GREENE KING PLC SUBMISSION TO PUB COMPANIES AND TENANTS – A GOVERNMENT CONSULTATION

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This is the response from Greene King plc to the Government's consultation on pub companies and tenants. Please note we use 'pub owners' to describe any company with tied agreements in the pub industry and 'tenants' to describe both lessees and tenants throughout the document.

Introduction

Greene King is a vertically integrated brewer and pub retailer, quoted on the London Stock Exchange and a member of the FT-SE 250 Index. It has been based in Bury St Edmunds, Suffolk for over 210 years and it operates three distinct trading divisions: -

1. Brewing & Brands, which brews the UK's leading ale brand portfolio and factors a wide range of third-party supplied beers, lagers, wines, spirits and minerals to both our estate and other on-trade pub companies and independent operators as well as the UK off-trade and export market.

2. Greene King Retail, which owns and operates 987 managed pubs, hotels and restaurants across the UK.

3. Pub Partners, which owns and is responsible for 1,269 tenanted, leasehold and franchised pubs across the UK.

We are recognised for the overall quality of our pub estate and beer brands, which has been achieved by long-term investment and a continued focus on providing customers with great value, service and quality. Our vertically integrated model ensures that we are well placed to respond to the ever-changing market conditions and challenges.

Executive summary

We believe that the main purpose of the consultation is to transfer around £100m per year from pub owners to tenants through altering the terms of existing, legal tied agreements under a new, Statutory Code.

Our response to this is based on five key principles: -

1. Greene King does not believe there is a proven need to regulate, by statute, the relationship between pub owners and their tenants.

2. The tie has worked successfully for hundreds of years, is protected by law and should be allowed to continue without material alteration.

3. Arbitrary thresholds for the application of any Statutory Code are inappropriate and will potentially distort the market, causing unintended consequences.

4. If a Statutory Code was implemented, it should be focused on addressing the perceived biggest cause for concern in the pub industry – the longer term, fully repairing and insuring lease.

5. Rather than introduce costly and burdensome red tape in the form of new legislation, the focus should instead be on strengthening the role and powers of PIRRS and PICAS under the present legally-binding Voluntary Code and giving the Voluntary Code a longer chance to work.

We are pleased that the consultation recognises that the industry has faced (and still faces) a wide range of challenges. We welcome the Government's recent decision to abolish the beer duty escalator, but would like to see more done to reduce the raft of red tape that has been imposed on the industry over the last ten years, which has resulted in a significant increase in overheads for each and every pub. We are also pleased that the Secretary of State recognises that the British brewing industry could be significantly disadvantaged should the beer tie be altered. We have operated pubs under this agreement for over 210 years and strongly believe that it is not broken and that it will continue to evolve over time as an integral part of our diversified business.

There is little doubt that the pressures on the tied model in the pub industry have been extreme in the last five years and that these pressures are likely to remain. Besides the smoking ban, credit crunch and recession, pub owners and their tenants will still have to deal with rising alcohol duty, a growing preference for consumers to drink at home, changing demographics and upward pressures on costs. Poor pubs will still close and poor tenants will still fail, whether the predominant code of practice is statutory or voluntary, and we are concerned that the introduction of a Statutory Code may even accelerate pub closures.

In November 2011, Government determined that the most appropriate course of action was not to intervene in setting the terms of commercial, contractual relationships, that legally binding self-regulation could be introduced far more quickly than any statutory solution and that it could be equally effective.

Government's response to the BISC tenth report on pub companies, written at that time, also made some clear statements: -

- *"The beer tie is considered lawful practice and...whether or not a lease or tenancy includes a tie is a commercial decision on the part of both parties."*
- *"The Industry Framework Code is to be made legally binding, by incorporating the Code by reference into new agreements and via collateral contract for existing lessees. Making the Code legally binding will have the same outcome as making it statutory."*
- *"Tied pubs are run under widely different types of agreements: in particular the long-term lease model and the traditional tenancy model of operating offer very different terms and fulfil different market needs. Some attempts have been made to categorise the market by size of operator, but this does not fully capture the leased/tenanted divide. The distinction should not be primarily by size, but by type of lease or tenancy."*
- *"Issues primarily refer to those pubs operated under a long-term (FRI) lease."*
- *"There is no evidence to suggest that the tie is a cause of controversy or dispute between smaller family and regional brewers and those who operate their tied estate (under the traditional tenancy mode)."*

We do not believe that circumstances have changed materially since those statements were written in 2011. If anything, we would suggest they have improved through the successful development of the self-regulatory framework. Therefore, it would be inappropriate to reconsider the beer tie, or the way in which pub owners manage the relationships with their tenants, at this time. More time is needed for the full benefits of the Voluntary Code to be evaluated. The Voluntary Code works well for both Greene King and our tenants and we remain very much committed to making it a success.

We have operated under a voluntary Code of Practice since 1998. We have invested significantly to ensure total transparency across our business and especially with our tenants. All our new tenants are interviewed and signed off by a director of the company. All our tenants have received copies of the Code and it is referred to in all new agreements. We fully support PIRRS and PICAS, which is included within our complaints escalation procedure. To date, we have had no recognised breaches to either PIRRS or PICAS, which confirms that we are already operating, and have always operated, in a fair and lawful way. We believe these bodies are in easy reach of our tenants and represent a cost effective independent solution to both our tenants and the industry.

The consultation document proposes the creation of a two-tier system of codes for the industry (one statutory and one voluntary) by proposing an arbitrary 500 pub threshold for a Statutory Code and an Arbitrator. It is our view that the use of a threshold in this way does not reflect how the industry operates. In particular, the key difference between traditional tenancy and leased models, as recognised in the 2011 Government report, needs to be considered.

Our core business (80% of our estate) is operated under the traditional short-term tenancy, which is based on an alignment of interest between us and our tenants. It continues to offer a low cost entry to self-employment (and a home) and ease of exit. Rents are lower to reflect the shorter tenure and we are responsible for repairing the fabric of the building. It remains a low risk business opportunity for a tenant, with what can be a high return on investment, particularly for an average, or better than average, operator. Around 20% of our estate is operated under the longer-term fully repairing and insuring (FRI) lease, which we only offer to specialist operators to reflect the higher level of investment. This is typically chosen by multiple operators.

Government identified, in 2011, the longer-term lease agreement as one of the principal causes of many of the problems faced by the pub industry. We would therefore propose that only FRI leases are governed by the Statutory Code, regardless of the pub company size. Alternatively, if the arbitrary threshold is retained, then we should be exempt from the provisions of the Statutory Code, alongside the smaller family-run breweries, as we operate on the same short-term brewery-tied agreement model as they do.

We are concerned that the introduction of a Statutory Code, imposed only on pub companies with more than 500 leased or tenanted pubs, could have a number of unintended consequences for this industry and for the sustainability of the traditional British pub. These include: -

- The acceleration of pub closures – as pub companies will choose to divest those pubs which are less sustainable, and many are likely to be sold for alternative use (45-50% will no longer be pubs once sold).
- The transfer of better quality pubs to managed pubs operated by the pub companies themselves– creating less opportunity for self-employment.
- A restriction in consumer choice – fewer pubs and fewer beers available on the bar.
- A substantial decline in pub investment.
- A growth in long-term lease agreements – should pub companies be required to offer both free-of-tie and tied agreements for each pub.
- A hands-off approach by pub companies to operating and supporting tenants.
- The threat of brewery closures.
- A loss of jobs through pub closures, or in brewing, distribution and suppliers.
- A reduction in beer duty revenue and other tax revenues to the Exchequer.

The beer tie in our agreements is permitted under EU and UK competition law since, to the extent that it has an appreciable effect on competition at all, it meets the conditions for exemption under the Verticals Block Exemption Regulation. The legal justification for application of a block exemption is that the agreement generates efficiencies, which benefit consumers and outweigh any competition detriment.

The introduction of a mandatory free-of-tie option and the principle that a tied tenant should be 'no worse off than a free-of-tie tenant': -

- Strike at the heart of the Verticals Block Exemption Regulation as the changes proposed will inevitably change the balance of competition and even remove the efficiencies which benefit consumers. As such, these aspects of the consultation go against the principles of convergence required by EU law.
- Go against the general principles of proportionality and non-discrimination by promoting the interests of one small group of tenants over those of other participants in the industry and consumers.

In conclusion, we believe that Government should recognise that the Voluntary Code is working and should be given a reasonable time to fully prove its worth, particularly in the prevailing economic climate. We do not believe that legislation is required in this area and that, as currently proposed, it could have significant unintended consequences for the British pub industry.

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Q1 Should there be a statutory code?

We do not believe there should be a Statutory Code.

1. Self-regulation has delivered success for Greene King and its tenants for over 200 years.

We were the first company to introduce a Code of Practice in 1998 and Greene King, and its tenants, have been operating successfully under self-regulation for over 200 years. During that time, there have been good times and not so good times but the brewery-tied tenancy model, the same one that is used by the other regional or family brewers who, it is proposed, will not be included in any Statutory Code, has survived as it has generally been left to correct itself to meet the challenges and opportunities of the time.

2. Other external factors are depressing pub owner and licensee profitability.

There is little doubt that the pressures on the tied model in the pub industry have been extreme in the last five years and that these pressures are likely to remain. Besides the smoking ban, credit crunch and recession, pub owners and their tenants will still have to deal with rising alcohol duty, a growing preference for consumers to drink at home, changing demographics and upward pressures on costs. Poor pubs will still close and poor tenants will still fail, whether the predominant code of practice is statutory or voluntary.

The consultation document states that the number of pubs has declined from 70,000 in 1980 to approximately 50,000 (-29%) today. The drinking and eating out market in the UK is very different now than it was over thirty years ago. In 1980, our estate was made up of mainly wet-led pubs. Today, we have almost 2,300 sites that trade to a much wider and varied market and include venues, wine bars, hotels and restaurants. As such, we no longer consider the market to comprise of just pubs but all on-trade premises with which our pubs have to compete for consumer spend.

The Addendum shows the relevant On-Trade leisure market for the UK compared with similar data from 1988, as provided by CGA. It shows the current competitive market at 92,274, a decline of -3,300 (-3.5%) from 1998. Even if pub specific premises are considered, the total number of pub style operations (the Drinking segment excluding Student Bars but including Food led pubs) amounts to 57,006, which is down -5,741 (-9.1%) over 25 years.

If data for just England & Wales is considered, the picture is slightly healthier with the overall On-Trade market declining by -2.7% and the pub specific market declining by -7.7%.

The pub market has been ever-changing in response to consumer trends. In 1900, there were nearly 6,500 breweries operating in the UK, a number that would fall to 142 by 1980. These breweries served 102,000 pubs in England and Wales at the turn of the century, a figure that would drop to 66,000 (-35%) by 1967. The pub numbers for England & Wales had fallen further by 1980 to around 64,000 (-3%) and to around 57,000 in 1988 (-11%). The current number of pubs in England & Wales is 53,000 (-7% from 1988).

Account should be taken of the specific reasons for pub closures within this dynamic market. In the 1970's and 1980's, the pub was under severe pressure from the growth of social and sports clubs, which could provide larger premises, better facilities, entertainment and subsidised beer prices. They forced the closure of many pubs, particularly in village locations and newly built suburban estates. Since 1998, 28% of social clubs have closed in England and Wales due to changing social trends and increased overheads.

At the time of the Beer Orders, it was widely recognised that the stock of pubs exceeded customer demand by around 10%. An unintended consequence of the Beer Orders was the growth of non-brewery pub companies that extended the life of many pubs, but also introduced different operating models such as long, more commercial leases for pubs.

Further competition to the traditional pub came from the extensive city and town centre expansion of on-trade premises in the 1990's as local authorities encouraged the thirst for the night life economy. Managed pub groups, in particular, benefited from lower rents as they expanded into high streets. A combination of density, scale and high investment in these markets not only impacted on the immediate smaller tenanted and leased pubs but also on the rural wet-led pubs surrounding these towns.

Add to this the investment in leisure retail parks, the growth of mass market restaurants and competition from supermarkets and it is unsurprising that many smaller tenanted and leased pubs are no longer fit for purpose, simply due to the loss of their historical customer base, their size or the high risk of investment to reposition them into new markets.

These factors, in combination with increased overheads, red tape and alcohol duty, the smoking ban and the over-riding economic conditions of the last five years, have meant an acceleration in pub closures.

The reality is that the tie, through the support that pub owners voluntarily provide to tenants and their pubs in difficult trading conditions, has kept more pubs open than would 'naturally' have been the case, which is indicated in chart one, below. The more stringent the proposals for a Statutory Code, and therefore the more distorted the market becomes, the more likely pub closures will accelerate again.

Chart 1: The number of pub closures by tenure, six months to March 2013

CGA STRATEGY

Total GB Pub Closures by Tenure				
6 months to March 2013				
	Total Outlets			
Tenure	Sep-12	Mar-13	Openings	Closures
Free	20,516	20,193	475	802
Managed	9,714	9,815	169	109
Non Managed	27,448	27,000	67	470
Total	57,678	57,008	711	1,381

3. The current Voluntary Code (V6) has not been given enough time to prove its value.

We have delivered on a number of positive developments under the strengthened self-regulatory regime.

- Code compliance is imperative to both our and our tenants' success. A number of rigorous processes and ways of working have been introduced into our business to ensure compliance, alongside a new and aligned training programme for our Business Development Managers (BDM). All new tenants are interviewed and signed-off by our Operations Directors.

- We have improved transparency of information and the agreement management process through an investment of over £1m in IT infrastructure and hardware improvements.

- Upgraded pre-entry training is a requirement for all new tenants, which we have extended to include our "Go for Growth" Planning for Success, "Go for Growth" Maximising Your Market Share, Essential Finance, Retail Excellence, Beer Quality & Cellar Management and our "Safe Start" statutory property compliance courses.

- All our rents are signed-off centrally by a committee, including RICS registered valuers.

- We fully support PIRRS and PICAS, which is included within our complaints escalation procedure. To date we have had no breaches recognised by either PIRRS or PICAS, which confirms that we are already operating, and have always operated, in a fair and lawful way. We believe these bodies are in easy reach of our tenants and represent a cost effective independent solution to both our tenants and the industry.

4. The additional costs and red tape associated with a Statutory Code will be an unwelcome additional burden on both pub owners and tenants.

5. V6 is more stringent in certain key areas than the proposals in the consultation document.

V6 is a contract between us and our tenants in its own right. It is legally binding under current law, and is included within our tenancy agreements.

6. Depending on the detail within any proposed Statutory Code, the unintended consequences of regulation will close more pubs, cost more jobs and lose tax revenues for the Government.

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.

No, we do not agree that a proposed Statutory Code should be binding on all companies that own more than 500 pubs. It is an arbitrary figure, which takes no account of how each business operates. We own c.2,300 pubs, of which 1,000 are managed pubs, restaurants and hotels. For these sites, a Code, whether voluntary or statutory, is irrelevant. Of the remaining 1,300, the majority are run under the traditional medium-term, brewery-tied tenancy that we have been predominantly operating for over 200 years. This is the same business model that the other regional or family brewers operate, yet they are exempt from the proposed Statutory Code because they have not grown as much as we have over the last 20 years.

We are also concerned that this arbitrary threshold of 500 pubs has been justified on the basis of inaccurate reporting of British Institute of Innkeeping (BII) information. The consultation document has inaccurately taken BII members' queries as being complaints and suggested that those with the most complaints should fall under a proposed Statutory Code. Unsurprisingly, the pub companies with the most pubs have registered the most queries. This is not a basis for deciding which companies should be in or out of something that is potentially as impactful as a Statutory Code.

We have received feedback from the BII on our tenants' requests for advice. Over the last three years, 26 calls have been made to the BII service, which represents 0.6% of our tenants over the three year period. There was a wide range of topics that our tenants wanted to discuss with the BII, which can be seen in chart two. Only one is listed as a grievance and only one is listed as a dispute.

Chart 2: BII schedule of Greene King tenants' requests for advice over last three years

Year	Total Number of calls for advice	Calls from GK BII Members	GK %	BII stated reasons for Call																	Number of GK Tenanted/Leased Pubs	Calls as % GK Tenanted/Leased Pubs
				Financial	Rent Review	Repair Liability	Buying Out	Beer Tie	Lease Renewal	Legal	Termination of Agreement	Managed House	Assignment	Beer Volume Target	Business Support	Costs	Surrender	Grievance	Business Rates	Dispute	Other		
2010	195	7	4%	2	2					1	1	1										1,514	0.5%
2011	197	12	6%		2						3		1	1	2	2	1					1,380	0.9%
2012	194	7	4%						1								2	1	1	1	1	1,269	0.6%
Total	586	26	4%	2	4	0	0	0	1	1	4	1	1	1	2	2	3	1	1	1	1	4,163	0.6%

So, if an arbitrary threshold of 500 pubs is included in a proposed Statutory Code, we believe Greene King should be exempt, on the basis that we operate the same model as those pub owners outside of the proposed code and that we have not had a material issue with our tenants as a result of our interpretation and implementation of our Voluntary Code.

However, we are more concerned that setting a threshold could act as a barrier to investment and expansion as those pub owners below the threshold might be reluctant to grow beyond any threshold level to save on the costs and burdens of a Statutory Code. It could also create a two-tier system within the industry with the larger pub owners under a Statutory Code, with all its additional costs and burdens, and the smaller pub owners under a Voluntary Code, with voluntary arbitration if they wish to continue with it. This has the potential for unintended consequences.

The consultation document proposes a potential transfer value of £102m per year from pub owners to tenants. The more stringent the proposals attached to a Statutory Code, and therefore the increased likelihood of this value transfer, the less effective the two-tier system will be. If a tenant has a pub with a company outside of the proposed Statutory Code, they are potentially going to see a similar tenant, with a pub owned by a pub company within the proposed Statutory Code, making more profit. The former tenant will therefore look to operate a pub under a Statutory Code. This transfer of skill will force those pub owners outside of the proposed Statutory Code to offer their tenants the same terms and conditions as if they were in the Statutory Code, and to incur additional costs in doing so. This renders the artificial differentiation between large and small pub owners irrelevant and negatively impacts on those small pub owners that Government seems keen to protect from the proposed statutory regime.

As Greene King has a responsibility to its shareholders, its employees and its customers, as well as its tenants, to be successful, if a Statutory Code was to be overly burdensome and costly to our business, we would look to reduce the number of tied pubs in our estate to become exempt from statutory regulation. We could achieve this through accelerated disposals and accelerated transfers from tenanted or leased pubs to managed pubs. Assuming we would not be alone in pursuing this strategy, the market is likely to be flooded with pubs for sale, reducing the overall value of pubs, with negative consequences for all operators. It is also worth noting that around 50% of all pubs sold are sold into alternative use, thereby accelerating pub closures unnecessarily.

Another, preferable alternative to the 500 pub threshold is to only include fully repairing and insuring (FRI) assignable leases within a proposed Statutory Code. These are the agreements that have created most, if not all, of the material issues raised in the various Government reports on the relationship between pub owners and tenants. This would also have the positive effect of encouraging pub owners to reduce the number of these agreements, only using them when it is clearly the right agreement for the pub and the prospective tenant.

In summary, if there is to be an arbitrary threshold, then Greene King should be exempt from any proposed Statutory Code on the basis that we operate the same model as those pub owners outside of the proposed code and that we have operated fairly, lawfully and transparently with our tenants under self-regulation. Our preference, if there is to be a Statutory Code, and based on the risks associated with a two-tier system, is to remove the threshold altogether and ensure that all pub owners with long-term FRI agreements are governed by the Statutory Code in respect of those agreements.

Q3 Do you agree that, for companies on which the Code is binding, all of the company's non-managed pubs should be covered by the Code?

We do not agree with this. If there was to be a Statutory Code, it should be proportionate to the problem. Most of the issues raised by those that believe self-regulation does not go far enough have been caused by long-term FRI leases and not shorter-term, brewery-tied tenancies. Therefore, we suggest that the only pubs that should be covered by any proposed Statutory Code are those with long-term, FRI, assignable leases. All others, including brewery-tied tenancies and 'tenancies at will' (TAW) should be exempt.

If there is to be an arbitrary threshold based on size, Greene King, based on its predominant brewery-tied tenancy model, should be exempt, as this is the same type of agreement that the regional and family brewers operate, which are assumed in the proposals to not need a Statutory Code governing them. We do not believe we should be discriminated against because of our size and success in growing our business over the last 20 years.

If Greene King is not to be exempt, or the brewery-tied tenancy is not to be exempt, then within any proposed Statutory Code, we suggest that other shorter-term agreements that we and others within the Code operate, should be exempt.

We operate a number of pubs under one to two year agreements that we plan to sell in due course, with the full and explicit knowledge and understanding of the licensee. In fact, these pubs tend to attract high quality tenants who know they can operate the pub on reduced costs to the mutual advantage of both pub owner and tenant. If these pubs were to come under a proposed Statutory Code, then the additional costs and red tape associated with the code could lead to these pubs being closed instead of remaining open for an indefinite period. We also believe that TAWs should be excluded as they operate primarily to keep pubs open if a licensee leaves a pub without a suitable longer-term replacement in place. They are normally 28 day agreements on a subsidised rent. The additional cost and red tape of having to operate these agreements under a Statutory Code would lead us to temporarily close these pubs instead.

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

We currently operate a number of franchises within our business for branded concepts, which include a full tie of beverages, machines and food, aligned to branded menus under agreements approved by the British Franchise Association (BFA), which has a recognised grievance procedure. If a Statutory Code was applied to pub franchises, this could undermine the BFA agreements. There is also a risk of this setting a precedent for franchisees to challenge their tie in other branded businesses (such as McDonalds, Burger King, Subway, KFC, Costa, Domino's etc).

Q5 What is your assessment of the likely costs and benefits of these proposals on pubs and the pub sector? Please include supporting evidence.

We are not clear as to what is being asked in this question and whether it is intended to cover the costs and benefits of the Statutory Code in principle or the impact of the proposals as a whole.

We do not believe it is correct to state that the proposals will have little impact on those companies who operate fairly, as it depends on which elements, if any, of the Code are taken forward. By way of example only, staffing costs may need to increase, to ensure compliance, as well as training costs. In addition, we are not clear as to the likely costs of the Statutory Adjudicator but are aware that some estimates suggest a cost of c. £500,000 per company in the first year alone, some of which would undoubtedly be passed on to tenants.

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

We were the first company to introduce a Voluntary Code of Practice in 1998 and we continue to fully support self–regulation. We have invested in our people and our infrastructure to deliver the principles of the current Voluntary Code, which is already binding on us as a matter of contract law. We strongly believe on-going compliance with the Voluntary Code will ensure that we continue to attract and support the best quality tenants in a competitive market and result in continued growth in profit share for both our tenants and us. More time is need for V6 to prove its worth to the industry.

We are concerned that a Statutory Code, aimed at only part of the industry, risks stifling investment in this sector and the acceleration of pub disposals. Having part of the industry only subject to a Statutory Code could distort the market.

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

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

Fair and lawful dealing

As a business, we always aim to deal with our tenants in a fair and lawful way. We have operated under this principle for over 200 years under the Greene King brand and we are extremely mindful of the impact on our brand image if we do otherwise. While we do not agree with the introduction of a Statutory Code, we do believe that it is in the best interests of all pub owners to deal fairly and lawfully with their tenants.

By way of example as to our fair and lawful dealing, we aim for total transparency with our tenants. All of our rental valuations are prepared in line with RICS Guidance (The Capital and Rental Valuation of Public Houses, Bars, Restaurants and Nightclubs in England and Wales 1st Edition) and we share these with our tenants.
We have operated open book agreements for many years. This ensures that we set fair rents appropriate to each business, reflecting each pub's turnover and overheads. We also operate a flat management structure, which ensures that tenants have easy access to decision makers and there is a clear escalation process for complaints to the Managing Director of the business unit.

We support PICAS as part of the Voluntary Code, as it provides tenants with a lower cost opportunity to challenge fairness.

For over 200 years, we have sought to comply with all relevant laws impacting on our relationship with our tenants, recently at significant incremental cost to the business. We believe that the proposal for a Statutory Code could add further costs, with little value, as tenants are already protected under a range of current legislation including: -

- Landlord & Tenants Acts of 1927, 1954 and 1988
- Landlord & Tenants (Covenants) Act 1995
- Leasehold Properties Repairs Act 1938
- Arbitration Act 1996
- Human Rights Act 1998
- Misrepresentation Act 1967
- Unfair contract terms legislation
- Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

In addition, there are various legal remedies available to tenants under contract and tort law.

'Tied tenant should be no worse off than a free-of-tie tenant'

This principle is one that needs careful consideration in the light of current competition law provisions. The beer tie, in our standard tenancy agreement, is permitted under EU and UK competition law since, to the extent that it has an appreciable effect on competition at all, it meets the conditions for exemption under the Verticals Block Exemption Regulation (VBER). The legal justification for application of a block exemption is that the agreement generates efficiencies, which benefit consumers and outweigh any competition detriment.

Under the general principle of convergence set out in Article 3, Regulation 1/2003, the UK Government is precluded from enacting any measure of national competition law that prohibits an agreement or restriction, which is permitted by a block exemption. Regulation 1/2003 specifies the appropriate mechanism for national intervention, being withdrawal of the block exemption by decision of the national competition agency, in this case, the Office of Fair Trading (OFT).

We are concerned that the principle of 'a tied tenant being no worse off than a free-of-tie tenant' goes against the principles of the VEBR as the change would inevitably alter the balance of competition and even remove some of the efficiencies, which currently benefit consumers. As such, we believe that this aspect of the consultation is contrary to the principles of convergence required by EU law.

Secondly, a requirement that 'a tied tenant should be no worse off than a free-of-tie tenant' is arguably contrary to the general principles of proportionality and non-discrimination, as it promotes the interests of one small group of tenants over those of other participants in the industry and consumers.

With regard to the competition issue, the European Commission has considered the application of EU competition law to beer ties of UK breweries on numerous occasions and on each occasion has concluded that the efficiencies for consumers, which flow from these arrangements, outweigh any loss of competition. Based on its case law, the Commission has enacted successive block exemptions exempting beer ties on consistent terms for the last 30 years.

The approach of the European Commission to beer ties imposed by brewers is described in "Bellamy & Child: European Union Law of Competition" (Seventh Edition) at paragraph 7.156, as follows:

"In Whitbread, Bass, and Scottish & Newcastle the Commission applied Article 101(3) to give retroactive validity to the standard leases of three major national United Kingdom brewers because of the improvements to distribution which agreements for the lease of pubs combined with exclusive purchase/non-compete obligations offered. The Commission indicated that such improvements could be outweighed where a brewer used the tie to extract higher prices from its tied customers than those being charged to non-tied customers, even when adjusted for the increased benefits which tied customers obtained from a brewery. However, the countervailing benefits offered by the brewers accounted for the difference between the prices at which they supplied loan-tied and non-loan tied customers".

As this passage illustrates, the question of whether the loan tie results in a tied tenant being worse off than a free-of-tie (FOT) tenant is the specific subject matter of the exemption in these cases. This analysis also underlies the VBER.

Accordingly, to remove a pub owner's ability to organise its business in this way, in accordance with settled EU competition law, strikes at the heart of the VBER and violates the principle of convergence.

It is also appropriate to note that, if there are concerns that pub companies and breweries are using a beer tie to extract unfairly high prices, the appropriate mechanism for national intervention would be for the OFT to withdraw the exemption and not for the introduction of a Statutory Code.

There would appear to be a risk that the introduction of the principle of 'a tied tenant being no worse off than a free-of-tie tenant' could have the unintended effect of distorting free competition in favour of the least efficient operators in the market and to the detriment of potentially more efficient FOT tenants and consumers. Every potential tenant currently has the option as to which deal to sign up to in a competitive market, which offers a mix of different opportunities and business models. To require certain pub owners to offer a small number of less efficient tenants the same terms as more efficient rivals is discriminatory and distorts competition.

We also believe that there are good arguments for saying that the introduction of a principle that 'a tied tenant must be no worse off than a free-of-tie tenant' would be contrary to the principle of non-discrimination, which requires that similar situations are treated in the same way but that objectively different situations are recognised and treated differently.

Breweries and pub companies, which currently use a beer-tie, are not in the same situation and this difference must be recognised.

The consultation notes that, historically, the use of the tie by regional brewers has not been problematic, that the benefits of the tie have been significant for small and medium-sized brewers and that the loss of the tie would have serious outcomes, including for Greene King (which is expressly mentioned). It even identifies the very real risk that the few large international brewers could dominate the market if there are changes to the tie 'putting pressure on, potentially leading to the closure of, British ... family-run brewers' i.e. companies like Greene King.

The proposals, however, place us on the one hand, and the large international brewers and the pub companies on the other, all in the same category without acknowledging the important differences between these companies. This could be regarded as discriminatory.

The consultation document suggests that tied tenants are 'worse off' than FOT tenants and that a balance of £102m should be moved from the larger pub owners to their tenants, although the rationale for determining that this is the appropriate value is not clear.

It is worth acknowledging that most FOT premises are operated under longer-term lease agreements, which include FRI conditions, high security deposits (often the equivalent of six months' rent) and upward only rent reviews. The ingoing costs are significantly higher than the traditional short-term tenancies, as are the inherent overheads to operate a FOT pub. If FOT tenants want to invest in their businesses to develop them, such investment generally needs to be fully self-funded, leaving tenants exposed to the fluctuating money markets.

On the other hand, the traditional tenancy is a low cost entry to a short-term agreement with the landlord retaining responsibility for the repair and maintenance of the fabric of the building. We believe the average annual cost difference for a tied tenancy is £10-20k less than a FOT tenancy, based on the annualised cost of entry, debt servicing and the cost of overheads based on the individual pub.

We do not believe it is possible to assess the difference in value to the operator of comparable tied and FOT agreements in pure financial terms, as set out in the example profit and loss model within the consultation proposals, for a number of reasons: -

- It is not possible to place a value on such factors as an operator's attitude towards risk and reward under each agreement. These are personal preferences that will vary across the broad spectrum of pub operators.

- If a mandatory FOT option became legislation, it should only be applied to longer-term FRI leases and not shorter-term, brewery-tied tenancies. It is less likely that a tenant would get a suitable return on their initial investment over the shorter time period of a brewery-tied tenancy.

- We would expect the hypothetical pub tenant in the market to expect to receive more profit for the increased efforts and risk in operating a FOT business, where he or she has no support from the pub owner, than a tied tenant. Consequently, it is appropriate for a FOT tenant to pay a higher rent than a tied tenant.

- The consultation document also suggests that the same assumptions and the same share of the divisible balance must be used in both tied and FOT valuations and that the rental bid should be the same in both cases. This cannot be correct and is not reflective of the market. It is being used as a simple mechanism to 'balance' the calculation on the consultation document. If the market for FOT leases was strong and our pubs more attractive, we would expect to see a divisible bid of well over 50% should be achieved by the pub owner and perhaps, if the market perceives tied leases as unattractive, a margin below 50% may be more accurate. The example shows the adjusted rental bid of approximately 30% for a tie versus a FOT bid of 50%. This variance is not evidenced in the market.

- The example model simply also uses sales parity between the two models which is too simplistic. Typically, the FOT tenant should be able to achieve higher sales on the back of their improved margin being passed on to consumers in lower retail selling prices, if that is what they choose to do.

- However, increasing sales through a FOT model in turn creates a bigger rent adjustment (at D), thereby reducing the adjusted tied rent even further. This could ultimately lead to a minimal rent being payable for a tied lease. This demonstrates to us the deep flaw in the methodology as the FOT rent is driving the tied rent in this calculation, when it is the particular market that determines this. It is for the skilled valuer to assess the market for each property and assess demand depending on the type of agreement.

- The hypothetical tenant would expect more reward for their efforts as a FOT tenant and the tied tenant may feel adequately compensated with lower profit and not necessarily feel worse off if they have lower fixed costs and the added benefits of support given by the pub owner.

We are proud of the level of tenant support that we provide and believe it is central to us in attracting the best tenants into our pubs. In particular, this support is essential to new tenants entering the business. Examples of our tenants' support package include: -

  - Web-based business support package
  - On-line product ordering and in-house customer sales
  - Subsidised industry-leading training for tenants and their staff
  - On-line marketing support including wide-ranging marketing, promotions, food and wine menus
  - On-line buying guide
  - Retail templates (Love-Your-Local, Business Builder etc)
  - Annual business reviews and regular business support meetings with their business development managers/operations directors
  - Review process to support tenants in difficulty
  - In-house premises licence management and machine management
  - Subsidised Maintenance & Service Agreements (covering the service and maintenance of equipment and statutory compliance)
  - Support of estate managers (RICS qualified) and surveyors
  - Professional rating appeals
  - Premises licensing management

- Cellar service support
- 7-8 year cycle of external rota programme, including all amenity signage and on-going repairs
- Access to expansionary investment (design & build) and in-house loans
- Guest ale programme and on-going product promotion programme
- Benefit of corporate and Greene King brand advertising campaigns
- 24x7 tenants' help desk

While some tangible costs are easy to value, many of the benefits to our tied tenants listed above are intangible and impossible to value and quantify. For example, we put our company name on all of our tied pubs, from which tied tenants should benefit from the advertising we do and the ongoing investment in promoting and protecting our brand.

This high level of tenant support has been in place for many years and is a cornerstone of our business, as we believe it makes us competitive in the market. Investment in pubs is essential for them to remain relevant in today's market. We externally decorate our tenancies (but not our longer-term FOT leases) on a seven year cycle and annually invest over £17m in capital across our tenanted estate to ensure our estate is appropriate for the market. The investments are funded through a blended return on rent and wholesale margin.

Should a mandatory FOT option be implemented, there is a risk that pub owners will invest less in their pubs, as it will be harder to justify investment for such agreements if the returns are not appropriate or as certain, particularly for a brewer such as Greene King. Instead, tenants will have to seek third-party finance, undoubtedly resulting in less investment and a decline in the quality of tenanted and leased pubs.

In addition, tied pub owners have a vested interest in keeping their pubs trading to maintain the rent and the wholesale profit, whereas a FOT landlord does not. This was well demonstrated during the current recession. Our hands-on approach in this area ensured that we could support ailing tenants with flexible rent concessions and beer discounts to support retail promotional activity and keep our pubs open.

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.

ii. Increase transparency, in particular 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.

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

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

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 obligations,

Rent reviews

As stated above, we do not believe that a Statutory Code is necessary. However, it is worth noting that the maximum rent review cycle that we currently operate with is five years. We have a process in place to allow tenants to request a rent review should there be a material change of circumstances, which is generally taken to be a change of circumstances that would justify a re-rating of the premises and a consequential business rate reduction.

Increased transparency

We have provided full transparency of information to our tenants as part of the Voluntary Code but do not agree with the proposal to provide a parallel tied and FOT rent assessment. As previously stated, we believe that while the tied rent can be determined by divisible balance, using the RICS guidance, the FOT rent cannot be determined by a simplistic formula based method as proposed.

Abolish the gaming machine tie

We do not agree with the proposal in the consultation document to abolish the machine tie. It is our view that the gaming machine tie:

- ensures regulatory compliance with the Gambling Act 2005 and the licensing objectives of thereof;
- is beneficial for the Exchequer, as removing the tie will cost in excess of £10m in lost tax;
- creates additional profit for tenants; and
- supports the UK machine manufacturing sector and the employment this brings.

These are explained in more detail below: -

- Regulatory Compliance

The machine tie allows a tenant to select the machine supplier they wish to use, from an approved list. As part of the selection process for approving a supplier, we ensure that the company has been granted the appropriate operator's licence from the Gambling Commission and that the company is run by fit and proper management, as approved and licensed by the Gambling Commission. To become a licenced machine operator requires a significant cost.

Ensuring that machines are only supplied by a fit and proper licensed supplier furthers the licensing objectives of the Gambling Act 2005 (to keep gambling crime free, to protect the vulnerable and to prevent children from gambling).

Furthermore, as part of the selection process for approving suppliers, we ensure that the supplier will correctly and adequately administer the renewal and application process for gaming machine permits and notifications, ensuring pubs are legally able to offer gaming. If the machine tie were removed, then either the tenant would need to administer this process themselves or remember to negotiate the administration as part of the cost of the gaming machines. The removal of the tie, therefore, could lead to a significant level of non-compliance in this area, compromising the Gambling Act's licensing objectives.

As part of the selection process for approving suppliers, we also ensure they have adequate liability insurance. This is a check many tenants may not make.

It is our belief that, if the machine tie is abolished, this could open up the pub market to unscrupulous rogue suppliers who do not have the appropriate licences and may supply machines that do not adhere to the Gambling Commission's technical standards or to relevant health and safety laws. There is also a real danger that machines would be supplied with illegal software and illegal stakes and prize limits. We are concerned that the Gambling Commission and local authorities will not have the resources at their disposal to curb this potential rise in illegal operators. We also question whether the vast majority of tenants will have the resources or knowledge to be able to adequately check suppliers' licences and ensure that they are only being supplied machines by fit and proper companies. It is worth remembering that the 1968 Gaming Act was brought into place as a direct result of the operations of rogue criminal suppliers and if the machine tie is abolished, there is a real risk of compromising the Gambling Act 2005 key objective of keeping gambling crime free.

- Loss of revenue to the Exchequer

We believe a removal of the machine tie would also result in a loss of revenue for the Exchequer. The recent introduction of Machines Gaming Duty (MGD) is a good example of how we worked closely with approved suppliers to provide information for tenants and support the process of registering for this new tax. Our stipulation to approved suppliers that they only supply machines to tenants that have registered for MGD will ensure high levels of on-going compliance and also provide an audit trail for both MGD and VAT purposes.

If the machine tie were removed, it would also remove the requirement on tenants to use an approved fit and proper licensed supplier and therefore the rate of MGD registration is likely to fall, resulting in lower MGD receipts.

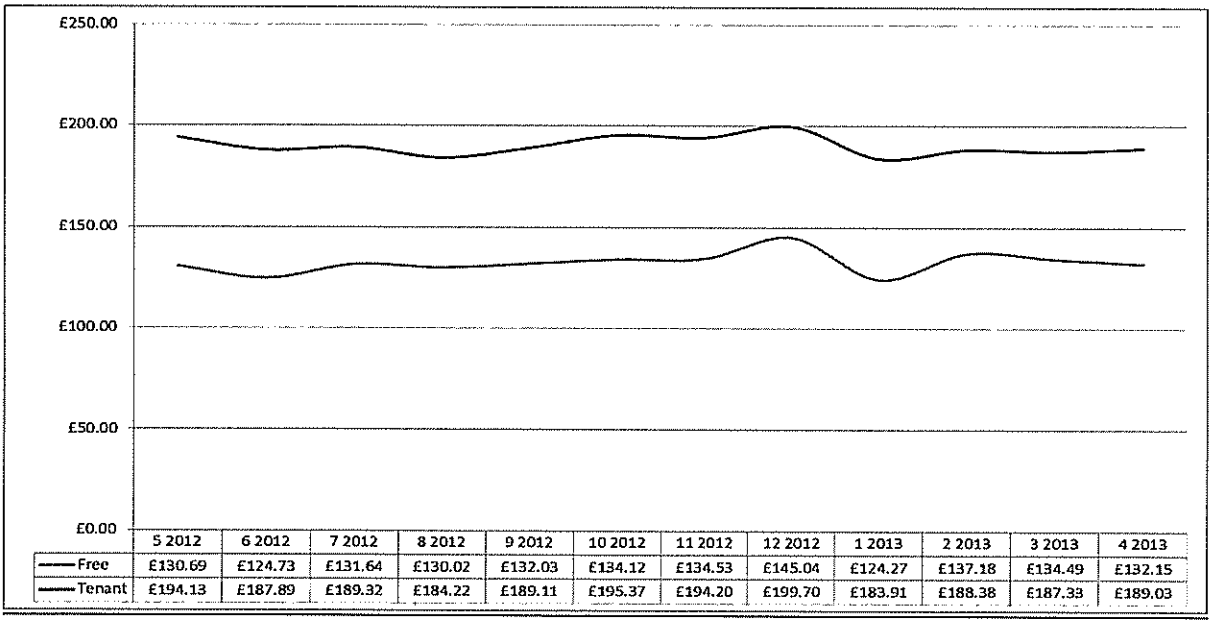
Pubs, where machines are tied, are actively managed by our specialist machines team, resulting in a higher net cash take. As MGD is calculated as a proportion of the net cash take (currently set at 20%) then the resulting loss of MGD receipts will be significant. We estimate this could cost the Exchequer in excess of £10m.

- Additional profit for tenants

We employ a specialist machines team to maximise machine profitability. This is achieved through a number of areas such as supplier selection, using group scale to negotiate low cost supply, supplier management, service level agreements, providing tailored advice to tenants and machine selection (having a large information pool across a large tenanted and managed estate means that we are able to select machines to maximise profit rather than just on the basis of cost).

The result of this specialist focus is a higher net cash take of almost 60% more when comparing tied machines to non-tied machines. This is demonstrated on Chart Three, which is taken from information given to us from machine suppliers Gamestec Leisure, the largest supplier of gaming machines to the UK pub markets. We have had similar submissions confirming this differential from our other main suppliers, such as Sceptre Leisure, and the Independent Operators Association, and would be happy to share this information on request.

Chart Three: Differential net cash take – tied vs. non-tied machines



	5 2012	6 2012	7 2012	8 2012	9 2012	10 2012	11 2012	12 2012	1 2013	2 2013	3 2013	4 2013
Free	£130.69	£124.73	£131.64	£130.02	£132.03	£134.12	£134.53	£145.04	£124.27	£137.18	£134.49	£132.15
Tenant	£194.13	£187.89	£189.32	£184.22	£189.11	£195.37	£194.20	£199.70	£183.91	£188.38	£187.33	£189.03

The agreements that we have in place divide the profit generated by the machines equally between us and the tenant. If the machine tie were to be abolished, then this would result in an adjustment to the pub rental charge as the pub profit would increase accordingly. Removing the machine tie will result in lower net cash takes, meaning less overall profit being generated in tenanted pubs leading to both tenants and landlord making less profit.

- Support for the UK machines manufacturing industry

The decline of the UK machine manufacturing sector is well documented. Removing the machine tie could inflict a further blow on this under-pressure sector. As part of the tender process for approving a machine supplier, the investment levels that we expect our suppliers to commit to new equipment are agreed. The objective is to ensure the machines provided to the consumer are sufficiently attractive (gaming machines are a fashion product and the rule of thumb is the older they are the less attractive to the consumer). These agreed investment levels support the UK machine manufacturing sector. The removal of the tie could lead to suppliers providing older machines to tenants in a bid to sweat the asset (as a tenant often does not have the resource or specialist knowledge to know the age or average earning potential of a machine). This will lead to fewer purchases of new machines, further reducing output for manufacturers, resulting in a loss of UK manufacturing jobs.

No other product other than drinks (and machines) may be tied

In principle, we agree that no other retail products should be tied although please note our answer to question 4 above regarding franchise agreements.

There are also some exceptional services that we do tie that we would argue are of benefit to our tenants: -

- Bottled gas used for the dispense of draught beer is supplied through our delivery chain and is tied under some of our agreements.

- There is a tie for the provision of our cellar service installations which ensures it is undertaken in a competent way.

- We include a subsidised maintenance and service agreement within our tenancy agreements, which goes beyond the contractual repairs obligations and includes all statutory compliance.

Provide a guest beer option

We do not agree that if a Statutory Code was to be implemented, that a mandatory requirement to provide a 'guest beer' should be included: -

- The consultation document refers to a 'guest beer', which could be interpreted as any lager, stout and cider as well as packaged beers, as opposed to specifically 'guest ales'. This would significantly extend the commercial risk to our business and create excessive market distortion.

- We are brewers in our own right and while we accept a range extension of cask ale can benefit some parties in some markets, we should not be forced to provide access to market for our competitors. This is particularly so when considering the significant Progressive Beer Duty advantage they receive and the lack of any investment they have to make in our asset or in dispense equipment.

- We already choose to offer a number of regional brewer guest ales through our supply chain and we have begun to enter into individual arrangements with a small number of tenants to source local micro-brewery ales, where there is a clear market opportunity. We plan to extend these arrangements as market opportunities arise.

Flow monitoring equipment

In the current market, all beers are readily available from many sources, both legal and illegal. Over the last ten years, we have invested over £3m in flow monitoring equipment and pay an annual service fee of £0.6m. We do this to: -

a. Manage the tie more efficiently.
b. Improve product quality for our tenants including beer temperature.
c. Provide our tenants with state of the art equipment to manage their business more profitably including providing information on dispense and till yields.

We use the i-draught system supplied by Vianet Group (Brulines) and we also install this system within our own retail estate for the same commercial reasons listed above.

The commercial facts for investment in flow monitoring equipment are compelling: -

- Cross border illegal distribution of beer has, in the past, been rife and became attractive for rogue suppliers and the criminal fraternity. This has historically impacted on volume sales and excise duty. While this threat has lessened, we are concerned that, should this opportunity reopen if the use of flow monitoring equipment were banned, criminals could see an opportunity for a quick profit in distributing or even producing their own products (outside quality and excise duty controls) as has been demonstrated with fake spirit brands being distributed across the UK.

- We estimated that the loss of tied volume was around 6% in 2001 with more business time being spent investigating "white van" deliveries to our pubs as well as escalated cellar visits. If flow monitoring was removed there is a real risk that this could occur again.

We do not rely on flow monitoring equipment alone to determine agreements breaches. Last year, c.150 breaches were identified by us and all were resolved through discussions with the tenants involved.

We have been reassured by Vianet Group (Brulines) that they have satisfied the requirements of the 2010 Select Committee Report and complied with the Government's recommendations to have their equipment tested by the National Measurement Office. It was found to be within acceptable tolerances.

As such, we believe we should be entitled to use the appropriate equipment and information to manage the tie within our estate. Buying outside of the tie enables potentially unscrupulous tenants to mis-state their full sales turnover, which impacts on the assessment of the appropriate rent for the pub and ultimately undervalues the asset value. There is also a risk that these sales may not be fully declared for VAT purposes. We estimate this could account for up to £300m in lost revenue across the industry to the Treasury.

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

As previously stated our view is that there is no need to expand beyond what is in the current V6 Voluntary Code.

With regards to the draft proposal, and taking into account our comments so far in this submission, we have the following additional concerns: -

- There is a requirement that all agreements are to be subject to a Schedule of Conditions (SOC), not just full repairing agreements. We do not believe this is appropriate as this level of interference is not applied to other comparable sectors e.g. secondary retail shops.

- We expect to operate under a 'put and keep' repairing clause.

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?

Again, we reiterate that we do not believe a Statutory Code is required. It has yet to be proven that the updated Voluntary Code does not work. However, if it were to be implemented, we would propose a sunset clause at three years, with a full review based on value added and its impact on the industry as a whole including pub closures.

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

No, there should not be a mandatory FOT option in any proposed Statutory Code, as it would remove the certainty of supply for all regional brewers, regardless of threshold, and lead to accelerated pub closures, potential brewery closures and thousands of lost jobs, within both the industry and the supply chain.

The consultation proposals suggest that companies that are subject to the Statutory Code should offer every tenant the option of either a FOT or a tied agreement regardless of term. This is not appropriate in our view. A short-term agreement must be tied to reflect the low in-going value. If this was offered as FOT, there is a risk that the tenant,

who would have responsibility for the fabric of the building under a FOT agreement, would not invest in their business as they would not get a return on their investment within the term of the agreement.

We are concerned that the consultation proposals could lead to pub owners, which are subject to a Statutory Code with this option, only operating long-term lease agreements, which would preclude low-cost entry, reduce the level of tenant support and increase the overall risk of any proposed Statutory Code failing to address the perceived issues in the industry.

The proposal to require a FOT option would also offend the principle of proportionality outlined in answer to question 7 above because it benefits a small subset of tenants and requires them to be treated in the same way as others, who are in a very different position.

The principle of proportionality requires that (1) a legitimate aim is pursued; (2) the strength and impact of the response reflect the issue identified i.e. that the least aggressive response to the problem is utilised; and (3) so much pain is not felt by such a small group that it would not be fair or just.

The proposal to require a FOT option would be disproportionate because the perceived harm does not flow from the regional brewers, such as Greene King, nor from shorter-term agreements like the brewery-tied tenancy that we operate. Therefore any Statutory Code should not be aimed at companies such as Greene King.

We also believe that a mandatory FOT option could trigger a judicial review under the Human Rights Act 1988.

Q12 Other than (a) a mandatory free-of-tie option or (b) a mandatory requirement 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?

Given the economic climate that has prevailed for several years, we have witnessed more FOT pubs closing than tied. This would indicate that the question is not relevant as it is not established that tied tenants are worse off.

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

No. We do not believe this to be required as there is no requirement for a Statutory Code and therefore there is no need for an Adjudicator. If a Statutory Code was introduced, the consultation refers to an Adjudicator aligned to the recently appointed Grocery Adjudicator. However, there is no comparable relationship between the two industries.

The grocery sector was investigated by the OFT and was found to have competition issues, whereas the pub industry has been investigated by the OFT on several occasions, the most recent in 2010, when it was found that there were no competition issues.

The current PICAS and PIRRS adjudication has not had sufficient time to bed in and we are confident that this provides a low cost option to address any breaches to the Voluntary Code.

Instead of a Statutory Code and Adjudicator system, it might be useful to explore giving greater powers to fine pub owners found to be in breach of V6 of the Voluntary Code. If pub owners are found to be in breach and are fined, beyond restitution costs to the tenant, the additional sums could be invested in some sort of "pubs fund" to support not-for-profit community pubs schemes.

We are concerned that the estimated costs of operating such a Statutory Adjudicator are significantly higher than the current voluntary arbitration arrangements and we believe that the estimated costs are understated. We do not have clarity around the costs as the Grocery Adjudicator as it is expected to publish draft guidance for consultation in the summer 2013.

- We understand that the Grocery Adjudicator is planned to be a part-time body and we are uncertain if it is planned for the pub industry Adjudicator to be part-time or full-time, which will further increase costs.

- The Grocery Adjudicator will only arbitrate on breaches to the Grocery Code, whereas, according to the consultation document, the pub industry Adjudicator will both enforce the Statutory Code and also arbitrate

on rent disputes which will require specialist advice. This does not appear to have been taken into consideration.

- It is proposed that the levy is to be funded based on the relative number of pubs of those companies operating under a proposed Statutory Code. If the proposed Statutory Code comes into force, we believe that it should include all pub owners with tied agreements and that a higher levy should be charged on longer leases as they carry the highest level of risk.

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

i. Arbitrate individual disputes?

- Assuming that a Statutory Code is introduced, we would accept the proposal for the Adjudicator to arbitrate on individual disputes provided that they related to the Statutory Code. However, we do not believe the Adjudicator's arbitration role should cover rental disputes. There are established processes for the determination of rental disputes through the RICS Dispute Resolution Service and PIRRS.

- The processes for dealing with rent disputes, through either arbitration or referral to an independent expert, are well established. Arbitrations are subject to statutory control under the Arbitration Act 1996 and referrals to independent experts are on the basis of a duty of care.

- We believe that tenant breaches of the Code should also be referred to the Adjudicator.

- It would be unreasonable, burdensome and costly for any historical disputes or new disputes arising out of actions or decisions, which occurred prior to the implementation of a Statutory Code, to be heard by the Adjudicator.

ii. Carry out investigations into widespread breaches of the Code?

- Yes, we believe this is more appropriate but an appropriate definition of 'widespread' is required.

- If the cost of any such investigation is to be paid for by the pub owner found to have breached the Code, it should also be clear as to who pays if such an investigation does not find that an pub owner has breached the Code.

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:

We strongly believe that any sanctions imposed should be in proportion to the breach committed and should be clear and transparent.

i. Recommendations?

We would hope that the vast majority of disputes would be easily resolved by the Adjudicator who would provide pub owners with recommendations to prevent future breaches.

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

We believe that this should only occur in the case of the most serious breaches of the Code, which again would need to be clearly defined.

iii. Financial penalties?

We expect fines to be kept to a minimum and in direct proportion to the breach.

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

While we do not believe that there is a need for either a Statutory Code or an Adjudicator, we do accept that, if one is introduced, regular reporting would be essential. It should, however, be undertaken in such a way as does not impose unnecessary levels of red tape or require excessive levels of bureaucracy, which might lead to additional costs being imposed on the industry.

If these proposals were to be introduced, we suggest that a sunset clause is implemented after three years, with a full review based on cost and value added and its impact on the industry as a whole, including pub closures.

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?

As previously stated we do not see the need for an Adjudicator. However, if one were introduced, it should be funded by an industry levy. We already pay a levy per pub to fund the on-going costs of PIRRS and PICAS and this principle should be repeated. It is worth noting though that any companies within a Statutory Code are unlikely to continue to financially support a parallel voluntary process, which in the proposed two-tier system of regulation, would be another potential unintended consequence.

As we do not support the arbitrary threshold for inclusion in a Statutory Code, we believe that, initially, the entire industry should be responsible for funding the costs of the Adjudicator, and that amounts should be determined by reference to the number of FRI leases operated by each pub owner, rather than by reference to the number of brewery-tied tenancies. Banding of contribution levels is inappropriate unless each band covers a suitably small number of pubs.

We would like to see a review of funding after three years, with subsequent funding then being determined by reference to the number of breaches each pub owner has committed.

There is a lack of clarity as to the potential costs of establishing and running a Statutory Adjudicator. But, even looking at the best estimates from within the industry, it seems clear that pub owners will not be able to fully absorb the additional operating costs of complying with a Statutory Code and the levy to fund an Adjudicator. At least some of these costs are therefore likely to be passed down to tenants in the form of rent and other charges. Whether a tenant will then be able to pass those costs on to consumers, given the competitive nature of the markets in which they operate, is doubtful, leading to further financial pressure on tenants' profitability.

Great Britain

GK Competitor	1998	2013	Var
Market	95,574	92,274	-3,300

EATING			
CGA Type	1998	2013	Var
Total	31,731	35,085	3,354
Food Led Pubs	8,709	11,342	2,633
Restaurant	21,194	23,743	2,549
Alloc Unknown	1,828	0	-1,828

DRINKING			
CGA Type	1998	2013	Var
Total	55,555	46,646	-4,616
Circuit Trad	2,016	3,215	1,199
Circuit YPV	8,444	12,867	4,423
Student Bar	1,517	982	-535
Wet Led Pubs	39,285	29,582	-9,703
Alloc Unknown	4,293	0	-4,293

ENJOYING			
CGA Type	1998	2013	Var
Total	3,320	3,013	-307
Casino	79	151	72
Entertainment	488	913	425
NightClub	2,753	1,949	-804

SLEEPING			
CGA Type	1998	2013	Var
Total	4,968	7,530	2,562
Hotel	4,968	7,530	2,562

Total Pubs (Drinking plus Food led Pubs less Student Bars)	62,747	57,006	-5,741

England & Wales

GK Competitor	1998	2013	Var
Market	87,008	84,643	-2,365

EATING			
CGA Type	1998	2013	Var
Total	29,647	32,722	3,075
Food Led Pubs	8,346	10,803	2,457
Restaurant	19,574	21,919	2,345
Alloc Unknown	1,727	0	-1,727

DRINKING			
CGA Type	1998	2013	Var
Total	50,026	42,690	-7,336
Circuit Trad	1,963	3,050	1,087
Circuit YPV	7,553	11,644	4,091
Student Bar	1,434	945	-489
Wet Led Pubs	35,124	27,051	-8,073
Alloc Unknown	3,952	0	-3,952

ENJOYING			
CGA Type	1998	2013	Var
Total	3,062	2,776	-286
Casino	69	142	73
Entertainment	447	839	392
NightClub	2,546	1,795	-751

SLEEPING			
CGA Type	1998	2013	Var
Total	4,273	6,455	2,182
Hotel	4,273	6,455	2,182

Total Pubs (Drinking plus Food led Pubs less Student Bars)	56,938	52,548	-4,390