

Pub code Statutory Review

The Forum of Private business believe that the code was set up in good faith with a clear intention by parliament, that following abuses by the pub co's and a failure to self-regulate, the code would provide tenants with a simple choice of staying within the pub company tie, with the benefits that offered or to have the choice of paying a fair market rent and being free of all buying contracts and being able to buy what they wanted from where they wanted. They would in effect be operating like a free trader and therefore be meeting one of the principles of the code that they were no worse off than the free of tie.

The issue being that the pub code was poorly written and left some areas which were unclear and open to interpretation, by the highly resources pub companies who have used these flaws to their own ends. This leaves the high court as the only solution in many instances, a high number of arbitrations needing to be carried out by a PCA [Redacted].

[Redacted].

The pubs code adjudicator it turns out is not an adjudicator he is an arbitrator, therefore unable to clearly adjudicate and set clear legal precedent. He and his office seem to be caught like a rabbit in the headlights between a powerful and well-resourced Pub co lobbying machine and a group of very noisy and troublesome campaigners. He is also faced with a huge backlog of arbitrations [Redacted] and despite evidence-based submissions has not until a week ago launched a single investigation into the numerous bad business practices, aimed at manipulating the code, reported to him. The PCA is now looking at the [Redacted] stocking situation something he could have addressed at the time of [Redacted] by issuing clear guidelines [Redacted].

It is also the Forums belief that a true MRO backed by an independent rent assessment and leading to a termination of any purchasing contract attached to the lease, is impossible to deliver. Something that the PCA confirmed at our meeting in October 2018, then there has not been a single MRO option, as envisioned by parliament, delivered in the 3 years of the code's existence. Those examples being given by the pub companies and the PCA are nothing more than new forms of tied agreement with marginally better terms for the tenant.

A SIMPLE SOLUTION

What we need is a clarification that "new agreement" in the Code relates to a new TIED agreement not an MRO agreement.

The reason the Act remained open/vague was at the time of drafting an argument was put forward that the Government did not want to overly interfere with commercial practices and if the parties wanted to agree MRO by new agreement, rather than side letter, they should not be restrained from doing so. The Forum agree with that principle, BUT there should be a default position, MRO by the swiftest simplest and cheapest means possible, alternatively, if the POB want to deliver by new agreement they offer terms to the tenant and the tenant considers and negotiates/agrees or, in the absence of agreement it all reverts back to a side letter like the one the POB can initiate in the lease. This makes sure the POB must "sell" a new agreement on its benefits rather than force it upon tenants as the only alternative to being tied, currently it is a choice between two negatives. We have set this out in more detail in the attached Pub code key issue document.

[Redacted]

We have also attached the presentation we made to both yourselves and the Minister at our recent meeting which also has some suggestions as to how Dilapidations, better interaction with the true tenant representative groups and better education for prospective and existing pub tenants could be improved and better delivered and we hope these can be considered as part of the review.

On the downside pub co tenants have been badly affected by the introduction of the code, regulation was put in place to protect them and the failure of the PCA to be a champion for them and their rights. On the up side there are some simple steps that could be taken in terms of changes to the code as well as the PCA role and powers that would solve the issues without having to resort to primary legislation, I hope the government takes the opportunity to make these much needed corrections.

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