



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	X
Local Government	
Central Government	
Legal	
Academic	
Other (please describe):	

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

Executive Summary

In response to the challenges and changes within the tenanted pub industry Marston's has developed its Franchise Agreement. The Franchise has evolved and been developed using ideas and innovations trialled through the managed house model. This is a significant move away from the traditional pub business model. Marston's provides a comprehensive package of goods and services including the premises. **The Franchisee pays no rent.** Products are provided on a sale or return basis. The Franchisee shares in the profitability of the business, has limited financial investment and limited risk. Both parties work on the same profit and loss account to facilitate complete financial transparency between the parties.

Introduction

Marston's are Full Members of the British Franchise Association and operates its Franchise Agreements in accordance with the BFA Code of Ethics. To become full members, Franchisors must have a proven trading and franchising record. British Franchise Association members commit themselves to comply with the terms of the following policies and procedures as published by the Association:

The Code of Ethics

The Disciplinary Procedure

The Complaints Procedure

The Appeals Procedure

The BFA state that in its most familiar sense, the term 'franchise' has arisen from the development of what is called 'business format franchising'.

'Business format franchising is the granting of a license by one person (the franchisor) to another (the franchisee), which entitles the franchisee to trade as their own business under the brand of the franchisor, following a proven business model. The franchisee also receives a package, comprising all the elements necessary to establish a previously untrained person in the business and to run it with continual assistance on a predetermined basis (including a predetermined agreement length, with renewal options).'

Marston's Franchise

To improve the business relationship Marston's have gone further than a traditional franchise and removed the rent and transaction process for products to sell. Given the lack of finance available to pubs Marston's have also removed all costs for the Franchisee to pay other than the council tax and wage bills.

Marston's has developed its own 'Business Format Franchise'. This is a move away from the traditional pub tenancy or lease. Ideas and innovations are tried and tested in the managed house business model and where appropriate rolled out and incorporated into the Franchise business model. The concept is run in parallel with our managed houses. If Franchise becomes subject to a statutory code this opportunity to trial and test innovations prior to incorporating them within the business model would not be possible, increasing the risk and cost to the Franchisee.

The Franchisee is provided with premises from which to operate the Franchise Business and enters into a Franchise Agreement to sell our products and services. The Franchisee pays no rent in respect of the premises. The removal of any rental payment differentiates this from other pub company 'Franchise Agreements'. The risk to the Franchisee is minimal as the initial capital outlay is low. Marston's provide fully fitted premises with all the equipment required to operate the business.

The Franchise model has been developed over 4 years with the latest changes coming from Franchisees themselves. We pride ourselves in positive Franchisee feedback and low levels of business failure. Moving Franchise into the consultation would threaten the use of the BFA to monitor members' behaviour through Franchisee feedback. The BFA promote ethical working practices which is the main objective of the consultation.

The Franchisee receives: premises from which to operate the Franchise: the use of Marston's Franchise concept: a Licence to use the Marston's trademark, a comprehensive training programme, management and accounting services, a developing and improving business system: the benefit of discounted bulk buying power, together with product which the Franchisee retails and holds as a fiduciary bailee on a sale or return basis. In addition Marston's provide free of charge:

- Full EPOS system
- Full Pub Inventory no CSA or Rental Fee
- Full supported 'Blue Box' giving full H & S and HASSAP control with regular audit and update process, the cost of implementation is also borne by Marston's

- Bi-annual Menu development with supporting marketing material
- Monthly stock audit
- Regular Mystery shopper reports and feedback
- Intensive Induction Training
- Utility bills paid for the pub and private accommodation
- Providing and maintaining cellar-cooling equipment
- Providing and maintaining fire extinguishers & Emergency Lighting
- Inspecting and certification of gas appliances
- Inspecting lifts each year (if the pub has any)
- Emptying the septic tank (if the pub has one)
- Surveys for asbestos control and checking for radon gas.
- Fire Alarm and Emergency Light Testing
- Portable Appliance Testing
- Fire Risk Assessment
- Children's Play Equipment Inspection
- Property repairs
- Investment

Each franchise business is owned and operated by the Franchisee. However, Marston's retains control over the way in which products and services are marketed and sold, and controls the quality and standards of the business. The Franchisee is rewarded with a % of the weekly turnover. The Franchisee has a direct stake in the business and also takes a share of the profit. The pre-determined profit split gives financial transparency. It also ensures a fairer split of the profit between the two parties. We would repeat and stress that this method is both transparent to Franchisees and also creates a real incentive for Franchisees to drive sales in their franchised pubs. In addition Marston's Franchisees benefit from accommodation over their pub which is free of cost (other than council tax).

Basis of Exemption from the draft code for business not abusing the relationship

Marston's Franchise Agreements should be exempt from the proposed provisions; it does not incorporate the 'unfair practices' which the draft code is targeting. The consultation states that the government is interfering on grounds of 'fairness for tenants'. Our Franchise offers a 5 plus 5 year agreement at a low entry cost, with limited risk for the Franchisee and a pre-determined share of the profit.

This eliminates the issues that Government Consultation paper is aiming to address, the assessment and level of rent payable on the premises, the level of rent on review and the effect on the level of rent of the Beer Tie. Marston's Franchise treats the Franchisee fairly; indeed this is an obligation of Marston's under the BFA Code of Ethics to which it is subject.

The Government consultation states that 'we will be careful to ensure that measures taken are proportionate, targeted and fair, to ensure those who are currently being treated unfairly are protected, and not to place an undue burden on the companies who are currently treating their tenants fairly.'

The current issues which relate to the beer tie and its effect upon rent are not issues that are relevant to our Franchise Agreement. Firstly there is no rent payable under the terms of this agreement. Secondly products are provided on a sale or return basis. Thirdly Franchising is based upon the Franchisee working in partnership with the Franchisor. Unethical behaviour and working practices are not permitted by the BFA, these would in any event break the model.

As the Government has clearly stated they "wish to regulate only as much as is necessary to achieve its objectives" we strongly believe that our Franchise Agreement should be excluded from this proposal as it does not incorporate the provisions which the government are seeking to regulate. Marston's operate the Franchise Agreement under the British Franchise Association Code of Ethics and have undertaken to comply with the BFA's Disciplinary, Complaints and Appeals Procedures, which provide systems and procedures for dealing with any disputes between the parties. It would be inequitable to incorporate our Franchise within the proposed Statutory Code aimed at conventional tenancy situations.

An exemption should be granted on the following grounds:

1. The Franchisee pays no rent.
2. Products are provided on a sale or return basis.
3. If a transaction for products is to take place it is undertaken at managed house prices. The transaction cannot take place until after the sale of the product.
4. There is complete transparency between the parties who share one profit & loss account.
5. This is a Franchise of a pub business.
6. The Franchisor is governed by the BFA code of Ethics.

We would be happy to explore with you further how an appropriate exemption should be worded, but we would argue that a simple and straightforward exemption should be created for our Franchise. That approach would address the abuse which the Government believes it has identified in the arrangements adopted by some of our competitors.

Consultation questions

Q1. Should there be a statutory Code?

Marston's does not accept there is a need for a Statutory Code.

Marston's has its own Code of Practice, which is currently being updated to comply with the revisions within Version 6 of the Industry Framework Code, consultations in respect of these revisions have been held with the BBPA. The Industry Framework Code will continue to evolve, the new regulatory board will monitor and develop the Code to meet the requirements of the Industry and the parties represented.

Marston's has contributed financially to the self-regulatory system currently in place, to impose a second mandatory system would place a heavy financial burden upon the Company and divert monies from core business activities. It seems inequitable to place such a heavy financial burden on companies who are already financing a scheme which has been and continues to be developed to address the same issues.

The self-regulatory system provides all parties with a clear understanding of their individual obligations from the first meeting through until the termination of the agreement and handing back of the property. There is a transparent procedure for dealing with complaints, breaches of the Industry Framework Code are referred to PICA-Service, or the courts and disputes relating to rents are referred to PIRRS, an independent panel of assessors who are empowered to set rents or to the RICS third party referral system. The costs involved for the complainant are low.

The introduction of a second regulatory system would prove a significant financial burden on the Companies who are to fund it. It duplicates the system already in place and would lead to a two tier system which would be confusing for all parties.

Historic issues relating to upward only rent reviews have been addressed, tenants can now request the removal of an upward only rent review clause from their lease. However premiums paid on assignment are more difficult to address the Landlord is usually obliged "not to unreasonably withhold consent" to an assignment, it is for the incoming tenant to establish the value and level of any premium paid; the Landlord is not party to the negotiations between the incumbent tenant and the potential assignee.

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.

Marston's do not agree with this mandatory number. Marston's supports 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 to abolish the machine tie and offer a guest beer would materially distort competition.

We believe that Franchise Agreements should be exempt from the Code. The objective of the Statutory Code is to deal with issues relating to rents, the Beer Tie and unethical working practices. Under Marston's Franchise Agreements no rent is payable the concern raised in respect of rent setting at the commencement of an agreement, on review or renewal and the effect of the Beer Tie on the level of rent ceases to be an issue. These Agreements are operated under the British Franchise Code of Ethics who operate their own Complaints and Disciplinary Procedures. The BFA audit working practices to ensure they are ethical this is evidenced by Franchisee feedback. These replicate other Franchise Opportunities offered in the marketplace, which are not subject to similar stringent legal obligations.

We do not consider that managed pubs should be covered by the code. There is ambiguity between the consultation document paragraph 4.23 which states: 'For companies with 500 or more pubs the provision of the code would cover all non-managed pubs'. The impact assessment states: The statutory code will apply to all pub companies with more than 500 non-managed pubs. Clarity is required on this point.

We also believe that property companies operating free of tie pubs should not be covered by such a Code, as these agreements are no different from any other commercial lease on shops, restaurants, and other business premises. The pub owners in these circumstances are completely at arm's-length to the pub operation and have little, if any involvement in the business or information regarding the performance of the pub. In addition free-of-tie leases operated by companies who are caught by the code and its implications should be removed for the same reason.

It would seem that the decision to include non-tied pubs in the 500 calculation stems from a concern that pub companies would just transfer all their pubs to be managed pubs. This has to be a commercial decision for the individual company, who should be free to make a commercial decision on which operating model to adopt. Circumstances change and there are a number of commercial reasons why a Pub Company may choose to carry more risk and operate an outlet as a managed house or a franchise.

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?

If a Statutory Code is to be implemented Marston's supports a leased/tenanted pub threshold (subject to the caveats surrounding distortion of competition above). The Code should only be binding on those leased/tenanted pubs owned by the company. Franchise, managed and FOT pubs should be exempt.

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

Marston's believe that their Franchise Agreement should be exempt from the Code. This is a move away from the traditional pub tenancy or lease. The Franchisee is provided with premises from which to operate the Franchise Business and enters into a Franchise Agreement to sell our products and services. The Franchisee pays no rent in respect of the premises.

Each franchise business is owned and operated by the franchisee. However, Marston's retains control over the way in which products and services are marketed and sold, and controls the quality and standards of the business. The Franchisee is rewarded with a % of the weekly turnover. The Franchisee has a direct stake in the business and takes a share of the profit. The pre- determined profit split gives financial transparency. It also ensures a fairer split of the profit between the two parties. Both parties work from one profit & loss account giving full transparency to both parties.

The Marston's Franchise Agreement has full BFA accreditation and is a true Franchise. It offers the Franchisee an opportunity to share in the profitability of the business at minimal financial risk. It differs from the traditional lease and tenancy agreements as there is no rent payable in respect of the premises. This eliminates the issues that Government Consultation paper is aiming to address, the assessment and level of rent payable on the premises, the level of rent on review and the effect on the level of rent of the Beer Tie. Products are supplied on a sale or return basis. For the model to work our franchise pubs must sit alongside our managed houses.

As the Government has clearly stated that they" wish to regulate only as much as is necessary to achieve its objectives" we believe that our Franchise Agreement should be excluded from this proposal as it does not incorporate the provisions which the government are seeking to regulate. Marston's operate the Franchise Agreement under the British Franchise Association Code of Ethics and have undertaken to comply with the BFA's Disciplinary, Complaints and Appeals Procedures, which provide systems and procedures for dealing with any disputes between the parties.

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 disagree with the cost/benefit analysis incorporated in the Impact Assessment, which estimates that there will be a transfer of value of circa £4,000 from the pub owning companies to their Licensees covered by the code. Marston's provides a comprehensive Special Commercial or Relevant Financial Advantages package.

A detailed breakdown of the above is attached detailing the open market cost to the licensee should they purchase these services directly.

Where pubs are operated FOT the licensee has to manage and fund sourcing all these services, this will take a lot of time and there will be no external check on the quality of service provided.

It is in our interest to invest in our properties as these are our assets which we own and from which we derive income. We do not agree that there is more incentive for the Licensee to invest in the property than the property owner or that most investment is tenant driven. During 2011-2012 Marston's spent £ on capex projects on its leased and tenanted properties, we do not believe lessees have access to financial resources at this level to invest.

The cost of the code would lay a heavy financial burden on pub owning companies and would necessitate rationalisation and cost cutting. This would almost certainly result in a reduction in investment. This would not be compensated for by Licensees investment, in the current market banks are reluctant to lend monies for such projects.

SCORFA Benefits of a Brewery Tenancy

Business Help	Open Market Cost for Licensee to Purchase Directly	Comments

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

Marston's supports the continuing of self-regulation within the Industry. Marston's has adopted its own Code of Practice and continues to update and improve this; amendments have been made to comply with Version 6 of the Industry Framework Code, which is legally binding upon the Company.

The Industry has reacted to the criticism levelled against it and has made significant changes to address these and continues to do so. Version 6 of the IFC introduces further clarity and transparency on areas which have previously raised concerns such as: rent assessment, rent reviews, the provision of insurance and repairing obligations including schedules of conditions.

In 2009 the BII Licensee Business Support Helpline recorded 8 calls relating to Marston's of these 3 were requesting advise on rent review, 2 concerned buying out, the remaining 3 related evenly to repair, finance and grievance. Only 1 grievance call was received.

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

Marston's 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 and our Membership of the BFA.

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

As a brewer, we see no benefit or incentive to adopting this business model. Marston's supports the principle of fair dealings with tenants. As most pubs are unique it will be extremely difficult to have develop a formulaic method to compare these options. The benefits of SCORFA (and what constitutes SCORFA) must be over the life of the agreement, rather than a single point in time. The different business models carry different levels of risk and reward for the parties and this also needs to be taken into consideration. The consultation paper states " the Code must explicitly address the issue of risk & reward, to ensure that this is shared at an appropriate level between pub companies and tenants'.

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.**

We would welcome more clarity on what constitutes an event outside the tenant's control.

Marston's set out in their individual company codes when and how they can increase prices. There is no evidence that pub companies do make 'significant increases' in drinks prices – indeed the OFT response to the CAMRA super-compliant on this issue concluded that:

'Large pub companies' gross profit margins have decreased between 2005 and 2010 and consistent with this , price changes to lessees have increased at a lower rate than the price changes to pub companies by brewers, suggesting that the pub companies have not passed on the full extent of beer increases at the brewing level of the supply chain'.

- 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.**

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. However we do not believe it is practicable or possible to lock these into rent assessments on an individual pub basis where every pub is unique and rent is part of a commercial negotiation. There is also a lack of evidence of FOT rent assessments as this has not be a business model used in traditional brewery tenancies.

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

Marston's do not agree. In accordance with the Industry Framework Code income received from Machines where tenants are tied is currently disregarded in calculating the rent on the premises. If the tenants were not tied on machine income this income would be included in the divisible balance and rentalised.

Under our current tenancy agreements where the gaming machine income is fully tied the after the deduction of machine taxes, supplier charges and VAT the income is split 50/50 between the company and the tenant.

Due to our expertise and control over the quality and maintenance of the machines used the income generated by the machines is we believe higher than it would be if individual tenants sourced their own machines. We believe that the current tied option is financially more beneficial to the tenant.

Abolition of the tie would remove all current control mechanisms, tenants would have to deal with all the legal, contractual and maintenance issues relating to the gaming machines. Tenants would have to enter into their own supply agreements without the current expertise provided by the Company. They would have to obtain and manage Licences, permits and all taxes in relation to the machines.

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

Marston's does not agree. The 'guest beer' option is defined as 'the tenant should be allowed to purchase and sell one draught beer from any source'. 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'. There is no evidence to support this assumption and it would lead to competition issues where pub companies brew their own beer. Marston's operates five breweries, Bank's, Marston's, Jennings, Ringwood & Wychwood and are therefore able to offer a wide variety of choice to their tenants under their existing agreements.

There could also be unintended consequences for local breweries. With the guest beer provision as currently drafted, there would be nothing to prevent licensees from sourcing their most popular beer (in most cases standard lager) from larger brewers or wholesalers.

As a brewery owner the introduction of the 'guest beer' would have a significant financial impact on our business this coupled with the cost of the proposed Statutory Code and Adjudicator would necessitate cost savings in other areas of the business and result in potential job losses. On average, breweries make a profit of 1p or 2p per pint. Their success and viability depends on high volume sales and effective distribution networks. If a guest beer is mandatory for companies owning over 500 pubs, there is little doubt that this will have a significant impact on sales and will lead to cost cutting measures including job losses and brewery closers. It would reduce the amount of capex spent on the property portfolio.

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.

Marston's 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. The suggestion that modern technology should be ignored and historic practices relied upon is not a valid argument.

The current Industry Framework Code has a flow monitoring protocol which must be included in individual company codes stating that flow monitoring equipment cannot solely be used as evidence that a breach of contract has occurred. Marston's always

requires secondary evidence of buying out before considering any action for a breach of contract. We consider this as a fair and reasonable position to take in any Statutory Code.

Flow monitoring equipment is a benefit to both Pub Company and tenant as a management tool. It allows for example off-site management of sales which is very useful to a tenant or lessee away on holiday.

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

We have already made comment on a number of the proposals under consideration, we will not reiterate points already raised but would make the additional comments in respect of Annex A

Part 1 Item 4 There is no clarity on what written evidence will be required to confirm compliance.

Item 8 The Pub Company will not have detailed information regarding the cost of utilities where the previous Tenant/Lease has been responsible for payment of these.

Item 9 c (iii) This must be qualified "as far as the Pub Company is aware at the time of entering the agreement".

Item 14 the prospective tenant will benefit from the rent assessment being provided at the same time as the information detailed in item 9, without the rent assessment they will be unable to make a reasoned business decision on whether to enter into the proposed agreement.

Item 15 this should be qualified as being information which the Pub Company is able to provide subject to the Data Protection Act.

Item 16 (c) This point is vague and far reaching and requires qualifying.

Item 17 Does this mean the rent will be reviewed within 6 months or agreed within 6 months?

Use of the terminology rent assessment to cover letting rents and rent reviews is confusing.

Item 32 (a) Rental valuations and negotiations should be undertaken by a suitable qualified person.

Item 34 Clarity is required on the phrase 'implications for the disposal of the business'.

Item 36 (c) This should be limited to the current insurance year.

Item 39 to run two Codes of Practice would be extremely confusing for all parties.

Annex A (ii) The Rent Assessment Statement should be signed by a properly qualified individual.

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. The BBPA has committed to reviewing the self- regulatory system (suggested every three years) and we would expect any Statutory Code to be reviewed (transparently and independently) on the same timescale.

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

Marston's does not agree that a mandatory free of tie (FOT) option should be included in the Statutory Code. We currently sell products which we produce through our tied pubs, if there was a mandatory FOT option, we would lose sales through these outlets which would not only adversely affect the profitability of the business it would affect the viability of the current supply chain and distribution network, this would lead to price rises through loss of economies in scale. Reduced sales would lead to rationalisation of products, potential loss of products and a reduction of choice to the consumer. Larger International Brewers with no pub chains would gain market share. Rationalisation of the regional breweries and redundancies may be unavoidable.

We would need to review our strategy in relation to tenanted pub ownership with consider selling properties which are no longer viable. Investment in tenanted pubs would be drastically reduced. The Compass Lexicon survey concluded that of Marston's tenanted pubs would be financially unviable in a mandatory FOT scenario.

Marston's offer a number of different agreements based on different business models, these offer different levels of reward dependent on how much risk the Tenant is prepared to take. There is already choice and we do not consider that it is necessary or financially viable to offer every tenant a FOT option.

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?

Marston's believes that the self- regulatory system currently in place and SCORFA already delivers this.

Marston's offer a range of agreements, based on different business models; these encompass different levels of risk and reward between the parties. The larger the burden of risk the Company carries the higher the reward and the lower the level of risk the Company carries the lower the reward.

From the Tenants viewpoint a Free of Tie Agreement is higher risk to the tenant, lower risk to the Company but offer potentially higher rewards to the tenant. Lessees have less but still relatively high risk and reward. Tenancies carry less risk for the tenant and less reward. Franchises are low risk and lower reward for the Franchisee. Managed houses offer the least risk to the manager but offer them the lowest reward, the risk is carried by the Company.

The share of the rewards is directly related to the level of risk. The more risk either party takes the greater their share of the reward.

Pub Tenants who at present have a low cost entry option into the trade will find the upfront costs rising, this will reduce the number of people entering the industry.

In 2010 Marston's commissioned an independent Licencee survey. The recurring theme from Licensees was the low cost entry to the industry provided by our Franchise. Critically 86% were attracted to this agreement as it provides a 'relatively risk free way to run a pub'. 94% of the sample confirmed that they would recommend the franchise to others.

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

Under the Industry Framework Code, PICA-Service already provides an independent conciliation and arbitration service for complaints around company conduct; tenants also have the option of court action in serious cases. Tenants have the option of PIRRS or RICS third party referrals for rent reviews. The appointment of an Independent Adjudicator would replicate the systems already in place. It would also place a heavy financial burden upon the Pub Companies, to provide a service, which is already in place and which they are financing.

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

i. 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)
- RICS third party referral
- Via the court system over contractual disputes
- Other established arbitration bodies (ACAS)

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 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:

i. Recommendations?

These refer to minor or accidental breaches; these will be dealt with under our current Code of Practice.

ii. Requirements to publish information ('name and shame')

Reporting on excessive rent review proposals and other breaches of Company Codes of Practice is already widely reported in the Publicans Morning Advertiser

iii. Financial penalties?

The cost of setting up and the annual on-going costs of the Adjudicator, together with the provision of a dedicated in house compliance officer to monitor and document the code will place an additional financial burden on Companies.

Where there have been serious breaches a licensee can take court action and a successful claim for damages will impose financial penalties on the offender.

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.

The proposals duplicate the existing systems already in place.

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

If implemented we consider that there would also be required a review of the cost of the system and the effect on the Industry as a whole, we propose that this and the review of the need for the Adjudicator be undertaken annually.

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 impact on the industry and consumers of setting up such an Adjudicator should be kept to a minimum. We believe the cost estimates of such a regulator are too low. The costs will increase year on year. We suggest a cap of the budget of the Adjudicator to minimise the impact on the pub sector.

The impact of the levy would affect all parties. The Industry would be burdened with additional costs in a time of economic austerity. The additional costs would lead to cost cutting measures to provide the additional monies required to cover these costs. The pub owning companies will reduce investment in properties, as the banks are extremely reluctant to lend money to pub tenants there will be less investment in pub estates, which will lead to more companies disposing of their pubs.

Removal of the Beer Tie and or the introduction of a guest beer will impact on the viability of Breweries supplying goods through the existing distribution network to tied pubs. Inevitably there will be job losses and Breweries will close. This will lead to less competition in the market place and the larger International Brewers will have reduced competition and more of a monopoly, they will be able to demand higher prices. The consumer will have less choice and prices will rise.

Dependent on how costs are awarded then pub tenants will be put off using the system due to the cost. If they are not responsible for abortive costs then this could lead to expensive frivolous claims. Alternatively they will use the existing mechanisms in place to deal with their complaints due to the lower costs involved.

The Levy as proposed will be paid by pub companies covered by the Code, in proportion to number of pubs owned. In second and subsequent years of the levy, it is suggested that those who breach the Code pay more. **However, this still does not address managed companies, Franchise and FOT companies having, as proposed, to pay into the Adjudicator system despite having no pubs that are actually covered by the provisions.**