

Business, Innovation and Skills Committee

Oral evidence: Pubs Code Adjudicator, HC 986

Tuesday 10 May 2016

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Members present: Mr Iain Wright (Chair); Paul Blomfield; Peter Kyle; Amanda Milling; Jonathan Reynolds; Amanda Solloway; Craig Tracey; Chris White

Questions 1 - 78

Witness: **Paul Newby**, Pubs Code Adjudicator, gave evidence.

Q1 Chair: Mr Newby, welcome to the Business, Innovation and Skills Select Committee. We are genuinely grateful that you are here. Although this is not a formal pre-appointment hearing, previous BIS Select Committees have taken a very close interest and, indeed, have helped changed the law when it comes to pubcos and the formation of your new post. It will have the feeling somewhat of a job interview, but I am sure that that will not put you off. Let me begin by asking what made you apply for the role.

Paul Newby: Good morning, everybody. What made me apply for the role? I had been in my previous role for quite a long time. I am 57 years old and I felt it was time to look for something new to do. It was time to hand on the reins to some of my younger colleagues at my old firm, having felt in that past that I wished some of my older colleagues would leave sooner so that there was succession there. Having been involved in this market, I also felt that it was a subject in which I had a lot of interest and I wanted to make some contribution to the changes that were going on and that were required in the market. I had been involved in the voluntary code process with the BII accreditation service and so had some knowledge around the subject. Therefore, I looked at the website that contained the details of the role, felt that my skill set was quite well aligned with the demands of the job, and applied.

Q2 Chair: That brings me on to my next question: what specific skills do you bring to the role?

Paul Newby: I have been working in the pub property business for about 35 years. If I can just, for a moment, take you right back to where this journey started, it was longer ago than that, 40 years ago, that a managed pub company built a pub opposite my mother and father's house. My father signed a petition for the pub and my mother signed a petition against the pub. I got a job in the pub and, before I was 18, I was washing glasses in a very busy community-led pub and then went on to work behind the bar. From that, in higher education I worked in a busy student bar. I came to find out that it can be very

enjoyable working in the pub trade, but it is hard work. I did a course in property, which was a sandwich course in Sheffield. The third year, my first year of work, was a sandwich year, and I worked at a firm dealing with industrial property to start with. Quite by chance—I did not know this when I went there—they had a department that dealt with pubs and that sounded, at the time, a much more interesting thing than factories and, before I went back to complete my final year, I ended up that year working with one of the partners who dealt with pubs. I became quite interested in the market. He offered me a job when I graduated, so I went back.

Q3 Chair: Sorry to interrupt you, Mr Newby. Tell me the specific skills you bring to the role.

Paul Newby: Yes, I am coming to that, sorry. Right from the start of my career I have been working in the pub sector. During that time, I have dealt with a whole range of aspects of pub property, including transactional matters and most, if not all, professional matters that go to pubs. During that time, I have developed a lot of work with landlords and tenants, in particular in the field of rent reviews, landlord and tenant work and lease renewals. I progressed from being a negotiator advocate in that role through to expert witness work, where one's duty is to a tribunal, to provide evidence objectively, and then through to being, as I progressed in my career, a dispute resolver myself, as an arbitrator and independent expert. Latterly I trained as a mediator. What I bring to the role is an all-round view of this pub market, the 12,000 or so tenants and the big pubcos, and the relationship they have as landlord and tenant. I genuinely feel that I have seen it from all angles.

Q4 Chair: You mentioned an all-round view, and that you have been working in the business for something like 30 or 40 years. Equally, you will be aware that your appointment has raised a number of issues when it comes to perceived or actual conflicts of interest. Looking at the application pack for the post of adjudicator, the headhunters say, with regard to conflicts of interest, "If you or a family member have any personal or business interest or potential conflict of interest with the activities of the Pubs Code Adjudicator you will be expected to declare this". Did you declare anything?

Paul Newby: I did. In my CV, I made it clear that I had worked for pub companies and their tenants in a number of respects and over many years, and I felt that was part of the reason to apply for the job, because I had experience of that area.

Q5 Chair: How was that declaration on your job application explored during the selection process?

Paul Newby: My main interview in front of a panel was five months ago, in December. I do not have a transcript of that, but my recollection is that my application letter and CV, both of which referred to involvements with pub companies and pub company tenants, were discussed as part of my experience. I recall being asked about conflicts of interest and I do not have a clear recollection of everything that was said, but I do recall discussing where I would consider specific conflicts of interest arose in my role—for example, if I had personal knowledge of a particular case or if, by chance, I was closely involved with a person in the process, such as a family member or a member of a club that I was a member of—and how I would deal with conflicts of interest in that scenario.

Q6 Chair: You will appreciate that perceptions are really important when it comes to this. It not just that you are independent and impartial; you have to be seen to be impartial and independent. I think of it very much along the lines of football: if Newcastle and Sunderland were playing a match, you would not have a referee coming from Tyne and Wear, in terms of having somebody who has been very integrated and influenced by clients from a particular side. Frankly, Mr Newby, you cannot win, can you? That perception of a conflict of interest means that, whatever you do, your decision will be questioned and the impartiality will be questioned also.

Paul Newby: It is a very important point and I do not take it lightly. The perception of conflict is something I need to address. I want to address it by engaging with all the stakeholders and showing them that I can do this job properly and fairly. I have taken off my previous hat and thrown it away. I have a new hat and new responsibilities, which are spelled out very clearly in statute. I do want to talk to all the stakeholders; I am already talking to them. I take it very seriously. I have considerable respect for the people who have spent a huge amount of time and effort in getting this code into place, and I want to see that it is implemented properly. Therefore, I do want to talk to them. I want to try to convince them that I am here to do the job properly and fairly and to listen to all stakeholders.

Q7 Chair: Let me just push my line of questioning. As I said, every decision that you make when it comes to adjudicating will be questioned. If you find in favour of the pubcos, the accusation will be: "See, he is helping his former clients there". If you find in favour of tenants, it will be: "He is overcompensating and has not really looked at this in an impartial manner". Are you not compromising the post of adjudicator through your appointment?

Paul Newby: I do not believe so. I will not be working on my own here. I will be working with a team, including a lawyer. I will have guidance on these issues. I will be working in accordance with statute and statutory obligations. I will be responsible to the Secretary of State. I believe I can do the job fairly, lawfully and properly.

Q8 Chair: On occasions where you have to arbitrate on something and you know the company, you know the individuals concerned and you may know the issues, because you have been involved heavily, how will you extract yourself from that? Will you play any part in cases where you have a known interest or you know the issue?

Paul Newby: First things first: one of my duties will be to put in place a conflict of interest policy, which I will do. That is one of many things that need to be done. This is the start of my sixth day in post and we have much work to do. We will put in place a conflict of interest policy and, where I have an involvement that is deemed, in accordance with the statutory provisions, to be a conflict, there will be a policy to deal with it.

Q9 Paul Blomfield: I am sure colleagues will want to come back to some of those issues, but I wondered if I could talk a little bit about the code. You will recognise that the long debate to get to where we are focused very much on the free of tie option and the right for tenants to have market rent only options. That was something that the pub companies opposed and the Government was reluctant to do, and it had to be forced through by the

House of Commons. I just wonder whether you think the code is adequate. Before looking at that generally, could I ask you a little bit about the market rent option? There is concern that those tenants who are looking for a market rent option will have to swap to shorter leases and that that is an unfair pressure. What is your view on that?

Paul Newby: I have only seen the documents that everybody else has seen, when they have seen them. I saw the Government's response on 14 April, and my understanding now is that a market rent option, when it is applied, for example, to a lease renewal, will have to be honoured for the period of the existing agreement, rather than being limited in some other way, and that security of tenure rights will remain as per the existing position. Is that the question you are asking?

Q10 Paul Blomfield: My understanding of the situation is that tenants would have to swap to shorter leases if they moved to market rent only and that that undermines the code, but you are saying that is not the case.

Paul Newby: My understanding is that, where there is a rent review and the market rent only option is chosen, a lease that comes into being at that point will not be foreshortened below the term that already exists. In relation to a lease renewal, my understanding is that, if it is a lease renewal and a market rent only option, a new lease will come into place on terms to be agreed.

Paul Blomfield: Okay. That is something we might explore further.

Paul Newby: Perhaps I should add that, in terms of the bigger picture and systemic issues, clearly new lease terms in a lease renewal situation must be fair. They must be fair as between the parties and they must be fair to tenants. If they are not, that could well come in the unfair practices category in a wider systemic sense.

Q11 Paul Blomfield: That is what we are interested in exploring; this issue is about fairness and about levelling the playing field, which has, in the past, been tilted very heavily in the favour of pub companies. I am trying to explore those aspects of the code that might counter the attempt to level the playing field and tilt it back to the pub companies again, and what levers provisions within the code might have to advantage pub companies within negotiations. Another one is that a tenant can waive the right to a market rent only lease in exchange for investment in a pub. Do you think that creates a blackmailing tool to the advantage of pubcos?

Paul Newby: If it is misused, it could. Therefore, it needs to be monitored closely.

Q12 Paul Blomfield: You would recognise that there is a record of pubcos using every lever at their disposal to screw tenants, would you not?

Paul Newby: The Pubs Code goes to the heart of two things, in more general terms. One is that there has been undoubtedly a dysfunctional relationship, not universally so, but nonetheless a significant one that has led us to where we are now. That comes about because of the big company landlord/small tenant imbalance. The Pubs Code is intended to redress that imbalance and bring in some more protection for tenants.

The second point is not directly related to your question, but I will just finish it. Apart from dysfunctionality, the other problem is consistency or, more importantly, lack of consistency. In my own practice, when representing tenants in the past, I have seen an inability to explain why there is one figure for one pub and another pub of very similar character has a completely different figure. Another high-level purpose of the Pubs Code is to address that inconsistency and, through fairness, more transparency and more information, to level the playing field. Property markets thrive on imperfection. That is what gives one party the edge over the other. The code will hopefully iron out some of those imperfections.

Q13 Chair: Were you advising clients about those imperfections in the market and asking them to be able to take advantage of that?

Paul Newby: In my job as a negotiator in the past, I would have a duty to the client to get the best result for them. The point I made earlier about the rounding of my experience is that moving on and moving through being an expert witness requires one to give a much more objective view about the market. As a dispute resolver, one's obligation to the parties engaged in a process of dispute resolution is to act judicially. The point I was trying to make on that is that I genuinely feel that I have seen this from an all-round position and I can bring something to this and help it develop. Clearly, it is a momentous occasion for the trade to have this code and everybody wants to see it succeed in the right way. This is a platform on which to build greater fairness, greater transparency and all the things that the code wishes to improve in this market.

Q14 Paul Blomfield: You make the important point that this has been a dysfunctional relationship. It is also important that you make the point that everybody wants to see the code succeed. I guess the definition of success might be different for different stakeholders. In that context, if it is to really be playing a role in levelling the playing field and empowering tenants who felt disempowered in that dysfunctional relationship, do you think there are weaknesses in the code as it stands?

Paul Newby: The code is not my code; it is the Government's code.

Paul Blomfield: I am guessing you might have a view on it, though.

Paul Newby: It goes a long way to addressing some of the day-to-day issues, the more bite-size issues over rent disputes and so on. It goes a lot further in an area that, at this stage, we can only speculate about, and that is systemic abuses and unfair market practices. As I say, one can only speculate where those might come, in what form and what particular aspects of the relation they touch upon. One of the reasons why I am so keen to meet all the stakeholders is that I want to hear what they have to say about that straight away. I want them to be in no doubt that, if there are unfair practices out there, I want to know about it. Within the code, for example, there is talk of tenants being properly advised. I do not just want those to be fine words. I want to understand how and where they are going to get advice that is affordable.

That is a big issue for the average tenant of a pub. I recall someone somewhere saying that not every tenant can afford the hourly rates of some professional advisers and that is true. I have already talked, for example, to one of the tenant stakeholder bodies, the ALMR. To digress, I have started already, in the few days I have been in office, engaging

in stakeholder meetings—a series of invitations have gone out—and I had the first two of those last week, one of which was with ALMR, the Association of Licensed Multiple Retailers. They represent a large body of tenants. Admittedly, they tend to represent small and medium-sized companies more than individuals, but they tell me that they have 4,000 tied leases within their membership. They have emphasised the need for consultation and guidance coming from me soon on which issues I am looking at and how we are going to implement the code.

Q15 Paul Blomfield: I am sorry to interrupt. You were at pains to point out your long experience in the sector. I am curious that you are now saying, “I am just starting this new job and I am exploring where there might be some unfair practices”. I am guessing that you know where the unfair practices are and probably, when acting for pubcos in the past, you have defended them. Could you share the insight that you have gained from your previous experience into what you think the unfair practices are and how effectively you think the code addresses them?

Paul Newby: Direct personal experience of the big landlord/small tenant will have been, frankly, of some bullying tactics, of the selective use of information. Do not forget I have been on both sides of this. I have experienced it, in the main, in relation to negotiations and expert witness evidence, around levels of rent and lease terms, where that was appropriate, but also, on occasion, for example, arising from an error made in the past that needed to be put right in relation to improvements in rents, with regard to fighting for the recovery of overpaid monies and the huge effort that was required to win that battle.

There are other areas, frankly, of which I have less experience in the commercial relationship, but of which I have a more general knowledge through my work on the voluntary code. I was asked to be involved in the voluntary code specifically with a property hat on, so we would not just talk about rents; we might talk about repairs, dilapidations, for example, in the landlord and tenant relationship. There might be wider issues over the trade relationship, for example, in relation to the tie and beer pricing, which is not something that I claim to have huge experience of. That is something that I need to learn more about in this role, so that I have the right level of knowledge to deal with the issues. Therefore, my experience, in that sense, is a bit mixed.

Q16 Paul Blomfield: You have identified a number of potential unfair practices and the way in which advantage has been tilted towards the pubcos. There is the potential for you to have an enormous workload. What are you planning to do to advise the pubcos, in terms of enforcement and the way that they operate the code, to minimise the number of cases that are referred to you?

Paul Newby: This is the issue of resilience and a day one service. We have a very limited amount of time, but we are working very hard, first, I should say, to have a day one service in place, and to have at least some clear signposting. We are working on the basis that there will be some sort of surge of inquiries and possibly of referrals. First, how do we help those people? How are we able to identify cases that should not be coming to us, deal with those effectively and signpost them in the right way, so that we can separate out things that need addressing immediately? One of my three key priorities is day one service, signposting. We are planning to develop the very basic website that exists at the moment to a day one service that will help to direct people.

We are now working, on the resilience side, to have a helpline that will work effectively for people who wish to speak personally to someone, rather than be directed to a website. We have developed some quite complex flow charts based upon what we think the code is going to say, for example, in the MRO process. At the moment, if I was to give one of those flow charts to you, it really is almost unintelligible unless we spend hours talking about it. We want to boil that down into something that is very clearly understood.

Paul Blomfield: That is probably quite important.

Paul Newby: Yes, so that we can help signpost people in the right direction.

Q17 Paul Blomfield: You have made a number of comments that colleagues will probably want to explore further, and I do not want to monopolise the time, but I wonder if I could ask one last question. You described the code as very much the Government's code given unto you. Did you have any role in commenting on it in its development, any contact with BIS?

Paul Newby: I have had absolutely no involvement directly in any drafting of the code.

Q18 Paul Blomfield: In that case, could you just explain to me what the Secretary of State for Business meant when he stated in a letter that you "shared your professional insights" with officials on its drafting?

Paul Newby: Yes. Between the date I knew I was to be appointed and the date I took up the post six days ago, I have been involved in meetings with BIS officials about setting up the office. There were necessary decisions that needed to be made about location and so on and I attended a meeting at 1 Victoria Street, which was all about logistics, the office and proposed staffing structures.

Q19 Paul Blomfield: What did the Secretary of State mean when he said that you "shared your professional insights" on the drafting of the Pubs Code?

Paul Newby: I can only answer in the way that I can answer that question, which is that, in the meeting that I attended, which I think was on 2 March, I was asked a question, and I responded, about one or two technical issues. I was asked, for example, in relation to my experience as a dispute resolver, about reasonable timescales that were required to get independent experts appointed. I gave a view on that, but the discussion was of a very general nature; it did not last very long and I gave a view when asked. It was a high-level general discussion. We did not discuss any detailed drafting issues at all.

Q20 Chair: Mr Newby, you said that the code goes a long way, but not all the way. What else needs to be done?

Paul Newby: There will be powers to review and make further recommendations. It remains to be seen. What I am saying is that we will be looking out for matters that need to be brought to the Secretary of State's attention.

Q21 Jonathan Reynolds: Good morning, Mr Newby. I hope you will not mind me returning to the issue of the perceived conflict of interest and the confidence of tenants. That

is not to make this an unpleasant experience for you, but I think you will recognise that is where the controversy has come from. In your earlier answers to us, you stressed your overall view of the industry, but I am sure you are aware that the principal concern of tenants is that they believe that, effectively, for the last few years your job has really been to promote the interests of large pubcos. Is that a fair assessment of your career to date?

Paul Newby: No, it is not. Do you want me to pursue that?

Jonathan Reynolds: Please do.

Paul Newby: It is fair to say that, I can understand why they would think that, so therefore it is a very legitimate comment, and it is one that concerns me greatly because of the perception interest. I want to make this work properly for all stakeholders and therefore I must address it. My previous firm does work for pub companies, yes, along with a lot of other firms. My previous firm has been described as the pub industry's leading property adviser. That is not correct on any facts or statistics, though, if one were to read the marketing on the website, I can understand why. It is a very legitimate point. I do not wish to make light of it.

It has been difficult for me up to now. I have not engaged in a debate, and I really want to rise above it; otherwise it will be self-defeating. I have not been able to talk about statistics, and you will appreciate that some information is of a commercially sensitive nature and it is difficult to talk about individual cases because of confidentiality.

Let me give you a flavour of what I have done personally over the last period of time. When I left my last firm, I prepared a series of spreadsheets breaking down the work that I had been doing, because it had to be handed over. I have completely left Fleurets; I have no work remaining from the day I left. I needed to leave that behind responsibly in an organised manner, so I broke the work activities down into three categories: agency work, which is transaction work; professional advice work; and my dispute resolver work, which is mainly RICS presidential appointments work. There were 67 activities on those schedules, and not to exaggerate this, but that is everything from a file to be closed where there was something waiting to happen through to new work that was literally still coming in through the door.

Among those schedules, on the dispute resolver schedule, not one case involved one of the big pub companies. On the transaction schedule, there were three cases that involved a big pub company, and, on the professional schedule, there were another three cases that involved a big company. Six of 67 activities involved one of the big six. On those schedules and mainly in the professional schedule, there were seven activities relating to pub tenants, and my work most recently on contentious cases has been for tenants.

Q22 Chair: May I come in on this? I have worked in a professional services firm, and the utilisation rate was all-important; billing your time to clients was king. How much, in the last five years, of your time did you bill to pubco clients?

Paul Newby: I cannot answer that question off the top of my head. I do not know.

Q23 Chair: Would you be able to provide that to the Committee?

Paul Newby: I would have to ask my previous firm. Would the information be provided privately, because it is commercially sensitive?

Q24 Chair: It could be private. I do not want numbers in terms of money, but, in terms of how much of your time was utilised towards the big pubcos, that would be helpful. In addition, I would be interested in what percentage of the firm's turnover came from pubcos as well—again, no figures in terms of money, but a percentage would be helpful.

Paul Newby: I can answer the last question in relation to the previous financial year and, please, I need to tread carefully here, because I have previous contractual obligations.

Chair: Of course. I appreciate that.

Paul Newby: The financial year of my old company was 30 September, so the last financial year finished in September 2015. Approximately 20% to 23% of the firm's turnover came from big pub companies.

Chair: Thank you.

Q25 Jonathan Reynolds: We want to stress, Mr Newby, we are not trying to get you to say things that are difficult. Clearly, we respect that confidentiality.

Paul Newby: I want to help as much as I can.

Q26 Jonathan Reynolds: Absolutely, but it is getting that sense of how much of the work of your former firm, Fleurets, was around the big pubcos, because that is essentially at the heart of the controversy here.

Paul Newby: May I just add that not all of my work is chargeable time? We are in a new year now, which started on 1 October—sorry, my old firm. Please excuse that; after 25 years, it is quite a hard habit to break. My largest contribution to fee income last year was from the sale of a country house hotel in the west country, and that is a transaction fee; it is not in any way related to time, so the answer I can probably give you will only be approximate because it is not all chargeable time.

Q27 Jonathan Reynolds: Using the phrase “your former firm” now, are we to conclude you have no financial interest, no shares, no personal interest of any sort?

Paul Newby: No. That is on the public record. Again, in the application process I did not seek to hide this. The CV that was submitted described me as a director and shareholder of Fleurets. I need to explain this carefully. It will appear on a register of interests. The firm went through a rearrangement several years ago where previous shareholding equity was converted into debenture shares, which is, in effect, a form of long-term loan to the company. You may be familiar with this, Mr Chairman. Getting younger people to come in and put money into companies in professional services is not so easy nowadays and so, to reconstruct the firm and to create a level playing field for new people coming in, we converted old equity into debenture shares, a form of long-term loan.

That arrangement was carried out several years ago and was then subject to a repayment plan over a period of time, to help the company pay out the loan, from a cash flow point of

view. That arrangement was in place a long time before any of this was contemplated and continues until it is repaid. I continue to hold those debenture shares. They are what they are; they are a loan and it will be paid back to me.

In the operating company, I had a shareholding, which is a nominal shareholding and, on leaving the company, those shares converted to non-voting and non-dividend-bearing shares. They are security that I simply hold because I have another loan to the firm in the form of a director's loan account, which will again be reimbursed to me over a period of time to help the firm's cash flow.

Q28 Chair: Why do you own those shares still? Would it not be cleaner all around, subject to the debentures that you have mentioned, no longer to own these other shares?

Paul Newby: It is a fair question. That is the nature of the agreements that were put in place some time ago, which I was party to, because we wanted to make sure that a cash call on the firm was affordable and that these things would be repaid. The structure was put in place a long time ago. My director's loan account will be repaid on a straight line basis over a period of time. It is a pre-existing agreement that is in place. I could ask if it would be possible to be repaid more quickly, but that agreement was already in place when I left.

Q29 Jonathan Reynolds: Isn't the crux of this issue really that, for anyone who is in a quasi-judicial capacity, it is not whether we believe they will exercise bias, but whether there might be the perception that there is bias, and that essentially will make your job impossible? I used to be a trainee corporate lawyer as well. I have done those kinds of agreements where you restructure firms. People do not understand the different classes of shares; it is not common knowledge. They may simply look at this and say that you are a shareholder with an interest in being repaid, if it is a debenture share; that you essentially have an interest in the financial health of the company that will repay you; and that that will be a problem for you doing this job.

Paul Newby: I have explained the position. I declared the position very openly. We will have a register of interests. If a matter occurs where this is a difficulty, then I will deal with it in accordance with the conflict of interest policy.

Q30 Jonathan Reynolds: Is the issue not really whether tenants and the pub companies themselves feel your work will be unchallengeable? I do not, in any way, doubt your integrity, sir, or your professional skills. I am just saying there will be a problem here.

Paul Newby: Perhaps I could just finish developing the point about ALMR. They have already come to me and signalled quite clearly that they are happy to work with me on implementing the code. They represent some 4,000 tied tenancies. They are working with BII, the British Institute of Innkeeping, on developing initiatives in relation to the implementation of the code. I have not met BII yet, but they have similarly signalled to me that they are fully supportive of me in my role, knowing all that we know here. BII tell me they have some 5,000 members. ALMR is more company-oriented; BII is more individual memberships. We have asked BII how many of those 5,000 are tied leaseholders and they are unable to tell us, but they believe it is a substantial number. Those two organisations do not think there is a big overlap, so quite a substantial body of

tied tenants are signalling to me that they are happy to work with me to get this code properly implemented.

Q31 Jonathan Reynolds: When the Ministerial Statement was made in the Chamber of the House of Commons about this role, one thing that surprised me was that it is a relatively short term, I believe, that you have initially been appointed for. Is that right?

Paul Newby: My appointment is for a term of four years.

Q32 Jonathan Reynolds: Four years is not a long time. Do you think anyone doing this job therefore has responsibilities as to what they may do after they do this job, in order to maintain the integrity of the position?

Paul Newby: I have absolutely no idea what I will do after this job. I am 58 years old this year; I might retire. I really do not know. We can speculate a lot about it.

Q33 Jonathan Reynolds: You can appreciate again the concern would be, if, over a period of time, people doing this job were going from and back to industry, it would look like a problem, would it not?

Paul Newby: You started back on the conflict of interest point, so let us go back to that. I have a statutory duty here. What it says in the SBEE Act and what it will say in the code are very explicit with regard to fairness. It is not just me; I am not sitting here in some kind of all-powerful role. There are going to be people in my office working with me. I will be the person ultimately responsible with a duty to the Secretary of State. It is my intention to exercise that duty properly, fairly and lawfully. On top of that, my professional institution has been asked questions about this; I know that from what I have read. Its stance is that my position as it stands does not debar me from taking up this role, but nonetheless I have a personal responsibility, as a chartered surveyor, and therefore if I was to misdirect myself—clearly I am not intending to do that—I would have two people coming down on me like a tonne of bricks: the Secretary of State and the RICS. Believe me, I do not want that.

Q34 Chair: Following on and just to push you further on what Jonny was saying, when your term as adjudicator comes to an end, do you rule out categorically returning to your old firm in some shape or form, whether as a director or as a consultant?

Paul Newby: Yes. I will not go backwards.

Q35 Chris White: I have a couple of questions, but the first one refers to something that you have responded to a couple of times already. In your response to the Chair, when you were talking about perceived independence, your defence was that you were guided by lawyers. I suppose independence would mean whether you accept or reject that advice. Do you think it would be helpful for you to publish the advice that they give you?

Paul Newby: Do you mean in specific cases?

Q36 Chris White: In terms of the advice, full transparency would be all cases.

Paul Newby: We are drilling down into quite a level of detail, six days in. I would like to give you a proper answer to that question rather than—

Q37 Chris White: It is a question of your principled view on the matter.

Paul Newby: It is of paramount importance that the fairness and transparency issue goes through the whole thing, the whole piece here, and I would expect ordinarily that what we do would be transparent. I do not want to avoid this question, because I do not have an adequate answer.

Q38 Chris White: You understand my point that if you ignore the advice of your legal representation, then the perception has possibly not changed.

Paul Newby: I want to assure you that we will act fairly, lawfully and transparently, but, if you want a more detailed answer to the question of exactly how we would deal with it, I would really like the opportunity to come back on that.

Q39 Chris White: That is absolutely fair, if you can forward something to the Committee.

Paul Newby: My head of legal has been appointed but is not yet in post because of the requirements for notice periods, so we are working on that to get things sorted very quickly, but we are still very much in the planning phase and the understanding phase of this.

Q40 Chris White: Moving to the second part of my question, you have talked about levelling the playing field; you have talked about fairness; you have talked about a really complicated flow chart. What is your personal view of the business model you are working with? What is your strategy? What is your ambition? Where do you see the sector going?

Paul Newby: On the issue of valuation of rental value, you must not lose sight of the fact that it is still about the market and how the market works, and we are trying to help the market work better. I hope this is answering your question, but if not, please stop me. While the SBEE Act and the code that will come are very explicit on powers, duties, obligations, the issue of guidance and so on, I see a significant part of my role as lying in the stakeholder meetings, the guidance and the visibility in the role to bring about behavioural change, to make the market work better, and to deal with things that the code talks less explicitly about. Running through all of this is the judicial principle that parties should try to resolve their own disputes. We should help them to do that, and greater fairness and transparency will assist in that process.

Q41 Chris White: Thank you. That was quite a good attempt. Whose behaviour are you trying to change?

Paul Newby: That is a good question. Bearing in mind what I have already said, clearly there are some aspects of what pub companies have done and are doing that the Act goes to, in terms of protection for tenants. I have seen it myself, as I have already referred to, in working for tenants. There are some things that could be done a lot better in the negotiation process of trying to arrive at a fair and right answer. I would see, to some extent, a measure of my success, in a way—and please do not take this the wrong way—as

there being fewer disputes referred to me than more. It would mean that parties were finding a way fairly to resolve their disputes, if we managed to persuade the right sort of behavioural changes.

Q42 Chris White: This is a yes or no type question. Do you think the cost of tied beer and rent is too much for pubs to be sustainable? Is this the sort of behavioural change you are talking about?

Paul Newby: A yes or no is very difficult, because it is a complicated question. I come back to the point I made that, as far as rents are concerned, it is the market that sets rents. It is the interaction of supply and demand and, in the real world, if you are letting a pub, the market will only pay as much as it will pay for a particular pub, factory, property, whatever it is. The market determines that level. We are not trying to impose an unnatural level of rent here. The market rent option only means market. But if your question is what is happening to rents more generally, affordability of rent in pubs—and affordability has always been the key measure—is changing because of all the other pressures that are upon pub operators, whether that is rising labour costs, rising utility costs, Sky television, the price of beer. There is a whole mixture of factors that go into what makes up a profits test valuation, which determines the affordable market rent.

Q43 Craig Tracey: You mentioned before about putting in place a conflict of interest policy. What, in your opinion, does and does not constitute a conflict?

Paul Newby: It is a question I would like to answer in more detail perhaps in due course, but, as a general answer, we would look to use model conflict of interest guidance and develop on that. I will need to take advice from the team to help that be developed. I talked earlier about some specific examples. Bear in mind that the number of cases that I have been involved with is minuscule compared to 12,000 tenants, but if by some chance a case is referred to me that I had personal knowledge of in the past, where I acted for one side or the other and therefore know very specific details about that case, I would expect that to be an example of something that was a personal conflict to me and, we would have a mechanism to deal with it.

Q44 Craig Tracey: Will you publish your conflict of interest policy?

Paul Newby: Yes. I see that as being the product of work by us, but also of using a proper approach and consultation.

Q45 Craig Tracey: Just looking at the code itself, will you be producing guidance for tenants and lessees on the new code? Particularly thinking that most of the tenants will be, essentially, small businesses, will you be proactively working with them so they understand how they can bring a case to you?

Paul Newby: I am pleased you asked me that question. The answer is yes. There are certain specific statutory obligations in the guidance, particularly with regard to the investigation function. Way beyond that, though, the intention is to have more consultation and more advice and guidance on how the code is going to be implemented. The lack of a transitional period does not help, because we would have had some time to work on that. We are working in a very short timescale here. I have quite a lot of

priorities, but if I was to have three, one is day one service, two is visibility in all stakeholder meetings, and three is to deal with consultation, advice and guidance and get it out there in plain language. You will understand I mean this in the right way. The big pub companies are well organised and, if they are not well organised, they should be. It is the individual tenants who need help. They need help and guidance; they need plain language.

Just to come back to the point about those who are opposed to my appointment, they are very important and I need to deal with that, but I have another concern, again from personal involvement and things that are being said to me. There are 12,000 or so tenants out there. I have considerable concern that a substantial number of those do not have an enormous level of awareness of the code and what it means to them. I see that communication as being extremely important.

Q46 Craig Tracey: It is interesting you mention the ALMR. I have spoken with them in the past and they have made it very clear that the biggest concern to their members is getting the Pubs Code implemented as soon as possible. They are concerned about the delay; it breeds uncertainty for their members, because they do not know where they are with the negotiations on leases, etc. How confident are you that this is going to be in place as soon as possible, because now we have another delay and they are obviously keen to see it in place?

Paul Newby: Frankly, the unexpected delay concerns me and it is unhelpful. Having said that, it is a matter for Government. I can only pick it up and run with the ball when I get it, but I recognise the pressure is on. As I said to you earlier, I have had a meeting with ALMR and already had some extremely helpful feedback from them. Basically, it is saying, “We need you to do this, this and this and get the guidance out there, because we want to know how all this is going to work”. It is a major priority. We have limited time. There are other things going on in the world around all of this.

Q47 Craig Tracey: Do you still think we are on schedule? I think it is June now that they are looking to—

Paul Newby: I do not know when the current issues with the code will be resolved. I assume that Government and stakeholders are working on it to try to get the best outcome here, but the delay is unhelpful. The only, I suppose, positives that come out of that are: first, it is important, if there are problems in the code, to try to iron those out and get it right; and, secondly, for me to use any delay wisely in getting on with the job.

Q48 Jonathan Reynolds: I just want to ask a supplementary related to Craig’s questions. This is a fundamental issue. Do you think it is for you, as adjudicator, or for the people you are serving, the companies and the tenants, to decide where there is a conflict of interest? Is that your call or is it whether they believe there is a conflict of interest?

Paul Newby: In the SBEE Act, it is for the adjudicator to decide if it is a conflict of interest, in accordance with the policy that will be agreed with the Secretary of State.

Q49 Amanda Milling: Can we go back to the flow chart, which you yourself described as “unintelligible”?

Paul Newby: I did mean perhaps to the ordinary person. We have done a bit of decoding of them.

Q50 Amanda Milling: I would like you to elaborate a little further in terms of why that is the case and what steps you are taking to convert it into something that can be implemented.

Paul Newby: Last Friday, we had a workshop on service delivery. Those flow charts were prepared for that workshop as a starting point for quite a large room of people, who are experienced in process delivery, to start boiling it down into manageable chunks. I do not have the complete answer at the moment, but I believe we will have an answer relatively soon that we will be able to upload to our website to give some very clear signposting on, for example, the steps towards MRO.

Q51 Amanda Milling: There are a couple of things on this. If it is so complicated, is there not a danger that, in practice, it cannot be fully implemented, or its implementation is compromised and there are holes in it?

Paul Newby: No, I do not believe that is so. As it stands, in draft, the code will require parties to do some things during the process. Some of that is flowing through from things that were in the voluntary codes in terms of what the parties should be doing. We will just break that down into understandable steps and gateways through which the matter will go. If it is a matter that simply cannot be agreed after the necessary effort, steps and gateways, then it will come to the PCA office to be dealt with.

Q52 Amanda Milling: You said you were looking to get this sorted relatively soon. Can you be a bit more specific?

Paul Newby: I do not want to create any hostages to fortune, but we are working on it now. We do not know when the code will be finalised. The statutory guidance has to be in place in six months. Very helpfully, I have already had from ALMR a whole list of queries that they have raised about these processes, so we are looking at that now. I really do not want to say it is going to be four weeks or six weeks and then let people down. It will be as soon as we possibly can do it.

Q53 Amanda Milling: You talked about wanting to make it as clear as possible. How are you ensuring that that is the case?

Paul Newby: There is an ongoing piece of work around that. We are working with what was called the Better Regulation Delivery Office, now Regulatory Delivery, and their process experts. They are helping us break this down. Their experience is in taking complex bits of legislation like this and simplifying them into understandable processes and bite-sized chunks. I recognise here that we are dealing with 12,000 tenants, ordinary people, who do not have high-powered business advisers to tell them how to work around this. We need to get to flow charts and, allied to that, simple questions and answers that relate to each other, which will help signpost the way forward.

Q54 Amanda Solloway: You mentioned earlier about I suppose what would be your vision; I do not know how you would describe it. You said it was to help the market work

better. I assume that that is in terms of the landlord, the tenant and, ultimately, the consumer as well. How will you measure your success?

Paul Newby: It is a good question. It is very difficult to measure success by the absence of referrals, but as a dispute resolver, every time I have been involved in an arbitration case or an independent expert case, particularly for tenants, the thing that always strikes me is the amount of time, angst, pressure and not least cost that it involves. It is something that is horrible for tenants to go through when they are dealing with a big company landlord who has deep pockets. For me, there is a virtue in all of this in trying to get things to a better place, and I really mean that sincerely. I recognise that a very large proportion of 12,000 people do not have huge means; many of them do not have a large income, and making the market work better and more fairly for them is a very important thing.

Q55 Amanda Solloway: Would you be looking at, for example, fewer closures? Do you have a target for that, because ultimately that is the biggest fear, I suppose?

Paul Newby: Many things are affecting pub closures. Clearly, a dysfunctional landlord and tenant relationship affects the viability of a pub and can sometimes send it into a spiral of decline that leads to other things. It is there that our work at the PCA may have some positive effect on closures. But there are many other factors that are affecting pub closures. Take, for example, things like Port Talbot Steelworks in the news; if that closes, how is that going to affect pubs? There may be too many pubs in the wrong location. There are plenty of other factors and, of course, plenty of other economic factors that are making it more difficult for small pubs to make sufficient profit to be viable. Our role is to make sure that the part of the industry where the pubcos and their 12,000 tenants sit works more fairly and more transparently.

Q56 Amanda Solloway: You are saying that part of your role is to facilitate good working relationships in order to progress the industry.

Paul Newby: I prefer to use the expression “behavioural changes”. In my experience of negotiating rents, I have seen a lack of transparency, and the new code goes to the heart of that.

Q57 Peter Kyle: Thank you for your evidence today; it has been very interesting. You said you had not decided what to do for your next job after this. Let us assume you go to set up a country pub somewhere. How would you go about it? What would you recommend as the best way to enter the pub market? What model would you choose?

Paul Newby: It is a good question. When I am 62, I probably will not want to go into the pub business, but I suppose you never know.

Q58 Peter Kyle: Are you saying it is not a good business to go into?

Paul Newby: I think it is a very good business to go into, but perhaps not at 62. As I said earlier, it is a business that can be a lot of fun, but it is also extremely hard work—we all know that—in today’s world. The answer to your question is that, because I am of the generation that likes to own their own house, I would probably want to own my own pub,

one that would be a nice and profitable pub in a nice location with destination food and very nice drink.

Q59 Peter Kyle: Presumably untied.

Paul Newby: That is clearly where you were going with that. Yes, the tied market has clearly had its problems and that is what this is all about. I go back in all of this to the start, to the exemptions under EU competition in 1983 and 1984, the beer orders of the late 1980s and the issues that run through, which are all linked by the tie. In this piece of legislation, in the SBEE Act and the code, at last the tie is going to—

Q60 Peter Kyle: Presumably, if you were thinking of setting up a business, you would look at the statistics, which are: 57% of tied publicans say they are struggling financially, compared to 43% who are not. If you were going into the business, you would look at things like that when you were making your decision.

Paul Newby: As I said earlier, the issue around rents is about the market and, on a supply and demand basis, the market will pay an affordable rent. That is the rent that is predicted by the profits test calculation that we are contemplating here.

Q61 Peter Kyle: I am sorry to interrupt, but I am squeezed for time. We hear a lot of evidence from people who are entrepreneurs setting up businesses in different sectors around the country, and we know and you know how important it is that we get more people setting up businesses. Having read the statistics and done the research for this evidence session, you have to wonder why an entrepreneur would set up a pub and see it as a really good vehicle for their entrepreneurial spirit when, in addition to all the other challenges you have as an entrepreneur, you have this extraordinary set of other burdens that are imposed by an additional set of people, who are heaping on additional sets of contractual obligations that no other business in any other sector of a similar size would ever have to experience. Is it not true that you need to come in and disrupt this market absolutely fundamentally?

Paul Newby: Nobody wants people to go into a business that is doomed to failure and to lose money and their livelihood, potentially. Nobody wants that to happen, and this code does go to that. It goes to fair rents that are affordable based on the profile of that pub, based on the profit valuation, and it goes to those people, where they are dealing with one of the big six pubcos, being properly advised in the first place to make the right decision about what rent to pay and whether, indeed, to go for that opportunity.

Q62 Peter Kyle: In the spirit of my cheeky question earlier, though, you alluded to the fact that you would not take a tied contract yourself, so why should anyone else be expected to take one?

Paul Newby: There are some very good tied pubs out there. There are also some small and medium tied pubs that are under a lot of pressure. The pub market has been changing structurally for a long time and will continue to change.

Q63 Peter Kyle: When you come to the sunny days of retirement, you will still think that going into a pub is a decent business rather than setting up any other type.

Paul Newby: There are some extremely good pub businesses out there and I have seen people come into the business recently and prosper. They need to be well advised to make the right business decisions.

Q64 Chair: Mr Newby, you have a lot to do; your workload could be immense. Do you have the resources to do the job?

Paul Newby: I believe so, yes. We are working hard on recruitment to put in place a team that will do this job. As I mentioned briefly earlier, one of the big challenges here is resilience, which is a word that I have learned and that goes to the issue of, at the moment, dealing with an unpredictable demand for our service.

Q65 Chair: You mention resilience, and that is a good word. Do you not have one hand tied behind your back in the manner in which your office will be established? Looking again at the application pack, it says, “The adjudicator will not employ staff direct but will have seconded staff from the public and private sectors”. How can you have resilience if you might have people seconded for just a matter of months?

Paul Newby: The secondments that are taking place are much longer term than that and, therefore, we will have a team in place that will do this job. One of my other duties, clearly, is to deliver this service in a cost-effective manner within a reasonable budget. It needs to do its job properly, but I will still have to justify to the Secretary of State the basis of a levy. Trying to envisage how to staff up the office to deal with, at the moment, unpredictable demand for the day-to-day work in rent referrals as opposed to the medium and longer-term systemic investigations that might be necessary, and how to match all that up with staffing, is proving to be a challenge; I will not deny that. We are talking to the Regulatory Delivery people about how they will help us deliver a robust service that will cope with variations in demand around the core staff of my office.

Q66 Chair: When you recruit or second people from the private sector, it will be looked at very closely. Your appointment has had accusations of conflict of interest; the people you appoint will also face such scrutiny. How are you going to avoid similar accusations that people might be biased in terms of where they have come from?

Paul Newby: Clearly, that is something that we want to do and it is evidently desirable. In terms of a specific policy, I do not have that at the moment. I am not going to make something up, but again, I am quite happy to advise the Committee in due course exactly how we are going to deal with this matter.

Q67 Chair: Will the staff you second, certainly from the private sector, be publically listed?

Paul Newby: I cannot see why not.

Q68 Chair: How are you going to go about setting the levy without facing an accusation that you are trying to help your former clients?

Paul Newby: The budget is being built on the real costs of the operation. There are things in place: we know what our premises costs are; we know what some of our core salary costs are going to be. The big unknown factor has been how much it is going to cost to

provide a proper service, and we are working on that. For day one, year one, we will have to make some reasonable assumptions.

Q69 Chair: What are those assumptions?

Paul Newby: We are working on that. It is early days, Mr Chairman. If I may tell you one of my concerns—and it was a question I asked early on—right at the start, even in the papers on the recruitment website, there was a reference to a budget figure for running this office and I asked where it came from. I did not get a particularly great answer to that question. My concern is that I do not want to try to shoehorn a service into a figure, because that is the tail wagging the dog. I want this office to work properly and be properly resourced.

Q70 Chair: You want it to be a lean operation and that is commendable.

Paul Newby: It has to be.

Q71 Chair: We have to be lean and efficient, but Parliament has said that the adjudicator has to investigate suspected systematic abuses of the code and consider which, if any, enforcement measures should be taken. That enforcement role is absolutely crucial to make sure the market operates effectively. How can you reconcile having a lean operation while, at the same time, carrying out what could be a very large function in terms of enforcement?

Paul Newby: The only answer I can give to that, at the moment, without more of the development we are working on, is properly to lean on the example of the Groceries Code Adjudicator, where I believe, in relation to systemic investigations, they have brought in specific, specialised help when it was needed.

Q72 Chair: Do you think the Groceries Code Adjudicator works well? Is that the model you are trying to apply?

Paul Newby: I have met the Groceries Code Adjudicator and discussed how her office was set up and how it functions, to learn any lessons in relation to PCA. I am not sure I am qualified to comment on how well the office is functioning. I do not have a judgment on that.

Q73 Chair: That was an adjudicator that was set up relatively recently; it is in its early stages. Are there any lessons that you can learn in terms of: “They have done that. I do not want to do that. I do not want to repeat any mistakes”? Have you looked at that?

Paul Newby: I think they are in their third year, and we are seeking to learn from them going forwards now. I had a meeting yesterday with my head of policy and operations, who has just commenced work, and one of the action points from that is for Kathy Lee-Cole to meet her equivalent in the GCA, to see what lessons we can learn from them.

Q74 Chair: I just want to finish again on that conflict of interest question. Have you spoken to Ministers about this issue?

Paul Newby: Have I spoken to Ministers?

Chair: Have you had a specific discussion, either raised by you or raised by Ministers, about the conflict of interest, or the perception in the industry of potential conflict of interest?

Paul Newby: Let me just be clear. I have only met one Minister recently and that was Anna Soubry. We had a discussion about today and I think we touched upon the issue of conflict, but I have not had a detailed discussion.

Q75 Chair: What does the nature of that touching mean?

Paul Newby: It was on the basis that it was a subject that was going to come up today.

Q76 Chair: I do not want you to betray any confidential discussions with the Minister, but it is obviously of relevance to what we are looking at in the Committee. What was discussed and agreed?

Paul Newby: Nothing was agreed. We had a discussion about my appearance before this Committee and the topics that might crop up. At that stage, I was expecting to get a little bit of guidance on what would happen today, although I had a pretty good idea that I would be questioned particularly on the issue of conflict. There is no more to it than that, I do not think.

Q77 Chair: In terms of your role and where you have come from, are you essentially poacher turned gamekeeper?

Paul Newby: No.

Q78 Chair: Why not?

Paul Newby: My experience is all-round. I am coming at this from the adjudicative, judicial position. I have thrown away my old hat. I have a new hat. I have new responsibilities. The code is very clear on fairness and transparency and that is the direction I am coming from.

Chair: Mr Newby, thank you very much for your time. I think I speak on behalf of the Committee when I thank you for the words and the answers you have provided to us. Thank you again.

Paul Newby: Thank you very much. Thank you, all.