

## Written evidence submitted by Pubs Advisory Service Ltd (IBR0107)

### The Treasury Committee Business Rates inquiry Pubs Advisory Service

With direct reference to the Terms of Reference and on behalf of our concerned members we reply as follows:

- How the current Business Rate system measures up against the following pillars of good tax policy:

- Fair

A. *Currently the assessment process isn't fair as the approved valuation method published by the agency it isn't being followed and the outcome for pubs isn't fit for purpose. Publicans are not able to conduct their own Fair Maintainable Trade (FMT) assessment as they do not have the required information and should not be required to challenge a VOA assessment that did not correctly follow the FMT process in the first place. It seems to be the case that the VOA rateable value assessment relies too heavily on Trade figures reported from Pubs which means that the actual performance of a pub has too much influence on Rateable value. The approved methodology is very clear that the FMT is the trade performance that would be expected of a "Reasonably Efficient Operator" not the the operator replying to a VOA request for their sales figures. Because of this lack of professional diligence poor operators are rewarded with reductions in rateable value and exceptional operators punished by increases.*

- Provide certainty.

A. *As is stands pubs have little certainty that Pub FMT assessments are being done correctly or taking into account the variables in an individual pub that valuers are required to apply in making those assessments.*

- The problems associated with property-based business taxes

A. *It is a concern as valuation officers in the VOA have defaulted to making Pub FMT assessments via a "desktop only" method which relies too much on actual performance which is specifically deprecated in the relevant methodology. Further that the emails we've supplied show that the VOA takes far too much heed of the views of conflicted valuers and follow their flawed approach to valuing Pubs. In doing so the VOA appears to give third party credibility to flawed Pub Company Valuations via the backdoor. Conversely undervaluing tied pubs also enriches the Pub Owning Companies as there is*

*more money in the divisible balance from which to pay a higher rent.*

*The VOA state that their application of the approved guidelines results in the establishment of a Market Rent that would be paid by a reasonably efficient operator. It is clear that there is very limited correlation between the rateable value and the rents actually demanded and paid by pub tenants. Particularly tied Pub tenants who according to the guidelines should be paying a rent at a discount to the Market Rent. The VOA should be put to explaining the reasons for the application of the same methodology often arriving at wholly different conclusions for the same property.*

The attached email evidence supplied seems to suggest the VOA was subverted very easily back in 2005 by valuers working in the interests of commercial property companies, they boast about their success in changing the minds of the VOA. The property companies with tied pub estates wanted to have a different (lower) valuation for pubs which operated under a tied lease or tenancy agreement.

The comments from a blog post on the same exact issue a few years later also reveal more of the going on's: [http://www.buyingapub.com/?p=3299&fbclid=IwAR33JymWPh49FkTeZRav5SO-r3PKWdCcR6c7bAfMdQIL5foKjPwhTah4\\_XY](http://www.buyingapub.com/?p=3299&fbclid=IwAR33JymWPh49FkTeZRav5SO-r3PKWdCcR6c7bAfMdQIL5foKjPwhTah4_XY)

Pubs Advisory Service supplied detailed information to the VOA in Jan 2019 on the use of Container description as opposed to saleable volume agreed with HMRC (72 pints) in the assessment of trade, the Chief Valuer said the VOA were "*familiar with this issue*" and gave the impression the VOA had adequately dealt with 72 pints in their assessments and valuations.

We arranged to meet the VOA National Valuation Head for Leisure and Licensed Property to discover just how they had approached 72 pints in their valuations, they said they had not dealt with it. They were surprised by the evidence we had supplied and approached it as if they were hearing it for the first time, if anything they were a bit incredulous which makes the first response from Chief Valuer very misleading. It seems quite clear that at the coal face the use of containers and not contents of cask ale is infecting FMT assessments for pubs, so much so that the resultant VOA valuations even if following the approved guidance are not going to be sound and probably inflated.

## **Summary**

The VOA has a troubling approach when it comes to pubs, they are seemingly doing desktop only valuations and not tackling the variables on a case by case basis. They are instead making too many allowances for the wrong things (the views of conflicted surveyors) and not making allowances for the right things (72 pints) or following the approved guidance that they themselves publish.

Publicans should not be put to long waits in challenging assessments done unprofessionally in the first place i.e. assessments that have deviated from the approved guides or failed to apply 72 pints etc. As a minimum a statutory Pub assessment must be done professionally first and foremost and only then if there is dispute a challenge raised.

Publicans and trade bodies expect a site visits during valuations, RICS say it is mandatory to carry out site visits, so why are pubs (who are already subject to a unique method of valuation) getting no visits or proper assessment from the VOA, it is not possible make a sound valuation sitting behind a desk.

It is not for the publican to do their own FMT assessment and supply it to the VOA, it is for the VOA to carry out an FMT calculation and be able to prove they have done a calculation following the guides issued by both the VOA and the RICS. No publican should be challenging an assessment that was not carried out professionally as they are at a disadvantage by not being a valuer themselves in trying to correct and fill in the blanks left behind by a surveyor not following a statutory process.

If valuations for pubs are done properly (i.e. 72 pints removed from the calculations and strict adherence to the approved guides) then this will create fair and lawful assessments and ultimately result in professional valuations publicans can have faith and confidence in.

The committee should inquire into FMT processes and assessments carried out by the VOA and uncover why it has gone so very wrong when it comes to pubs.

The recent debate into Pubs held in the main chamber of the House on 28/03/19 saw a number of MP's speaking out and stating clearly that the processes of the VOA were not transparent and failing pubs, we couldn't agree more.

We would be prepared to speak and give evidence at any hearing that you choose to hold

Chris Wright

Pubs Advisory Service

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## [72Pints.co.uk](http://72Pints.co.uk) Investors briefing note Jan 2019

To whom it may concern.

We are writing to inform you about the lack of critical information in the Pub Industry, this will have massive implications for investors, accountancy firms, auditors and regulators. It is seemingly brought about by the Brewers, Pub Companies and the British Beer and Pub Association (BBPA), whose members produce 90% of the beer in Britain.

Deliberate use of the size of a cask ale container instead of the contents has misguided tens of thousands of publicans. This will not only have a devastating impact on the livelihoods of those who entered into contracts in good faith but similarly as far as investors are concerned their analysis will have also been based on financial statements from the pub companies and brewers as being reliable and statements of fact.

In reality these figures are likely to be materially mis-stated given the revelation that containers and not the contents are being used in price setting and rental assessments.

[Background](#)

British "Cask or Real Ale" is unique to Britain and is cherished by customers in British Pubs. It is not a beer that is finished in the brewery but has a secondary fermentation which is managed and overseen by a skilled publican at the pub. This is cask conditioned beer and in order to reach optimum condition there is a quantity of undrinkable sediment present in the cask alongside the part which is drinkable i.e. the beer. Traditionally this sediment was returned to the Brewery which then counted it and reclaimed a proportion of the duty paid because it was not consumable.

In 1993 the beer duty rules were updated to reflect the requirement for a brewer to calculate and count the amount of sediment and adjust the duty paid before the beer left the brewery. This concession works as long as the customer (i.e. publican) is fully informed and can apply the declared volume of duty paid beer to help set the sales price and gross profit from the cask ale being supplied. If the wrong figure is used here the publican loses money and worse cannot even pay the bills. It is therefore critical the information related to the volume of saleable/consumable beer is supplied at or before the point of sale, so the publican can avoid under-pricing.

For the avoidance of doubt undrinkable sediment is being exempted up front so duty is not being reclaimed later as was the case in the past. It falls to HMRC to ensure all beer/alcohol drunk in the UK is duty paid – as long as two conditions outlined in HMRC EN226 are applied:

- 1) the first customer (i.e. publican) must be made *fully aware* of the amount of beer that was duty paid and therefore would be drinkable, and
- 2) Brewers must prove that no drinkable beer was being shipped without duty being paid i.e. a quantity in excess of any declaration they make.

## HMRC and Duty

HMRC were worried that Brewers might pay duty on a standard volume but then go on to adulterate and fill their casks with a different amount of alcohol i.e. using far less sediment than they declared. The HMRC EN226 regulation was revised and tightened in 2001 to close off any possibility a brewer could declare (say) duty on 68 pints but sneak in 72 pints of drinkable beer and avoid paying duty on

4 pints. Added to this in 2017 AWRS from the HMRC put a new requirement on publicans to inform HMRC if they were supplied any beer in excess of the declared duty paid volume.

HMRC EN226 is now applied to thousands of different beers has ensured government are getting paid the right amount of duty and a precise share taken from the production of alcohol, herein lies the problem – the customers (i.e. publicans) are not being told, this is why we are writing to you.

HMRC were approached and informed of the practice and amended some regulations in 2016

## Effects of wilful misguidance

New publicans are trained/instructed to base their business plans and bid for pub rents based on selling an impossible and unachievable volume of 72 pints. We have collated an extensive archive of training manuals and rent offers all outlining endemic use of 72 pints. This misguidance damages the sector and needs to be injuncted and stopped as it is dishonest and sets false expectations not only for tenants but for investors.

In the case of people renting a Tied Pub the rents that they pay are based on a shareable profit drawn from sales of cask ale. When a profit based on selling 72 pints is *baked* into the finances the business plan is forfeit as it no longer works. Perversely the cost of the beer and everything else remains the same, any cash missing from the till comes straight out of the publican's expected share of the profit, the pub company suffers no such effect and has now received an unjust share.

Given that the rent is higher than it should be then the HMRC is also receiving 20% of the extra rent, this might go some way to explain why the HMRC have been reluctant to stop the mis-guidance of duty when we presented evidence to them, they too are receiving an unfair share to the clear detriment of the tenant.

*It is a fact Publicans are paying on the basis that the barrel supplied to them is "all for sale" when they are in fact receiving far less than a full barrel of beer to sell.*

## Legal opinion

We have taken legal advice and can report that all lawyers we have contacted report that this practice can *render the leases and letting agreements void*, tenants can repudiate any agreement made on a wholly false premise such describe above and can walk away from the pub and claim damages. *This will have serious implications to the valuation of the businesses* who lease or rent pubs as they cannot enforce their agreements, investors will be exposed because of the use of 72 pints.

## How are investors likely to be impacted

Its proven that tenants were not made aware of this nefarious practice which is still ongoing, and it is our belief that investors active in this sector are highly likely to have been misled.

Given that the investment analysis will have been based on, amongst other things, the true and fair income statement (profit and loss accounts) our evidence means that the reported profits of the companies implicated in this practice are likely to be materially impacted.

This also has implications for the institutions who have issued either equity or debt securities based on prospectuses containing evidently incorrect profit and loss statements. Not only is this damaging

to investors, but it is also likely to lead to reputational damage across the sector and in particular, where securities have been issued, to London's standing as a well-regulated financial centre.

## Financial Reports

In relation to financial reporting, pub companies are including beer duty (which is a government tax on beer consumption) as an element of their *cost of goods* sold to their tied tenants. This has the effect of reducing their reported gross profit on the sales of beer to their contractually obliged tenants.

We note that these companies generally report around 43% gross profit on sales of tied products which means that they are also making 43% gross profit selling government tax to their tenants. We feel a truer reflection would exclude government tax and reveal their true gross profit being between 60% - 70%

On the point of sensitivity analysis if hypothetically the Government was to replace beer duty with an equivalent increase on VAT the then only implication for reporting would be that pub companies would immediately begin reporting the gross profit we outlined above.

We believe the current method adopted by the pub companies to conceal duty is contrary to the reporting standards which excludes government tax from the performance of a public company.

## ESG

The rigged game of using container sizes has failed to ensure a fair and equitable profit share from the pub tenants have had their lives ruined with many being made insolvent and understandably has badly affected the health of many. Therefore, any firm claiming to be ethical investor would undoubtedly be concerned about the social impact alone let alone the performance of their investment.

## Detailed analysis

We have carried out a detailed analysis and investigation which the findings are available to you of:

- 1) The deliberate and wilful conspiracy to misguide
- 2) Financial impact analysis on a per pub site basis
- 3) We can show the recommendations we sent to the secretary of state
- 4) We can show that senior executives were approached and informed of impact this practice had to their tenant's years ago and what the steps they took

## The Pubs Code Adjudicator

Change is coming to six companies; the PCA has published draft guidance in Nov 2018 to end the practice of using containers in calculations by April 2019 but this is only for 6 regulated companies. There dozens of firms outside of the PubsCode some of whom will have issued securities in London or have loans all of which potentially have been agreed on erroneous financial statements.

## Summary

Statutory notification related to the contents of casks was being systematically removed from the supply chain in direct and concerted opposition to ignore what is required by HMRC EN226, but how was this possible and happening across so many businesses?

We would very much like to work with parties who might have been impacted by the above practice and would be delighted to discuss this with you in greater depth at your very earliest convenience.

Regards

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Dear Mr Wright

Thank you for sharing your briefing note on the topical matter of 72 pints with the Valuation Office. **Our team which is responsible for the valuation of Licensed properties is familiar with this issue.** As you know, the Rateable Value of any non-domestic (business) property represents the annual rent a property would achieve if let on the open market at a valuation date which is set in law. For the current Rateable Values, which came into effect on 1 April 2017, the set valuation date is 1 April 2015.

When we are valuing licensed properties, we gather information about the rental market for pubs and other similar classes of property, along with other factors significant to the valuation of this type of licensed property. We then use that evidence to arrive at a reasonable assessment of the Rateable Value. If any ratepayer believes their Rateable Value is incorrect, they should use the Agency's Check Challenge Appeal (CCA) process. This provides an opportunity to provide detailed information about why they believe their Rateable Value is incorrect.

Regards

**Chief Valuer | Valuation Office Agency (VOA)**

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Original Message

From: [redacted]  
Sent: Friday, December 9, 2005 1:03 PM  
Subject: RE: [redacted]

Dear [redacted]

Many thanks for that Two further points:-

1. When using the VOA and BBPA agreed method of valuation of a pub for rating purposes that has had its rates calculated on a FMT basis ,what happens if the premises become vacant and there s no turnover? does the property get rated on some other basis , subject to empty rates relief? As pubs are only a type of retail premises they are presumably only capable of having empty rates relief for three months? at the end of the empty rate relief period what happens if there is still no actual trade to calculate the FMT from ? Do they then get rated on some other basis?
2. You mentioned on the phone the other day that you believed there were databases to which pub owners and operators contributed to share details relating to their pubs for comparative purposes of turnover rents rates etc ,can you let me know a little bit more abo 1t them and the information that they contain and if there may be information on the data bases that would be helpful to [redacted] in his case and if you could gain access to them on CJB behalf or if I le could subscribe to them? do let me know.

Many thanks



From: [redacted] \*  
Sent: 01:24:24 December 2005  
To: [redacted]  
Subject: [redacted]

Dear [redacted]

I know of no other guidance agreed between BBPA and VOA until early this year. [redacted] is a leading [redacted] I [redacted] a member of the BBPA property panel with the role to act on t5ehalf of the BBPA to g pub r ing spe1altst who was also a member of that panel between 2002 and 2005. [redacted] agree guidance with the VOA on the 2005 list, which he did

The guide has a very similar for on olesale volumes of lior - pr so t61995 and ODO lists. Before that the guidance was based pu estates. [redacted] did t a a ecame seriously out of date as the brewers divested their representa 1onof the relationship to change the methodology this time - only to improve the graphical used for this was [redacted] turnover and rent to reflect market conditions in 2003 The data

[redacted] and restaurant

on the VOA

turnovers declared by the statutory returns from pub



operators,  
 on the BBPA side as much evidence of relevant free of tie rents as could be found from members estates  
 (which was not much as the statutory assumption of an annual full repairing and insuring tenancy free of any  
 tie is rare in the marketplace)

Chris then conducted a discussion which seemed like alchemy to most of us, using this data to establish a  
 tone for property types reflecting quality and different market drivers. So for example there was a big drop in  
 the RV of the bottom banded businesses this time, because rural pubs are losing commercial rental value.  
 Often they are now worth not much more than their residential value; "a flat with a wash till downstairs, run  
 evenings only as a part-time business". On the other hand the top end of the catering banding increased to  
 reflect the demand from chains for high value catering businesses to run with branding under management.

Objective was to try to agree a banding that would understate the average of actual new rents as at  
 March 2003 in the marketplace. Valuers feel he succeeded. We expect a free of tie secure lease to warrant a  
 rent of 14-18% of total turnover. The guide has a maximum of 14% of wet turnover in Central London and a  
 maximum of 12.5% outside London. Also a maximum of 10.5% of food turnover, anywhere. There is also  
 plenty of scope to argue downwards based on both quality of location and the expected fair maintainable trade,  
 with very low percentages at the bottom end.

I do not say this is the lowest possible level but it was a good result if you start from the position that the right  
 way to value such properties is the profits method. I would be the wrong person to argue any other method as I  
 am chair of the RIGS Trade Related Valuation Group which publishes the guidance to valuers pointing them in  
 that direction. In fact such guidance is also in line with International Accounting and Valuation Standards, so  
 there is no realistic chance that such a method is wrong.

I think the four properties with RVs in my previous letter are all leaseholds. Bar Risa and the Archway are  
 Enterprise freeholds let on tied leases, and I think the other two are free of tie leases from commercial  
 investors. I have been meaning to test the system for getting rents off the Land Registry records so I will try it  
 out with these. I will need to recover a small charge for each search. Turnover will be a problem - I will have a  
 think.

The theory of using turnover as a basis for rents should be that those who trade very well in average premises will  
 benefit from a lower rate cost than they would expect and those who trade badly (against other similar  
 premises) will have a high cost. The system should reward quality and penalise failure. In practice there is a  
 strong "drag effect" in that the valuer are no good at separating a good site from a good operator. It is not  
 uncommon for a pub to rent at a high rate a site it thinks is a good one, until the trade crashes when the  
 operator leaves and they find they cannot relet it at anywhere near the previous rent. To me that means a good  
 operator also needs to be a negotiator to guard against this "drag". Proof is difficult - there needs to be  
 good access to comparable information to show that the present operator is proveably exceptional. We know  
 the VOA has the data to show this; but is it in the public interest for this data to be protected from  
 by those the VOA is in negotiations with? The VOA should be setting the right tax, not the highest rents seen  
 get away with. s ax ey can

I am enjoying it!



-----Original Message-----

From: [Redacted]  
 To: [Redacted]

§ 7 [Redacted]

*Submitted April 2019*