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**From:** 1  
**Sent:** 14 June 2013 23:11  
**To:** Pubs Consultation Responses  
**Subject:** Pub companies and tenants - A government consultation Response

**Attachments:** 13-718RF-pub-companies-and-tenants-a-government-consultation-response-form completed PS.doc; Letter to BIS re ..... docx



13-718RF-pub-com Letter to BIS re  
panies-and-ten...

Please find attached my response and reply to the consultation.

I am a licensee and leaseholder of an Enterprise Inns pub.

We are based near ..... where there are a large number of Pubs many of which are owned by Enterprise Inns and where many are struggling.

I am happy to be contacted and can back up my statements if required.

We are at our lowest ebb and really need to see some light at the end of the tunnel.

Regards

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## Department for Business, Innovation & Skills

### Pub companies and tenants - A government consultation

#### Response form

**The consultation will begin on 22/04/2013 and will run for 8 weeks, closing on 14/06/2013**

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

This response form can be returned to:

Pubs Consultation  
Consumer and Competition Policy  
Department for Business, Innovation and Skills  
3rd Floor, Orchard 2  
1 Victoria Street  
Westminster  
SW1H 0ET

Email: [pubs.consultation@bis.gsi.gov.uk](mailto:pubs.consultation@bis.gsi.gov.uk)

Please tick one box from a list of options that best describes you as a respondent. This will enable views to be presented by group type.
<input type="checkbox"/> Representative Organisation
<input type="checkbox"/> Trade Union
<input type="checkbox"/> Interest Group
<input type="checkbox"/> Small to Medium Enterprise
<input type="checkbox"/> Large Enterprise
<input type="checkbox"/> Local Government
<input type="checkbox"/> Central Government
<input type="checkbox"/> Legal
<input type="checkbox"/> Academic
<input type="checkbox"/> Other (please describe): Leaseholder & Licensee

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

## **Consultation questions**

### **Q1. Should there be a statutory Code?**

Yes, without doubt this is absolutely essential as the Pubco's have consistently failed to anything but pay lip service to the voluntary COP. There have been several enquiries into their practices and as Vince Cable has said in response to a question raised about us by our MP John Glen "I think we all have such examples of publicans in our constituencies and it was that kind of experience that led to the Select Committee producing four reports on the subject. It also led to our seeking a voluntary code. In view of the lack of progress, we recommended a statutory code, on which we are now consulting." It is long overdue.

### **Q2. Do you agree that the Code should be binding on all companies that own more than 500 pubs? If you think this is not the correct threshold, please suggest an alternative, with any supporting evidence. Yes**

### **Q3. Do you agree that, for companies on which the Code is binding, all of that company's non-managed pubs should be covered by the Code? Yes**

### **Q4. How do you consider that franchises should be treated under the Code? Depends on how the franchise is set up and without that knowledge I cannot comment other than to say it should be watched carefully for abuse and becoming a tied lease under a different name**

### **Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. The costs would be minimal as this should lead to fewer closures and bankruptcies. Instead it should achieve greater employment both within the business and suppliers and also achieve a better share of reward meaning greater tax actually paid.**

### **Q6. What are your views on the future of self-regulation within the industry? It doesn't, hasn't and there is no evidence that it would work. Basically without a statutory code the Pubco's will continue to abuse their position of power and carry on wilfully selling leases on properties that have no chance of being viable on the high rents and excessive prices through the tie. If it can be abused to their advantage it will.**

### **Q7. Do you agree that the Code should be based on the following two core and overarching principles?**

**i. Principle of Fair and Lawful Dealing Absolutely**

**ii. Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant Yes**

### **Q8. Do you agree that the Government should include the following provisions in the Statutory Code?**

**i. Provide the tenant the right to request an open market rent review if they have not had one in five years, if the pub company significantly increases drink prices or if an event occurs outside the tenant's control. Yes**

**ii. Increase transparency, in particular by requiring the pub company to produce parallel 'tied' and 'free-of-tie' rent assessments so that a tenant can ensure that they are no worse off. Yes**

- iii. ***Abolish the gaming machine tie and mandate that no products other than drinks may be tied.*** Yes
- iv. ***Provide a 'guest beer' option in all tied pubs.*** Yes
- v. ***Provide that flow monitoring equipment may not be used to determine whether a tenant is complying with purchasing obligations, or as evidence in enforcing such obligations.*** Yes

**Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered?** With one exception as far as I can see these look ok, though that may need revisiting at a later date. The one exception is that this should apply equally to assignments as to new leases.

**Q10. Do you agree that the Statutory Code should be periodically reviewed and, if appropriate amended, if there was evidence that showed that such amendments would deliver more effectively the two overarching principles?** Without question this is important that this is possible if required

**Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code?** Yes

**Q12. Other than (a) a mandatory free-of-tie option or (b) mandating that higher beer prices must be compensated for by lower rents, do you have any other suggestions as to how the Government could ensure that tied tenants were no worse off than free-of-tie tenants?** A Market rent only option with a free of tie option

**Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?** Yes providing they are truly independent

**Q14.**

**Q15. Do you agree that the Adjudicator should be able to:**

- i. ***Arbitrate individual disputes?*** Yes
- ii. ***Carry out investigations into widespread breaches of the Code?*** Yes

**Q16. Do you agree that the Adjudicator should be able to impose a range of sanctions on pub companies that have breached the Code, including:**

- I. ***Recommendations?*** Yes
- II. ***Requirements to publish information ('name and shame')*** Yes
- III. ***Financial penalties?*** Yes including compensatory awards

**Q17. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory?** yes

**Q18. Do you agree that the Adjudicator should be funded by an industry levy, with companies who breach the Code more paying a proportionately greater share of the levy? What, in your view, would be the impact of the levy on pub companies, pub**

**tenants, consumers and the overall industry?** Yes, I do agree. The effect would be dependent on the size of the levy though should be minimal.

My apologies for the rambling nature of this correspondence.

We took over [redacted] on the [redacted] 2011. We were originally interested in the pub when we received details from the agent in September 2010 but we missed out by a fraction at that time. In January 2011 we were successful and were looking forward to moving in sometime in late June, so we were led to believe. Delays in processing our application at Enterprise were considerable and obtaining vital information about the pub from the previous landlord or Enterprise was extremely difficult. The previous BDM [redacted] had not processed our application to Enterprise and, when he was succeeded by [redacted], things appeared to pick up speed. However, this did not last long and [redacted] admitted herself in a meeting last year that we had had the *'assignment from hell'*.

We have spent the last [redacted] we have been here pumping our savings, our belongings and, latterly, pensions into the business to meet the shortfall between the turnover and costs. We have been trying to get constructive and genuine help from Enterprise Inns, our partner, for more than a year with no avail. (An "A" board and 3 months barrelage discount, whilst welcome are not enough on their own)

The business had been in decline for some time before we took it on and it has become apparent from the accounts that we were given for the business that it had never achieved the sort of turnover we have been expected to deliver in our first year of trading. Currently it is approximately half that expected figure.

While we have made many changes and improvements, we have ended up using money we had earmarked for business development to plug the difference between turnover and outgoings. This has curtailed our ability to develop the business as we would like both in time and, most importantly, financially.

An example of Enterprises cavalier way with their leaseholders occurred after only three months in the premises. In [redacted] we were suddenly informed that Enterprise had neglected to charge us a deposit. It was remarked that we looked surprised.

We were. A figure of £0 was included in the Pre Contract Agreement for the deposit. We explained that and were told "someone at Enterprise has messed up however no one will admit to it. However the issue is not going to go away" We took this to sound like a threat. We had asked on several occasions what the full take over figure would be and a deposit was never mentioned. Our then Area Manager asked for the "deposit that someone at Enterprise had forgotten" approx. £6000 by cheque there and then or we could pay £2000 and several instalments at a very difficult time of the year and with no explanation at all. Needless to say we were extremely upset and anxious about this. Like many publicans at the time we were worried about the business and to have a further issue to add to this was and still is a huge burden. We contacted [redacted] twice by letter and a couple of times by phone but had no response to either. We feel, at the very least, that we deserve a full explanation as to how this mistake happened. To add insult to injury, at a very bad trading time of the year, £584.13p was removed by Direct Debit from our account in both February and March totalling £1168.26p without our authority and after we had disputed it with no response. These, apparently, were two instalments of the deposit. This money has not been returned.

I believe this to be

We had a further meeting at the pub with [redacted] where it was suggested that a rent review might take place. She had arrived at the pub unannounced on [redacted] 2012 and arranged a meeting [redacted] again, at the pub. This meeting became a little emotional. Although the previous week [redacted] had mentioned that attention needed to be given to the outside of the pub, this was given as the reason (retail standards) that we would not be receiving the rent reduction we had asked for and that, actually, we were virtually being asked to leave. [redacted] followed this with a long discussion with [redacted] explaining where we stood and this resulted in a more positive attitude towards us. Another meeting with [redacted] followed, on [redacted]. She had kindly bought me some flowers and the discussion seemed more positive. Mr [redacted] had apparently done a '180 degree turn about' and wanted us to provide a 6 - 12 month plan for the pub. [redacted] said if I emailed her how much money we could afford to pay that week's rent and beer order she would have a discussion with [redacted] about the release of the order. [redacted] had one missed call from [redacted] and no further contact. The beer was not released that day but we managed to find the extra money the following day to pay. We had an extremely busy weekend ahead of us which included a seafood platter evening for one of our most supportive and regular customers. This actually went extremely well and we now have bookings on the back of it. On the Saturday was our regular monthly music evening, again, this would have been a complete disaster without stock to sell. (This has subsequently become a normal state for our working relationship.

The reason behind our request for a rent review was that the business was (and still is) unsustainable on the present outgoings. The delays in take over depleted our resources and we have been 'plugging holes' in the business ever since. Our finances have run out and despite being told that £15,000 would have to be taken off the yearly rent bill for the business to be viable, this action has been refused.

By [redacted] s own admission we were badly dealt with by Enterprise leading up to and after taking over the assignment, and that the rent was £15000 too high for the business to be sustainable.

We wanted to take this business forward however the trading conditions we are encountering are far worse than envisaged and it is proving harder than expected to get the business back where it needs to be. We, however, still believe it has potential.

We have poured our own savings into this business to plug the holes and have tried to discuss this on several occasions as the "plug money" was running out to no avail.

Shortly after this [redacted] "left with immediate effect" We have subsequently had a further three BDM's two of which were stand ins until they could find and train a new one. We have at times found ourselves isolated and ignored and this has been the trend ever since we took over.

**In a subsequent meeting with [redacted] he stated that for our rent to be affordable we needed to turn over a further £100,000 per year. Then he stated that even if we did we would not make any money.**

As a result of our putting the Pub on the market and speaking with a local accountant (over thirty local tied, foot and freehold pubs) we have been told our turnover is entirely reasonable for the area and economic climate and that Enterprise's assessment was entirely unrealistic.

We cannot believe that it does anyone any good at all for yet another pub to fail, let alone another Enterprise pub. Apart from employment and contribution to the local economy through suppliers as well as providing an attractive venue and facility, this pub also performs an important role as a village community hub. This is, after all, the only facility left in this village.

However the only conclusion we can now draw is that Enterprise Inns do not want us to succeed and appear to not want to do anything other than pay lip service towards helping us. We can only draw this conclusion as we would have had a greater response to our requests for help over the past year. As it is our requests have fallen on deaf ears and we have little in the way of response to our phone calls, emails and letters.

They have recently and only as a result of our on-going financial issues finally decided to help us with a temporary rent reduction and barrelage discount. This is to enable us to carry on trading while we try to find a buyer. There is little chance of anyone doing this however they patently do not want another closure in this area and coincidentally during the consultation process. They acknowledge that we cannot make this work and have admitted that they would have to drop the rent on the open market. This is because no one would pay my rent. Yet it is the correct market rent for me! This is justified by "others pay a similar rent". Several of their pubs have closed locally, some have been on the market since before we started looking in 2010 and they have at least three locally up for sale freehold.

We realistically do not expect to survive more than a few more weeks. The eighteen months with Enterprise has meant us putting at least £100 per day into the business to keep it open and during that time have not drawn a penny. We are now the recipients of Working Tax Credits which is an appalling situation to find ourselves in..

I feel I should make a few points for clarity.

- We took over the pub on assignment, in [redacted], which meant we bought the lease from the existing leaseholder.
- He had signed a new lease and put the business up for sale pretty much the same day (if not the same day).
- We were told by the agent that [redacted] was persuaded to sign a new lease by the then Enterprise area manager "because he would get a good price for it".
- During the process of buying the lease, from [redacted], Enterprise would not supply us with information as to the trading history of the pub.
- The Pub's trading history, prior and since our taking over, shows that the business has not turned over anything approaching the level of turnover Enterprise believe it should. This is clear from the accounts I have dating back to 2004. During this time period, in 2006, Enterprise raised the rent by over 30%.



- Enterprise Inns would have known at the time that that level of rent was unsustainable and, knowingly, approved us to take over.
- The dry rent is set according to this "FMT or Fair Maintainable Trade that a REO, Reasonably Efficient Operator" could achieve. At no point has Enterprise ever been able to explain how they arrived at this figure. They have admitted that we would not be making any money if we did achieve it though.
- The "wet" rent is rarely mentioned. Effectively the "wet" portion is the amount that is made on products we are contractually forced to buy through them. At yesterdays BISCOM meeting this "wet" portion was stated as having been approximately £60 per brewers barrel in the past however this was now known to be around £260 per brewers barrel.
- So a barrelage figure of 150 barrels a year equals an additional rent of £39000. So for a property with a rent of £25000 the true rent would be £64000 per annum. This rent is way above what an equivalent sized FOT pub with similar turnover would be paying. You are handicapped from day one.
- In my case the combined rents add up to approximately 36% of my turnover which is unsustainable. IF the sales of tied products goes up so does the proportion of "wet" rent thereby maintaining a high ratio relative to turnover
- An FOT pub rent to turnover is an average 10.7% according to the ALMR BENCHMARKING REPORT 2012 which compares the costs of running both FOT and Tied.

I am more than willing to discuss this further.

To say I am appalled at how we and others have been treated would be an understatement

Though the Licensees Supporting Licensees website I discovered we were not alone, which was a great help being able to discuss these issues and others with similar and sympathetic people

It is time for a change and it must happen soon to stop further abuse. Any legislation will come too late for me but it is still urgently required.

Please do not let any more people down and stop this happening now.

**Thank you, I feel confident that this time right will prevail.**

My details are in the email that this is attached to.