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Dear Sirs

**RE : PUB COMPANIES AND TENANTS - A GOVERNMENT CONSULTATION**  
**Consultation beginning 22/04/2013, closing 14/06/2013**

I refer to your Public Consultation and am pleased to respond to your questions herein.

I am a publican of a tied pub in . I was tied to Enterprise Inns but they sold their interest to Fullers Smith and Turner brewers ago.

A deal had been agreed between Enterprise Inns and I but at the last minute they changed their minds and decided to sell to Fullers bizarrely at a marginally lower price, around £ less. Whilst disappointed, I assumed I may continue to trade under the same conditions, however within days of acquisition Fullers restricted my range of beers available under the tie and the trade I had developed was obliterated within a few months.

The problem was that I had spent several years bringing the pub back from the brink of business failure by investing a large amount of time and money but also learning what my clientele wanted and enjoyed. We had six beers on regularly, well known and popular brands, (a local micro brewer), all supplied by Enterprise Inns. When Fullers took over they limited my beer range to Fullers products only (I could have a guest ale off their limited list if I bought three of their brands). My customers are on the whole mature and affluent and do not enjoy being told what to drink. We trialled the Fullers range with a very poor reception, their only popular brand being London Pride. I now serve London Pride only as the other beers are so unpopular I end up pouring them away as slops, My remaining hand pull pumps remain vacant.

This of course is damaging my business and if it were not for the support of my loyal customers, and food and wine sales, I would surely be bust by now.

Fullers have made no secret of the fact that they want the pub back as a managed house and it seems this restriction of my beer choice is simply a manipulation of the terms of the tied agreement to drive me to financial collapse.

of Independent Pub Confederation has sought to broker a compromise and even [MP] has sought to mediate, however, the Fullers executive have on their original agreement to meet and a year on I am still struggling by wit hone beer. Loyal as they are I am now losing customers.

has assisted me in the preparation of this submission, we have talked at length and considered your consultation proposals he says keep it simple. I have to say it is obviously lacking as none the proposals resolve the clear exploitation of lease terms that Fullers are employing to their advantage driving my pub into unsustainably.

I know for a fact I am not the only Fullers lessee suffering under these tactics and unless your statutory code seeks to restrain such behaviour the horrors of the industry will prevail. the is under similar pressures and the has already folded and handed back the keys (now a managed house). Enterprise and Punch get much of the bad press as they are huge companies with thousands of pubs but you must be under no illusion the brewers are just as bad.

I gather even if you do implement the free of tie option as overwhelmingly sought by licensees it will not apply to the likes of Fullers therefore you must also act and seek to outlaw unfair contract terms in tied agreements.

Yours sincerely

## 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.

It should be binding on all pub owning companies operating the tied tenanted/leased model (INCLUDING THE SMALL FAMILY BREWERS). The intention is to deliver fairness - why should they be absolved this responsibility ?

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?

Again all models that involve the tie should be bound to be fair. If franchises are covered by the British Franchise Association and Government are satisfied that their regulatory standards deliver this then fine, if not then pub owning companies using this variation on a theme should also be bound to the statutory code.

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 consider tied agreements would remain and revert to their original intention - a mutually beneficial relationship. The free of tie option is essential to force this change and I notice is not present in the proposed draft code, it needs to be otherwise you are wasting your time.

Q6. What are your views on the future of self-regulation within the industry?

There is no intention to actually self regulate. The fact that Fullers have a representative deep in the self regulatory process yet use the lease terms to restrict my beer selection and drive me out of business is indicative the fact that they intended to maintain control of the regulation, fool Government into not acting and continue to manipulate the system to their advantage along with the pubcos and other brewers. You can see why licensees see their behaviour as Cartel like.

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*

Yes

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

Yes

Behaviour such as that I am experiencing can not be controlled by a formula - Fullers and the like have to know that they risk losing the tie all together if they do not act fairly.

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?  
Yes

As previously mentioned a free of tie option is needed.

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?  
YES

If the statutory code were to have one clause only, this should be it and it would resolve a multitude of the side issues.

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?

They should both be in one as a threat the other as a mechanism of measurement.

Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?  
Yes

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

Adjudicator should have power to consider whether terms are fair and if not strike them out of agreements. Leases and tenancies have a provision that if the tie went then the pub owning company is entitled to a rent review so this is an eventuality tyhat has not only been considered but provided for in agreements.

*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