

Pubs Code Review Team
Department for Business, Energy and Industrial Strategy
1st Floor, Orchard 3, 1 Victoria Street, London SW1H 0ET

Email: PCAreview@beis.gov.uk

Additional Evidence

THE PROBLEM

1. Sections 42 (3) (b) of the Small Business, Enterprise and Employment Act 2015 is unenforceable and cannot deliver the fundamental provision:
“The principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie”.
2. The SBEE Act 2015 enables the secondary legislation (the Code) to effectively define how the Prime Principle can be delivered through applying a MRO option. However, unless one can firstly determine the correct tied RAP or the MRO offer, there remains absolutely no mechanism to check whether the Prime Principle has been applied correctly. The current legislation leaves sufficient grey areas and loopholes for the POBs to game legislation and avoid delivering the tenant a meaningful tied rent or a true MRO option.
3. Essentially, the Code and the inability of the PCA to apply any sort of test to the POBs MRO offer or indeed the Independent Assessor’s (IA) final award, ensures the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie, can NEVER be applied.
4. There is also absolutely no check or test to determine whether the new MRO offer is correct. One must therefore conclude, POBs, looking to protect their product tie profit, as predicted in earlier consultations, will look to recover lost profit by adding it to the MRO offer. There is nothing in the Code, as currently drafted, that prevents the POB distorting the MRO offer leaving the new MRO tenant worse off than if they had remained tied. ([Redacted] accounts show that profit from tied products is approximately [Redacted]% of actual profit.)
5. The Department for Business, Innovation and Skills 2015 Impact Assessment stated that the transfer of POB profits to tenants under a MRO option would be £14k per year. Whilst most would accept this is a conservative estimate, multiplying the figure

by 20,000 pubs covered by the statutory Code gives an estimate of 140m profit that the POBs would need to transfer to tenants for the principle that tied pub tenants should not be worse off to apply. This simply has not happened.

<https://www.parliament.uk/documents/impact-assessments/IA15-002.pdf>

6. Sections 42 (3) (b) of the Small Business, Enterprise and Employment Act 2015 is unenforceable. The PCA has no powers in his gift to ensure POB compliance. The Code must be amended, as a matter of urgency, to include a Parallel Rent Assessment (PRA). This final check to determine if both the tied rent, and the MRO offer is correct, must be administered by the PCA for every Code complaint, to ensure Code compliance.
7. Furthermore, Sections 47 (1) of the SBEE Act 2015 states the Secretary of State may by regulation make such provisions to ensure that Sections 42 (3) (b) is enforceable.

Sections 47 (1) of the SBEE Act 2015:

(1) The Secretary of State may by regulations make provision about terms of a tenancy or other agreement between a pub-owning business and a tied pub tenant—

(a) which are inconsistent with the Pubs Code,

(b) which purport to penalise the tenant for requiring the business to act, or not act, in accordance with any provision of the Pubs Code with which the business is bound to comply

The Secretary of State must use the provisions in Sections 47 (1) of the SBEE Act 2015 to amend the inconsistent elements of the Pubs Code to ensure POB compliance.

THE SOLUTION

- To empower the PCA to use PRAs in all cases to determine whether the tied rent is correct.
- To empower the PCA to use PRAs in all cases to determine whether the MRO awards from the IA are correct.
- The PCA must publish all MRO cases together with their PRAs.
- The legislation must be expanded to ensure the principle that NEW MRO pub tenants should not be worse off than they would be if they WERE subject to any product or service tie.

[Redacted]