

Business, Energy and Industrial Strategy Committee

Oral evidence: Pubs Code Adjudicator, HC 589

Tuesday 12 July 2022

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Members present: Darren Jones (Chair); Tonia Antoniazzi; Ms Nusrat Ghani; Paul Howell; Mark Jenkinson; Charlotte Nichols; Mark Pawsey.

Questions 1 - 26

Witnesses

I: Greg Mulholland, Chair, British Pub Confederation; Paul Crossman, Chair, Campaign for Pubs; Ian Cass, Managing Director, Forum of Private Business; Haley Tansey, Publican.

Examination of Witnesses

Witnesses: Greg Mulholland, Paul Crossman, Ian Cass and Haley Tansey.

Q1 Chair: Welcome to this morning's session of the Business, Energy and Industrial Strategy Committee for a one-off session, doing some post-legislative scrutiny of the Pubs Code Adjudicator legislation, which was a policy area that our predecessor Committees were heavily involved with over many years. We have three panels this morning. First, we are delighted to welcome Greg Mulholland, chair of the British Pub Confederation; Paul Crossman, chair of the Campaign for Pubs; Ian Cass from the Forum of Private Business; and Haley Tansey, who is a publican. Good morning to all four of you.

We are going to get into the very specific issues of market rent-only leases, and adjudication and pricing, but just to start us off, from a general perspective or overview, has the pubs code rebalanced the relationship between pub companies and their tenants in the way that was originally intended?

Greg Mulholland: It is a privilege to be here before the Select Committee. It is rather strange, but the Select Committee is one of the most important parts of our system, and it is important to acknowledge that, so thank you for the invitation and the interest in this issue.

Members who were here at the time of the passing of the pubs code will remember the basis of the legislation. As you have said, Chair, there were four Select Committee reports on this issue, all of which exposed the quite extraordinary and outrageous exploitative practices of the large pub companies that operate tied lease models. The Select Committee—rightly and, in the end, inevitably—called for action. The then Government were rather slow to act but, in the end, they did decide to act to introduce a pubs code and an adjudicator, but that legislation was based on two simple principles.

The first principle was that there should be fair and lawful dealing. The second was that the tied tenant should not be worse off than a free-of-tie tenant. The simple reality is that that legislation has been a wholesale failure, because neither of those principles is being upheld. Neither of those principles, very bizarrely to us, is being upheld by the Pubs Code Adjudicator, who was appointed as the statutory regulator—or so we believed—to oversee and ensure that that legislation was successful.

I know that we are coming on to the market rent-only option, but the key was always the solution proposed by this Committee, which was, at the time, called a free-of-tie option, with open market rent review, which clearly meant an independent assessment of your rent on a free-of-tie basis, and then to have the option to do that rather than be tied.

I am conscious that some Members were not here at that time and there has not been very much discussion, but there is a lot of misunderstanding about what the beer tie is and deliberate misrepresentation. The beer tie,



as operated by these companies, is, frankly, the biggest rip-off in Britain today. It involves charging extortionate, inflated, above-market prices to the very people who are supposed to be the business partners of these companies. It is wholly unjustified. The Committee decided it should carry on only if there is this option to be free of tie, and yet the pub companies have thwarted that. The legislation was neutered, I am afraid, which was political decision making since the legislation was passed.

It has been a failure. The situation is as bad as ever. Tenants are scared for going MRO, and we will go into more detail on that further in, but I am afraid that it has been a failure of Whitehall and of Government, and broken promises to Parliament from Ministers, who assured the House of Commons and the House of Lords that they would legislate and do it properly. They failed to do so.

Q2 Chair: I am assuming that other witnesses on the panel will agree with Greg Mulholland's opening remarks. Is there anything in particular that anybody wishes to add before we go into specific questions?

Ian Cass: Just to support what Greg said, the figures would be roughly 3% of the people who could have achieved MRO, bearing in mind they go through a five-year cycle. The number who have achieved an MRO will be in single figures.

The unfair business practices have increased. I would imagine that the Pubs Code Adjudicator is having to deal with a lot of practices that were not in evidence before the code came in but are now. It would be naive for anybody to think that we were going to get it 100% right the first time, but there was provision in there for the adjudicator to report anything that was there to avoid sticking to the code, as well as to recommend on bad business practices that have come up. I do not think that we have seen any example of using soft power a bit more to prevent those behaviours.

Q3 Chair: Just on this 3% figure, do we know what that means—3% of what?

Ian Cass: Imagine the number of tenants who are going through, mostly on five-year agreements, with the trigger point for getting an MRO being every five years—it was brought up at the last Committee meeting that was had here. The figures at that point were about 3% of people who could have achieved MRO. I am sure that there will be an argument: some will say that that is because there is not a demand for it from tenants. I do not think that is the case. It is the fact that, instead of being a 90-day process and fairly cheap to achieve, it is taking years to achieve and costing an amount of money that many tenants cannot afford to bring in. I think that I am right in saying that the PCA agreed with that figure.

Whether or not it is still the same, I would argue that the number of people who have achieved MRO, of those who could have done, is probably still in single figures. There was a survey in 2014, in which



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about 93% of respondents said that they would be interested in MRO, so there is quite a disparity between those who said that they would be interested and those who have managed to get it.

Paul Crossman: The changes that were made to certain bits of the wording in the code, combined with the choice of the first adjudicator, has meant that the pub companies have had all this time to reposition and restructure their offering and come up with alternative business models to avoid the code, all with very little opposition from the officialdom that you would think would be overseeing those problems arising.

Many of them had financial woes at the time. The result is that they have all restructured now and many have gone offshore. As for the profits that are still being taken out of our local businesses, it is even worse than it was before, because they are just leaving this country completely. The whole industry has pivoted and changed around the pubs code, as well as what was inevitably going to happen, probably, if they were not checked.

Q4 **Chair:** This was the concern that the original adjudicator was too industry-friendly.

Paul Crossman: It was absolutely clear. It is one of the most clear-cut conflicts of interest that you could possibly expect to see, to be honest with you. It was an industry estate agent, effectively, who had a director's loan outstanding with Fleurets, which is one of the biggest property survey and estate agents in the industry. That director's loan was outstanding throughout the entire time. Paul Newby served his time as adjudicator with absolutely no effect that we could see from our end of things. In fact, this Committee spoke out strongly on the issue of his appointment at the time, and I am afraid that it was just completely disregarded by the Government. Anna Soubry stuck to her guns on the issue, and everything that we said, which we felt held water, was completely disregarded.

Haley Tansey: I would just like to add a bit of fact. I shook hands on a free-of-tie agreement with my pubco for a 20-year free-of-tie lease. The free-of-tie price was a £45,000 uplift on the rent I was paying at the time. That included the profitability that the pubco would be losing on me buying alcohol and other drinks from it, and there was a handshake on that. It went to the board, which came back and said it needed another £20,000. That is an extra £65,000 that I have to find and then buy my drink supply on top of that. It was simply not sustainable as a business.

My profitability from going free of tie should have been an enhancement to the business but, in fact, it was just a massive handicap, because you had to find that extra money and then find money for your alcohol, minerals and whatever else on top of that. It is just not a sustainable business model. That is a lot of pints of beer and a lot of meals that a publican has to serve to even stand still with that.



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Q5 Mark Pawsey: Haley, you have told us about the increase, but we always knew that market rent would be a higher rent than that where people were paying for part of their rent through the additional price of their beer. Are you saying that that sum that you were quoted was not a market figure?

Haley Tansey: Yes, and I know that because I had two valuations done, by Savills and by an ex-pubco—

Q6 Mark Pawsey: But surely the point of the adjudicator was to determine whether the market rent being quoted by the pubco was, in fact, a market figure. Have you taken that to the adjudicator?

Haley Tansey: I have taken a rent review to the adjudicator, which was found in my favour, but not around this scenario. This was put to bed and was going to be revisited in the new year, which was 2020. Of course, we all know what happened, so that never went any further, because of the pandemic.

Q7 Mark Pawsey: So there were complications. Greg, you were actively involved in this in the time that you were here as an MP. It is five years after the code came into effect. We have heard where we are, which is that just 3% of people have taken up a market rent-only option. What would you have expected to have happened by now?

Greg Mulholland: If we had had the legislation that we were promised, which we did not—and Ministers broke their promise to Parliament—people would have the very simple right that this Committee suggested, which was that they could choose, at certain trigger points, to go free of tie on an independently assessed market rent.

Just to pick up a point that you made, you said that the market rent will be higher. That is not true. One of the scandals with the tie as operated by these large companies, which increasingly dominate the market, is that we are now getting to a very anti-competitive situation, very similar to the one when Margaret Thatcher's Government decided to put through the Beer Orders. These companies are dominating.

Part of the reason that this Committee suggested action is that the tied rents were higher, in many cases, than free-of-tie rent, so we had a complete skewing of the market. The issue in the end was that this model was based on taking too much from pub profits, so tenants with good turnovers were not able to make a living.

All that was suggested was an independently assessed market rent. This is really important, if I may just explain this. My clause that was voted on by both Houses of Parliament in November/December 2014 gave the simple right to tenants of these large companies to choose to tell the company that they wanted to go free of tie, on the basis that they would get an independently assessed market rent.

You probably will remember, Mark, that the Government then took out my clause and watered it down, and rather than being able to pay that



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from 90 days, which was what both Houses of Parliament voted for, it was taken out. As you have heard from Haley, it can take up to two years to get through the process, so people are giving up.

If people had had the clause as voted for, and as Ministers promised, people would have done that, and the pubco model would have had to change, if the tie was going to be attractive, because you were going to have tied deals where people were paying far more for their beer than you or I could buy it for on the open market, which is the reality of the tie. In the end, either the pubcos would have to make it really attractive and profitable for tenants, or people would take their option, but they have not been given that option.

Q8 Mark Pawsey: Just to rewind a bit, if somebody is paying more for their beer, the assumption is that they are going to get a lower rent, and the market rent option would always be higher because they then had a freedom to go and buy it. You will have to unpick that for us, because that does not seem to make sense to me.

Greg Mulholland: It is a misassumption. That is the point. The industry survey showed that tied rents got higher. This was the then ALMR, now UKHospitality, which has two members that are the larger regulated pub companies, so it is hardly a biased view. It showed that tied tenants had got higher before the legislation came in than free of tie, so it is a misassumption. In the olden days, with the old brewery tie, you would pay more for your beer, when people used to drink far more beer than they do now, and you would get a lower rent. That is not the model we are dealing with, and that is why predecessor Committees decided to act. Paul can give you direct examples of that.

Q9 Mark Pawsey: Back to my question, if your legislation had gone through as you had originally anticipated and would like to have seen it, what proportion of the market that had a tie would have exercised MRO by now, in your view?

Greg Mulholland: Thousands, we believe.

Mark Pawsey: Half of them?

Greg Mulholland: Potentially.

Paul Crossman: More than that.

Haley Tansey: More than that.

Greg Mulholland: But, in the end, it would have stamped out the exploitation. The reason why this Committee decided that action had to be taken was to stamp out the exploitation, and that is continuing because of the watering down and the failure of legislation.

Q10 Mark Pawsey: Why has that not happened? You have spoken about the weaknesses in the legislation, but we have heard also about the cost of the process, the time the process takes, and the choice of the first



adjudicator. Which of those is the most compelling reason for things not having worked out in the way that you would like to have seen it happen?

Greg Mulholland: The most compelling reason is what we believe was deliberate watering down and deliberate neutering of the legislation. It was a fudge. The legislation became a fudge. There were statements from Ministers saying, "We want to get the balance right and we want the pubs code to work for everyone." If you decide to do something, you do it. If you decide that there is an injustice, you tackle it. You do not then fudge and horse trade, which is exactly what happened. If you look at when the code was delayed, there was clear horse trading going on behind the scenes with the pubcos and their representatives. You may remember that time, Mark. In the end it was designed, I am afraid, to fail from the moment that the Government took out my—

Q11 **Mark Pawsey:** You are alleging that there was a definitive strategy on the part of Government to make it fail.

Greg Mulholland: We believe so. In the end, the one thing that we really hope this Committee will do, having done so much work, is a proper inquiry into this issue, because it is desperately needed. Calling former Ministers, advisers, and BEIS and PCA staff, would be extremely enlightening, and we hope that that will happen.

It is something that will not work. Just to give you a very simple, practical example, rather than having the 90 days from which the tenant could start to pay the independently assessed rent—it is very hard to get to the independent assessed rent in the first place—the pubco gives a figure that it calls an MRO offer, which is just a high rent that it wants to ask for, and then negotiation starts.

The problem is that, when it gets to any point of dispute, the pubco will insist on arbitration, which was never intended to be part of the process. That arbitration can take a year or two. The costs are huge. Sometimes pubcos demand costs, which scares off tenants and makes it impossible to do. Sometimes, in certain cases, as you are aware, it even has to go to court. The whole point of having a statutory regulatory system was to allow a simple mechanic, where people did not need to go to court and they could go through this. They have been let down.

Q12 **Mark Pawsey:** Ian, the premise of the tie is that the tenant will pay a proportion of the cost of the building through an up charge in the beer price, but there is no additional charge on any of the products, is there? It is just on the beer where the tie exists.

Ian Cass: No.

Mark Pawsey: So it is just on the beer.

Ian Cass: In the original tie, you were a brewer and, quite reasonably, you wanted your beer sold in your pub. That was part of the agreement.

Q13 **Mark Pawsey:** But the pubco charges more only for beer. It does not



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charge more for wine or any other product.

Ian Cass: It does.

Haley Tansey: It does.

Paul Crossman: It depends on the tie.

Q14 **Mark Pawsey:** So those are at a market price. The pubco will say that it provides a whole load of other services, like support on training, hygiene or marketing, in addition to the upcharge on the beer. Is the reason why so few people have exercised MRO that they do not want to lose all of that support that comes from the pubco?

Ian Cass: Very simply, no. First of all, on your point about MRO, the clue is in the name—market rent-only. It is supposed to be based on a fair market rent, not market rent plus the margin that they are losing on selling products, so let us get that one out of the window. That is not what it was based on. If it was based on the way that you are describing it, with the difference that they are paying on the beer added on top, the second principle of the code—that a tied tenant will be no worse off than a free-of-tie tenant—would never be achievable. MRO should be a fair market rent only. That is one.

On this idea of the SCORFA, I was, for my sins, a sales rep for spirits companies in the past. We used to deliver St Patrick's night kits and things to individual pubs. We do not do that anymore. The big companies put a marketing spend into the pubcos, and they support events around those brands. I would suggest that you ask any of the pubcos to put a value on that SCORFA, and they will be unable to do so. We have asked that question before.

There is this idea that the publican gets all these things. I would love to see that. I would love to see a statement every year that said, "Here is the value of what we are putting into your pub," because, as a businessperson, Haley could make a sensible business decision about whether MRO made sense.

Q15 **Mark Pawsey:** Would that be a good question for us to ask the pubcos when we see them later?

Ian Cass: It would be a great thing. I have asked the Minister that as well—whether you could have some kind of annual statement that said, "This is what we are investing in you and your pub." It is a great idea, because you would then get a clear idea, but you do not have that at the moment.

Q16 **Mark Pawsey:** You just get it, so somebody comes along and assists you with your venue development, your health and safety, and your food safety regs.

Ian Cass: You get a load of promotional kits, but does the pubco pay for those, or were they given to it by Diageo or whoever else? You do not



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know. Put a true value on it. It does not quite balance out. Hopefully, both of those answers help.

- Q17 **Mark Jenkinson:** This predates my time here. You made a comment about your amendment being watered down. My understanding was that commitments or statements of intent made at the Dispatch Box can be held up in court. Did the Minister stand up and suggest that the intent was as you understood it to be?

Greg Mulholland: Yes. We had clear statements from Ministers, from both sides in the coalition Government and from the subsequent Conservative Government, saying that they would stick to that promise, but that simply did not happen.

- Q18 **Mark Jenkinson:** No one has yet taken it to court to challenge it on that basis that you know of.

Greg Mulholland: While I was still in Parliament, we raised it. We had debates. The last one was probably in 2016, and we have been writing to this Committee, which is probably the only option available. In the end, this was all about a huge imbalance. Some of the biggest beer brands and pub companies in Britain dominate it. Their financial power is huge. On the tenants' side, you have people who do not have the resource and cannot challenge it individually or collectively. That is a real problem.

- Q19 **Tonia Antoniazzi:** What are your views on the role and performance of the adjudicator to date?

Ian Cass: I would say disappointing. It seems to me very clear that, when Anna Soubry put this in place, she said two things. First, there was a statutory obligation for the PCA to bring forward any bad behaviours to the attention of the Minister that were to do with avoidance of the code; and, secondly, she was in a position where she could make recommendations on other bad behaviours. We have seen those bad behaviours coming up—things like the weaponisation of dilapidation, so that you are in breach of your agreement. You are immediately told that the dilapidations bill is £60,000 or £70,000, or whatever it might be, quite often above the deposit that you put in. That puts that person in a very vulnerable position in the negotiation in the first place.

We flagged things like this up and said that we have seen more of this behaviour—these franchise-style agreements that are being brought in. I would have liked to see the PCA either investigating those to see whether there was any validation of what we said, or at least using a bit of soft power in the same way as the small business commissioner does, to say, "We have had reports of this. Can you let us know what is going on?"

I will give you a specific example. When the first lockdown happened in the pandemic, we raised a question about whether, when pubs reopened, there would be any conditions put on them reordering and reopening in terms of stock that they had to take, repaying debts and things like that, and whether the PCA would make sure that that was not the case. We



were told that it did not really have the time and resource to do that and to speak to the six regulated pub companies, which surprised me, so we did it instead.

Sure enough, certain companies placed conditions on reopening. You had to agree to pay a certain amount of deferred rent debt in a specific period of time or you had to order so much stock, and that went on. Having flagged it up as a potential issue, nothing has been done about it. One investigation has been done on Heineken, which does not really, in my opinion, have a great deal of value, and nothing else has been looked into.

Q20 **Tonia Antoniazzi:** Does the adjudicator has enough powers?

Ian Cass: Anna Soubry very clearly changed it and made an amendment where she had a duty to report any bad behaviour to do with avoiding the code, and she was allowed to make recommendations on other bad behaviours which, for me, says that, if other things were coming up, we recommend back to the Minister. From what I can see, that has not been done. If it had been, it would at least have improved things. We worked out that, in 2019, between us and individual publicans, we had sent in 102 examples of cases of bad behaviour. Nothing was ever done about them. We do not know why nothing was ever done about them. Certainly at that time, the PCA did not keep records of the number of complaints coming to it and could not tell us the total numbers.

There is an opportunity missed there. You would be naive to think that this was going to be perfect from square one, but there was an opportunity to make it better and to report back to the Minister some of these issues. From what I can see, that has not been done at all, and that is a sad thing. The adjudicator has also been faced with a lot more issues than were first envisaged when the code came out. I am sure that everybody thought that it would be all about rent assessments, and that is why Mr Newby was put in place. It turned out that the vast majority of the issues were around contract, which was why you needed somebody with a legal background to deal with it. I am sure it is dealing with a lot of bad behaviours that did not exist before the code came in.

Haley Tansey: I am party to a number of publican forums where people voice their concerns, and so this is not just my view but the view of the publicans of this country. They feel that the PCA has taken a side, and it is not our side. They feel that the issues that are reported are not heard. If they are heard, nothing is done about it.

A lot of publicans came forward and spoke to a guy called Tom Astley, who was then the intelligence officer. He did a full report on publicans' issues, and that was archived. Publicans feel that they did speak out about what they felt was wrong, and then nothing was done about it. They have just lost faith and trust in this whole process, and feel that the current adjudicator is not approachable and that some of the events are



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not ones that a normal publican could afford the time out of their business, or the ticket price to Olympia or wherever, to attend.

There should be clinics set in a local environment, like MPs do, where they say, "On such a day, we are holding this clinic in this venue," so that people can go and speak about their views. Then they have some recourse as to what is going to happen going forward, so that they are not just telling them that there is a problem, but they get a response to that problem. Even if it is that it cannot be dealt with or that there is nothing that we can do about it, at least they have voiced what they feel is an issue and somebody has taken the time to address it.

Paul Crossman: I would agree with what Haley said. We had high hopes of both adjudicators, although not really maybe in the first case, and that turned out the way we expected. When Fiona came in as deputy, we were all, at the time, really happy, because we were saying that we need somebody who understands law, which we were clearly getting, and her history looked promising.

We engaged really early on. I have met Fiona a few times and we get on really well personally, but I have ended up with the impression that we are a bit of a pain. We go to her with genuine tenants' problems. We get portrayed as being aggressive and really a troublesome factor. Given the way that this code came about and the fact that tenant campaigning created the pubs code and the office of the adjudicator, so the whole thing is thanks to tenants campaigning, I felt that we would have an adjudicator who would be our champion as tenants.

I have raised this with Fiona and her view is different. Her view is that there is some balance to be found between tenants' needs and pubco needs. The code was not brought in for that reason. It was brought in because of the misbehaviour of pubcos; it was supposed to redress that situation, not to find some middle ground where everyone is catered for. This is a result of historic injustice that has not been corrected.

Greg Mulholland: We have an adjudicator who refuses to properly engage with genuine independent tenant groups, and keeps putting out press releases and, no doubt, telling BEIS that she meets with tenant groups, when the groups she meets with are funded by, have membership contributions provided by, or even have members that are, the regulated pubcos. You could not make it up, but that is the reality. We have raised that with the Committee. We have raised it with BEIS. It has been ignored.

The Committee may not be aware, but in the recent survey that was purportedly done for the Pubs Code Adjudicator by Ipsos MORI, with all the tenants who were interviewed, where did the data come from? The PCA's office asked the regulated pub companies to provide it. We are aware that there are tenants who are in dispute with their pub company and who were not asked, because one of them is sitting two places away from me. I am sorry, but that is totally unacceptable. The PCA needs to



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be independent, to seek data itself, and to stop relying on the regulated pub companies. It is far too cosy.

We have an adjudicator who does not adjudicate, partly because they do not have the powers. The current adjudicator has decided not to arbitrate, has done one investigation, has ignored the systematic abuse of dilapidations bills and the systematic and ongoing abuse of section 25 notices, and did nothing about the clear discrimination of MRO tenants who were generally charged full rent through lockdown. They have ignored all those issues, and so, frankly, what is the point of the adjudicator? It certainly is not what tenants were promised, and tenants, understandably, feel very betrayed.

Q21 Tonia Antoniazzi: I have a bit of self-interest in the next question that I am going to ask you. My constituency of Gower is one of the most visited places in the United Kingdom. The beer that is produced there—and there is more than one brewery—is an absolute brand. When people visit, they want to be able to drink beer that they know as a local brand. In your view, what impact has the pubs code had on publicans' access to beer and other products? Is it now fairer? I have not seen it. My constituents and my pubs are not seeing it. I just wanted to know what your view is.

Greg Mulholland: We are very keen that publicans particularly have their view on this. One thing that is really important is that small brewers are not getting access to breweries. Also, what has not been picked up at all is that our small brewers are also victims of exploitation by this model and by these large companies. I do not know if anyone saw the Tom Kerridge programme on pubs last year, but it was a very powerful example of a pub in Stroud owned by Punch Pubs. The figures that the pubcos are offering to the small brewers to be on their list are scandalous. If it was milk or dairy farmers, Parliament would have done something about it. For some reason, because it is not consumers and because it is publicans, it keeps getting ignored.

Many small brewers cannot even afford to sell. Some small brewers are being forced to sell almost at a loss to be on that pub company list, and yet what happens? That brewery is still expected to deliver it the two miles to the pub, and yet the price to the tenant—the supposed business partner—has this excessive, inflated mark-up. That is what it is. It is a totally artificial price—the so-called wholesale price. It is not wholesale at all.

Two examples in that case are Punch Pubs and Stonegate—one registered in the Cayman Islands and one now owned by a New York investment firm, having been sold by a Mayfair-based one last December. They do not brew a drop of beer. Why is it legal for them to overcharge and to put that extra money on to beer that they do not brew? Frankly, that is called a protection racket. It is an absolute scandal, making £40 for doing nothing when the brewery is struggling. Small brewers have closed, and some of those that have closed recently are the very ones that have become reliant on those pubco lists. There is a competition



issue as well, and it needs dealing with. Small brewers are being let down, as well as publicans and, as you said, Tonia, consumers. I am really keen to get the publicans in.

Paul Crossman: I had a phone call from a local brewer just a couple weeks ago. He did not know that I was coming to this, but he just contacted me because of my campaigning work. He said, "Can we talk about the way things are at the moment?" This is a small local brewer—a great brewery with great beer—and he said, "I have to drive past a dozen pubs to drop my beer to you," because I have three free-of-tie pubs, two of which are free houses. We own the freehold and it is a different world to the leased world, I can tell you. We are free of tie and can sell his beer in all three of our pubs. We are absolute gold dust for him, because he simply cannot sell into those local pubs, so his beer is not being enjoyed by people who visit York, unless they come to our pub. They cannot go to just any pub in York and find it.

Q22 **Tonia Antoniazzi:** Is there a limit, though, Paul? If they can get a certain amount through the pubco, is it only a certain limit that they get—they cannot sell more than the main beers?

Paul Crossman: The terms are so punitive for them to sell into a pubco in the first place. It is a system called Beerflex, whereby the pubcos can say, "Yes, we allow access for local beers into our tied pubs", but it is the single most expensive way that you can buy beer as a licensee. You will pay at least 10% or 20% more to get those beers than you would to get something off the main pricelist. Meanwhile, the brewer is getting paid a pittance for the beer.

I know this because, years ago, I had a delivery from a local brewery. It was a SIBA delivery, and I got both invoices. I am not sure whether that was a mistake, but they got £55 from Punch and the beer came to me at £110. It was literally a 100% mark-up on what they had sold and Punch did not even touch that beer. The brewery delivered it. It is just an invoicing exercise, shuffling bits of paper around and saying, "We will take a massive cut out of the middle, thank you very much, because we have the contractual power to do it and you cannot do anything about it".

The pubs code came in since then, but the pricing has not improved. If you look at the so-called wholesale prices that these big brewers publish, no one pays that price. The only reason that that price exists is so that the pubco can then claim that its tied tenants are on so much discount—5% or 10%—but it is a discount on a completely mythical price that nobody else in the industry would even consider paying, because it is insane. It is literally 100% more. I pay free-of-tie prices in all my pubs, including from the major brewers that are part of what Greg termed the British pubco scam. I buy beer direct from these big brewers and I have seen the prices at which those same beers are charged to tied tenants. Recently, we saw some kegs that were over 100% more to tied tenants than I am paying in my free-of-tie pubs.



Haley Tansey: I am in the same boat as your constituents. We are in Hebden Bridge in West Yorkshire. It is a fantastic town for tourists. We had a local brewery where we did very well with a few of their lines—Saltaire Brewery. He came to us and said, “I am really sorry but we can’t supply to you anymore. We can’t afford to drop the beer off to you, because we are not even making 50 pence on a cask by delivering it to you.” They tried to negotiate with the pubcos, but they were not interested, and they just had to take themselves off the SIBA list at the time. Our customers and visitors alike would come in specifically for that drink. They want to taste a bit of Yorkshire or whatever. They want to indulge in the local food and drink available, and they are just not able to. There is a competition issue as far as I am concerned.

Ian Cass: I will throw in one thing in answer to your question that gives you a bit of numbers. According to SIBA figures, there are about 800 new microbreweries in the last 10 years and their market share has stayed the same, at about 7%. So we are getting more of these microbreweries appearing, but, in answer to your question, they are not getting any share of the market. It is static, around the 7% point.

Q23 **Tonia Antoniazzi:** What is your understanding of what the pub codes say about the tie and gaming machines? Is it different from the adjudicator?

Ian Cass: I really do not understand this one. My understanding was that gaming machines were not to be included in the tie. The Committees have recommended that in the past. The amount of money involved just should not be part of it. The adjudicator’s interpretation would seem to be that, if you do not want a fruit machine, that is fine, but if you do you have to take it on through a supplier provide by the regulated pub company. I do not get that. We have questioned it and just been told, “Yes, that is the case.” As far as I am concerned, gaming machines are still included in the tie, because your only other option is not to have one. I cannot really say any more on this.

Paul Crossman: That is a really good case, because that clearly is not the intention of the Act. It is just not the intention. Fiona Dickie has interpreted that in such a technical way, to say, “Well, this is my interpretation of that and this is, therefore, my ruling on it,” effectively. I would say that that is a clear case where she should be going back to the Secretary of State and saying, “The wording of this looks a little bit like it is not going to be beneficial to tenants,” which it should have been in the first place, so why not report that back as a problem with the code?

Greg Mulholland: Just very quickly, we shared the letter that we sent to the adjudicator. When we read the guidance on the legislation with regard to the gaming code, we find it impossible to see how Fiona Dickie has made the decision. It is absolutely scandalous. This Committee recommended an outright ban of the code. Now, we have a situation where the gaming tie stays in place because of the decision made by the adjudicator—another poor decision also made in her column in the



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Morning Advertiser rather than in another way. The system is just not working.

Q24 **Mark Jenkinson:** I just want to move it on to what you get for your money. Through Covid, how did the regulated pubcos respond? Was that helpful to licensees?

Haley Tansey: Thankfully, I had not got my free-of-tie lease agreed. If I had, I would have had no support whatsoever. Because I am tied, we did get support from the pub company. Initially, there was a rent-free period, and then, as the grants came in, there was a percentage that went towards rent, which is what they were supposed to be for.

Q25 **Mark Jenkinson:** So you had rent-free periods and, when the grants came in, you had to give a percentage of the grant, but no rent was racking up in the interim.

Haley Tansey: No, not for me as a tied tenant, but, for people who were free of tie, yes. I would have racked up over £140,000-worth of rent debt, which I have no idea how we would have paid off.

Paul Crossman: I have a contrasting experience, because I am not tied. I am a tenant of Star Pubs and Bars, but I am not tied. We were charged full rent through the entire pandemic. I wrote numerous letters and had numerous replies from various people in Star, all saying that they felt that what they had in place was appropriate, i.e. full rent being charged all the way through. It was not until we got toward the very end of the pandemic, by which point you can imagine that some people will have been absolutely desperate with the debt that was building up behind them, that they said, "If you settled your debt in full, we would give you three free months going forwards," but they wanted that money in to do that.

I am still in dispute with Star at the moment. I paid my rent completely up until November 2020 in the end, because we were able to reopen in the summer. We did get a grant. We were very fortunate to be one of the pubs that did get grant money, so I used that to settle my debt. In the long lockdown from, in our case, November until May, we were closed. We could not open during December, because we do not do food and I was not going to do sausage rolls, despite what the Government said, so we stayed closed all through December.

During that time, tied tenants were given a discount of 90% off their rent by Star, and all we got was this offer towards the very end of the pandemic that you would have three free months, if you settled your rent debt in full. Because we are still under the protected period, I have a protected rent debt that we are still disputing at the moment.

Ian Cass: I just have an observation. In the first three months of lockdown, I am pretty sure I am right in saying that most of the regional brewers said, "Just don't pay rent for that period". The regulated pub companies said, "We will defer the rent, but you still owe it to us". There



was a bit of behavioural difference between the way regional companies, which still rely on the pubs to be shop windows for their products, treated their tenants and the way some of the regulated pub companies operated in that first three months.

With a couple of them, when you reopened, you were obliged to repay all that debt within an agreed period in order to secure your delivery and to reopen the pub. To be fair, there was help that came a little later, but, when the pandemic initially hit, I would say that the regulated tenants were at a bit of a disadvantage.

Paul Crossman: The Government put a code of practice in. Clearly, the major pubcos chose to interpret that code differently for tied tenants than the way that they did for free-of-tie tenants, and I do not see how that is possibly defensible. There is no contractual basis for it. It was purely a decision that they made to apply that code completely differently.

Greg Mulholland: Mark, going back to the question that you asked about the legislation, it said that tenants going for the market rent-only option were not allowed to be treated in a detrimental way, or to be discriminated against, effectively, and this was clear discrimination. Anyone who had taken the legal right that this Committee suggested they had were discriminated against and charged full rent through lockdown. That is scandalous.

Q26 **Charlotte Nichols:** I should just declare an interest as the chair of the all-party parliamentary group on pubs, and I refer to my declaration of Members' interests accordingly.

I just want to wrap up what we have been discussing in this session around what the future of the sector might look like and what the Pubs Code Adjudicator should be doing going forward in order to fix some of the issues that we have been discussing today. If you were able to wave a magic wand, what would be your prescription going forward?

Ian Cass: It seems to me that the main intention of the market rent-only option was to rebalance the books to the "no worse off" and the "fair and lawful dealing". If MRO was easy, accessible, not overly complicated and not going to cost you a fortune, that would rebalance the books—"You have to behave yourself or this person may well go MRO." I had argued that the Government might not have had to spend quite as much money during the pandemic if the code had been working in MRO as it should have done, because these companies would have to behave in a better manner. You have to look at MRO and getting that right.

Paul Newby tried to get tenant groups together and to work with them. I work with pretty much every regulator through the Forum of Private Business, from HMRC to the Pensions Regulator or the Small Business Commissioner. The only regulator that I have no formal contact with is the Pubs Code Adjudicator, despite asking her on a number of cases. She



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continues to speak to the BII, UKHospitality and the FLVA, which are all, I would say, involved in this.

I would like to see the adjudicator liaising more with tenants, taking notice of the behaviours that are going on and doing something about it. Part of that might just be using some of the soft powers to put a shot across somebody's bows and saying, "Look, we are seeing this. I don't want to see more of it coming in. If this becomes common behaviour, I will go back to the Minister with it". Without waffling on too long, if you addressed the MRO, and if the adjudicator worked more with tenants and really did become their champion, we would be in a far better place than we are now.

Haley Tansey: I would like to see a change with the pub code. I would like it to be more aligned with the Scottish pub code that has gone in, because I feel that, if I was a publican in Scotland, I would have a better deal than I have as a publican in England. As publicans, we feel a little left behind with that, almost like second-class pub tenants, even though we are doing the same job. We deserve more.

There needs to be a stop to the strong arm of dilapidations, where publicans are being scared out of their properties because they are being hit with huge bills for dilapidations that simply either do not exist or have been highly inflated. People who have been good tenants want a chance to continue in their businesses and an opportunity to be more profitable by going into an MRO situation when, in fact, once you mention that word, it is highly likely that your pub is going to be taken back in as managed.

You lose your business, the place where you and your family live, and where your children go to school, and the friends and community that you build. You are part of that town. My coaching inn has been there since 1657. We have been serving customers since that day and it is a privilege for me to do that. Now I am under threat, because I asked for MRO, of losing my entire business that I have worked so hard to build, and the 50 local staff we employ will all be gone. That just seems really unjust and unfair.

Paul Crossman: What Haley has just said is absolutely right. We are at the front line of this industry and we are the people who deal with the communities and the staff. All the nice community-facing side of pubs is dealt with by the licensees. These big corporate factors behind us are so remote from that that they literally do not care. They just do not care. It needs to be recognised, to be honest, that the pubs code in this country has been a failure. Scotland has benefited from that. It has learned from the failure of the English code, and that was clearly evident in the Committee sessions. Despite the best efforts of the pub company reps who were down there, trying to talk about investment and this, that and the other, they saw through it all, because all that stuff has been aired before and is mostly non-existent.



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Unfortunately, you have to just go back and revisit the whole thing, as far as I am concerned. We have not even talked about the various ways in which pubcos are avoiding the pubs code. Just briefly, I refer you back to the letter that I wrote to the Committee about four weeks ago on the section 25 notices. That is just one of the ways; dilapidations is another. There are so many ways that they are avoiding the pubs code now that there will not be a tied sector in five years' time for anyone to adjudicate.

Greg Mulholland: Thanks, Charlotte, for your work on the pubs APPG.

It is very bleak, and it is time that Government and Parliament woke up to what is happening in the sector. You have Heineken buying up pubs. It bought a huge tranche from the failing Punch Taverns, now Punch Pubs. There is this monopoly going on. At the same time, Marston's and Carlsberg have merged, so we are going back to where we were with the Beer Orders. The huge global brewers are getting their stranglehold on the sector, owning far too many of our traditional pubs.

Not happy with only owning them, they then operate this extraordinary model that is operated and legal only in the UK, where they can overcharge their so-called business partners for beer and, incidentally, for other products. Mark Pawsey seemed to think that the tie was only on beer, but it is absolutely not. It is on wines, spirits, soft drinks and, indeed, on repairs and everything else. There is an education job to do on the reality of the tied model.

In terms of what needs to happen, this Committee needs to do an inquiry. I would really urge you to do this again, because the Committee has shown the leadership on this issue. It needs a full, proper inquiry, as happened previously, which led to legislation. This Committee was let down in the way that Parliament and tenants were let down and betrayed by the broken promise of Ministers.

We need the legislation we were promised. It needs the primary legislation to be reversed, and then we need an adjudicator with more powers to do that. We need the genuine market rent only option. We need what was promised. There also should be a competition inquiry because of what is happening and the way the global brewers are. At the moment, it is not good for small brewers, it is certainly not good for publicans, and it is not good for consumers, so we need action on several fronts.

Chair: Thank you to all four of you for your contributions this morning. That is very helpful for setting the scene.