
From:
Sent: 21 May 2013 15:18
To: Pubs Consultation Responses
Subject: "When was it acceptable for Criminals to write the Law"

I am a Leasehold operator of a Pub/Hotel called _____ which I took over in _____ prior to both the ongoing consultation and the 'Self Regulation'. The quote in the subject above is what I said to the Business development manager for Scottish and Newcastle (Now star pubs and bars) at the time that they unveiled their code of conduct. It was a completely flawed concept that I have rarely ever seen before. It truly is akin to a burglar re writing the breaking and entering law. The current situation is the result of this process and I fully support the notion that Pubco's abuse a monopoly position and that it needs addressing immediately. Furthermore though, I think the abuses go beyond this as there is no support system to challenge Pubco's when they do not uphold their legal obligations. As such size and strength mean they are not held to account. If the current consultation manage to redress this to any degree it would be a significant step in saving the industry. Below I have detailed some specific issues with S&N/Star Pubs and Bars that I think may be of assistance.

I have a lease which is NOT fully repairing. When I took over the property in _____ I was given a copy of a schedule of works for repairs that were to take place. This was attached to an email (which has been filed as with all other emails/letters) that said these would be done immediately upon the signing of the lease. Yet six months later 90% of the work still hadn't begun including a Fire escape that (again I have a letter to prove this) was described as dangerous and should not be used in any circumstance. For 6 months I constantly chased for this but no work was done and only when I threatened to walk out within 24 hours did an emergency meeting take place. The Repairs were then done but many of them to such a low standard that today they await repair again. Notification has been given months ago but if I stop paying rent the Pubco simply refuse to send out a beer order meaning I would have to break the tie and forego a legal obligation. Thus the tie effectively allows Pubco's to demand rent even though they have not kept their repair obligations. (For all of the above I have photos, emails and letters).

The fundamental issue here is that the tie allows for abuse and misrepresentation. Pubco's talk of profit sharing and divisible balance but keep very quiet about the profit they have ring fenced from a site because of the hugely inflated price of beer. If it is marketed as a 50% profit share then it should be just that. I have huge issues with the rent model itself and this again is because Pubco's are providing figures that are simply the result of their imagination to come up with a rent. In my case it took just 3 weeks to see that huge amount of the detail in the FMT rent model (a document provided to show why the rent was at a certain level) was completely incorrect. Some could be seen as a basic mistake but others quite frankly could be seen as _____. For example the rent model showed an expected increase in turnover of 100% (double) what the site was doing at the time the building was being assessed. That was clearly shown but what wasn't was the prices upon which that volume was being achieved. It turned out that the prices at the time were around 30% lower and had only been increased a few weeks before I looked at the property. Worse still even the wholesale prices were all wrong and this was Scottish and Newcastle's own pricelist!!!

Having renegotiated the rent I stayed in the property and carried on investing huge amounts of money into hotel bedrooms and bathrooms, landscaping the garden (patio and decking) and improving all areas of the operation (Tills, Kitchen equipment, Hotel software). However this turned out to be a mistake as not only did I meet the unlikely FMT target set out in the original rent model I exceeded it. A rent review was set at the end of the second year and even though Scottish and Newcastle's own code of practice stated that "this means a tenant will FULLY benefit if they exceed the FMT" they decided (and continued to maintain) that the rent review should be based on the turnover at the time.

In short the initial rent model was completely wrong (all in the Pubco's favour - Wages ridiculously low, profit margins far too high, maintenance costs understated, F&F devaluation not included etc etc) which meant the business was not viable at the time. I invested huge amounts (over £150k) into the business/property but now rather than just re evaluate the mistakes made in the business they wanted to value it after 2 years of hard work and investment. Add into this how tardy S&N was with repairs and you can imagine my frustration.

I have all of the paperwork but time and time again S&N accepted the figures and information they liked and completely disregarded the bits they didn't. Apparently F&F is a balance sheet item (a 1st student in accounting would laugh at this let alone someone with a full working knowledge of business accounting). The wage figure given straight off the payroll was reduced but no reason given. All of this was done to massage an imaginary profit figure which produce the desired rent. I don't blame the employees as if you give someone the tools to do a job and reward them based on the amount of money they charge a pub, they are obviously going to do this. Of course results are required to keep a job and put a roof over their head.

Pubco's will defend the rental model system by saying they are just an estimate of how someone could run the property, they are based on the average operator and they are not a guarantee. Dig deeper though and all these comments fall apart. The rent model is used to set rents which are then used in a lease. If the system is wrong then so is the lease. They do provide a guarantee BUT only for the Pubco in the shape of rent.

The most bizarre part though which no one can ask is who or what is the concept of FMT based upon? We are told it is an average operator. BUT WHO IS THE AVERAGE operator? What mathematical equation is being used to determine this? What figure are being inputted in? In my experience the FMT is simply a figure plucked out of thin air by an employee of the Pubco who has a clear interest in overstating this. On that basis alone the system is flawed.

Then there is the question of whether the rent model matters and how it is used by the Pubco's. BDM's use the document as a marketing tool. Look at any Pubco's website showing available sites and the show "potential profit". For someone like myself who had no experience in the industry there is a general acceptance of the figures provided in a rent model document because they are coming from a large organisation with in most cases a long history of running pub firms. Even the "recruitment" process is set up to enhance this. You don't go to a viewing like you would if you wanted to lease a shop premises. You go to an interview to see if you are the "right type of person". It is all very clever marketing as you are rail roaded into accepting figures because (and this is probably the most used phrase a BDM will ever say) the pubco has "Lots of other people who want to take on the pub".

Pubco's also leverage their price increases based on the tie/discount model. For example a letter comes out every year to show what percentage the drinks that pubs are obliged to buy have increase by. But this percentage is set on a wholesale price. Most pubs have a "discount" that is a fixed monetary amount (in my case £125 a barrel) but because this is fixed and doesn't get increased the effect of a 5% increase is really an 8% increase. I do not have the resources to do this but it would be interesting to see whether a tied operator has a greater percentage increase than a freehold operator because if they do it is the most blatant abuse of a monopoly position and questions whether a tie is actually legal.

I could write a book about all the things that Pubco's do (or don't do) but I do not wish to take more of your valuable time when such an important issue is at hand. I would ask you to give serious consideration to

- 1) Whether FMT is anything more than marketing concept.
- 2) Whether the Rent model itself has any place in business. And if it does should Pubco's be held accountable for the figures produce if they are later shown to be completely inaccurate.

- 3) Whether F&F devaluations should be factored into a divisible balance rent model.
- 4) Whether a Pubco can maintain that a lease is legally binding if they do not carry out the repairs it states they should.
- 5) Whether leveraging of beer price increases results in a ever increasing disadvantage to tied tenants and as such is the abuse of a monopoly position. If so is the practice legal.

Finally I am quite happy to support all of the above points with facts, figures, emails and letters because I have only prevented what would have been a financial meltdown by fighting every day against the Pubco and even still that only prevents me going bankrupt. It certainly doesn't result in a decent wage or fair balance of profit which I was sold into. I am trying to get out of my lease at the moment simply because the reward is not worth the risk, the effort nor the investment and if I had the time I would campaign to better educate prospective new tenants about the pitfalls of dealing with Pubco's.

Thank you for your consideration of my opinion.

Kind regards

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