



WH BRAKSPEAR & SONS LIMITED

PUB COMPANIES & TENANTS: A GOVERNMENT CONSULTATION

RESPONSE TO THE GOVERNMENT CONSULTATION

JUNE 2013

EXECUTIVE SUMMARY

WH Brakspear & Sons Limited has been in existence for over 230 years, and is now owned by JT Davies & Sons Limited, itself a family company established for over 130 years. We are a family owned and managed business with values that are aligned to our commitment to fair, transparent and lawful dealing with our tenants/lessees.

We operate a tied pub model and have done so since Brakspear was first established. The tied model enables a low cost and low risk entry and exit to/from the UK pub industry, and enables entrants to the industry to benefit greatly from the support and know-how of companies like ours. Tenants/Lessees benefit from special commercial or financial advantages (SCorFA), and we would direct the Committee to the work carried out by the Independent Family Brewers of Britain with Ernst Young on this subject. In addition, Brakspear is able to invest significant financial sums into pubs to maintain and enhance the standards and environment that British consumers expect from their pubs.

We believe that the Pub Industry has made significant progress in self-regulation over the past three years, and the introduction of version 6 of the Industry Framework Code with its support from the Association of Licensed Multiple Retailers is evidence of this. The creation of PIRRS and PICAS, alongside other established arbitration bodies (ACAS) and of course, the courts system; provide many options for disputes to be resolved. Yet another arbitration/adjudication body is not required, not to mention the additional cost for pub companies

We believe that the consultation paper and the ministerial interview accompanying it, is biased, uses less than objective language and data inaccuracies. In addition, we believe there is a flaw in the guest ale provision as drafted in the consultation. The limit of 500 pubs and the option of a free of tie choice will have unintended consequences for the industry.

If the statutory code proposals as drafted are adopted, we believe that (along with other family brewers and pub companies) we will be forced to change the way we operate our business, resulting in reduced investment, reduced support, reduced capital employed and, job losses and pub closures.

In conclusion, our industry has already suffered too much unwarranted Government and European interference over recent years and given the extreme pressure on business in this recession, we appeal to the Government to finally let our industry get on with trying to make a success of pubs in collaboration with our licensees as opposed to spending even more time grappling with yet more regulation.

SUBMISSION TO DEPARTMENT OF BUSINESS INNOVATION & SKILLS

Introduction

WH Brakspear & Sons Limited [Brakspear] welcomes the opportunity to respond to the Business Innovations & Skills Committee's call for evidence in their consultation into Pub Companies and Tenants

We are totally committed to fair, transparent and lawful dealing with tenants and lessees and all other business partners and against any abuse of the tied pub model. We are committed to self-regulation and an independent complaints panel for rents or any other aspect of the Industry Framework or individual company codes. We are also convinced that the tied pub model provides a material and significant net benefit to tenants/lessees, with a low cost entry to running your own business and commitment and investment from companies supporting a vibrant pub sector through an unprecedented and difficult economic climate.

WH Brakspear & Sons Limited

Background

W H Brakspear & Sons Limited was founded in 1779 and became part of the J T Davies Group in 2007.

J T Davies is family owned and was founded in 1875. The Board is chaired by Michael Davies whose son Tom is the Chief Executive.

Being a family owned company we take the long term view, and we are building a business that is recognised as being responsible, forward thinking and that makes us the first choice for hospitality champions thinking of running a great pub.

Currently we own 145 pubs located throughout the South of England which we let on either short term tenancy agreement of 3-5 years (76% of our estate), or longer term assignable lease agreements.

As well as owning pubs we are also the owners of the famous Brakspear beer brands that are brewed for us under licence at the Wychwood Brewery in Witney, Oxfordshire. Like our pubs, our beers are very pleasing to the eye and have a great reputation for the highest quality standards.

Our aim is to be the Pub of Choice for drinks, food, lodging and great atmosphere. We recognise this can only happen when we work closely with our tenants and principal suppliers.

Being the Pub of Choice means our tenants and Brakspear have the opportunity to be properly rewarded for our joint efforts while our customers experience a great time, every time.

Our pubs actively seek to build good relations with the communities that support them. We are members of the Independent Family Brewers of Britain (IFBB), the British Beer and Pub Association (BBPA) and the British Institute of Innkeeping (BII) we maintain an active involvement in promoting best practice in each of our pubs.

We also encourage all our tenants to become members of the BII through our subsidised first year membership scheme.

Our original Code of Practice that was accredited by BIIBAS in August 2010 sets out how we build relationships with existing and new tenants or lessees and what a tenant can expect from Brakspear. The Code of Practice has been revised to incorporate Version 5 of the Industry Framework Code and will be updated again to incorporate Version 6.

Our Business Model (The Tie)

At Brakspear we operate a traditional tenancy and lease business model, across all but one of our pubs. We have one managed pub.

Our tenancy and lease agreements typically provide for a full tie trading arrangement. However, we demonstrate a level of flexibility and allow based on commercial agreement, variations to a full tie arrangement.

We firmly believe that the tie arrangement benefits both parties to the agreement. Brakspear are able to buy, insure, maintain, and invest in the properties operated by our tenants, as well as providing many other additional benefits to our tenants. Such benefits include BDM support, marketing support, product promotion, commercial consultancy, financial advice and so on.

More generally, the tied system allows a low cost and low risk entry to owning and managing a business within the UK hospitality sector, and in addition, it enables a low cost and low risk exit from the industry if required.

Increasingly, Brakspear provides a level funding to potential operators, currently not available from UK banks and other lenders. This funding can be short term working capital provision, through to financing the business start up, including plant and equipment and fixtures and fittings acquisition and has also included funding for lessee's business development strategies.

The Current situation within the Pub Industry

Since 2004 we have seen five inquiries and two OFT reports into the tenant pub company relationship. In each case the enquiry has found in favour of the tie and therefore, we find it difficult to understand why there is the need for yet another enquiry.

Since 2007, it has been extremely difficult for many businesses in the UK, and the Pub Industry has faced much more than its fair share of challenges. The smoking ban, the poor economic environment, extremely aggressive pricing in the off-trade (notably supermarkets) and financial constraints on consumers have all created huge pressures on the Great British Pub.

The current rate of pub closures stands at 26 per week. Historically the trend shows that free of tie pubs are more likely to close than tied pubs, as recognised by the impact assessment which highlights a 5% closure rate for free of tie pubs between 2010 and 2012, compared to a 3.4% rate for tied pubs. In the same period Brakspear closed two pubs (1.3%) and sold three pubs to individual investors, one of which remains as a pub, the other two have subsequently closed and been developed.

We believe that the higher rate of free of tie closures is due to the less understanding nature of banks and property landlords, whereas we know that family brewers like Brakspear do have a greater understanding of tenants/lessees and the pub industry, resulting in a more flexible and supportive attitude in times of difficult trading and cash flow. There is no advantage to us to see good tenants/lessees suffer and leave our business as our success

is closely aligned. This is why we have increased the support available to our tenants/lessees during these continuing difficult economic times.

We believe that self-regulation remains the appropriate way to ensure that all parties are protected from any potential abuse of the tied model and that the business potential, level of support and respective obligations are fully transparent and offer a fair deal for all parties. This is evidenced by the numbers of cases going to both PIRRS and the more recently formed PICA Service. Whilst we recognise that Version 6 of the Industry Framework Code has taken longer than we had hoped or expected to produce it is very pleasing to know that the ALMR (Association of Licenced Multiple Retailers) have played a full part in its compilation and are now a party to it.

No tenant/lessee of Brakspear has felt the need to take a complaint to PIRRS or PICAS since our code of practice was accredited in August 2010.

The recent duty reduction on beer was a hugely welcome step for which the Chancellor was rightly applauded. However, failure to recognise the resilience and advantages of the tied pub model in difficult economic times such as these and the consequences of many of the proposals in relation to the Statutory Code is in danger of undermining this boost and are clearly counter to the Government's own deregulatory and growth agenda.

Brakspear Survey of Tenants

Contrary to the data set out in the Consultation, our own surveys of our tenant/lessees show that in the main those tenants/lessees are happy with the support services provided by Brakspear.

Our last survey was completed in Q4, 2012, and generated a response rate of 67%. Highlights from the report prepared by Elliot PR are as follows:

- 80% of respondents were happy with HO Support
- 69% agreed that HO personnel understood their business
- 89% of respondents are happy with their BDM
- 78% were satisfied with their BDM led business reviews
- 78% felt that their BDM understood their business
- 92% agreed that their BDM acted with honesty and integrity
- 77% of respondents felt that their BDM was innovative and generated ideas

Past BIS Committee Recommendations and Brakspear Compliance

We would like to comment on the actions Brakspear has taken to comply with past BIS Committee recommendations and gives some evidence of how we have assisted tenants/lessees during the continuing difficult economic climate of the past few years:

i. Code of Practice

Our original code of practice was accredited by BIIBAS in August 2010.

The Code applies to all tenants/lessees with a substantive agreement with us. The Codes are explained to all new tenants during our thorough recruitment process.

Tenants/Lessees are asked to sign to state that they have been taken through the Code of Practice. The Code of Practice is included in our Tenant Welcome Pack, is available on request and is permanently available on our website.

ii. PEAT (Pre-Entry Awareness Test)

All new applicants are requested to take the PEAT and we insist on new applicants to the Industry to complete the test. Experienced operators are not forced to undertake the test.

iii. Business Plans

Before taking a lease or a tenancy agreement, tenants/lessees are required to complete a business plan for their chosen pub.

We make all appropriate information available to assist in preparation of those business plans, and we always recommend tenants/lessees refer to their independent professional advisors. We also have a list of recommended accountants and business advisors who will be able to provide support where the tenant/lessee does not have one available. The Brakspear Business Development Manager (BDM) is also made available for valuable advice and further support:

iv. Long term leases

Brakspear do not enter into any long term lease agreement for our pubs unless it is reviewed and actioned/executed between our solicitors and the solicitors of the prospective tenants/lessees.

v. Rent Reviews and Letting Process

A shadow rent calculation is calculated and shared with the tenant/lessee at the initial letting of every pub, on a substantive agreement (a tenancy or lease agreement of 3 years or more).

Annual RPI rent reviews are considered on a case by case basis. At times of a high index (as in the last few years) Brakspear limit the RPI increase to an amount lower than that contracted and at times does not increase the rent at all.

Rent concessions are afforded to tenants/lessees where the pub operations are at a high standard but trading performance is not what it might be, perhaps due to circumstances outside their control such as changes to the local economic environment.

vi. Business Support

Over the last couple of years many family brewers and a number of pub companies have innovated to make their tenancies and leases more attractive to potential tenants and lessees. This innovation is required to ensure that those companies' agreements are competitive in the market place, in order that they might prevail in the pursuit of the best operators available.

Brakspear have many wonderful, attractive pubs in a great area of the country that have a focus on food, with a competitive rent level supported by many services offered to tenants/lessees. Services such as the following support tenants/lessees:

- Access to a highly experienced Business Development Manager (BDM) able to support the tenant/lessee in many ways. We currently have four BDM's supporting 145 tenanted/leased pubs with a fifth BDM joining within 8 week. We

believe that this will give Brakspear the lowest pub to BDM ratio in the industry of less than 30.

- Availability of a wide range of real ale including our own excellent ales that are supplemented by monthly seasonal ales, and the wide range of ales brewed by Marstons Brewing Company. In addition, on a pub by pub basis we allow products from other family brewers, and local micro brewers via the SIBA scheme.
- Other drink ranges include lagers from all the major international brewers, ciders from the three main cider producers, a range of over 1,300 wines, a vast range of spirits and soft drink product.
- Lessees enjoy discounts on all drink products
- Tenants are offered a variety of discounts on a case by case basis where there is a valid commercial circumstance supporting the need for a discount
- Our tenants/lessees benefit from our central management of property compliance tasks and the purchasing benefit from our purchasing scale.
- Investment in our estate (and tenants/lessees) was £2.5m last year, an all time high including an average of £8k per pub on external decoration and £3.5k on signage, every five years.
- Interior design advice from our employed interior design professional
- A single point of contact for all property repair and advice, provided by our own RICS qualified chartered surveyor
- Training courses
- Free rating and utilities advice
- Quarterly in house magazine with product promotions, other incentives and sharing of best practice
- Mystery customer programme

Many of the above services and benefits are not readily financially quantifiable however, we would point the committee to the work carried out by the Independent Family Brewers of Britain (IFBB) and Ernst Young with regard to Special Commercial or Financial Advantage (SCORFA), and to which Brakspear has fully contributed.

The Consultation Document and Process

Before answering the individual questions there are some key points, inaccuracies and assertions from the evidence-base and impact assessment we would like to highlight:

- The Ministerial Interview on the consultation website gives the perception that the tenant/lessee relationship with their pub company or family brewer is broken and does not exist in the majority of cases. This is simply untrue. The language used such as "unfairness and abuse" and "so many unfair practices " and "rough deal" and "over-inflated rent" and the implication that there is no culture of fairness and transparency whatsoever, sets out a false picture from the start of the consultation.
- The number of 'complaints' to BII highlighted in the consultation (400 in three years) were in fact calls to a helpline. We understand that the consultation committee has now been provided with the correct figures, and we request that they be adjusted. Other complaints noted are anecdotal.

- The Consultation suggests that the industry has not moved forward on self regulation. We would disagree that there has been no progress, the industry has moved a long way in the last two years and the latest Code was supported by the ALMR representing multiple licensee interests.
- ***“The tie gives an additional route of abuse”*** and being ***“tougher for tenants to know if they are getting a good deal”*** are simply assertions with no foundation as is ***“tied tenants are more likely to face serious hardship”***.

This is simply not true as the tied model protects tenants/lessees when trade falls and this is reflected by a greater proportion of free-trade pub closures as tied pubs. The same section states ***“The fair working of the beer tie is particularly important because of the hardship many publicans face including the possibility of losing their home”*** again is no different from the rest of the pub trade (or indeed anybody with a mortgage who loses their job).

- The language of this whole section is emotive, with little if any substance for the Government action then proposed. None of the above suggests the ***“proportionate regulation”*** which is the stated intention.
- There is no estimate of what will be a significant increase in costs of self-regulation for those companies below the 500 pub threshold proposed, if larger companies are no longer part of this (since 2010, self regulation has been funded by BBPA members at a cost of £4million).
- The consultation also proposes that there be a transfer of value from pub companies to tenants that would lead to increased investment in the sector. This would appear contrary to the reality today where the asset owners (the pub companies and family brewers) commit very significant amounts of capital expenditure on our estates each year. In 2012, Brakspear invested £1.9m equating to an average of £13k per pub in capital expenditure, and £5k per pub in revenue investment on areas such as property repairs, maintenance and statutory compliance.

It is extremely unlikely that banks will step in to replace the pub company's investment. The more likely scenario is a reduction in overall investment in the industry leading to increased pub closures.
- There is no assessment of the impact on family brewers and pub companies of the proposed guest beer provision, or loss of the machine tie. This would have a very material impact on companies and create a significant distortion of competition above and below the proposed 500 pub threshold. The loss of the machine tie is likely also to lead to a growth in criminal activity for gaming machines.

The responses to the questions below are predicated on the basis that we do not believe that the evidence supports the need for a Statutory Code and adjudicator.

RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

Q1. Should there be a statutory Code?

Brakspear do not accept there is a need for a Statutory Code even though Brakspear will not fall under the sanctions of such a code as we have significantly less than 500 pubs in our estate. We believe that self regulation is working and should be given more time, to further demonstrate this belief.

We support the working and structure of PIRRS (rent) and PICA-Service (breaches of the IFC) to ensure any claims relating to abuse of the tied model are properly and swiftly dealt with, at the least cost to all parties. Such services are not available in most other industries in the UK. Self regulation also now ensures that potential licensees have to undertake suitable pre-entry training, financial and legal advice before taking on a pub.

Version 6 of the Industry Framework Code is now in place. Our trade body BBPA spent almost a year in discussion with the ALMR and other representatives of lessees agreeing commercially sensitive changes to the Code. Brakspear will be proceeding toward revising our current Code of Practice ready to be re-accredited by BIIBAS.

A Statutory Code would also result in a two-tier resolution system with significant cost implications for all companies. This would put an inevitable strain on the voluntary system.

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.

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?

Brakspear does not agree, as we believe self-regulation is working and should be given time to demonstrate it is working.

We support a 500 leased/tenanted pub threshold, but on the basis that this **does not** lead to a material distortion in competition above and below this threshold. The current proposals which abolish the machine tie and offer a guest beer would materially distort competition between large and smaller companies with less than 500 houses.

A threshold of 500 pubs has other unintended consequences. Managed pub companies will be liable to pay for the Adjudicator under this proposal, despite the fact that they have none, or very few leased pubs.

The Code should not be binding on the managed houses within our estate.

The decision to include Managed pubs in the 500 calculation seems to come from a concern that larger pub companies could transfer all their pubs to a managed

division. Under the Landlord and Tenant act they could do this anyway and most have decided against it but this has to remain a commercial decision for the individual company to operate its estate in the manner it wishes to.

Finally, we believe yet another unintended consequence of the proposals is that a Company such as JD Wetherspoon who have no tenanted, franchised or leased pubs would be subject to pay for an adjudicator if Managed pubs are included as they have more than 500 houses all however are Managed units.

Q4. How do you consider that franchises should be treated under the Code?

We do not have any franchise operations within Brakspear.

If franchises are regulated under the British Franchise Association they should not be covered by any 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.

We do not agree with the costs and benefits stated in the consultation document regarding the impact the proposals will have on the pub sector but will leave those Companies with more than 500 houses to make their own case as part of this consultation.

We do however believe the impact of statutory regulation will impact on smaller companies with less than 500 houses as we will still have to maintain PICAS and PIRRS as part of self-regulation. There will be far fewer pubs now under this self-regulatory banner with costs remaining similar which will result in a much greater burden on smaller companies like ours.

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

As stated previously, we fully support self regulation within the industry, and believe great progress has been made in recent years with strong evidence that the system is working well. We are committed to ensuring that, despite Government intervention, the self regulatory system will continue.

We are committed to the Industry Framework Code and self regulation.

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

- **Principle of Fair and Lawful Dealing**

We are committed to fair, transparent and lawful dealing with tenants/lessees and all other business partners and stakeholders, and to stamping out any abuse of the tied pub model, as has been proved by the take-up of the self-regulatory system.

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

Firstly, we believe there is no such thing as a "Free of Tie" tenant/lessee who's Landlord bears the property risk without recharge to the tenant.

That said, to retain and attract effective licensees, we and other pub owners need to demonstrate that tied tenants/lessees are no worse off than free-of-tie tenants/lessees and we support further transparency in this area. Individual pubs are however unique and the proposed mandating of individual benefits (SCORFA) and linking to rent calculations is likely to be unwieldy, complicated and is not practicable.

It should also be noted that the rent of free-of-tie outlets are often set with a lack of knowledge regarding outlet performance and limited information due to the arms-length relationship between the lessee and the pub company. Free-of-tie rents will also be impacted by the economic climate, availability and cost of finance to purchase freehold premises.

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

- **Provide the tenant the right to request an open market rent review if they have not had one in five years,**
Agreed

- **if the pub company significantly increases drink prices**
We will set out in our Code of Practice when and how we can increase our prices, which are normally annually following the increase in supplier (international and national brewer) prices outside our control and the annual alcohol duty increase levied by the Treasury.

- **Or if an event occurs outside the tenant's control.**
We cannot agree to this without it being more clearly defined

- **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.**
We support greater transparency of SCORFA benefits which would highlight the key benefits of the tied model to prospective tenants and lessees at rent assessment time.

- **Abolish the gaming machine tie and mandate that no products other than drinks may be tied.**
We do not agree.

We believe the tied system serves both tenant and company well in that we keep a close watch on the quality of machine, the income and the need to change or improve the machine as income slows. We employ an independent consultant to deal with these matters who tenants can contact should they have any issues.

We have completely removed machines from the divisible balance on rent assessment.

We also believe that by only imposing free of tie on AWP machines on those companies with more than 500 pubs it will significantly distort the market place.

In addition, there is real concern across the industry that removing the tie would lead to criminal behaviour by small independent suppliers and that the Government would seriously reduce income as control over taxation and the collection of such would become unregulated.

- **Provide a 'guest beer' option in all tied pubs.**

Do not agree.

The 'guest beer' option is defined as 'the tenant should be allowed to purchase and sell one draught beer from any source'. This drafting, in our view, will generally benefit the major international brewers because it is likely that tenants/lessees will opt to 'guest' their best selling lager. This will hinder not only pub and beer brand owning companies like Brakspear and Family Brewers, but also the local microbrewers across the country.

The consultation document justifies the inclusion of such an option by claiming 'it may be of benefit to both the tenant, consumer and independent breweries'. We would like to see the evidence to support this assumption and it would lead to competition issues where pub companies brew their own beer. We already offer a wide variety of choice for tenants within their existing supply agreements.

- **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.**

Do not agree.

There is no evidence presented in the consultation as to why flow monitoring equipment should not be used as part of the process to determine if a tenant is not complying with purchasing obligations.

Our Code of Practice clearly explains our use of flow monitoring systems, and the process we follow if there is a suggestion that purchasing obligations under the tie are not being observed. In addition, the route of appeal is highlighted in our Code.

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

We have dealt with a number of the issues raised by the proposed Code in answer to the questions above. We leave it for the BBPA to comment in more detail.

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 if a statutory code is forthcoming but at Brakspear we are committed to reviewing the self-regulatory system and think this should be on a on a 3 year basis.

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

No.

We do not agree that a mandatory free of tie (FOT) option should be included in the Statutory Code. A mandatory FOT option would have serious unintended consequences for the entire pub sector, a number of which are identified in the consultation:

- 'In the short term there will be higher costs as a result of lost economies of scale...these are likely to fall disproportionately on lower volume pubs...this may also lead to some pubs becoming unviable and closing', Brakspear have large number of small village pubs across the Thames Valley with low volumes.
- 'Choice is likely to suffer' as market could be foreclosed by large international brewers offering limited brands
- 'Removing the surety of the tie would reduce pub owning companies' incentive to invest'
- 'The impacts could include higher costs for consumers, the exit of one of the major pub owning companies and/or dominance of the market by large international brewers'

We would agree with the Government that the chances of the above happening are high. We also believe that consequences of losing the tie on a large scale would also be likely to include:

- Increased pub closures and subsequent impact on employment (both direct and indirect);
- A negative impact on pub sales and property value;
- Less people entering the sector;
- Less choice of brands in those pubs that remain for the consumer;
- Closure of breweries and/or breweries divesting their pub estates,
- Denying small brewers a (currently effective) route to 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?

None

We believe that the self regulatory system and SCORFA already delivers this.

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

Under the IFC, the PICA-Service already provides an independent conciliation and arbitration service for complaints around company conduct, and PIRRS for rent reviews which we believe is satisfactory and lower cost.

Q14. Do you agree that the Adjudicator should be able to:

- **Arbitrate individual disputes?**

We would point out that there are already a number of services that are available to tenants to arbitrate disputes:

- PICA-Service (disputes relating to breaches of the IFC)
- PIRRS (disputes relating to rent reviews)
- Via the court system over contractual disputes
- Other established arbitration bodies (ACAS)

And no further regulation is required.

- **Carry out investigations into widespread breaches of the Code?**

Investigations into breaches of the Code would have to be based on sound evidence, and specify where exactly the Code has been breached. Systems should be in place to prevent vexatious and speculative complaints being escalated, with the resultant time and financial cost of unnecessary investigations.

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:

- **Recommendations?**
- **Requirements to publish information ('name and shame')**
- **Financial penalties?**

The consultation contains no detail of appeals process for companies, recourse to such a system should be in place to prevent unfair decisions being reached.

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

We will leave this to the BBPA to respond in more detail. [See separate BBPA response]

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?

The Levy as proposed will be paid by pub companies covered by the Code, in proportion to number of pubs owned. However, this still does not address managed companies and FOT companies having, as proposed, to pay into the Adjudicator system despite having no pubs that are actually covered by the provisions.