

Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 02 February 2018 20:11
To: 'Pubs Code Adjudicator Office'; '[Redacted]'
Cc: '[Redacted]'
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Dear Adjudicators

Thank you for the time that you were able to spare for our group yesterday. I think we all found it to be a potentially useful start to an engagement that can begin to move the industry towards a desirable cultural change, we do believe you need to move much faster though as “events” are happening.

I would like to apologise if you feel that our efforts to brief you of an issue which we regard as a very serious and ongoing problem in this industry, seemed a bit cumbersome and repetitive. We have been focused on this issue for years and were attempting to revisit access to the set of information we provided 12 months ago, which we were shocked to learn was not regarded as an issue at that time, we now understand that you accept this is an issue and a serious one. We have attempted to reiterate our points with some new evidence on [Redacted] changed policy and admission that [Redacted] tenants had been misguided in the past that has arisen since that archive was compiled.

As a matter of policy, as a group, we make a point of communicating fully – we have nothing to conceal and only have the interests of our members and the wider participants in the industry in mind.

It has been ironic that today has seen another of the periodic campaigns from a Trading standards vector as you can see from the attached links. These may well be catalytic for the topic we are discussing.

[Redacted]

These articles which threaten prosecution of publicans who strive to do what their PoBs require - drives home the underlying issue which is the [Redacted] of the PoBs to TPTs - this is something that clearly must stop immediately - and it is the PCA duty stop it now, the undrinkable ale [Redacted] is clearly in violation of schedule 2 and I am now very concerned that the timescale for investigation from the PCA office which suggests involving asking questions at a meeting in “February or maybe March” and allowing time to reply no longer addresses the matter at all.

In that period, I can sadly predict that a minimum 186 small pub businesses, families with homes and hopes who are the responsibility of the PCA office to protect, will arrive at the “tipping point” and will begin the inevitable and unrecoverable slide into tax credits, HMRC debt, bankruptcy and eviction, this will get worse as Trading Standards begin to turn their attention to the volume of beer dispensed in Pubs.

The evidence is clear, and I believe the PCA should be issuing clear guidance on cask ale saleable content clarification, with a view to implementation within 30 days or less – this must be accompanied by a major communication strategy bringing the issue of correct pricing to the attention of TPTs and making it clear that Pobs MUST now:

1) Publish Py for all ales on price lists

- 2) Explain in robust mathematical detail exactly how the “unsaleable sediment” had been “factored in” to their pricing when they published their sediment lists in January 2016 by reference to pricing immediately before and after their claimed “date of knowledge” – alternatively – Adjust the 2018 Cask ale prices to TPTs to eliminate the charges for unsaleable beer and duty in accordance with the sediment declaration, taking care that any resulting fully adjusted price movement does not breach the CPI+3% trigger for MRO. (this will be a complex calculation but I have a model in development)
- 3) issue clear guidance on pricing Cask ale on the basis of saleable content – rather than container description.
- 4) begin to plan the compensation of tenants who have been misguided in the past.

This issue is a significant scandal and while, up to yesterday, there might have been some slight means to claim that the PCA office was not fully aware of the implications to your primary mission of lawful fair dealing with TPTs, this can no longer be the case, we have given you every opportunity to make your own enquiries and there is no doubt whatsoever in anyone’s mind that this matter MUST be addressed and immediately.

We may have a further opportunity to consult on the matter of Wastage and line cleaning allowances and this can wait for the next COO meeting but COOs should be warned that they MUST have their fully justified policy available for discussion at the next meeting.

But the fact that the PCA is now fully aware that PoBs are selling undrinkable, duty exempt ale (sediment) to TPTs as fully drinkable and duty paid product on which TPTs are expected to make a full margin is not something that can wait for the next COO meeting - you must deal with this immediately.

I believe, our efforts in reducing the complexity so ordinary mortals can understand seems to be working and we are detecting an increasing volume of interest - not least as a wholly unexpected spin off from this city of London Trading Standards initiative about ensuring at these prices everyone get “full measure”.

This is a major crisis and demands immediate action.

Do not fumble this

Best regards

[Redacted] Punch Tenant Network

From: Pubs Code Adjudicator Office [Redacted]
Sent: 26 January 2018 08:32
To: Punch Tenant Network[Redacted]
Cc: [Redacted]
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

[Redacted]All pre-reading materials are

accessible, thanks. [Redacted]

From: Punch Tenant Network [Redacted]
Sent: 25 January 2018 17:40
To: Pubs Code Adjudicator Office; '[Redacted]
Cc: [Redacted]
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Hi [Redacted]I just wanted to check that all is well and you have been able to access the prereading for Fiona. I assume that is the case as I have heard nothing.

Best regards

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 22 January 2018 17:50
To: 'Pubs Code Adjudicator Office' [Redacted];[Redacted]
Cc: '[Redacted]

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Hi [Redacted]

Some of my colleagues seem to be having problems with some of the links in the agenda prereading document which I hope I have fixed here.

I attach a new Agenda document with the links fixed I hope. Plus a matrix of the documents and cross referencing the links to their original source and their abbreviated addresses.

I hope that this will help ensure that the Deputy PCA can get full access to everything. The PCA has already seen all this so that is less of an issue.

If there are any difficulties I can email a compressed zip file but it will be quite bulky.

Please let me know of any issues but if I hear nothing further then I will assume that everyone in the room on the 1st has had access to all of this and we can move on from there.

Many thanks

[Redacted]

From: Punch Tenant Network [Redacted]
Sent: 21 January 2018 18:20
To: 'Pubs Code Adjudicator Office' [Redacted]
Cc: '[Redacted]'

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Hi [Redacted]

As promised I have spent most of my busy weekend assembling the attached which represents our suggested Agenda for “matters of policy” that we believe need to be discussed in the near future. Our immediate priority is “container description” the others are close behind.

I have provided a list of the names of expected attendees at present – this could yet change.

I have answered as far as I am able your impertinent questions on PTN, its membership and relationship with [Redacted].

The agenda document attempts to provide a narrative with links to relevant documentation by way of prereading. some of these have had to be localised as the BBPA website seems to have crashed over the weekend and a good deal of our reference material is from that source.

I trust that this will lay the groundwork for a productive meeting.

Best wishes

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 18 January 2018 11:42
To: 'Pubs Code Adjudicator Office'[Redacted]
Cc: '[Redacted]'

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Hi [Redacted]

As publicans we do not recognise a “close of play” on Fridays. Providing something at the point where folk who work in offices are hopefully heading down to the pub for a well-earned weekend pint seems a little pointless. I will, hopefully, undertake to provide our agenda and details of the 2 or 3 PTN members who are able to attend and some of the other points of information requested in time for you to do whatever you propose to do with them by “start of business” on Monday 22nd January.

I will develop a list of the pre-reading which would be helpful as the basis of our meeting and hopefully provide this at the same time.

By way of agreement on process, to simplify matters I propose the following:

- 1) To preserve the source integrity of content, much of this will be in the form of web links to the original material that is publicly accessible online.
- 2) Other material will or has already been supplied containing sublinks to publicly available material. We would expect that it and any supporting material could either be read online or, if a hard copy is required by the Deputy-PCA, then your office will be able to oblige.
- 3) pre-reading that is not publicly available will be provided as far as possible by email attachment. Again if hard copy is required, we would hope the PCA Office can oblige.

Some of the material is by its nature interactive and, it might be helpful to have a PC running Excel with projection screen available. If it can access the internet as well that may also be helpful. We will bring any material that may use this medium on a USB hard drive – if this may breach any Internal data security policies please advise how we can deal with this.

I would hope that having provided pre-reading on Monday your office will be able to confirm receipt and that the Deputy-PCA has access to the online material so that we can proceed on the assumption that we all start on the same page.

Please let me know about any problems with this as soon as possible.

Best Regards

[Redacted]

Punch Tenant Network

From: Pubs Code Adjudicator Office [Redacted]
Sent: 17 January 2018 15:23
To: Punch Tenant Network [Redacted]; [Redacted]
Cc: [Redacted]
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

[Redacted]

In preparation for the meeting between the PCA, Deputy PCA and Punch Tenants Network on 1 February, please provide an agenda and list of attendees by close of play, Friday 19 January.

Please also provide details of Punch Tenants Network's constitution, membership and dates of previous meetings with Punch.

Any pre-reading materials for the Deputy PCA should be sent to her no later than 25 January.

Regards



[Redacted]

From: Punch Tenant Network [Redacted]
Sent: 05 January 2018 18:50
To: Pubs Code Adjudicator Office; '[Redacted]
Cc: [Redacted]

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

OK [Redacted] we will tentatively edge forward.

when I say we do not represent specific tenants I mean that in the sense that we are not involved in any specific arbitrations – we do represent our members in the round in the way that any other representative body such as BBPA, ALMR, FLVA etc.

I am trying to assemble our team for 1 February but I want to make a few points clear just to make sure there is no misunderstanding.

- 1) all attendees on our side will NOT be tenants of Pubs subject to the code.
- 2) all attendees will be members of the Punch Tenants Network and will be representing the interests of our members and all other TPTs who ARE subject to the code, in that sense they form a representative body in the same way that a meeting with representatives of ALMR or BBPA would do.
- 3) the matters we wish to bring to the attention of the Adjudicators will be general matters of policy and practise which will impact a very high proportion of the negotiations that go on between TPTs and their PoBs whether or not they are members of our representative body.
- 4) any evidence presented will NOT as far as we are able to achieve it ever be specific evidence associated with any specific current arbitration or claim of a breach of code nor likely to be brought by a TPT to the PCA.
- 5) the evidence we will bring will be representative of past and current business practise in engagements between TPTs and PoBs and will be presented with the purpose of gaining understanding and guidance on whether or not these business practises are in accord with the underlying principles of the Pubs code should they occur in an engagement with a PoB that is subject to the code.
- 6) we will not find it helpful if there is any suggestion from the PCA that the specific and very clear practises we propose to describe may or may not be fair, lawful and in breach of the code or not in breach etc.. depending on other specific circumstances of a particular case.
- 7) our meeting with Mr Newby in so far as he is involved, does not, and will not, indicate any suggestion that we either condone or endorse in any way his appointment or record of achievement as PCA. We have accepted his attendance purely as this is an arbitrary condition insisted on by the PCA office to allow access to a deputy adjudicator with whom we have no issues at all.

Our discussions will have comprehensive minutes, mutually agreed and published on the PCA website in the same way as the CCO forum minutes are published with agreed actions points and schedules for actions and will include reference to the status and conditionality of the attendees.

If there are any issues with this then please do say now so we can resolve them as soon as possible.

Please stop putting obstacles in the path of the people whose rights you are supposed to be upholding.

Regards

[Redacted] Punch Tenant Network

From: Pubs Code Adjudicator Office [Redacted]
Sent: 05 January 2018 10:36
To: [Redacted]
Cc: [Redacted]
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

[Redacted]

Thank you for last night's e-mail.

I was aware that you do not represent other tenants, I was simply trying to suggest how we might structure the meeting to get the most out of it. Apologies for any cognitive dissonance which arose as a result.

I have booked a room in BEIS Head Office at 1 Victoria Street, London, for 11.00-12.00 hrs on 1 February.

Grateful if you could let me know who will accompany you to the meeting so that I can arrange access and passes.

Regards



[Redacted]

From: Punch Tenant Network [Redacted]
Sent: 04 January 2018 22:40
To: Pubs Code Adjudicator Office; [Redacted]
Cc: [Redacted]

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

[Redacted],

I am suffering from cognitive dissonance here.

Your original invitation to a meeting stated “the Pubs Code Adjudicator would be happy to meet to discuss this subject and any other policy issues which you would like to raise.”

We have danced around the handbags and I have conceded that I am prepared to meet the PCA on the basis that this opens up the opportunity to meet the deputy PCA to discuss the “issues of policy” raised by schedule 2 5c and elaborated in the mail chain below in addition “any other policy issues I would like to raise”

I do not believe that I have alluded to specific breaches of the Pubs Code on the basis that I am not involved in nor representing specific cases because the labyrinthine and arcane approach of your office to matters of general interest to all parties is resulting in no guidance on “matters of policy”. As far as I can tell in the history of the PCA very little has been done which is designed to guide parties on the correct approach that the Pubs Code requires to some very fundamental issues which exist in every single negotiation between TPTs and PoBs.

The purpose of the meeting, in my view, is to propose reasonable guidelines in certain areas that are problematical in every single case so that all future negotiations would be better structured prior to reference for arbitration.

It is hoped that this will to some extent reduce the scope of disagreement and speed the arbitration process.

My colleagues at the PCA have already indicated Article 40 of the Enterprise Act places a responsibility on the PCA to consider the fairness or otherwise of business practises and to make recommendations as to the boundaries of these practices to help guide both sides and avoid disagreement eventually leading to arbitration which appears totally logjammed with nothing emerging to inform the process.

On this basis I have to say I will not be in a position to present “specific evidence of the breach in an individual arbitration case” as this would put me in the same position of colleagues who are parties to an individual arbitration case, and would place me in personal peril of compromising a party to an arbitration, which I will not do.

I am not representing individual cases, but am responding to an invitation to present and discuss “matters of policy” if this is no longer the import of your invitation I do not see how we can proceed.

So, the TPTs who your office has been established to adjudicate and enforce fairness and legality will continue to be denied, through your own impenetrable procedures.

One day this entire muddle will be reviewed by a dispassionate party and I wonder if the conclusion will heap credit on a process which was supposed to be designed to be swift, fair and in accordance with law ensuring that TpTs are no worse off than Free of Tie – as a Free of Tie operator who has extensive experience of being a TpT I am increasingly convinced any review will conclude that there is a lack of application being brought to bear in the execution of the role and opportunities to scale the process have been squandered. Further the PCA has failed to make a report to the Secretary of State on the matters that prohibited him from executing his statutory function and make recommendations as to what needed to be done to remove them.

I do not know where we go from here but will, for the time being keep Feb 1st available in my diary.

[Redacted] Punch Tenant Network

From: Pubs Code Adjudicator Office [Redacted]

Sent: 04 January 2018 11:43

To: Punch Tenant Network [Redacted]

Cc: [Redacted]

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Unfortunately, diary commitments mean we cannot make the dates you have suggested. As week commencing 22 January does not work for you, the next available time to meet will be in week commencing 29 January.

Both the Pubs Code Adjudicator, Paul Newby and his Deputy, Fiona Dickie, are happy to meet you together in London on either 29, 30 Jan or 1 Feb.

Should you be able to make any of the suggested dates, it would be helpful if you could confirm, and send as required, the pre-meeting material you wish to be considered to this office a week in advance of the meeting.

It is worth bearing in mind our previously stated position on alleged breaches of the Pubs Code, that we would require specific evidence of the breach in an individual arbitration case, and that when considering whether to launch a wider investigation, the PCA is guided by the four prioritisation principles set out in our Investigation Guidance; Impact, Strategic Importance, Risks and Benefits, and Resource. A copy of the Investigation Guidance is available on the PCA website at www.gov.uk/pca.

Regards



[Redacted]

From: Punch Tenant Network [Redacted]

Sent: 03 January 2018 20:44

To: Pubs Code Adjudicator Office; [Redacted]

Cc: [Redacted]

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

My apologies the 15th Jan is dedicated to a meeting with [Redacted] in the hope we can gain some understanding out with the PCA's involvement, 16th might be possible in London otherwise 17, 18 19 might work.

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]

Sent: 03 January 2018 20:18

To: 'Pubs Code Adjudicator Office' [Redacted]

Cc: [Redacted]

[Redacted]

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Thank you for your message [Redacted] and condolences on your bereavement.

I am puzzled over the modalities you are now introducing into the issue of a meeting. No one has ever suggested to me that meetings with one public servant were conditional on my being willing to meet with another. My main point is that I am on record as objecting to Mr Newby's appointment and would not want any suggestion that my position had changed [Redacted].

I had gathered that Mr Newby had already fully satisfied himself, presumably on the basis of his own prior knowledge, as he made no enquiry of me, that there is no evidence to suggest that current and traditional practises in this area contravene the fundamental principles of legality, fairness and that tied tenants should not be disadvantaged because of a product of service tie, which are his responsibility to regulate.

I was seeking a "second opinion" from the Deputy Adjudicator because I find myself in fundamental disagreement with that position, along with every other person that I have discussed it with. It seemed to me pointless to waste the PCA's time having him go over all the same ground on which his mind is already implacably resolved.

I was hopeful that the Deputy PCA who has a different background and set of perceptions might be better placed to understand my points with a view to being able to make up her own mind on the matter on the basis of the facts and evidence [Redacted]. That might then allow a more open-minded debate leading to a resolution. We have spent several years now engaged with numerous government departments including BEIS, Trading Standards and HMRC [Redacted]

Schedule 2 5c was several government departments response to finding a targeted and proportionate owner to deal with the issue where it does most damage.

It is tragic that the industry itself has stalled in the initial steps it began to make two years ago to deal with the issue, they stopped in anticipation of the PCA giving some general guidance which they had already accepted was a major problem, but wanted a consistent guidance from the PCA which would benefit all. This should have been an early and easy "win" for the PCA which could have radically energised the whole industry. All sides are baffled as to why he has failed to do anything, and now suggests that there is no evidence and never was any!

We are in an extraordinary position where nobody, who does not have some reason to do so outside the PCA office, has any difficulty whatsoever in understanding that this issue is a major industry scandal which exactly fits the kind of matter that caused the PCA office to be created, with an objective of achieving greater fairness and balance in a highly asymmetric relationship. [Redacted]

However – I surrender – you have won – the vital interests of tied tenants is much more important this futile posturing. I no longer "continue to reject the offered meeting with the PCA" and will meet him at any time that will be mutually convenient on the basis that this is a condition of your allowing me to meet with the Deputy Adjudicator, who has all of the same powers and responsibilities of the PCA, but who has not yet had an opportunity to consider the detailed facts of the case and the evidence behind it [Redacted]

In order to get best value from this engagement I would suggest that I first meet with the deputy adjudicator to discuss the evidence and details of the matter and to help her to a full understanding of the matter and its implications and then, having given her a chance to review the matter a further meeting may be required with both the PCA and his Deputy so that they can explain in minute detail exactly what their conclusions are and what they propose to do about it, if anything.

If this is acceptable I will contact my colleagues to see who can be available but the week of Jan 22nd is impossible – best we can suggest is 15th 16th 17th Jan hoping we can find folk who are not trying to relax after the Festive season.

Regards

[Redacted] Punch Tenant Network

From: Pubs Code Adjudicator Office [Redacted]

Sent: 03 January 2018 12:05

[Redacted]

[Redacted]

Subject: RE: [Beer duty - Schedule 2, paragraph 5\(c\)](#)

[Redacted]

Thank you for your e-mail of 22 December and apologies for the delay in responding. A family bereavement meant I had to take time off work at very short notice.

Regarding arrangements for you to share with the PCA your concerns about the way in which you say pub-owning businesses are evaluating revenue from beer sales in Schedule 2 profit and loss statements, I am afraid we are unable to offer you the meeting with the Deputy Pubs Code Adjudicator that you have requested. As we have said in the past, the Deputy PCA is not prepared to accept meetings where the offer of a meeting with the PCA himself has previously been refused. Assuming that you continue to reject the offered meeting with the PCA, we would nevertheless like to offer you a meeting with officials from the office of the PCA. We are happy to hold this meeting either at the PCA office in Birmingham, or in London if that is more convenient.

A third party note-taker will not be required – although you will be free to take your own notes. Any notes of the meeting made by the PCA will, of course, be shared and agreed with you to ensure that there is an accurate record of the discussions. While we would not intend to publish these, they might potentially be disclosable following a freedom of information request.

On the basis of the availability in your email, perhaps you would like to suggest some dates in the week of 22nd January; and let us know your preferred venue and who will be attending with you?

Regards

[Redacted]



Pubs Code
Adjudicator

From: Punch Tenant Network [Redacted]

Sent: 22 December 2017 10:06

To:[Redacted]

Cc: Pubs Code Adjudicator Office; Dickie Fiona (PCA); Newby Paul (PCA); [Redacted] HUNT, Jeremy

Subject: Re: Beer duty - Schedule 2, paragraph 5(c)

[Redacted]As today is the last day before "early in January" realistically arrives for folk with normal jobs and is a very busy time for TPTs can I please have an update on progress in setting up this meeting.

My colleagues are anxious to settle on dates as January is often the only opportunity for TPTs to be able to take time off from their businesses and it is not really fair to expect them to hold fire on their arrangements at the convenience of officials who enjoy benefits such as statutory holidays with pay among others.

Seasonal greetings

[Redacted] Punch Tenant Network

Sent from my iPad

On 20 Dec 2017, at 14:05, [Redacted] wrote:

[Redacted]

[Redacted]

From: Pubs Code Adjudicator Office [Redacted]
Sent: 15 December 2017 12:10
To: Punch Tenant Network [Redacted]; Dickie Fiona (PCA) [Redacted]; Newby Paul (PCA) [Redacted]
Cc: [Redacted]
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Dear [Redacted]

Thank you for your e-mail of 14 Dec 2017 to the Pubs Code Adjudicator on Beer Duty – Schedule 2 paragraph 5 (c).
[Redacted] responded to you previously on the issue on 21 Dec 2016 (e-mail enclosed). I also responded to an Fol request on the same subject yesterday (a copy of that response should now be available on the PCA website).

However, the Pubs Code Adjudicator would be happy to meet to discuss this subject and any other policy issues which you would like to raise. Alternatively, if you would prefer to meet with representatives of this office, other than the Pubs Code Adjudicator, that can also be facilitated. With Christmas fast approaching, I suggest we meet early in the New Year. If you could let me know your availability, I will try to arrange a suitable venue.

I am also copying in [Redacted] who has raised the same issue and who would also be welcome to join us at the meeting.

Regards

<image001.png>

[Redacted]

From: Punch Tenant Network [Redacted]
Sent: 14 December 2017 14:41
To: Pubs Code Adjudicator Office; Dickie Fiona (PCA); Newby Paul (PCA); [Redacted]

[Redacted]

Cc: [Redacted] 'HUNT, Jeremy'

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Importance: High

Dear Adjudicator

Could I please have the courtesy of a response to this issue? It is now 465 days since you acknowledged you were reviewing the matter and 14 days since my last prompt on the subject.

I am informed by colleagues that the topic has been raised with you on several occasions in the past year and your response has been that the matter was being “looked into”.

The fundamental issue is so simple that it takes very little effort to understand it and its implications for tied tenants. Increasing numbers of tenants’ representatives in parliament have expressed astonishment that nothing has yet been done to address the matter. It is a source of widespread dismay that something so simple and detrimental to every tied tenant should not have been resolved immediately it was brought to your attention.

I fully expect that, when reviewed by the TPTs involved, it will be seen that you will have addressed this matter in the confidential arbitrations that you have already completed, and which are in progress, therefore this subject must be an ideal one to be brought forward as a “Golden Thread” arising from your arbitrations (ref CCO meeting notes 28th March 2017) This will give general guidance in future negotiations between PoBs and all TPTs – it is a real disgrace that your office has not seen fit to publish such guidance to the benefit of all TPTs in the year since the matter has been brought to your attention.

This issue was placed squarely into the responsibility of the PCA office by the pubs code via the insertion of Schedule 2 5(c), this was as a result of representations from other government departments as it was seen as the most targeted, proportionate and effective way of dealing quickly with the most damaging implications of the matter, which are most serious in the Tied Pub sector, where TPTs have no choice of supplier and are dependent on their PoB whether brewers or not to give them accurate information about the revenue potential of their tied supplies.

For the avoidance of doubt, the issue relates to the PoB practise of evaluating revenue in Rent assessments on the basis of nominal container description and with insufficient (if any) provision for unsaleable and duty exempt content (sediment waste) and other unavoidable factors leading to the loss of otherwise consumable and saleable beer (operational waste) there is a widespread attempt to conflate these matters which do not stand up to impartial examination. In addition, we are concerned over the practise of advising tenants to set their selling prices on the same basis (container description), [Redacted]. This has the effect of TPTs setting prices lower than necessary to achieve the revenues and profits on which the rents they are expected to pay are assessed. This practise has arisen from lazy “Custom and practise” shortcuts taken by licensed industry professionals in the context of a significantly more relaxed (and profitable) past industry context, in these past years operational waste, if addressed at all in revenue assessments, was taken as a below the line deduction and, in the case of PoBs often buried in “Sundries”. These lazy practises are inappropriate when placed in the hands of today’s PoBs whose main skill is financial engineering and much more rigorous methods are required to ensure fairness in this highly asymmetric relationship.

You have been provided with a large portfolio of evidence supporting the issue, and I here attach a subset of this evidence and analysis – I can assure you there is much more. Some (pre PCA) progress was made when the BBPA reiterated its guidance to brewers and PoBs on the matter and some non-brewing PoBs then issued lists of saleable content declarations, but these are not widely communicated and implications are not explained to TPTs by PoBs business managers, trainers

etc. Even today the unfair practise of using nominal container description with insufficient allowance for operational and sediment waste is very evident in all of the recent rent assessments we have seen.

The time for “investigation” has passed – the evidence is incontrovertible, is universal across the pub companies you regulate, and it is time for the PCA to publish acceptable “Golden Thread” guidelines into evaluating these revenue and expense lines in all rent related revenue assessments and offers.

The following is a nonexclusive list of the topics I believe should be covered in these guidelines with my suggestion as to how they could be addressed – Myself and colleagues will be happy to attend a meeting on this specific topic with a view to further clarifying these guidelines and their justification.

1. **Weekly Line cleaning Operational waste - Cask and Keg**

Minimum of total specific pub line length (certified by metrology - if available) * 52 weeks

2. **Allowance for all beer “Operational Waste” Risks,**

Misorders, Spillage, Fobbing, faulty containers not eligible for refund, etc... failing, that clear guidelines on how a TPT is supposed to monetise all occurrences of these risks to preserve assessed revenue and profit.

3. **Minimum allowances for unavoidable “Operational Waste” - per Cask:**

Test and prove- minimum .4 pint (95% saleable beer assuming all samples are not yet bright)

Cask end – unavoidable average .5 pint (using most efficient extraction techniques)

BBPA “full pint” Guide line on top ups and sampling – minimum say .25 pint per cask

Overall - minimum 1.15 pints per cask (saleable beer)

4. **Allowances for unsaleable cask sediment**

In accordance with Brewery / HMRC agreed declaration rounded down to nearest legally saleable measure. An industry agreed average for projected yield may be discussed and agreed for use in assessments – it will not be 100% as is widely used at present. Revenue per cask can only be fairly assessed on the basis of duty paid volume less total operational waste.

5. **Outlaw “short pour” assumptions in revenue assessments**

A review of the “head on beer” issue and BBPA guidance on permissible Head on Beer. This will guide how much increased/decreased revenue PoBs may evaluate based on assumed “legal underpouring” by TPTs. This area is often used to conflate the operational waste issue and suggest TPTs can legally achieve enhanced yields by underpouring. Sometimes keg beer yields in excess of 100% are claimed! This is simply not possible to achieve legally and a Statutory Adjudicator cannot be seen to [Redacted] he must adjudicate. It is notable that none of the photographs or representations of glasses of beer on the PCA Website actually represent a legal measure of beer! - however decorative they may be

Average Pint conforming to BBPA guideline =

BBPA average rim fill glass as a consumer measure must be minimum 568ml so

average =103% of minimum volume of 568ml = 585 ml (figures in BBPA guideline)

average pour - BBPA guideline is minimum volume must be 95% after head collapse

so normally distributed average pour measured by eye = 97.5% of “pint” container= 585x97.5 = 570 ml average pour

Consumer law suggests that a pint must be a minimum of a pint - at best assume a pint is a pint and leave “Head on beer” an issue between TPT, Trading Standards and consumers. This is not a profit participation opportunity for PoBs.

6. **More accurate TPT training**

Training and pricing guidelines in PoB training courses MUST ensure TPTs are fully aware of the statutory consumable volume in cask ale and operational waste issues for pricing purposes.

All training courses and advisory material MUST be very careful to explain these issues and the implications for retail pricing and margin protection.

I fully expect PoBs will seek to obfuscate and delay [Redacted], however, the issue needs to be addressed, it is very clear that these practises are unfair, they seek to defeat the fundamental principles of lawfulness and fairness that underpin the code, they involve a failure to comply with both the letter and spirit of government regulation and they must be dealt with without further delay.

I look forward to the courtesy of something more than an automated response to this communication and expect one within 5 working days.

Seasonal Greetings

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 01 December 2017 20:20
To: 'Pubs Code Adjudicator Office' [Redacted]
Cc: [Redacted]
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Dear Adjudicator

I am reminded by my colleagues that this issue remains (in your words)
“in the process of undertaking a more in depth review of the issues raised in your email.”

And more than a year has elapsed and, unless I missed it, you have not been “in touch once we have reviewed your correspondence in more detail.”

While I realise that the PCA office must be one of the busiest arbitration and adjudication services in the country I would point out that with a rough estimate of 17,000 pubs subject to your adjudication responsibilities each losing a very conservative average of £3,000 per year paying their landlords for undrinkable beer and beer duty where the beer cannot be sold and no duty has been paid and rents inflated by this fictional trade this amounts to £139,726 per day of excess profits arising from this unfair business practice.

In the 450 days since you first acknowledged you were investigating this matter the costs to the tied tenants subject to this issue is now approximately £62.9 Million which (if true) represents a monumental failure of your responsibilities.

It is a matter of some significant concern that nothing has been forthcoming from your office by way of:

- a. A request for further information or explanation
- b. A report to the secretary of state of this unfair business practise
- c. Guidance to PoBs on the fair assessment of revenue on Cask Ale
- d. An explanation as to why we, HMRC and Trading Standards are all incorrect in our analysis.

I am hopeful that we will not have to wait too much longer to learn what you propose to do about this scandal.

Sincerely

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 20 December 2016 19:59
To: 'Pubs Code Adjudicator Office'[Redacted]
Cc: [Redacted]
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Dear Adjudicator

It is now 12 days 8 of them working days since I asked this question – have you any response to my questions?

We now have a new issue looming which is [Redacted]

Please can we begin to establish some dialogue?

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 08 December 2016 10:48
To: 'Pubs Code Adjudicator Office [Redacted]
Cc: [Redacted]
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

[Redacted]

It is now 92 days since you said (see below):

“We have undertaken an initial review of the information you provided, and are currently in the process of undertaking a more in depth review of the issues raised in your email. We will be in touch once we have reviewed your correspondence in more detail.”

Do you have any idea how much longer your “review” is going to go on?

90 days is possibly at the outer limit of what might be considered reasonable and for 10 working days to elapse with no response to a polite enquiry is also pushing the bounds of common courtesy.

This is a live issue, we are seeing every day RAPs that do not comply with schedule 25c and which continue to misrepresent the revenue and profit opportunity available to tied tenants, this is both unlawful and makes tied tenants worse off than free of tie.

The arithmetic of the matter is very clear and by failing to investigate, and give clear guidance to POBs in this area the PCA is beginning to expose itself to sponsoring adjudications on tenant’s complaints which also do not comply with the Pubs Code – that would be very unfortunate.

The lack of clear guidance on how the revenue and profit calculation must be made taking into account Schedule 2 5c risks the PCA office having to revisit adjudications in the light of information which was already under investigation by that same office.

Forthcoming issues:

I would warn you that the traditional January price increases will soon be announced which is another classic and structural process by which tied tenants will be made “worse off than free of tie” as they are every year.

You need to understand the dynamic of how this happens and you should probably examine the process, and put some thought into how to issue guidance to POBs as to how to avoid this process, which is your responsibility.

The matter is urgent and you probably have no more than 6 weeks to issue pre-emptive guidance in this area which will be needed to head off POBs just continuing their pre-code behaviour without reference to the implications of the new law.

I look forward to hearing from you as soon as possible.

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]

Sent: 24 November 2016 14:28

To: 'Pubs Code Adjudicator Office' <office@pca.gsi.gov.uk>

Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Hello [Redacted]

I would be interested to know if you have an idea as to when you might have “have reviewed your correspondence in more detail” and might be in a position to “be in touch”.

I feel that sufficient time has elapsed for you to have conducted a forensic examination of the issue and the industry is entitled to some feedback and guidance from the PCA office on this matter that

has a significant impact on the financial position tied tenants who are made much worse off than free of tie on account of the misleading information enshrined in current rent assessments and failures to appreciate the significance of the requirements of schedule 2 5c

I look forward to hearing from you in the next few days.

Best regards

[Redacted] Punch Tenant Network

From: Punch Tenant Network [Redacted]
Sent: 09 September 2016 00:16
To: 'Pubs Code Adjudicator Office' <office@pca.gsi.gov.uk>
Subject: RE: Beer duty - Schedule 2, paragraph 5(c)

Hello [Redacted]

Thank you for updating us – we will soon be away on business for two weeks with highly unreliable email service., however we will eventually receive what you send.

In a few weeks it may be possible to attend a meeting with PCA officials to discuss plans to resolve this matter.

Best regards

[Redacted]

From: Pubs Code Adjudicator Office [<mailto:office@pca.gsi.gov.uk>]
Sent: 08 September 2016 13:14
To: punch.tenant.network@gmail.com
Subject: Beer duty - Schedule 2, paragraph 5(c)

Dear [Redacted]

Thank you for your email of 31 August 2016.

We have undertaken an initial review of the information you provided, and are currently in the process of undertaking a more in depth review of the issues raised in your email.

We will be in touch once we have reviewed your correspondence in more detail.

Yours sincerely

[Redacted]
Office of the Pubs Code Adjudicator
