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13th June 2013

Pubs Consultation
Consumer and Competition Policy
Department for Business, Innovation and Skills
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Westminster
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Dear Sirs

PUB COMPANIES AND TENANTS: A GOVERNMENT CONSULTATION BY THE DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS

I am writing on behalf of JW Lees & Co (Brewers) in response to the Government consultation. We strongly oppose the imposition of a Statutory Code on the brewing and pub sector as has been proposed by the Department for Business, Innovation and Skills. We support the submissions that have been made by our trade associations, The Independent Family Brewers of Britain and the British Beer and Pub Association, but feel sufficiently strongly about this issue to submit our own submission.

JW Lees was established in 1828 and remains a local family company with strong values and real roots into the communities in which we own pubs. In 2012 we were recognised as the 'Community Pub Operator of the Year'. We employ 1,100 people and have a turnover of £59 million with a pub estate of 172 pubs of which 136 are tenanted with a full tie in place. Our tenancy agreement has been changed a number of times in recent years owing to government-enforced changes but, prior to that, had operated for a number of years quite happily on the basis that we want our tenants to be successful and that, if they are successful, then both the brewery company and the tenants share in that success. Our current agreement now incorporates version 6 of the recently launched Industry Framework Code and is based on a three-year renewal term and contracted into the Landlord & Tenant Act 1954. We have recently been highlighted by both Deloitte and BDO in two separate surveys as one of the fast-growing medium-sized companies that are likely to help the UK get out of recession and this unceasing government fascination with the pub trade continues to keep us away from running our business as well as casting doubts over our desire to invest in the tenanted pub sector.

Pubs and brewing are highly competitive and there are ways that we support our tenants that have been recognised by the European Commission as Special Commercial or Financial Advantages (SCORFA). We also believe that self-regulation is working through a combination of the IFC as well as the SCORFA benefits that we offer our tenants (not that it was not working before). However, we would add that there are clearly issues with tenants and property owners who bought at the top of the market before the smoking ban and are currently in a position of negative equity. This situation is not unique to the pub industry and we believe that JW Lees tenants have been protected from this since all of our agreements are non-assignable traditional three-year tenancies and it has been JW Lees that has borne the risk on the falling capital values of our property assets allowing tenants to get on with the business of running their pubs.

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We worry greatly about the unintended consequences of government interference in an already highly competitive market and the impact that this might have on both jobs and investment in the tenanted pub sector. Self-regulation should be given a chance to work and we do not need any more red tape in our business.

Yours faithfully

W G R Lees-Jones
Managing Director



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
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Department for Business, Innovation and Skills
3rd Floor, Orchard 2
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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	X
Large Enterprise	
Local Government	
Central Government	
Legal	
Academic	
Other (please describe):	



JW Lees & Co (Brewers) Ltd

Greengate Brewery

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- **William Lees-Jones, Managing Director**

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PUB COMPANIES & TENANTS: A GOVERNMENT CONSULTATION

Introduction

JW Lees welcomes the opportunity to respond to this consultation. We operate 172 pubs in the UK and brew a number of excellent award-winning ales and lagers at our brewery in Middleton in North Manchester. We also import and distribute wines, spirits and minerals into both our own pubs and the general pub and restaurant trade. We employ around 1,100 people in total across our company as well as working with our 136 tenants and their respective employees who work in our tenanted pubs. Our estate consists of 136 tenanted pubs and 36 managed pubs.

JW Lees is a member of BBPA and IFBB and we endorse their submissions to this consultation but would make the following points of our own.

Last year we paid £20 million of taxes in total compared to £3.5 million which was retained by the company to fund future growth. We have recently drawn down a new loan of £10 million from The Royal Bank of Scotland to fund future growth and we are increasingly concerned that, given the relatively low returns offered by the sector and the high degree of competition in an industry that is not only mature but also in decline, we are adding to our risk profile by being focused on the brewing and pub sector. However, we are a good long-term family business and believe in focus and are committed to the principles of our core values built over 185 years. We are also encouraged by JW Lees being highlighted in recent independent and public surveys by both Deloitte and BDO as one of the mid-sized companies that will take the UK out of recession.

But we are confused. We run an honest old-fashioned business and continue to find ourselves responding to more and more government consultations which take us away from running our business. We are always straight with our tenants to help them to run good quality pubs serving JW Lees beers, good food and letting bedroom accommodation in some instances. The basis for the success of our business is that our tenants are also successful since the overall health of the business relies on a mutually beneficial partnership.

Self-regulation seems to be starting to work in the pub industry but there have been so many changes in the last few years that we feel that the government should wait to see whether this new way is working rather than pandering to the views of parties with long-held vested interests who are pressing for legislation. This is evidenced by the high level of tenant satisfaction across the industry alongside low levels of complaints to BII, PICAS and PIRRS.

The current process feels like a sledgehammer is being used to crack a nut. The tied way of breweries buying and investing in pubs has worked successfully for many years and there is no reason why it cannot continue to work for both brewers and licensees but we are

living in a time of a 'perfect storm' with falling property values, the ban on smoking in public places, low supermarket pricing on alcohol that is driving people away from pubs and the creation of FRI leases that moved costs from brewer to licensee in the wake of the 1989 MMC enquiry into brewing and pub retailing. It is perhaps no coincidence that it is the same people who are asking for legislation now who said that a voluntary code would not work two years ago.

It is true that there have been a number of unsuccessful licensees who bought FRI leases at the top of the market and this has led to business failures, bankruptcies and pub closures, but this is no different to anyone purchasing a business in any other sector in a boom market which then goes into decline. Indeed, the main point of difference in our business is that if a tenant gets into difficulty we, as the landlord, have a vested interest in the success of the pub because it sells our beers, and so we provide support in the form of free advice, rent reductions, price reductions and business building activity. JW Lees does not offer (or has ever offered) any FRI leases (or franchises) but just simple three-year traditional tenancies that offer a low-cost opportunity for people wanting to work for themselves to run pubs with the support of a brewery that will do everything that it can to support its tenants. We have, however, inherited some agreements when we have purchased new pubs and have done everything that we can to move those leaseholders onto a traditional tenancy agreement.

Self-regulation has to be given a chance to prove itself and the fact that BBPA has worked to create six versions of the Statutory Code in the last two years is evidence that this code has both evolved, but it is too early to see its true impact since not all three-year agreements have been renewed since its inception.

We would also comment that the industry associations are creaking owing to the continued pressure of consultation and potential legislation and that organisations such as the BII are on the brink of not being financially viable as a result of the pressure put on them by government. This is already an industry that has a large number of trade associations and the existence of this large number of associations is a reflection of the industry's tendency to want to comply with government. But every time there is a consultation there is less enthusiasm to engage with government. Our culture as brewers is rooted in compliance with HMRC and the fair collection of beer duty; we want to work with government but government needs to show some faith in the brewing and pub sector since there is a genuine desire to make voluntary self-regulation work.

This is also a UK industry that our government should be proud of and it is hard to believe that the UK government is not behind the clearly demonstrable jobs that can and are being created by the hospitality sector and that this is in stark contrast to the tax avoidance by newer and more international businesses that operate in the UK. To coin a phrase this feels like 'shooting fish'.

We would, however, like to publicly acknowledge the benefit that the Chancellor's decision to reduce beer duty has achieved since, although it was only 1p, the beer duty escalator was not a well-conceived tax and the burden it was bringing to the UK brewing industry has resulted in much reduced beer consumption in the UK. JW Lees this year cancelled our price increase that we had already announced when the Chancellor announced his decision to reduce beer duty, but the results of these sort of decisions are long-term not immediate since drinking in pubs is habit driven and not an event in itself.

We need to get more people drinking responsibly in pubs and if we can achieve this then society will be a better place.

Before answering the individual questions posed in the consultation there are some key points, inaccuracies and assertions from the evidence-base and impact assessment that JW Lees would like to highlight:

- The number of complaints to BII has been exaggerated since it should say 400 enquiries to a help line not 400 complaints. JW Lees has received no complaints apart from usual correspondence from licensees and customers
- The changes made in the past two years have been enormous. These have had widespread support from both pub owners and licensees but there have always been the same naysayers in politics and the media who have continued to use the threat of legislation since they did not want a peaceful solution that brewers, pub owners and tenant licensees were happy with
- Change "The tie gives an additional route of abuse" and being "tougher for tenants to know if they are getting a good deal". These are 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
- We are concerned about the cost of self-regulation for those companies below the proposed 500 tenanted pub threshold since the current voluntary code is driven and largely funded by BBPA and larger companies. JW Lees is a small company, happy to comply with trade associations owing to the increased complexity and nature of government consultations. But this does not make the consultations right
- The consultation also proposes that this transfer of value would lead to increased investment in the sector. This is most unlikely since tenants are more likely to take short cuts on investments to get a better deal and banks are unlikely to back the sector on an unsecured basis. Pubs tend to need to be refurbished on a four to five yearly cycle and it tends to be the pub owner that

funds the refurbishment. This is then paid back by increased rents and increased tied sales. This just does not happen in free houses, hence the increased level of pub closures in the true independent free house sector – please note that JD Wetherspoon is not an independent free house operator but probably the most professional operator of mass market wet-let pubs in the UK

- There is no assessment of the impact on pub companies of the proposed guest beer provision or loss of the machine tie. Pub companies need to be compensated for the loss of income that they will suffer, otherwise they may not stay in business which would lead to even more pub closures
- The conclusions of the recent OFT enquiry appear to have been ignored in the consultation

We do not believe that a Statutory Code and adjudicator are necessary but we are happy to answer the questions posed as follows:-

Q.1 Should there be a Statutory Code?

No.

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.

No and we are not sure where the 500 pub limit came from. We own 136 tenanted pubs, so JW Lees would be well below the 500 pub limit but the commercial reality is that all companies would need to comply with the code to be competitive and to attract the best licensees.

Also, the introduction of a limit sets a precedent for the future and we are concerned that it endangers our route to market for our beers, ie we own pubs to sell our beers and we would worry about future legislators reducing the 500 pub limit to a lower level which may put us out of business.

Any limit imposed should only be measured against leased/tenanted part of the business and not the total number of pubs owned by the company.

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?

This has clearly not been thought through since there are a number of ways in which pubs are run – managed, tenanted, leased and franchised. The definition of pub ownership needs some more thought than was contained in the consultation paper: these are all very different sorts of businesses with different controls and KPI's.

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

Franchises are a relatively new way of pubs being run and are yet pretty much unproven. We would argue that some are not even franchises but a quasi-managed format. This change is a good example of pub owners trying new ways of running pubs but, unlike fast food franchises, franchises are unproven in the pub trade.

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.

Costs will escalate with the introduction of any new code and the creation of an adjudicator since this will add another level of bureaucracy on top of the voluntary code and other current measures. We are yet to come across an example where more regulation leads to reduced costs and a better way of a market operating.

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

Self-regulation seems to be scoffed at by some but also seems to be working. Brewing and pubs are dynamic business environments and competition for beer brands and attracting the best tenants to run pubs will always exist and be the primary driving force in the market. There are very few sectors where the best people can have such an impact as they have in a pub and this is the basis for competition for all pubs, whether they are run by tenants or managers.

The battle for talent is the most dynamic aspect of the pub trade and some people prefer the option of being employed and working as managers, whereas others prefer to be self-employed and to be tenants under the umbrella of a pub company or brewery. Free houses are different since the licensee will then also have the added complication and risk of freehold ownership and this type of asset-backed lending is increasingly unlikely to be funded by banks. There are some (not many) pub properties that operate on a free-of-tie basis like Wellington as well as some shopping centres and airports who work on turnover-related rents but in the main the tied model is the basis for the UK pub trade.

We cannot understand why the pub sector warrants so much attention from government when the reality is that the managed sector is growing whereas the tenanted sector

continues to suffer from continued government enquiries, each of which jeopardises pub owning companies' investment plans. Certainly we at JW Lees have chosen to invest more in our managed pubs of late owing to uncertainty in the tenanted sector and this is not good for our tenanted business.

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

Of course. We are totally committed to fair and lawful dealings with our tenants since we need to be true business partners.

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

We believe that our tenants are in fact better off than free-of-tie tenants and have calculated the SCORFA benefit of being a JW Lees tenant which supports this. But it is in capital developments that JW Lees tenants really benefit since we spend more on developments and repairs than we collect in rent since it has long been our business philosophy to invest in our business rather than to milk it. This is why we have been in business for 185 years with our tenanted business the mainstay of the JW Lees business.

Often the investments that we make in our pubs are very long term and this is something that we have learned over time – to re-roof a building rather than patch it up, for instance, is commercial madness since patching makes the most sense short-term and is what any good short-term business would do. In reality the payback on such costs tends to be very long term (over say 30 years so at 3%) but these vital repairs are necessary and so we carry them out regardless but they are what any responsible property owner would do. And when we do them we insulate the building, refurbish the interior and make the sort of improvements that need to be made in order to stop the building dilapidating.

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

Yes, every JW Lees tenant has a three year rent review which can result in rents going up or down. In the last five years rents have generally tended to go down owing to wet-led tenancies suffering in the wake of the ban on smoking in public places. Food-led pubs have seen rent increases owing to increased investment levels and no tied arrangement being in place for food supply (unlike franchised restaurants where all supplies are tied).

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

JW Lees would never do this, so yes again. The only time that we would increase the price for a particular drink would be if we were trying to phase out its availability. This tends to happen with 'sunset' brands that are no longer viable to produce or supply and so is very unusual but nonetheless this happens with some forms of drink. This happened, for instance, with Boddingtons Bitter which is no longer available on cask for a number of reasons. At other times there may be an instance whereby JW Lees re-launches a beer with a higher price but with increased marketing support as part of a repositioning exercise. This is unlikely but, like many of these questions, we are concerned with the unintended consequences of this government consultation.

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 as long as it did not add another layer of bureaucracy. The introduction of shadow P & L accounts have meant that we are already generating more paperwork than previously, as have increasing levels of complication regarding fair maintainable trade. Given that on-trade beer volumes have fallen by over 50% in the last five years this is a moving target and requires regular review.

We would hope that JW Lees's reputation as a great operator as exemplified by us winning the Publican Award for Best Community Pub Operator 2012 would mean that we attract tenants who are comforted by our reputation but confident that we embrace a culture of constant change in our business while honouring our word in every instance.

We do not agree that we should be forced to supply 'free of tie' rent assessments. As an integrated business we operate pubs to sell our beers and thereby maintain our brewery production, as has been the case for 185 years. As such, would not offer a free of tie agreement as this would be in conflict with our core business goal, to brew beer. Subsequently, the production of a 'free of tie' rent assessment would mean additional and unnecessary administration for our managers, and be highly confusing for prospective tenants.

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

No, we genuinely add value by managing machines in our tenants' businesses. Machines are renowned for giving the opportunity for gangs to pressurise individual licensees to give them the rights to their machines and the government should be wary of losing legitimate income to the cash economy. Freeing up the machine tie would give an incentive to open up this market to uncontrolled operators.

JW Lees operates a full drinks tie as well as support for insurance and other services. There is no profit generated in any other area other than drinks purchases, for instance for insurance or the provision of services, but we can in many cases negotiate better terms for our tenants than they can achieve individually and so this is a benefit for the tenant and the overall business.

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

Absolutely not. This is a dangerous area. The introduction of guest beers for cask beer and draught cider came in following the 1989 MMC report and the widening of this clause could be disastrous for brewers, tenants and the consumer. Look to continental Europe where frequently there is often only one beer on the bar and no choice and the domination of local markets by international brewers.

We are already disadvantaged by progressive beer duty and have lost over 50% of our direct delivered free trade business in the last 15 years to micro brewers. The introduction of a mandatory guest beer would endanger the viability of brewers like JW Lees.

Please do not be fooled that guest beers are a good thing. People expect to be able to buy JW Lees beers in JW Lees pubs and we pride ourselves on the quality of our beers. Think of it another way - can you imagine being able to buy a Big Mac in a Burger King restaurant? That would be ridiculous.

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

No. Flow monitoring equipment is essential to monitor beer sales and has only become prevalent owing to tenants not complying with their purchasing obligations. This is rather like having speed limits on roads but not giving police officers the speed guns: it would mean that no one would ever be caught speeding by a police officer.

We cannot understand why anyone would wish to discredit flow monitoring equipment since not only does it allow pub owners to monitor beer sales but also has a number of benefits for quality purposes too. We only install it in pubs when tenants are suspected of 'buying out' and breaking our agreement: it is our way of putting them on the 'naughty step' since they have broken our agreement which is based on trust and service.

But, just like the compliant motorist who has no problem with police officers being armed with speed guns, the compliant licensee should have no problem with flow monitoring equipment but embrace the benefits that it brings to their business.

Q.9 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 and IFBB to comment in more detail.

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 done sensibly.

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

No. The OFT conclusions on the tie remain both current and relevant.

We continue to be nervous about larger investments in our tenanted pubs owing to government enquiries and continued threats to remove the beer tie do nothing to build our enthusiasm for investing in the sector.

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?

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

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

No, didn't this government promised less red tape for business? An independent Adjudicator would both add bureaucracy and cost to an already beleaguered sector.

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

(i) Arbitrate individual disputes?

No (see above). There are already a number of routes that tenants can follow to arbitrate disputes.

(ii) Carry out investigations into widespread breaches of the code?

Any Adjudicator should provide true value for money and the scope of their power should be focused.

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

See above. Clearly the cost and power of any Adjudicator would need to be agreed by all and to be reasonable. It is, however, premature to predetermine the powers of an Adjudicator given that we feel that the creation of an Adjudicator is a bad idea.

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

No (see above).

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?

See above – the government already collects a disproportionate level of tax, beer duty, National Insurance, corporation tax, VAT and other taxes from the British brewing and pub sector. If it is government's view that additional bureaucracy and the office of an Adjudicator be funded then it should be funded by the government.

As a member of the Association of Greater Manchester Authorities Business Leadership Council and Young Presidents Organization among other organisations, I am constantly challenged by the lack of profitability of the sector compared to other sectors as well as the high level of cooperation that the sector gives to government. Why would the overall industry wish to fund a levy to pay for an Adjudicator that the sector does not want? If government feels that an Adjudicator is necessary then government should pay for it – already the government collects more than five times the amount of profit that JW Lees makes in taxes and so the cost should be borne by the public purse. Why do the UK government seem intent on making pub tenancies an area of business that investors would not wish to put their money into?
