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**From:**  
**Sent:** 14 June 2013 06:44  
**To:** Pubs Consultation Responses  
**Subject:** Pubs Consultation  
**Attachments:** Pubs Consultation Response 13th June 2013.doc; Pub Company Consultation  
- Vianet Limited t/a Brulines

Sir/Madam

Please see attached my consultation response.

I am one of the members of the Fair Pint Campaign, a member of the Independent Pubs Confederation, a member of ALMR and first and foremost a passionate publican.

To propose action in the way that you are is the right approach for our much damaged sector. We need tough but fair regulation to create the right conditions for a truly efficient marketplace. The free of tie/market rent only option is an essential ingredient in that mix and above all else will lead your department proposals at this time to long term success.

I have also attached a further email and attachment that was sent earlier today to the Minister in relation to flow monitoring equipment manufactured by Brulines and used by pub companies.

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.

Representative Organisation

Trade Union

Interest Group

Small to Medium Enterprise

Large Enterprise

Local Government

Central Government

Legal

Academic

Other (please describe):

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**

**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. I can understand the suggestion of the 500 threshold and if the much needed regulation is easier to impose now with this threshold in place then so be it. If the Government thinks that it is able to impose the regulation on all companies operating tying agreements then all the better for the tenants, the sector and the economy.**

**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? Where a pub franchise model contains obligations to purchase products from the pub owning company then it should be governed by the code. Pub company franchise agreements, particularly those claimed to be in operation by the likes of Punch Taverns are unlikely to be real franchise agreements. McDonalds operates franchises and is recognised by the consumer as a brand. Punch Taverns doesn't and isn't.**

**Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. I have seen government estimates and take no issue with those. The cost will be recouped by investment into the sector many times over as a result of the creation of a more efficient and free market. At present the market is badly "regulated" internally and corrupted by what looks to be operating as a cartel-like group of companies fronted by the BBPA. The market is carved up and the wholesale price of beer is artificial.**

**Q6. What are your views on the future of self-regulation within the industry? It won't work because there is no real intent to make it work, the parties promoting it are conflicted and it completely fails to address the objective of redressing the balance of risk and reward in the sector. It doesn't seek to promote the Government objectives of fairness and of the tied tenant being no worse off than free of tie. Lots of crony-ism I'm afraid and typical of the pub sector over the last 20 years.**

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

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

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

**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. I am particularly concerned about this element. I have been involved in exposing the flaws in the flow monitoring equipment and have attached her and email and attachments sent to the department earlier today*

**Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? Yes**

**Free of tie option**

The Statutory Code needs a Free of Tie option with an open market rent. In the event of a failure to agree between the parties the rent dispute should be capable of referral to a third party (in accordance with existing rent review provisions of the lease/tenancy/agreement or relevant legislation).

As early as 2008 Vince Cable said "I support the Fair Pint Campaign which is pushing for legislation for leased pubs to be released from their tie."

The Free of Tie option remains an undelivered Select Committee recommendation from 2009, further reiterated by the Committee of 2010 and 2010-12.

The Committee recommendations of 2009 and 2010 were endorsed by the Labour government in 2010.

In March 2010, John Healey, Labour's pubs minister, set out plans to reform the tied agreements including "a Free of Tie option for tied tenants accompanied by an open market review".

In June 2010, Consumers Minister Ed Davey gave an assurance in the House of Commons that the Government would stick to the previous Government's plan to relax the beer tie and timetable for reform.

IPC consider a Free of Tie option is the only way to deliver the Government's commitments of 'fairness' and '*that a tied licensee will be no worse off than if they were free of tie.*' The free of tie option was a foundation stone of the IPC collaboration and written into our Manifesto from its inception.

The Free of Tie Option is a market solution to a market problem.

**Fairness**

The IFC has a provisions that to be accredited company codes must satisfy the minimum obligation that

"All contracts will be fair reasonable and comply with all legal requirements."

We are advised that companies are bound by both their company codes and IFC and that this specific provision will be required as expressly contained in all future company codes if they are to be accredited. It follows that this minimum obligation should be an express provision in the Statutory Code.

**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? Yes

**Q11.** Should the Government include a mandatory free-of-tie option in the Statutory Code? This is absolutely essential. The free of tie option (market rent only option ) is the most efficient way of enhancing the market and creating the free and fair trade that will once again stimulate investment into the sector. The tie has failed the sector through complacent and abusive operation; "churning" of tenants, steep and unjustifiable rent increase and equally steep and unjustifiable increases in the wholesale price of beer to tied tenants. Much has been blamed on Beer Duty but this tax has never been closing pubs and pubs will keep closing now that the Treasury has reduced the tax burden on producers by small amount. That benefit will not be passed onto tenants and consumers. It will be taken whole by pubcos and brewers who will then infill the gap with their own price increases and this is already happening as can be seen by the price increases immediately after the announcement. The free of tie option does not mean that all tenants will exercise the right and particularly so if pub owning companies choose to offer competitive terms. They should learn to operate efficiently in a truly competitive market. It is better for them and better for the sector. The operation of the tie has cost the tax payer hundreds of millions in losses to both RBS and Lloyds TSB. RBS lost money re-selling to Heineken in 2011 the pubs it had bought 10 years earlier. Lloyds lost GBP 500million in the Admiral Taverns sale. Punch Taverns has lost Over 98% of its share price and Enterprise Inns has lost nearly 90% of its market value. This is all while they were operating the business model they claim to be so successful! These companies are nothing more than financial intermediaries ruthlessly controlling access to a marketplace. The free of tie option will make them behave like real companies as they will need to earn their customer for once. It will also assist small brewers in being able to get into the market.

**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? The mandatory free of tie option for all tied tenants - at rent review, at the start of the tenancy, on renewal and on sale by the pub company of the freehold interest to a third party is the only way forward that will have the long term positive effects that the Government is seeking. You can see that it will be effective by the amount of abuse and loud opposition against your department is coming from the pub companies and their associates such as Brulines. Threats of legal action etc.

**Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code? Yes.** This person must be genuinely independent. For too long our sector has been dogged and done down by conflicts of interest and crony behaviour. Even now, remarkably, the Trade Related Valuation Group at the RICS (responsible for setting valuation terms for our sector in that institution) remains largely steered by Rob May FRICS . Mr May is, unbelievably, the National Rent Controller at Enterprise Inns plc. It is hard to imagine a more blatant conflict. Tenants in the sector have little or no confidence in third party determination in the sector because this sort of conflict is rife. The main pub companies ensure that they distribute work to as many firms of influential surveyors as possible in an attempt to harness commercial loyalty. Its a very poor state of affairs.

**Q14. 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*

**Q15. 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*

Under the new statutory code the Adjudicator should have a power to consider any complaint it receives about whether a contract is fair and/or reasonable.

Where the Adjudicator considers a contract is not fair and/or reasonable, they should have the power to take action on behalf of licensees either individually or in general to stop the continued use of the provision where possible.

Bearing in mind the Government commitment for 'Fairness' and that the self regulatory process and IFC already purportedly commit BBPA members to fair contracts, this should amount to formalising existing promises under a statutory regime and providing a robust and effective method of enforcement denied to the self regulatory regime.

The Adjudicator should have powers, on review, to alter the statutory code, and indeed the statutory threshold, should it transpire the code is lacking, or self regulatory system failing.

**Q16. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory? Yes**

**Q17. 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.** The cost of the adjudicator

should not form a major cost to the sector. The cost of not having it has been devastating as set out above. In addition to the damage outlined thousands of pub tenants have lost their livelihoods, and in many case life savings and the cost to the Government in terms of associated benefits may be as high as GBP 100million each year. Those looking to abuse and exploit will point as usual to red tape as a major problem. The 'red tape' in our sector is imposed by the beer tie. It is an appalling form of "self-regulation" that benefits the property owners and pub companies only. The market is badly corrupted and does not operate properly with the result that we see today. Two or three largely collapsed companies control access to perhaps 25% of the UK pub market.

The real entrepreneurs and wealth generators in our sector are the publicans themselves - the retailers - and their efforts are being squandered to pay for the ludicrous debts taken on by pub companies to pay out funds to connected parties that sold pub groups into these companies. The cash has gone and thousands of pubs are financially raped each year to pay the interest on the debt pile that is left. At the same time pubco bosses reward themselves with unjustified million pound pay packets, bonuses and pension pots. It is the worst sort of crony capitalism.

*The UK banking sector has been in disarray as a result of lack of control and abuse of dominant position by incumbent banks. There was lots of shouting for less red tape and now we see the result. It will leave the UK in doldrums for a generation. Mark Carney is taking up his role as the Governor of the Bank of England. Mr Carney's approach to banking regulation in Canada was to impose tough but fair regulation with harsh penalties and some discretion. It has led to a leaner, and better operated financial sector in Canada which to Mr Carney's credit has survived the banking crises intact. The secret is the tough and fair regulation such as would be achieved by the proposed statutory code and free of tie option. It may not be what pub companies and the BBPA want but it is what they need and they will be better for it as will the whole sector.*

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**From:**  
**Sent:** Friday, June 14, 2013 03:21 AM  
**To:** McLynch Julie (CCP)  
**Cc:** jo@joswinson.org.uk <jo@joswinson.org.uk>;  
<pubsadvisoryservice@btconnect.com>;  
<pubsadvisoryservice@btconnect.com>;  
greg.mulholland.mp@parliament.uk <greg.mulholland.mp@parliament.uk>  
**Subject:** Pub Company Consultation - Vianet Limited t/a Brulines

Julie

I have been given your email address by , with whom I have worked for several years as a Fair Pint and IPC colleague.

I'm writing in connection with Brulines, a system used by pub companies for monitoring beer flow and the information from which is used, possibly criminally, to levy so-called "fines" against pub company tenants and more generally as a means of intimidation.

This week the company published its latest results (which were poor and led to a decline in its value) and at the same time fired a shot across the bows of those looking to regulate pub companies and also the use of equipment such as that produced by Brulines.

The Publican Morning Advertiser this week published the article below:

<http://www.morningadvertiser.co.uk/Company-City-News/Statutory-code-Beer-flow-company-Vianet-to-challenge-proposals>

I was concerned to see, once again, Vianet's claims with regard to its highly flawed system. As a preliminary point it is ridiculous of Vianet to claim that its systems are in any way at all capable of increasing the quality of beer products sold to the consumer. This is a blatant . Along with others in the Fair Pint Campaign we are currently consulting with environmental health officials with regard to food safety issues arising from the Brulines system and we hope to have more information on this shortly. I've attached a photo of the sort of residue that is ordinarily left inside parts of the Brulines equipment. Pub tenants have no access to this equipment which is owned by the pub companies and therefore tenants are unable to clean the equipment.

Expert reports carried out recently (by leading consultants TUV Sud Ne and commissioned by me and others) on this flow monitoring equipment in the pubs have clearly established its inaccuracy and flaws. Similar results have been found by Trading Standards officials. I have attached here the initial pages and summary of the 59 page report from TUV Sud Nel and the rest can be supplied on request, along with a Trading Standards report.



There are further reports from TUV Sud Nel

This system needs to be brought under the law or it needs to be rendered illegal. I don't think that the Government should be in any way concerned about threats of legal action from this company.

Best regards

The Fair Pint Campaign  
IPC

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RESTRICTED - COMMERCIAL  
NEL



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Fax +44(0)1355 272999

## FLOW INVESTIGATION TESTS AT PUBLIC HOUSE

A Report for

a client of

Prepared by: 	Approved by: 

For

Managing Director

Date: 20<sup>th</sup> October 2011



## FLOW METER TESTS AT PUBLIC HOUSE

A Report for

a client of

Project No: DLP002

Report No: 2011/408

Date: 20<sup>th</sup> October 2011



[www.tuvnel.com](http://www.tuvnel.com)

## SUMMARY

NEL were instructed by DLP Piper UK LLP to undertake flow investigation tests at public house in . The tests were performed on a number of font dispenser units and the associated flow metering system in the cellar to assess the accuracy of the metering system. The flow tests covered a range of flow conditions.

The flow metering system and the installation of the flow meters have been documented. It was noted that there appears to be no standard installation practice. The results from the flow tests performed on a selection of the flow meters installed at and the measurement errors have been reported.

The tests highlighted significant flow measurement errors from using the meters. A high proportion of the errors were greater than 10% in magnitude with many errors greater than 40%. Overall the flow measurement errors ranged from -121.9% to 72.8%.

The performance of the flow metering system showed many of the meters to be highly variable and appeared to be dependent on the flow conditions. The variation in meter error for the same meter indicates that the 'meter factor' value is not constant.

The overall measurement system is unable to clearly identify if beer or water is being dispensed.

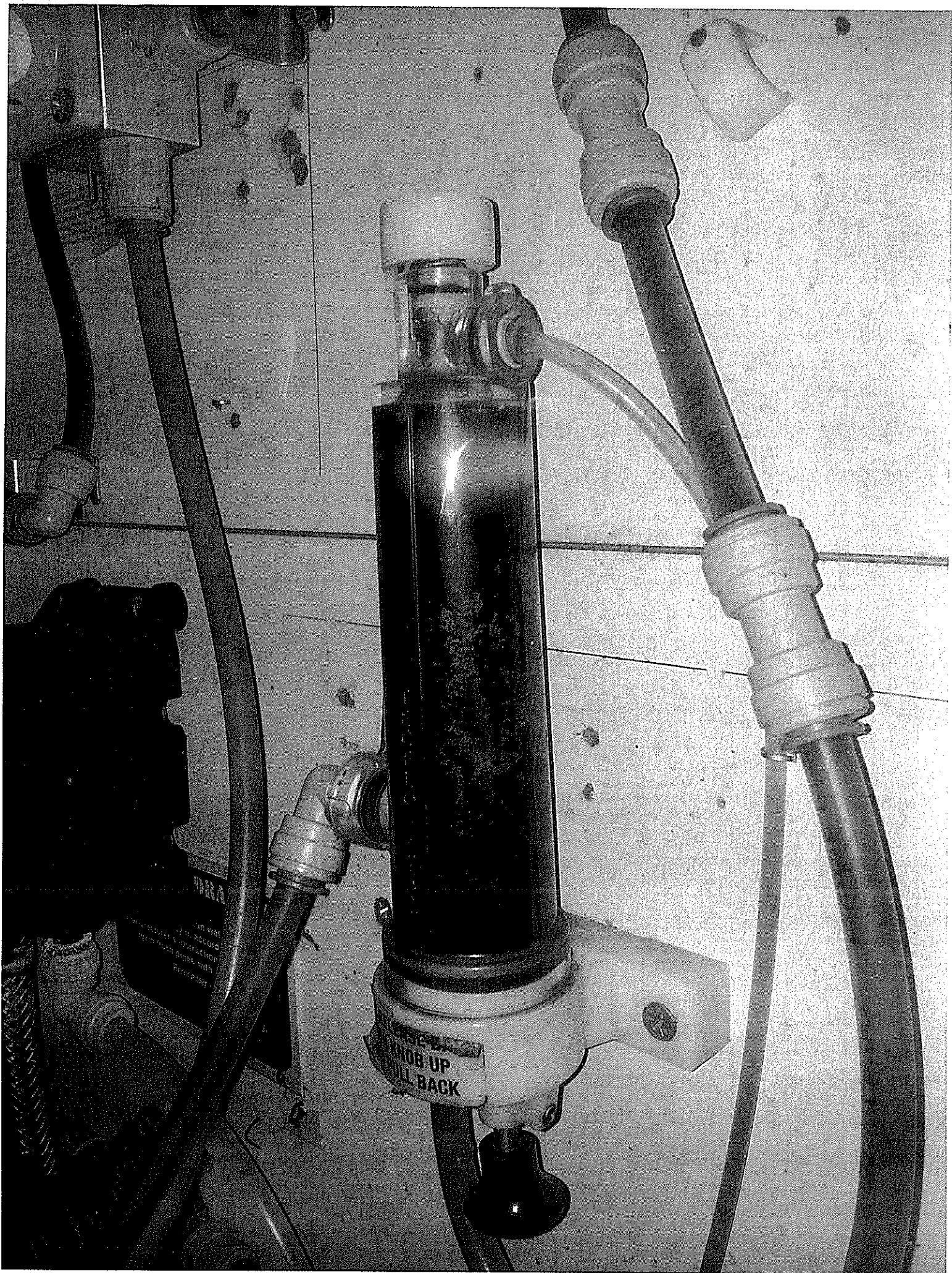
Based on the tests performed on the flow meters at the results would suggest that the meters are not capable of accurately measuring dispensed volumes over the range of flow conditions tested.

## REPORT SIGNATURES

It is standard practice for one engineer to prepare the report and another to review it, hence the two signatures on the front of the report.

## QUALIFICATIONS AND EXPERTISE

- My name is \_\_\_\_\_ I am a Project Engineer and Service Leader for Wet Gas Flow Measurement at TUV SUD NEL of East Kilbride, Glasgow G75 0QF. NEL is a world-class provider of technical consultancy, research, testing, flow measurement and programme management services. NEL is the custodian of UK national flow measurement standards on behalf of the National Measurement Office (NMO).
- I have a 1<sup>st</sup> class Masters in Chemistry and PhD in physical chemistry and engineering on the quantification of temperature, flow and mixing in microfluidic flow devices.
- I am a member of the Royal Society of Chemistry and am working towards chartership.
- I have over 4 years experience at NEL of advising in relation to the operation of flow monitoring equipment, ranging from microfluidic devices to wet gas and multiphase flow measurement equipment. This has included presenting various flow measurement training courses including measurement uncertainty course, wet gas and multiphase flow measurement course, micro flows and the '*Principles and Practice of Flow Measurement*' course.
- For the past four years I have provided assistance to the UK representative and Chairman of the European Collaboration in Measurement Standards (EURAMET) for the Technical Committee of Fluid Flow – this committee includes static volume measurement.
- I have also been involved in various research projects on liquefied natural gas measurements, differential pressure flow meters, flow systems for energy storage applications and pipeline sampling techniques.
- Relevant flow papers published:
  - 
  - 
  -
- I have been asked to report to DLA Piper UK LLP and their client Onifas Limited in relation to the accuracy of flow monitoring equipment installed at \_\_\_\_\_ Public House, \_\_\_\_\_. A copy of my letter of instruction is at Appendix J.
- I have been responsible for the preparation of this report. Where I have received assistance from other team members, I state who they are and how they assisted me.



**Report from :-  
SLOUGH TRADING STANDARDS**

**On testing of:  
BRULINES MEASURING SYSTEM**

**At:**

**On:  
14<sup>th</sup> & 21<sup>st</sup> October 2009**

**Provided by :-**

**(Senior Trading Standards Officer)  
&**

**(Senior Trading Standards Officer)**

## **1. Experts Qualifications and Experience :-**

This report is provided by \_\_\_\_\_, both Senior Trading Standards Officers and qualified Weights & Measures Inspectors.

\_\_\_\_\_ obtained the Diploma in Trading Standards (DTS) qualification in 2007 and has over 3 years of experience of testing weighing and measuring equipment..

\_\_\_\_\_ qualified as a Weights & Measures Inspector in 1975 by obtaining the 'Board of Trade' qualification. He has over 35 years of experience in testing weighing and measuring equipment. \_\_\_\_\_ has over 37 years experience within the Trading Standards service and has been employed with Slough Borough Council Trading Standards since May 2006

This experience and qualification therefore qualifies both \_\_\_\_\_ to act as experts in respect of the work carried out in this report.

## **2. Any other literature or material relied on**

Other literature that has been relied on is presented in this report as Annex A and Annex B.

- **Annex A** : Brulines testing protocol.
- **Annex B1** : Notification e-mail to Brulines 12/10/10
- **Annex B2** : Notification e-mail to Brulines 20/10/10
- **Annex C** : Results from testing on the 14/09/10
- **Annex D** : Results from testing on the 21/09/10



**3. Statement :-**

**Made on behalf of the Expert:**

**1<sup>st</sup> Statement of Expert  
Annexes A, B, C & D  
Dated : 30/09/10**

**SLOUGH BOROUGH COUNCIL  
- Senior Weights & Measures Inspector : Expert**

**In respect of measuring equipment testing carried out at :-**

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**EXPERT WITNESS STATEMENT OF  
- SENIOR WEIGHTS & MEASURES INSPECTOR**

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I am employed by Slough Borough Council Trading Standards Department, as a Senior Weights & Measures Inspector. I obtained the Diploma in Trading Standards (DTS) qualification in 2007 and have over 3 years of experience of testing weighing and measuring equipment.

My first contact with \_\_\_\_\_ was on the 19<sup>th</sup> February 2008, when \_\_\_\_\_ called for advice about a problem that \_\_\_\_\_ was having with \_\_\_\_\_ pub company, Enterprise Inns, about issues with an exclusivity clause in contract with them which insists that all stock is purchased from them.

\_\_\_\_\_ was initially concerned regarding the legality of such clauses. \_\_\_\_\_ sent through a number of documents relating to this matter, which remain in secure storage at our offices.

I advised at the time of options available to \_\_\_\_\_, including contacting her respective Trade Association and most importantly a solicitor for further instruction. As the matter was in the area of Employment Law, it was outside of the remit of Trading Standards.

No further contact was received from \_\_\_\_\_ until the 9<sup>th</sup> September 2009, upon which Slough Trading Standards were requested to carry out testing of a measuring system called 'Brulines'. The equipment, I was informed, was a measuring device attached to the delivery lines of each pump in the pub, which measures the volume of product dispensed for sale.

Further research was carried out, by contacting other Trading Standards departments, as to any other testing of this type of equipment that was being carried out around the UK.

On the 18<sup>th</sup> September 2009, \_\_\_\_\_, a Trading Standards Officer with Stockton-on-Tees Trading Standards posted instructions on the national Trading Standards noticeboard of Brulines' equipment testing protocols. This testing protocol is presented in **Annex A** of this report.

Initial testing of the equipment at the \_\_\_\_\_ was carried out on the 14<sup>th</sup> October 2009 by both myself and \_\_\_\_\_ a qualified Weights & Measures Inspector of 35 years experience – qualified with the Board of Trade qualification).

As required by the protocol, notice was given to the Brulines Calibration Systems department prior to the testing; in order for an appropriate operative to be in place to record the readings during our visit. An example of the e-mail sent to \_\_\_\_\_ at Brulines (dated the 12/09/09) is presented in **Annex B1** of this report.

\_\_\_\_\_ and myself arrived at the \_\_\_\_\_ at 10:30hrs on the 14/09/09 and met with \_\_\_\_\_ and the pub manager \_\_\_\_\_.

An inspection was made of the cellar and the equipment to be tested. The measuring system appeared to be a basic flowmeter system and was 'non-prescribed' in respect of weights and measures legislation. The testing therefore is to establish as to whether the equipment is accurate or not. There were no signs of tampering or any attempt to circumvent the system (checks carried out in accordance with the Brulines testing protocol).

In preparation for the testing \_\_\_\_\_ and I selected a number of Capacity Serving Measures from behind the bar (i.e. a selection of 1 pint and ½ pint glasses). All glasses were capacity 'brim' measures and either 'crown stamped' or carried EU marking. They were tested for accuracy by comparing their volume with a 'pre-calibrated' 1 pint and ½ pint measure that we had brought with us. All measures, to be used in the testing procedure, were confirmed to be accurate.

Prior to the testing, as required by the Brulines testing protocol, a telephone call was made to the Brulines Calibration Systems department, to notify them that testing was about to commence and that readings should be taken from that moment. Persons spoken to at Brulines were both \_\_\_\_\_ and then \_\_\_\_\_ – on telephone number 01642 \_\_\_\_\_. The Brulines systems were then opened for monitoring of testing readings.

On commencing the testing, a selection of the lines were tested by drawing off several pints and half pints (to brim measure) into the respective measures. Amounts dispensed were Best Bitter (handpull) 5 pints, Bombadier Bitter (handpull) 5 pints, Strongbow Cider (freeflow) 3 pints, Kronenburg Lager (freeflow) 4 pints & Fosters Lager (freeflow) 6 pints.

On completion, a call was then made to Brulines Calibration Systems to notify them of the end of the testing period and to request the readings that they had recorded. These were provided as per the results in **Annex C**.

As a result of there being minor discrepancies on some of the lines, it was decided that it would be necessary to test these systems at a higher volume; in order to replicate sales of these products over a busy day at the premises.

I requested that it would be prudent to establish connection of each product line to the water supply, for the high volume testing; as it would not be in the interests of the businesses to have to waste such a huge volume of their stock for this testing. It was noted, on inspection of the Brulines equipment, that this was a basic flowmeter set-up; no density meter was observed. Therefore it was decided that it would be very likely that results would not be impaired by testing with water rather than beer, cider, bitter, etc.

Arrangements were made to put this into practice and a further visit date was arranged for the 21<sup>st</sup> October 2009. Brulines were again notified via e-mail of the arrangement (on the 20<sup>th</sup> October 2009 – as per **Annex B2**).

and I returned to the premises on the 21<sup>st</sup> October 2009 at 9:30hrs and followed the same procedure as last time. A check on the equipment and cellar area was carried out. The capacity measures being used in the test were assessed for their accuracy. Brulines Calibration Systems were notified prior to the commencement of testing. The testing period was approximately from 10:00 hrs – 13:00hrs.

At the beginning of the testing of each line, the line was connected to the water supply and respective amounts of water was drawn through and measured with the capacity serving measures (filled to brim).

Measures taken were : 12½ pints of Strongbow Cider (Bar Area), 22½ pints of Strongbow Cider (Lounge Area), 21 pints of Fosters Lager ( Bar Area), 22 pints of Foster Lager (Lounge Area), 24 pints of Kronenburg (Bar Area), 23 pints of Kronenburg (Lounge Area), 26 pints of Stella Artois Lager (Bar Area), 30½ Old Speckled Hen Bitter (Lounge Area), 36½ pints of Best Bitter (Lounge Area), 39¾ pints of Bombadier Bitter (Lounge Area) and 1 pint of Guinness (Bar Area).

The ¾ pint of Bombadier Bitter was measured with a pre-calibrated measure that we brought with us.

During the testing period, the pub opened and 2 pints of Fosters Lager and 1 pint of Guinness were sold from the bar area. These 'pulled' pints for customers were inspected by the testing officers and were filled accurately by the member of staff. These drinks were counted in the overall results for testing.

Brulines Calibration Services were notified by us once the testing period was over and results were requested from them. These results were provided by at 13:55hrs and are presented in the table in **Annex D**; showing the discrepancies present in some of the lines.

These results were then relayed over to  
at 14:10hrs on the 21<sup>st</sup> October 2009.

at the

**I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge & which are not.**

**Those that are within my own knowledge I confirm to be true.**

**The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.**

**Signed**

**Dated**

.....

.....

I confirm that all the above facts are correct and true and witnessed by myself.

**Signed**

**Dated**

.....

.....

#### **4. Facts within the experts knowledge**

Please refer to statement above, provided by \_\_\_\_\_ and  
witnessed by \_\_\_\_\_

#### **5. Who carried out**

- **(i) examination**  
Examination was carried out by \_\_\_\_\_
- **(ii) measurement**  
Measurement was carried out by \_\_\_\_\_
- **(iii) testing :-**  
All testing of the equipment was carried out by \_\_\_\_\_
- **(iv) qualifications of that person under expert supervision**  
All persons carrying out the testing were qualified experts (as per qualification stated in Part 1.

#### **6. Where there is a range of opinion**

##### **Summary of range**

- Some of the measurement devices provided accurate readings.
- However, some of the Brulines equipment tested provided inaccurate readings at high volumes.

##### **Reasons for own opinion**

The opinions reached in this report were the result of examination of the results of the testing of these specific lines at Public House on the 14<sup>th</sup> & 21<sup>st</sup> October 2009.

From these readings along, it is not possible to comment on the accuracy and reliability of Brulines equipment in general.

#### **7. Summary of conclusions reached**

From the results of the testing of this equipment, it is apparent that some of the measuring systems in operation on the dispensing lines are inaccurate.

This may be due to a number of factors :-

- (a) a fault in some of the measuring equipment.
- (b) wear and tear of the measuring devices on a number of the lines.
- (c) Lack of maintenance of the equipment on some of the product lines.
- (d) Non- or incorrect calibration of some of the equipment at installation.

**NB// It is worth noting that on some lines the discrepancy was between 3-4 pints for each 20-40 pints pulled off; if this pattern were to repeat over busy trading periods over a number of months, these discrepancies on Fosters, Kronenburg and Bombadier Bitter could mount up to a considerable amount.**

**8. If not able to give opinion, state why**

All opinions stated within this report are supported by evidence from the testing of the equipment.

It is important to note that the results provided and the opinions given in this report relate merely to the equipment tested on the 14<sup>th</sup> & 21<sup>st</sup> October 2009.

These opinions should not be taken as an indictment of the Brulines system as a whole; which if properly maintained may well be able to provide accurate readings.

**9. Final Verification Statement of experts:-**

Both experts, \_\_\_\_\_ and \_\_\_\_\_ understand their duty to the court and have complied with that duty”

Both experts are aware of the requirements of Part 35 of the practice direction and the Protocol for Instruction of Experts to give evidence in civil claims.

**Signed :-**

**Dated :-**

.....  
(Senior Trading Standards Officer)

**Signed :-**

**Dated :-**

.....  
(Senior Trading Standards Officer)

## **ANNEX A – BRULINES TESTING PROTOCOL**

### **Protocol for Trading Standards wishing to test Brulines equipment (June 2009)**

#### **Summary**

Brulines Limited are part of Brulines Group Plc based in Stockton on Tees. Brulines provide dispense monitoring equipment to pub chain owners, giving statistics on sales and usage.

In relation to Trading Standards matters, some of these pub chain owners may use the monitoring equipment information to take civil action against individuals running a licensed premise who are acting outside their terms of contract e.g. buying beers from an unauthorised source (out sourced).

Although Brulines install the equipment and interpret the results and provide statistical reports, the equipment is owned by the pub chain. The majority of Brulines customers also employ them to carry out on-site visits after installation, although some carry out this role themselves.

Some licensees subject to civil action have questioned the accuracy of the equipment.

There is some debate whether the equipment is in use for trade and it depends on how each individual pub chain use the information. There has been some evidence that certain pub chain owners quote specific quantities of 'out sourced' beer and seek compensation based on this quantity. The quantity tends to be based to some extent on the monitoring equipments readings. It needs to be noted though that the final quantity quoted is very likely to be discounted by various adjustment factors e.g. estimated line cleaning, and estimated stock levels.

The question of use for trade has been forwarded to LACORS but at the moment each investigating officer must make that decision based on the individual facts to hand.

The Brulines equipment consists of a flow meter attached to each beer line (plus one on the water line). This information is send back to Brulines head office by a data transfer device. The current flow meters in common use cannot differentiate between beer and water so Brulines use line cleaning adjustment factors.

There is no read out on the premise where the equipment is installed making it difficult for officers to test the equipment. Information can be requested after any such test but due to the way the data is routinely compiled in discrete one hour blocks this may not be an adequate method for testing. Brulines have agreed the procedure given below to assist officers wishing to test equipment on site.

Brulines are cooperating in relation to the testing of the equipment but would ask investigating officers to be vigilant when carrying out any tests to avoid any attempt to sabotage or adversely affect any such test. Brulines have experienced numerous attempts to circumvent or even sabotage the equipment in order to discredit results.

Circumvention could be using a magnet, bypassing the meter, or damaging the meter somehow. Would officers be wary of such tactics during testing to ensure the integrity of any tests carried out. Brulines have produced the accompanying information on circumvention techniques for officers information.

### **Procedure**

In order for Brulines to ensure they have a member of staff at head office available during test the following has been agreed.

1. Officers wishing to arrange for a test should put the request in writing **one full working day** prior to the test to a dedicated email address and include:-

a. Officer name, title & authority details, and preferably a telephone contact number. Brulines will respond via email to confirm receipt.

b. The premise name and address of the test

c. Approximately what time the test will be carried out (normal office hours)

2. Brulines may contact the investigating officer and request that one of their engineers be present at any test. The engineer will not affect the test in any way, but will examine the equipment visually to establish whether it has been tampered with. Brulines may also offer the investigating officer statistical evidence in relation to that premise (which should be kept confidential i.e. not released to the complainant at that time). Brulines have been advised that it is up to the investigating officer whether these offers are accepted.

3. Just prior to carrying out the test the officer should the Brulines number and identify themselves and advise Brulines which line or lines will be tested.

4. The officer can then speak to a Brulines member of staff during the test to get live readings as and when required. Alternatively the officer can arrange with Brulines to provide results after the test is completed.

5. Brulines would request that the officer advise Brulines of the results of any tests as soon as is reasonably practicable as they may wish to visit the premise themselves to establish if there has been any previous tampering with the equipment.

This protocol has been suggested to facilitate testing of Brulines equipment. I would advise that any other method used be discussed with Stockton Trading



Standards as the way in which Brulines stores and records data in discrete one hour blocks may be problematic to other methods.

Paul Chilver - Senior Trading Standards Officer  
Stockton on Tees Borough Council

### **Circumvention techniques**

Stockton Trading Standards have been supplied with comprehensive documentation on known circumvention techniques but unfortunately due to its size it is not practicable to distribute via email.

A brief summary of the main issues are shown below. Any authority wishing a copy of the full document should contact Stockton Trading Standards.

1. **By passing the flow meter** – This can be done in a number of ways which involve cutting into the beer line either side of the flow meter. This is either done to an individual meter or all meters. Generally a bypass valve is fitted which can redirect the flow around the Brulines flow meter as and when needed.
2. **Concealed dispense points** – Once the Brulines equipment is installed new unmonitored dispense equipment is installed and used. Whole concealed cellars have been found in the past.
3. **Temporary dispense boards** – These boards are connected to the spear feed pipe and main gas ring main. They can be installed and removed in a matter of minutes.
4. **Magnets** – Magnets of differing strengths are used to slow or stop the flow meter.
5. **Sabotage** – Water can be deliberately sprayed into the EDIS data storage and transfer unit
6. **Isolation of the electricity supply** – This can be done by removal of the fuse from the EDIS box, or disconnection of the box from the supply.
7. **Interfering with the communication link** – attempts have been made to damage or cover the antenna interrupting or stopping the transfer of data
8. **Use of G clamps** – Simply clamping the flow meter and applying pressure to prevent the meter from turning freely. This often leaves tell tale signs but not always.
9. **Removal and replacing the flow meter wheel** – Dismantling the flow meter and removing the wheel for periods of time.

Company Website : <http://www.brulines.com/brulines/>

## **ANNEX B1 –**

### **E-MAIL NOTIFICATION OF TESTING TO BRULINES 12/10/09**

**From:** [mailto: @slough.gov.uk]  
**Sent:** 12 October 2009 13:30  
**To:** .  
**Subject:** RE: NOTICE OF INTENDED TESTING OF EQUIPMENT.

Dear Sir/Madam,


I am writing to notify you (in line with the agreed testing protocol with Stockton on Tees Trading Standards) of our intended testing of Brulines equipment at public house in address :

I would be very grateful if you could have a person in attendance for me to speak to during the testing procedure, which we aim to carry out between 10:30 and 12:30 on **Wednesday 14<sup>th</sup> October 2009**.

I would be very grateful if you could respond with confirmation that this e-mail has been received.

Yours sincerely,

**Senior Trading Standards Officer**  
**Slough Borough Council**  
01753 875 (t)  
01753 875 (f)  
(m)

 Please don't print this email unless you really need to - think of the environment.

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## **ANNEX B2 –**

### **E-MAIL NOTIFICATION OF TESTING TO BRULINES 20/10/09**

**From:** [mailto: i]  
**Sent:** 20 October 2009 9:30  
**To:**  
**Subject:** RE: NOTICE OF INTENDED TESTING OF EQUIPMENT.

Dear


I am writing to notify you (in line with the agreed testing protocol with Stockton on Tees Trading Standards) of our intended testing of Brulines equipment at public house in Slough (address : \ )

I would be very grateful if you could have a person in attendance for me to speak to during the testing procedure, which we aim to carry out between 10:00 and 12:30 on **Wednesday 21<sup>st</sup> October 2009**.

I would be very grateful if you could respond with confirmation that this e-mail has been received.

Yours sincerely,

**Senior Trading Standards Officer**  
**Slough Borough Council**  
01753 875 (t)  
01753 875 (f)  
(m)

 Please don't print this email unless you really need to - think of the environment.

# ANNEX C :

## DATA FROM 'INITIAL TESTING' ON :- WEDNESDAY 14<sup>th</sup> OCTOBER 2009

PRODUCT TESTED	NUMBER OF PINTS TAKEN	TOTAL AMOUNT TAKEN ON LINE	BRULINES DATA RESULT	DISCREPANCY
<b>BEST BITTER</b> (LOUNGE AREA)	5	5	5.0	0
<b>BOMBADIER BITTER</b> (LOUNGE AREA)	5	5	4.5	- 0.5 PINTS
<b>STRONGBOW CIDER</b> (LOUNGE AREA)	3	3	2.9	-0.1 PINTS
<b>KRONENBURG LAGER</b> (LOUNGE AREA)	4	4	3.9	-0.1 PINTS
<b>FOSTERS LAGER</b> (BAR AREA)	6	6	6.0	0

**AN APPOINTMENT WAS THEN MADE FOR THE FOLLOWING  
WEEK (21<sup>ST</sup> OCTOBER 2009) TO TEST THE EQUIPMENT AT  
HIGHER VOLUMES.**

# ANNEX D :

## DATA FROM 'FURTHER TESTING' ON :- WEDNESDAY 21<sup>ST</sup> OCTOBER 2009

PRODUCT TESTED	NO. OF PINTS TAKEN	TOTAL AMOUNT TAKEN ON LINE	BRULINES DATA RESULT	DISCREPANCY
<b>STRONGBOW CIDER</b> (BAR AREA)	12 ½	35	35	0
<b>STRONGBOW CIDER</b> (LOUNGE AREA)	22 ½			
<b>FOSTERS LAGER</b> (BAR AREA)	21 (INCLUDING 2 PINTS SOLD)	43	46	+3 PINTS
<b>FOSTERS LAGER</b> (LOUNGE AREA)	22			
<b>KRONENBURG LAGER</b> (BAR AREA)	24	47	50	+3 PINTS
<b>KRONENBURG</b> (LOUNGE AREA)	23			
<b>STELLA ARTOIS</b> (BAR AREA)	26 (INCLUDING 4 PINTS SOLD)	26	26	0
<b>OLD SPECKLED HEN</b> (LOUNGE AREA)	30 ½	30 ½	30	- 0.5 PINTS
<b>BEST BITTER</b> (LOUNGE AREA)	36 ½	36 ½	37	+ 0.5 PINTS
<b>BOMBADIER BITTER</b> (LOUNGE AREA)	39 ¾	39 ¾	43.5	+3.75 PINTS
<b>GUINNESS</b> (BAR AREA)	1 PINT SOLD	1	2.5	+1.5 PINTS