Accounting for duty paid on alcohol and volumes of unsaleable draught products

Submission from CAMRA, the Campaign for Real Ale

January 2019

CAMPAIGN FOR REAL ALE

Submission to the Pubs Code Adjudicator

Introduction

Thank you for the opportunity to respond to this consultation. CAMRA is a UK non-profit organisation with around 191,000 members. CAMRA campaigns for real ale, community pubs and consumer rights.

As key stakeholders in the establishment of the Pubs Code (the Code) and creation of the Pubs Code Adjudicator (PCA), CAMRA is campaigning for improvements to be made to the Code, to ensure that the 'no worse off' principle can truly be delivered. CAMRA has evidence to suggest that at present, Pub Owning Businesses (POBs) are continuing to exploit loopholes in the Code,[1] seeking to gain more from the profit margins of Tied Pub Tenants (TPTs).

CAMRA welcomes this consultation as a step forward towards eliminating a bad practice used by POBs to extract extra profit from TPTs, which can be used within profit and loss statements to inflate the proposed rent a TPT pays to the POB based on false assumptions of saleable volumes of beer.

General comments

The practice by which POBs base profit and loss statements for TPTs on the assumption that a container holds 100% saleable liquid is clearly absurd and unfair. Taking the example of a standard 72 pint firkin, while dependent on the type of beer, the saleable volume after sediment and operational waste is generally expected to be around 67 pints but could be as low as 64 pints. This represents a reduction in saleable liquid of around 10%, meaning that profit and loss statements in relation to draught beer, if the sediment and operational waste are not properly accounted for, could result in a misleadingly inflated projected profit for the TPT of up to 10% from draught beer sales, and therefore increase the proposed rent that the TPT should pay to the POB.

CAMRA believes guidance should ensure that TPTs receive the most accurate and transparent information about the amount of saleable liquid per container of beer and how this has been taken into account in the calculation of profit and loss statements. The guidance should result in a system that is as simple as reasonably practicable for brewers and POBs to navigate, while ensuring that TPTs have access to adequate information to ensure that they can reasonably assess profit and loss forecasts.

CAMRA's preferred route forward to ensure that TPTs have access to accurate and transparent information under the Code is to require POB rent assessments to:

- provide specific allowances for wastage and undrinkable sediment in every rent assessment
- base the allowance for undrinkable sediment on an average across the volume of ale they have sold in the past year (brewers are currently required by law to keep records that would allow this calculation)
- prohibit POBs from making the implicit assumption that publicans can short measure consumers illegally

Our response provides comments on each of the sections of the consultation document.

Accounting for duty paid

Cask ale is a unique product, a key characteristic of which is that it undergoes secondary fermentation in the cask that it is dispensed from. This means that, owing to sediment, a proportion of the real ale will always be unsaleable. Therefore (while not within the

[1] Please see appended paper summarising the results of a fact finding exercise carried out with TPTs

direct remit of the PCA) it is vital that the excise duty allowance for undrinkable sediment is maintained, to ensure the future survival of this traditional, natural product. If the allowance was removed, cask ale would then be overtaxed, creating a disincentive for brewers to produce it, and for TPTs to stock it.

CAMRA is aware that concerns have been raised by other organisations about unintended consequences of requiring POBs to provide TPTs with details on duty paid on all cask ales available under the tie in a full and up to date price list. This does not negate the fact that, under Excise Notice 226, each container of beer should be labelled with details of the duty paid on it.

CAMRA agrees with the statement from the PCA that TPTs should be alerted to this requirement, so that they are aware that this information is available on each container of beer that they serve. TPTs may wish to keep their own records on this, and therefore we recommend that the training needs for TPTs (covered later in this response) are just as an important requirement in this respect as the method by which the duty accounted for is displayed by the POB for the TPT.

Accounting for waste

We agree that best practice should be for POBs to account for unsaleable liquid separately in forecast profit and loss statements rather than only as part of the gross profit calculation for TPTs. This should be based on the declared volume of the container, and not be reliant on claims of the producer overfilling the container.

CAMRA supports the separation of sediment and operational waste within profit and loss statements. Sediment waste is due to the unique nature of cask beer, whereas operational waste will be present regardless of the container a beer is served from.

Accounting for sediment waste

The amount of sediment in draught beer varies dependent not just on the container size, but on the type of cask beer and how it has been stored. Therefore a standardised allowance would have to be set at a percentage reasonable enough to capture all cask ales to ensure that TPTs are not left worse off through their efforts to provide a range of beer to cater for consumer preferences and allow choice.

CAMRA's preferred approach is for the allowance for undrinkable sediment to be based on an average across the volume of cask beer that has been sold in the pub in the previous year (brewers are currently required to keep records that would allow this calculation by law).

Accounting for operational waste

It is an accepted principle that in the serving of draught beer a certain amount of beer from each container will not be saleable as it will be discounted under operational waste. This includes pulling beer through a line after cleaning, 'warm' draw off and customer tasters/samples, accidental spillages, lively beers frothing over glasses when served and overfilling of glasses. The amount of operational waste will vary from site to site. Because of this, CAMRA asserts that no POB should be allowed to sell cask beer to a TPT on the basis that 100% of the beer left after accounting for sediment waste is saleable.

The size and layout of a pub should be taken into account by the POB when accounting for operational waste. As it is accepted that operational waste will vary from site to site, POBs should not be able to assign a standard percentage of operational waste across sites that vary significantly in size.

Training and support

TPT training and support

CAMRA supports the expectation that all TPTs should have access to training on cellar management, saleable volumes and dispensing best practice, and that this should be provided as both an induction and on an ongoing refresher basis. CAMRA also supports the approach in respect of cellar management support and other professional services.

Additionally, there should be a requirement for POBs to submit all training materials to the PCA to ensure that all training provided to tenants explicitly explains how cellar management, best practice and saleable volumes are linked, and how these factors are then reflected within profit and loss statements and forecasts.

It is CAMRA's assertion (backed up by the PCA's own survey of TPTs[2]) that there is currently an unacceptably low awareness of the Code and MRO among TPTs. This is a key area in which the Code is failing as without the knowledge of its regulations and protections, TPTs will not be able to utilise the Code to ensure that the no worse off principle is achieved. Therefore, in matters as detailed as saleable volumes and profit and loss statements, POBs should be compelled by the PCA to place sufficient emphasis on providing training to TPTs to ensure good levels of understanding of the impact on their business.

If new guidance is issued as a result of this consultation, the PCA should issue an explanatory note so that TPTs understand in the clearest way possible the reasoning behind the new guidance and the implications of the new guidance for them.

Business Development Manager (BDM) training and support

CAMRA supports the assertion that BDMs should be fully trained to explain the approach adopted in profit and loss statements. POBs should be required to submit proof to the PCA that BDM training has been a) completed and b) renewed on a 12 monthly basis.

Contact

If you would like to discuss our response further, please do not hesitate to contact us.

Ellen Hudspith, Policy and Research Manager - ellen.hudspith@camra.org.uk

[2] https://www.gov.uk/government/news/pubs-code-adjudicator-releases-results-of-first-tied-pub-tenant-survey

Pubs Code Feedback

A report by CAMRA, the Campaign for Real Ale

CAMPAIGN
FOR
REAL ALE

March 2018

Pubs Code Feedback

1. **BACKGROUND**

1.1. An email went out in January 2018 to all licensees who we have an email address for, seeking information on how new pub operating models are affecting pubs, licensees and their customers. Feedback on other issues relating to the tie and the Pubs Code were also welcomed.

1.2. This report details the feedback received that relates to wider issues affecting traditional tied agreements under the Pubs Code. All comments in this report are based on statement from licensees and do not necessarily reflect the views of CAMRA.

1.3. All feedback has been anonymised to remove references to specific pub companies.

2. **COMMENTS ON TRADITIONAL TIED AGREEMENTS**

2.1. Much of the feedback was from licensees on traditional tenancy and lease arrangements.

2.2. <u>Case One:</u> The lease was coming up for renewal against a background of declining profits but the initial pubco offer was risible so the licensee registered for MRO. They stated that the pubco then put every conceivable obstacle in their way and acted in a 'very rude and arrogant' manner. Fortunately, they had previous experience in contract management at a senior level in private companies. They stated that they followed the procedures 100% by the book despite the difficulties this posed. The pubco's initial offer included a rent rise from £31k to £70k. At this point they insisted on talking to senior management and, by stated sheer persistence, succeeded. Eventually they managed to negotiate a contract which rolled their existing lease forward, gave them freedom to buy in all wines, spirits and minerals plus 10% of beer free of tie (FOT) plus access to certain beers at the lowest trade price. Clearly a great result for them but only after dogged and determined negotiations.

2.3. <u>Case Two:</u> The licensee reflected on their experience of negotiating directly with their pub company on going free of tie. They stated that their advice would be not to bother with the PCA but negotiate direct with the pub company. They stated that they would recommend ignoring everything the pub company first tells you and establish the real facts - in particular working out the FOT rent that a licensee **should** be paying – they recommended that the ALMR has produced excellent statistics and guidelines on this.

2.4. <u>Case Three:</u> Licensee has been at the pub for 21 years and is on a three-year rolling deal. They reported that initially the pub company said the current arrangement 'no longer exists' and therefore cannot continue. The pub company then said they're not offering them any more but the licensee is resisting this. They report that the pub company are also saying they'll put up the rent £4k a year which the licensee states they will also contest. They are actively looking at the MRO option but very much fighting for a rent reduction as the building is in serious disrepair.

2.5. <u>Other Feedback</u> Most of this comprised negative feedback about pubco behaviours – reductions in beer choice, sudden decisions to switch the pub to a management model, brow-beating on negotiations etc. Also, many tenants reported on the difficulties pubs face as a result of competition from the off-trade: people staying at home and the challenge of making a profit even after greatly increasing turnover. Just one tenant offered positive comments – saying that their pub company had been very supportive at local level since they came into the trade last year – excellent training, free of charge marketing, and a lot of money spent on their accommodation. Beer prices were the only downside the specific tenants reported.

2.6. A couple of respondents drew particular attention to the dilapidations issue. One said 'The main tool pubcos are using to scupper new lease negotiations are terminal dilapidations which they demand be attached and which are so costly that most people run a mile. These dilapidations usually have little basis in reality but challenging them needs grit and determination.'

2.7. A Chartered Surveyor who does a lot of work with tenants noted that many are currently getting lots of visits from pubco reps checking up on them, especially around buying outside the tie. They stated that they are amused that the main job of the Compliance Officers appointed by the pubcos isn't to ensure that the companies are complying with the Code but that tenants are complying with their agreements. They stated that they believe that pub companies are targeting in particular any tenant who has expressed an interest in MRO.