



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

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): <i>Family Brewer Tenant</i>

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; because a Code of Practice is required as a first point of reference in case of query. The various versions of Self-Regulated Codes of Practice & Conduct, whilst not fully fair, nor expansive enough, have provided just that.*

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 strongly disagree; Any company with even as many as 20 or 25 pubs may be considered to be a sizeable and serious business (property values alone could be as much as £10m, and turnover could be in the region of £12m - £20m), and going 'under the radar' so to speak, may allow these businesses to profit through unfair practices and poor treatment of tenants. I believe that ALL tenancies should be operated on an equal basis so as to provide a level playing field for all competition.

Whilst 400 or more complaints may have been received in respect of companies owning more than 500 pubs and only around 50 complaints have been received at the BII referring to companies with fewer than 500 pubs or 11% of all complaints, this still represents a considerable amount of the complaints received. One should take into account an estimated number of complaints not made at all or not made to the BII, some of which may be due to intimidating circumstances. Further, one should consider if the number of complaints made via the BII is a reflection of a lack of confidence in this particular trade body, since they appear to represent the views and desires of the Landlord Pub owning companies rather than those of their tenant members, who do not enjoy a formal or structured form of representation outside of campaign groups.

Drawing a line at 500 will result in a high proportion of future complaints coming from those lessees where their landlords own less than 500 pubs, and may provide for an opportunity for further exploitation.

Take for example my own personal situation; We are a Tenant of Fuller Smith & Turner, a 'Family Brewer' with more than 360 pubs.

Firstly, there is little or no difference between owning 360 pubs or 501 pubs, both are a massive player in our market place.

Secondly, a brewer such as Fuller Smith & Turner is to all intents and purpose a 'National Company' and an Internationally recognised brand, operating its Pub outlets predominantly in the South East of England, a most lucrative area, that reaps possibly the greatest returns per pub. The density of Fullers Pubs in the South East is such that they compete equally with the bigger and even the biggest players in the country, and therefore should be treated the same.

Comment

We , took possession of our Pub Lease under assignment from a previous incumbent in , it was at that time an Enterprise Pub (on an old Intreprenuer Lease). All of our homework was conducted in the knowledge that we were taking our Pub Lease with Enterprise, because we could not account for every hypothetical eventuality. In , we received a phone call from Enterprise, advising us that they had 'Sold' our freehold to Fullers just 10 minutes earlier! We find ourselves considerably worse off under

Fullers than we did under Enterprise due new price lists being issued from Fullers and a restrictive list of beer choices. Each and every one of our beers became more expensive than Enterprise overnight.

This means that under any new legislation with a set limit of a number of Pubs existing, any advantage created for those tenants currently owned by the companies with more than 500 pubs can be dissolved over night. Family brewers might on the whole be a little fairer, or more pragmatic in their methods of dealing with their tenants, but this is no guarantee, nor does it apply automatically to all of them. Further, by removing or reducing the limit you may also eradicate the possibility of a company exposing a loop-hole in the legislation, though I note your plan to count the numbers from the 'Top Company'.

Please do not assume that 'under 500 pubs owned' is a rosy existence – it is not.

Opinion

Large family brewers, such as Fuller Smith & Turner, will most likely follow the main-stream legislation, because they will not wish to operate pubs that no one wants due to having the highest rents and highest tied beer prices. However, I believe to leave that to chance or, 'Self Regulation' is a dangerous move, their Pub Outlet Estate is worth in excess of £1/4 Billion, this IS NOT a small family brewer in the context that I believe is meant.

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? I am unable to make a well informed comment on this scenario.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. *The cost of the Adjudication panel & compliance estimated at £1.2m will filter down to the lessee's of some 20,000 pubs at a rate of some £60 per annum, disguised as a service provided – it will be very easily accounted for.*

The estimated £102m transfer from Pub-owning Companies to Tenants will be a welcomed amount for the tenants (a lifeline for many). However, it may be too little and too late for a large number too. Beware, that the Pub Companies WILL find a way to recoup this amount through new charges (see below), they will feel that they have no choice but to pull this back, mainly due to current share prices and continued industry decline, and they WILL recoup it from their Tenants.

Way's that will be considered to draw back £102m; (i) Cellar Services provided without charge up until now WILL end up as charges for equipment (lease / rental), and call out fees will undoubtedly be applied for service calls by engineers. (ii) Delivery / Transportation charges introduced for beer deliveries. (iii) Increases in the cost of compliance packages (iv) Increases in the price of beer for the Freehold Market trade. (v) Holding deposits on beer barrels. (vi) Charges for missing or stolen beer barrels. (vii) Charges for branded glassware and beer mats. (viii) Withdrawal of promotional assistance. (ix) Increased Dilapidations charges. (x) increased margins on tied Minerals & Wines (These should immediately be removed from the Tie), and no doubt many more that are yet to be invented.

The Pub Owning companies WILL NOT spend £102m without inventing ways to retrieve it and

will only retrieve it from the Lessee. You could at least divide the resultant transfer figure by two if not more.

Q6. What are your views on the future of self-regulation within the industry? *Current evidence concludes that it hasn't worked thus far, and it suggests that it is not likely to work in the future.*

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, and if adopted, 'Fairness' can only be determined through 'adjudication'.*

ii. **Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant** *I recommend caution with this benchmark condition. One only has to increase the price of beer and services to the Free of Tie market place in order to create an environment where the Free of Tie Tenant could be become no longer as 'well-off' as he may be considered to be today.*

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, but also that ALL tenants should be entitled to an immediate rent review within two years in order to re-align rents reviewed and set prior to the introduction of the new code.*

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, the two rental comparisons are essential.*

iii. **Abolish the gaming machine tie and mandate that no products other than drinks may be tied.** *Yes, the gaming machine tie must be removed. But ALSO, it should be considered imperative to remove the Tie on all Minerals, Wines & Spirits. These are purchased at ludicrously excessive profit margins and unrealistic prices, and yet ALL of these products are easily sourced through cash & carry outlets.*

iv. **Provide a 'guest beer' option in all tied pubs.** *Yes, I agree with this in the case of Pub Companies that are NOT brewers i.e. Enterprise, Punch and the like. (Whilst I would personally like to see this implemented I cannot view this as a fair option for Breweries owning pubs, who would naturally wish to sell their own beer, and other guest that they can provide through reciprocal arrangements, therefore I am suggesting that; All Brewery owning Pub Companies (UK Breweries) that can provide a constant stream of at least 10 real ales (not lagers and ciders) could be excluded from the 'guest beer' requirements.*

How will it be possible to account for the quantity of guest beer purchased, or whether the guest beer stock levels are constantly maintained, whilst attention to the tied beer stock might be minimised to ensure that it runs dry on a regular basis forcing the customer to purchase more of the guest beer and less of the tied beer. What will be the impact of the price of the guest beer (a potential for under cutting the tied beers) and therefore increasing the guest beer sales further. This will be a difficult provision to account for and police, and if it is a complex condition it may be riddled with loop holes on either side.

Take this scenario: A Star Pubs & Bars tenanted pub opts to purchase one real ale free of tie. It continues to be tied on all lagers, ciders and stouts. It chooses to sell only one brand of real ale, say for example Sharps (owned by Coors) Doombar, a brewer that does NOT own pubs, Sharps benefit massively and Star Pubs and Bars sell NO real ale through this outlet.

In my own case, a Fullers Pub (& providing they were included in the legislation), I would either elect to purchase Fosters free of tie (my biggest brand seller), and at the same time elect to no longer sell any alternative in this category i.e. Carling, which would also result in a further increase in Fosters sales, or, I would elect to purchase a real ale free of tie, such as Doombar by Sharps, as I know that this brand would compete excellently with London Pride (by Fullers), and I would at the same time reduce my offering of 5 real ales down to say 3 (one of which being my guest beer option), leaning more customer preference to my guest beer. Further, I would restrict sales of certain non-free of tie products at premium times and non policed times of the day / week ensuring maximum sales of my guest beer option, i.e. by simply turning the pump clip around on a Friday and Saturday Night and Sunday Lunchtime. Under current conditions, were I able to purchase a guest beer as described above (Sharps Doombar), I could easily engineer a route to save myself some £16,000 per annum.

The tie of certain products is not necessarily the problem here – THE PROBLEM IS the price to which ALL beer (and drink) products are inflated to account for the financial needs and greed of the Pub owning companies.

I concur that in non-brewery owning Pub Companies, that the full range of beers should be available either wholly free of tie or, fully tied for draught beer & cider products only two simple choices accompanied by two different rental options (fairly assessed of course). But the tied drinks MUST be provided also at fair rates

Two PriceTariffs should be provided publically (for all to see) by each beer supplier, proving the price that each and every 'customer' (tenant, free-holder, bar operator) can purchase for, under tied or free of tie conditions, thereby displaying the difference between the two or demonstrating the advantage of being tied vs FOT, and thus proving that a tied tenant will be "no worse off than a free of tie tenant" these prices should also be 'published' sales prices to Freeholders (i.e. non-rent paying pubs), because of the danger in a loophole that will ensure that "free of tie tenants will be worse off" than before the new legislation. Sales to ALL pubs should be made only from these two price lists for the sake of any ambiguity. This will be imperative for any calculation or review of the implication of being tied vs free of tie. As licensees we have been required to display a tariff visible to the public for years. We do not operate two tier price schemes for regular and non-regular customers!

I am not talking about controlling the actual price of beer products, but the transparency of the difference between the prices paid by Tied Lessees, Free of Tie Lessees & Freeholders. The brewers and pub owning companies will find their own price levels within their market place.

Furthermore, a Pub Owning Company or Brewer will need to declare the percentage that the physical rent represents in the overall targeted rent review of each rented pub in the rent review calculation. The balance of the rent it will be assumed, and calculated will be provided for through the beer tie. If sales of tied beers exceed requirements for the balance of the rent a rebate should be applied that benefits both the Pub Owner and the Lessee, say in equal share, thus providing reward (and motivation) for both parties for excellence in sales. Any shortfall,

would easily determine either the need for a rental reduction and / or realignment of the percentage of physical rent portion, and this would be triggered by an unhappy tenant who would most likely end up at adjudication or arbitration, which would also unravel further reasons for the shortfall. It would therefore find that the tenant was inadequate, or that the Pub Owning Company was heavy handed in its assessment of the rent.

Therefore, as sales increase rents MAY increase and as sales decline rents MAY decline.

EXAMPLE

In my own case, I pay an excessive level of rent, which in my opinion has not been calculated in a fair way (Rental £ pa). My beer sales have risen under my tenure from brewers barrels a year () to brewers barrels a year (). Under the tie I can generously estimate that we are paying £160 per brewers barrel more than we would on the open market today (£ pa), a combined rental figure of . years ago, prior to my tenure as lessee, the rent was at circa) and the barrelage was brewers barrels, giving a combined rental of . We work very hard for the extra sales, but gain little benefit from them. Our rent has been increased due to our successful sales (without any reward or motivation from our Pub Owning Company), and our 'beer rental' premium, or contribution made from the purchase of tied beer, has increased most significantly, and primarily to the advantage of the pub owning company. Only in controlling the differential between the Tied Prices and the Free of Tie Prices, and at the same time determining the two rental options (tied & free of tie) can we monitor the total rental contribution by each individual lessee, whilst at the same time rewarding over performance as well as under performance of the individual lessee, as well as the overcharging or under charging of the combined rent and beer.

- 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.** Only for as long as the product is considered to be inaccurate? If a tenant is contracted to a beer tie, he should be expected to be penalised for failure to comply, but only if the equipment can do the job that it is intended for – clearly the current equipment cannot.

Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? I believe that the only tied products should be Beer, Cider & Perry, thereby excluding soft drinks and minerals from the tie – what next, will there be tied requirements for a packet of crisps?

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 I agree – change is constant, and calls for constant or periodic review.

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? Yes, for non brewery owned pubs, in the case of brewery owned pubs, it is beer prices & market prices, and a combined total of the two, as described above, that need attention.

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? Beer prices need to be **fair** just as rents do. Published price lists and discounts need to be transparent. Risk and reward need to be considered & sales targets should be established to provide for reward in the form of volume discounts. Fair rental levels need to be established, and perhaps the only way to do this is by settling on a fully free of tie model. This will undoubtedly increase rents, but the rental levels will find themselves in a competitive arena and WILL settle at competitive levels as each Landlord Company vies for maximum occupancy of their premises, conversely these premises if unviable will close. This route will ensure that beer is sold competitively, and that the Tenant becomes a CUSTOMER of the Landlord for two products, Rent & Beer, and that the two will need to be treated separately.

Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code? Yes, if the Tie or partial Tie is upheld. If the Tie is abolished it may be unnecessary providing that a form of representation is founded for Tenants.

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? This is a very difficult one, I would lean more to III – the imposition of Financial Penalties in favour of the tenant.

II. Requirements to publish information ('name and shame') Yes, definitely, it is the only way in which the offender might reconsider its course of action.

III. Financial penalties? Yes, in favour of the tenant, with a proportion being applied to the cost of the Adjudication process.

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, and also by a small (proportionate) fee to the tenant on the principle that, if you have paid towards a facility, you may feel fully entitled and justified in using that facility. It will also preclude Landlord Companies from imposing even a disguised charge on the tenant to cover their own element of this cost.

The impact of such a levy will result in the Landlord Companies devising ways in which to pass on this cost to the tenant (see my answer to your question 5). There remains a number of services provided by Landlord Companies that are not individually charged for. The result of any such legislation must remain focused on the tenable maintenance of the pub industry (and with that the brewer) and the tenable opportunity for the tenant. And, at the same time needs to ensure that it does not impact on the consumer nor, play into the hands of the 'off-trade', particularly the supermarket outlets.

NOTE

Speaking from personal experience having operated our pub for years, I can say that good opportunities DO exist in the tenanted pub sector, but not for all pubs. We have operated a very successful pub for years, but it has taken considerable personal investment and rewards and margins have been slim. The risk and reward ratios are not as they should be. Furthermore no account has been given for the learning curve experienced in this industry which has undoubtedly come at considerable cost.

We are presently in the fortunate situation whereby , : have reached an agreement with us to purchase our lease back (surrender) for a fair sum – though it does not fully reflect the value which should be attributed to it, or would have been attributed to it in years gone by. It is nonetheless a mutually acceptable figure that has been agreed upon.

We will, be returning to this industry and are encouraged by the attention that this industry is receiving from the Government, and the efforts of those, determined to create a realistic and fair future for our industry.