Campaign for Pubs

Promote, Support and Protect Pubs

Liam Byrne MP
Chair, Business and Trade Select Committee
House of Commons
London
SW1A 0AA

27th June 2025

FAO Liam Byrne MP - Chair of the Business and Trade Select Committee
Cc: Rachael Maskell MP – MP for York Central

Dear Liam and Committee members,

The continuing failure of the Pubs Code and Pubs Code Adjudicator – further evidence

I am writing this letter as a follow up to my letter to the Committee dated 31st March 2022 which I wrote in my capacity as both Chair of Campaign for Pubs and as a working publican running three pubs in York, one of which is leased from Star Pubs and Bars.

You will find a copy of my previous letter here. It is entitled *"The use and abuse of hostile Section 25 notices by regulated pub-owning companies, for the purpose of gaming and subverting the Pubs Code"* and I regret to say the contents of the letter are as applicable now (3 years later) as they were at the time of writing.

The issues raised in the letter were among those discussed at the Committee evidence session of Tuesday 12th July 2022 where oral evidence was heard from various witnesses including myself and Greg Mulholland from Campaign for Pubs, as well as Pubs Code Adjudicator (PCA) Fiona Dickie, and also various senior pub company executives.

Campaign for Pubs has followed up twice since then with letters to the Committee. Firstly in September 2022 on the subject of tenant engagement by the PCA (or the lack of it – except via routes and events compromised by the pubcos themselves): Campaign-for-Pubs-letter-to-BEIS-Committee-re-PCA-evidence-23rd-September-2022-min.pdf, and secondly on the specific subject of pub franchise models in July 2023 Joint-letter-to-Business-Trade-Committee-re-pub-franchise-model-19th-July-2023-min-1.pdf

Given the ever-deepening crisis that continues to afflict the UK beer and pub industry and the tied pubco-controlled sector in particular, there are now several important outstanding issues that I must raise in relation to our previous contact with the Committee.

These issues are highly pertinent to the current interest the Committee is taking in industry regulators generally, and particularly the matters of pricing, competition and consumer protection. It was encouraging to see your recent message on X asking the question "Are regulators defending the powerless, or just watching the powerful take more than their share?"

At Campaign for Pubs we strongly believe that our own industry regulator is failing to tackle a grossly unfair ongoing situation which continues to see small business pub tenants suffering disadvantage and hardship at the hands of powerful corporations acting as an apparent complex cartel. Meanwhile consumers and independent suppliers lose out due to endemic anti-competitive practices which restrict choice, raise prices and ultimately impact heavily on communities in terms of repeated business failures and permanent pub closures.

Against this backdrop our regulator has now settled on a stated mission of “Protecting Fairness in the Tied Relationship” as though fairness has already somehow been achieved. It categorically and demonstrably has not, and at Campaign for Pubs we find the implied suggestion that it has genuinely offensive, especially coming from the very regulator that has failed to achieve or enforce it.

The issues in this letter are also relevant to the current interest that the Government is taking in the matter of access to the pub market for our small independent craft brewers. At Campaign for Pubs we are very pleased to hear that the Government is looking into this issue, and in coming months we will be engaging directly with Government officials on the subject both at meetings and in writing. Our membership includes independent brewers who will be able to give officials a clear picture of the adversity of their current situation in relation to the rigged and anti-competitive pubco controlled sector.

We believe that hard-pressed publicans who lease their pubs from major pub companies – especially those directly subject to the onerous restrictions of a tied agreement – share a common cause with independent brewers who are unable to sell beer to most of their local pubs due to the tied model. We find it extraordinary that successive Governments have seen fit to preserve this model (which is rightly unlawful in other industries, and is only allowed in the pub sector due to a special exemption from normal UK competition law), despite the fact that the tie erects a clear barrier to entry for the vast majority of the UK’s extraordinarily rich and diverse craft brewing sector.

We also find it extraordinary that successive Governments have shown so little interest or concern over the wealth extraction that is made possible by this model, and in particular the fact that tied tenants are routinely hugely overcharged for both wholesale products and rent under this model, which leads us to believe that it is a matter that is still not fully understood or appreciated by policy makers.

This leads directly to the first point I would like to raise in relation to our previous contact with the Committee.

1. **Pricing information requested by the Committee from the pub company representatives in attendance.**

In a crucial exchange during the session involving the pubco executives in attendance, Darren Jones intervened as Chair to chastise the witnesses for failing to come to the hearing suitably equipped with information showing the pricing differential charged between tied and non-tied tenants.

This is the transcript of Darren Jones’s intervention, when it became clear that the executives present had failed to bring the information required that would have given the pricing issue the necessary transparency for the committee:

***Chair*:** It is really important that we get this right, because we are being asked to make a referral to the Competition and Markets Authority, which is something that we would need to consider. The CMA has a lot to do, and so to ask it to do something is a serious consideration for this Committee. You and your teams were briefed in advance that we were going to ask questions about beer pricing, but none of you has the answers. I need to see the difference in pricing between tied and market only, and any evidence that you have on Tonia Antoniazzi’s questions about brewers that are not part of your groups. You can share that information in commercial confidence. It is not something that we will have to publish, necessarily, but I do need to see that pricing structure. If you can all commit now to sending that to us, that would be very helpful. Is that a yes? Thank you.

As you will see, the question from the Chair was blunt and his displeasure at the brazenly evasive tactics of the executives was abundantly clear.

My first question in this letter is, did the committee ever receive the information requested, and, very importantly, are the committee satisfied that they received the relevant information in full?

The Committee needs to be aware that the pubcos operate a pricing system that splits into many different "bands" for their tenants depending on which "deal" a given tenant is on. The Committee therefore needs to see all the bands in full and not allow the pubcos to cherry pick banded pricing information which only applies to the more favourable deals.

The question of differentials in tied versus non tied pricing is one we have raised repeatedly with both the committee and the Adjudicator, as we believe it pertains directly to the issue of fair dealing which is of course one of the principles underpinning the Pubs Code itself.

The wholesale prices being imposed on tied tenants were already routinely 90-100% higher than free-of-tie wholesale prices (for the exact same products) when the Pubs Code came into force in 2016. The Code then exerted a moderate level of control over future increases but still allowed above-inflation increases to be imposed on tied tenants by their pubcos.

Crucially however there was no retroactive correction of the historically high tied prices that had been charged pre-Code, so the pre-existing differential remained in place as the default starting position for future tied pricing. The allowance for above-inflation tied increases subsequently meant that tied marginal price increases continued to outstrip increases for the same products for free-of-tie customers (who after all can generally exert their own buying power and ultimately even choose to take their custom elsewhere).

The huge gulf that persists between tied and non-tied pricing (which can still routinely be up to 100%) is entirely indefensible, and we fail to see how the committee could not reach the same conclusion if they have indeed been provided with the full information as requested by Darren Jones.

Clearly this excessive wholesale pricing will have a knock-on effect down the line leading to higher prices for customers at the bar and/or reduced margins for pub operators. The fact that tied tenants are also restricted to a very limited product range, which consists mainly of the same predictable generic macro brands and which prohibits access to the huge majority of the UK's independent producers, makes this a consumer protection issue in terms of both price and choice, quite aside from the abuse and impoverishment of tied pub tenants themselves.

Darren Jones was right to threaten the pubco executives with CMA scrutiny. In our view a full market review cannot now come soon enough. We are now firmly in the same anti-competitive territory that led to the last significant intervention in the form of the 1988 Beer Orders. Once again we desperately need effective action to establish a fair playing field and a genuinely open market in UK pubs. Only then perhaps our regulator might be able to sit back and claim to have something that just needs "protecting".

2. Section 25 figures quoted by the pub companies at the committee hearing and recorded in the Adjudicator's annual statistics.

We do not accept these figures as accurate, or at least certainly not as representative of the reality faced by tenants.

As we have discussed with the PCA many times, we do not accept that the use of Section 25 evictions notices is anywhere near as rare as depicted by the figures quoted in both her own annual statistics, or as relied upon by the executives questioned by the Committee.

Whether or not the figures themselves are absolutely technically accurate in terms of notices *served*, what is not shown is the number of time the mere *threat* of such a notice (often verbal and therefore

unrecorded) has been enough to ensure compliance with the intention of the pub company to remove a good quality tenant on a secure long lease, and to replace them with an operator under a new quasi-franchise agreement outside the scope of the Pubs Code.

We are aware that the Pubs Code Adjudicator believes that the Code provides recourse for tenants that are put in such a situation, but we do not share her optimism that all such cases are accurately recorded or indeed that many of the tenants' involved understand their rights in this regard. We believe she hugely underestimates the amount of continuing hidden abuse of tenants that is ongoing, and that most tenants are still too intimidated or overwhelmed to pursue their statutory rights, even where they are fully appraised of them.

Frankly we believe that problems of this sort continue because the office of PCA remains far too close to the companies it is supposed to regulate and is consequently far too credulous and trusting of the information they provide and their claims of good intentions which are simply not borne out in their clearly observable general behaviour.

3. The PCA's recent statement about the fact that some new agreements are not covered by the Pubs Code.

Earlier this year (13th March) the PCA published a news story on the Government website entitled *"PCA considers innovative agreement types*", (Link here: PCA considers innovative agreement types - GOV.UK) wherein she included the following passage:

> *The PCA has received enquiries relating to the status of certain types of profit or turnover share agreements which may have increased in popularity in the market since the introduction of the Pubs Code. These may have some, but not all, of the features of pub franchise agreements and can be known in the trade as operator, manchise or hybrid agreements. The PCA has been considering how the Pubs Code may apply to such agreements.*
>
> *The PCA is minded to the view that some of these profit or turnover share agreements may fall within the relevant definition of what constitutes a tied pub for the purposes of the Pubs Code.*

Then later:

> *The PCA does not at present consider it appropriate to require compliance in respect of any of these types of agreements which may fall under the Pubs Code and will not be taking action to regulate them.*

Then later:

> *The PCA is not currently aware of evidence showing significant harm to operators from these types of agreements."*

This is an issue we have raised many times with the PCA, particularly as we believe it is very clear that these "innovative agreements" have been rolled out at scale simply as a means for the regulated pub companies to remove pubs from the scope of Pubs Code and, crucially, to restore the unfair profit and power imbalance that they enjoyed prior the Code's introduction.

As such we believe the growth of these agreements constitutes prohibited Code avoidance pure and simple, and that the practice clearly places the outgoing tenant in a detrimental position, something which is expressly forbidden by the Code.

After all, what could be more detrimental to an existing Code-protected tenant than to be deprived of their business, home and livelihood entirely?

We wonder if the committee might not agree with our viewpoint which is essentially twofold:

a. The outgoing (evicted) tenant has suffered the most significant harm possible, in that they have lost their business (and often therefore also their home and entire livelihood).
It is important to add that this is usually because they simply wished to exercise their statutory right to MRO (or had already done so at a past date), and that the imposition of detriment for that reason is expressly forbidden by the Code itself

b. The incoming tied operator has severely impaired comparative autonomy under such agreements, and can only be worse off than if the pub had been allowed to become MRO as intended under the Code, given the fact that the profit margin under such agreements has been structurally skewed massively back in the favour of the pub company.
The weighting of profit in favour of pub companies is a long-established feature of the industry, and one of the main motivators for statutory regulation under the Code.

We have heard of many tenants who have suffered enormously under these punitive new agreements, which we further believe are legally questionable on a number of fronts, as discussed below.

4. **The legal questionability of these new "innovative agreements".**

As illustrated in my previous letter to the Committee, we at Campaign for Pubs have long voiced concerns about the legal validity of the new quasi-managed agreements that have now been rolled out (completely openly and under the nose of the PCA's office) by every regulated pub company since the Pubs Code came into effect.

As detailed in that letter we have various concerns about the use of these models, but there are two legal issues in particular:

a. **Do they truly fulfil the requirements to pass legal muster as a justification for a Section 25 notice under the Landlord and Tenant Act quoting Grounds G? To be clear, this is where the pub company claims to be taking the pub back for its "own occupation".**

In reality they are simply bringing in a new self-employed operator under a new profit share agreement, NOT a manager properly employed by themselves (which would far more clearly constitute their own business and therefore their "own occupation").

The new operator has all the risks and responsibilities of self-employment and none of the securities or rights that would come with genuine employment, while the pubco regains total control of the business relationship, including the profit split, without assuming the normal responsibilities of properly employing a manager or team, or shouldering the significant burden of the day-to-day operation of the premises.

It is very difficult to see how this can truly legally constitute their "own occupation" under the L&T Act to the extent that it justifies an eviction in order to the circumvent the statutory Pub Code.

One of our member publicans who had faced such an eviction to make way for such an agreement wrote the following in a letter to PCA Fiona Dickie on 25th April this year:

> *I quote from your recent press release on 13.03.2025 that "the PCA understands such operator agreement's… represent lower commercial risk for the Operator than a Traditional Tenancy or lease". An employee never takes, and should never be forced to take, any commercial risk within their employment. The Pubcos relying on this model to justify Grounds G in section 25 notices must*

therefore be penalised and prevented from doing this again under the Pubs Code principles of fair and lawful dealings. This would ensure the PCA are being both reactive and proactive in preventing further detriment to TPT's now that you accept that these are a form of commercial agreement, albeit not a 'typical' pub business agreement. They certainly are not a form of employment using your theory.

The PCA has not provided this tenant with a substantive response to her enquiry.

b. Do these agreements comply with the HMRC IR35 rules, or are they more like Uber pubs systematically exploiting a grey area of employment/self-employment?

If there is found to be a time bomb tax issue on this front then the new operators have been mis-sold an opportunity and recklessly placed in a very dangerous situation.

Therefore it is our strong view that it is not those operators that should be held responsible for any consequences, but rather the pub company that has deliberately drawn up and sold a deeply flawed opportunity to a less sophisticated and less powerful party.

It is abundantly clear that this crucial issue, which we expressly raised over three years ago, remains entirely unresolved. The lack of regulatory action and even interest is frankly astounding.

The PCA has been made aware of our concerns on numerous occasions but has actively chosen not to pursue the matter to any significant degree until the publication of her March newsletter which, while inviting information from operators, makes it clear that she still does not regard these questionable agreements with any major alarm or scepticism.

She has also, in the past, indicated her view that the resolution to these concerns will only really be forthcoming via a full legal challenge, something that would represent a David and Goliath battle realistically well beyond the realms of possibility for most averagely resourced publican operators.

The way in which the extremely brave battle to save Manchester's iconic and historic heritage pub The Britons Protection (as referenced in my previous letter) was ultimately thwarted and neutralised by the legal and financial might of the Star Pubs and Bars, says absolutely all you need to know about which forces currently hold collective sway over our pubs and how determined they are to protect their unfair and utterly dominant advantage. That case was brought by an unusually well-resourced and sophisticated tenant, and even he was ultimately unable to see it through the system to secure a legal precedent.

A court case simply does not represent a realistic route to resolve the legal questions that persist, and we believe both the government and HMRC should step in to adjudicate the situation, given the PCA's clear reluctance to pursue it in any meaningful way.

5. Conclusion. The future is in the hands of policy makers.

Given the clear direction of travel in the pub company sector, which is back toward corporate control, macro brand ubiquity and reduced tenants' earnings and power, I believe the Government needs to take a clear view as to what they want to see in the sector going forward.

If policy makers are happy to see more and more of our pubs slide into bland corporate mediocrity (and often subsequently close for good) then they need do nothing at all. We will continue to lose pubs at a rate of around a thousand a year, most of which could have been saved had they not been simply reduced to "cash generating units" on the spreadsheet of a corporation with one eye on maximum short-term profit extraction and the other on the longer-term land value.

If, however, the Government would like to see more pubs thriving in the hands of committed local operators making a fair share of profit and able to deliver their communities a bespoke, quality service, in well-maintained surroundings (while also supporting our wonderful, currently largely excluded, array of local independent brewers and other producers) then it needs to take urgent action. It must recognise and address the anti-competitive domination of ruthlessly extractive (largely offshore) predatory capital that is currently exploiting the unfair and undeserved privilege of the beer tie to pillage and degrade huge swathes of our irreplaceable national pub infrastructure.

My initial letter contains numerous policy suggestions which I will not repeat here. Suffice to say they all still apply three years later as these already hugely dominant corporations continue to demonstrate how unfit they are to be trusted with the additional and undeserved privilege and advantage of the beer tie - an anomalous vertical supply arrangement which is rightly outlawed in most other industries.

The inescapable fact is that the more pubs have their independence and autonomy removed by the corporations that own them the worse things are going to get for publicans, pub customers and communities, and the more we will see our independent craft brewers and other producers shut out of their own local pubs as a route to market.

We will see yet more domination by multinational mega brewers and offshore-owned pub companies, meaning that ultimately the excessive profits that they extract between them will not only leave our pub sector but our entire national economy, delivering the polar opposite of the domestic economic growth that this Government so clearly wishes to see.

It falls now to the Government itself to finally act once and for all to properly curb the excesses of the corporations responsible for the outrageous anti-competitive wealth extraction that is so clearly blighting our unique and irreplaceable pubs, to the great cost of our economy and collective culture.

Yours sincerely

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