

# British Pub Confederation

*Standing Up for Pubs and Publicans*

Paul Scully MP  
Parliamentary Under Secretary of State (Minister for Small Business,  
Consumers and Labour Markets)  
Department for Business, Energy & Industrial Strategy  
3 Whitehall Place  
London  
SW1A 2AW

17<sup>th</sup> June 2020

Dear Paul,

## **URGENT – Proposed code of practice on rent negotiations**

We are writing to you, on behalf of our member organisations and as a matter of urgency to express our concern about the Government's proposed Code of Practice on rent negotiations.

We welcome the Government's recognition of the need for a Code for commercial landlords, but the recently released draft version was unfortunately a very grave disappointment in relation to pubs, proposing as it does a voluntary framework which relies on all parties to negotiate in good faith, something which has historically been notably lacking when it comes to the behaviour of pub owning companies.

As it is currently written, the Code will not assist pubs, and indeed is drafted in a way that will actually allow pub-owning companies to exploit their tenants, which must be the opposite of what the Government is intending.

## **Tenants working group redraft**

We commend the efforts of the "tenants' working group" who have come together to put forward a redraft which has been circulated today. This redraft is a welcome improvement, and constitutes a far more realistic view of what is actually needed in order to protect thousands of small businesses going forward through the remainder of this crisis and beyond. Perhaps this is not surprising given that it originates from a group of expert publicans working on the front line of the sector, who understand what is really needed by tenants.

This is in stark contrast to the notable under-representation in the original drafting group. This under-representation is a perennial problem in such scenarios, and one which the British Pub Confederation and the recent formation of the Campaign for Pubs and the Forum of British Pubs (both members of the British Pub Confederation) actively seeks to address and highlight.

## **A meaningful, mandatory code is required**

However, we also wish to make clear our view of what really needs to happen for the Government to properly support pubs, and other businesses, as other Governments in other countries have done.

This Code of Conduct will have to be mandatory, very clear in its intentions and have legislative weight behind it, if it is to have any chance of success.



### ***Member organisations:***

*Campaign for Pubs*  
*Forum of British Pubs/Forum of Private Business*  
*Licensees Supporting Licensees*  
*Guild of Master Victuallers*  
*GMB*  
*Scottish Licensed Trade Association*  
*Fair Pint Campaign*  
*Pubs Advisory Service*  
*Justice for Licensees*  
*Punch Tenant Network*  
*Unite the Union*  
*Protect Pubs*  
*Society for the Preservation of Beers from the Wood*

The pub industry has long suffered from the unreasonable behaviour of aggressive, profiteering pub owning companies. Self-regulation, and voluntary codes have a very well proven track record of being completely ineffectual. Indeed the consistent flouting by pub owning companies of a succession of such voluntary "Industry Framework Codes" was condemned by no less than four Select Committees, and eventually led to Parliament resorting to the statutory regulation of the largest six of these companies under the Pubs Code.

The great difficulties most tenants have faced in getting any meaningful support from their pub owning companies during the Covid-19 closure shows that their behaviour has not changed.

During the closure, many of these same companies set their sights aggressively on the Covid-19 grants issued to individual Publicans to help their small businesses bridge the closure period. Too many pub companies have regarded these grants as their own bail-out package, and have openly demanded them in rent, placing their own interests firmly ahead of those of many other parties to whom tenants will also have financial obligations.

The frankly astonishing letter of 18th March to the Chancellor by their representative group the BBPA requesting that the grants be paid direct to these pub owning companies themselves only went to show how widespread and co-ordinated this attitude was. The letter was, quite rightly, not successful in its aim, to the credit of the Government.

While there have been admirable examples of good practice from a few of the smaller brewers and by one of the big six regulated companies (Admiral Taverns), most of the large pub owning companies have been extremely slow to react to calls from their tenants for support, and have failed to go far enough once their so-called "support packages" have finally been unveiled. Indeed many are still actually trying to convince their tenants that simply deferring full rent for repayment at a future date counts as support, when in fact it is of course simply a case of kicking a toxic can down the road into a hugely uncertain and worrying future.

This does not bode well in terms of these same companies respecting a voluntary Code.

## **So what we are calling for, on behalf of our members organisations and independent publicans:**

### **1. The Code must be mandatory**

The Government must have the courage to make the Code mandatory, with proper legislative sanctions for breaching it, if it is serious about wanting to actually save pubs rather than just being seen to do something.

The pub industry has long suffered from the unreasonable behaviour of aggressive, profiteering pub owning companies. Voluntary codes have a proven track record of being completely ineffectual. Indeed the consistent flouting of such codes was condemned by no less than four Select Committees and eventually led to Parliament resorting to the statutory regulation of the largest six of these companies under the Pubs Code.

So a mandatory Code with real legislative teeth is vital, anything less will lead to a calamity of mass business failures and closures within the pub sector, not to mention more broadly in hospitality, leisure and retail.

### **2. We need absolute clarity on the percentage or methodology for sharing the financial impact of Covid-19 between landlords and tenants**

The Government needs to clarify the precise basis by which Covid-19 period rents are being agreed. As earlier drafts stand, a Landlord could be compliant by choosing either to seek payment of full rent for the Covid-19 period if they offer longer repayment terms, or a Landlord could offer a significant discount. This is a recipe for dispute and causes difficulty for mediation if both options are compliant with the Code.

The Code should, therefore, specify whether the parties are agreeing a temporary market rent based upon the impact of Covid-19 on trading for a period of time; or whether there should be a 50-50 or other percentage split on the losses for the Covid-19 period. This will give clear expectations to both landlords and tenants and allow a trade-off between the various options available to resolve the matter.

In line with recent judgements relating to the Pubs Code Adjudicator, the burden should be on the Property Owners to show that they are “equitable” in sharing the cost impact of Covid-19, and are not forcing the weaker party to shoulder more of the risk, which is very clearly what is happening now.

### **.3. We need an independently and fairly mediated dispute resolution service with the power to intervene in L&T Act commercial contracts, and to ensure fair and lawful dealing, for cases where the parties cannot reach agreement**

If there is mandate and clarity of outcome as outlined above, there will be a strong foundation for the parties to come to agreement. However, there also needs to be provision for a low-cost mediation service to incentivise agreement, to ensure fair and lawful dealing, and to resolve disputes when they arise. Most leases have provision for mediation if disputes arise, or otherwise the Code could specify the use of any professional and independent mediation service with a cap on costs so that it is accessible to tenants.

### **4. Assessment of any ability to pay any rent must not be based on some undefinable ‘ability to pay’**

We believe that it is wrong for pub owning companies, especially those in receipt of Government assistance themselves, to be seeking commercial rent on pubs with no income and unable to trade due to the forced closure. However in cases where some rent is agreed to be payable by mutual agreement (for example where the pub is owned by a supportive individual who requires some income) then this is acceptable.

Overall, though, a clear principle must be established that any rent demanded or paid is based on the individual circumstances of the pub operator, and not based on the current principle of “ability to pay”, which is impossible to define and as drafted gives pub-owning companies (and other landlords) carte blanche to go after individual operators for whatever they think they can get out of them.

Pub rents are essentially assessed as a share of profit, and so it is only reasonable that they are reassessed to take into account the exceptional circumstances presented by the Covid-19 crisis, including how long a given pub is, has and will be unable to trade, and the debts incurred by the licensee/operator.

### **5. This Code must not in any way affect the statutory Pubs Code and tenant’s rights under it**

Tenant members of our organisations have expressed serious concern that proposal for the rent code of practice could be used to undermine or even cancel the Pubs Code. British Pub Confederation members, the **Pubs Advisory Service**, have also written expressing this concern to BEIS officials but have not received the necessary clear and definitive answer needed to allay these concerns.

So please can you confirm as a matter of urgency that the Pubs Code is not to be undermined or replaced by this code and that it is going to be in addition to tenant rights under the Pubs Code and the rights it affords to tenants.

### **Government engagement with independent licensees and tenants' groups**

We also wish to again express our concern that BEIS have not so far been properly engaging with independent licensees/tenants' organisations.

To make matters completely clear:

- The **British Beer and Pub Association (BBPA)** represent their members, **including the large pubcos and big breweries**. They do not represent individual publicans and as you are aware, the interests of the large pub-owning companies are often diametrically opposed to the interests of the people who actually run pubs.
- **UK Hospitality** represent a wide range of interests across the hospitality sector, with some overlapping issues that apply to the pub sector and other than do not. They do have multiple operator pub sector members but don't speak for individual licensees and ***they have two regulated pubcos as members, Greene King and Star Pubs and Bars, as members.***
- The **British Institute of Innkeeping** is a charity focused on training and licensee support, rather than a trade association and ***it receives considerable funding from the regulated pubcos so cannot be seen as representing tenants of those companies.***

***So it really is vital that you engage and are seen to engage with independent licensee organisations, that do not represent the regulated pubcos, have regulated pubcos as members or receive funding from the large pubcos.***

It is essential that you therefore engage with the **British Pub Confederation**, the Confederation of organisations not linked to the regulated pubcos that represent individual pubs and publicans. We do find it both bizarre and frustrating, when Ministers have long said that licensees should unite and speak together and independent licensees and pub groups have done exactly that by forming the British Pub Confederation and working together on key issues. Yet so far BEIS and the PCA continue to ignore this and, unacceptably, engage predominantly with organisations who represent, are funded by the large pubcos or have them as members. You must be aware how this looks to licensees and tenants (especially in terms of the statutory Adjudicator, who has to be and has to be seen to be independent and impartial). So we hope that the Government and the PCA will now fully and properly engage with the British Pub Confederation and our member organisations.

We therefore urge you to include the British Pub Confederation in discussions going forward and we request that Greg Mulholland (Chair and **Campaign for Pubs**) and Ian Cass (Vice-Chair and **Forum of Private Business/Forum of British Pubs**) are properly included and engaged from now on in all discussions relating to pubs.

We welcome that BEIS officials have a virtual meeting with the Forum of British Pubs tomorrow, but we also ask that you now confirm that both the Campaign for Pubs and Forum of British Pubs (both also representing the Confederation) will be added to the current task force and to all pub sector discussions, groups and meetings from now on.

In conclusion we reiterate the fact that this new Code of Conduct will have to be mandatory, very clear in its intentions and its scope, and to have genuine legislative weight behind it, if it is to have any chance of success. Experience has shown that in the pub industry commercial

landlords generally need to be very clearly compelled to act fairly towards their tenants.  
Leaving it to good faith and voluntary action will be calamitous.

We look forward to hearing from you.

Yours sincerely,

Greg

Ian

Chair, British Pub Confederation

Campaign Director, Campaign for Pubs

Vice-Chair, British Pub Confederation

Director, Forum of British Pubs

cc Fiona Dickie, Pubs Code Adjudicator  
Darren Jones MP, Chair, BEIS Select Committee  
Toby Perkins, All Party Parliamentary Pub Group