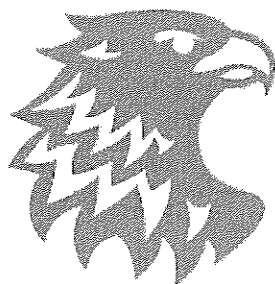


Pub Companies and Tenants:

A Government Consultation by the
Department for Business Innovation & Skills
June 2013



CHARLES WELLS
BREWING & PUBS SINCE 1876

Submission by Charles Wells Ltd
June 2013

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1. Introduction

Established in 1876 by our eponymous founder, Charles Wells is a family owned brewery and owner of 210 pubs run on tenancy or lease agreements. We are based in Bedford and run the largest independently owned brewery in the UK.

Our heritage is vitally important to us but we don't let it get in the way of progress. Constantly modernising, we listen to feedback and build on the experience of almost 140 years to improve the way we do business. We understand that we can only be successful if our licensee customers are successful and therefore do everything we can to help them build sustainable and profitable pub businesses.

When Charles Wells established the company, he demonstrated his responsibility to his neighbours by bequeathing a well to the town, ensuring a ready supply of fresh water. In the same spirit, we recognise that we have responsibilities to our trading partners and the local communities in which we work. We are also active members of a number of industry bodies including the British Beer and Pub Association (BBPA), the British Institute of Innkeeping (BII), the Association of Licensed Multiple Retailers (ALMR) and the Independent Family Brewers of Britain (IFBB).

We are committed to managing a sustainable and enduring business and over the last two years our total investment in pub properties has been £ m. We have also invested in the premium ale category through our advertising of Bombardier beer. This has helped to raise awareness of traditional English beer amongst a different drinker profile and driven new customers into pubs to sample ale. This was made possible by the guaranteed supply we have through the tied trade business model.

Charles Wells makes a significant impact on the local economy, directly employing over 350 people. Additional jobs are created in the pubs and associated industries such as farming and raw materials, logistics, other retail outlets etc

We have always met the expectations placed on us by the industry, being one of the first to have a compliant code of practice accredited at each round of the Industry Framework Code (IFC) development and have actively encouraged licensees to seek information from the advisory services available to ensure the information we provide is honest, fair & transparent at all times.

Since the introduction of the IFC in 2011, we believe that there has been much progress made across the industry. We are already facing heavy taxation (in 2012, our tax obligation equated to % of turnover) and are concerned that the introduction of a Statutory Code will result in additional costs and regulatory burden. In turn this would be likely to reduce our investment in properties and support services and result in a less-well invested pub estate and licensees.

We know that the IFC has had a positive impact on the trade and believe that it would be damaging to introduce a Statutory Code without having the chance to fully analyse the benefits of the voluntary one.

The business model of a brewery tenancy still offers a low-cost entry into running their own business for a large number of people. It's therefore important to have a range of different agreements to choose from so that prospective licensees can weigh up their options against their investment funds, their experience in the trade and select the most appropriate pub operating agreement for them. We have a number of case studies and testimonials (See APPENDIX) in which our licensees have explained why the brewery pub tied tenancy works for them and it's important to keep this option open for their successors.

We strongly oppose any proposal for a free of tie option in brewery agreements, and would point out the acknowledged benefits of the tie referred to in the last enquiry. In a response to the House of Commons Business, Innovation and Skills Committee's tenth report of session 2010-2012 into pub companies, the Government recognised

that, particularly in the case of the traditional tenancy model, the tie plays an important role in safeguarding the future of Britain's smaller breweries. Acknowledging that the traditional tenancy model not only provides a low cost entry for a licensee wishing to open a pub but also offers a low cost/low risk exit, as neither the freehold nor the lease need to be sold on, the response also recognised that the tied model may be essential to the preservation of small British brewers and local beer, as well as British businesses and jobs.

As such, we are aligned with the response to this consultation from the British Beer & Pub Association (BBPA) and the Independent Family Brewers of Britain (IFBB) proposing that self-regulation be given further time to show its effectiveness.

[See separate responses from IFBB and BBPA]

2. Executive Summary

2.1 Tenancies and Leases

In the last nine years, our industry has faced four separate Select Committee enquiries (2004, 2009, 2010 and 2011). The beer tie enquiries have specifically reviewed the long Fully Repairing and Insuring leases (FRI) that are common amongst the larger pub companies that do not have an association with a brewery and which were established after the national brewers were broken up by the Beer Orders of 1991.

In response to the House of Commons Business, Innovation and Skills Committee's tenth report of session 2010–2011 into pub companies, the Government recognised (Nov 11) that, particularly in the case of the traditional tenancy model, the tie may play an important role in safeguarding the future of Britain's smaller breweries.

In that report it was concluded that the traditional brewery tenancy is fundamentally different to the long FRI lease market and that the latter should be governed separately, with a strengthened code of conduct.

The report acknowledged that the traditional tenancy model not only provides a low cost entry for a licensee wishing to run a pub but also offers a low cost/low risk exit, as neither the freehold nor the lease need to be sold on. In addition, the fact that the costs of property – repair, insurance, maintenance and improvements – are borne by the brewer significantly reduces the risk profile. Long term decisions about the property can be made without short term risk to the tenant.

We firmly believe that our tenancy agreements are fundamentally different from those lease agreements facing scrutiny with the latter carrying far greater risks and capital requirements; however our business model offers the opportunity of enjoying a high rate of return on a limited amount of capital invested.

2.2 SCORFA

Whilst many pub company detractors focus only on property rents and drinks prices, our tenancy and lease agreements and code of practice demonstrate that there are so many more factors to consider in a Charles Wells brewery tie. The SCORFA (Special Commercial or Financial Advantage) benefits associated with running one of our brewery pubs form a significant part of our working relationship with licensees and offer support which would be difficult to achieve for a free of tie operator.

Our traditional tenancy differs from the more straightforward commercial lease, as we have an active role in the successful outcome of the business. SCORFA illustrates the financial element of our input to the traditional brewery tie partnership.

2.2.1 SCORFA benefits take many forms but may be characterised in the following ways:

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We make a significant investment in the purchase, development and maintenance of our traditional tenanted premises and this varies from building extensions to new kitchens and sewage treatment plants.

We are actively involved in the licensee's pub business as we know we can only be successful if they are.

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2.2.2 Other areas of SCORFA that should be considered:

Our brewery pub rents are substantially lower than free of lease rents. In accordance with version 6 of the Industry Framework Code, our tenancy rents are not subject to an upwards only rent review, which is a standard feature of a commercial lease.

2.2.3 In addition to the services above our brewery pub licensees enjoys further intangible benefits which are not available to commercial lessees:

- Peace of mind: The traditional pub tenant is not bound into a fixed term. If, for whatever reason, they wish to give up the tenancy, they can do so upon issue of notice without financial penalty and with a guaranteed purchase of stock and inventory
- The traditional tenant will enjoy a personal relationship with Charles Wells as their brewery partner

2.2.4 We have calculated that the average level of support Charles Wells provides per pub per annum through the benefits afforded by SCORFA is £

2.3 The Industry Framework Code

We believe that the IFC provides a strong platform for self-regulation in the industry, with common ground among pub owning companies and operators. We have a comprehensive code of practice in place and haven't experienced any issues which have required the services of the PICAS/PIRRS arbitration services.

The intention of the IFC was to provide a framework for open and transparent business transactions, specifically the agreement by both parties of rent. It has achieved this aim and we now have a better system of regulation than previously. Rent setting systems, including the shadow P&L have been reviewed and tightened up.

2.4 A Statutory Code

The Government says it is committed to a free market, and to reducing the amount of Red Tape. If that is the case why is yet more legislation being considered without a detailed investigation into the allegations of unfairness, particularly since the voluntary code that was requested by the BIS Committee has now been put into place following a lot of hard work and cooperation within the industry.

In the past ten years we have been subjected to five enquiries and two OFT reports. In each and every case the fundamental principle of the tied business model for public houses has been supported both in the UK and in Europe through the 'Block Exemption'.

Along with our fellow IFBB members, Charles Wells would currently be below the threshold proposed of 500 pubs. However it is proposed that the Secretary of State be allowed to amend that level and that is a concern to us. We firmly believe that any alteration to the threshold should only ever be carried out through a Parliamentary Bill or equivalent and not on the whim of the Secretary of State.

We feel that it would be better to place the existing code on a legal footing, which the industry believes has already been achieved, and strengthen the options for appeal for long FRI leases.

For many licensees, sadly, the years of recession between 2007 and 2010 were too much for their businesses. High taxation, cheap beer in supermarkets, behavioural change by consumers and simply escalating costs of doing business all played a part. A statutory regulator would not have saved those businesses.

3. Responses to Questions

3.1 Introduction

[See separate BBPA and IFBB responses]

Our responses to the specific questions asked are aligned with those submitted by the BBPA and IFBB. We do not believe that the evidence supports the needs for a Statutory Code and Adjudicator but reflect the opinion that if a Statutory Code is implemented it should be light-touch, cost effective and not materially distort competition.

Rather than repeating information submitted by other representative groups, we are providing some specific points that Charles Wells Ltd wants to emphasise and which should be considered in conjunction with the IFBB submission to which we are signatories.

3.2 Self Regulation

Self-regulation ensures that potential licensees have to undertake suitable pre-entry training, financial and legal advice before taking on a pub. We impose these stringently and go above and beyond the requirements of the IFC to ensure that prospective licensees are made fully aware of all the implications before signing an agreement and seek expert advice at every stage of the negotiations.

At Charles Wells, we have implemented the revisions of version 6 of the Industry Framework Code and will be incorporating these into our revised Code of Practice that is provided to all prospective and existing licensees.

3.3 Scope of Statutory Code

We believe that self regulation is working and negates the need for a Statutory Code. However, if such a code was to be introduced, we would support a leased/tenanted pub threshold of 500 pubs (subject to the caveats surrounding distortion of competition). The Code should only be binding on those leased/tenanted pubs owned by the company and not include managed houses.

3.4 SCORFA – Special Commercial or Relevant Financial Advantages

Introduced in 1984 by the European Union in Regulation 1984/83, as part of the Block Exemption regulations, SCORFA represents, in essence, the commercial, financial or other advantages that the tenant or lessee receives when taking on a tied agreement.

We have reviewed the support offered to our licensees, which contributed to being named The Publican's Pub Company of the Year (200+ tenanted/leased) two years running and being highly commended in the third (2009–2011). This high level of support has attracted record numbers of prospective licensees to apply for a Charles Wells brewery pub as they recognise that they have the best of both worlds in running their own business and reaping the rewards available whilst sharing the risk with a collaborative pub company partner. Taking into account the different elements that make up SCORFA (see section 2.2) we estimate that the average value of SCORFA benefits available for a Charles Wells brewery pub licensee equates to £ per pub per annum. The SCORFA value that licensees will take advantage of varies from pub to pub, but they will all receive a part of it and the full value represents significantly higher levels of support than could be acquired through, for example, individual negotiations for free of tie beer, gaming machine provision etc.

3.5 Beer Tie

We already offer a number of different options for our licensee customers to acquire guest beers to provide the variety their consumers are looking for. A minimum of three beers from other companies are offered each month, with the choice available complementing our existing range and ensuring their reputation for quality ales is maintained. Licensees are also able to select beers out of the tie under a corkage scheme – effectively charging a small premium in recognition of having a free of tie option. These measures enable a wider range of beers to be available whilst protecting the traditional brewery pubs route to market.

We believe that if an overarching free of tie option was introduced, the bigger producers would be able to offer the most competitive prices so, rather than opening up the market, would, in fact, result in less choice and domination by the big brands. Thus reducing the opportunity for smaller regional and micro brewers that the proposal claims to support.

4. Conclusion

Following consideration of the above Charles Wells Ltd, as a member of the IFBB, would request that the following points are taken into account:

- We do not support the introduction of a Statutory Code and adjudicator on the basis that self regulation has already made significant improvements. There is a will and determination to continue this work and this should be allowed to deliver on behalf of an already battered and beleaguered industry.
- If a Statutory Code is introduced we would support a 500 tenanted/leased pub threshold on the strict condition that it does not lead to a material distortion in competition above and below this threshold. The current proposals to abolish the machine tie and offer a guest beer (which could be a pub's best-selling lager) would materially distort competition.
- Any future alteration of the minimum threshold above which the Code would apply should only be introduced through a full parliamentary Bill or equivalent and not just by the Secretary of State.
- Much of the consultation is flawed, misrepresentative and at times misleading. For example it claims that there have been over 400 complaints to the Bill when in fact there have been 400 enquiries.
- There is no evidence to show that self-regulation is not working nor indeed that a Statutory Code would work.
- The impact assessment includes a number of inaccuracies as outlined on pages 6, 7 and 8 of the BBPA response.
- We have never been to arbitration and already treat tenants fairly. Traditional brewery tenancies are a proven and successful business model that has survived the test of time evidenced by research carried out by Elliott Marketing & PR.
- 3.11 states "The Government's aim is to regulate proportionately". We would argue that this is a contradiction in terms and history suggests that it is a very difficult balance for Government to strike when introducing new regulations.
- Any intervention in the industry at the end of the day is likely to be paid for by the consumer. Is that really fair or a desired outcome?
- The questionnaire that accompanies the Consultation Document is in our opinion very biased and the fact that a Government Minister interviewed on video is featured on the Consultation web page using emotive language and inaccurate data leads us to believe that the outcome of the review has already been pre-judged by those most closely involved with this important issue. We believe that the Ministerial interview, as well as parts of the Consultation Document and the questionnaire are in clear breach of the Market Research Society Code of Practice designed to ensure fair and open consultations.
- The introduction of a Statutory Code:

- Risks further costs and regulatory burden to an industry already beset with heavy taxation and compliance costs. We do not want or need any more regulation and must be better off without it.

The percentage of tax paid in relation to our turnover for the year to September 2012 was over 10%. We are wholly reliant on our pub licensees being successful so work closely with them to achieve this but if further administrative regulation and cost is imposed on us, the additional financial burden means we simply won't be able to offer the same high levels of support that have attracted them to running a Charles Wells brewery pub in the first instance. And this goes against the model we have worked to for nearly 140 years and moves away from the partnership working that helps deliver profit for both parties.

- Including a mandatory free of tie option will unquestionably distort the market leading to uncertainty, further job losses as well as reduced investment in pubs and consumer choice.

We have invested over £1m in our tenanted pub estate in the last 2 years and helped create jobs in a number of local areas. Does the Government really intend to risk jeopardising this investment?

- Will lead to damaging, unintended consequences such as higher costs for those companies using the current Voluntary Code. We want to continue with a cheaper, more efficient Voluntary Code which is already working well.

In conclusion Charles Wells Ltd thoroughly rejects the proposal that a Statutory Code underpinned by a newly-formed regulator is a necessary or appropriate way forward. Indeed it would lead to many damaging, unintended consequences and the existing Voluntary Code should be given longer to work.

5. Contact Information

This submission is made by Peter Wells, Managing Director of Charles Wells Pub Company on behalf of Charles Wells Ltd.

For further information or more details, please contact:

Peter Wells

Tel:

Or

6 Appendix

Testimonials from licensees of Charles Wells Brewery Pubs

adds 11 boutique bedrooms from ashes at coaching inn: Industry veteran , who runs has added 11 boutique bedrooms to in a £500,000 joint venture with Charles Wells. The bedrooms opens in the week starting June and the new venue will officially launch on June. told Propel: "We suffered a fire in the staff house last summer and I saw an opportunity to convert the house to letting bedrooms to add to our existing five bedrooms. We have created 11 fantastic bedrooms, which will change the dynamic of the business particularly with the corporate market mid week. Charles Wells has been fantastic to work with and very supportive, in what initially was a major problem for . The company believed in me and the opportunity and I am looking forward to making the venue one of the most unique and successful country inns in the country. It has been a very successful trading country pub over the years with an average occupancy of 80% and I see this rate continuing with the extra deluxe rooms, which will also have a slightly higher rack rate."

in M&C Report story about taking a second Charles Wells Brewery Pub

"Our relationship with Charles Wells has been fruitful and enjoyable and our mutual understanding of what makes a great pub came to the fore when we independently identified as a potential development opportunity."

licensee recruitment case study

has run on a Charles Wells tenancy for the past four and a half years and is a strong advocate of the support he receives from teams across Charles Wells which helps him to drive his business forward , and he feels gives him real value from his tied tenancy. I says: "Although I do pay more for my beer with a tied tenancy agreement, the sheer level of support I have access to makes it worthwhile. I have expert advice readily available from all areas of the pub company and have a really open and collaborative relationship with my retail development manager. He knows as much about my business as I do, and I have the confidence to be able to approach him about any issues. At no point do I feel as though I am being 'managed', but instead that we are working together for mutual benefit".

During the past four years has accessed a range of central services, most regularly from the Charles Wells' marketing team who have recently helped him with his vision for a quirky way to present his menus. "I find it extremely impressive how approachable the marketing team are. It is refreshing to be treated as an individual and offered tailor-made advice and support from people who take the time to get to know your business, instead of just a standard response or template. When I came to them with a new idea for my menus they were so open and enthusiastic and helped me make it a reality. I know they must look after hundreds of pubs but they make you feel like you are their only priority and we have done very well out of the team over the years!"

The support has received from the Property Development team is another service he feels gives particular value to his tie. "It is a scary proposition to be completely on your own in the event of an emergency so the peace of mind of having a team of experts to call on who will sort out any issue, no matter how big or small is just so invaluable" says "The property team has also helped me to address some recent problems with

planning permission which I just wouldn't have had the time or knowledge to tackle alone and they were extremely passionate about fighting my corner".

As part as the pub's development Charles Wells has also supported [redacted] in extending his kitchen. [redacted] continues: "Obviously the financial contribution towards the extension was a benefit in itself, but Charles Wells also supported me throughout the work ensuring all legislation was adhered to and the project ran smoothly".

And it's not just projects or developments where [redacted] finds value in his Charles Wells tenancy. He explains, "I have access to beer and wine development experts who are extremely passionate and knowledgeable, training courses, cellar management specialists and also have a direct line into a customer services team and telesales team to place all my orders in one place. Charles Wells also provides a forum where I can get together with other local licensees to share best practice and experience and it's great to feel part of this wider group and support network."

licensee recruitment case study

[redacted] who runs [redacted] on a Charles Wells brewery tenancy enjoys her working relationship with the company. "I run a freehold pub as well as my Charles Wells tenancy and it's helpful to have a view from both pubs" said Denise. "Whilst my beer prices are more expensive at [redacted] I know that I have a team of people behind me and they'll help if I have any difficulties. If my boiler broke down tomorrow, for example, Charles Wells would send someone out to mend it straight away which is worth its weight in gold. And if things got so bad that I had to close whilst the boiler was replaced they'd be there to help me through. I've appreciated the honesty from everyone at Charles Wells as this helps me manage my business effectively and makes sure we can both work towards the same goal of running a successful pub."

[redacted], a semi-finalist of the 2012 [redacted] of the Year Award, doesn't want a pub company running her business for her, but appreciates the extra support and collaboration when she needs it. "What I do at [redacted] mirrors what I do at my freehouse and I've never been one to sit around and wait for someone else to do something. Charles Wells explained that they wouldn't invest in the pub until there was better evidence of its potential but that gave me a great opportunity to come in, start from a low base and develop the business from nothing. We set about doing some simple redecoration and a project manager from Charles Wells came over to run through some ideas based on his experience and they also provided a chalkboard artist to help publicise that things were changing at [redacted]."

"Whilst I'd learned from experience at my first pub, I was impressed that Charles Wells offer the option for new entrants to spend some time in one of their other pubs. A new licensee can't understand how much of their life will be taken over by their business so mentoring is a great idea for anyone who wants to find out more before taking the final plunge. And it was good to know that the business, marketing and finance plan I had to complete before Charles Wells would consider me for a pub was taken so seriously. Their Business Support Manager pointed out a number of areas for us to review together and helped overcome some of the issues that could impact on my business further down the line – with my first pub, for example, I set the prices too low and then struggled to get them up so I found it a breath of fresh air to sense-check my business planning with another expert in the field at such an early stage."

And whilst [redacted] uses her [redacted] membership for networking and advice purposes at her freehouse, she also enjoys being part of the Charles Wells licensee 'gang'. "Nobody babysits me but I know there's support available when I need it" she commented. "I see my Retail Development Manager regularly, technical services helped get the bar set up, I've had advice on wine development, received some second hand kitchen equipment to see me through the first few weeks and I sent my Manager on the CRISP induction course. Despite the fact we're both experienced operators, it was an extremely valuable course and we picked up a lot of really good ideas. It was also the start of networking with other licensees and the Charles Wells round table discussions are another really good way of sharing best practice with other operators as well as talking through issues with the directors. And it's great to

know you're not alone so if you want to get advice or sound people out about ideas, it seems my fellow Charles Wells licensees are just as ready to help as the company itself."

licensee recruitment case study

and had always run their own businesses, including coffee and juice bars and renovating property, but always dreamt of running their own pub.

In 2006 they took the plunge at and set about giving the pub a new lease of life, replacing flooring, windows and the electrics, refurbishing the interior and installing a heated canopy.

In 2009, they were told that their pub had been bought by Charles Wells and were immediately afraid of the unknown. However, in the first month, they saw all the Board Directors and were invited to the Charles Wells brewery in Bedford to meet other members of the team. Their Retail Development Manager was on hand to talk them through the changes and despite their suspicions, began to see that the company could add some real value to their business.

Shortly afterwards, started to look for his own business and they felt confident enough to discuss a second pub with Charles Wells. "They were very honest about commented "as it was in a bad state of repair. But we both knew it had great potential and that we could build a successful business together."

After just two months of getting to know Charles Wells, the family took tidied it up and opened as a bar only. Three months later, it closed for a two month refurbishment with considerable support and investment from Charles Wells. "We had to restore rotten floorboards, rewire, plaster the ceiling and replace whole joists" said "as well as developing the look and feel of the pub. The Charles Wells team was fantastic and swung into action like a well oiled machine. We had honest conversations about how it should look and kept the success of the pub and what our customer base would want as the prime focus. That collaborative approach made sure we got the best result possible and everybody benefits.

"Despite our initial reservations, it's been like a breath of fresh air working with Charles Wells Pub Company" said . "They're very efficient and nothing ever seems to be too much trouble for them. We see our RDM regularly and have met a lot of the support team but we're still finding out just how much additional help they offer. Their Wine Development Manager has recently helped us redesign our wine list and is helping with menu design and staff training and it's great to work with people across a number of business areas who make decisions and help develop our trade.

"Working with a family business has been a pleasant surprise and our relationship with Charles Wells is more like a partnership. They care about their property so invest in their pubs; care about the quality and choice of their beer range and react very quickly when improvements can be made. They also care about people – attended their five day CRISP induction and it was an excellent introduction to the industry, the company and how they work with licensees and we'll be taking advantage of additional training places they're providing for staff free of charge."

So, what is this family's assessment of Charles Wells? "Any misgivings we had at the beginning have been well and truly dispelled" said "Charles Wells has a far more personal approach than we ever expected and have made things as easy as possible for us to work with them. We were sceptical about the awards that they've won but now we know how efficient and supportive they are, we understand fully why they deserve their accolades." The couple have now taken a third pub, with Charles Wells and the relationship is stronger than ever.