

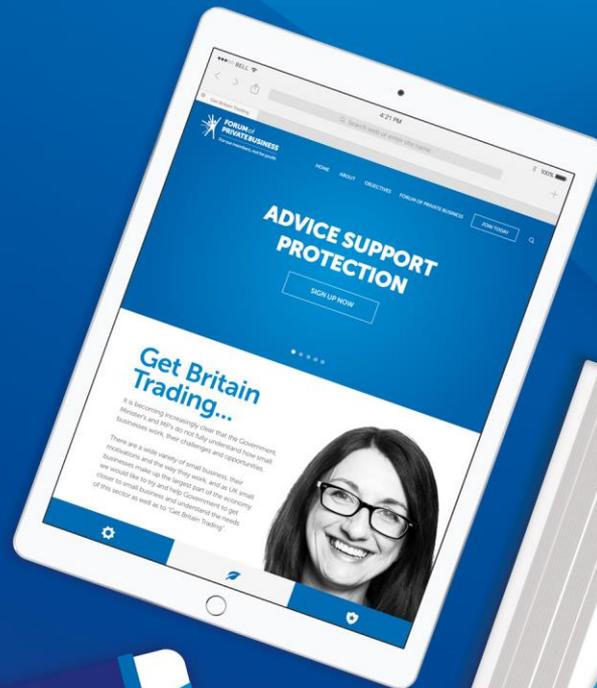


**FORUM of  
PRIVATE BUSINESS**

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# The Pub Code strategic review

[Redacted]





# The Forum

- The Forum has just over 30,000 member companies covering a variety of sectors from the Orkney isles to the Isles of Scilly.
- We have a growing number of members from the hospitality industry including pub co tenants.
- We take a proactive, preventative approach to our members providing, advice, education and information to reduce risk and avoid traumatic situations for the business
- We provide a toolbox of solutions for business and we are enhancing that toolbox for the hospitality industry
- We are a not for profit organization providing an independent voice for our members
- MY JOB IS EASY!



# Background

- Pub companies's were not behaving in a fair manner and after failed self regulation, they were legislated against through the pubs code
- The two main principles of the code
  - That tied tenants of the largest pub-owning businesses are no worse off than free of tie tenants
  - That there is fair and lawful dealing between the largest pub-owning businesses and their tied tenants
- MRO should have been a fair and accessible (in terms of time and cost) choice for pub co tenants
- Unfair business practices would be investigated by the PCA
- Issues with unfair business practices aimed at avoiding the code or problems with the code should have been referred back to the Minister, see Anna Soubry's statement to parliament



# Statement

“I agree that pub company gaming, which my hon friend the Member for Peterborough (Mr Jackson) mentioned, could be an issue, where a tenant’s rights to MRO are avoided, perhaps via an investment. The best insurance is to get the pubs code in place. The Government accepted an amendment to the Enterprise Bill that places a duty on the adjudicator to report cases of unfair business practices that are aimed at avoiding the code. It will open to the adjudicator to make recommendations to the Secretary of State to address any unfair business practices. I know I have upset the pub cos; I will be up front about that because I know I have not given them what they wanted. I have, I hope, satisfied the proper concerns communicated by tenants, and we are going to work on that.”

“The regulations setting out the pubs code are subject to parliamentary scrutiny at any time, so we can amend them, but he is right that we must get them right from the outset. The legislation also provides for a review every three years.”

**Anna Soubrey**



# The Forum's disengagement from regular meetings with the PCA

1. **A true MRO option for tenants** as envisioned by parliament is undeliverable, as it relies removal of the product tie, an independent rent review and a simple deed of variation on the contract. This is not happening, there is no break in the tie, no independent rent assessment and the Pub co's are writing new contracts taking time and money to put them in place leading to a compromise that works in their favor. It also leads to a large number of appeals which are now contract based rather than rent based.
2. **Unfair business practices**
  - The 72 pint issue (price and rent)
  - Dilapidations (financial disadvantage, leverage)
  - Area managers lying (rent assessments & contracts, dilapidations)



# The Forum's disengagement from regular meetings with the PCA

## 3. “The code adjudicator is just that— an adjudicator to ensure fairness. Paul Newby will do that.” Anna Soubry

- The PCA isn't an Adjudicator, he's an arbitrator, so carrying out lots of individual arbitrations, (an unnecessary workload), setting no precedent unless both parties to agree to waive confidentiality.
- All arbitrations are appealable, so the final solution is to resort to the high courts for a ruling, for which the tenant pays the costs.
- Most of the appeals are of a contract nature, (adding surveyors as arbitrators fails), true MRO means this would not be the case
- True MRO removes most bad business practices as an issue as tenants have the choice of a true MRO option.



# The Forum's disengagement from regular meetings with the PCA

## 4. “We must not let a few dominate the debate. It is important to be fair to both sides and to make sure that all the tenant groups are involved; this is why I am a great fan of Campaign for Real Ale, which represents a large section of tenants.” Anna Soubry

- To be clear CAMRA are a consumer body
- The Forum brought all the campaign groups to the table at the PCA's request, the Forum managed to arrange this in 2018 and the PCA did not engage effectively, basically if you disagree with the PCA and cause him issues he dismisses you as a noisy minority and disengages from you. That is not the role of an effective regulator his job is to engage with all stakeholders whether he agrees or disagrees with them, his job is to be an independent adjudicator and dealing with dissent is part of the job.
- So we have Code Compliance meetings which include the British Beer and Pub Association
- PCA Tenant Representative meetings, comprise the FLVA, UK Hospitality and the BII
- [Redacted]
- The Dilapidations Advisory group is being run by the BBPA?
- The PCA survey only looks at those who have been through an MRO process and reached a compromise solution with their Pub Co, not those who tried to try to obtain it and are now out of their pub.



# Key issues

1. No true MRO option for tenants
2. Unfair business practices continue unchecked and brand new ones appear
3. The lack of a true MRO undermines the PCA's role
4. The PCA has failed to engage with all stakeholders in delivering better behavior in the sector

# Solutions



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- True MRO needs to be available as a choice
- MRO should be a simple and swift option the idea being that any publican could activate it with relatively little necessity for professional representation. Currently all tied agreements contain a clause permitting the Pub operating business to simply terminate the tie and demand a rent review in accordance with the lease terms by an independent third party, if they want one.
- Essentially such a tie termination would take the form of a deed of variation to the lease or possibly even simpler a side letter. If tenants had the same termination of tie rights as POB's then this would be the true MRO. Certainly this idea of a true MRO is not deliverable by the Code as it has been over complicated and allows the POB's to present MRO in a complex, time consuming and expensive manner i.e. a new agreement or contact the high number of which the PCA is struggling to arbitrate over.
- The POB's [Redacted] have managed to convince parliamentarians that a tied lease and a MRO or Free of tie lease are entirely different agreements where, in fact, a tied lease is a FOT lease with a purchasing obligation (a tie) attached, this obligation can very simply be carved away from the lease leaving a FOT agreement.
- If a true MRO were available then [Redacted] would be in financial difficulties and this is exactly why they are fighting the prospect of a deed of variation (or any other simple MRO alternative). The original mistakes in dealing with appeals are now being repeated with the nominated arbitrator appointments, surveyor arbitrators instead of lawyer arbitrators, who are not qualified to deal with the issues they are faced with.
- The failure to deliver a quick and simple MRO has led to practically all the PCA issues. None MRO issues would be all but irrelevant if a true MRO, as we know it, existed, e.g. poor BDM behaviour would result in the tied tenant simply exercising the MRO right. If there were no timing issues (MRO request can be made at any time) and all the tenant needed to do is what the POB does under the terms of the lease, the only big issue would be determination of rent, POB behaviour would be practically self policing as the tenant would have equal rights to terminate the tie.



# Solutions

- Dilapidations, if a pre-lease building survey was conducted and a schedule of condition agreed at the start of the contract many of the dilapidation issues would disappear, the Landlord and tenant act covers this its just that Pub co's seem to ignore it relying on tenants ignorance.
- The PCA needs to include all true tenant representative groups in his workshops, the BPC and punch tenant network at least should be represented
- Pub tenants need to be informed and educated particularly on contracts and rent assessments before signing them and on dealing with dilapidations. Something the Forum are currently working on.



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