APPG on Pubs recommendations to the Pubs Code Review

PCA Review Team
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Dear Minister for Small Business, Consumers and Corporate Responsibility,

As the Chair of the APPG on Pubs, I am writing to you to submit our evidence to the Pubs Code Review, the details of which are outlined below.

The APPG on Pubs looks forward to hearing your response to the review and the progress which can be made to ensure that the Pubs Code is implemented more effectively.

Yours sincerely,

Toby Perkins MP

Chair of the APPG on Pubs

Introduction to our review & who we've heard from

The APPG on Pubs has held three public evidence sessions and met with the Pubs Code Adjudicator twice, publicly in advance of the review and privately since the review started.

The questions that we asked witnesses to consider were:

How has the legislation changed the experience of tenants and the behaviour of pub companies?

How has the legislation influenced a change to the business practices of pub companies, are these changes consistent with the spirit of the code and should parliamentary legislation be altered to take into account these new modes of practice in the industry?

Have the changes delivered a fairer distribution of income between tenants and lessee?

What changes to the code should Parliament consider?

What recommendations should be made regarding the role of the Pub Code adjudicator?

Since you announced your statutory review of the pubs code and PCA, we have held a first evidence session which was an industry evidence session, the speakers at this session were [Redacted] of the British Beer & Pub Association, [Redacted] of Ei Group and [Redacted], Star Pubs & Bars.

The Second evidence session held was a Publicans/Pub Campaigners Evidence Session, the speakers at this session were [Redacted] for CAMRA, [Redacted] & Campaigner and [Redacted] of the Forum of Private Business.

A private meeting was held with the Pubs Code Adjudicator and Deputy Pubs Code Adjudicator.

Areas of concern and recommendations for review

1) The legislation should be altered to reflect that no terms and conditions will be allowed that have the effect of artificially disadvantaging (making 'worse off') tenants who choose to exercise their MRO rights.

One of the core principles of the code was that a tied tenant should be 'no worse off than if they were free of tie'. This principle informed much of the way that the code was drafted and informed the basis on which the adjudicator and tenants should assess the way their tenancy was being managed by the pub owning business (POB).

During the evidence we heard a widespread view amongst tenant representative groups (TRG)bodies that pub companies were artificially adding costs to the MRO process to make it unattractive for tenants to decide to go MRO. This meant that tenants seeking to become free of tie were now considering that they were going to be 'worse off' than tenants who were tied.

2) The Minister should make clear in legislation that for terms and conditions to be compliant with the code, no dilapidations bill greater than the capital loss in value as a result of the dilapidation will be permitted and that any term that sought to extend the tenants liability beyond S18 (1) was unlawful.

One of the key ways in which tenants claimed to have been discouraged from becoming free of tie was that they were faced with a large dilapidations bill when they came to assess their free of tie offer.

It is also the case that many tenants face a large bill at the time they leave a pub. The Landlord and tenant Act is clear regarding the statutory cap on the cost of repairing dilapidations

S18 (1) Landlord & Tenant Act 1927 states that :

- Limb 1: 'Damages for a breach of covenant or agreement to keep or put premises in repair....shall in no case exceed the amount (if any) by which the value of the reversion....in the premises is diminished owing to the breach of such covenant or agreement.....'
- Limb 2: '... and in particular no damage shall be recovered ... if it is shown that the premises ... would at or shortly after the termination of the tenancy have been or be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement.'

However a letter from [Redacted] to the Chair of the Group in response to a dispute over a tenant leaving [Redacted] said:

- "Section 18 (1) is not intended to absolve tenants of their contractual obligations to maintain a property in line with the terms of their lease. Its purpose is to prevent landlords from seeking redress from tenants in circumstances where they have not suffered a loss. For example, a landlord may not charge damages for dilapidations on a property that is to be wholly demolished and re-developed. A landlord's claim is restricted to the true level of loss. In the case of [Redacted], we have suffered a significant loss as a result of [name redacted]'s failure to hand back the property in a condition that meets the requirements of the terms of the lease i.e. that the property should be in good and tenantable repair, statutorily compliant and in good decorative order."

This means that the terms of [Redacted] contracts appear to be overriding the provision that there is a cap based on depreciation of capital value and extending the liability of tenants to anything required to bring the property back to the standard their company requires.

3) Prevent Routine rent increases during negotiation.

Clause to prevent Pubcos imposing routine rent increases during negotiation also means POBs can't disadvantage tenants during the negotiation & incentivise Pubcos to negotiate quicker.

4) The legislation should offer a presumption that a deed of variation would be appropriate unless the POB could demonstrate why it was not suitable in a particular case.

One of consequences of POBs electing to ask tenants, who are attempting to exercise their rights to an MRO arrangement to have the new arrangement done via a new contract as opposed to a deed of variation, is that tenants have to pay stamp duty on a new contract whereas they won't on a deed of variation.

This clause is a disincentive to become free of tie and tenants believe creates an unnecessary additional cost to tenants in this process. **We suggest that the legislation should offer a presumption that a deed of variation would be appropriate unless the POB could demonstrate why it was not suitable in a particular case.** Under these circumstances the POB would have to notify the PCA why they were not able to offer a deed of variation.

5) In the event that the Minister did not support this view, a suspension of stamp duty could be proposed for new tenancy agreements that arise as a result of a tenant exercising their right to become free of tie under the rights conferred on them by the pubs code.

6) The Minister's review should consider whether the code should set a maximum 'rent up front' period that POBs can charge.

It has long been accepted that many tenants who request an MRO are already in financial distress at that point. Indeed , it is logical that pub tenants who are already performing well financially are less likely to be unhappy with their current arrangement.

However, one of the issues that TRGs raised was that there was a significant alteration in payment terms that were offered to tenants who were tied in comparison to free of tie tenants.
Tenants who wished to go MRO were often asked for two or three months' rent up front along with substantial dilapidations bills and other managerial costs**. Therefore, we would ask the Minister's review to consider whether the code should set a maximum 'rent up front' period that POBs can charge.**

7) Increase the 14-day limit on tenants considering MRO offers - 3 months is the very lowest time limit that should be placed on tenants to make this decision to refer their case to the PCA.

We heard from both POBs and TRGs that the 14-day limit in which a tenant had to decide either to accept an MRO offer or refer to the PCA was not helpful to either party. Time limits in the code need to be reviewed as the time limits at the start of the process are very tight & there is no time limit on how long the PCA should take to arbitrate

The 14-day limit means many tenants & POB are into an adversarial arbitration situation simply because tenants must do so or risk being out of time. It is perfectly sensible for there to be a period of negotiation after the original offer before it goes to the PCA. This would not prevent Tenants from referring their case to the PCA within 14 days if they wished to do so, **but 3 months is the very lowest time limit that should be placed on tenants to make this decision to refer their case to the PCA**.

8) Extend time limit so that tenants can still refer a case to the Adjudicator for 2 years after their tenancy is concluded.

Many issues arising under the code only come to light after several years, often as the tenant leaves the pub, is faced with a rent review or a lease renewal. Due to this the Statutory Limitations must be extended to the duration of the tenant's occupancy of the building + 2 years. Many of the issues facing tenants at their eviction can occur without any recourse. If there are issues that affect a tenant and are unresolved at the point that the tenancy finishes that is not a reason for that tenant to no longer have recourse to the PCA.

9) A need for Guidance from Pub Code adjudicator.

Both tenants and POBs felt that there was a lack of clarity on 'the golden threads' that would be consistent in the industry from the PCA that led to understanding of the decisions being made, that decisions took too long and that both sides were still unclear what was considered to be a compliant set of core terms and conditions. POBs have suggested that the PCA should view their standard terms and conditions and comment on whether they are considered to be compliant with the Puibs code and suggest areas for change if necessary. This seems to be a sensible suggestion and we would like the Minister to suggest that this is implemented and explain in her response to the review why it is not practicable for this to be implemented if she declines to do so.

10) Tenants need more info from the PCA

There is an imbalance between the level of knowledge about market conditions and likely performance between the POBs and tenants (particularly new tenants).

Allegations were made that POBs were less than transparent about the rents and prices being charged 'in the market'. Whilst we accept that there is some need for commercial confidentiality, a key plank of the arbitration process is based on what is a reasonable rent and there needs to be greater confidence in the impartiality of those assessing the rent levels.

There should also be an attempt to increase transparency of arbitration decisions. Whilst POBs have access to all the decisions that have been made in their case there is no central database of these decisions available to tenants or to the public and so the way the code is being interpreted is only known by one side in these disputes. It would be much better if there was a wider publication of the decisions made.

11) **Reduction of the 500 Pub limit - the Group believe that a two tier regulatory framework is not ideal and that the legislation should reduce the limit of 500 pubs to be covered by the code be reduced to 100.**

The pubs code and MRO option only applies to POBs with over 500 pubs. It was accepted fairly widely that small brewers needed a certainty of supply in order to allow their brewery to be viable. However, evidence was heard from tenants who believed that they had been a victim of many of the practices that POBs were accused of from their landlord who was a small brewer.

It is important that any backlog be cleared and the clarity called for here be provided to tenants and POBs, but **the Group believe that a two tier regulatory framework is not ideal and that the legislation should reduce the limit of 500 pubs to be covered by the code be reduced to 100.**

12) **We would recommend that the phrase 'common in the market' as a test be removed.**

We also heard evidence that suggested that the definition in the code of terms that are '"common" in the market place was unhelpful and was used as a way to prevent things that might be reasonable being rejected because they were not considered common. It also had the potentially distorting effect of POBs attempting to introduce terms into certain negotiations so that they could be used as evidence in the future that they were 'common'. **Therefore we would recommend that the phrase 'common in the market' as a test be removed.**

13) **For most tenants the pub is their home as well as their livelihood. The desire of the POB to move to a Manager should not override the tenants right to ask for a MRO or an extension where they had met with their obligation during the term of the contract.. If appropriate there should be amendments to the Landlord /tenant legislation to achieve this objective.**

The right to transfer should only be available to a POB that has a pub without a contracted tenant at that time.

14) **The current adjudication process seems to involve a first stage of arbitration between the POB and the tenant. This puts the tenant at a severe disadvantage as the tenant cannot afford the legal representation available to the POB.**

15) **The PCA should assume responsibility for the adjudication and be transparent with his findings. If the current legislation is too vague to place that obligation upon him then it should be amended in order to do so.**

16) **There is significant dissatisfaction amongst the pub tenants concerning both the role of the PCA and the outcomes from the processes introduced by him. We feel that at the conclusion of his current contract that a fresh appointment be made after consultation with both the POB representatives and the Tenant organisations and a new Pub Code adjudicator be appointed with experience in dispute resolution, who enjoys wider confidence in the industry and is, and is seen to be, impartial.**