



FULLER SMITH & TURNER

PUB COMPANIES AND TENANTS
A GOVERNMENT CONSULTATION

TO BUSINESS, INNOVATION & SKILLS
SELECT COMMITTEE

June 2013

**SUBMISSION TO BUSINESS INNOVATION AND SKILLS
COMMITTEE ENQUIRY 2013**

EXECUTIVE SUMMARY

Fuller Smith & Turner PLC have been brewing beer and running pubs from their Chiswick Brewery headquarters since 1845. Today we brew over 220,000 barrels of beer and run 386 pubs throughout the south of England. We are passionate about our people, our pubs and the tied business model. Our estate of pubs is made up of 177 Managed and 209 Tenanted houses all of which operate under a system that ties tenants to purchasing all of their drinks products from us.

The tied model revolves around the tie on drink products and takes its origin from a desire to sell our own cask ale beers at the finest quality possible. By buying pubs brewers such as Fuller Smith & Turner were able to produce and distribute quality beers to be enjoyed locally by their customers. The tied system offers a low cost of entry to running your own business with the majority of the risk being carried by the Landlord Company. The return on investment for the average or better operator however can be high.

The Consultation Document argues for a true free of tie option however we can state and provide evidence of the tied market being stronger than the free market. Since 2000 we have sold 27 pubs only one of which was sold de-licensed. The 26 we sold on the open market all became free of tie and of that number only seven remain trading today.

The Government says it is committed to a free market, and to reducing the amount of Red Tape. If that is the case we respectfully ask why the Government is now considering yet more legislation without a detailed investigation into the allegations of unfairness, particularly since the voluntary code that was requested by the same BIS Committee has now been put into place after an enormous amount of work by all sides.

The situation that the Government Consultation is seeking to change was caused by the Government's last wholesale interference in our Industry with the Beer Orders of 1989. The law of ill thought through consequences is in our view likely to apply again.

In the past 10 years we have been further subjected to five enquiries and two OFT reports. In each and every case the basis for a tied system for public houses has been supported both in the UK and in Europe through the "block exemption".

Version 6 of the Industry Framework Code has been worked on for nearly a year now and was finalised in the past two months. Individual companies are now strengthening their own Codes of Practice to meet the requirements of the new Industry Framework Code. Within in this new Code PICAS (Pub Independent Conciliation and Arbitration Service) was introduced and gave tenants the opportunity to take any grievances with their Landlord to an independent third party panel. Since its inception in August of last year only 3 cases have been taken to PICAS with a further 4 pending. This is hardly evidence of total dissatisfaction by tenants of their Landlord Company. The fact is 7 out of 10 (8 out of 10 at Fuller's) would sign another agreement with their Landlord a fact that in itself proves the majority are satisfied with the tied tenancy or lease they have with their Landlord.

Effective consultation must always be fair to both sides but numbers in the consultation document have been misquoted and in some cases are totally wrong and misleading and it leads the reader to believe there are hundreds of complaints being received about pub

Landlords. The truth is the BII helpline has received circa 400 inquiries but of these only about 40 cases have been rent reviews or live complaints about their Pub Company. That is 0.17% of the 23,000 tied or leased pubs in this country and can hardly be the reason why the Government can justify state intervention or the cost that state intervention would incur.

The questionnaire that accompanies the Consultation Document is in our opinion totally biased and the fact that a Government Minister is video interviewed on the Consultation Web Page and includes emotive language and inaccurate data leads us to believe that the outcome of the review has already been pre-judged by those involved. We believe that the Ministerial Interview, 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.

One of our biggest concerns is that whilst under the proposals we will not be covered by the Statutory Code as we have less than 500 pubs it will still in our opinion create an uncompetitive market place because of the changes that are proposed on those companies over 500 pubs.

The proposals as drafted would also mean that Managed Houses are included in the 500 proposal and we strongly argue that Managed House numbers should not be part of the equation as again this would distort competition between companies especially for a Company like Fuller Smith & Turner who might wish to increase their numbers of Managed units and be unable to do so without becoming part of the group of companies under Statutory Regulation. We are close to the threshold of 500 with 386 pubs yet our leased/tenanted estate stands at only 209 well below the 500 number.

We firmly believe if the Statutory Code Proposals as drafted are introduced we would be forced to change the way we operate the tied model. This we believe would result in reduced investment, reduced support, a reduction in Capital employed and ultimately to a large number of job losses both at pub and brewery level.

Self-regulation is working, all of the main and truly representative bodies including the ALMR are now party to the Industry Framework Code 6 (IFC) and we believe there is no need for change as under our own proposals we will review the Framework Code every 3 years.

In conclusion business of any sort is under extreme pressure in this recession, and we appeal to the Government to finally let our industry get on with trying to make a success of our businesses in conjunction with our licensees rather than spending even more time wrestling with yet more regulation.

**SUBMISSION TO BUSINESS INNOVATION AND SKILLS
COMMITTEE ENQUIRY 2013**

1. INTRODUCTION

In this report Fuller, Smith & Turner P.L.C. welcomes the opportunity to respond to the committee's call for evidence in their consultation into Pub Companies and Tenants.

2. HISTORY

Fuller Smith & Turner PLC have been brewing beer and running pubs from their Chiswick Brewery headquarters since 1845. Today we brew over 220,000 barrels of beer and run 386 pubs throughout the south of England. We are one of a number of successful independent family brewers who like similar independent companies in other industries are passionate about their people, their pubs and their business model.

The model revolves around a tie on wet products and takes its origin from a desire to sell our own cask ale beers at the finest quality possible. By buying pubs brewers such as Fuller Smith & Turner were able to produce and distribute quality beers to be enjoyed locally by their customers. As transport facilities improved so the distribution network has expanded to the present levels of production stated above.

Our estate of pubs is made up of 177 Managed and 209 Tenanted houses all of which operate under the full wet tied system.

3. THE TIE

With the security of the tie, Fuller's buy, insure and maintain the properties operated by our tenants. The tied system provides a lower cost of entry for a tenant setting up in business and creates new employment opportunities for entrepreneurs. As business increases or decreases the tied system allows for the financial impact to be shared between company and tenant thus decreasing the risk of failure and closed pubs. We welcome the fact that the consultation recognises that the beer tie has no detrimental impact on competition and consumer choice.

4. THE CURRENT SITUATION IN THE PUB INDUSTRY

Over the past ten years we have faced five inquiries and two OFT reports. In every case the enquiry has found in favour of the tie. We therefore do not understand what has changed to bring about yet another enquiry.

The past five years have seen an unprecedented period of change and challenge for our industry, the recession, allied with aggressive pricing strategies by supermarkets have put an enormous strain on the pub market.

Whilst, we have not been immune to pub closures we have only closed two houses in the past two years. Of these one was due to a fire the other due to a request by the Police in a difficult trading area. Overall the numbers of closures have been far greater in the free market (5%) than the tied market (3.4%) where banks and property landlords are less understanding than Family brewers like Fuller Smith & Turner. There is no advantage to us to see good landlords/tenants suffer and leave our business as our fortunes are so closely aligned. This is why we have increased the support available during these trying times to both tenants and lessees alike.

Further evidence of the tied market being stronger than the free market is that since 2000 we have sold 27 pubs only one of which was sold de-licensed. The 26 we sold on the open market all became free of tie and of that number only seven remain trading today.

In addition we wish you to understand that we have a number of free of tie leases operating under our Managed House banner the majority with institutional landlords. Occasionally because of changes in circumstances these leases become unviable and loss making. The institutional landlords who all operate in the free market are not interested in re-negotiating rents or giving any other form of help to alleviate our losses. They operate purely as property landlords and the problem and toxic debt lies with us. The three premises are now all boarded up with substantial rents still payable to the landlord. We wish you to understand that that is how a property landlord operates and as a Family Brewer who cares about its tenants and lessees is a position we do not wish to be placed in because we are forced to operate all our properties on a free of ties basis whether directly or as a consequence of statutory intervention.

We firmly believe that self-regulation is working and that this is borne out by the numbers of cases going to both PIRRS and the more recently formed PICAS. Fuller Smith & Turner have been fully involved in the drafting of Version 6 of the Framework Code and whilst we accept this has taken longer than we had hoped to produce we are pleased that the ALMR (Association of Licensed Multiple Retailers) have played a full part in its drafting and are now a party to it. We are also committed to meeting with the relevant parties to continually evolve self-regulation in the coming years.

No tenant or lessee of Fuller Smith and Turner has found a need to take a case to either PIRRS or PICAS under the current Code and only one or two matters per annum have actually been referred to the Tenanted Director.

Our biggest concern with the proposals is that whilst at present under the proposals we will not be covered by the Statutory Code as we have less than 500 pubs it will still in our opinion create an uncompetitive market place because of the changes that are proposed on those companies over 500 pubs.

The proposals as drafted would also mean that Managed House numbers are included in the 500 proposal. We strongly argue that Managed House numbers should not be part of the equation as again this would distort competition between companies especially for a Company like Fuller Smith & Turner who might wish to increase their numbers of Managed units and be unable to do so without becoming part of the group of companies under Statutory Regulation. We are close to the threshold of 500 with 386 pubs yet our leased/tenanted estate stands at only 209 well below the 500 number.

5. THE CONSULTATION DOCUMENT AND PROCESS

We believe much of the Evidence throughout the consultation document is at best weak and at worst a mis-representation of the current situation and we deprecate the fact that we have not been given the opportunity in the consultation documents preparation to provide evidence to the contrary.

We find it disturbing that the preparation of the Consultation document and accompanying surveys are at best a misrepresentation of facts. We also believe the online survey to be completely unfair as it does not allow tenants and lessees who support Fuller Smith & Turner

and the tied estate system to vote against many of the proposals set out in the questionnaire. It only allows them to **NOT** answer the questions.

As a general point we believe the questionnaire and the "Ministerial Interview" on the Consultation Website to be in breach of the Market Research Society Code of Conduct designed to ensure open consultation.

In particular we wish to point out the following:

- a. The word "complaints" is used when referring to the number of calls made to the BII Helpline. We are aware the BII have now sent you corrected figures and we ask that these now be adjusted in any future documents and particularly when talking to Government on the current position re PIRRS and PICAS's success.
- b. The number of cases that have actually been through PICAS since its formation last year is 3 with 4 more pending which may not all reach the stage of a hearing. The consultation document refers to 42 enquiries and again without adding the outcome of the 42 cases the consultation document completely distorts the actual position and leads the reader to believe 42 cases have been through PICAS.
- c. The consultation document infers that the industry has not moved forward a point we would strongly disagree with as we see the inclusion of the ALMR as a party to Version 6 of the Industry Framework Code as a major step forward.
- d. Whilst we believe actual evidence available has in some case been misrepresented on the contrary many anecdotal points of evidence are used as a reason for Statutory Regulation with no evidence at all to support the allegations. An example is the statement "there are other people (usually current or former tied licensees) which act independently and estimate they receive over 10 cases per week". If they are true cases and breaches of the Voluntary Codes why are these cases over 500 (10 times 52) in a year not represented in the case numbers going to PICAS (3 with 4 pending) and where is the evidence that we as an industry are always asked to provide to back these allegations up.
- e. A further point of what we believe is bias in the document is to take a survey question concerning the number of tenants that would sign a new agreement with their Company (7 out of 10) and turn that into the point the document makes that the remaining 3 would choose to go free of tie. This is a totally inaccurate and again in our opinion a bias conclusion. Our own survey of Fuller Smith & Turner tenants and lessees shows that 8 out of 10 would sign a new agreement and that the remaining two give reasons such as a career change or retirement as a reason for not wishing to renew.
- f. There is no consideration of the balance between risk and reward of the different parties in the consultation. Fuller Smith & Turner generally bears a much higher risk with the return on the asset achieved over a much longer period. A new tenant can and in many cases does achieve a significant return for a very modest investment.
- g. The impact assessment (section 33) contains out-of-date information. The pub sector published in February 2013 Version 6 of the Industry Framework Code (IFC) - not Version 5 as stated in the impact assessment. Version 6 of the Code is a major step forward from Version 5 as it provides greater transparency for tenants and lessee

6. FULLER SMITH & TURNER SURVEY OF TENANTS.

Contrary to data set out in the Consultation document surveys we have carried out of our tenants views show that in the main they are happy with the support services we provide and more importantly the tie and vastly reduced cost of entry. Lessees and Tenants who are on a substantial agreement (3 years or more) with the company were all included in the survey. Highlights from the last report where over 50% of our tenants participated were as follows:

And most importantly

In addition we hold regular open forums with tenants to find out how they believe we can improve our business relationships which has in the past two years resulted in us introducing a service package agreement, free wi-fi, free BII Membership and a free Mystery Shopper Programme. When signing up for the new service charge agreement tenants have also benefitted from higher discounts as well as ridding themselves of the arduous task of completing many red tape documents.

7. BIS COMMITTEE RECOMMENDATIONS AND EVIDENCE OF COMPLIANCE

We would now like to comment on the action Fuller Smith & Turner has taken to comply with past BIS Committee recommendations and give some evidence of the assistance we have been giving tenants during the difficult economic climate of the past few years.

i. Code of Practice

Our original Code of Practice was submitted to the BII in April 2010 and was accredited by BII BAS on the 3rd June 2010. This has been amended since this time to incorporate Version 5 of the Industry Code and we are preparing to update it once again to comply with the changes made in Version 6 of the Industry Framework Code.

ii. Coverage of Codes

The Codes apply to all tenants or lessees on a substantial agreement with Fuller Smith & Turner. The Codes were explained to each tenant who signed to say they had received the code. All new tenants receive the code as part of the letting procedure and it is permanently available to all tenants on our Extranet.

iii. PEAT (Pre-Entry Awareness Training)

We insist that all new applicants with the exception of anyone who has been in the trade for some years to undertake the PEAT qualification. We do urge the British Institute of Innkeeping to update the version of PEAT available to prospective applicants to incorporate changes that have been made since the original version was devised.

iv. Guest Ales

We operate rotational guest ales once per week which tenants are able to take the opportunity to stock providing they stock a minimum of three of our home produced ales. However, our own portfolio of ales is so strong only % of our tenants take advantage of the scheme.

v. Rent Reviews and the Initial Letting Process

Unlikely many other Companies we have capped any RPI increase : when the Index has gone above that level to help our tenants and lessees during this serious downturn in the economy.

We have also where appropriate reviewed rents with tenants and where a change in circumstances or a change in the economy of the local area has taken place rents have been reduced.

A shadow rent calculation is provided at all rent reviews and at the initial letting of every house. In addition every new applicant signs a check list to confirm we have taken them through every detail of the pub on offer and that they confirm they have taken expert advice where necessary.

vi. Business Support

We believe that during the past year various companies have introduced new ideas to their tenancies and leases to make them more attractive to applicants. Whether by way of freedom of the tie, partial freedom or improved allowances and services it confirms that in a competitive market place the best agreements will prevail. We believe the committee should take note of this thought that if an agreement were not competitive then new applicants are unlikely to apply.

For our part we have always had very competitive rent levels together with a host of services some of which are listed below. This fully justifies the difference between a free of tie and tied rent system.

- Some of the very best pubs throughout the South East of England
- A portfolio of fine ales arguably the best in the country
- Lessees enjoy £ discount per barrel on own produced beers and £ on beers produced outside of Fuller's. Likewise tenants receive £. and £' respectively.
- We offer a Service Package to all tenants and lessees to help them cope with compliance, The charge is £ per week and in return Lessee discounts increase to £. on own produced ales and £: on beers produced outside of Fullers. Likewise tenants receive £. and £' respectively once they sign up.
- Investment in our Tenanted Estate is at an all time high level of £ million.

- Training courses were increased in number and reduced in price to an average of £ per course. The take up of courses has also reached record numbers in the past two years.
- Free Rating Advice is provided for all tenants and lessees
- Free signage at an average cost of £. every 5 years is provided for both lessees and tenants
- Free design advice when a tenant/ lessee wishes to carry out a refurbishment of the house. Valued at over £ .
- Minerals at a very low wholesale price direct from Britvic
- In house monthly magazine with offers in every addition.
- Master Cellarman scheme which pays out over £ per annum at cost in beer if achieved.
- Free annual membership of the BII.
- Mystery Visitor Programme twice per year.

vii. Business Development Managers

In the past we have used the Ashridge Management School to assist in training Business Development Managers in all aspects of their business.

We fully supported the new Level 4 BDM training run by the BII and four of our five BDM's have successfully undertaken the full programme. By the end of July all five of our BDM's will have passed through the training. In addition we have a mentor system in place for new BDM's and each is assigned a buddy to make sure they have access to any information they require.

Our tenants expect and we guarantee a call rate of once every eight weeks. Many houses are visited far more often than this.

8. CONCLUSION

We acknowledge that there was a need for change in the pub industry and that those changes have been incorporated into past Self Regulation documents and the introduction of Code 6 is the next step in that process. We strongly recommend that this be allowed time to show it will work and that the only recently formed PICAS Board be allowed to carry out the task they have been formed to.

It is generally acknowledged that having the discipline of a more extensive and exacting industry code has been a positive and productive process for our company. Not only has the exercise been instructive in looking at our own internal procedures, we believe it has better informed tenants and lessees with more rigorous and transparent processes being beneficial to all concerned.

The Industry Framework Code of Practice is driving change in the pub sector, and we believe that it is now important to allow the industry to continue to build on the good start that has been made.

We urge the committee not to tinker further with the livelihoods of good businesses such as Fuller's that have been in existence for over 165 years to achieve headlines they seek elsewhere.

FULLER SMITH & TURNER ANSWERS TO CONSULTATION QUESTIONS

Q.1 Should there be a Statutory Code?

Fuller Smith & Turner do not believe there is a need for a Statutory Code to be introduced even though the current proposal would mean they would not be under the sanctions of such a Code as they operate less than 500 pubs. We believe as we will spell out later in the questionnaire that the Statutory Regulations as drafted would have unintended consequences of distorting the free market place.

We participate fully in and support the working of both PIRRS (Pub Independent Rent Review Scheme) and PICAS (Pub Independent and Conciliation Service) and believe that self regulation is working and should be given more time to prove this.

The low cost of being able to take both rent and Code of Practice disputes to these bodies is not available in most other industries in this country. We insist all our applicants that do not have experience of the trade sit PEAT the pub entry training and we insist they take financial advice before signing one of our tenancies. We also believe that at Fuller Smith & Turner we invest heavily in our estate and provide support services second to no other Company in the country. These SCORFA benefits (Special Commercial or Financial Advantage) some of which are listed above can be backed up by evidence which will be presented on behalf of IFBB Members in their reply to the consultation.

Version 6 of the Industry Framework Code has only recently been agreed and is now proceeding to the next stage where individual companies re-write their own Codes of Practice ready to be accredited by BIIBAS. We have played a major part in discussions with representatives of the BBPA, BII, ALMR and other parties and believe the latest version is a major step forward especially as the ALMR have been fully involved in the latest Version 6.

Whilst the consultation period does not require us under a Statutory Code to have or abide by Industry Framework Code 6 we have no intention of not abiding by its contents as we firmly believe it is a major move forward as stated above.

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 supporting evidence.

Q.3 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?

We support a 500 leased/tenanted pub threshold, but only if this does not lead to a material distortion in competition above and below this threshold. The current proposals which abolish the machine tie and demands a guest beer be offered could as drafted materially distort competition between large and smaller companies with less than 500 houses. We would also point out that as drafted the guest beer could be nominated as a lager which we believe is not the intention.

As drafted the number of pubs would also mean that Managed House numbers are included in the 500 proposal and we strongly argue that Managed House numbers should not be part of the equation as again this would distort competition between companies especially for a Company like Fuller Smith & Turner who might wish to increase their numbers of Managed units and be unable to do so without becoming part of the group of companies under

Statutory Regulation. We are close to the threshold of 500 with 386 pubs yet our leased/tenanted estate stands at only 209 well below the 500 number.

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.

One last point we believe is yet another unintended consequence of the proposals is that a Company such as Wetherspoons who have no tenanted, franchised or leased houses 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.

Q.4 How do you consider that franchises should be treated under the Code?

We have no franchised houses in our Estate but do believe if operated under the British Franchise Association regulations they should not be included under the proposed Code.

Q.5 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.

Q.6 What are your views on the future of self-regulation within the industry?

We participate in and fully support self-regulation within the industry, which we believe has made great progress especially over the last year. We believe the system is working well and should be allowed to prove this by its continuance following Version 6 of the Code being launched. We are also as part of our support committed to continuing with self-regulation despite being below the threshold of 500 pubs.

The new code includes the establishment of a new Regulatory Board to oversee the corporate governance of BILBAS, which accredits all company codes, and the PIRRS and PICA-Service panels, which have already been successfully established and provide independent, low-cost arbitration services for rent and other disputes. This new Regulatory Board is in the process of being finalised and we understand will be meeting by the end of May for the first time. WE fully support the formation of this new Board.

Q.7 Do you agree that the Code should be based on the following two core and overarching principles?

i. Principle of Fair and Lawful Dealing

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

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

We would first like to point out that we believe there is no such thing as a "Free of Tie" tenants whose Landlord bears the property risk without recharge to the tenant.

That said we fully support the proposal that a tied tenant should be no worse off than a free of tie tenant and believe that at Fuller Smith & Turner having taken into account the SCORFA benefits that this is the case.

We have participated in an IFBB member survey on SCORFA benefits where we offer a vast range of services to our tenants and lessees.

The results of the survey were as follows:

Type of Support	Average Level of Support*
Business/legal/marketing/property Training etc **	
Capex Support	
Additional direct financial/cash support	

**Average data provided so there is will be wider variation at individual pub level.*

*** It should also be noted that levels of support are calculated on a net cost to pub company basis.*

We have also heard that proposals on the calculation of SCORFA should be at a given time. This method would totally distort the investment we make in our houses over a longer time period. The renewal of a roof for instance is a major cost but only occurs every 25-40 years and will cost circa £30,000. Signage and re-decorations to our properties is made every 5-6 years and costs upward of £10,000.

Q.8 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

Agree

- if the pub company significantly increases drink prices or if an event occurs outside the tenant's control.

We will set out in our own Code when and how we can increase prices. This is normally annually, or when the wholesale price of the produce is increased significantly by a supplier.

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.

As stated above we would only agree to this if it reflects the life of a pub and not a given short period.

iii. Abolish the gaming machine tie and mandate that no products other than drinks may be tied.

We do not agree

We operate a tie on machines on a split basis. 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 a 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 rents.

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.

We have a real concern that 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.

iv. Provide a 'guest beer' option in all tied pubs.

We do not agree.

The history of a Company like Fullers purchasing local pubs to sell their own brands of ales means we will always be against the provision of guest ales across the entire estate. Where throughputs allow and we sell sufficient of our own brands (3 at any one time) then we do provide through our brewery the option to purchase guest ale which changes on a weekly basis. As we have said earlier in the document such is the success and popularity of our own ales that only of our outlets take up the option of guest ale.

We would also point out that although we are not within the number of 500 outlets as proposed in the consultation document if the proposals are carried forward we believe the guest ale rule will once again distort the market place.

Lastly, again because of poor drafting we believe the intension of the guest beer option being made available was actually to allow guest ale. However as drafted a licensee could nominate a lager.

Although we cannot speak for SIBA (Society of Independent Brewers) who this is intended to benefit we believe they too are against the change to the regulations in this way.

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

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 has a flow monitoring protocol within it that we believe is one of the industries best and states that flow monitoring equipment cannot solely be used as evidence that a breach of contract has occurred.

Q.9 Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered?

We will leave this area to the larger companies and the BBPA to comment.

Q.10 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 Fuller Smith and Turner we are committed to reviewing the self-regulatory system and have suggested this should be on a on a three yearly basis.

Q.11. Should the Government include a mandatory free of tie option in the Statutory Code?

Imposition of a mandatory free of tie option would destroy the basis of the traditional tenancies and leases we run at Fullers which is the pillar of local communities and provides a low cost and low risk of entry to the licensed trade.

Q.12 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?

No

Q.13 Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?

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

Q.14 Do you agree that the Adjudicator should be able to:

(i) Arbitrate individual disputes?

We believe that 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)
- RICS also have their own resolution service.

And that no further regulation is required.

(ii) 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 will need to be in place to prevent a large number of speculative complaints being sent for adjudication.

Q.15 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

(ii) Requirement to publish information ('name and shame')

(iii) 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.

Q.16 Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory?

We do not believe there is a requirement to replace the low cost self adjudicating schemes we now have in place with a high cost bureaucratic adjudication system.

Q. 17 Do you agree that the Adjudicator should be funded by an industry levy, with companies who breach the Code paying a proportionally 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. As stated earlier this will also be borne by Companies that have no tenanted, leased or franchised houses. In second and subsequent years of the levy, it is suggested that those who breach the Code pay more which we do not disagree with.
