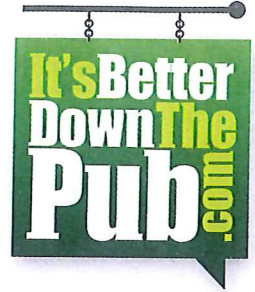


# thePublican's Morning Advertiser



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<b>OWN</b>	<b>WE♥LAGER</b>	<b>MY PUB</b>	<b>MINI-FESTIVALS</b>
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Tuppen: gave his views on the voluntary code

## Tuppen reveals arbitration fines

Rise chief executive Tuppen has revealed the company paid compensation of between £6,000 on average to £6,000 on average in two cases lost through the Pubs Independent Code & Arbitration Service (PICA-Service). PICA-Service was set up in 2009 as part of the self-regulation deal to manage the landlord-tenant relationship. Tuppen said at the Tenanted Pub Company Summit last week he admitted: "We have an average fine of £5,000 to £6,000. We are very happy for this to be made public. We have had three PICA-

Service cases; won one, lost two. This is not a voluntary code in crisis, it is a voluntary code that is taken very seriously by all the players in the industry and is working." He also revealed that out of the 2,200 rent reviews of Enterprise pubs over the past three and a half years only 17 of them went to the Pubs Independent Rent Review Scheme. Tuppen added: "If there is genuine concern about publicans getting into something they don't really understand, we would be happy to extend our cooling-off period from six months to 12 months." ■ **Tenanted Pub Company Summit: p10-12**

## Licence fees are unlawful says QC

Comments follow groundbreaking case

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The regulations governing fees for premises and personal licences are unlawful – according to leading licensing barrister Philip Kolvin QC.

His comments follow a ground-breaking case last month at the Court of Appeal which saw a group of sex shop owners successfully argue that they were being unfairly charged for enforcement fees, on top of administrative fees.

In his book, *Licensed Premises: Law, Practice and Policy*, Kolvin argues that the fees regulations governing premises licences, personal licences and club premises certificates are unlawful. Kolvin claims that 600,000 licensed premises, including 50,000 pubs in England and Wales are paying unlawful fees.

He said that while the fees regulations were lawful when published in 2005, they became unlawful when new European laws – The Services Directive – came into force in 2009. Kolvin said that when the Licensing

Act 2003 (Fees) Regulations 2005 was published, fees were set at a level to enable recovery of the full costs of administration, inspection and enforcement.

However, from 2009, licensing authorities were legally prevented from charging fees going beyond the costs of the authorisation process. Therefore licensing authorities should have recalculated fees to remove the element of enforcement.



**"[Licensees] should only be asked to pay administrative costs"**  
**Philip Kolvin QC**

Under the Licensing Act 2003, fees are centrally set by Government, but Kolvin said that Government was "bound by the same rule as local authorities".

He exclusively told the PMA: "This is not just technical. The legislature really meant to ensure that people did not have obstacles when they wanted to provide services in the EU, so they should only be asked to pay administrative costs. There's an important point here in not having administrative penalties and barriers when peo-

ple want to supply services."

Jonathan Smith, partner at licensing legal firm Popples-ton Allen, said: "I agree this is unlawful. Is there an opportunity here for licensees or trade bodies to reclaim previous fees? It's possible, but I don't think there's a huge appetite for it."

Licensing lawyer Peter Coulson explained that it was important to note that local authorities cannot charge licensees for enforcement if it is to check illegal traders, but it can charge for checking if licence holders are not in breach of their licence conditions.

He added: "Whether it would be possible to [claim reimbursements] is a moot point as it would be very tricky for licensees. There's so much work involved. Local authorities will have to look carefully at the way they set licence fees to avoid being challenged."

Kate Nicholls, strategic affairs director at the Association for Licensed Multiple Retailers, said that she thinks operators will look carefully at what Kolvin is saying to assess whether there is scope for reimbursement.

The Home Office was unavailable for comment.

■ **Legal comment: p18**