regards

[Redacted]

[Redacted]

From: Punch Tenant Network [Redacted]

Sent: 18 January 2017 15:41

[Redacted]

Subject: Urgent clarification requested concerning [Redacted]

Importance: High

Dear Pubs Code Adjudicator

I am writing you as the coordinator of the Punch Tenant Network, the independent membership group representing Punch Taverns publicans across the UK. We seek clarification for our members on some serious concerns arising from [Redacted] .

[Redacted] have confirmed their intention first expressed on [Redacted] last that [Redacted]

Among the raft of documents issued [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

treatment of these tied pubs are the specific responsibility of the Pubs Code and the Pubs Code Adjudicator, it is therefore your specific responsibility to be very clear in advising and issuing guidance to both POBs and tenants on how the Pubs Code will impact on the proposed acquisition and the rights and protections that the Code affords to affected tenants.

[Redacted]

MRO Trigger

I have discussed the matter with [Redacted] at BEIS and he has confirmed that he believed that it would be very likely that this proposed change to the tie [Redacted] would constitute a trigger for MRO but I should seek guidance from your office. Which I hereby request.

The first point of clarification we seek is confirmation from the PCA that you agree with BEIS that [Redacted]

I base my belief on the view that SBEE 2015 para 43 9 a, b, c, are all met
In addition I believe Conditions A, B, C and D are all met in section 7 of the Pubs Code.

1. The event is "is directly related to a change in the tie imposed by the pub-owning business(1) on the tied pub" 7.4(a) thus satisfying Condition D.
2. The event will affect other local pubs but not all pubs in England and Wales satisfying Condition C.
3. None of the conditions in Condition B apply thus satisfying that condition.
4. Condition A is met in that there will be a clear expectation in the mind of the tenant that the level of trade will decrease in the future if he is not allowed to stock the variety of products his customers want.

[Redacted]

[Redacted]

Search as we might, we can find no support for his view in either the SBEEE 2015 Act or the code. The only direct reference to stocking is in the SBEEE 2015 section 68 where a tied Pub is defined, in 68 para 6 it excludes pubs with only stocking requirements as being defined as tied pubs - allowing an otherwise free of tie pub to have a stocking requirement without bringing it under the Pubs Code provisions, but nowhere in the Act or the Pubs Code is there any reference to how a Brewery POB gets automatic rights to insert a stocking requirement into a business agreement by reason of transfer of ownership of holding company shares, nor can a POB insist on unusual terms in a new agreement proposed as a result of a MRO request this is defined in section 31 of the code as ***“terms which are not common terms in agreements between landlords and pub tenants who are not subject to product or service ties.”*** Quite clearly a term in a MRO agreement which imposes a product stocking requirement would not be ***“a common term between landlords and tenants not subject to product of service ties”***.

I should add that in discussion with [Redacted] at BEIS it was suggested that there might be an issue with the imposition of a stocking requirement under section 31 but guidance should be sought from your office, which I now request.

[Redacted] makes reference to Hansard where ministers in debate discuss intentions of legislation where genuine Brewers who have invested in their own Pub estate might have a right to require their brands to be stocked but none of this intention has been expressed in the law as far as we can tell.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

We again seek guidance from the PCA and BEIS on this matter and we would also ask if assurances have been sought by [Redacted] on this point, which would seem to be absolutely central to [Redacted]. If assurances have been sought and given, we would request that this be disclosed immediately.

We would impress on you that this matter is urgent – I understand guidance on this specific topic has been requested in August 2016 by the [Redacted] and is still unresolved. However, there is new urgency

[Redacted]

[Redacted] Punch Tenant Network

CC:

Rt Hon Margot James MP

Rt Hon Ian Wright MP

Rt Hon Toby Perkins MP

Rt Hon Greg Mulholland MP

Rt Hon Jeremy Hunt MP

[Redacted]