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PCA Review Team
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Via email: PCAreview@beis.gov.uk

Reference (please quote if replying) TV/CC/60906

12 July 2019

Dear Sir

Pubs Code Review

I understand that the BEIS is undertaking a statutory review of the Pubs Code and the work of the Pubs Code Adjudicator between July 2016 and March 2019.

I recognise that some aspects of the Pubs Code have been successful. However, since it was introduced, I have been in regular contact with the Minister, Kelly Tolhurst, and the Adjudicator, Paul Newby, both of whom I met to discuss this issue, on behalf of a constituent who is the landlord of a pub in my constituency. I am therefore setting out the issues he raised with me.

My constituent's pub is a traditional one with 97 per cent of his trade being wet sales so he was hard hit by the beer tie. The introduction of the Code was therefore helpful in renegotiating his rental package as a result of the beer tie. However, his view was that the Pub's Code Adjudicator needed to do more to ensure that the Code was fully implemented.

One of the core problems he faced is that his Pubco, [Redacted], and all the others, insisted upon a new lease in order to take-up the full free of tie option. In doing so, they added more onerous terms at considerable cost over the term of the new lease; plus the cost of re-negotiating the new lease and putting it in place, as well as legal fees and stamp duty. The cost of the new lease proposed by [Redacted] in his case would have been around £[Redacted].

My constituent felt that it was unnecessary as [Redacted] added by Deed of Variation various new purchasing freedoms as a result of his new tied arrangement. I understand that there is an arbitration process within the Code to resolve this matter, but it is not speedy and my constituent is not aware of any such substantive cases being resolved.

He believes that this is a key area on which the Adjudicator should be issuing clear instructions to the Pubcos on the specific circumstances that a new lease may be required. Additionally, the Adjudicator should be leading the legal debate on behalf of tenants who do not have the resources to take on the Pubcos. My constituent believed that a new lease was not necessary and felt that it was a delaying tactic. He took the advice of two Counsel both of whom agreed.

Alongside this [Redacted] refused to recognise the new legislation in relation to the backdating clause in my constituent's current lease. They also refused to grant any purchasing freedom from the Rent Review date in his current lease until a completed MRO Agreement was in place which could potentially take over a year. In addition to the new lease arbitration further delay can be caused as a result of drafting and rent valuation appeals. In my constituent's case, this would have impacted on the development of his business and incurred losses of upwards of £5,000 per month as a result of paying for the tie beyond his Rent Review date of [Redacted] 2017.

Again, my constituent believes that this is an area where the Adjudicator should have been leading with more specific instructions to the Pubcos and taking judicial action on behalf of Tenants.

His view, therefore, was that the tenant's options on going free of tie are very difficult: The tenant has the choice of:

- (1) accept a new lease and sustain the more onerous terms and costs associated with that;
- (2) or dispute the new lease and face losses on backdated rent and a lost business development opportunity for a considerable period.

Over the past year, I have been raising these issues with the Minister and the Adjudicator. I understand that the PCA has now issued a new Statutory Advice Note which reflects my constituent's definition of the Pubs Code, and about which he has been in extensive correspondence with the Adjudicator.

He is very concerned that it has taken so long for the Adjudicator to act and tells me that thousands of tenants have been affected. My constituent is considerably out of pocket for the error and his case has been wrongly adjudicated.

This is clearly an aspect of the Pubs Code that I hope can be addressed following the review.

Thank you for giving me the opportunity to comment.

Yours faithfully

A handwritten signature in black ink, appearing to read "Theresa Van". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.