



SPECIALLY FEATURED ENTERTAINMENT ("SFE") TARIFF

CONSULTATION RESPONSES 2018

PPL consultation on changes to the Specially Featured Entertainment (SFE) Tariff

A response from the British Beer & Pub Association

October 2018

Summary

The British Beer & Pub Association (BBPA) is the leading organisation representing the brewing and pub sector. Our members account for some 90 per cent of beer brewed in Britain today, and own around 20,000 of the nation's pubs. A full list of our members can be found [here](#) and we welcome the opportunity to respond to this consultation and indeed for informal discussions between PPL and trade bodies over the last 18 months or so.

Of the 48,350 pubs in the UK, 80% are small businesses operated by individuals as freeholds or leased and tenanted businesses. The pub sector faces some very significant challenges with sharply rising regulatory costs such as the National Living Wage, auto-enrolment of pensions and the apprenticeship levy. This is compounding an already disproportionate tax burden where one in three pounds collected in the pub goes to the Government in excise duty, VAT, business rates, and other employment taxes. A recent study by Oxford Economics¹ confirmed that per pound of turnover, pubs pay the most business rates across all business sectors and have among the highest net VAT burden. Over 12,000 pubs have closed since 2000 and this continues at a rate of three every day. Avoiding unjustified and unnecessary cost increases remains critical for the continued viability of many pubs.

We respond to the individual consultation questions in more detail as part of this response but in summary we do not believe PPL have provided the justification or evidence required for any further increases in the SFE tariff, which already increases by RPI each year, more than maintaining its value in real terms. The proposals could cost the pub sector upwards of an additional £100 million per year which is wholly unreasonable and disproportionate. It would result in many more pubs no longer putting on this form of entertainment for their customers. As in previous proposals, PPL is solely reliant on an entirely theoretical choice-modelling exercise to justify further increases. This is flawed in many ways (as we set out in more detail) and does not provide a rational basis for the changes proposed. It also bears absolutely no relation to the reality of the current market for entertainment of this type in pubs, bars and nightclubs. Indeed, whilst consumers have moved away from pubs and bars as competition from other leisure activities has increased (coffee shops, gyms, home entertainment etc), this has been even more acutely felt in the nightclub sector.

In relation to structural changes set out by PPL, we welcome the intent to consider how to simplify the tariff and provide greater consistency across businesses calculating their obligations. Indeed, for some smaller venues a more linear approach to the per person hourly rate would, of course, be potentially attractive. Unfortunately, as our analysis in this response shows, the changes to the structure being proposed whereby these very venues would inevitably now be reporting on a capacity basis, would increase their costs under this tariff by upwards of 200% on average. Therefore, changes to a capacity-basis could only be considered, if accompanied by a significant reduction in the hourly rate per person rather than the opposite.

¹ The pub sector tax burden: a sectoral comparison. Oxford Economics, Sep18

In terms of calculating attendance, we have not had any publicans or pub company members report difficulties to us with the current calculation of average attendance and again see no strong rationale for moving to a different measure as proposed here. This again would inevitably lead to big increases in fees for some businesses. Whilst PPL highlight they have taken this “ebb and flow” into account in their overall fee proposals, this is not satisfactory as it would impact individual businesses very differently and is being done using a very arbitrary basis with an entirely theoretical and unrealistic starting point.

We remain very willing to work with PPL on consistent and clear guidance for calculating average attendance by businesses and the record-keeping to support this.

1. PPL’s current thinking about the scope of a revised tariff (section 3)

The BBPA is of the view that there is insufficient justification or evidence put forward to move away from the existing scope of the SFE tariff in terms of types of venues covered at this point. However, we do believe, further analysis should be undertaken as to whether festivals and large individual events be considered separately in terms of a SFE tariff due to the unique nature of these activities.

In terms of SFE events we agree that a combination of DJ/and or dancing at an event should attract the SFE tariff, as is currently the case. We would question though whether the inclusion of “facilities for dancing” is relevant given the guiding principle should be that the SFE tariff is applied whether sound recordings are played as a main or special attraction, rather than background music.

If dancing is taking place as a special event, then this will fall within the scope of the SFE tariff, and we see no reason to include any reference to “facilities for dancing with reasonable expectation that dancing will take place” which is vague and is not consistent with the aim of clarity in the tariff.

2. PPL’s current thinking about the structure of the tariff (section 4)

We support the intention from PPL that the basis for calculation of the SFE tariff is based on duration and attendance. This has been the case for many years now, is well understood and is, in our view, the fairest way to currently differentiate between the type of venues and SFE events within the hospitality sector covered by the tariff. It is right that larger events attracting more people and lasting longer should pay proportionately more than smaller events over a shorter period.

Attendance bands

In terms of attendance bands, we believe the current band-sizes do not present any particular issues for the trade. We support the principle of equal-sized bands at the lower end as logical and so the smallest events are not unduly penalised. However, it is not clear how many events would benefit from such a change so additional analysis may be worthwhile to determine the impact and cost/benefit of this change. For very large events, we don’t have a preferred view although bandings of 25 may add additional complexity to the tariff at this level.

More importantly, as PPL set out in the tariff, is fair rates between venues of different sizes. Whilst a more linear approach in terms of fees per person in the different bands would, of

course, appeal to some smaller operators, the biggest concern for all licensees is the existing rates that they themselves pay and avoiding any further increases in these. Indeed greater revenues from larger operators from moving to a linear system should result in a decrease for smaller operators.

On the other hand, there are also various fee-based models across industries and licence types that have a lower “per unit” rate for larger businesses who would otherwise pay a wholly unrealistic amount for the service/benefit received.

In summary we do not believe sufficient analysis is presented here to justify a change in the existing approach in terms of the existing band structure and rates within these.

Reporting of attendance

We do have some concern that agreed reporting methodologies for attendance are not entirely transparent and consistent. Over a number of years now, we and other trade bodies have offered to work with PPL to establish clear guidance available to all licence holders as to good practice in this area and associated record-keeping, recognising of course the very different venues and businesses within scope of the tariff.

However, we do not believe sufficient evidence has been provided by PPL to support the contention that a move away from average attendance is now required. We are not aware of any issues raised by our members or individual publicans regarding the current reporting method nor evidence from PPL of significant mis-reporting. Whilst inevitably, there may be a small margin of error in smaller venues without door staff who are counting people in and out, this is likely to be small, and there is no reason or evidence we are aware of to propose that this will lead to a material under-reporting in terms of SFE revenue from pubs. Licensees will generally have a very good understanding of attendance levels in their pub over the course of an SFE event.

If PPL have concerns with individual reporting, this should be addressed unilaterally. It would, however, be unrealistic and unfair to have a smaller venue faced with the choice of having to count the total number of people entering their pub over the course of an event (and the associated cost) or move to report on a capacity-basis without a significant reduction in the per person tariff.

Pubs will generally not fall under PRS Tariff D which relates to commercial discos and dancehalls, and where the basis for reporting is total admissions.

Capacity

We recognise that capacity could be a credible alternative in many instances and consistent with the basis of some other tariffs such as the main PRS tariff for pubs. However, further consideration could only be given to such a change if this were on a broadly revenue-neutral basis for pubs. Even if this were the case at sector level, there would still be significant losers running small SFE events in large capacity outlets. It is also worth highlighting that the equivalent PRS tariff for a 200-capacity pub is already significantly lower (2.5p per person) than the *existing* PPL tariff (3.9p per person), yet only further increases are being proposed.

We have collected and analysed 2016/17 data from a sample of over 2,100 venues (pubs, clubs and hotels) holding more than 94,000 SFE events. As shown below, pubs on average are reporting attendance at SFE events at 40% capacity. This falls to 34% when weighted by total SFE events across the number of SFE events over the course of the year. For hotels average attendance was 62% and nightclubs just 24% On this basis and

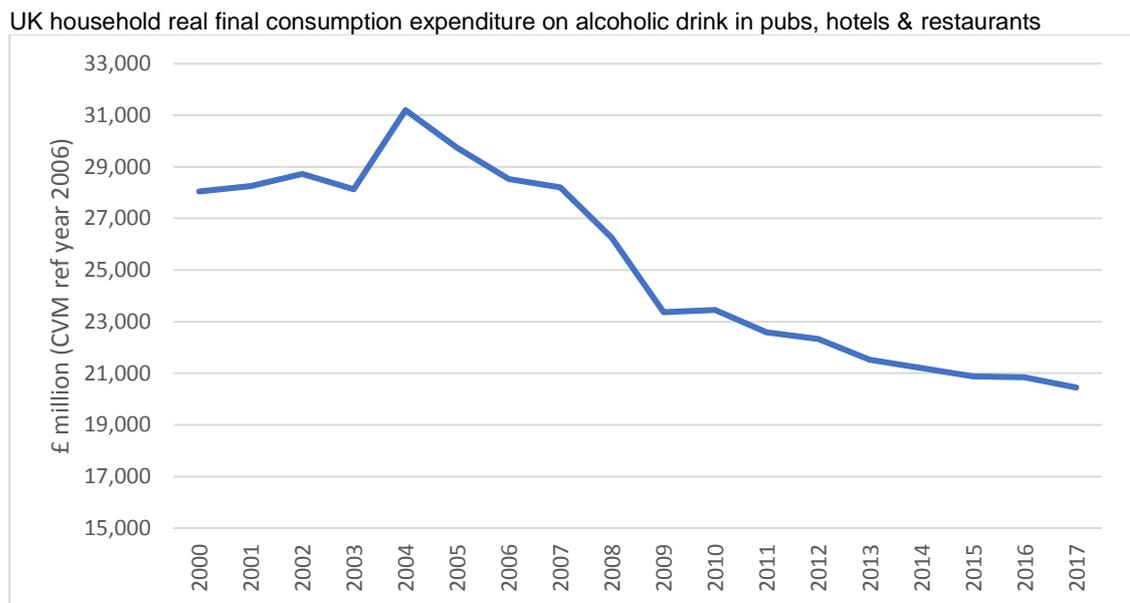
based on current payments and the capacity of the sampled venues, a move to a capacity-basis would increase pub fees by c.190%. This in itself would be unfair and unsustainable for many....and indeed this would be *before any further increases* as proposed in section 5!

	Sample	Average Attendance	Average Capacity	% of capacity
Clubs	68	321	1,327	24%
Pubs	1,619	103	259	40%
Hotels	415	139	224	62%
TOTAL	2,102	117	287	41%

3. PPL’s current thinking about the fees under a revised SFE tariff (section 5)

We do not believe PPL have provided the justification required for any further increases in the SFE tariff, which already increases by RPI each year, more than maintaining its value in real terms. As in previous proposals, PPL is solely reliant on an entirely theoretical choice-modelling exercise to justify further increases. This is flawed in many ways as set out by an analysis from respected consultants, Frontier Economics, which is attached as Annex A. This also bears absolutely no relation to the current market for entertainment of this type in pubs, bars and nightclubs.

The reality is that consumers have moved away from pubs and bars over the last two decades. Over 12,000 (one in five) pubs have closed since 2000, due to changing socio-economic factors, rising costs and a wider range of leisure activities for consumers to engage with, this has resulted in fiercer competition than ever for discretionary spend (from coffee shops, gyms, home entertainment and technology) and as demonstrated by a 27% real terms fall in expenditure on alcohol in pubs and the wider on-trade during this period. Indeed, this trend has been even more acutely felt in the nightclub sector.



Source: ONS, BPPA

The choice-modelling exercise which is the sole basis for a tariff increase starts with a wholly theoretical value of 75p per hour that consumers would be willing to pay reduced by PPL to

22p for a recommended tariff to take account of “ebb and flow” and an arbitrary third share of this value between PPL, PRS and the licensee. PPL calculate the current average fee per person at 3.8p so an increase to 22p would equate to a 479% increase on the current fee².

Based on our sample of 1,600+ pubs, currently paying an average annual fee for SFE events to PPL of £1,023, this would mean a fee increase of £4,899 to £5,922 per annum per pub. However, if the majority of pubs are then reporting on a capacity basis, as proposed as part of this consultation, the combination of these two factors would increase the average bill to a staggering £16,991. This is completely unfeasible by any measure.

	Current SFE Fee	Fee if move to 22p under current method
Sample of 1,600 pubs	£1,656,100	£9,587,948
Average per pub	£1,023	£5,922
% change		479%

	Current SFE fee	Fee if move to capacity	Total fee if move to capacity + 22p
Sample of 1,600 pubs	£1,656,100	£4,817,097	£27,508,418
Average per pub	£1,023	£2,975	£16,991
% change		191%	1,561%

We do not see on what basis PPL has made the assumption that the current SFE tariff is undervalued. The tariff was the product of detailed negotiation with what was the British Entertainment and Discotheque Association (BEDA) over several decades. The tariff has also been in place in its current form for 27 years and has been increased by RPI every year as highlighted. Our understanding is that the previous negotiations were intended to be a “radical reappraisal” of the SFE tariff, and, to the best of our knowledge, there have been no new factors other than those which formed part of the 1987 and 1991 negotiations which would warrant re-negotiation of the tariff, such as new technological developments for example.

The proposed increases in the value of the tariff are unacceptable and we strongly contest the use of the FTI Choice Modelling Study to support the values contained in the proposed tariff. The reasons why consumers choose a particular venue are complex, and will include a combination of ambience, décor, location, clientele, presence/absence of music, whether their friends are going there and so on. SFE is only one of a number of factors that attract customers and affect their willingness to pay.

The FTI Choice Modelling Study makes assumptions about what customers might be willing to pay for recorded music, but has failed to address what licensees would be prepared to pay. In fact, what licensees are prepared to, and are able to, pay for music and entertainment has seen a sharp decline in the past year as reflected in the market changes

² For larger venues, the current SFE tariff falls to around 2p per person per hour so an increase to 22p would be an even more staggering rise.

highlighted above. These are critical factors to be taken into account in setting fees in a monopoly market.

The outcomes of some of the key scenarios used in the choice-modelling approach are also counter-intuitive, further calling into question the reliability of this approach.

Respected economics consultancy, Frontier Economics has undertaken a detailed analysis of the choice-modelling work. This is attached at Annex A. This expands on the points above but their conclusion is very clear:

“...at a fundamental level, the GFK study and approach are misconceived – what GFK have set out to measure is not the right starting point for determining what constitutes a reasonable level of tariffs.”

First, it cannot be assumed that the WTP for music by patrons represents a potential profit pool that licensees can readily tap into through admission fees and drinks prices. Second, it cannot be assumed that the full WTP of the end customer provides an appropriate starting point for assessing what constitutes a reasonable royalty rate.

Frontier Economics, September 2018

Surcharges

There was no mention of proposed surcharges in the recent discussions with trade bodies. We would like to understand further the rationale for these and the extent that there is an issue currently with copyright infringement and late payment in this area. A 50% surcharge is an extremely high penalty for late payment, even with the maximum cap proposed, which could be dealt with by other means, such as interest charges for example.

Trade bodies have previously raised concerns about the application of the surcharge in relation to background music tariffs and the incorrect application. In contrast, PRS do not operate a late payment surcharge. A surcharge is only implemented where businesses have been found to be using music without a licence, and it is only charged for the first year of the licence. This would seem a more reasonable approach.

With a single merged operating company for PPL and PRS now responsible for issuing bills, and this still in its infancy (first year), we would also question if it is appropriate for PPL to seek to introduce additional surcharges at this time.

4. PPL’s current thinking about the implementation of a revised tariff (section 6)

PPL propose to phase in any tariff increase over three years. Whilst, of course, members would welcome the phasing of any increases, we do not believe sufficient evidence has been presented to justify any further tariff increases at this point.

We strongly believe PPL should move towards uprating the tariff by the official inflation measure (CPI), rather than the discredited RPI.

BBPA
1Oct18

Annex:

SFE – public performance tariff: COMMENTS ON THE USE OF GFK'S WILLINGNESS TO PAY ANALYSIS TO DERIVE REASONABLE ROYALTY RATES. Frontier Economics.
September 2018

Specially Featured Entertainment (“SFE”) Tariff Consultation

RESPONSE FORM

PPL is consulting on potential changes to its “Specially Featured Entertainment” (or “SFE”) tariff, which covers the playing of recorded music at events such as discos and DJ nights. The consultation relates to a potential new SFE tariff for nightclubs, pubs and bars, restaurants and cafés, and hotels.

The consultation paper, found here on PPL’s website: www.ppluk.com/sfereview, explains why PPL is reviewing its SFE tariff, and sets out PPL’s current thinking in relation to the following aspects of a potential new SFE tariff:

- Tariff Scope
- Tariff Structure
- Fees
- Implementation

You may use this form to respond to the SFE consultation.

How to respond

PPL welcomes your feedback on its current thinking about how to revise the SFE tariff. Where possible, please include evidence to support your comments.

The deadline for responses is **5 October 2018**.

Please send your response to sfereview@ppluk.com

Electronic responses are preferred but, if necessary, you can send your response by post to:

SFE Tariff Review
PPL
1 Upper James Street
London W1F 9DE

Confidentiality

If you wish any part of your response to be treated as confidential, then please mark that part accordingly. Otherwise, PPL may refer to all of your response as part of any information it subsequently publishes about the consultation feedback.

Part A: Your details

The details you provide in this section will assist PPL when assessing consultation responses. We may also use them to contact you regarding your consultation response, and/or to provide you with further information about the consultation and its outcome.

A1: Name and address of your business, premises, or organisation.

CPA - Concert Promoters Association
51 Elizabeth Road
Henley on Thames
RG9 1RA

A2: Your name (if different from above).
Carole Smith, Secretary

A3: Please select your preferred method of communication regarding this consultation, and provide contact details for that method in the box below:

Email

Post

carolesmith@concertpromotersassociation.com

A4: If you are responding as a business which has SFE events, please describe the type(s) of venue at which your business holds SFE events (such as pubs, bars, nightclubs, restaurants, cafes, or hotels) and how many of each type of venue you operate.

A5: If you are responding as a trade body, please provide details of the sector in which you operate and the type and number of trade body members you represent.

Formed in 1986, the Concert Promoters Association is a membership organisation, which represents and promotes the interest of concert promoters in all contemporary music genres.

Ensuring that concertgoers have the opportunity of seeing their favourite artists at reasonable ticket prices has always been a primary concern of the CPA.

The CPA represents 59 members including venues, concert halls, promoters, festivals, the National Union of Students, Liverpool Philharmonic Hall and The Jockey Club

A full list of members is listed below:

Triple A Entertainment Ltd
AEG Presents
Academy Music Group
Aiken Promotions
Artist Promotion Management
Asgard
Barbican Centre
Bolton Whites Hotel / Macron Stadium
The Bridgewater Hall
Broadwick Live
Castle Concerts Limited
Celtic Connections
Colston Hall, Bristol
CMP (Entertainment & Sport)
Crosstown Concerts
Cuffe and Taylor

Dan Colman
Derek Block Concert Promotions
D.F. Concerts Ltd
DHP Family
Edge Street Live
Festival Republic
Forest Live
The Flying Music Co Ltd
Gandey World Productions
Green Man Festival Limited
Handshake Ltd
HQ Theatres
IMG (UK) Ltd
International Talent Booking
The Jockey Club Live
Kennedy Street Enterprises Ltd
Kilimanjaro Live
Live Nation (Music) UK Limited
Liverpool Philharmonic Hall
Marshall Arts
MCD
Metropolis Music
NUS Services Ltd
One Inch Badge
Phil McIntyre Entertainment
Portsmouth Cultural Trust
Raymond Gubbay Limited
Regular Music
Robomagic Live
Rock The Castle
The Round House
Serious Ltd
Senbla
SJM Concerts
South Bank Centre
TGC Concerts Ltd
The Sage, Gateshead
The Symphony Hall, Birmingham
Triple G Music
U-Live
Usher Hall, Edinburgh
Wolverhampton Civic
Workers Beer Company

<http://www.concertpromotersassociation.co.uk/members>

A6: If you are **neither** a SFE venue **nor** a trade body representing SFE venues, please provide details of your interest in the consultation below.

Part B: Your consultation response

Where applicable, please provide your comments and where relevant any appropriate supporting evidence on the points below:

B1: PPL's current thinking about the **scope** of a revised SFE tariff (see Section 3 of the SFE Consultation Paper);

While the CPA agrees that there should be a clearer understanding of what a defined SFE event should be, we don't believe the explanation in the consultation document offers one.

The scoping section for venue types says it will consider separately, and in due course, how the revised tariff should apply to larger individual events such as festivals.

The CPA represents all types of venues and events, including festivals. Leaving out categories of venues and events represented by the CPA from this review makes it difficult for us to give a comprehensive response at this time.

The CPA believes, additionally, there should be one approach for all venues hosting SFE events rather than treating larger events in a separate methodology at some later date.

The scoping section for where the SFE tariff would apply does not offer clarity. Many CPA venues could offer activities that PPL would assume fall under the SFE tariff definition when in fact the primary event for patrons at that venue was not a SFE event.

B2: PPL's current thinking about the **structure** of a revised SFE tariff (see Section 4 of the SFE Consultation Paper);

The consultation lays out two approaches for licensees to report attendance information under the new proposed SFE tariff.

The first is using actual admissions. The flaw with this is acknowledged in the consultation paper itself, that of identifying the duration that event goers are part of the audience covered by the SFE tariff and the duration of time, in a large mixed-use venue, they are not. Factoring in an "ebb-and-flow" adjustment, while offering a neat solution to PPL's tariff structure, is not a technical solution to measure actual SFE tariff charge usage.

The consultation document says that PPL's consideration is that licensees could pay an advance hypothecated fee based on estimated attendance figures using venue capacity for events the year ahead. CPA members will host a wide range of varied events changing one year to the next. PPL knows very well that capacity is absolutely no indication of actual attendance or audience size. Placing a front-loaded speculative burden on CPA members is mis-guided with consequences that outweigh any sensible reason offered by PPL for suggesting it.

Both new proposed structures run the risk of miscalculating cost upfront whilst taking value out of our membership, value that could and would be reinvested over that year back into the entertainment sector benefiting PPL and PRS members alike.

B3: PPL's current thinking about the **fees** under a revised SFE tariff (see Section 5 of the SFE Consultation Paper); and

Notwithstanding the adjustment made for "ebb and flow" and the split apportioned between PPL and PRS of the "value of music" at a SFE event, the jump from 3.8 pence per person unit value per hour to 22 pence per person unit value per hour represents a six-fold increase, one the CPA regards as a punitive.

If such an inflated charge is applied on a hypothecated basis to CPA members for the year in advance, using speculative usage from assumed capacity rather than attendance, PPL is correct in being mindful that such a fee could have a significant impact for operators of SFE events. It could have a significantly damaging impact on CPA members.

The CPA does not agree, either, with the assumption that the cited 75 pence per person unit value of music to patrons at SFE events, before adjustment, is conservative.

B4: PPL's current thinking about **implementation** of a revised SFE tariff (see Section 6 of the SFE Consultation Paper).

The CPA is less concerned with the implementation of the newly proposed SFE tariff structure but more in getting a fair and defensible tariff to reflect attendance at SFE events hosted by and invested in by CPA members in advance of any implementation.

B5: If you have any additional comments on PPL's consultation paper, you may include these below.

The CPA would happily work with PPL to find a workable SFE tariff solution, fair and fit for purpose, but we believe the current proposal is flawed.

The distribution of the value from any live event, including recorded music, should be agreed between stakeholders and all those impacted by changes. Collections from tariffs to PPL, or PRS, do not alter the available value of any live event. They do not generate additional income to be distributed to performers, recorded music rights owners, artists or writers, but simply redistribute available value away from investors of events, the CPA membership.

PPL, and PRS, wish to streamline licensing and in doing so increase tariffs. But tariffs cannot be reduced to a mathematical exercise using choice modelling. The UK's live entertainment sector runs on extremely tight margins. Raises in tariffs ultimately reduce revenue to CPA members and reduce the live sector's ability to invest in the artists and events that generate the income for the collection societies in the first place. Those artists are also the recipients for collections on distribution thereafter. It is an ecosystem and there must be a balance struck. The CPA does not believe this new tariff proposal finds the right kind.

To submit your response, please email your completed response form to sfereview@ppluk.com.

Alternatively, you can send your response by post to the address below:

SFE Tariff review
PPL
1 Upper James Street,
London, W1F 9DE

The deadline for responses is **5 October 2018**.

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The consultation paper, found here on PPL’s website: www.ppluk.com/sfereview, explains why PPL is reviewing its SFE tariff, and sets out PPL’s current thinking in relation to the following aspects of a potential new SFE tariff:

- Tariff Scope
- Tariff Structure
- Fees
- Implementation

You may use this form to respond to the SFE consultation.

How to respond

PPL welcomes your feedback on its current thinking about how to revise the SFE tariff. Where possible, please include evidence to support your comments.

The deadline for responses is **5 October 2018**.

Please send your response to sfereview@ppluk.com

Electronic responses are preferred but, if necessary, you can send your response by post to:

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PPL
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London W1F 9DE

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If you wish any part of your response to be treated as confidential, then please mark that part accordingly. Otherwise, PPL may refer to all of your response as part of any information it subsequently publishes about the consultation feedback.

Part A: Your details

The details you provide in this section will assist PPL when assessing consultation responses. We may also use them to contact you regarding your consultation response, and/or to provide you with further information about the consultation and its outcome.

A1: Name and address of your business, premises, or organisation.

DHP Family Limited, 2 Lace Market Square, Nottingham NG1 1
Premises – Rock City, Rescue Rooms, Stealth, Bodega, Thekla, Oslo, The Garage, The
Borderline

A2: Your name (if different from above).

Julie Tippins (Head of Compliance)

A3: Please select your preferred method of communication regarding this consultation, and provide contact details for that method in the box below:Email Post **A4: If you are responding as a business which has SFE events, please describe the type(s) of venue at which your business holds SFE events (such as pubs, bars, nightclubs, restaurants, cafes, or hotels) and how many of each type of venue you operate.**

DJ club events are held in our venues.

A5: If you are responding as a trade body, please provide details of the sector in which you operate and the type and number of trade body members you represent.

N/A

A6: If you are **neither a SFE venue **nor** a trade body representing SFE venues, please provide details of your interest in the consultation below.**

N/A

Part B: Your consultation response

Where applicable, please provide your comments and where relevant any appropriate supporting evidence on the points below:

B1: PPL's current thinking about the **scope** of a revised SFE tariff (see Section 3 of the SFE Consultation Paper);

It looks very much like a divide and conquer approach by PPL – there is no reason given why Festivals, Student Unions, holiday parks, boats etc – anywhere that holds events with DJ's and dancing should be included in this consultation. It is a tariff that applies to a type of activity and all types of premises where it takes place should be consulted.

We are very concerned that PPL is trying to charge people for the possibility that they may play records for dancing whether or not any dancing actually takes place. This tariff should be applied where the DJ's have actually played records and people have actually been dancing – other wise we would pay this tariff for the privilege of having the opportunity rather than providing the service.

We think PPL needs to revise its scope and include those operations it is omitting (without a reason for doing so). As members of the CPA (Concerts promoters Association) we believe strongly that festivals should be included within this consultation.

B2: PPL's current thinking about the **structure** of a revised SFE tariff (see Section 4 of the SFE Consultation Paper);

We totally disagree with PPL's proposed changes to the tariff. The current methodology of calculating fees on average actual attendances results in a fair method of paying for a service. Whilst nightclubs may use clickers or other counting methods to monitor the number of customers and staff (combined) at one time in the whole building, bars and pubs do not and it would be a disproportionately costly requirement for them to start doing this. As you must be aware that this is impractical for bars and pubs – why are you even suggesting it?

The move to charges based on capacity rather than actual attendance is not a fair basis on which to charge. We would be forced to pay for a service for far more people than those who actually received the service.

No pub or bar is completely full of customers in every room with a PA from the moment doors open to second the music stops, and yet you are proposing that we pay for exactly that on that basis. You have not presented any argument on why we should pay a fee to play records based on customers who are not actually in the building (never mind the room). You are disconnected from reality. One of PPL's principles is "fairness" – perhaps you can explain how this can be construed as fair.

This example used by UK Hospitality shows precisely how we would be overcharged using this model: *An example would be a pub with a function room with a capacity (under fire regulations for example) of 250, yet the regular disco event held there usually attracts a crowd of 100. Under the current metric, this would be recorded accurately using average attendance. Under the proposed metric the pub would be paying for 150 people who were not even at the SFE event. This would also apply to larger venues with multiple rooms of large capacity, but not filling these to capacity for each event (unfortunately the norm), or people only staying in one part of the venue for example.*

B3: PPL's current thinking about the **fees** under a revised SFE tariff (see Section 5 of the SFE Consultation Paper); and

We completely disagree with the basis and the levels proposed in this consultation. These levels if implemented would result in the closure of nightclubs and bars due to the impact of these proposed cost increases making our DJ events uneconomic. Without these events as part of the programme, our venues will no longer be economically viable.

Consumer Price Index is a fairer and more representative indexation to use rather than RPI – the difference is that RPI includes housing costs and these bear no relevance to this tariff. These are some of reasons why CPI is a better metric to us:

a) *Accuracy. It has been strongly argued that CPI is a more accurate measure – its maths is truer. It actually reflects the inflation that most people experience. The maths that works out the RPI has been described as ‘bonkers’.*

b) *The RPI does not meet international standards. It doesn't match what other countries do.*

c) *The RPI is more volatile. It shoots up and down quite a lot. There are arguments for using the CPI on the grounds that it changes more slowly.*1*

DHP have calculated that just one of our venues would see a 1000% percentage increase in its PPL bill based on this methodology and pricing

We do not believe that the SFE tariff is undervalued, we do however believe that the support that bars and clubs give to the music industry and artistes is indeed undervalued – in how we help to promote their music to wider audiences and support them through the various fees and charges (PRS, PPL, performance fees etc) that they receive from venues.

We have seen no technological developments that have changed the way music is presented in bars and clubs and therefore no review of this tariff is necessary.

The choice modelling presented by PPL bears no resemblance to the reality of actual customer behaviour in nightclubs or bars with DJ's. Following the changes to the Licensing laws in 2006 we have seen a steady decline in the numbers of people going to nightclubs and subsequently the number of nightclubs has reduced dramatically (45% between 2005 and 2015). When nightclubs were the only licensed premises where you could drink after 11pm pre 2006, a significant number of customers were only coming to continue drinking, not for the music, after 2006 once customers could just go to late night bars (mostly without no or just background music) they choose to go there. This clearly shows that the music is not the only reason that people go to nightclubs and late-night bars with DJ's. Where we have nightclubs with attractive smoking areas with no music, these areas will be full of customers – any not just smokers, some customers will stay out in these areas for the whole event socialising and drinking.

This is supported by UK Hospitality research that show the top 5 factors influencing customer choices are:

Venue/Atmosphere	49%
Value for Money	44%
Cost	40%
Location	37%
Quality of Experience/Offer	36%

The choice modelling research asks hypothetical questions to customers and do not include and real-life research to validate that this can be borne out by the way customers act. This is therefore incomplete evidence and should not be used in any proposals that affect tariffs.

The numbers proposed for the tariffs are completely arbitrary and are quite frankly ridiculous, it show how little PPL are connected to the late-night industry – otherwise they would know that these fees are unsustainable and would result in wholesale closure of nightclubs and late bars with DJ's. The current economic climate for the late-night industry is very challenging; the increases in business rates, rent, staff costs (minimum wage, workplace pensions, skilled staff shortages driving up wages) have contributed to the continued shrinking of the late-night sector. A massive increase as proposed if it happened at one of our venues would result in 884% increase on Friday and Saturday club nights at one of our venues. This would increase the annual bill from around £5,700 to £56,000.

*1 <https://www.statslife.org.uk/economics-and-business/33-rpi-versus-cpi-what-s-the-difference-why-does-it-matter-will-it-make-you-poorer-or-richer>

B4: PPL's current thinking about **implementation** of a revised SFE tariff (see Section 6 of the SFE Consultation Paper).

In terms of any implementation of changes to tariffs, this should be done with a long lead in time to give PPL customers enough time to review their business model and make changes to minimise the impact. We need a Code of Practice for PPL – this would give PPL customers a clear understanding of how PPL will act if they find themselves in arrears, massive surcharges are not the answer for businesses that are most probably struggling anyway if they are not paying their PPL bills. No other company would take this approach with customers – and when PPL has a monopoly – it an example of how PPL thinks it can abuse that position to even suggest it. With other suppliers if you are not happy with the terms offered, we can move to a different supplier, with PPL we have do not have that option.

B5: If you have any additional comments on PPL's consultation paper, you may include these below.

PPL need to give the companies its charges information on how the monies collected are distributed and what its admin costs are, how much its collects from each tariff each year. Its lack of transparency and lack of interest in the businesses it collects from are typical from a company that thinks it can behave how it likes and respond to no-one but the record companies it collects for due to its monopoly position.

We need transparency on its collection costs, how much money is distributed and to who in the music business and how much is collected from each tariff annually.

We need to see how PPL decides which records are played and how that money is divided up between the different records companies and labels. There is no information on how PPL monitors the tracks that are played by DJ's under the SFE tariff to show that a fair method of calculation of how the money collected is divided up amongst the record companies and labels is maintained. It feels like you just divide up amongst those companies are the major players in PPL to the detriment of smaller record labels and their artistes.

I have never had anyone form PPL in any nightclub I have worked in monitoring playlists and I've been working in nightclubs since 1981!

PPL does not support emerging talent in this country, it is only interested in what it can extract form our businesses. The UK music industry at grass roots is in a crisis – venues are closing, new artistes are not coming through, copyright collecting companies need to do more to support us so we can be part of the continuation of the success of UK music industry. Perhaps some of the monies spent on their fabulous new offices and six figure salaries should have been redirected to invest in the next generation of bands and acts, and the venues they need to play instead.

To submit your response, please email your completed response form to sfereview@ppluk.com.

Alternatively, you can send your response by post to the address below:

SFE Tariff review



PPL
1 Upper James Street,
London, W1F 9DE

The deadline for responses is **5 October 2018**.

SFE Tariff Review
PPL, 1 Upper James Street
London, W1F 9DE
Via email to sfereview@ppluk.com

2 October 2018

Dear Sir or Madam,

PPL: Consultation on Specially Featured Entertainment Tariff

FSB welcomes this opportunity to respond to the consultation on potential changes to PPL's "Specially Featured Entertainment" (SFE) tariff.

FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed, micro, small and medium sized business. FSB is non-party political, non-profit and is the largest business association in the UK. Small and medium-sized businesses make up 99.9% of all businesses in the UK, and make a huge contribution to the UK economy. They account for 51% of private sector turnover and employ 58% of the private sector workforce.

FSB believes it is unreasonable for PPL to charge discos and nightclubs, pubs and bars, restaurants, cafes and hotels the same SFE tariff for the playing of recorded music at events. There are widely differing criteria and varying operational practices within those business types which will mean marginal engagement with the tariff in some cases, and more significant relevant usage in others. A DJ in a hotel or a restaurant will often simply provide an ambiance which is marginal to the main customer attraction (and the value of music usage therefore relatively insignificant) whereas nightclubs may use DJs every night as a main attraction for customers (resulting in the music value being significantly higher). We see a good reason to separate these differing types of businesses so that they are treated fairly and the applicable tariff is reasonable.

FSB believes that any revised tariff must be fair and reasonable. Within each reasonable tariff, FSB can see the practical logic that the "fee per person" for all SFE events should be broadly the same, regardless of the size of the audience. Licensees operating the smallest SFE events should indeed pay a proportionately smaller fee.

Protecting the performance rights of music right holders is important to the success of the UK's music industry, which includes a large small business community. However, the financial constraints that user small businesses face limit their ability to grow and develop economic resilience. The increase of the PPL fee per person per hour from 3.8 to 22 pence is a drastic increase and one that will be harmful to small businesses. Without detailed research evidence, FSB is unable to comment in detail on the methodology used to reach the 'value of music' figures PPL relies upon, but we question the broad assumptions that appear

to have been made in reaching the conclusions set out in the report which is included in the consultation material. There are other ways of evaluating music usage which could be linked to factors other than floor area (such as overall event attractions, entrance ticket price if any, overheads, profitability and so on) which might better reflect the 'music value' to the business, and how the division of the report's value total should be split between PPL, PRS and the business operator. Furthermore, the report evaluation process appears not to be sufficiently transparent to enable small businesses to easily understand why they are being assessed under the SFE tariff, and how that assessment is reasonably justified.

Whatever the appropriate and reasonable tariff changes, we agree that any significant increase in license charges should be phased in over at least three years to avoid hardship for small businesses, and should be suitably trailed in advance of the changes to enable them to make any necessary adjustments to their finances or business model.

Moreover, where the operator of the SFE event venue does not obtain or pay for the appropriate license on time, FSB understands that PPL may seek to levy a surcharge. Whilst we understand the PPL desire to impose surcharges, we would expect PPL to operate a reasonable system of notice and information, and that any surcharge system should not excessively penalise minor transgressors or first time offenders ignorant of the license requirement. FSB suggests that a more reasonable surcharge cap applicable to those circumstances and to small businesses should be set lower than £1,000.

In the latter regard, it is important to note the commercial pressures upon small businesses. Our research shows that a third of payments to small businesses are late, while the average value of each late payment stands at £6,142. Furthermore, 37 per cent of small firms run into cash flow difficulties, 30 per cent are forced to use an overdraft, and 20 per cent currently cite a slowdown in profit growth. Sadly, every year 50,000 small businesses are forced to shut up shop due to late payments of sums due to them. To achieve fairness, we would expect PPL to ensure that it operates a collection and enforcement system which takes into account the reality and pressures of the small business environment, and offer reasonable payment terms to those who find meeting their license payment obligations a struggle.

If you have any questions, or if we can be of any further assistance, please do not hesitate to contact my colleague Dana Elman Vishkin on 07595067068 or Dana.Elman@fsb.org.uk

Yours sincerely,

Martin McTague
Policy and Advocacy Chairman

Greene King response to PPL's SFE proposals

Introduction

Greene King is a leading pub retailer and brewer which was founded in 1799 and is headquartered in Bury St. Edmunds, Suffolk. We currently employ 39,000 people across our trading divisions: Pub Company, Pub Partners and Brewing & Brands. We operate around 3,000 pubs, restaurants and hotels across England, Wales and Scotland.

In many of our pubs Specially Featured Entertainment (SFE) plays an important role in providing ancillary activities for our guests to enjoy. Should the consultation's recommendations be implemented as they stand, and if no action were taken by Greene King to reduce the current number of SFE events, it will approximately double the cost to Greene King for overall music licencing and increase the cost of SFE events by around 450%. We do not believe this is proportionate, reasonable or fair. Furthermore, there have not been sufficient changes in the SFE market place to warrant the proposed changes, making them both unfair and unjustified.

The cost burden posed by the proposals means that, should they be implemented, we would have no option but to severely restrict or completely stop SFE events. This is likely to lead to reduced customer numbers and decreased spend, resulting in the closure of pubs which are currently marginal in terms of financial viability, and leading to job losses, a drop in taxation revenue and communities losing a vital hub. Ultimately the proposals are likely be self-defeating for PPL as bands and DJ events in pubs become unviable, leading to a significant reduction in the number of venues paying the SFE tariff at all.

1. PPL's current thinking about the scope of a revised SFE tariff (see Section 3);

Greene King is of the view that the scope of businesses included in the tariff should remain the same as it is currently and that broadcast music should not be included in the scope of this tariff.

In terms of the definition of an SFE event, we agree that the combination of a DJ and/or dancing at an event should attract the tariff, as is currently the case.

Where SFE events do take place in our pubs they will be ancillary events and often subject to alteration. For example, there may be a DJ on a Saturday night, where tables that have been used for dining during the day are moved to make a temporary dance floor. On other Saturdays, it may be decided that a pub quiz would be more popular than a DJ and therefore this activity no longer takes place. 'Provision of facilities for such dancing with the reasonable expectation that it will take place' is therefore not a term that recognises the flexible offers in many of our pubs (and other pubs across the UK) and should not be used as it cannot be consistently applied.

2. PPL's current thinking about the structure of a revised SFE tariff (see Section 4);

We completely disagree with the structural proposals set out in the consultation document, with particular reference to the reporting of attendance.

SFE events are typically free for our customers and the actual number of attendees will not be counted in and out. Average attendance, although different methods of calculation are used, is understood and we are of the view this reflects the attendance at SFE events in a reasonable way.

Conversely, the proposed move to assessing events by capacity will simply mean we end up paying for customers who haven't attended, significantly increasing the tariff paid. Using an 'occupancy load figure' is similarly unfair, unworkable in practice and shouldn't be used.

Doing so will lead to adding unnecessary and financially crippling additional cost. As noted above, we estimate the cost increase to be in the region of 450%, a level which cannot be absorbed by the small businesses which comprise our pub estate, particularly at a time where the industry as a whole is already facing unprecedented financial burdens elsewhere.

Similarly, the proposed capacity metric is fundamentally unfair, and would lead to significant increases for pubs even under the current fee level.

We also believe the Consumer Price Index (CPI) should be used for annual indexation, rather than the Retail Price Index (RPI). This would bring the indexation in line with other government agencies, where CPI is the more commonly-used metric, and provide much-needed consistency across sectors. Indeed, RPI is widely-viewed as an outdated and inaccurate measurement, leading it to be dropped by the ONS in preference for CPI in 2017.

3. PPL's current thinking about the fees under a revised SFE tariff (see Section 5);

Greene King does not recognise the basis on which PPL has made the assumption that the current SFE tariff is undervalued. This tariff has been in place since 1990, and has been increased in line with RPI each year. We are not aware of new factors (such as technological developments for example) that justify the requirement for wholesale changes. If anything, we are of the view that market changes would merit a reduction in tariff rates.

The proposed increase in the 'per person' value of the tariff from 3.8 pence per person per hour, to 22 pence per person per hour, which is an increase of over 450%, is totally unacceptable and potentially hugely damaging to pubs across the country.

Ultimately, the use of choice modelling appears to be flawed. Our customer insight shows that the reasons for choosing to visit our pubs are much more complicated than the simplistic assertions in the choice modelling work. Location, meeting friends, watching sport, participating in pub quiz, food quality, drinks range and atmosphere, are the main drivers for choosing a pub. Whilst SFE events may help attract customers to a pub, in most cases they will not be the primary reason a customer visits that pub.

4. PPL's current thinking about implementation of a revised SFE tariff (see Section 6).

Regarding a potential surcharge, our reading of this is that it would work in a way similar to other PPL tariffs such as background music, but with a cap of £1,000 per site. We believe that the proposed surcharges are disproportionate and therefore do not agree with their implementation. Furthermore, there is currently not enough clarity around how they would be implemented. We strongly recommend that PPL provides additional information about the use of surcharges before the proposals are taken any further.

Given we believe this proposal to be unfair, unreasonable and disproportionate we do not have anything further to add regarding implementation at this stage other than to say it shouldn't happen.

Specially Featured Entertainment (“SFE”) Tariff Consultation

RESPONSE FORM

PPL is consulting on potential changes to its “Specially Featured Entertainment” (or “SFE”) tariff, which covers the playing of recorded music at events such as discos and DJ nights. The consultation relates to a potential new SFE tariff for nightclubs, pubs and bars, restaurants and cafés, and hotels.

The consultation paper, found here on PPL’s website: www.ppluk.com/sfereview, explains why PPL is reviewing its SFE tariff, and sets out PPL’s current thinking in relation to the following aspects of a potential new SFE tariff:

- Tariff Scope
- Tariff Structure
- Fees
- Implementation

You may use this form to respond to the SFE consultation.

How to respond

PPL welcomes your feedback on its current thinking about how to revise the SFE tariff. Where possible, please include evidence to support your comments.

The deadline for responses is **5 October 2018**.

Please send your response to sfereview@ppluk.com

Electronic responses are preferred but, if necessary, you can send your response by post to:

SFE Tariff Review
PPL
1 Upper James Street
London W1F 9DE

Confidentiality

If you wish any part of your response to be treated as confidential, then please mark that part accordingly. Otherwise, PPL may refer to all of your response as part of any information it subsequently publishes about the consultation feedback.

Part A: Your details

The details you provide in this section will assist PPL when assessing consultation responses. We may also use them to contact you regarding your consultation response, and/or to provide you with further information about the consultation and its outcome.

A1: Name and address of your business, premises, or organisation.

Marston's PLC, Marston's House, Brewery Road, Wolverhampton, WV1 4JT

A2: Your name (if different from above).

John Walker

A3: Please select your preferred method of communication regarding this consultation, and provide contact details for that method in the box below:

Email

Post

John.walker@marstons.co.uk

A4: If you are responding as a business which has SFE events, please describe the type(s) of venue at which your business holds SFE events (such as pubs, bars, nightclubs, restaurants, cafes, or hotels) and how many of each type of venue you operate.

Marston's is a leading pub operator and independent brewer. It has an estate of 1,568 pubs situated nationally, comprising managed, franchised and leased pubs. Marston's are responsible for the SFE licenses in c600 Managed and Franchised sites. These sites are predominantly wet led community pubs. We are members of the BBPA and UK Hospitality and support the SFE consultation responses made by them.

A5: If you are responding as a trade body, please provide details of the sector in which you operate and the type and number of trade body members you represent.

A6: If you are **neither** a SFE venue **nor** a trade body representing SFE venues, please provide details of your interest in the consultation below.

Part B: Your consultation response

Where applicable, please provide your comments and where relevant any appropriate supporting evidence on the points below:

B1: PPL's current thinking about the **scope** of a revised SFE tariff (see Section 3 of the SFE Consultation Paper);

Marston's is of the view that there is not sufficient justification or evidence put forward to move away from the existing scope of the SFE tariff in terms of types of venues covered at this point.

The inclusion of "provision of facilities for dancing with the reasonable expectation is will take place" is ambiguous and does not support the aim of providing a clear understanding of what constitutes an SFE event. As such it should not be included in the scope of the SFE tariff.

B2: PPL's current thinking about the **structure** of a revised SFE tariff (see Section 4 of the SFE Consultation Paper);

We support the view that the SFE tariff should be set by attendance and duration as is currently the case.

Attendance bands - The bands currently in use do not cause any issues and should be maintained.

Reporting of attendance – The proposed change of moving from an estimated attendance to capacity would cause a significant increase in the cost of an SFE event, even after taking into account "ebb & flow" of customers during an event. The average attendance reported for SFE events in our sites is 70.6 people per event but average capacity it 170.4. Our average attendance is 41.4% of capacity and therefore changing the structure of the tariff in this way would represent a 141% increase in the cost of an SFE event licence even which we consider unfair and unsustainable for most pubs.

As such Marston's disagrees with the proposed change to reporting of attendance from estimated averages to capacity.

B3: PPL's current thinking about the **fees** under a revised SFE tariff (see Section 5 of the SFE Consultation Paper); and

The proposal to increase the cost of an SFE event from 3.8 pence per person, per hour to 22 pence represent a 479% increase. Marston's oppose this as being unfair and unjustified.

The assertion from PPL that pub operators can extract more value from customers during SFE events is incorrect. We never increase our prices during SFE events and entry fees are not charged for entry. On rare occasions such as New Year's Eve an entry fee may be charged but is the main reason to charge on these occasions is to cover the cost of food & drink for the customer. There is no ability to extract additional value from our customers. The Choice Modelling exercise undertaken by PPL is purely theoretical and we do not believe that legitimate justification has been provided for an increase in the SFE Tariff.

We do not see on what basis PPL has made the assumption that the current SFE tariff is undervalued. The tariff was the product of detailed negotiation with what was the British Entertainment and Discotheque Association (BEDA) over several decades. The tariff has also been in place in its current form for twenty-seven years and has been increased by RPI every year.

The proposed increases in the value of the tariff are unacceptable and we strongly contest the use of the FTI Choice Modelling Study to support the values contained in the proposed tariff.

Surcharges - A 50% surcharge is an extremely high penalty for late payment, even with the maximum cap proposed, which could be dealt with by other means, such as interest charges for example.

B4: PPL's current thinking about **implementation** of a revised SFE tariff (see Section 6 of the SFE Consultation Paper).

We do not believe sufficient evidence has been presented to justify any further tariff increases at this point. However phasing of any increase in cost over a number of years would be welcomed.

B5: If you have any additional comments on PPL's consultation paper, you may include these below.

The impact of the changes proposed by PPL would increase the costs of a licence for an SFE event in Marston's by 1,040%. We do not accept that there has been any material change in the market to justify such an increase. We are fundamentally opposed to the proposed changes in structure to the tariff and the fees.

To submit your response, please email your completed response form to sfereview@ppluk.com.

Alternatively, you can send your response by post to the address below:

SFE Tariff review
PPL
1 Upper James Street,
London, W1F 9DE

The deadline for responses is **5 October 2018**.

Phil Urban
Mitchells & Butlers plc
27, Fleet Street
Birmingham
B3 1JP

SFE Tariff Review
PPL
1 Upper James Street
London
W1F 9DE

13th September 2018

Dear Sirs

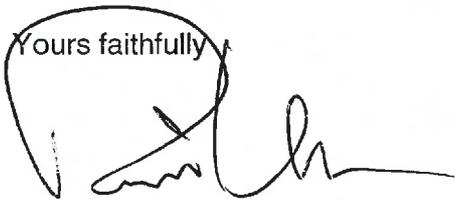
Re: Mitchells & Butlers plc; Specially Featured Entertainment (“SFE”) Tariff Consultation Response.

We are writing to express our fundamental opposition to the proposed changes in SFE tariffs. A detailed response to the matters raised in the consultation paper is included below, but in summary, we believe these changes to be neither pragmatic nor fair.

We have no practicable means of measuring actual attendance in the vast majority of the 1,700 licenced premises we operate across the UK. We see no reason to change the average attendance model which has been accepted for many years.

With no way of measuring actual attendance, the proposal means we will incur tariffs based on capacity. This will result in an estimated 450% increase in costs to our business. We do not accept that there has been any material change in the market to justify such an extortionate increase.

Yours faithfully



Phil Urban
Chief Executive, Mitchells & Butlers Plc



Mitchells & Butlers Comments to the Individual Consultation Questions

1. PPL's current thinking about the scope of a revised SFE tariff

- We are of the view the scope businesses included in the tariff should remain the same as it is currently.
- We agree that broadcast music should not be included in the scope of this tariff.
- In terms of the definition of an SFE event, we agree the combination of a DJ and/or dancing at an event should attract the tariff, as is currently the case.

2. PPL's current thinking about the structure of a revised SFE tariff

- We fundamentally disagree with the structural proposals set out in the consultation document, with particular reference to the reporting of attendance metric.
- The current reporting of attendance has been used by licensees, and accepted by PPL, for many years. Average attendance, although different methods of calculation are used, is understood and we are of the view this reflects the attendance at SFE events in a reasonable way.
- The majority of all our businesses do not have the ability to measure actual attendance by way of using a 'clicker' or similar. Therefore, the average attendance model currently used works well for these venues, and in our view does give an accurate record of how many customers attended a certain SFE event.
- The proposed move to capacity for such venues is extremely problematic and goes against the principle of fairness set out in PPL's 'key principles'.
- The SFE tariff, as PPL rightly states, should be paid based on those customers actually hearing the music played at a relevant event. By moving to a metric of capacity, this would lead to a situation whereby many premises would be paying copyright fees for, effectively, people who are not even at the event.
- We believe the capacity metric is fundamentally unfair and will lead to significant increases for many types of venue even under the current fee level, which would in turn result in potential closure of certain sites across our estate.

3. PPL's current thinking about the fees under a revised SFE tariff

- We do not see on what basis PPL has made the assumption that the current SFE tariff is undervalued. This tariff was developed over a number of decades, and last negotiated with



BEDA and subject to agreement by parties involved. This tariff has been in place since 1990 and has (as agreed) been increased by RPI each year.

- The proposed increase in the 'per person' value of the tariff from 3.8 per person per hour, to 22 pence per person per hour is wholly unacceptable.
- We strongly contest the continued use of choice modelling in this most recent consultation to support the increases contained in this proposed tariff.
- The reasons why consumers decide to visit venues are much more complicated than the simplistic assertions in the choice modelling work, and include location, ambience, clientele, presence/absence of music, food and drink range etc. SFE events are only one of a number of factors that attract customers to a certain venue and affect their willingness to pay.
- The choice modelling summary included with the consultation makes broad assumptions about what customers are willing to pay for recorded music events, but crucially fails to address what the business such as Mitchells & Butlers would be prepared to pay.
- Choice modelling provides no support whatsoever for any increase over the current long-established levels of fees for SFE, still less for the massive increases proposed by PPL.
- PPL is using the wrong indicator in attempting to revalue the SFE tariff. The primary 'customer' in reality is the venue operator who has to make the commercial decision as to the SFE music offer and what the market can bear and is commercially viable.
- Monopolistic increases in the tariff fee as proposed will fundamentally change the structure of the market for SFE, reducing demand and closing and irrevocably damaging businesses. This cannot in any way be deemed to be fair, reasonable or proportionate and we must reject the proposed licence fees and dispute there is any need for a revision of the tariff.

4. PPL's current thinking about implementation of a revised SFE tariff

- Regarding a potential surcharge, our understanding is that this would work in a way similar to other PPL tariffs, such as background music however with a cap of £1,000 per site.
- We do not agree with such surcharges, for example PRS for Music does not make any charges for late payment as in most instances it agrees a payment plan with licensees.
- In relation to the proposed implementation, given our fundamental opposition to the proposed new tariff and structure we believe further discussion is necessary regarding implementation and timescales for this.



Specially Featured Entertainment (“SFE”) Tariff Consultation

RESPONSE FORM

PPL is consulting on potential changes to its “Specially Featured Entertainment” (or “SFE”) tariff, which covers the playing of recorded music at events such as discos and DJ nights. The consultation relates to a potential new SFE tariff for nightclubs, pubs and bars, restaurants and cafés, and hotels.

The consultation paper, found here on PPL’s website: www.ppluk.com/sfereview, explains why PPL is reviewing its SFE tariff, and sets out PPL’s current thinking in relation to the following aspects of a potential new SFE tariff:

- Tariff Scope
- Tariff Structure
- Fees
- Implementation

You may use this form to respond to the SFE consultation.

How to respond

PPL welcomes your feedback on its current thinking about how to revise the SFE tariff. Where possible, please include evidence to support your comments.

The deadline for responses is **5 October 2018**.

Please send your response to sfereview@ppluk.com

Electronic responses are preferred but, if necessary, you can send your response by post to:

SFE Tariff Review
PPL
1 Upper James Street
London W1F 9DE

Confidentiality

If you wish any part of your response to be treated as confidential, then please mark that part accordingly. Otherwise, PPL may refer to all of your response as part of any information it subsequently publishes about the consultation feedback.

Part A: Your details

The details you provide in this section will assist PPL when assessing consultation responses. We may also use them to contact you regarding your consultation response, and/or to provide you with further information about the consultation and its outcome.

A1: Name and address of your business, premises, or organisation.

Vanilla
1 – 2 Duke Street
Truro
Cornwall
TR1 2QE

A2: Your name (if different from above).

Graeme Scrimgeour

A3: Please select your preferred method of communication regarding this consultation, and provide contact details for that method in the box below:

Email

Post

Email

A4: If you are responding as a business which has SFE events, please describe the type(s) of venue at which your business holds SFE events (such as pubs, bars, nightclubs, restaurants, cafes, or hotels) and how many of each type of venue you operate.

We operate 1 x venue that operates as a café / bar during the day and on weekend evenings we have a DJ with dancing on our first floor.

A5: If you are responding as a trade body, please provide details of the sector in which you operate and the type and number of trade body members you represent.

N/A

A6: If you are **neither a SFE venue **nor** a trade body representing SFE venues, please provide details of your interest in the consultation below.**



Part B: Your consultation response

Where applicable, please provide your comments and where relevant any appropriate supporting evidence on the points below:

B1: PPL's current thinking about the **scope** of a revised SFE tariff (see Section 3 of the SFE Consultation Paper);

The current SFE system tends to differentiate accurately between our different ways of delivering music (i.e. incidental / background music during the day and a DJ on a Friday and Saturday evening).

B2: PPL's current thinking about the **structure** of a revised SFE tariff (see Section 4 of the SFE Consultation Paper);

The current system works well.

Introducing an alternative way of providing more complex recording of admissions will undoubtedly add administrative burden to all venues regardless of their size. Smaller independent venues such as ours cannot afford any further administrative burden given the excessive labour demands already imposed by statutory authorities to provide security etc.

Smaller independent venues struggle with high rents, non-domestic rates, high staff costs, property maintenance, insurance, pension contributions, banking, accounting, utilities and, in an ideal world we would make a profit or even be able to pay ourselves as owners. This isn't possible in the current climate on the high street – something that does not appear likely to change.

B3: PPL's current thinking about the **fees** under a revised SFE tariff (see Section 5 of the SFE Consultation Paper); and

It is easy to make 3.8p per hour look like a small amount. However, round that up and PPL/PRS do very well out of a small venue such as ours – PPL collect £1,872 and PRS collect £2,105 annually, which is a total of just under £4,000 per year from one small venue in Cornwall.

Based on say 150 persons over 3 hours x 105 sessions per year, you are suggesting an increase from the current rate of 0.38p per person per hour of **£1,778** per annum to 0.22p per person per hour to **£10,395** per year **an increase of 485%** just for PPL.

I can categorically state that you will destroy music venues, both independent and national chains who are facing unprecedented challenges. These venues are the places where musicians start their careers and begin a love for music. You will drive these venues out of business, leaving customers to sit at home streaming cheap music and drinking cheap alcohol from supermarkets.

People should be encouraged to visit music venues and not be punished financially for it.

The reason that the music industry is suffering is not because of a sudden drop in licencing from venues as it increases in line with inflation.

If you need to collect more funds for artists, you must focus on music streaming. I am friends with successful artists from the 90's who were in very popular bands and have streams in the 100's of thousands annually, but only collect in the region of £8 per year in royalties.

People come to venues for many things, music is not the only reason. The cost of providing the music is higher than you think. We pay DJ's, service equipment, pay door supervisors, provide staff, stock bars, clean the property pay huge rent, rates and insurance and make a loss every year.

We firmly believe that you will be making a **huge mistake** by increasing the current fees more than the rate of inflation – which is **fair** (as you mention being fair in the consultation).

Our current losses are shown below, however if you would like further supporting evidence, please do not hesitate to contact me at any time.

Losses in the first 7 months of 2018 for 1 x Venue

	Total
<u>NET OPERATING INCOME</u>	<u>-17,218.59</u>
OTHER EXPENSES	
Advertising	179.61
Gifts and Samples	221.33
Miscellaneous Expenses	209.53
Total Other Expenses	610.47
<u>NET OTHER INCOME</u>	<u>-610.47</u>
<u>NET INCOME</u>	<u>£ -17,829.06</u>

B4: PPL's current thinking about **implementation** of a revised SFE tariff (see Section 6 of the SFE Consultation Paper).

We firmly believe that the implementation of the proposed changes will have a detrimental effect on music venues and the music industry in general. Any implementation no matter how gradual will have serious consequences to the venues and music industry.



A large, empty rectangular box with a thin black border, intended for a consultation response.

B5: If you have any additional comments on PPL's consultation paper, you may include these below.

Whilst we take the risk of the proposed changes extremely seriously, putting in danger the employment of many people and the investment in venues, the proposals are almost laughable as a proposal.

I am almost speechless.

Graeme Scrimgeour
Director
Penswood Inns Ltd

To submit your response, please email your completed response form to sfereview@ppluk.com.

Alternatively, you can send your response by post to the address below:

SFE Tariff review
PPL
1 Upper James Street,
London, W1F 9DE

The deadline for responses is **5 October 2018**.



Ian Payne MBE
Stonegate Pub Company Ltd
500 Capability Green
Luton
Bedfordshire
LU1 3LS
12/09/18

**Ref: Stonegate Pub Company LTD: Specially Featured Entertainment (“SFE”) Tariff
Consultation**

The Stonegate Pub Company is the fourth largest managed pub company in the UK, operating around 750 pubs across the UK. The Stonegate estate consists of a variety of traditional pubs in high street and suburban locations as well as leading branded bars, including Walkabout, Slug & Lettuce and Be At One.

The current consultation surrounding ‘SFE’ has far reaching consequences across our estate and appears to have little justification for the proposed level of increase. Providing entertainment for customers comes with a hefty price tag, the associated costs of additional staff, door supervisors, the entertainment itself along with compliance to ensure a safe environment.

A high proportion of our businesses deliver weekly entertainment events for customers of all age groups, employing DJ’s and providing late night events. We are extremely proud to have an excellent reputation within our industry, having won many national awards associated with entertainment and providing a safe environment for our customers. We will continue to invest in our late night offer should entertainment not become cost prohibitive.

The Stonegate Pub Company does not accept that there has been any material change in the market that justifies your proposed increases. On the contrary, the SFE market is coping with a number of challenges, including increased business rates, an unfair taxation system between traditional and digital businesses, as well as the challenges around employment as we head towards Brexit and the unknown.

We are extremely concerned that the proposed increases to the SFE Tariff, if implemented, would damage hundreds of our businesses resulting in a significant loss of facilities to consumers, potential loss of jobs and decreased contribution to the local economy and community. The wide scale increase for many local community sites we operate will render some sites loss leading and may further lead to pub closures.

Pubs and music have always been inextricably linked. Many famous bands and DJ’s started their careers in pubs, to cease to provide these environments for the entertainers of the future is also potentially damaging for the music sector longer term.

Utilising the new proposed fees, we have estimated this to be an overall increase of **570%** to the Stonegate business, and a wholly unjustified **£6M** increase in the yearly fees we currently pay.

Stonegate Pub Company
Porter Tun House, 500 Capability Green, Luton, Bedfordshire LU1 3LS
T: 0845 126 2944 W: www.stonegatepubs.co.uk

Registered Office As Above. Registration Number: FC029833. Place of Registration England & Wales



The proposals in the recent consultation document are similar to those put forward in 2011, and our key arguments against the evidence base, need for change and significant increases in cost remain the same as per the Stonegate Pub Company response in 2011.

Comments on the consultation questions

1. PPL's current thinking about the scope of a revised SFE tariff

- We are of the view the scope businesses included in the tariff should remain the same as it is currently.
- We agree that broadcast music should not be included in the scope of this tariff.
- In terms of the definition of an SFE event, we agree the combination of a DJ and/or dancing at an event should attract the tariff, as is currently the case.

2. PPL's current thinking about the structure of a revised SFE tariff

- We fundamentally disagree with the structural proposals set out in the consultation document, with particular reference to the reporting of attendance metric.
- The current reporting of attendance has been used by licensees, and accepted by PPL, for many years. Average attendance, although different methods of calculation are used, is understood and we are of the view this reflects the attendance at SFE events in a reasonable way.
- The majority of all our businesses do not have the ability to measure actual attendance by way of using a 'clicker' or similar. Therefore, the average attendance model currently used works well for these venues, and in our view does give an accurate record of how many customers attended a certain SFE event.
- The proposed move to capacity for such venues is extremely problematic, and goes against the principle of fairness set out in PPL's 'key principles'.
- The SFE tariff, as PPL rightly states, should be paid based on those customers actually hearing the music played at a relevant event. By moving to a metric of capacity, this would lead to a situation whereby many premises would be paying copyright fees for people who are not at the event.
- For example, many of our Stonegate venues, such as those within our late night Popworld brand, have capacities of 1500+; however in reality these capacities on an average attendance basis are circa 400, which is 26% of total capacity.
- We believe the capacity metric is fundamentally unfair, and will lead to significant increases for many types of venue even under the current fee level, which would in turn result in potential closure of certain sites across our estate.

3. PPL's current thinking about the fees under a revised SFE tariff

- As in 2011, we do not see on what basis PPL has made the assumption that the current SFE tariff is undervalued. This tariff was developed over a number of decades, and last negotiated with BEDA and subject to agreement by parties involved. This tariff has been in place since 1990, and has (as agreed) been increased by RPI each year.
- The proposed increase in the 'per person' value of the tariff from 3.8 pence per person per hour, to 22 pence per person per hour (an increase of over 450%) is wholly unacceptable.

Stonegate Pub Company

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- We strongly contest the continued use of choice modelling, in this most recent consultation by GFK, to support the increases contained in this proposed tariff.
- The reasons why consumers decide to visit venues are much more complicated than the simplistic assertions in the choice modelling work, and include location, ambience, clientele, presence/absence of music, food and drink range etc. SFE events are only one of a number of factors that attract customers to a certain venue, and affect their willingness to pay.
- The choice modelling summary included with the consultation makes broad assumptions about what customers are willing to pay for recorded music events, but crucially fails to address what businesses such as Stonegate would be prepared to pay.
- Choice modelling provides no support whatsoever for any increase over the current long established levels of fees for SFE, still less for the massive increases proposed by PPL.
- As to the scale of this increase, we estimate for Stonegate an increase of **570%** or **£6M** a year based on the 22p figure being implemented.
- PPL is using the wrong indicator in attempting to revalue the SFE tariff. The primary 'customer' in reality is the venue operator who has to make the commercial decision as to the SFE music offer and what the market can bear, and is commercially viable.
- Monopolistic increases in the tariff fee as proposed will fundamentally change the structure of the market for SFE, reducing demand and closing and irrevocably damaging businesses. This cannot in any way be deemed to be fair, reasonable or proportionate and we must reject the proposed licence fees and dispute there is any need for a revision of the tariff.

4. PPL's current thinking about implementation of a revised SFE tariff

- Regarding a potential surcharge, our understanding is that this would work in a way similar to other PPL tariffs, such as background music however with a cap of £1,000 per site.
- We do not agree with such surcharges, for example PRS for Music does not make any charges for late payment as in most instances it agrees a payment plan with licensees.
- In relation to the proposed implementation, given our fundamental opposition to the proposed new tariff and structure we believe further discussion is necessary regarding implementation and timescales for this.

In summary the Stonegate Pub Company remain of the view that there is no basis for any increase in the tariff values, may limit the ability for pubs and bars to provide recorded music and lead to closure of venues. The proposed increases contained in the consultation document are unacceptable and potentially damaging to the UK hospitality industry.

Please feel free to contact us directly in regards to the above matter.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Ian Payne MBE".

Ian Payne MBE
Chairman - Stonegate Pub Company LTD

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UKH response to PPL SFE proposals

Introduction

UKHospitality is the voice of a sector that generates £130bn revenue each year. Representing more than 700 member companies, operating 65,000 venues in a sector that employs 2.9 million people, UKHospitality spearheads hospitality's representation on the strategic, structural and regulatory issues it faces, campaigning for policies to help the sector achieve further growth as a key driver of the UK economy. These businesses represent 10% of UK employment and generate £38bn of tax for the Exchequer. Hospitality has faced myriad cost pressures in recent years which have severely impacted the sector.

UKHospitality is a new trade association, formed in 2018 by a merger of the Association of Licensed Multiple Retailers (ALMR) and the British Hospitality Association. The organisation represents pub, bar, hotel, restaurant and late night operators, in addition to events and contract catering businesses. We have a number of companies and individual operators in membership who would be severely impacted if the proposals by PPL went ahead.

Executive summary

- UKH does not accept there has been changes in the SFE marketplace that warrant changes to both the fee level and structure of the tariff. We urge PPL to think again. We do not consider there has been any material change in the market that justifies such increases.
- Over the last 20 years, the market has shifted from SFE heavy nightclubs to bars and restaurants where SFE may be an occasional part of their offer but often is not the case. It is clear that SFE is less valuable to operators than it has ever been.
- Furthermore, the SFE market as with many hospitality businesses, is coping with a number of challenges, including business rates, an unfair playing field compared to digital taxation and potential future employment challenges to name but a few.
- The proposed changes to tariff rates and structure are business critical (both separately and in combination). PPL's proposals, if implemented, would close thousands of businesses in the hospitality sector, with subsequent impact on

economic growth, employment, tourism and the quality and diversity of our town centres.

- The counterintuitive results of the GFK study, as set out in the full analysis at annex 1, shed considerable doubt as to whether the GFK approach has been able to illicit meaningful information on the ‘willingness to pay’ of end customers for music as SFE. Furthermore, GFK have arbitrarily focused on particular results which they seem to favour without proper justification or supportive evidence.
- In summary, PPL’s approach simply assumes that GFK’s estimates of end customer ‘willingness to pay’ define a pool of pure profit that is available to distribute between licensor and licensee. There is no basis for this assumption. It gives no regard to either the ability of licensees in practice to tap into this end customer value or the costs incurred by licensees in generating this value.
- Venue closures, a repositioning as non-SFE heavy bars or restaurants would, in all likelihood lead to a reduction in tariff revenues for PPL.
- The agreements reached with BEDA in 1987 and 1990 still stand, and we do not believe the current evidence put forward by PPL changes this. PPL has been accepting fees paid under this tariff, including methods of calculation, for many years and we fail to see why the situation now necessitates such a radical change.
- Music is but one of a number of factors considered by consumers when choosing a venue. A CGA consumer survey of consumers who use the late night economy found that the top five factors under consideration are:

Venue/Atmosphere	49%
Value for Money	44%
Cost	40%
Location	37%
Quality of Experience/Offer	36%

Music was rated as very important by just 28% (ranking it 9th of the 9 options available to respondents). We would conclude that this further undermines PPL’s excessive valuation based on the flawed choice modelling approach.

- The increases in fees alone will, if implemented, lead to many operators closing and SFE events disappearing from hospitality venues. The impact these proposals would have on the late night sector would be devastating.
- With the fee level increases being damaging enough, the proposals couple this with a significant structural change to the tariff. Even without building in the structural change costs, we conservatively estimate this will cost the nightclub and pub sector

an extra £72m per year, however this figure is likely to increase due to the structural changes.

- We believe the proposed capacity metric is fundamentally unfair, and would lead to significant increases for many types of venue even under the current fee level.
- The proposed increase in the 'per person' value of the tariff from 3.8 per person per hour, to 22 pence per person per hour (an increase of over 470%) is wholly unacceptable.
- It is frankly ludicrous to suggest that two-thirds of 'value' perceived by a customer for their night out should be allocated to music copyright just because the copyright owners say it should.
- Monopolistic increases in the tariff fee as proposed will fundamentally change the structure of the market for SFE, reducing demand and closing and irrevocably damaging businesses. This cannot in any way be deemed to be fair, reasonable or proportionate and we must reject the proposed licence fees and dispute there is any need for a revision of the tariff.

Background

The SFE tariff has been negotiated a number of times over the last sixty years, for the vast majority of this time the main trade body involved was BEDA, which merged with the ALMR and its membership is now part of UKHospitality. Implemented tariffs were always subject to mutual agreement, when introduced. The agreements reached in 1987 and 1990 were intended by PPL as 'radical reappraisals' of the tariff, and it was clearly agreed between PPL and BEDA that any future amendments to the tariff would be limited to RPI indexation increases annually, unless either party raised new factors, changes in the marketplace or other evidence that the tariff is not fit for purpose.

We are of the view that this agreement still stands, and we do not agree with the evidence put forward by PPL for the radical changes to both the fee level and structure of the tariff currently being sought. In fact, we could counter these proposals with a case for a reduction in the tariff given changes in the marketplace that have reduced the value of SFE. Up until the introduction of the Licensing Act 2003 in November 2005, venues wishing to trade beyond 11.00pm had been required to obtain a Public Entertainments Licence under which the serving of alcohol needed to be ancillary to music and dancing. In other words, the licensing regime of the time made SFE mandatory. Since 2005, this is no longer the case and the market has moved away from SFE as a result. The table below shows the shift from SFE heavy nightclubs to bars and restaurants where SFE may be an occasional part of their offer but often is not the case.



CGA Outlet Index

GB On Trade Universe & Structure: June 2018 vs. 2008



N.B. Chart shows selected breakdown only

Large Venue: Bingo, Casino, Entertainment, Conference & Country Clubs

Source: CGA Outlet Index June 2018

On the back of new rights granted for background music in 2003, PPL sought and indeed implemented very large increases regarding this tariff including structural changes, using similar arguments that the value of background music (and music in business more generally) was undervalued – despite a negotiated increase two years prior to this. This new tariff was rejected after a lengthy legal process by the Copyright Tribunal, who refused to allow changes to the structure of the tariff and awarded a fee increase significantly lower than that sought by PPL. There are clear parallels with PPL’s argument regarding the SFE tariff, previously rejected by the Copyright Tribunal in 2009.

In 2011, PPL held discussions with relevant trade bodies, and published proposals regarding reform of the SFE tariff which were very similar to those put forward in the 2018 consultation. These proposals would have seen significant increases in fee levels based on the same methodology (choice modelling) used in the current consultation, as well as structural changes. Following robust arguments put forward by trade bodies, companies and individual licensees PPL withdrew these proposals, and agreed a three month notification period ahead of any future changes to the tariff.

In 2017, PPL re-opened discussions with trade bodies ALMR, BBPA and BHA on a confidential without prejudice basis. Despite constructive discussions between both sides, unfortunately the scale of the fee increases and structural changes proposed could not be supported by industry, and no agreement was reached. PPL committed to a public consultation on any future changes to the SFE tariff – this was published in July 2018.

The proposals are similar to those put forward in 2011, and our key arguments against the evidence base, need for change and significant increases in cost remain the same – however we have updated our critique of the choice modelling model, costs for different parts of the sector based on the new proposed fee levels, and legal advice.

Key principles

Before addressing the consultation questions themselves, we have some comments on PPL's 'key principles' set out in section 2 of the consultation, which underscore their rationale for the fee and tariff changes. We would point out that whilst elements of these, such as clarity and simplicity of tariffs is not necessarily problematic, when taken together with 'appropriate valuation' these simple principles are wholly inadequate to underpin the major changes proposed.

Comments on the consultation questions

1. PPL's current thinking about the scope of a revised SFE tariff

We are of the view that the scope businesses included in the tariff should remain the same as it is currently, i.e. we agree with the scope set out in the consultation document. However, there are other types of business that are likely to be affected such as student unions/campus venues, holiday parks and centres, bingo halls, casinos, boats – as many of these are likely to hold disco events to some extent.

We agree that broadcast music should not be included in the scope of this tariff.

In terms of the definition of an SFE event, we agree the combination of a DJ and/or dancing at an event should attract the tariff, as is currently the case. However, we would question whether the inclusion of 'facilities for dancing' is strictly relevant given that the legal principle should be that the SFE tariff is applied where sound recordings are actually played as a main or specially featured attraction (rather than background music for example).

If dancing is taking place, we do not see the need for wording as suggested i.e. 'provision of facilities for such dancing with the reasonable expectation that it will take place' which we see as vague and potentially open to interpretation. This ambiguity could become even more problematic when combined with the increasing fluidity of the licensed trade. Venues are able to shift their offer from day to day and morning to night. In addition, sites will be bought and sold, relaunched as a new outlet style responding to and anticipating shifts in consumer demand.

On a broader point regarding scope of PPL tariffs, we note that businesses operating accommodation through home sharing platforms – where music, television etc. are available to guests are not included in any PPL or indeed PRS for Music tariffs. We would be happy to meet with you on this separate issue, to explore how we can develop a fair and level playing field for all businesses using music.

2. PPL's current thinking about the structure of a revised SFE tariff

We fundamentally disagree with the structural proposals set out in the consultation document, with particular reference to the reporting of attendance metric.

The current reporting of attendance has been used by licensees, and accepted by PPL, for many years. Average attendance, although different methods of calculation are used, is

understood and we are of the view this reflects the attendance at SFE events in a reasonable way.

Many venues do calculate capacity using a 'clicker' or similar to measure the actual amount of attendees entering an event. These will likely use this metric currently, for this SFE tariff and other relevant tariffs.

However, a large proportion of hospitality businesses such as pubs, bars and hybrid venues (food-led in the day with more of a drinks focus in the evening) do not have the ability to measure actual attendance in this way. Therefore, the average attendance model currently used works well for these venues, and in our view does give an accurate record of how many customers attended a certain SFE event.

The proposed move to capacity for such venues is extremely problematic, and goes against the principle of fairness set out in PPL's 'key principles'. The SFE tariff, as PPL rightly states, should be paid based on those customers actually hearing the music played at a relevant event. By moving to a metric of capacity, this would lead to a situation whereby many premises would be paying copyright fees for, effectively, people who are not even at the event.

An example would be a pub with a function room with a capacity (under fire regulations for example) of 250, yet the regular disco event held there usually attracts a crowd of 100. Under the current metric, this would be recorded accurately using average attendance. Under the proposed metric the pub would be paying for 150 people who were not even at the SFE event. This would also apply to larger venues with multiple rooms of large capacity, but not filling these to capacity for each event (unfortunately the norm), or people only staying in one part of the venue for example.

The consultation mentions an 'occupancy load figure' and refers to a two people per square metre measurement. In terms of the basis of this, we cannot find a UK established precedent for such a measurement. It is therefore unclear what evidence there is to support it.

The PRS for Music HR tariff uses capacity, and also a 25 person capacity increment; but the definition is also significantly more generous to the customer than the definition proposed above. The PRS definition of capacity states that if the accommodation of a room is limited to seating, the capacity is the number of seats; otherwise it is the maximum number of persons "which can reasonably be accommodated in the room" or equivalent fire regulation number if that exists.

We also believe the Consumer Price Index should be used for annual indexation, rather than RPI. CPI is the preferred measure of inflation by Government and other organisations.

3. PPL's current thinking about the fees under a revised SFE tariff

As in 2011, we do not see on what basis PPL has made the assumption that the current SFE tariff is undervalued. This tariff was developed over a number of decades, and last negotiated with BEDA and subject to agreement by parties involved. This tariff has been in place since 1990, and has (as agreed) been increased by RPI each year. We understand that this previous

renegotiation was intended to be a 'radical reappraisal' of the SFE tariff, and we are not aware of new factors (such as technological developments for example) that justify the requirement for wholesale changes. If anything, we are of the view that market changes would merit a reduction in tariff rates.

The proposed increase in the 'per person' value of the tariff from 3.8 per person per hour, to 22 pence per person per hour (an increase of over 450%) is wholly unacceptable.

We strongly contest the continued use of choice modelling, in this most recent consultation by GFK, to support the increases contained in this proposed tariff. The reasons why consumers decide to visit venues are much more complicated than the simplistic assertions in the choice modelling work, and include location, ambience, clientele, presence/absence of music, food and drink range etc.

UKH and BBPA have commissioned further economic analysis from Frontier Economics, which can be found at annex 1.

A CGA consumer survey of consumers who use the late night economy found that the top five factors under consideration are:

Venue/Atmosphere	49%
Value for Money	44%
Cost	40%
Location	37%
Quality of Experience/Offer	36%

We would conclude that this further undermines PPL's excessive valuation based on the flawed choice modelling approach.

As noted above, SFE events are only one of a number of factors that attract customers to a certain venue, and affect their willingness to pay.

The choice modelling summary included with the consultation makes broad assumptions about what customers are willing to pay for recorded music events, but crucially fails to address what the licensee (i.e. the business) would be prepared to pay. What licensee are prepared, and indeed able, to pay for music and entertainment has declined in the last decade due to a number of factors, primarily cost pressures on other elements of the business such as employment costs, rates, utilities etc. What the actual business is prepared to pay PPL is a critical factor that should not be ignored when setting tariffs in a monopoly market.

Key findings from the analysis (attached in full at annex 1) includes:

- Highlighting that there are two key misconceptions underlying the use of the study for setting royalty fees – namely the 'willingness to pay' for music by customers represents a potential profit pool that fee payers can tap into through admission fees and drinks prices. Secondly, the study assumes 'the willingness to pay' of the end consumer provides an appropriate starting point for assessing what constitutes a reasonable royalty rate.

- Choice modelling analysis will only be valid if the underlying customer survey data on which it is based is in itself reliable. We question the survey data provides a reliable source of information on the willingness to pay by customers for SFE music.
- The analysis involves asking customers hypothetical questions from hypothetical choices. There are always concerns with such an approach that the customer's stated responses do not reflect actual choices in real-world situations.
- The choice modelling approach assumes that estimates of end customer willingness to pay directly relate to estimates of the maximum price that businesses are willing to pay for SFE events. This approach is misconceived since customer value is only one of a number of factors that determine business willingness (and ability) to pay for a value of an SFE event. Disregarding the business element of any change in value means that the choice modelling conclusions are erroneous.
- The choice modelling takes no account of the businesses affected and the affordability of the proposed increases and likely impact on the market – i.e. closure of businesses and reduction of SFE events in the marketplace. In any normal market setting, the fee levels that licensees could be expected to achieve would only be a fraction of the monopoly level, as competition between multiple licensors would limit their ability to demand significant increases from fee payers.
- The suggested figure of 22p per person per hour is completely arbitrary, as shown by the element of 'ebb and flow' to get to this figure from the much higher figure of 75p.
- The choice modelling results in an average figure – in effect a median maximum willingness of what to pay for music. Some customers may be prepared to pay more than 22p, but more significantly some customers would be prepared to pay much less. Even where customers may be willing to occasionally pay a significant premium to access 'music they like to dance to', this does not mean they would be willing to pay this premium on a regular basis.

The revised analysis from Frontier Economics clearly demonstrates once again choice modelling is flawed, because what it has set out to measure is largely irrelevant for determining what constitutes a reasonable value for this tariff. The study and approach are misconceived. As a result, we do not accept that choice modelling is a valid method for demonstrating value in this context.

Choice modelling provides no support whatsoever for any increase over the current long established levels of fees for SFE, still less for the massive increases proposed by PPL.

PPL is using the wrong indicator in attempting to revalue the SFE tariff. The primary 'customer' in reality is the venue operator who has to make the commercial decision as to the SFE music offer and what the market can bear, and is commercially viable.

Monopolistic increases in the tariff fee as proposed will fundamentally change the structure of the market for SFE, reducing demand and closing and irrevocably damaging businesses. This cannot in any way be deemed to be fair, reasonable or proportionate and we must reject the proposed licence fees and dispute there is any need for a revision of the tariff.

We note that NUS Services has responded such is the level of their concern at the direction of future tariffs for their sector. Students' Unions exist in the not-for-profit sector with any surplus generated from events going straight back in to essential services for students. Unreasonable increases in fees will adversely impact their ability to provide safe social facilities for students and could accelerate the loss of some vital support services at a time when they are needed more than ever.

4. PPL's current thinking about implementation of a revised SFE tariff (see Section 6).

Regarding a potential surcharge, our understanding is that this would work in a way similar to other PPL tariffs, such as background music however with a cap of £1,000 per site. We do not agree with such surcharges, for example PRS for Music does not make any charges for late payment as in most instances it agrees a payment plan with licensees. We would like to see more clarity on the use of surcharges, for example in the PPL code of practice.

In relation to the proposed implementation, given our fundamental opposition to the proposed new tariff and structure we believe further discussion is necessary regarding implementation and timescales for this. Phasing in fees is always helpful, however we remain of the view that in this particular instance there is no basis for any increase in the tariff values, and the proposed increases contained in the consultation document are unacceptable.

Conclusion

PPL's proposed increases are wholly unjustified, economically unsustainable and unacceptable. Increased costs of the magnitude proposed within the PPL SFE consultation paper, if implemented fully or even in part, would result directly in the closure of many venues and yet more nightclubs switching their offer from SFE to become a late night bar with background music. The provision of SFE could then move underground (akin to the rave and warehouse scenes of the late 80s and early 90s). This would decimate the late night sector as we know it and actually deliver a reduced level of revenue to PPL.

We look forward to continuing dialogue and discussion with PPL on these consultation proposals.

UKH

04.10.18