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Association of Licensed Multiple Retailers (ALMR)- Brief on code V6

ALMR Leasehold Reform Campaign Update

- Following the publication of 4 substantive Select Committee Reports¹ and the Government's proposals for enhanced self-regulation in the tied leased/tenanted sector, the ALMR constituted a Council Working Group to negotiate with BBPA Members. Meetings were held between January and May 2012 and subsequently negotiations have been continued at Secretariat level.
- This note summarises the ALMR's negotiating position and the proposals for reform put forward. For ease of reference, this has been separated into those proposals agreed or likely to be agreed and those which have not been accepted. In the latter are included proposals previously agreed with Government but not yet implemented or taken forward.

Negotiating Objectives & Overview

- The ALMR's objective in engaging with BBPA has been to achieve a sustainable, more equitable share of the divisible profit arising from individual businesses to allow both business partners to profit from the business. Given the BBPA's refusal to enter into discussion on or codification of commercial contract terms, this was to be delivered through greater transparency in the rental assessment calculations, in particular:
 - Justification of assumptions and provision of realistic comparables
 - Better allowance for legitimate business operating costs – particularly a manager's salary for multiples
 - Freedom and flexibility for lessees to operate and organise their business as appropriate
 - More effective regulatory structure to ensure enforcement and monitoring of commitments

ALMR Proposals Accepted (Assignable Leases)

- Given the BBPA's refusal to discuss commercial measures which may deal with the balance of **risk and reward**, ALMR proposals in this area related to the **principles underpinning the Code** on which lessees may rely in taking legal redress or cases to PIRRS and PICAS. New principles include a requirement to abide by the spirit not just the letter of the Code, to act with integrity, honesty and conduct business in a professional and fair manner and be transparent in all dealings, charges, costs and rent calculations. These requirements apply to all company employees and actions.
- Despite the intervention of Government, uncertainty about the **legal status** of the Code remains and there are conflicting legal opinions on whether the provision of a collateral contract – the form of an open and unlimited offer to be bound by the Code – was sufficient for existing lessees. There was also confusion as to whether the Framework Code or the Company Code was made legally binding on lessees. Revisions have been made to clarify this and a mechanism included to insert the Framework Code into existing leases by standard industry DoV on request or as a matter of course if the landlord disposes of the property interest to a company which does not subscribe to the IFC. This makes the IFC 'indisputably legally binding'.
- **Annual Statements of Compliance** will be provided by the larger companies and will form the basis for spot checks by BIIBAS and/or the Regulatory Board (agreed Dec 2011 not yet in place).
- An agreed **rent assessment statement** with minimum content on sales, income and costs has been agreed. A standard set of terms for what will be accepted in cost lines, and the inclusion of new cost lines will make calculations of operating costs more transparent and realistic. The Rent Assessment Statement will include indication of evidence base used to derive assumptions, provision of relevant Benchmarks or comparable data and greater transparency on rent as a proportion of turnover and costs. Whilst an allowance for manager's salary has been made, this is below the divisible balance. The Statement must be prepared by someone who has visited the pub in the last 3 months and is subject to a new strict timetable for provision of information and agreement of final rent. Failure to meet these timetables will see cases referred to PIRRS.
- Enhanced reference is made to **RICS Guidance** and all rent assessment statements must now be signed off by either an RICS valuer or a company representative as compliant. This will help to address concerns about the enforceability of RICS Guidance on RICS members. In addition, the relevant sections from RICS Guidance – on matters to which lessees should have regard, including FoT circumstances – are included.

¹ ALMR were witnesses at the following inquiries – 2004, 2008, 2010 and 2011. The Government's response was published on 24 November 2011 and required the BBPA to discuss with industry partners: the principles of the Code relating to the balance of risk and reward; evolution of the AWP tie and resolution of rentalisation; simplification of rent negotiations; greater justification of rent assumptions; agreement of common format of shadow P&L; enhancement of PIRRS

- New requirements on **disclosure** will give lessees the right to ask for more information and to receive it where it is available. In particular, information which is available and will be relied upon in 3rd party determination must be disclosed at the earliest opportunity and when requested.
- BBPA has also accepted *ALMR* proposals for model/template **lessee business planning tools**, with sensitivity analysis on income fluctuation, the effects of indexation and enhanced operating cost calculations. This is referenced in the Code alongside *ALMR* Benchmarking as a tool to assist in FoT comparisons.
- **A new schedule of condition**, with clarification on 'put and keep'. There are timetables for the provision and update of this, with a new protocol on **dilapidations** to avoid protracted legal wrangling on exit
- Royalty payments on **AWPs** are to be phased out from June 2013 and clarity will be provided on machine administration charges with PICAS able to review 'reasonableness' of charges. There is also finally a clear statement that tied machine income may only be shared once.
- New requirements to provide relevant information to allow for price-matching of **insurance**, and the agreement of realistic comparable terms in an industry schedule should make this obligation workable and capable of delivery. An industry protocol may be forthcoming or guidance to the Code. In addition, there is a new restriction on profiting from the provision of insurance.
- Primary physical evidence other than **flow monitoring** will be required before taking enforcement action.
- **Upward only rent review clauses** must not be included in new agreements and an industry standard deed of variation is accepted to remove them from existing leases.

Areas of ongoing negotiation

- *ALMR* proposed that a new Pub Industry **Regulatory Board** comprising Code signatories, national trade bodies representing lessees and landlords and invited experts, with an independent Chair be established. The aim is to remove control of the self-regulatory structure and Code from BBPA and vest it in the industry. This is accepted in principle, but debate remains about role and remit.
- The establishment of a Board is accepted in principle but debate is ongoing about remit and constitution. The *ALMR* would like the Board to take control of Code reviews, self-regulatory processes and procedures, sanctions and penalties and provide an ultimate source of redress. From a PR perspective, there is an opportunity to position the Board as a forum for discussion of matters outside the self regulatory structure which have no other mechanism for resolution eg balance of risk and reward. Redress, ombudsman role and consultation with non-Code signatories is not accepted by BBPA who believe the regulatory board should only have a role as 'guardian of the code and associated functions'. **This is a fundamental sticking point.**
- **Lessee Obligations:** the Code includes several areas where lessees are required to produce documentation or take professional advice – where this is complied with, due regard should be had to this in negotiations. There is also a section on requirements at assignment, which goes beyond the requirements of the lease in some cases and which imposes some onerous obligations.

ALMR Proposals Rejected

- *ALMR* did initially table proposals to remove the AWP tie, introduce guest cider rights and a one-in-one-out model on guest ale, removal of WSM tie, price matching on all tied products (not just insurance) but BBPA representatives would not even enter into discussion and withdrawal was a pre-condition of negotiation.
- More detailed proposals on **automatic spot checks of rent assessment statements** and the requirement to have a named compliance officer were not accepted. '**Justification**' of assumptions on statements continues to be resisted and a request for a comparison of tied rent (wet and dry) and FoT OMR was rejected.
- Provision of national wholesale price list for product was originally volunteered by BBPA to Government and we sought clarification to allow it to be used to refer discounts against and determine margin. This has now been withdrawn and BBPA are unwilling to discuss. They have proposed that all pub companies be required to display their selling price for beer instead. It is unclear what this will mean in practice.

Proposed new Regulatory Board

It has been agreed that a new Regulatory Board will be established in order to oversee the self-regulatory regime which has been established for the pub industry. This paper supplements and expands the proposals already tabled by the BBPA.

Aims and Objectives

- The Board would be a limited company setting the overall framework, ethos and principles behind self-regulation.
- Its role is to provide a non-executive oversight of the regulatory regime as a whole – ensuring it remains relevant, appropriate, proportionate and sufficiently robust to deliver ever-improving standards
- The Board would not arbitrate on specific cases but would act as a higher forum for debate to which new matters arising may be referred for consideration.

Remit

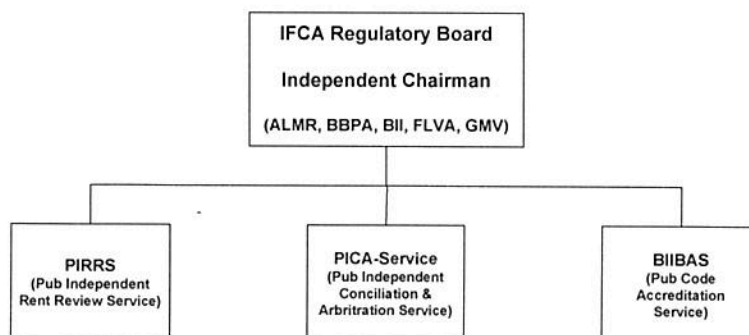
- Guardianship of the Code – to keep the content under consideration, to manage the review process and consult with interested parties on future revisions
- To provide a mechanism for consultation and discussion with key stakeholders
- To provide a forum for discussion of matters outside the self-regulatory structure ie to keep issues of risk and reward under review and to air concerns about the balance in the commercial relationship ie future contentious issues which may arise and have no other mechanism for resolution
- To set day-to-day rules and protocols for the regulatory panels on matters such as transparency, disclosure, anonymity, rules of governance and the practical handling of cases
- To review sanctions and penalties regime
- The Board is not a court of appeal but has a form of ombudsman role in that matters may be referred up by exception by one of the regulatory panels on matters of disagreement or issues which fall outside the scope of the Code and self-regulatory structure.

Format

- The Board will be initially formed by the signatory bodies to the Code and properly constituted national trade bodies by invitation.
- It is envisaged that there will be a broad balance between landlord and lessee interests, with lessee interests predominating.
- Individuals will be nominated to the Board by the signatory bodies but a signatory body may not have more than one seat ie there may be 3 landlord representatives, only one of these should be formally sitting as BBPA.
- The Board will be led by an independent Chairman and up to 3 places will be available to additional individual experts, by invitation. Additional members may be co-opted by agreement.
- Board appointments will be in the form of nominations and approved by general agreement – there should be no absolute ability to veto

Operation

- The Board will determine its own constitution and rules of management.
- All day-to-day management decisions will be taken by majority voting (simple or qualified)
- Decisions which impose a new fiscal or regulatory burden should be subject to unanimity
- Administration of the Board will be vested in an independent individual and duties will include management of lessee contact and signposting for cases, ad hoc contact with regulatory panels, finance/accts



Association of Licensed Multiple Retailers (ALMR)- IFC status to Vince Cable

E-mail Message

From: [Blaney Nicholas \(CCP\)](#)
[EX:/O=DTI/OU=DTIHQ/CN=RECIPIENTS/CN=NBLANEY]
To: [Blaney Nicholas \(CCP\)](#)
[EX:/O=DTI/OU=DTIHQ/CN=RECIPIENTS/CN=Nblaney]
Cc:
Sent: 30/11/2012 at 09:50
Received: 30/11/2012 at 09:50
Subject: Response from Association of Licensed Multiple Retailers (ALMR) to the Secretary of State's letter on Self Regulation of the Pub Industry Framework and Company Codes, 23 November 2012

Attachments: Brief on Code V6 negotiations.docx
IFC status to Vince Cable 23 Nov 12.docx

Nicholas Blaney | Competition Landscape Reform | Department for Business, Innovation & Skills | nicholas.blaney@bis.gsi.gov.uk | Orchard 2 Floor 3, 1 Victoria Street, London, SW1H 0ET | T: 020 7215 6622 | www.bis.gov.uk |

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From: Kate Nicholls [<mailto:knicholls@almr.org.uk>]
Sent: Friday, November 23, 2012 9:13 PM
To: MPST Central Admin
Subject: Response to Secretary of State letter to Rodger Vickers re self-regulatory framework

Please find attached a letter to the Secretary of State in response to his request for factual information on the progress of self-regulation in the pub sector.

We should be happy to provide more information or respond to any more detailed queries.

Kind regards

Kate Nicholls
Strategic Affairs Director

Association of Licensed Multiple Retailers

9B Walpole Court, Ealing Studios, London, W5 5ED
Tel: 020 8579 2080 or fax: 020 8579 7579

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23 November 2012

Rt Hon Vince Cable MP
Secretary of State
Department for Business, Innovation & Skills
1 Victoria Street
London SW1H 0ET

Dear Secretary of State,

Self-Regulation of the Industry Framework Code and Company Codes

Thank you for your letter of 7th November to Rodger Vickers, copied to other industry stakeholders, following your meeting with the Business, Innovation and Skills Select Committee. I know that Rodger and the PIRRS/PICAS Board Chairman will be writing to you separately in response to your specific questions about the self-regulatory framework, but I wanted to take this opportunity to comment from a lessee perspective.

Background & Overview

The *ALMR* is the only national trade body dedicated to representing the interests of licensed hospitality businesses. Between them, our members operate over 13,000 pubs, clubs, bars and restaurants and employ over 325,000 people. Whilst our membership is diverse – both in trading style and size of operation – two thirds of our member companies are small, multi-site businesses and half of their outlets will operate on tied leases.

The *ALMR* has been actively engaged in efforts to establish and promote an effective system of self-regulation for the sector since its establishment in 1992 and has given evidence to the last four Select Committee inquiries. In 2009, we instigated a mediation process in order to try to build common ground within the sector; this led directly to the introduction of more robust accreditation of Codes of Practice, regular revision and review of Framework Code content, the establishment of PIRRS, and latterly PICAS, where we have a position on the Board.

In addition, when the Government was considering its response to BISCUM, we liaised regularly with officials, providing critical commentary on some of the proposals and highlighting areas of weakness and concern. Our position at that time was that, whilst a number of positive ideas were on the table – presented individually and by different interest groups – which held out the prospect of meaningful change, much more work was required to bring these together into a cohesive whole and, more importantly, a great deal of work was required to make the proposals more robust and to turn them into deliverable commitments capable of enforcement.

Over the course of this year, we have been actively involved in discussions with the BBPA, and separately BII and FLVA, to try to address the deficits in the self-regulatory framework we identified to Ministers in

ALMR

November 2011. These discussions have focused on the key objectives for the industry identified in the Government's response to the Select Committee – namely making the Framework Code indisputably legally binding and strengthening it to include commitments on which tenants and lessees can rely – commitments which were believed to have been addressed in version 5 of the Code but are only now being translated into deliverables - reviewing the underlying principles of the Code relating to the balance of risk and reward and the establishment of an independent arbiter.

Our position has always been to address self-regulation holistically – codification of those aspects of the commercial relationship which can be dealt with in that way, effective dispute resolution where that relationship breaks down and independent oversight. A Code on its own is insufficient: equally a strong regulatory framework without a robustly drafted Code, will not deliver results. Our preferred approach is to work collaboratively with all partners to develop a complete solution.

Some progress has been made in all three areas, but outstanding fundamental issues remain to be resolved. We have taken this opportunity to provide more details on the proposals we have put forward to strengthen the self-regulatory framework and areas of ongoing discussion as part of our response to the specific questions in your letter.

1. Awareness of PICA Service & Future Development

The *ALMR* is a member of the Board of both PIRRS and PICA Service and has been involved in the development and promotion of both. The PICA Service Panel was established in January 2012 with the Service becoming fully functioning in June and hearing its first cases over the summer. The establishment of an independent, external dispute resolution mechanism, with the ability to award costs is a significant step forward.

But we believe it will only deliver its true potential and result in effective self-policing of behaviour when more is done to publicise its existence, role, remit and case outcomes. All lessees of major pub companies received a letter from their landlords in December 2011 alerting them to the fact that they would be able to refer Code related disputes to PICA Service. On the other hand, activity to promote and, more importantly, maintain awareness of the service and how it may be used has been limited; unless addressed, this may result in lower take up.

Education and the provision of factual, objective information is vital to ensuring that lessees are aware of not only their rights, but how to exercise them; it is key to delivering an effective self-regulatory system.

PICA Service is still very much in its infancy, with protocols and procedures still being refined. It is vital that these are aligned and cross-referenced with a newly revised Code – for example, when cases may be referred straight to PICAS if internal dispute resolution is failing – and that there is consistency of approach on standards of disclosure of evidence and outcome across the regulatory regime. Identifying companies who have been found in breach, publicising reasoned decisions where these have broader applicability and allowing for matters to be referred between PICA Service, PIRRS and BIIBAS will all encourage greater self-policing of behaviour and enforcement.

These are all issues which we believe capable of being addressed by the newly proposed over-arching Regulatory Board, providing it is properly constituted and constructed.

2. Awareness of rights under the Code

As already noted, the *ALMR* has never believed that a Code of Practice can resolve all the issues with which the industry is grappling in this area; but it is an important part of the overall solution. Some matters are simply not capable of being codified and there are others which landlords are unwilling to codify. As the lease remains the primary contract, commitments will only have real bite if they are incorporated into clauses within that document.

ALMR

Whilst the package of measures outlined by Government went some way towards delivering this for new leases, the situation for existing lessees was confusing, uncertain and fell short of delivering an indisputably legally binding Code. We have spent a considerable amount of time negotiating with the BBPA on this matter and believe that Version 6 of the Code, when published, will finally resolve this matter.

Version 5 of the Code clearly incorporated the Industry Framework Code into all new leases by way of a reference. For existing lessees, the proposal was for the Code to become a collateral agreement by means of an 'open and unlimited' offer to lessees to exercise their rights under it. We understand that there is still some legal debate as to whether an offer which imposes obligations as well as rights can be made a collateral agreement in this way.

The large pub companies all wrote to their lessees in December 2011 to highlight this change. There are significant differences in language and approach, with some requiring a signed legal agreement, others requiring no action and only a few highlighting the legal obligations imposed on the lessee if they did act under the Code. There was also some confusion amongst recipients as to which Code was being incorporated – the company or the industry code. The ALMR handled Code-related queries from half of its tied lessees in January.

At a collective industry level, activity has been focused on raising awareness of the existence of the Code. Communication of the contents and implications for lessees has been undertaken at company level, particularly with new lessees. As previously noted, there is an absence of central, objective information on lessee rights and how to exercise them. The ALMR has activity planned in this area after the next revision of the Code and will be liaising with IPC, GMV, FLVA and BII on this.

Future Code Developments

The ALMR identified two substantive issues of concern arising from the BBPA/Government's agreed approach. Firstly, an 'open and unlimited offer' was not binding on successors in title and hence left existing lessees exposed and unprotected if the landlord interest in their premises was disposed of (there are increasing examples of where this is a problem). Secondly, even incorporation of the IFC into the lease gave lessees limited rights since it contained very few specific commitments and focused instead on setting out the content of company codes.

Some commitments were further restricted to **Fully** Repairing and Insuring (FRI) leases and companies immediately began reviewing the definition of this. Because some obligations only applied to companies with more than 500 leases, there was also confusion in messaging from some landlords as to whether the Code applied to them at all.

Our initial discussions with BBPA on future Code development have focused on resolving these two matters. The drafting of the Code in terms of its legal status has been tightened up and any uncertainty removed. Version 6 of the Code will also include a standard industry Deed of Variation to provide a low cost solution for existing lessees wishing to incorporate the Industry Code within their lease and a requirement for the same Deed to be inserted at the landlord's cost where the property interest is sold to a non-Code signatory.

More importantly, we have worked to translate as many of the pledges volunteered by the BBPA to Government into codified commitments in the IFC which have bite. For Version 5 of the Code, most of these simply required company codes to make clear their policies and this inevitably limited their benefit to lessees. Version 6 should see specific requirements incorporated in the Framework Code itself, representing meaningful and deliverable rights in some areas on which lessees can rely.

Version 5 of the Code needed almost 80 revisions – some of which are in the areas for further improvement which the Government tasked the BBPA to discuss with lessee representatives, particularly the principles on which the Code is based, but most of which translate the 2011 pledges set

ALMR

out in the Government Response to Code clauses which are practical, workable and deliverable. Many of these appear to be small concessions, hard won but they will significantly improve transparency and accountability on rental valuation variables.

We have attached a summary of the areas in which we have had discussions with the BBPA, including a new Regulatory Board, as well as those areas which have not been taken forward or where it has not proved possible to engage. Discussions are still being had on the precise wording to ensure the immediate improvements promised in 2011 eg "fully justified" rent statements, are delivered in practice, but we remain hopeful that this can be successfully concluded by the end of the year.

The area which remains a sticking point is the role and remit of a new Regulatory Board to provide independent oversight of the regulatory process. We believe it must be a broadly based and demonstrably independent body. A broad remit and function which includes consulting all stakeholders, promoting and maintaining awareness among lessees of the Code and how to use and providing a forum for debate on the more intractable issues, are key components to delivering a comprehensive and lasting solution. It is also critical to ensuring that such a solution is seen as a genuine industry-wide one and is not owned and controlled by a single interest group.

In summary, the Code rightly remains a work in progress. Whilst it could be further strengthened and improved, it is immeasurably better and represents a significant improvement on standards of transparency and disclosure.

The most intractable issues remain outside the scope of the Code and the self-regulatory regime, however, and this explains in part why debate has been so lengthy and, for some parties, unproductive. It is also why we continue to believe that further reform of the governance structure and self-regulatory framework is required.

3. Code Re-accreditation and Pub Advisory Service

These are rightly matters for the BII to address and take forward and we have offered to help and support them in this work. We stand ready to communicate plans when they are formulated. The proposals for annual compliance reports to assist with re-accreditation and spot checks on compliance to provide a regular health-check and encourage self-policing were originally proposed by ALMR and we look forward to bringing them into being through the newly proposed Regulatory Board.

We are not aware of the activities of the Pub Advisory Service being operated by Chris Wright.

Conclusion

The challenge from Government to industry in 2011 was to make the Industry Framework Code indisputably legally binding and establish an independent arbiter. Subject to successful conclusion of final discussions on a number of outstanding areas, that should finally be delivered next year with the publication of Version 6 of the Code and the creation of a new Regulatory Board.

The Government and Select Committee challenge to engage on the more intractable issues of greatest concern to lessees, and in particular the principles underpinning the balance of risk and reward will remain under discussion going forward.

Yours sincerely



Nick Bish
Chief Executive
enc

Brighton & Hove



Brighton & Hove Licensees Association

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19 November 2012
Rt Hon Vince Cable MP
Secretary of State for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET

Dear Sir,

Re: Self Regulation of the Industry Framework and Company Codes

As a member of the IPC, Brighton & Hove Licensees Association felt it pertinent to reply independently to the request for information regarding the self regulation of pubcos and Industry Framework and company codes. We are aware that you have asked for information in four specific areas and we will take these in turn:

1) What action has been taken, and is planned, by the governing board of PICAS to promote and maintain awareness among licensees of the availability of mediation and arbitration services in relation to any matter relating to the Framework and Company Codes. Any facts you can share, consistent with commercial confidentiality, of binding decisions already made by PICAS would also be welcome.

We are unaware of any promotion to our members of PICAS. Awareness is limited and has not been promoted by Landlords to their Tenants in our experience. Clearly we cannot comment on what may be planned. With reference to confidentiality, it has always been our view that any confidentiality of decisions serves only to assist the landlord and flies in the face of the transparency we all crave and all parties claim they wish to see.

2) What action has been taken, and is planned, by the large pubcos (those with over 500 pubs) to maintain awareness among licensees of their rights under the code, including of the specific improvements introduced in December 2012 through version 5 of the Industry Framework Code in relation to rents, insurance, dilapidations and training, including pre-entry training; of the legally binding nature of the code; and of licensees' right to binding arbitration. I would be interested to know what further improvements the industry is proposing to include in version 6 of the code, designed to further improve transparency and fairness for tenants and when will these be implemented?

Again we are not aware of any ongoing actions designed to promote awareness of the Industry Framework Code. Companies have issued their own codes of practice, many of which will have been released prior to December 2011, but we are not aware of any further actions to promote awareness of improvements of the Framework Code. Whilst we are aware of variations to be included in version 6 [REDACTED] works on the ALMR Strategy Group) it is our opinion that many of these further commitments are sadly cosmetic and do not address the key issues of rebalancing risk and reward.

3) What progress have the British Institute of Innkeeping (BII) made in preparing for their code re-accréditation role and what is the status of the necessary agreements with the industry on how the re-accréditation process will work?

It is clearly not our place to comment on the progress the BII have made in regard to re-accréditation. We are concerned of the process and that there is no genuine sanction for any pubco that can be applied by either the BII or the BBPA.

4) What action, if any, is being taken under the leadership of the BII to set up a Pubs Advisory Service for licensees, further to the Pubs Advisory Service already set up under the leadership of [REDACTED] and others.



Brighton & Hove Licensees

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We are not aware of any Pubs Advisory Service as set up by the Bill. We are aware of a Pubs Advisory Service which has been independently set up and we would favour a service that is independent. Firstly the need to have genuine ability to be free from pubco influence is essential and secondly their speed in setting up ahead of that of the Bill shows their willingness and ability. We have serious concerns about the Bill becoming both judge and jury and advisory body. They are not independent and have lost the trust of many publicans in recent years. Their first task must be to regain that trust of its members and not to be taking on more and more workloads whilst their membership crumbles.

In summary we are disappointed, though not in the least surprised, by the slow rate of progress. Despite assurances to Select Committees to publish Wholesale price lists, this hasn't happened. With assurances that the revised Framework code would be produced by the Spring we still await it. We have little doubt that the Framework Code (6) will carry some benefits in that it will be clearly and concisely written and will make good explanation of the process it will not (and we are led to believe can not) address the main issue of the rebalancing of risk and reward which still remains weighted firmly against the leaseholder. Until we address this central issue the industry will continue to fiddle while Rome burns.

Yours faithfully,

Spokesperson
Brighton & Hove Licensees Association

British Beer & Pub Association (BBPA) Letter to Jane Swift BIS 23 Nov 12

23rd November 2012

Ms Jane Swift,
Deputy Director Competition Policy
Department for Business, Innovation & Skills
1 Victoria Street,
London SW1H 0ET

Dear Jane,

RENT, CULTURE CHANGE AND PUBLICITY

At the recent meeting with Martin Rawlings and myself, you asked some additional questions to those contained in the letter from the Secretary of State to the PIRRS Board. As you are aware, we have replied to this letter separately (see attached).

You were particularly interested in information about rents and the suggestion from those assessing the ALMR benchmarking survey that rents had risen in the last year. You asked us whether BBPA member companies had been publicising their codes and the PIRRS and PICAS services to their tenants and lessees and for evidence of cultural change. I have been in touch with BBPA member companies who form our working group, which cover the vast majority of the leased and tenanted houses belonging to our members and the answers are as follows:

Rents

In 2011 we reported to the BIS Select Committee that "Rents have responded to the market and have declined by over 20% in real terms since 2008." Rents on the whole are still coming down. For one company average rents per pub are £2,200 less in 2012 than they were in 2010. For another all rents at renewal or review over the past six months have declined by 0.3%. For a third, evidence shows that in the last year average rents have fallen by (6.3%) whilst at the same time discounts on beer supplies to publicans have increased by 8.4%, further confirming the steps that landlords have been taking to assist publicans in addressing current market conditions.

Some rents will have risen because they are RPI linked, but some have a self-imposed cap on RPI of 3%, which is of course less than inflation in the past year. Even if RPI raises the rent temporarily, the majority of rents are coming down at rent review or lease renewal. In addition companies are still applying rent reductions on a case by case basis in order to lend additional support to their tenants or lessees.

ALMR Benchmarking Survey and Rents

The latest ALMR Benchmarking Report, July 2012 includes information on rents in the section entitled "Ownership and the tie". The 2012 report indicates a differential of 1.6% on rents as between the 'majority tied' estate and the 'majority not tied' of 12.3% and 10.7% respectively expressed as a percentage of turnover. As the report itself acknowledges the "data is necessarily based on smaller samples than the main survey and should be used with caution". The trend data however, only shows rent as a percentage of turnover and if the survey includes more and larger pubs this year with higher turnover, the rent as a percentage of turnover would quite possibly be lower, as appears to be the case in the "majority not tied" category. ALMR report a three-fold increase in pubs reporting into the survey which will have some influence, particularly on trend data.

Without more detailed knowledge of the data source, the numbers of pubs involved and the inclusion or not within the categories, it is difficult to assess these findings which appear to run contrary to the experience in the market being reported by our members. It is also significant that, in terms of overall costs, controllable costs were lower in leasehold estates with a majority of tied pubs (41.9%), than in those with a majority of untied pubs (48.4%).

It might be worth noting that the report suggesting that the ALMR data showed an increase in rents for tied pubs came from a French bank agent, who has since acknowledged that he misread it.

Publicity for PIRRS and PICAS

All our member companies promote PIRRS through their own company codes and by referral to the Industry Framework Code and in particular on the occasion of rent reviews or lease renewals. When version 5 of the Code was introduced this year, all tenants and lessees were reminded that PIRRS was available now and PICAS would be introduced in March 2012. Many companies used their BDM (Business Development Managers) to talk through the service with tenants. Many companies promote these services through their in-house magazines for tenants and lessees. BII promote the service through their magazine BII Business. As you know individual companies all have an internal dispute resolution process built into their codes, which point to the availability of the PICA-Service if the dispute is not resolved. PICA-Service is promoted through the BBPA website, with a specific link to the PICA-Service website, which provides a comprehensive guide to the Service, how to apply and the forms and procedures provided.

The Trade Press continue to publicise both services.

Companies also offer a range of other services. One good example is mentoring where experienced tenants visit a new tenant in their first year to offer advice and assistance.

Commercial in Confidence

Cultural Change and Risk and Reward

One of the clear advantages of the tied system is the central buying power and the ability to offer tenants and lessees central services. This may include: rating advice, free buying club, tenants training, cellar services, marketing and point of sale packages, mystery shopping programme, reduced contents insurance.

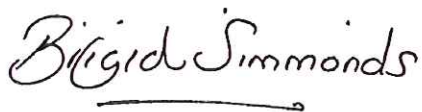
A whole range of additional services are available depending on the company, from fire risk assessment, health and safety assessment, gas boiler certification, chimney cleaning. Free Wi-Fi is a common additional service and individual website assistance. There is a cultural change with the decline of the longer lease and a preference for shorter agreements. All larger companies are providing more flexibility with the introduction of franchise arrangements and new retail agreements, which limit the cash commitment and exposure to rising costs. There is also much more flexibility available in commercial terms with free of tie options and a range of tied or not tied price of goods available.

A recent HIM annual survey for more than one major company showed that only 9% of their tenants were unlikely, or very unlikely, to take another pub with them and their applications are up 25%. For another company there was a real increase in acknowledgement of the performance of BDMs, most of which have now completed the BII training course. For many members engagement with the company continues to grow, with at least one reporting record attendance at road shows this year.

I hope this is helpful and as ever I am happy to answer any questions you may have.

With best wishes.

Yours sincerely,



Brigid Simmonds OBE
Chief Executive

British Beer & Pub Association (BBPA) - Letter to Rt Hon Vince Cable 21 Nov 12

21st November 2012

Rt Hon Dr Vincent Cable MP
Secretary of State for Business,
Innovation and Skills
1 Victoria Street
London SW1H 0ET

Dear Secretary of State

Self Regulation of the Industry Framework Code and Company Codes

Thank you for your letter of 7th November asking for a progress report on our work on the Industry Framework Code and individual Company Codes. As the British Beer & Pub Association are responsible for updating the Industry Framework Code, I am replying in answer to question 2 of your letter. Our members represent 95% of all tenanted and leased pub estates in the UK.

Legal Status of the Code

Version 5 of the Industry Framework Code was published in December last year and included the provisions that conferred and confirmed the legal enforceability of the Industry Framework Code, through the inclusion of the relevant clauses in company codes. All companies who own more than 500 pubs and the majority of smaller BBPA members, sent letters to their tenants and lessees before Christmas last year conferring the legally binding nature of their codes. This means that a tenant or lessee can call a company to account in a court of law to complain that a pub company has not met the standards required by the industry in the Framework Code. Alternatively the industry has established the Pub Independent Conciliation and Arbitration Service (PICAS) where such complaints can be dealt with at low cost, without recourse to the Courts.

BBPA was instrumental in bringing together the relevant parties to establish PICAS. You will have received information separately about its establishment and activities this year.

Implementation of Version 5

Companies had until 31st March this year to translate Version 5 of the Industry Framework Code into their own individual company codes. BIIBAS ensured that codes complied through a self-completed accreditation process.

The Commitment

In our Report to Ed Davey, the BBPA made the following commitments to strengthen the Industry Framework Code which are included in version 5 of the Code.

Upward Only Rent Reviews: UORR clauses will not be included in new leases, or leases that are renewed at the expiry of an existing lease. In addition companies will provide a side letter or deed of variation to that effect, on request.

Waiver Policies: Companies must record evidence of professional advice taken by all new prospective lessees and, or, waiver granted in respect of such advice. Company Codes must specify that pre-entry training is completed prior to the commencement of any substantive discussion of the agreement to be entered into. A waiver can only be applied where applicants are multiple retailers with a number of other tenanted/leased premises: or they can demonstrate at least three year's experience of running a pub; or three year's relevant business management experience; or applicants have an existing successful lease or tenancy with the company.

Insurance: In the event that the tenant/lessee can demonstrate that insurance can be secured at a lower price for the same degree of cover, the Company will recompense the difference in the charge.

AWP Machines: for Assignable Leases, Codes will specify the distribution of machine income between the lessee and the Company. Information will be provided to prospective lessees as to whether the Company receives royalty payments; the Company will make it clear which income has been included in rent assessments.

RICS Guidance: All Rent Assessments for new Assignable Lease Agreements must be signed off by a RICS qualified surveyor and all rent assessments and renewals must be conducted in accordance with the RICS Guidance.

Rents: for all Assignable Leases, a Rent Assessment must be provided. Such statement shall include the Company assessment of the trade indicating the margins, past three year trading (where available); assumptions used to the operating cost of the business and the effect of discounts. Company Codes will include a specific timetable for information to be provided in advance of rent negotiations, rent reviews and renewals.

Dilapidations: New Assignable Leases will describe the extent to which FRI leases will place obligations on the lessee in respect of the requirement to maintain and repair the property and the condition in which the pub should be returned to the Company at the end of the lease: there must be a specific period before the end of the lease when a survey will be conducted and details of who will pay for the survey and a process for any dispute.

BDM Training: companies with Assignable Leases must include a commitment to ensure that all BDMs receive training within a period specified by the company.

Price Lists: For Assignable Leases, companies will provide prospective lessees with their national wholesale price list which includes the beers as may be supplied by the Company.

PIRRS: The remit for the settlement of rent reviews has been extended to rent renewals. This is where a long term assignable lease has come to an end, where the lessee is entitled to renewal under the terms of the Landlord and Tenant Act, and he wishes to renew the lease but cannot agree the rent with the landlord. The BBPA has progressed the work of PIRRS, particularly through the establishment of PICAS through its membership of the PIRRS Board and its funding of the necessary expenses involved. The PIRRS Board will be reporting separately on the progress it has made and the cases it has handled over the last year.

Progress since Version 5

BBPA undertook to consult with constructive industry partners to explore more sensitive and commercial issues for inclusion in Version 6 of the Industry Framework Code. BBPA put together a small working group of Chief Executives of five companies who operate longer FRI leases, which has now met with a working group from ALMR on five separate occasions, with a number of meetings by executives in the intervening periods. We have explored through meetings and detailed consultation what further changes could be made to the Industry Framework Code. Similar and lengthy meetings have been held with the FLVA both in London and in the North of England to ensure that their views have been taken into account and that the FLVA were aware of the views of ALMR. The BII as the other party to the Code have also been kept informed and their views also taken into account through various conversations and meetings. We have also met with the Independent Pub Confederation (IPC) twice and written to the Chairman of the BIS Select Committee, Ministers and officials at BIS to offer updates on our progress.

Version 6 of the Industry Framework Code

In our Report to Ed Davey, we promised to explore the following more commercially sensitive issues:

- Evolution of the AWP tie, including exploring a mechanism whereby the issue of machine income rentalisation might be resolved.
- Simplification of the rental negotiation process.
- Rent assessments requiring greater justification of assumptions used.
- Agreement on common format of Shadow P&L statements to enable greater comparability between companies.
- Enhancement of PIRRS, including potential extension of its remit to FRI Lease renewals, not just mid-term rent reviews.
- Explore further principles of the Code in relation to balance of risk and reward.

Whilst Version 6 is still under discussion with ALMR, it has made real progress towards exploring these commitments further.

The introduction makes it clear that companies must be transparent about their terms of business and other dealings. Companies undertake to respond to all reasonable additional requests for information and where this is not available, the reasons must be disclosed. In particular, information which may be used in third party determination of rent should not be unreasonably withheld and should be shared on request, subject to appropriate confidentiality agreements.

Legal Status: Version 6 binds successors in title to individual pubs to the Industry Framework Code, if the pub is to remain tied.

Tied Tenancy and Lease Agreements

For ease of reference, Version 6 of the Code will provide a code for companies operating tied tenancy agreements in part one and in part two a Code for companies operating lease agreements. This letter concentrates on changes made in part two. Larger companies who operate 100 or more leases must provide an annual statement of compliance to the Accreditation Body (BIIBAS). The Compliance Statement will report on a range of indicators as determined by BIIBAS, including the number of new lease negotiations entered into; the percentage where a waiver was used; and the number successfully completed; the number of rent reviews; the percentage completed within an agreed time frame; and the number referred to PIRRS/PICAS.

Rental Process

In addition to the need to provide more information, Rent Assessment Statements will be provided to all new leases and lessees. It will be based on a shadow Profit and Loss Account, which must be prepared by the pub owning company in good faith and based on reasonable assessments. A common format for the Shadow P&L is included within the new Code and in addition pub companies must provide the nearest relevant cost benchmarking figures to the pub model being assessed. In addition rent assessments for new assignable leases must be signed off by a RICS approved valuer.

Insurance

The requirements for price matching in Version 5 are further extended to require companies to "price-match" on any like for like policies (based on realistic comparable terms), identified by the lessee and will provide all necessary information on request to enable a comparable quotation to be sought. Companies re-charging insurance will do so only in accordance with the policy and this charge will be clearly and separately shown in the shadow P&L, which is included in the rent assessment statement.

Amusement Machines

Again in addition to changes made in version 5, it will be made clear that where AWP machines are tied and the income is shared, such income may not be included in the rent assessment statement or the "divisible balance" and that such income may only be shared once. Companies may not apply "royalty" charges to new agreements after Revision 6 comes into force and such charges will be phased out from existing agreements.

Flow Monitoring Equipment

Ed Davey was questioned about protocols for Brulines (flow monitoring equipment), when he appeared before the Select Committee in December 2011. Version 5 of the Code requires pub companies to develop and include a protocol setting out the terms under which flow monitoring equipment is to be installed, calibrated and the information obtained made available to lessees. Version 6 will make it clear that evidence other than that provided by flow monitoring equipment must also be provided before taking enforcement action on purchasing obligations.

Schedule of Conditions

Extending the provisions of Version 5, Version 6 requires companies with a prospective lessee to provide them with a schedule of conditions. This is an agreed description of the condition of the building, drawing attention to any specific problems and clarifying what, if any, remedial work is required. Unless it is otherwise specified in the terms of the lease as "put", the assumption will be that the requirement will be "keep" or maintain the building in this condition.

Corporate Governance

As part of key discussions with ALMR, we are proposing a new corporate governance framework for the Industry Framework Code, BIIBAS, PIRRS and PICAS. Although proposals have not yet been agreed in their final form, the principle of a new Board under which all these services will sit has been established. The Board will have an independent Chair and organisations that sign up to the IFC will be represented on the Board.

Timetable

BBPA believes it should be possible to conclude our discussions with ALMR and our partners BII and FLVA before the end of the year and we are still working to that end. We will be offering other members of IPC an opportunity to sign up to the new Code and be part of the new Board. Our intention is to implement the revised Code along with the re-accreditation process during 2013 and we will work with BIIBAS and the other organisations to ensure a smooth and timely transition. The timetable and procedures will be established with all partners under the new Regulatory Governing Body.

In Conclusion

The BBPA met all the requirements of BIS for an updated Version 5 of the Industry Framework Code, which made meaningful changes, which could be quickly defined, to be introduced by 1st January 2012. In addition the Industry Framework Code became legally binding by the same date.

BBPA then moved quickly to enhance PIRRS and put in place PICAS to provide a low cost way of dealing with problems and this is already proving effective. The PIRRS scheme for rent and the PICAS process for all other complaints provide the right framework for self-regulation to work.

At the same time work has continued apace this year to make further changes which are much more commercially sensitive and therefore where it is more difficult to achieve agreement. We believe good progress has been made with the ALMR and other stakeholders and expect agreement to be reached on version 6 of the code before the year end. The final step will then be to work with signatories to the code to create a governing body to oversee this self regulation framework.

Aligning small multiple retailers with the views of landlords is always difficult, but this version of the code provides licensees with meaningful, and improved full and transparent information to prepare them better for negotiating individual commercial terms with their landlord, in particular, where they are considering a fully repairing long term lease.

The decision to take on a pub agreement is a serious undertaking and we have taken steps to ensure that all prospective licensees understand the contract they are considering through PEAT (pre-entry training), together with a requirement to take independent professional advice. In addition both individual companies and organisations like BII and FLVA provide advice and assistance to individual lessees and tenants and the BII are working to provide a single portal to that advice under the Pub Advisory Service (PAS) banner.

We would be very happy to meet with you to discuss any of these issues further.

Yours Sincerely

Brigid Simmonds

BRIGID SIMMONDS OBE
Chief Executive

British Beer & Pub Association (BBPA) M&C Report 20 Nov 12 re Enterprise

M&C report

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Breaking News: The lure of eating and drinking-out

Enterprise: Tax, Waverley, pub values, licensee support 20/11/2012 15:27:00

M&C Report takes a closer look at the full-year results to 30 September for Enterprise Inns and talks to chief operating officer Simon Townsend on Waverley, tax, the Olympics, publican support, capex, pub values and the north-south divide.

Front foot

Townsend said that after a few years of being on the back foot the group was now on the front foot in terms of capital expenditure and operational opportunities. He said: "What has happened over the past few years has put us in a position where we are better informed, have better tactics, can make better choices, can be more considered and innovative. We now have a greater operational resource to aid our publicans and fewer pubs per regional manager. I feel energised by the quality of the people and the work that is going into reinvigorating the Enterprise offer."

Tax

Like-for-like rents have fallen 12% and average beer discounts have risen 75% since 2008, said Townsend. "We estimate this to be worth some £54m of value transfer from the company to our licensees, equivalent to more than £9,000 per pub. We estimate that average licensee income is around £45,000 per annum, including the £10,000-a-year live-in benefit. Our income per pub currently stands at £65,000 per annum, while the Government/HMRC takes an annual £145,000 in VAT, duty and other taxes for each pub in the estate. This has risen by 19% from £122,000 in 2008. So you can see who is getting the biggest slice of the cake."

Pub estate and capex


Townsend said that the group invested £63m on enhancing the quality of its freehold estate during the year. The estate now comprises 6,060 properties with a book value of £4.3bn. The property portfolio comprises 5,902 trading pubs and 158 properties which are alternative use outlets or properties permanently closed or trading on short term agreements pending disposal. Townsend said that the group planned to invest a total of c£180m over the next three years in "positioning its pubs for growth". He said: "Over the next three years we expect the estate to reduce to approximately 5,200 pubs. Over the same period we plan to maintain our level of investment and spend approximately £180m to improve the quality of our estate. In the recent past, a significant proportion of our capital expenditure has of necessity been defensive in nature, ensuring basic functionality is in place to enable a continuation of trade. Looking forward we plan to direct an increasing proportion of our capital expenditure on growth-driving activities, where appropriate repositioning pub businesses to meet the changing needs of their local customer base."

He said the investment would be focused on developing food and accommodation offers and there would be a concentration on property condition, "kerb appeal". He said around £10m would be spent on larger schemes worth £250,000 or more in the coming year, pubs in good locations and with high quality licensees. He also said that the group had identified 700 pubs where the external condition was "poor", all of which will be addressed in the next 12 months.

Pub values

The company said that at the year end it had 1,049

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pubs valued at more than £1m, with an average pub value of £1.25m and a total value of just over £1.3bn. 1,420 pubs were valued at between £750k to £1m, with an average value of £856k and a total value of £1.2bn. The majority of the group's estate (2,037) is valued at between £500k to £750k, with an average value of £624k and a total segment value of £1.27bn. It has just over 1,000 pubs valued at between £250k and £500k, with an average value of £402k and a total segment value of £403m. Its total trading pub estate stands at 5,902 pubs, with an average value of £720k, and a total value of £4.25bn. It has 148 non-viable pubs, with an average value of £282k, and a total value of £42m.

Disposals

The group said that total net proceeds received from its disposal programme in the year amounted to £208m. It disposed of 301 properties in the year, of which 199 were unsustainable pubs generating net proceeds of £67m and 102 were exceptional properties generating net proceeds of £117m at an average multiple of 14 times income. A further 17 were sold as a sale and leaseback package for net proceeds of £24m at an average rental yield of 6.9%. Townsend said: "We will continue to dispose of unsustainable pubs as we enhance the quality of our retained estate and we will also capture opportunities to dispose of exceptional properties where we can realise cash proceeds above book value and at healthy multiples of income. We would not expect to complete further sale and leaseback transactions as we wish to preserve the largely freehold nature of our estate. Total disposal proceeds for the year to 30 September 2013 are expected to be in the region of £150m of which £40m is expected from our Unique estate."

WaverleyTBS

Townsend said that the collapse of WaverleyTBS was likely to cost the company between £1.5m and £2m over the course of Q1 2013 after licensees exercised the contractual right to source supplies from elsewhere, depriving the company of income. He said: "It was worth £4.5m of margin and we estimate that it has cost up to £2m through a reduction in sales. We were given two days notice that Waverley was about to collapse and we are still trying to build back our order line. We are currently exploring a number of options in regards to alternative supply options."

Operating performance

Townsend said that the rate of business failures had reduced by 4% during the year, with 85% of agreements having had rent reviewed or negotiated since 2008. During the year, 653 rent reviews were completed at an average annual reduction of 0.7% compared to 724 in 2011 at a reduction of 1.7%. 68% of substantive agreements are now linked to RPI (2011 - 65%), while 85% of publicans were receiving some form of BCF discount (2011: 81%). At the same time, overdue balances have been reduced by 20% to £4m.

Licensee support

"In an attempt to prevent outright failure we have continued to provide temporary concessions to publicans where appropriate, and have seen this cost reduce from £15m last year to £6m in 2012," said Townsend. "Some of this reduction has been embedded in amended terms for good publicans because we acknowledge the permanent nature of changes in the market within which they operate. However we have also removed concessions where it is clear that a change of publican is the best outcome for the trading prospects of the pub.

"Another cost associated with business failure is the bad debt that may arise on the departure of the publican. It is reassuring that the underlying cost of bad debt in the year has reduced to £1.3m (2011:

£1.5m), with the level of overdue balances also down to £4m (2011: £5m), representing only 0.6% of turnover."

Olympics

Tuppen said that the company would have achieved flat like-for-like income in the second half of it's the year if it hadn't have been for the Olympics where "sales were close to mid-January levels during the two weeks". He estimated that the company lost 12,000 barrels of beer volume during the two weeks of the Games.

Approach to the tie

Townsend said: "Our approach to the tie has continued to evolve, and free-of-tie options for bottled beers, ciders and flavoured alcoholic beverages ("FABs"), wines, spirits and minerals, gaming machines and guest ales are available in every new agreement. Where circumstances have been compelling to both parties, we have been able to agree completely free-of-tie terms. This suite of available options ensures that all publicans' needs can be met, whether at the time of a new agreement, or in order to sustain and evolve an existing relationship.

Project Beacon

Townsend said that the group had increased the number of outlets operating under the Beacon format to 254 (2011: 90) and were encouraged by its results, but said that only c.50 further conversions are expected. He said: "They are typically smaller, wet-led pubs with an average net income of around £35,000 but which have delivered significantly improved net income when compared to the three months prior to conversion. Aligned with our successful disposal programme, we believe there is a natural limit to the number of our pubs that would benefit from this particular product offer and method of operation and now anticipate a total population of around 300 pubs to operate to this format. We are extending the lessons learnt from Beacon to develop other concepts where food, sport or family are the more central elements of the pub offer, and we already have one trial site successfully operating a carvery concept."

The group launched its first Classic Carvery site under the scheme earlier this year at the Star Inn at Winscombe, north Somerset. Townsend said that the site was generating sales of £15,000 a week but that it was going to wait before opening a further unit under the format. He said that in half a dozen sites in the North a greater emphasis was being placed on a sports offer, but "wouldn't describe it as a full concept". He also confirmed that the group was keen a trial a "Blazing Grill" format at a site in the future, but was determined not to "over extend what we were already doing".

Total estate like-for-like net income - geography

The group said that it was increasingly experiencing divergent trading conditions by geography. Tuppen said that the south (2,234 pubs), representing 42% of total net income, was growing at 1.2% assisted by the effects of a strong London economy. The company operates 1,899 across the centre of the country, which generated net income of £120m last year, a net income change of -2.4%. It operates 1,769 pubs across the north, generating £112m on net income, a drop of 3.4%. Tuppen said: "The agenda for our southern team is a growth strategy, prioritising investment opportunities and ensuring our publican selection process leads to optimal performance. In the north our team faces a different set of challenges. Our net income is down 3.4% as economic pressures provide difficult conditions for publicans and their customers and our team focuses on minimising the risk of business failure. In the central region our net income is down 2.4% as elements of the characteristics of both the north and south are

evident. The operational reorganisation that we implemented this year was designed to recognise that each territory had different challenges and that the local teams required the flexibility to implement different strategies."

Total estate like-for-like net income - occupation

Tuppen said that as the company looked towards total estate net income growth based upon stability, investment and driving sales performance, it was encouraging that where publicans have been in their pubs for more than one year, representing 81% of total net income, it has seen like-for-like growth of 2.2% in the financial year. Conversely those pubs where publicans have been in situ for less than a year, which stood at 1,543 at the year end, generated net income of £76m, 13.6% down on the previous year. He said: "These pubs represent a robust core to our business and we will continue to work in partnership with these publicans to enhance income for us both. Of the 1,543 pubs where the publican has been trading for less than one year, 903 were trading under new agreements where the publican was still at the beginning of establishing the business, and the balance of 640 pubs were either closed or trading under temporary agreements while we identify the correct long-term solution for the pub."

Assignment market

Tuppen said that the company saw 140 assignments of leases in the past year, while "the number of assignments had halved over the past couple of years". He said that that the collapse of the assignment market was a good thing since it meant that Enterprise was not coming across licensees who had spent a couple of hundred thousand pounds on an assignment premium just to start trading a pub. He said that demand "was generally high" for Enterprise leases in the south. He said: "We had 26 highly qualified applicants with fully-funded business plans applying to take over a pub in Islington, with less than 10 in the Greater London area (out of c800) available to let."

Outlook

The group said it will focus on achieving like-for-like net income for the entire estate before restoring the business to sustainable growth in EPS. It will continue to use available cash to reduce debt as it aims to create value for shareholders through the long-term transfer of value from debt to equity. Tuppen said that in terms of trading, the group would be "buying and selling smarter" going forward and would continue to maximise value from high-value and tail-end disposals. He said: "We are now focused on returning the business to growth, through a number of initiatives that we believe will continue to generate significant cash flows that we will use to reduce our debts and deliver value for shareholders."

Analyst reaction

Douglas Jack at Numis said: "Full year PBT, down 13% to £137m, is in line with our forecast and consensus due to LFL net income falling 1.2%. EBITDA fell 7%, outpaced by net debt, which fell by 9%. There are clear signs that LFL net income is stabilising, whereas net debt is forecast to continue to fall rapidly (by c.9% in 2013E; versus EBITDA falling c.5%), creating further equity value in 2013E. In 2012, Enterprise refinanced its bank debt to June 2016, found a way to avoid the Unique bonds being cash trapped and achieved estate/operational improvements that should help LFL trading to stabilise further in 2013E. Our 110p target price equates to 9.5x EV/EBITDA (or 19% equity free cash flow yield), in line with the company's valuation in 2009 and 2010."

Simon French at Panmure Gordon said: "No further material purchases of securitised bonds are required following the purchase of £63m A4 bonds and £2m A3

bonds which will keep the group one year ahead of the schedule debt profile. The group will look to explore the opportunity of extending the term its £60m corporate bond due February 2014 although it has the resources to repay it from cash flow should it not be able to extend the maturity. We expect no material change to consensus forecasts today and the stock trades on a CY 2013E adj EV/EBITDAR of 8.6x. Given the improving trading trends and falling debt we think the stock continues to offer significant upside potential. We reiterate our Buy recommendation and 87p Target Price, implying c30% upside potential."

Geof Collyer at Deutsche Bank said: "The bank debt has been rolled into a new £220m forward start, extending the maturity to May 2016 - by which time we see the requirement for any short term bank debt being little more than a 'general purposes unsecured facility'. Enough Unique bonds have been bought back to satisfy the debt service covenant. We expect that all of the cash flow over the next three years will be used to further reduce debt and with these issues being resolved, we see most if not all of these repayments transferring to the equity value. We estimate this figure at over £520m, including £300m of disposal proceeds and £225m of free cash flow (net of £180m of capex) vs. the current market cap of £330m."

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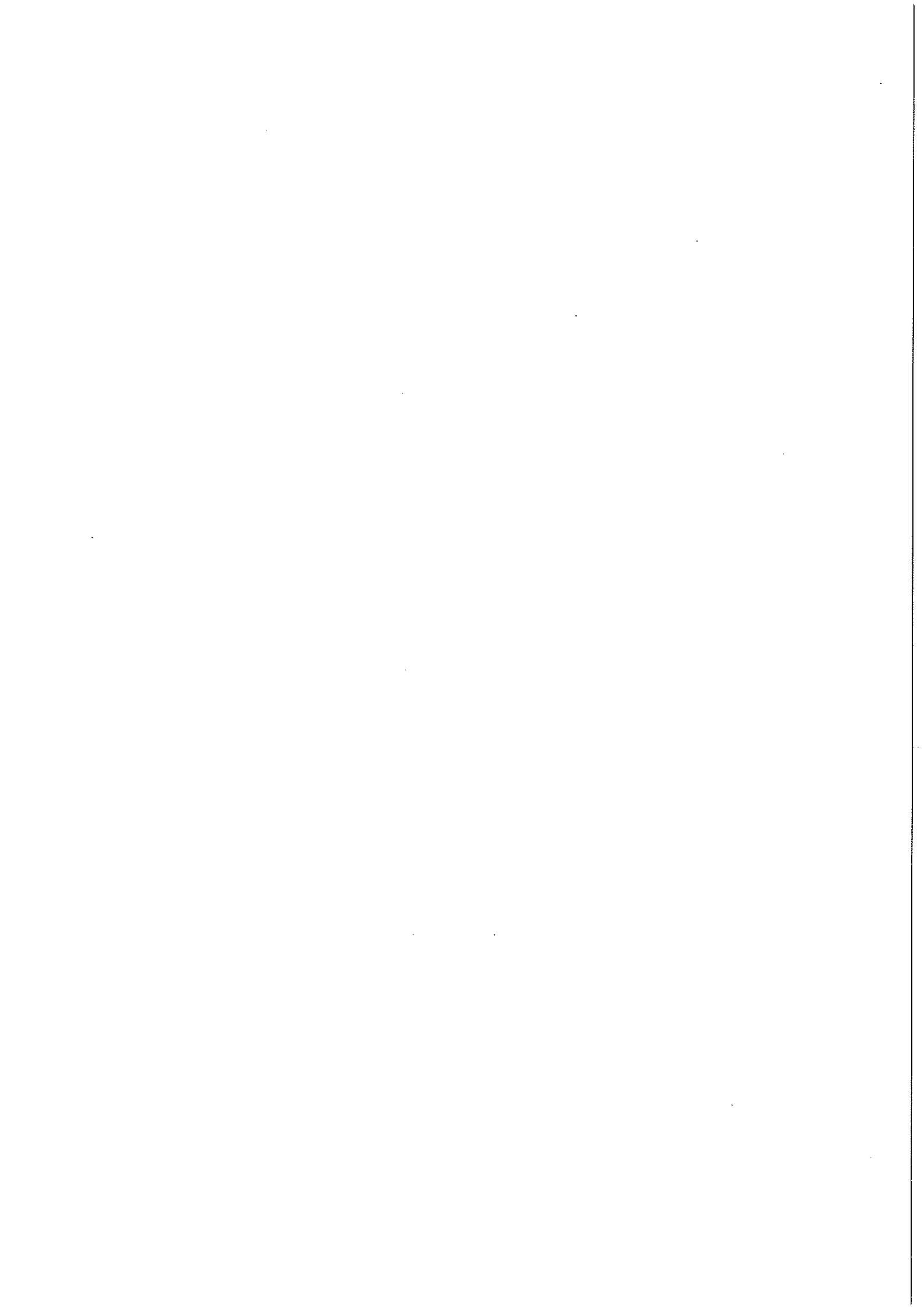
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CAMRA - Nov 12 - Vince Cable Letter

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Secretary of State for Business,
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23rd November 2012

Dear The Rt Hon Vince Cable MP

Pub Companies: Self Regulation of the Industry Framework and Company Codes

Further to your welcome decision to seek a report on progress towards self regulation of the tied pub sector, I am writing to submit the views of CAMRA, the Campaign for Real Ale.

CAMRA is a consumer group with over 145,000 individual members. We are concerned that the conduct and practices of the large pub operating companies are continuing to destroy the business viability of thousands of valued community pubs. Entrepreneurs, tied into restrictive and unfair contracts, are unable to make an acceptable living resulting in far too many business failures and ultimately the permanent loss of valued pubs.

PICAS

There is, so far, little evidence to prove that PICAS is capable of delivering the degree of change required. The launch of the service was surrounded by allegations that the Chair of the Panel would be partial to the interests of the pub companies. We have seen no sign of a marketing or communication campaign to encourage licensees to use this Panel. Additionally, the level of transparency is limited with only very basic information about the first two cases being released.

Given the continuing volume of complaints about the large pub companies being aired it is disappointing that PICAS has only been able to hear two cases. The decision to charge a £200 upfront fee to complainants appears ill advised and is surely deterring use of the scheme, particularly by those in the greatest financial distress.

Regrettably, due to the gross inadequacy of the company codes and the framework code, PICAS is barred from dealing with the fundamental problem of large pub companies taking an unreasonable proportion of pub profits. The consequence of this is to drive tied licensees out of business and to undermine the future of valued pubs.

Industry Framework Code

The BBPA and the pub companies have failed to deliver on all the commitments they promised by December 2011. Version 5 of the Framework Code issued in, December 2011, consequently falls short of what was promised to Government by the BBPA:



1. The pub companies have not fulfilled their commitment to Government that pre entry, training and professional advice must be taken or waived before a “**substantive discussion**”. Version 5 of the Framework Code waters this down to pre entry training and professional advice must be taken or waived before a “**substantive agreement**” is offered. Often by the time the substantive agreement is offered a potential lessee will have already verbally agreed to take on the pub and may feel at a point of no return.
2. Version 5 of the Framework Code only requires companies to provide an explanation of their own assumptions and assessments. The Code does not require companies to provide evidence to “**fully justify**” those assumptions and assessments as promised to Government.
3. The BBPA agreed that as part of self regulation pub companies would publish national company wholesale price list to achieve greater transparency. This commitment has not been met.

In one area, Version 5 of the Framework Code actually weakens the protections offered in the previous version. The previous Code provided protection for all tied licensees from the implementation of an onerous upward only rent review clause. The new Code only provides protection for lessees with longer term Fully Insuring Repairing Leases

We are not able to comment on the proposed Version 6 Framework Code as we have not been provided with a draft copy. The BBPA have however made clear through a meeting with the Independent Pub Confederation that the Code will not address the balance of risk and reward between pub companies and lessees. In our view, this was the most important commitment in the self regulation deal and so an apparent failure to address this brings the current mechanism of self regulation into disrepute.

Conclusion

Given the vital importance of the pub sector in sustaining strong communities, employment and the nation’s finances we urge you to intervene to ensure effective regulation of the tied pub sector and in particular to ensure an end to unfair practices from the large pub companies.

CAMRA endorses the submission to this review from Independent Pub Confederation. We believe the best solutions that will ensure a fair and sustainable balance of risk and reward between the large pub companies and their lessees are:

- The option for lessees to become free of tie accompanied by an open market rent review for all lessees of pub companies which tie 500 or more pubs
- A guest beer option for all remaining tied lessees of pub companies which tie 500 or more pubs

Yours sincerely



Jonathan Mail
Head of Public Affairs
CAMRA, The Campaign for Real Ale

Enterprise Inns

Our ref: WST/VJA
5th November 2012

Rt Hon Dr Vince Cable MP
Secretary of State for Business, Innovation and Skills
Ministerial Correspondence Unit
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Dear Dr Cable

It has been brought to my attention that you are reported to have made certain comments during your attendance at the BIS Select Committee Annual report review on Tuesday 30th October. I understand that, when referring to the progress of self-regulation in the UK pub industry, you said (or are reported as saying) "I am as concerned about this as you are and I continue to get the same complaints particularly about Enterprise. "

To my knowledge, you have not raised any such concerns with me, or any other representative of Enterprise, and I am therefore at a loss to understand how you can make such a comment. I am aware that there have been a small number of exchanges between us in relation to your constituents Mr and Mrs McCarthy and the pubs they occupy, the Prince Albert and the Milford Arms. I do not believe that you would make such a comment to the BIS committee if your concern related only to our dealings with Mr and Mrs McCarthy, especially as we have provided you with so much relevant context and background information in that case. It is therefore imperative that you urgently provide me with the specific details of any other cases to which you were alluding when you made your comment. The details of these cases will be readily available to you and I would therefore ask you to provide them to me by return in order that I may immediately investigate them.

You will appreciate my concern in this matter when, following similar allegations made by Brian Binley MP and Greg Mulholland MP, and despite numerous requests, we have never received a single detail to support the assertions made. The allegations were, and remain, extremely damaging to the reputation of Enterprise. I attach for your information just two examples of the attempts we have made to secure the relevant details in order that we may properly investigate them and, if appropriate, take any action required. All such entreaties have not resulted in Mr Binley or Mr Mulholland providing any detail, or indeed any response whatsoever. As a result we have not been allowed to investigate and resolve any genuine issues if such became apparent. Alternatively, we have been unable to correct the misrepresentations which were made by the individuals concerned.

I look forward to your response by return.

Yours sincerely
Enterprise Inns plc


Simon Townsend
Chief Operating officer



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www.enterpriseinns.com

Our Ref: GET/EG

30th September 2011

Rt Hon Kevin Barron MP
Chairman of Standards and Privileges Committee
Journal Office
House of Commons
London
SW1A 0AA

Dear Mr Barron

Brian Binley MP and Greg Mulholland MP

I am writing to you in your position as Chairman of the Standards and Privileges Committee to express serious concern at various statements made by Mr Brian Binley MP and Mr Greg Mulholland MP, many of which appear to me to constitute an abuse of Parliamentary Privilege.

On Thursday 7th July this year, I attended as a witness an oral evidence session of the Business, Innovation and Skills Committee. Mr Binley is, I believe, vice chairman of that committee.

At Q142, Mr Binley said to me: "*...the truth is I think you have been misleading incoming tenants for a very long time.*"

At Q143, Mr Binley continued: "*You are applying enormous pressure on your tenants and you are misleading them when they go into pubs. Is that not the case? We have evidence that it is, so be careful how you answer.*"

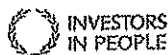
My responses are recorded in the minutes of the meeting.

Immediately following the meeting, which appeared to pursue a set of predetermined conclusions as opposed to being a reasoned attempt to gather evidence, I wrote to the Chairman of the Committee, requesting sight of the evidence referred to so that I might investigate and take such action as might be appropriate. (Copy attached). Despite a face to face meeting with Mr Binley at which he promised to provide the evidence and numerous follow up letters and emails, no reply has been received from either the chairman or Mr Binley. This lack of response seems to me extra-ordinary, not least because Mr Binley stated at Q184 in the same evidence session: "*I will show you the evidence*"

Following the release on 20th September of the Tenth report of Session 2010-12 Pub Companies, Mr Binley immediately issued a press release (copy attached), repeating the accusation that "*pubcos have intentionally misled tenants*"

Mr Binley, for reasons only he will understand, chose to send his press release to me and once again I took the opportunity to ask for sight of his "evidence" so that I might take appropriate action (copy enclosed). Once again, no response has been received.

Registered in
England and Wales
Company no. 2062808



2.

30th September 2011

As you can imagine such statements, which I believe to be manifestly untrue, are very damaging to my business. Furthermore, I am led to understand by a senior civil servant within the Department of Business, Industry and Skills that Mr Binley's accusations are held by many MP's to be true, dangerously distorting the view of pub companies in general and my company in particular and therefore prejudicing a fair outcome to any review of the Select Committee report.

In a similar vein, Mr Greg Mulholland MP, in his capacity as Chairman of the All Party Parliamentary Save the Pub Group, issued a press release on Monday 22nd August, (copy attached) alleging that his group had received "...30 serious detailed complaints..." which "...demonstrate the continued malpractice of the Pubcos..." and that 17 of the alleged complaints related to my company. As soon as we were made aware of the press release, we wrote to Mr Mulholland on 25th August, (copy attached) seeking the details of the complaints referred to in order that we might investigate them and respond accordingly. Once again, no response has been received.

To be subjected to damaging accusations without the right to understand and respond to the "evidence" that supports such accusations is, I would suggest, completely contrary to the basic laws of this country. If it is within your power, could I ask you to apply pressure to Mr Binley and Mr Mulholland either to provide evidence to support their damaging accusations with facts, including a right of reply from ourselves, or formally to withdraw such accusations.

May I at the same time draw your attention to a not unconnected Twitter feed from Mr Mulholland, "tweeted" soon after the BIS report was issued:

"Watch pubco shares tumble"

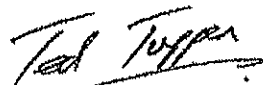
"The game is up for pubcos who have been exploiting tenants for too long"

All the sensible money will want out. The foreign creditors will be wanting their money back"

Can you please confirm whether such statements by a serving Member of Parliament are deemed to be acceptable to the Standards and Privileges Committee?

I look forward to hearing from you as a matter of some urgency and would of course be available to meet and discuss matters further should you consider this to be worthwhile.

Yours sincerely
Enterprise Inns plc



G E Tuppen CBE
Chief Executive



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Our ref: WST/VJA
25 August 2011

Mr G Mulholland MP
Member of Parliament for Leeds North West
House of Commons
London
SW1A 0AA

Dear Mr Mulholland

I have received a copy of the attached press release which I understand has been distributed in your name. I note you make reference to 17 'serious complaints' against Enterprise Inns plc, but am not aware that you have provided any information relating to these complaints to me or anyone else in my organisation.

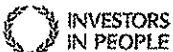
Having made this matter public, may I ask that you now provide me with the details of the 17 complaints in order that I may thoroughly investigate them and provide a suitable response, both to the members of the Save the Pub Group, and also to the Business Information and Skills Committee.

I look forward to hearing from you.

Yours sincerely
Enterprise Inns plc

Simon Townsend
Chief Operating Officer

Registered in
England and Wales
Company no. 2562808



The All Party Parliamentary Save the Pub Group

Contact: Greg Sutherland 0207 219 3833
Embargo: Immediate Monday 22nd August 2011

Save the Pub Group publish figures on serious complaints against Pubcos

The save the pub group have today published figures showing a breakdown of the complaints they have received against Pubcos from, individual tied lessees since June 2010, in which time the new Codes of Practice should have been in place.

The Save the Pub Group has received 30 serious detailed complaints, demonstrating that the new codes of practice have not improved the situation for licensees. Given that the Group has not sought individual complaints this is likely to represent only a tip of the iceberg of ongoing malpractice in the tied pub sector made possible by a gross imbalance of power.

Chair of the Save the Pub Group, Greg Mulholland commented:

“The publication of these figures really does demonstrate the continued malpractice of the Pubcos since the implication of the new codes of practise in June 2010.

“The fact that the Save the Pub Group have not actively gone out seeking individual complaints, means it is highly likely that these figures are merely the tip of the iceberg of the continued bad practise from Pubcos, up and down the country.

“The Business Innovation and Skills Select Committees excellent report made clear exactly what reforms were needed and what Pubcos should be doing to ensure that they act in a fair and responsible manner. The Pubcos have clearly demonstrated a failure to reform and these figures further demonstrate the need for the Government to now implement a statutory Code of Practice and a genuine free of tie option to ensure fairness for tenants.”

END

Summary of Complaints Received	
Pub Company	Number of Complaints
Admiral	1
Brakspear	1
Enterprise	17
Marston's	4
Punch	4
Scottish and Newcastle	3
Total	30

FLVA - industry self governance

VICTUALLERS ASSOCIATIONS

Vince Cable
Secretary of State
House of Commons
1 Parliament Street
LONDON
SW1A 0AA
16th November 2012

Dear Secretary of State

With reference to your letter addressed to Rodger Vickers, copied to ourselves, seeking input into progress made into various aspects of Industry Self Governance, we would respond to your points below following the numerical references within your letter.

In addition we have taken the opportunity to clarify important aspects surrounding licensee representation and indicated a suggested way forward to get the Governance process back on track.

1. In relation to the progress in promoting and maintaining awareness to licensees of the new mediation and arbitration mechanisms, this has been patchy, confused and unsatisfactory. That said both current bodies PIRRS and PICA Service are established, supported and meet our original criteria. The task of overseeing both of these bodies should rest with an overarching Governance Board which has yet to be formulated.

This is due to the reluctance of the principal body, the BBPA (British Beer & Pub Association) to assemble the overarching Governance body, as envisaged within the Tie, Code and Governance document submitted with V5 COP in December 2011. Consequently all the self governance bodies have been crafted and designed by the BBPA without any guiding hand from a true Industry Governing Body. PASS is not specified and unless that specification is determined by the industry itself the BBPA crafted model may prevail, which as we understand it does not meet the needs of our industry.

PASS will become amongst other things a key conduit for licensees to learn about Governance Bodies and other key industry matters. We have been frustrated in being unable to outline the FLVAs view of PASS to colleagues within the Governance bodies as that body has not been established by the BBPA. The FLVA has continually pressed hard for this to happen but the BBPA seem reluctant to cede governance. We wish to see some form of representative governance within this body but sense a form of grudgingly ceded enlightened despotism. At the point of establishment of this governance body, control and direction moves from the BBPA to the Industry.

2. The development work on V6 COP has been slow and there are significant differences between the FLVA position and that of the BBPA in substantive content of V6 COP and its overall structure. The FLVA were handed a copy of V5 COP 48 hours before it was communicated to the Government. We signed in good faith to keep the show on the road having been given assurances opportunities would exist for detailed input into V6 COP. This is an error the Association will not replicate with v6 COP as further date generated pressure is created. Negotiations with the BBPA have shown a lack of reciprocal good faith. Significant and detailed input has been made by the FLVA but not reflected in the latest draft version which requires

additional consultation before we would contemplate signing. We would not sign in its current form.

Additionally and more fundamentally the Framework Code structure followed by individual Company Codes renders the Framework Code as a signpost "motherhood and apple pie" document. The requirement exists for a standard industry COP which would be created in a statutory format but ideally should be fashioned by industry partners through a genuinely constituted Governance Body.

3. The content of Company COPs are reviewed by BII/BAS a BII subsidiary and the FLVA regard this process as not sufficiently robust or stretching enough in ensuring effective protections to rebalance the chronic imbalances within the Pub Co/Licensee relationship. In the event the current Framework Code/ Company Code structure remains, which we fundamentally disagree with, a forensic examination of the individual company codes must be undertaken. This accreditation should be undertaken under the auspices of the Governance Body.
4. In relation to PASS it was outlined within the last Tie, Code and Governance document that this body would be specified by the Governance Body and then awarded to "trade bodies qualified to deliver this service" following a decision from that OGB. To date there has been a form of PASS developed by the BII/BBPA and prominent Pub Co's, a further commercial entity registering the PASS name has been developed and we ourselves have developed an FLVA PASS format.

It seems the proper and correct procedure should be that that all these bidders should be allowed to outline their PASS approach to the OGB but only after the OGB has specified the nature, scope and objectives of PASS.

THE BII

Much of the work done by the BBPA has been in conjunction and in partnership with the BII and it is important to *pause and examine this relationship*. The BII is the British Institute of Innkeeping, the trades' education and training body, not a representative body for tenants. Membership consists of tenants, managers, freeholders, staff and corporate management with many holding senior Executive positions within the industry and it exists to set and deliver high professional standards of education and training within the industry. We believe the BII has allowed itself to be used by the BBPA and principle Pub Co's in being put forward as a quasi tenants' representative body which is not its principle role.

COP input from the BII has been properly and correctly confined to education and training matters, and should be judged from this position. This has been confirmed to us by their Chief Executive.

LICENSEES' REPRESENTATION

The picture relating to licensee representation is confused and must be a source of frustration to many, in particular Government. Only two bodies solely represent the interests of individual, basically sole trader licensees, the FLVA and the GOMV. Large company retail interests are represented by the ALMR. The IPC has not engaged with the current Governance process and seems to hold fundamentally divergent views to the tied trade model.

However given both PIRRS and PICA Service will benefit many within IPC we would welcome any input from IPC in relation to the development of V6 COP.

As detailed above, we believe the BII's role is not as a tenant's representative body but as the provider of the industry's training and standards.

THE WAY FORWARD

Given the successful establishment of PIRRS and PICA Service the following work remains outstanding and we would suggest the way forward as below.

- a. The establishment of an Overarching Governance Body for the industry consisting of genuine stakeholders within the industry. As we see it that should consist of the BBPA, ALMR, FLVA, GMV, BII and SLTA and needs to be correctly balanced to achieve optimum representative Governance. Government oversight would be welcome in ensuring a balance is achieved.
- b. The formation of an expanded COP working party under the guidance of the OGB to develop a standard Industry COP. This could include elements currently outside the present process i.e. IPC in addition to potential Governance partners.
- c. The OGB once formed would specify PASS and award PASS to the appropriate trade body meeting that specification.
- d. The OGB would then deliver the final elements of Governance rather than the BBPA ensuring a broader consensus than at present.

I trust the above addresses your points and we look forward to meeting with Jane Swift next Tuesday the 20th to expand on our vision

Yours sincerely



Nigel Williams
President
Federation of Licensed Victuallers Associations

Rodger Vickers
rodger.vickers@brownillvickers.com

7 November 2012

Dear Rodger,

Self Regulation of the Industry Framework and Company Codes

You will be aware that the Business Innovation and Skills Select Committee asked me on 30 October how effectively the legally binding form of self regulation which has been put in place is working. As I said in my subsequent letter to the Committee, I am keen to ensure that the reforms are in place and operating. I am therefore writing to you, as well as to the British Beer and Pub Association, the British Institute of Innkeeping, the Association of Licensed Multiple Retailers, the Federation of Licensed Victuallers Association, the Guild of Master Victuallers and the Independent Pubs Confederation, to ask for a report on the industry's progress in implementing these reforms.

I should therefore be grateful for the facts on:

- 1) What action has been taken, and is planned, by the governing board of PICAS to promote and maintain awareness among licensees of the availability of mediation and arbitration services in relation to any matter relating to the Framework and Company Codes. Any facts you can share, consistent with commercial confidentiality, of binding decisions already made by PICAS would also be welcome.
- 2) What action has been taken, and is planned, by the large pubcos (those with over 500 pubs) to maintain awareness among licensees of their rights under the code, including of the specific improvements introduced in December 2012 through version 5 of the Industry Framework Code in relation to rents, insurance, dilapidations and training, including pre-entry training; of the legally binding nature of the code; and of licensees' right to binding arbitration. I would be interested to know what further improvements the industry is proposing to include in version 6 of the code, designed to further improve transparency and fairness for tenants and when will these be implemented?

Yours faithfully,

<http://www.bis.gov.uk/>

- 3) What progress have the British Institute of Innkeeping (BII) made in preparing for their code re-accreditation role and what is the status of the necessary agreements with the industry on how the re-accreditation process will work?
- 4) What action, if any, is being taken under the leadership of the BII to set up a *Pubs Advisory Service for licensees*, further to the *Pubs Advisory Service* already set up under the leadership of Chris Wright and others.

I should be grateful for your considered response by 23 November. In the meantime, I have asked my officials to contact you and the organisations to which this letter has been sent to discuss my questions. When I have the facts I will update the BIS Committee further.



VINCE CABLE

Cc : Nick Bish - ALMR
Brian Rees - GMV
Martin Caffrey - FLVA
Martin Rawlings - BBPA
Peter Thomas – BII
Simon Clarke - IPC

FLVA Vince Cable

Dear Secretary of State,

Further to our letter of 16 November 2012 I can confirm that we have held a meeting with Jane Swift at the Dept for Business Innovation and Skills on Tuesday 20th November.

We were able to discuss at length the points we made in our letter to you and were also able to provide answers to her questions on the progress towards self regulation in the tenanted and leased pub sector.

We did confirm that although progress towards self regulation has been made there is still a good deal of work still to be done and procedures put in place before we can safely claim the process is complete.

As far as the FLVA is concerned there is still unfinished work on the following points:

1. Final agreement on the content of version 6 of the Industry Framework Code of Practice. We are concerned that the wording and definitions are too loose in several areas and some of our key recommendations have not been incorporated. At this stage we are not of a mind to sign.
2. Formation of PASS or its equivalent, its remit and format. This should be the task of the OGB not a joint decision between BBPA and BII. The FLVA have been sidelined in these discussions and told there is no such contract and it may be something to consider in a years time.
3. Creation of an Overall Governance Body which will take the lead roll in self regulation away from the BBPA which is the pub owners representative body.
4. Acceptance by the major pub owning companies of the need for radical change in their relationships with their tenants.
5. Clarification of the part to be played by the BII which because of its membership make up of pub managers and tenants, bar staff, freehold publicans, trade accountants and solicitors, and pub owning company personell should not be regarded as the tenant representative.

Our meeting with Jane was positive and productive and I thank you for giving us the opportunity to input into your review of the self regulation process. This is a process of change we feel passionately can have a massive impact on the future of traditional local community pubs throughout the country and a process that must be seen through by Government.

Yours sincerely,

Nigel Williams.

President FLVA.

FW Reply from Jo Swinson MP to Simon Clarke

Lehal Reena (CCP)

From: Swinson MPST
Sent: 19 November 2012 18:24
To: Swift Jane (CCP); Mansfield Iain (CCP); Quigley Faith (CCP); Normand Caroline (CCP)
Cc: SPAD CABLE MPST; Cable MPST
Subject: FW: Reply from Jo Swinson MP to Simon Clarke.
Attachments: 314352 Simon Clarke IPC Letter Out.pdf; FW: PUBLIC HOUSE REGULATION - LANDLORD AND TENANT DISPUTE

To see the email from Simon Clarke below on pubs.

The Minister's letter, and the email to which she responded, is attached.

Emily

From: Thomas Pauline (MPST MIN)
Sent: 19 November 2012 08:51
To: Swinson MPST
Subject: FW: Reply from Jo Swinson MP to Simon Clarke.

To be aware of.

Pauline Thomas | Correspondence Officer | Jo Swinson MP, Minister for Employment Relations and Consumer Affairs | Department for Business, Innovation & Skills | pauline.thomas@bis.gsi.gov.uk | 0207 215 3088 | www.bis.gov.uk | Blog: blogs.bis.gov.uk | Twitter: @bisgovuk

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: working together for growth

From: siclarke@aol.com [mailto:siclarke@aol.com]
Sent: 14 November 2012 09:57
To: Thomas Pauline (MPST MIN)
Subject: Re: Reply from Jo Swinson MP to Simon Clarke.

Dear Pauline

Thank you for the email attachment from Jo Swinson.

I appreciate Mrs Swinson is new to the role and wishes to take a systematic approach.

There are a few things I would like Mrs Swinson to be aware of which may have been lost in the sequence of Ministerial shuffles since Ed Davey had the role.

The self regulatory approach encompasses more than simply the BBPA's Framework Code. Mr Davey indicated, in the Government Response document, under the heading 'Challenges' that "*A more appropriate question than whether a pub is tied or free-of-tie is the question of whether there is the **right balance of risk and reward in the relationship, and whether the licensee has access to the information that they need to enable them to make sound commercial decisions and resolve disputes fairly and satisfactorily.***" I believe these are the questions, encompassing, amongst other things, the effectiveness of revised rent assessment guidance from the Royal Institution of Chartered

Surveyors (RICS), that are of primary concern to the groups representing consumers, lessees, tenants and small independent brewers and the root of the Select Committee Inquiries since TISC 2004. These are the very questions the pub owning companies and their representatives at the BBPA seek to avoid.

There seems to be continued confusion over the participation of bodies, such as Association of Licensed Multiple Retailers (ALMR), in the code revision process. For the sake of clarity, whilst the ALMR are members of the Independent Pubs Confederation (IPC) they do not represent the view of the broader organisation and indeed have been restrained, by the BBPA, from sharing details relating to code revisions (Version 6) with the other members. The participation of ALMR in the code revision process was initiated by the BBPA, the umbrella group of IPC has been specifically excluded from this process. Like the misunderstood consultations between Ed Davey and the ALMR in 2011, the ALMR's presence at the code negotiating table should in no way be perceived as IPC participation despite our open offer to be involved.

Version 5 was not an 'industry' agreed Framework Code - it was agreed between BIS and the BBPA. the Framework Code is called an 'Industry' Framework Code by the BBPA seeking to pass it off as industry agreed - **it is not**, CAMRA, Federation of Small Businesses, Guild of Master, Victuallers, Unite, Fair Pint, Small Independent Brewers Association, Justice for Licensees, Forum of Small Businesses and ALMR (who have sought to assist in ensuring the that he provisions contained are at least clear) have not agreed to the BBPA's Framework Code.

There remains considerable doubt in respect of the codes legally binding nature, indeed even the BBPA have two opposite legal opinions (as revealed by the Freedom of Information requests).

The Pubs independent Conciliation and Arbitration Service (PICAS) is **not** accepted as independent by IPC. It is funded and run by the BBPA (who not only represent the pub companies but essentially are the pub companies - Ted Tuppen Enterprise Inns boss is Vice President and former chairman and Simon Townsend, his No 2, is the Chiarman of the BBPA Communication Group - anything that has been present to BIS has gone over their desk first). The first two PICAS cases have found against the pubco, one of the tenants has left his pub the other had his on the market and his rent has increased by over 20%. It seems the only party placated by PICAS has been BIS.

On any approach, effectiveness is the key and Mrs Swinsons confirmation that this is a first step - receiving facts on how the self regulatory approach is working - is encouraging.

Officials have been in touch and a meeting arranged. I will of course seek to answer the questions raised by the Secretary of State and I hope the Department are able to consider a broader picture of how the self regulatory approach is working, or not, which encompass the issues of importance, rather than the various incarnations of the Framework Code which are seen by most IPC groups as a side issue given it has been deliberately designed by the pub companies to deliver no meaningful or material change under a veil of activity. As Mr Davey put it, the challenge is the question of whether there is the right balance of risk and reward in the relationship. This was the catalyst that resulted in Select Committee inquiries and remains the fundamental issue, the codes do nothing to redress that balance.

Please thank Mrs Swinson for taking the time to respond and I look forward to meeting her at some time after the information has been received.

Regards.

Simon
IPC SECRETARY AND CAMPAIGN MANAGER

-----Original Message-----

From: Thomas Pauline (MPST MIN) <Pauline.THOMAS@bis.gsi.gov.uk>

To: siclarke <siclarke@aol.com>

Sent: Mon, 12 Nov 2012 10:57

Subject: Reply from Jo Swinson MP to Simon Clarke.

<<Lynx case 314352 Simon Clarke Reply Sent.pdf>>

Dear Mr Clarke, please see attached a signed reply from Jo Swinson in response to your email of 26 October.
Kind regards

Pauline.

Pauline Thomas | Correspondence Officer | Jo Swinson MP, Minister for Employment Relations and Consumer Affairs |
Department for Business, Innovation & Skills | pauline.thomas@bis.gsi.gov.uk | 0207 215 3088 | www.bis.gov.uk |
Blog: blogs.bis.gov.uk | Twitter: @bisgovuk

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: working together for growth

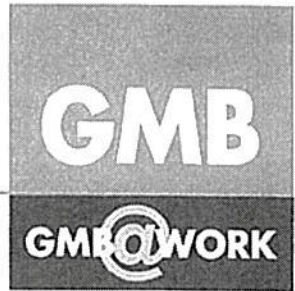
The Business in You campaign highlights support for start-ups and growing businesses, and encourages entrepreneurial spirit. For more information search online for "business in you".

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This email was received from the INTERNET.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

GMB



GMB Evidence and discussion document

19th November 2012

Presented by [REDACTED]

1

What action has been taken, and is planned, by the governing board of PICAS to promote and maintain awareness among licensees of the availability of mediation and arbitration services in relation to any matter relating to the Framework and Company Codes. Any facts you can share, consistent with commercial confidentiality, of binding decisions already made by PICAS would also be welcome.

None – there has been no concerted effort to inform licensees of PICAS as a system that can offer support to licensees, outside of the BII trade magazine and the website. If you enter PICAS into the BII website search engine you get no redirection

Does it work?

Concerns:

[REDACTED] – works primarily for Punch Taverns as an “expert” valuer. On the day it was announced that he was to be offered the job he was in The Rising Sun acting on behalf of Punch in my rental assessment.

The PIRRS board of Directors which oversee PICAS are as follows:

- [REDACTED] ALMR
- [REDACTED] - GMV
- [REDACTED] - FLVA
- [REDACTED] - BBPA
- [REDACTED] - BII

Only the GMV in this list represents Tenants and they are primarily located in the Southern part of the Country. The FLVA are deeply compromised by their funding by Enterprise Inns.

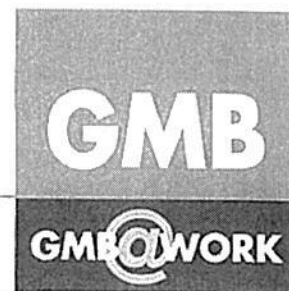
The first two cases were both heard earlier this year and both cases found in favour of the Landlord.

Both cases were reported in the trade Press on the 19th September as being positive for the landlords in question:

“A Pubco has been found in breach of its code of practice and the spirit of its code of practice, in the first case to go through the newly formed Pubs Independent Conciliation & Arbitration Service (PICA-Service)”

GMB - MIDLAND & EAST COAST REGION





How are "minor amendments" covered as accreditation only takes place every 3 years?

In 2011, following their accreditation Fullers made 6 pages of minor amendments to their Codes.

Have on going disputes changed following the strengthening of the Codes?

No – in the Case of [REDACTED] (Appendix 7) the dispute goes back to 2007 and has been supported by the GMB for this length of time. Enterprise intransigence has not abated despite the results of the BIS Enquiry in 2011 and the strengthening of the framework Codes have had no impact on Enterprises attitude to these tenants, which if anything has got worse.

In the case of [REDACTED] London, the dispute with Punch taverns regarding rental assessment has been on-going throughout 2011. The agreement to strengthen the Codes of Practice and adhere to self-regulation has had no impact on dealings with Punch Taverns (Appendix 8)

3.

What progress have the British Institute of Inn keeping (BII) made in preparing for their code re-accreditation role and what is the status of the necessary agreements with the industry on how the re-accreditation process will work?

We cannot comment on the inner workings of the BII in any work they may or may not have done in their re – accreditation role.

We can however state that the experiences of Tenants who have contacted us have given us absolutely no confidence in the BII as an organisation that will assist tenants.

The BII is reliant on Membership from Corporate Patrons of whom Enterprise Inns and Marston's are named on the BII website.

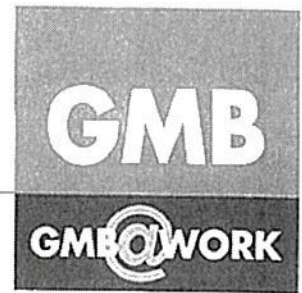
Brulines, Punch Taverns and Admiral Taverns are just 3 corporate members of the BII.

The BII employ a consultant [REDACTED] who gave evidence at the last hearing in 2011, alongside [REDACTED]

I have dealt with [REDACTED] on many occasions and it was [REDACTED] who informed the GMB of the decision to appoint [REDACTED]

[REDACTED] role within the BII is one of trouble shooter, in that he frequently gets involved with behind the scenes discussion and negotiations with Pub Companies where there have been examples of bad behaviour. This is informal and frequent and often results in either reductions in rents for tenants or exit agreements which reduce tenant's liability. Whilst clearly this is a positive thing for the tenants it provides no redress to the main issue – that being the re balance of risk and reward.





On Punch Taverns web site we have the following posting:

March 2012 update – Following recent accreditation by BIBAS on updates to the Punch Taverns Code of Practice a new version of the code will be posted here shortly. These changes include amendments to Punch Supply Services (around Pricing and Price Increases and Deliveries), Buildings Insurance, Renewing your Agreement and Marketing as well as incorporating all the elements of the new Industry Framework Code Revision 5 which was released in December 2011.

In June 2009 [REDACTED] an article in the Morning Advertiser entitled:

<http://www.morningadvertiser.co.uk/General-News/Bil-we-must-raise-literacy-and-numeracy>

This article stated that "it's been estimated that 40% of Licensees are struggling with literacy and numeracy"

Being aware of this within the industry the GMB would question why there has been no further detailed explanation of this legal issue to tenants?

Were the codes legally binding as per the explanation given to The Right Honourable Ed Davey in discussions with the BBPA in 2001?

These codes were required to be made legally binding and this has been attempted through issuing an "Open and Unconditional Offer" which under the "Carlill vs. Carbolic Smoke ball Company" precedent, it is suggested that both parties are bound to the terms of the code in the event that the tenant/lessee seeks to access the benefits of the code which go beyond the terms of the existing lease, the assumption being that the Pubco is behaving in accordance with the code whether or not the tenant/lessee has accepted it as legally binding.

Ed Davey was given the legal opinion of Howe, Blackstone Chambers provided to the BBPA on the 20th October 2011, to back up the BBPA's position that legislation was unnecessary as the Codes were already legally enforceable. (Appendix 5)

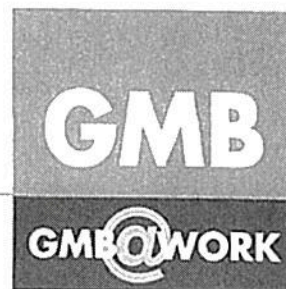
However under Fair Pints freedom of information request it was revealed that on the 4th January 2010 [REDACTED] gave the BBPA an opinion on the legality of the Codes which was contrary to this position. His opinion was that the Framework Codes were legally binding to the organisations who signed them but not to the individual Tenants and Lessees whose contractual arrangements were with the Pubco that they were dealing with. (Appendix 6)

GMB - MIDLAND & EAST COAST REGION

[REDACTED]
2 FAIRFIELD ROAD, BUXTON, DERBYSHIRE SK17 7DW TEL : 01298 24190 FAX : 01298 24635
Regional Website : www.gmbmidandec.org.uk



INVESTOR IN PEOPLE



██████████ had a role behind the scenes with a Marston's Tenant (Appendix 9) who was facing a rental increase based on a rental assessment that bore no resemblance to the Royal Institute of Chartered Surveyors Guidelines. Following a meeting with the GMB, the rent was reduced from 45 k to 29 k and discount applied. ██████████ informed me that he also made overtures to Marston's behind the scenes yet this information was never made public – why?

During negotiations between tenants and Pub companies I have always urged individuals to approach the BII, to show that they have followed the correct procedures. I have yet to experience a case that the BII have either investigated correctly or made a serious attempt to resolve. In my own case at the Rising Sun, the BII ignored my first two letters and only took interest in the case when the GMB attacked them publicly. The report that ██████████ instigated proved the majority of my complaints and cast sufficient doubt on the rest of the issues that some sort of penalty should have been imposed

In the case of The Fleece Hotel (Appendix 10) I involved the BII in a dispute between a tenant and Enterprise Inns regarding a clear Code of Practice Rent Review. The BII stated categorically that the tenant had every right to a COPRR under the current Code, but Enterprise ignored this totally and the BII did nothing. The Tenants left the Pub with the business proving to be untenable under the terms of the lease.

This case was provided to ██████████ as part of the 2011 BISC review.

4.

What action, if any, is being taken under the leadership of the BII to set up a Pubs Advisory Service for licensees, further to the Pubs Advisory Service already set up under the leadership of ██████████ and others?

None – the PAS was set up following the government announcement as a way of protecting the information available to tenants. We have seen ample evidence of misrepresentation from PUBCO's regarding the opportunities on their web sites and felt that PAS would be similarly abused.

I have included a statement from PAS below

The PAS unlike PICAS & PIRRS is not sponsored and run by pub companies.

The PAS is in a position to offer good advice from experts in the trade but this is being undermined by reluctance from Pub Companies to refer or promote this service to any new tenants.

We are however being used heavily by existing tenants who present us with alarming situations; more often than not we can offer no on-going help to make their business a success because to succeed they need to maximise their profit which under existing unregulated tied agreements is impossible. As a result we can offer little more than a shoulder to cry on whilst they negotiate an exit from the industry.

██████████

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BRITAIN'S GENERAL UNION

Conclusions

In the year since the BIS initiated the self-regulatory solution the progress seems to have been limited.

Whilst many of the initiatives have been implemented, none of them have provided the tenants with the security of knowing the re balance of risk and reward, which Ed Davey spoke about in November 2011.

A consistent aspect of the problem is the imbalance in both power and resources between the Pubco and the leaseholder, who lacks financial and information resources to support him in his negotiations. This imbalance is not regulated by the raft of consumer protection codes as the current law sees this transaction as being between two businesses which are deemed to have access to similar levels of resource and advice.

In reality the Pub tenant/lessee has very limited experience of the technicalities of the legal environment they are involved in and they do not have ready access to affordable advice of sufficiently high quality to enable them to fight their battle effectively.

Legally binding Codes of Practise will still require accessing the courts with the attendant risk of costs.

In general a leaseholder with a FRI lease is often in that situation because of a belief that the arrangement must be inherently "Fair" as it must be in the interests of the Pubco that the tenant thrives. This belief leads to the tenant being predisposed to accept a suggestion that problems with the business are their own fault, which may or may not be true – this belief persists until it is too late and the pressures both physical and financial lead to the business failing.

It seems that in the past and possibly even now the Pubco processes have been too slow to identify and respond to situations where the tenant/lessee are genuinely in trouble and there is compelling evidence that this is a deliberate policy. All of the current "Solutions" are designed to provide some kind of "Post Hoc" redress in the event that something goes wrong, or to try either filtering out or improving the preparedness of new entrants to the industry.

What is needed is something that is available in "real time" to assist the tenant/lessee to navigate their current situation and to give early warning to Pubco of impending problems

Forum Comment:

Most tied licensees are extremely nervous about putting their heads above the parapet, and with good reason. This is a huge factor preventing meaningful mobilisation. However, surely one excellent case of direct licensee representation happened back in January when an overwhelming majority of MPs voted for meaningful reform of the tied sector. MPs are there to represent their constituents, and it appears plenty of licensees have chosen to put some faith in that fact as throughout the debate speaker after speaker cited evidence drawn directly from licensees working in each of their constituencies. Furthermore that evidence was so consistent that it could only really be described as overwhelming. This powerful example of direct representation of tied licensees occurred in the very public forum of the House of Commons. It was based on real evidence and the verdict was clear from the landslide vote.

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INVESTOR IN PEOPLE

Greg Mulholland

E-mail Message

From: [Blaney Nicholas \(CCP\)](#)
[\[EX:/O=DTI/OU=DTIHQ/CN=RECIPIENTS/CN=NBLANEY\]](#)

To: [Blaney Nicholas \(CCP\)](#)
[\[EX:/O=DTI/OU=DTIHQ/CN=RECIPIENTS/CN=Nblaney\]](#)

Cc:

Sent: 30/11/2012 at 11:06

Received: 30/11/2012 at 11:06

Subject: Response from Greg Mulholland MP to the Secretary of State's letter on Self Regulation of the Pub Industry Framework and Company Codes, 9 November 2012

Nicholas Blaney | Competition Landscape Reform | Department for Business, Innovation & Skills | nicholas.blaney@bis.gsi.gov.uk | Orchard 2 Floor 3, 1 Victoria Street, London, SW1H 0ET | T: 020 7215 6622 | www.bis.gov.uk |

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All emails and their attachments containing a meeting minute, decision or comment on a submission by the Minister must be filed in Matrix by the policy team, as specified by Cabinet Office and BIS guidance

From: MULHOLLAND, Greg [<mailto:greg.mulholland.mp@parliament.uk>]
 Sent: Friday, November 09, 2012 03:08 PM
 To: MULHOLLAND, Greg ; MPST Central Admin
 Cc: Mansfield Iain (CCP); Cable MPST; Swinson MPST; Perm Sec (BIS); Crellin Joanna (MPST MIN); Normand Caroline (BE); Quigley Faith (CCP); Swift Jane (CCP); Boughen Aileen (Communications); Parly Unit - Others; Cable SPAD MPST
 Subject: RE: Vince Cable's response to your letter of 30 October 2012 to Jo Swinson

Apologies, one slight error you will have spotted (problem with hastily writing responses between meetings!) is that Rodger Vickers acts for Punch Taverns, rather than being an employee, which this suggest (and technically he is chair of a PICAS panel) but the point I was making is clearly the same and to many, unacceptable pubco involvement in what are supposed to be independent bodies.

Formal letter to follow but with the deadline of 23 November (which I welcome in principle) it was essential to raise the unacceptable terms of the questions/review as quickly as possible.

Best wishes,

Greg

From: MULHOLLAND, Greg
Sent: 09 November 2012 14:08
To: MULHOLLAND, Greg; MPST Central Admin
Cc: Mansfield Iain (CCP); Cable MPST; Swinson MPST; Perm Sec (BIS); Crellin Joanna (MPST MIN); Normand Caroline (BE); Quigley Faith (CCP); Swift Jane (CCP); Boughen Aileen (Communications); Parly Unit - Others; Cable SPAD MPST
Subject: RE: Vince Cable's response to your letter of 30 October 2012 to Jo Swinson
Importance: High

Apologies all, this was sent as it was being spellchecked!

Corrected version is this one:

Dear Patrick

Thanks for copying me to this and for cc'ing all the officials who have presumably been and are currently involved in this issue and its ongoing mishandling by the Department.

I will reply to the letter to me - and the BIS view on the current status - in due course (though I note at this stage that despite the defensive tone, there has not been any attempt to deal with any the points I made in the 11 page letter I sent detailing the constant stream of misinformation and misunderstanding in letters and emails).

I do however, as a matter of urgency, need to tell you that you are at it again! The letter sent to Roger Vickers and others is once again

The letter starts by asking, "how effectively the legally binding form of self regulation which has been put in place is working".

1. It hasn't been put in place.
2. It is not "legally binding" in the way you suggest, the legal advice on this is contradictory and inconclusive, but what is clear is that codes do not apply to existing tenants/lessees unless they have signed up to it (many have not) and may not be anyway unless it has been incorporated in their lease by a deed of variation, which hasn't happened. So please stop saying something that is misleading, partial and legally challengeable, as if it is fact.
3. The BBPA proposed system of "self regulation" that BIS rubber stamped last November and passed off as the Department's own, has not (as you know!) been "put in place". So why are you saying something that you know not to be true?!

I have two further initial points.

1. Why is this addressed to Roger Vickers (of Punch Taverns)? He is the PICAS chair and only one question relates to him the rest are well outside his remit, perhaps BIS have been given the wrong impression of Roger's position? (I also need to remind you that Norman Lamb, in his tenure in the Department, was horrified when he discovered that Punch's Mr Vickers was Chair of PICAS, when it was supposed to be an independent body, something that he was clearly unhappy that he had not been told by officials!)

2. The heading is "Self Regulation of the Industry Framework and Company Codes". As you know - or should know - and as BIS have acknowledged - the issue is much wider than the codes (the Govt Response makes this clear, I suggest you read it), so we need to be discussing and answering questions on the effect of Self Regulation as a whole not one tiny part of it. So why are you seeking to restrict the call for information to a small part of the BBPA/BIS proposal of November 2012?

The suspicion, I'm afraid, is that once again BIS officials are taking at face value the views of the BBPA, the pubcos representative trade association. They are seeking to keep the remit of any 'review' to a very limited assessment of whether the BBPA approved 'reforms' are implemented and whether they are working as they should NOT whether they are actually dealing with the problems that BIS have consistently accepted are there. So I need to ask, who wrote the questions sent to and have the BBPA had an input into this? I have to say, having been very close to this issue, that it looks as if the BBPA have provided the list of questions/terms of reference. Can you categorically deny that? If you can, then can you explain how you have come up with this rather strange, deliberately restricted list of questions that conveniently avoids the crux issue of risk and reward? (Even though Ed Davey made clear this WAS to be included as the code of practice was developed, which it hasn't been).

The disgraceful collusion exposed in the Save the Pub Group's freedom of information request into the clear, secret collusion that took place between BIS and the BBPA (and indeed the pubcos themselves) was an embarrassment to the Department. If there is any sense that this is happening once again then that would be a serious matter and one that should receive full public scrutiny.

So I need to ask you to revise the list of questions. The fundamental one that you know you should be asking is "have the reforms addressed the fundamental problem that the pubcos overcharge their tenants/licensees taking more than is fair or sustainable from the pub turnover". That is the key problem in this whole issue, as identified by the BIS and predecessor Select Committees going back to 2004 and accepted by BIS in the Department's published plan of action in February 2010, which was then accepted by Coalition BIS Ministers - and reneged on last year. The issue has NEVER been whether or not there are "codes of practice" or whether or not they may or may not be "legally binding", so please stop pretending it is. It is the fact that the pubcos, who are basically zombie companies doing nothing for the British economy, with vast amounts of money going straight to service their mind boggling level of debt, continue to double overcharge their licensees which is an exploitative distortion of the beer tie

(which is supposed to be higher beer prices for LOWER than market rent) leading to licensee hardship and is directly closing perfectly viable pubs, that only fail because the pubcos are taking more money than is reasonable or sustainable.

As the Department for Business, you should understand that and be prepared to do something about it, to allow the notable growth in the sector with smaller companies to expand. At the moment, BIS's failure to enact real reform in this sector is preventing that happening.

I can only urge that after the fiasco of BIS handling of this issue for the last year, that we finally now see some real leadership. Please wake up, start looking at the reality of this issue instead of believing the pubco funded BBPA who are doing all they can to prevent real and essential reform and finally face up to the fact that without real reform, all that has happened so far - the response of November 2011 - is BBPA inspired, pubco funded, BIS badged window dressing.

Yours sincerely,

Greg

From: MPST Central Admin [mailto:MPST.Centraladmin@bis.gsi.gov.uk]
Sent: 07 November 2012 17:02
To: MULHOLLAND, Greg
Cc: Mansfield Iain (CCP); Cable MPST; Swinson MPST; Perm Sec (BIS); Crellin Joanna (MPST MIN); Normand Caroline (BE); Quigley Faith (CCP); Swift Jane (CCP); Boughen Aileen (Communications); Parly Unit - Others; Cable SPAD MPST
Subject: Vince Cable's response to your letter of 30 October 2012 to Jo Swinson
Importance: High

Dear Mr Mulholland,

Please find the attached letter from Dr Cable in response to your letter of 30 October 2012 to Jo Swinson, setting out your concerns around BIS handling of issues around pub companies.

Best regards.

Patrick

Patrick Bremaud | Cabinet Committees | Department for Business, Innovation and Skills | : MPST.Centraladmin@bis.gsi.gov.uk | : patrick.bremaud@bis.gsi.gov.uk | (phone : 0044 [0] 20 7215 6412 or 0044 [0] 7215 5421|4 fax : 0044 [0] 20 7215 5468 | 1 Victoria Street London SW1H 0ET |

The Business in You campaign highlights support for start-ups and growing businesses, and encourages entrepreneurial spirit. For more information search online for "business in you".

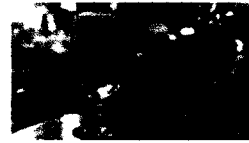
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Independent Pub Confederation



The Brighton & Hove Licensees Association



INDEPENDENT PUB CONFEDERATION

Rt Hon Vince Cable MP
Department for Business Innovations and Skills
1 Victoria Street
London
SW1H 0ET

22nd November 2012

Dear Dr Cable

RE: SELF REGULATION AND INDUSTRY AND COMPANY CODES

Thank you for your offering us the opportunity to respond to your letter dated 7 November 2012 addressed to Rodger Vickers, copying in some other industry participants. Of the parties invited to respond only the Independent Pubs Confederation (IPC) are outside the process of code revision, PICAS and PIRRS, that said, some members of IPC are involved in the process but have been prohibited from sharing information with the group as a whole.

It was one of Ed Davey's expectations that IPC would be involved in the process of reforms, this has not been the case. IPC were invited to a round table meeting early in the year at which we tabled our suggestions for inclusion into the BBPA's Framework Code, there was one subsequent meeting, 12th April 2012, where we were told our suggestions would not be adopted. Since that meeting we have had no further contact with the BBPA despite requesting a copy of the draft Framework Code in June, when it was due to be released.

GENERAL

The Governments Response was designed to deliver self regulatory measures that would be as effective as the BISCOP recommendations, for a Statutory code and independent adjudicator, and be implemented quicker. We consider neither have been satisfactorily achieved. The BBPA committed to circulating a draft revision of their Framework Code (version 6, V6) which would include "Further

Improvements" in June 2012, to be implemented in October 2012. It is now November 2012 and V6 has not been implemented or indeed circulated. IPC seem to have been excluded from the code revision process. The main thrust of IPC's expectation was to press for a free of tie options and guest beer rights accompanied by a fair open market rent, basically, rebalancing risk and reward (as Ed Davey put it in the Government Response). This one issue has been the root of the industries dispute, and highlighted by successive Select Committees since 2004. The BBPA have confirmed that they are not empowered to deliver this particular expectation of Government, or the industry, and it will not be a provision in their revised Framework Code. As the RICS guidance is not mandatory it would seem the industry has effectively conceded that it can not self regulate on this, the fundamental issue.

To be clear, to rebalance risk and reward in the relationship between landlord and tenant in the pub sector there needs to be a mechanism to restrain a pub owning company from taking more than a fair share of the profits of a pub.

The balance remains heavily weighted in the pub owning companies favour, they still take more than a fair proportion of a pubs profits in the form of rent and profit on tied products.

Your questions, need to be considered with the backdrop that, contrary to what you may have been told, there is no industry agreed Framework Code, Version 5, the current version, is a minor variation upon the first version which was rejected in 2009 mediation by the nine groups that now form IPC. In addition, the legally binding status of the code remains in question, specifically in respect of existing tenants, and even the BBPA have differing legal opinions in this respect. To suggest that their original opinion, from Martin Reece (attached), Senior Partner of perhaps one of the largest law firm in the world, DLA Piper, was unaware of the 'Carbolic Smoke Ball' principle, frequently cited as a leading case in the common law of contract, particularly where unilateral contracts are concerned, is implausible. IPC consider, to be legally binding beyond reasonable doubt, a deed of variation to the Lease should be offered to all tenants. There is no reason why this deed can not be a standard form document that simply needs signing by the parties and registering and therefore should be made available at a very modest cost.

The four questions seek to address four specific issues of the self regulatory package and by no means represent the package as a whole. Whilst seeking to establish the implementation and progress of the reforms the questions do not appear to inquire about the 'effectiveness' of the purported reform developments and we hope to be given the opportunity to comment thereon at a later date.

THE QUESTIONS

IPC have been excluded from most of these processes, however, practical experience assists us in providing answers to the four specific questions raised in your letter.

1) What action has been taken, and is planned, by the governing board of PICAS to promote and maintain awareness among licensees of the availability of mediation and arbitration services in relation to any matter relating to the Framework and Company Codes. Any facts you can share, consistent with commercial confidentiality, of binding decisions already made by PICAS would also be welcome.

PICAS is essentially a rebranding of one of the services previously undertaken by the British Institute of Innkeepers, it is nothing new and will now be funded by the pub companies through the BBPA, arguably diluting what impartiality it previously might have claimed. PICAS will be introduced in the BBPA's Framework Code and all company codes must make reference to the availability of PICAS. As PICAS supersedes Version 5 of the Framework Code there is no 'awareness' to speak of to be maintained amongst licensees.

Two cases have been heard and concluded since the inception of PICAS, Alan Yorke and Russell Stone, both cases found in favour of tenant. One tenant has now left his pub and we understand the other has his on the market. Neither are satisfied with the result, despite their complaints being found to be justified. We understand both have submitted their detailed submissions on their experience to BIS. We would be pleased to supply additional copies should you need them.

2) What action has been taken, and is planned, by the large pubcos (those with over 500 pubs) to maintain awareness among licensees of their rights under the code, including of the specific improvements introduced in December 2012 through version 5 of the Industry Framework Code in relation to rents, insurance, dilapidations and training, including pre-entry training; of the legally binding nature of the code; and of licensees' right to binding arbitration. I would be interested to know what further improvements the industry is proposing to include in version 6 of the code, designed to further improve transparency and fairness for tenants and when will these be implemented?

Reference to rights under Framework Code are referred to in Company Codes and in a letter sent round to existing tenants in December 2011. The companies websites make reference to the Framework Code, however, some of the links do not at present work. Since that date there has been no further 'action' taken that we are aware of, and I would remind you that many of our members are existing tenants. We are aware of no plans to promote further awareness. Most tenants are 'fire fighting' their circumstances and the limited rights conferred in the codes to date are very low on their priority list. Until the codes contain something meaningful and material we doubt that an awareness campaign, of a code offering very little in practical terms, will deliver much change.

Your letter refers to December 2012, we believe this is an error and is meant to read 2011. The Government Response refers to a list of 'Immediate Improvements'. As we demonstrated in our meeting with the departments representatives, these purported improvements already existed in the January 2010, Version 5, Framework Code and the Company Codes. Given that they already existed we do not accept they can be described as 'Improvements'.

It is of note that the list of 'Further Improvements' offered by the BBPA, in their report to BIS in October 2011, had the issue of 'risk and reward' at the bottom of their list. Ed Davey clearly identified this to be the priority issue and as such the Government Response changed the order, proposed by the BBPA, putting the issue of rebalancing risk and reward at the top.

The issue of rebalancing risk and reward could be resolved by a free of tie option, guest beer right and a machine tie release option, all accompanied by a fair open market rent. We suggested in our meeting with BBPA that codes should include such provisions and were advised by the BBPA they are not empowered to impose such

conditions upon their members. No alternative mechanism for rebalancing risk and reward has been presented to IPC.

In addition, we made proposals for more open access to information, e.g. shadow profit and loss rent calculations should be accompanied by a free of tie calculation so a tenant can compare their likely profitability and circumstances 'tied' against 'free of tie' (as outlined in 7.18 and 7.19 of RICS guidance - attached). There needs to be evidenced justification for any assumptions made in rent calculations, a simple rent assessment is meaningless without comparable evidence and benchmarking reference. At present pub companies and brewers simply send out a spreadsheet rent calculation with no evidence claiming to justify their desired rent. This spreadsheet proves nothing more than their ability to add up their 'estimates' of turnover, gross profit and costs under a veil of transparency where in fact, unsubstantiated, these estimates do nothing to satisfy the Governments "Challenge" to ensure "...the licensee has access to the information that they need to enable them to make sound commercial decisions...". As IPC have been excluded from the code revision process, and a draft has yet to be released, we are unable to advise whether there has been any effort to satisfactorily address any of the Governments 'Further Improvements'.

IPC would like the opportunity to report further to BIS on the variations to the BBPA's Framework Code when it is finally released.

3) What progress have the British Institute of Innkeeping (BII) made in preparing for their code re-accreditation role and what is the status of the necessary agreements with the industry on how the re-accreditation process will work?

IPC are not party to the BII's accreditation process.

Accreditation is no measure of fairness of company codes, simply compliance with the BBPA's minimum standard Framework Code. The BII have a code accreditation role, BIIBAS. As previously mentioned this service also used to handle code breach complaints, it would therefore be wrong to consider PICAS to be a 'new' reform initiative – it simply replaces the BII's service, which proved ineffective, under a new BBPA funded banner.

The BII's 3 year re-accreditation proposal does not seem to accommodate the reality of what actually happens. Company's have a code accredited and thereafter vary it with additional clauses, it would then be three years before these variations are considered against the Framework Code. Also, as the Framework Code is in an ever changing flux, does an accredited company code of last year get reaccredited when the Framework Code is revised ?

The current accreditation measures seem to allow some company codes through the net. BISCO were informed by the BBPA in the October 'Update' 2011 (para 53) that *"The Guidance to the Framework Code referring to the requirement of a protocol where flowmonitoring equipment is used includes the need to have evidence other than the evidence from the equipment. No evidence has been presented that indicates that this requirement is not being complied with."*

This statement is false on two counts, 1. the guidance to the Framework Code does not include the need to have evidence other than that from the equipment and 2. I personally made a complaint in this regard to the BII and BBPA as Enterprise Inns Company Code states they reserve the right to fine if they consider buying out has

taken place and the tenants fails to provide their confidential trading information. As trading information is commonly used at rent review by the pub companies to increase rent, tenants are therefore understandably reluctant to provide such information.

This raises two immediate questions, 1. were the BISCOP misled by the BBPA ? or, if not, 2. is this evidence of a failure of the BII's accreditation service - how did the Enterprise Inns code achieve accreditation ?

4) What action, if any, is being taken under the leadership of the BII to set up a Pubs Advisory Service for licensees, further to the Pubs Advisory Service already set up under the leadership of Chris Wright and others.

IPC are aware of no plans by BII to provide a Pubs Advisory Service.

IPC are however aware of a Pubs Advisory Service (PAS) introduced by specialists (surveyors and lawyers) who advise tenants and actual existing tenants, some of which are BII senior members, with considerable experience and understanding of the tied tenanted model. Some members of IPC are involved in that new service.

Unlike PICAS and PIRRS, this 'tenants' service has been consciously set up without BBPA and pub company influence, unsurprisingly it is therefore yet to be accepted and promoted by the BBPA and their members.

The existing PAS seeks only to give impartial advice to entrants to the industry and to assist current tenants who need assistance, without the influence of pubcos and brewers. PAS aims to be a non extremist sensible but robust organisation dedicated to holding participants in the industry to their promises. Sadly, PAS's initial activities have been concentrated around advising existing tenants already in deep trouble and facing financial collapse. The only service PAS can seek to offer in such circumstances is to assist in formulating an exit strategy which hopefully saves the tenant from bankruptcy but allows them to surrender their pub, which is often their home.

CONCLUSION

As previously outlined, the questions raised are the tip of an iceberg. Issues remain, e.g. in respect of Royal Institution of Chartered surveyors (RICS) rent assessment guidance and PIRRS and PICAS independence.

The Government Response and BISCOP recommendations both identified that there was confusion over the interpretation of the new guidance. Despite repeated requests from surveyors and Save the Pub Group, and even a subtle suggestion from BIS, through Mr Mansfield, the RICS have done nothing to clarify the guidance. The RICS have instead been led by the nose by an internal group of specialists, considered by some to be highly conflicted, including their former chairman, Rob May the National Rent Controller for Enterprise Inns. It suits the pub companies very well to ensure guidance remains unclear and open to manipulation. We would suggest BIS investigate the failings of the RICS guidance and the conflicts that appear to exist.

RICS guidance is not mandatory upon its own surveyor members but the codes do have a provision that pub owning companies will be bound by its provisions. The guidance needs to be clarified and that clarification needs to be enshrined in

the codes for it to have effect, assuming a deed of variation exists to make it legally binding. we do not consider simple reference in codes to RICS guidance is sufficient as a pub company can simply 'farm out' the rent assessment to a surveyor who is not obliged to follow the Framework Code. By including specific wording in the codes a chartered surveyor, whilst not obliged to follow the guidance, would be required to consider the Code as it would become one of the legal documents to which they must adhere in a rent review or lease renewal. This may go some way (not all the way) to rebalancing risk and reward.

Given the conflicts of interest that exist in the RICS, in the first instance we consider pressure must be brought to bear to recall the working group that rewrote the guidance, which included tenant representatives, and seek to clarify a mechanism that ensures risk and reward is rebalanced. In the event of failure to agree appropriate wording BIS may need to consider alternative drafting solutions.

IPC do not agree that the reforms currently implemented, or the proposals to date, can begin to address the fundamental issues and root of the industry's weakness.

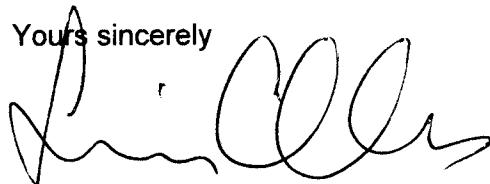
The critical issues are now, and always have been, illustrated by "The Challenges" in the Government Response and until they are resolved the resolution of the industry's problems can not begin.

"...whether there is the right balance of risk and reward in the relationship, and whether the licensee has access to the information that they need to enable them to make sound commercial decisions and resolve disputes fairly and satisfactorily."

As the BBPA have confirmed they are not empowered to include free of tie, guest beer and machine tie release provisions in the code, and the RICS guidance remains unclear and easily manipulated, the industry has effectively conceded to Government that they are not in a position to fulfil the above expectation by self regulation.

We very much hope that this call for evidence, and the recent meeting with BIS officials, is the beginning of a review process that will enable the Department to consider the effectiveness of the proposed reforms and alternative methods to implement the much needed "Further Improvement" to rebalance risk and reward.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Clarke', written in a cursive style.

SIMON CLARKE
IPC CAMPAIGN MANAGER AND SECRETARY

Justices for Licensees

E-mail Message

From: [Blaney Nicholas \(CCP\)](#)
[\[EX:/O=DTI/OU=DTIHQ/CN=RECIPIENTS/CN=NBLANEY\]](#)

To: [Blaney Nicholas \(CCP\)](#)
[\[EX:/O=DTI/OU=DTIHQ/CN=RECIPIENTS/CN=Nblaney\]](#)

Cc:

Sent: 30/11/2012 at 10:30

Received: 30/11/2012 at 10:30

Subject: Response from Justice for Licensees (JFL) to the Secretary of State's letter on Self Regulation of the Pub Industry Framework and Company Codes, 23 November 2012

Nicholas Blaney | Competition Landscape Reform | Department for Business, Innovation & Skills | nicholas.blaney@bis.gsi.gov.uk | Orchard 2 Floor 3, 1 Victoria Street, London, SW1H 0ET | T: 020 7215 6622 | www.bis.gov.uk |

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From: Justice For Licensees [<mailto:info@justiceforlicensees.org.uk>]
Sent: 23 November 2012 14:11
To: Swift Jane (CCP); Jo Swinson (MP - LD); Vince Cable
Subject: Pubco reform and self regulation
Importance: High

Ladies and gentlemen

I do hope that you do not mind us writing to you but we feel that it is important that it is important to our members that we try to represent their views. We appreciate that we are members of the IPC and are thankful for your involvement of the IPC, however the IPC is an umbrella group who have reached a mutual position for the benefit of the trade and the views of tenants do not always necessarily tally with the middle ground of the IPC. As ultimately it will be the tenants who are affected by any decision we feel that their input should be of the utmost importance.

We are founders of the Save the Great British Pub campaign, which has over four hundred thousand members, this has afforded us the luxury of being able to listen to a wide cross section of society as well as licensees thoughts. We are also members of several social media 'closed' sites where tenants are able to come together and talk freely without the fear of retribution. They help each other out and share information and that can only be a good thing, unfortunately in far too many cases by the time tenants have found these groups then the writing is already on the wall, this is repeated through stories expressed to Justice for Licensees.

The following answers to your questions are a synopsis of the views expressed by

tenants across the above groups:

1 Unaware of PICAS, have heard the name but that is about it, are aware, have used the board. Concerns over the independence of PICAS: questioning the level of independence of the BII and the FLVA, questioning the level of dependence of both organisations on the pubcos. Concerns that the pubcos may use their position to ensure more favourable terms. Concerned that they may be open to being leaned upon. The same can be said of PIRRS only with concerns over the 'secrecy' of PIRRS.

JFL position:

* It is concerning to hear of tenants that are unaware of PICAS/PIRRS as it is to hear of tenants who are ill informed on either the body or the process, this would tend to lean to the conclusion that there is a breakdown in communication and or comprehension which does not aid transparency. It was concerning to read of the stories of the first two tenants who came through the first PICAS, not so much those published in the trade press but their real thoughts put onto the forums, we believe that they may have written to you.

* Considering the lack of clarity over the reliance of both the BII and the FLVA on the pubcos for membership and training and ergo revenue streams, we would have to question the independence of both organisations. We are concerned that both organisations have signed up to Codes that they have admitted publicly don't go far enough, it is concerning that they are considering the same again now, tenants do not have the time for this to roll on and on, they are suffering and they need action.

* We were extremely concerned to learn of the BII/Brewdog/Diageo debacle <http://www.morningadvertiser.co.uk/General-News/Diageo-apologises-for-stripping-Scottish-pub-firm-BrewDog-of-Bar-Operator-of-the-Year-2012-award> we have to question whether they would succumb to such pressure again if applied by a pubco or groups of pubcos. We believe that they have proven that they are open to pressure and will succumb, that should not be a satisfactory aspect of a body put in as the 'policemen of the industry' it has achieved a heightened mistrust and a loss of respect by licensees, for the BII.

* We are aware of a tenant undergoing a rent review, twice the independent surveyor has left because of conflicts of interest, luckily this tenant is a chartered surveyor and as such has access to information that normal tenants do not. Considering all previous evidence of pubco behaviour we would be of the opinion that there is a distinct possibility that they may have employed these sort of tactics on other tenants, who would have been, quite justifiably, oblivious to the possibility of conflicts of interest. Considering all of the above we are concerned that PIRRS may be open to manipulation, may use such tactics as above and extremely concerned over the level of lack of transparency.

2 Tenants have made no reference to being kept informed, they commented when the codes first came out. Views such as how the hell is that going to help me, what a waste of time it does nothing for me, why has the COP removed benefits that I had under the lease, 62 pages of gobbolydigook. These sort of comments were widespread and prevalent across all of the above groups.

JFL position:

* The crux of the situation is the balance between risk and reward or the premise that a tied tenant should be in no worse a position than if free of tie, they both mean the same. The codes do not address this, the BBPA have said that it is not within their remit to include the balance between risk and reward and the pubcos have failed to implement any balancing in their own codes. Until this fundamental issue is addressed the problems will not go away.

* It is disconcerting to see the differences in legal opinion on the legality of the codes. Considering the position of many tenants and their lack of income they cannot afford to prove or disprove this through the courts. The imbalance in power between pubco and tenant on the issue of fighting through the courts remains as it always has and self regulation has failed to re install any balance between landlord and tenant.

* We have been led to believe that many tenants take a cursory glance through the cop, realise that it will not help them or their situation and file it away.

* The pre-entry awareness training requires further work and much more transparency in the reality of dealing with pubcos.

3 No comment from tenants.

JFL position:

* We are unaware of any progress. We remain concerned that the BII may succumb to undue pressure from the pubcos, which would therefore make the re-accreditation process little more than a sham. How will anybody know unless somebody blows the whistle?

4 Tenants appear content with the Pubs Advisory Service set up under the leadership of Chris Wright, we have not heard of any negative feedback. Concerns over pubco lack of support enforcing opinions of pubco unwillingness to support much needed honesty and transparency within the industry.

JFL position:

* We believe that it should be very concerning and telling that the pubcos refuse to support a Pubs Advisory Service that will produce independent advice at no cost to the companies.

Conclusions

Rent and RICS

It is concerning that far too many rents are at or exceed an open market rent value with the added burden of wet rent or the tie on top. RICS have produced further guidance since BISC however this guidance remains open to interpretation and manipulation and is not binding on the members of RICS. From a rental aspect there has been no significant change, rents remain out of kilter with the market and with best practice, therefore we are of the opinion that the self regulation to deal with the rental problems clearly highlighted by the Select Committees,

have failed on a monumental scale.

Codes

We have had no sight of version 6 of the codes and therefore are unable to comment. It is concerning to find that COP's heralded to MP's as containing 'further improvements' when these further improvements are nothing of the sort and can be found in codes dating back to 2010 and 2002, this could hardly be classed as 'further improvements'. A code of practice which fails to address the fundamental issues and fails to address the recommendations of the BISC will fail to address the problems suffered by thousands of tenants. Obviously if the codes fail the tenants then this would mean that self regulation has failed.

Risk and reward

The BBPA cannot address the issue of balancing risk and reward, RICS have failed to address the issue of balancing risk and reward, the pubcos have refused to address the issue of balancing risk and reward. Self regulation has failed on a monumental scale on this fundamental issue.

PIRRS/PICAS

Considering all of the above on this subject we feel that these bodies may well be out of kilter with what any normal man on the street would call an independent body and would therefore be out of kilter with government expectations.

Overall conclusion

The Government Response was designed to deliver measures that would be as effective as the BISCOM recommendations for a Statutory Code and Independent Adjudicator only with the added benefit of being implemented quicker than through statutory legislation.

We are now on version 5 of the Code, version 6 has not been circulated, the codes do not and will not address the issue of balancing risk and reward and the BBPA have confirmed that they are not empowered to deliver this particular expectation of government and industry. RICS guidance remains open to interpretation and is not mandatory. We have a self regulation deal which has delivered a code that fails ignominiously to address the fundamental issues, fails to address the issues and recommendations clearly highlighted by BISC, fails to deliver significant further improvements and fails to deliver any meaningful reform for the tenants. There are so called independent adjudicating bodies, however it is clear that parts of these bodies may not be quite so independent and may be open to manipulation and corruption.

It may well be unpalatable to hear but self regulation has failed to address the issues clearly highlighted by successive Select Committees, has failed to stand up to scrutiny, has failed to stand up to governments expectations and most importantly of all has failed the tenants, the consumers and the pubs. For almost a decade the pubcos have proven that they are incapable or unwilling to deliver meaningful reform, therefore it is now incumbent on government to do it for them.

On a personal note I would just like to take this opportunity to remind you all that at the end of the day this is real human beings we are talking about here not just some number on a spreadsheet, they live, breathe, laugh and cry no different to you or I, why should they suffer because some corporate being has been found to be wanting? How would you like it if this was one of your loved ones? Would you want government to stand up for them and correct those wrongs or let them continue to suffer? Hopefully, food for thought.....

Kind regards

Inez

Inez Ward
Justice for Licensees

info@justiceforlicensees.org.uk
www.justiceforlicensees.org

07816 899 742

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Public House Regulation- Landlord and Tenant dispute

Lehal Reena (CCP)

Sent: 26 October 2012 13:11
To: Swinson MPST Correspondence
Subject: FW: PUBLIC HOUSE REGULATION - LANDLORD AND TENANT DISPUTE

For logging

From: siclarke@aol.com [mailto:siclarke@aol.com]
Sent: 26 October 2012 12:54
To: Swinson MPST
Subject: PUBLIC HOUSE REGULATION - LANDLORD AND TENANT DISPUTE

INDEPENDENT PUBS CONFEDERATION

Dear Mrs Swinson

Firstly, a belated welcome to your new position. I thought it best to let you get your feet under the table before contacting you.

I am the Secretary for the Independent Pubs Confederation (IPC), representing tenants, lessees, small brewers and consumers, our core group of members include Campaign for Real Ale, Federation of Small Businesses and Guild of Master Vintners. Put simply, we effectively represent the other side of the pub sector 'coin' - the pub companies and brewers being represented by the British Beer and Pub Association (BBPA).

We read with disappointment the article in the Publicans Morning Advertiser ;

<http://www.morningadvertiser.co.uk/General-News/Exclusive-Government-washes-hands-of-self-regulation-deal-over-pubco-tenant-relationship>

I am sure you will have had a great deal of concern raised following the piece and we certainly share that concern, after the 8 years of battling to try and make some meaningful progress in the sector and curtail the misuse of power enjoyed for too long by some of the pub owning companies. It is of course possible that your departments statements have been taken out of context and I am hoping this to be the case.

Having attended meetings with your two predecessors Ed Davey and Norman Lamb I am well acquainted with the Governments efforts to seek a self regulatory solution, something we have striven for since 2004 to no avail.

The issues of the pub industry are diverse and complex which has assisted those with a mind to manipulate the system by diverting attention from the root of the dispute, the balance of risk and reward between landlords and tenants, appropriately outlined by Mr Davey in the Government Response to the BISCUM inquiry.

There are a plethora of side issues, that frankly few tenants are interested in, it is the commercial survival of pubs that lies at the heart of the matter. The BBPA engineered a self regulatory approach which deliberately neglected the one fundamental issue, rebalancing risk and reward. This was not missed by Mr Davey and he repeatedly stated in both the Government Response and in later correspondence that there was a Government expectation that risk and reward should be addressed in any solution and he anticipated 'meaningful' reform. The pub owning companies reaction to the Government Response, whilst apparently frantic and no doubt described by them as 'far reaching and material', fails the 'meaningful' test as it does not address Mr Daveys expectation of rebalancing risk and reward.

The BBPA's Framework Code has been sold as the solution to all the industries issues by the BBPA, even the other two other cosignatories to the code have indicated that it does not go far enough. If it does not seek to rebalance risk and reward and alter the commercial relationship to allow fairness and open competition to prevail it will be of little use or interest to the majority of tenants and will enable the pub owning companies, abusing the system, to maintain business and brush away the efforts of two Governments to seek to resolve the inequity that prevails.

29/01/2013

Please be under no illusion, this is not about abolition of the beer tie, quite the contrary, it is about encouraging the tied models to compete with free of tie models by introducing fair and reasonable behavior between landlord and tenant, something Government have done many times in other commercial property arenas (e.g. Landlord and Tenant Act 1954 Part II and all the subsequent legislation that followed). The tied model can be maintained by brewers who wish to ensure distribution of their product - but it must be fair, high tied product prices should be compensated for by benefits, like low rents, countervailing the commercial disadvantage. A tenant faced with a tied agreement or a free of tie agreement should have difficulty choosing, as both should have pros and cons, instead today, its a choice of success or failure of their business. Still many ill informed and naive tenants take tied agreements and subsequently suffer a few years of business difficulty, earning well under an acceptable minimum wage, watching their savings and resources depleted by the pub owning companies until their ultimate business collapse.

Ed Davey put into place a self regulatory system in which he had confidence the codes and/or revised Royal Institute of Chartered Surveyors (RICS) guidance on rent assessments would resolve the risk and reward issue. when I met with Mr Lamb he was surprised to learn that neither can assist. The BBPA have confirmed they are not empowered to place obligations on their members altering the commercial relationship, the RICS have confirmed their guidance is non mandatory and, despite BISCUM and Government identifying there was confusion in interpretation, hindering rent rebalancing, they have refused to clarify the guidance due to the influence of pub company representatives within the RICS itself.

I am a tied publican and a chartered surveyor, I sat on the panel that rewrote the RICS guidance, I have given oral evidence at the last three BISCUM Inquiries and seem to have earned some credibility and trust amongst a number of MP's and Ministers during my involvement in this dispute, including both BISCUM chairmen, Peter Luff and Adrian Bailey, and Greg Mulholland, who I have to say has more insight into this issue than any other MP I have met.

To conclude, I do hope the Government have not washed their hands of the pub sectors problems, the BBPA may well have satisfied some of their commitments made to Government but these were only small concessions diverting attention from the one big issue. The BBPA have confirmed on the one issue of fundamental importance, the balance of risk and reward, they can not act, rent assessments can not be enforced to do this job either. **The industry has effectively conceded it can not self regulate on the one issue that started the whole Inquiry process and remains the root of the problem and I urge Government to now consider a statutory way to deal with this one single issue.**

I would welcome the opportunity to discuss this matter with you either privately or in an open forum with other industry participants (a proposal Mr Lamb suggested when I last met him). Please do not hesitate to contact me should you wish to arrange a meeting or require any views from the organisations in IPC representing tenants, lessees, consumers and small brewers, discretion is assured.

Kind regards.

Yours sincerely.

Simon Clarke
Independent Pubs Confederation
Secretary
07850 319257

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Munna Upmavis

Correspondence Facilitator for Jo Swinson MP | Minister for Employment Relations and Consumer Affairs | Department for Business, Innovation and Skills | munna.upmavis@bis.gsi.gov.uk | 0207 215 6270 | www.bis.gov.uk | Blog: blogs.bis.gov.uk | Twitter: @bisgovuk

29/01/2013

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Pubs Advisory Services (PAS)

[REDACTED]

From: [REDACTED]
Sent: 22 November 2012 11:14
To: [REDACTED]
Subject: FW: PAS

[REDACTED] | Deputy Director | Competition Policy | Department for Business, Innovation & Skills | [REDACTED] 1 Victoria Street, London, SW1H 0ET | [REDACTED] www.bis.gov.uk | [REDACTED]

The Department for Business, Innovation & Skills (BIS) is building a dynamic and competitive UK economy by creating the conditions for business success; promoting innovation, enterprise and science; and giving everyone the skills and opportunities to succeed. To achieve this we will foster world-class universities and promote an open global economy. **BIS - Investing in our future**

From: Pubs Advisory Service [mailto:pubsadvisoryservice@btconnect.com]
Sent: 22 November 2012 11:13
To: [REDACTED]
Cc: [REDACTED]
Subject: PAS

[REDACTED]

[REDACTED]

The situation regarding take up of PAS by new entrants to the trade is rightly concerning as PAS offer and possibly exceed what the BIS response asked for from the pub trade, yet it seems not to be the ticket for recruitment officers at Pubco's, bear in mind this has zero cost to those various referring pub companies. It has been brought to your department's attention that lack of knowledge by new entrants prior to signing agreements is instrumental in some of the failures, a solution was required, we offer the full solution.

Tenants still have no word from your office regarding the route map.

PAS still has no response from PICA regarding the hearing of any tied tenant code breaches as they currently do solely for BBPA code breaches & disputes.

The may 2012 PAS tweet to <https://twitter.com/nmogovuk> twitter account is still unanswered, if the trade is to progress an agreed set of facts are required by new entrants.

Your attention to the above issues is appreciated.

Regards

[REDACTED]

PAS admin

28/01/2013

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[REDACTED]

From: [REDACTED]
Sent: 20 November 2012 16:20
To: [REDACTED]
Subject: FW: PICA
Follow Up Flag: Follow up
Flag Status: Completed
For info

From: [REDACTED]
Sent: 20 November 2012 16:16
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: PICA

Another email from PAS.

[REDACTED] | Correspondence Officer | [REDACTED] Minister for Employment Relations and Consumer Affairs | Department for Business, Innovation & Skills [REDACTED]
www.bis.gov.uk | Blog: blogs.bis.gov.uk | Twitter: @bisgovuk

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From: Pubs Advisory Service [mailto:pubsadvisoryservice@btconnect.com]
Sent: 20 November 2012 15:53
To: [REDACTED]
Subject: FW: PICA

[REDACTED]

[REDACTED]

We thought you should be aware that the following offer has been made by PAS (on behalf of tenants) to the PICA-Service regarding the hearing and enforcement of a tenants code of practice, we await their confirmation as to the level of service cover they are providing to this trade.

Regards

[REDACTED]

Pubs Advisory Service

From: Pubs Advisory Service [mailto:pubsadvisoryservice@btconnect.com]
Sent: 20 November 2012 14:15
To: 'Picas'
Subject: RE: PICA

28/01/2013

[REDACTED]

Regarding the provision of code details, like the BBPA Framework Code a copy would of course be made available when complete. It is our understanding PICAS has already accepted the role of conciliation and arbitration of the BBPA's Framework code despite it being incomplete and therefore the proposed tenants code poses no difference.

PICAS does not accredited the BBPA Framework Code and therefore as far as we can see the content itself is irrelevant provided it is legally binding. It is the shared legal view of tenants that anyone can construct their own code to suit their situation.

Given that PICAS is to all intents and purposes impartial and independent its role is not to oversee the codes content but simply to consider whether code provisions have been complied with.

Simply put what tenants are asking is whether the PICA service can act in the hearing and enforcement of the Tenants Code as it does with the BBPA's code.

We look forward to hearing any confirmation be that before or after your meeting on the 11th

Regards

[REDACTED]

PAS

From: Picas [mailto:info@picaservice.com]
Sent: 19 November 2012 13:13
To: 'Pubs Advisory Service'
Subject: RE: PICA

Dear [REDACTED]

Thank you for your email.

I have spoken with the Chairman of PIRRS who would like for your request to be itemed on the agenda of our upcoming board meeting which will take place on 11th December. I appreciate that this may not bring about as swift a response as desired by the group of tenants involved but we would be grateful if the board were provided with the opportunity to discuss the offer in full.

The Chairman of PIRRS has asked whether we might obtain from you further information on the aforementioned Code to ensure as fuller discussion as possible. Would you be able to furnish the Chairman with a copy of the intended Code prior to our meeting date and also for clarification on how the Code will operate?

Also, for clarity as PICA-Service operates as a subsidiary of the Pubs Independent Rent Review Scheme, do you intend to make a similar request for PIRRS to be included in the Code?

I look forward to hearing from you further.

Kind regards

[REDACTED]

[REDACTED]

Tel: 01276 417806

28/01/2013

www.picaservice.com

From: Pubs Advisory Service [mailto:pubsadvisoryservice@btconnect.com]
Sent: 19 November 2012 11:57
To: [REDACTED]
Cc: [REDACTED]
Subject: PICA

[REDACTED]

RE: PICA service for tenants code disputes

On behalf of a group of tied tenants who have drawn up their own Code of Practice (and before they send the code to their various pub companies) they would like to offer the PICA service an opportunity to mediate & arbitrate in the same way your service works for any BBPA Framework Code disputes.

Could you confirm this as soon as possible as we would like to inform BIS that PICA is keen to co-operate and your early response would be appreciated.

Regards

[REDACTED]

Pubs Advisory Service

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[REDACTED]

From: [REDACTED]
Sent: 19 November 2012 18:45
To: [REDACTED]
Cc: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
Subject: FW: Tied Tenants Code

From: Pubs Advisory Service [mailto:pubsadvisoryservice@btconnect.com]
Sent: 19 November 2012 12:46
To: [REDACTED]; [REDACTED]
Cc: [REDACTED]; [REDACTED]
Subject: Tied Tenants Code

[REDACTED]

[REDACTED]

The tied tenants code is ready to be published and took only 14 days to be drawn up.

Before releasing the code to the pub companies, tenants are wanting to see the government response route map.

The recent statements and events from the BIS office are taken by tenants as being step one, a clear statement as to further steps are requested by return.

Please advise as a matter of urgency.

Regards

[REDACTED]

Pubs Advisory Service

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[REDACTED]

From: [REDACTED]
Sent: 19 November 2012 18:27
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Pubs Advisory Service response to BIS

From: [REDACTED]
Sent: 19 November 2012 09:05
To: [REDACTED]
Subject: FW: Pubs Advisory Service response to BIS

Sent to my inbox.

[REDACTED] | Correspondence Officer | [REDACTED] Employment Relations and Consumer Affairs | Department for Business, Innovation & Skills | [REDACTED]
www.bis.gov.uk | Blog: blogs.bis.gov.uk | Twitter: @bisgovuk

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.
BIS: working together for growth

From: Pubs Advisory Service [mailto:pubsadvisoryservice@btconnect.com]
Sent: 15 November 2012 13:47
To: [REDACTED]; [REDACTED]
Cc: [REDACTED]
Subject: Pubs Advisory Service response to BIS

[REDACTED] would refer you to following statement in answer to your enquiry on the PAS and the advice we supply.

The PAS unlike PICAS & PIRRS is not sponsored and run by pub companies. The PAS is in a position to offer good advice from experts in the trade but this is being undermined by reluctance from Pub Companies to refer or promote this service to any new tenants.

We are however being used heavily by existing tenants who present us with alarming situations; more often than not we can offer no ongoing help to make their business a success because to succeed they need to maximise their profit which under existing unregulated tied agreements is impossible. As a result we can offer little more than a shoulder to cry on whilst they negotiate an exit from the industry.

Underneath is a survey we undertook in the first few weeks of PAS existence, if the BIS would like us to resurrect this survey and perhaps ask some additional questions we would be pleased to discuss how best this could be facilitated

Regards

[REDACTED]
PAS admin

28/01/2013

PAS survey no1:

Total Started Survey: 45

Total Finished Survey: 45 (100%)

Page: 1

1. Given that the Government rejected statutory legislation are you happy with the complaints system offered by your pub company or brewery?

	answered question		43
	skipped question		2
	Response		Response
	Percent		Count
yes	7.0%	3	
no	93.0%	40	

2. Do you have confidence that any complaint raised with your pub company will dealt with to your satisfaction?

	answered question		44
	skipped question		1
	Response		Response
	Percent		Count
yes	4.5%	2	
no	95.5%	42	

3. Are you aware of the company codes of practice issued by your pub company?

	answered question		44
	skipped question		1
	Response		Response
	Percent		Count
yes	84.1%	37	
no	15.9%	7	

4. Does using a code of practice complaint service that costs £200 upfront put you off from using it, even if you might get your costs repaid?

	answered question		44
	skipped question		1
	Response		Response
	Percent		Count
yes	77.3%	34	
no	22.7%	10	

5. Describe the relationship with your Pub company / Brewery when in contact with them?

	answered question		41
	skipped question		4
	Response		Response
	Percent		Count
Good	4.9%	2	
Satisfactory	14.6%	6	
Poor	80.5%	33	
Extra comments please add here			21

6. Would you like a free independent service to monitor any complaints you wish to make?

	answered question		44
	skipped question		1
	Response		Response
	Percent		Count
yes	97.7%	43	
no	2.3%	1	

7. Would you like a free independent complaints monitor to help with providing template letters and or tracking complaints?

	answered question		43
	skipped question		2
	Response		Response
	Percent		Count
yes	95.3%	41	
no	4.7%	2	

8. How useful would this new service be to you in helping you run your pub?

	answered question		41
	skipped question		4

Extremely useful	70.7%	29
Very useful	19.5%	8
Moderately useful	7.3%	3
Slightly useful	0.0%	0
Not at all useful	2.4%	1

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28/01/2013

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Raising Standards in Licensed Retail



RAISING STANDARDS IN LICENSED RETAIL

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22nd November 2012

Rt Hon Dr Vincent Cable MP
Secretary of State for Business,
Innovation and Skills
1 Victoria Street
London SW1H 0ET

Dear Secretary of State,

Self Regulation of the Industry Framework Code and Company Codes

Thank you for your letter of the 7th November asking for a progress report on the work undertaken by the British Institute of Innkeeping, the BII.

Other groups will answer and comment on the first two questions. The BII is responsible for a range of services and support functions. They include the Benchmarking and Accreditation of Codes of Practice (BIIBAS), together with administration of PIRRS and PICA-Service. It is perhaps helpful to set out some explanation of the position of the BII.

British Institute of Innkeeping (BII)

A charity set up 30 years ago with an objective of raising standards throughout the Licensed Trade. There are essentially three parts of the Institute:

- i) Membership
- ii) Qualification
- iii) Industry Support

We represent our members wherever it is appropriate to do so but do not cross over other groups such as BBPA on issues such as tax, VAT and duty.

Today there are 10,500 members, with a core of 6,500 who are operating pubs, mainly tenants, lessees and free holders.

BIIB, the Awarding Body, regulated by OFQUAL provides a large range of qualifications designed for the Licensed Trade. Licensing, security, alcohol awareness, cellar management and profitable pubs are just a few of the examples. In 2011 there were over 140000 qualifications overseen by BIIB.

Over the last two decades, the BII have been involved in all major trade issues. We have worked along with such trade bodies to help establish PIRRS, PICA-Service and also provide a full administration service.

BIIBAS

A subsidiary company overseen by the BII. It is the starting point for this whole debate.

Benchmarking against an agreed criteria, company codes are submitted, checked and then scrutinised by an independent group (see appendix)

If deemed satisfactory the company code is accredited.

The table sets out the summary of Code review:

Number of BBPA Members with Accredited Codes	Number of BBPA Members with Accredited Codes outstanding	Number of Non-BBPA Members with Accredited Codes
31	5	2

Of the five BBPA Members whose Codes remain outstanding, all five have attended a benchmarking meeting and our either:

- i) making further revision before submitting to BIIBAS of accreditation
- ii) Or BIIBAS are waiting to receive supportive documents before awarding benchmarking status.

BIIBAS has requested updates on these Codes.

Re-Accreditation of Codes

Early discussions have taken place with some Pub Cos but until the IFC version 6 is agreed then a definite program cannot be published.

We have confirmed to the BBPA and others that BIIBAS is prepared, organised and ready to undertake this work. There are several variables ie:

- i) The amount of reworking of the existing codes
- ii) The time taken to rewrite the codes
- iii) The overall timescale

Providing there is no major rewriting of the codes and a sensible timetable agreed then this work could be completed within 6 months, but ideally a target of 4 months would be set. The process is:

- i) The Pub Company's submit their Codes to the BIIBAS Administrator who conducts prima facie checks of each code, measuring them against the latest version of the IFC to ensure that all minimum requirements for the code are met.
- ii) The administrator, will then arrange for a BIIBAS Benchmarking Meeting to take place. This consist of the Pub Company representatives attending a 2 ½ hour meeting with a quorum of at least four of the benchmarking committee. The Committee scrutinise the code, page by page, line by line to ensure that the Code is free from ambiguity and includes all the necessary information.
- iii) Where amendments are required, prior to the code achieving accreditation status, the administrator will provide the Pub Company's with a set of minutes instructing them of the appropriate changes to make.

- iv) Once the Pub Company's have adopted the proposed changes there Code is examine in it's entirety by the administrator and then accreditation status is awarded.

The Framework Code

The Bill, announced in September 2012 that we were in agreement with the IFC version 6 and were prepared to sign as necessary.

Our members wished to see this completed, agreed and actioned. There are areas for future discussion, e.g. training and development of operators, but all of this can be taken forward and does not need to delay the process.

The Governing Body

The Bill as signatory to the IFC would expect a representation on the Governing Body. There is clarification needed about the administration of the separate groups.

It is acknowledged that the funding of this will lie with BBPA and its members. A clear budget and financial framework will be required.

Pubs Advice Service

A paper was circulated on 27th July 2012 with a proposal for a full advise and mediation service.

The early BIIBAS work saw the establishment of accredited advisors, mainly in finance, legal and property.

Discussion took place with Pub Cos and the other groups about this but it was agreed by BBPA that the priority order was:

- i) Framework Code
- ii) Governing Body
- iii) Pubs Advisory Service

In the meantime an alternative group was set up by Chris Wright and others.

The Bill paper proposed a broader, quality, accredited advisory service but also addresses the need for a signpost, or triage service and mediation.

Everyday, Bill and BIIBAS administration staff receive calls from members and non-members asking for advice and direction.

We will listen, advise and filter these requests and in some cases refer the caller to independent legal advice, PIRRS, PICA-Service and to other mentor services or helplines.

Using our early experience the proposal sets out:

- a) a list of advisors across a whole range of important and relevant subjects from the usual finance and legal, through to marketing stocktaking, people management, PR, advertising and business development.
- b) although it will take some time, the plan is to accredit and benchmark all of the above to ensure:

- i) proper national and region coverage
- ii) Suitable experience in the Licensed trade
- iii) A reporting and review system to check efficiency, effectiveness and customer satisfaction.

A copy of this paper was left with BIS officials last week.

The BII is ready to progress this work but an agreement is required from the new Governing Body about the process, funding and structure of such a service.

It must be stressed that the BII provides many benefits to the Trade. This is not an exclusive member's only system. The BII developed pre-entry awareness training (PEAT) and again this is open to all. PIRRS, PICA-Service and hopefully PIAMS (Pubs Independent Advisory and Mediation Service) will be available to everyone in the business.

PIAMS is especially relevant to new entrants as to those people considering a career and life in the pub sector.

The finance structure is yet to be discussed and finalised with the BBPA.

Summary

The BII represents and acts for its members and is a independent body.

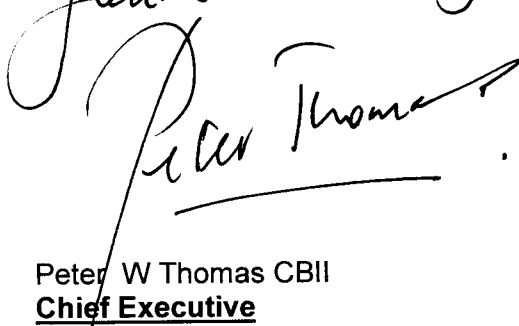
BIIBAS is the gateway for much of this work and sets the standard

Panels and advisory groups made up of independent people giving of their free time for the benefit of the Trade.

Information is provided for PIRRS and PICA-Service. Much has been achieved although the PR, messaging and general awareness of these activities is till too low.

The final part of this 'jigsaw' is the provisions for advise and, when necessary, mediation. So, following the BII principle that would be a quality, independent, accreditation service for all pub operators.

I hope this answers your questions. We would be happy to meet and explain the details at any time.

Yours sincerely,

Peter W Thomas

Peter W Thomas CBII
Chief Executive

B F Brindley

Bernard Brindley CBII
Chairman

APPENDIX

Pubs Independent Rent Review Scheme

The Pubs Independent Rent Review Scheme was established and available for use from 1st October 2009. The activity of PIRRS is overseen by the following board of directors:

Martin Rawlings of BBPA
Nick Light of ALMR
Peter Thomas of BII
Brian Rees of GMV
Martin Caffrey of FLVA

The Independent Chairman of PIRRS is Bernard Brindley.

There are two advisors to the PIRRS Board:

Rodger Vickers (Surveyor)
Phil Dixon (Industry Consultant)

PIRRS has eleven surveyors who act as independent experts for the scheme covering all regions in England. Those who are involved in the service are listed below:

Paul Newby – Fleurets
John Keane of Thomas E Teague
Colin Siebert of Colliers CRE
Rodger Vickers of Brownill Vickers
Andrew Watt of Colliers International
John Houston of John Houston Consulting
Tony Hunter of Savills Plc
Howard Day of Harper Dennis Hobbs
William Cuthbert of Fleurets
Daniel Mackernan of Davis Coffey Lyons
John Spacey of Porters Chartered Surveyors Ltd

Pubs Independent Conciliation and Arbitration Service:

The PICA-Service was established on March 1st 2012 and consists of 21 panel members. The chairman of the PICA-Service is Rodger Vickers and the Vice-Chairman is Trevor Barber. The PICA-Service is a wholly owned subsidiary of PIRRS and therefore the activities of PICA-Service are overseen by the Board of Directors listed above. The table below shows a break down of who is involved in panel hearings according to their relevant background:

PICA-Service Panel Members:

Pub Representatives	Company	Licensee/Ex-Licensee Representatives	Professional Representatives
Alistair Arkley	(Chameleon Pub Company)	Peter Edgar	James Anderson (solicitor)
Mike Clist	(Fullers)	Dennis Griffiths	Trevor Barber (Judge) (Vice Chairman)
Paul Howarth		Anita Law	Elaine Brown (Surveyor)

Matt Kearsy (Hall & Woodhouse)	Chris Lewis	Tom Henry (Solicitor)
Phil Strong	Shaun Rennison	David Jones (Accountant)
Andrew Thompson	Paul Waterson	Tony Lyons (Solicitor)
Gerry Cleary		Lisa Sharkey (Solicitor)
		Rodger Vickers (Surveyor) (Chairman)

British Institute of Innkeeping's Benchmarking and Accreditation Service:

BIIBAS has two separate committees in order to oversee its functions. The Benchmarking Committee is responsible for scrutinising and accrediting Codes of Practice put before them. The list of committee members can be found below detailing whether they attend as a representative for tenants/lessees, from Pub Company's or from professions related to the industry.

The Committee has a quorum of four, requiring either the Chairman or the Vice Chairman to be present:

James Brewster – Chairman
Bernard Brindley – vice Chairman

Representatives from the licensed industry	Representatives from Pub Company's	Professional Representatives
Laura Condliffe	Phil Strong	Alison Carter (Industry Consultant)
Philip Davison	George Barnes	Phil Dixon (Industry Consultant)
Karl Harrison	Peter Grieve	Barry Gillham (Chairman of Fleurets)
Chris Lewis	Giles Kendall	Johnny Johnston
Chris Maclean	Mark Welch	Neil Morgan (Christie & Co)
Gerry Price		Martin Caffrey (FLVA)
		Paul Newby (Fleurets)
		Stephen Owens (Christie & Co)

Lastly, BIIBAS has a Steering Committee who oversees the functions of BIIBAS and the benchmarking committee. The Committee is made up of the following personnel:

Steering Committee:
Johnny Johnston (Chairman)
James Brewster (Chief Executive, Licensed Trade Charity)
Bernard Brindley (Leaseholder and Chairman of BII)
Mike Clist (Operations Director Tenanted Division, Fullers)
Roger Hodgkinson (Chairman of the Yorkshire Region BII)
Peter Grieve (Director of Martin & CO Worcester)
Phil Dixon (Industry Consultant)
Peter Thomas (Chief Executive, BII)
Francis Patton

Rodger Vickers

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E rcv2@brownillvickers.com

18th November 2012

The Rt Hon Dr Vince Cable Esq. MP
Secretary of State for Business Innovation and Skills
1, Victoria Street,
London SW1H 0ET.

Dear Dr Cable,

Self Regulation of the Industry Framework and Company Codes

Thank you for your letter of the 7th November.

I am very happy to clarify what points I can where these are within my knowledge and confirm that I attended a meeting with Jane Swift and Faith Quigley on Thursday of last week with a view to this.

I am independent chairman of the PICAS (PICA-Service) panel and my involvement relates primarily to PICAS Hearings dealing with complaints concerning technical breaches or breaches in the spirit of the Codes of Practice of the individual Pub Cos and Breweries. These Codes of Practice, as you are aware, each incorporate within them the Industry Framework Code of Practice accredited in June 2010 and subsequently revised.

I represent an Independent appointment. The governance of PICAS currently lies with the PIRRS Board. Whilst I liaise with the PIRRS Board, and act as an adviser to it, I am not a member of the Board. You will therefore understand that I am only able to comment upon the matters you raise in numbered question one of your recent letter.

By way of background my knowledge of the industry dates back to 1964 when I joined a regional long established family business of licensed property valuers. I became a partner in the business in 1971 and senior partner in 1977. I am a Chartered Surveyor, a Member of the Chartered Institute of Arbitrators and senior Vice President of the Association of Valuers of Licensed Property. I am a member of the separate panels the President of the RICS appoints as Arbitrator, Independent Expert and as Expert Witness. Many of my appointments relate to Dispute Resolution matters concerning licensed property rent reviews or Lease Renewals but I have also attended Court on a number of occasions in my capacity of Expert Witness in respect of a variety of cases all concerning licensed property.

I retired from the day to day issues of running my practice in 2009 and became a Consultant in the firm. Over the past decade or so I have dealt primarily with dispute resolution issues and during the past three years have been involved exclusively in this field acting, with isolated exceptions, on my own account.

I was a member of the RICS Group which relatively recently formulated and agreed the Guidance note *'The capital & rental valuation of public houses, bars, restaurants & nightclubs in England & Wales.'*

I was one of two Chartered Surveyors charged jointly with drafting Procedure notes to provide an affordable way of resolving licensed property rent review disputes for PIRRS (the Pubs Independent Rent Review scheme) to adopt and was subsequently requested to prepare the first draft of Procedure Notes for PICAS prior to these being placed before legal Experts and being adopted by the PIRRS Board. This PICAS procedure is in part based on the process successfully adopted in PIRRS matters by virtue of the tenant lodging a written complaint, the Pub Co/Brewery responding, the tenant being permitted at his/her option to respond to such response should they believe this to be incorrect or misleading and the parties, again at the tenant's option, then being able to address the subsequent PICAS Hearing verbally.

Subsequent to PICAS coming into being the PIRRS Board gave consideration to individuals suited to be appointed from which to draw individual panels for each PICAS Hearing. I was included as a panel member prior to subsequently being requested to act as panel Chairman.

A senior circuit Judge, a former Head of Chambers, his honour Judge Trevor Barber was appointed as my vice Chair with the remaining extended panel being drawn from solicitors, accountants and chartered surveyors involved in the licensed trade, pub tenants and retired pub tenants, a licensed industry trainer, an individual from a licensed trade charity and current or retired Brewery Directors. Whilst Trevor Barber has initially attended Hearings as a panel member arrangements are in place for him to share the load in chairing Hearings himself going forward.

The chair of the PIRRS Board, Bernard Brindley, and I then met with external trainers and organised Panel Training Days. These days were entitled '*Consistent Empowered Arbitration*' and focused upon '*sharing the same purpose, values and ways of working to deliver fair, consistent and clear decisions.*' The PICAS Procedure paper was presented and explained in detail to the panel members prior to their being set hypothetical cases, retiring into groups and then explaining to the remaining groups the thought process behind their hypothetical Awards. It became clear that the quality of both the Trainers and the individual panel members was excellent. It is fair to say that the latter embraced the initiative.

I spoke at the Tenanted Pub Co Summit earlier this year to explain the manner in which PICAS worked. Adrian Bailey spoke at the same event. Announcements have appeared in the licensed trade press concerning the formation of PICAS and separate press announcements have concerned both the appointment of myself and that of Trevor Barber. Press releases appear when each case is heard. The website <http://www.picaservice.com> is in place detailing the manner in which PICAS works, providing Application forms and providing news updates. Arrangements are currently in hand for Bernard Brindley and myself to attend a Publican/MA interview to explain broadly the detail I am setting out within this letter.

This obviously represents a new process and a mechanism is in place to enable my panel to afford feedback, via myself, to the PIRRS Board of perceptions as to the success of the scheme on a case by case basis. This has led to slight amendments being made, with Board approval, to the PICAS Procedure paper as we progress. An example of this was that the view was expressed that at the outset Pub Cos could delay matters by way of referring complaints to various individuals within their internal chain of command structures as part of their Internal Grievance Procedures thus delaying the date when PICAS could become involved. The procedure now details that the Pub Cos at the outset have just fourteen days to confirm that their Internal Grievance Procedures have been completed. If they do not reply the PICAS process commences immediately. If their response is that their Internal Grievance Procedure has not completed they have, notwithstanding the fact their own individual Code of Practice may allow them longer, 21 days to bring it to a close subsequent to which the PICAS procedure is implemented immediately without further notice.

PICAS is operated by Administrators who act in accordance with the Procedure Paper whilst also handling individual queries from pub tenants. Procedures are in place to guard against panel members having conflicts of interest prior to their each being selected to a specific panel on an individual case by case basis. Attention is given to ensure that each specific panel is balanced in terms of representatives from the various professions and those with tenanted trade experience from 'each side of the fence' so to speak.

In a case between Alan Yorke and Benjamin Conradie-Yorke of the Foresters Arms pub, in Forest Row, East Sussex, and Enterprise Inns, heard on 17th August, the PICAS panel found that Enterprise Inns had breached its code of practice on one of the alleged counts – that it did not complete structural works within an acceptable given timeframe. The panel also found the company to be in breach of the spirit of its code in terms of poor communication with its tenants. Damages were awarded against the Pub Co. and the tenant was invited to make application for costs.

A Preliminary Hearing took place the same day when the panel was requested to determine whether a separate case involving Marstons Brewery should be referred to a full Hearing. A decision was relayed to the parties that this case did not meet with the criteria of PICAS and could not therefore be taken further.

A further PICAS panel hearing concerned Russell Stone of the George on the Green, Maidenhead, and Enterprise Inns, on Wednesday 17th October. The panel determined that the Pub Company had committed a breach of its Code of Practice in the way it had handled rent review proceedings and awarded damages in favour of the tenant. The complainant has been invited to submit an application for costs.

The next PICAS panel hearing takes place on 11th December.

I do hope that you find the above to be useful. Should you wish one of your colleagues to attend a PICAS Hearing as an observer I would, subject to the parties to the particular case involved affording consent, be happy to arrange this. I conclude by confirming that I am confident that the PICAS initiative serves as an efficient and workable vehicle to enable tenants to take their Pub Cos and Breweries to task should they breach their Codes of Practice.

Please let me know should I be able to be of further assistance

Kind regards.

Yours sincerely

Rodger C Vickers FRICS MCI Arb FAVLP



PICA-Service

The Pubs Independent Conciliation & Arbitration Service

UTILISING THE PICA-SERVICE – THE PROCEDURE

- 1.1 The PICA-Service is designed to provide tied tenants and lessees, whose Pub Companies or Breweries are bound by the Pubs' UK Industry Framework Code of Practice (IFC), with a formal dispute resolution system. The PICA-Service provides a mechanism by which a licensed property tenant can deal with issues between himself and his Pub Company or Brewery landlords concerning perceived breaches of the Pub Industry Framework Code of Practice or individual Pub Co/Brewery Codes of Practice or other complaints not particularly covered by such Codes but in the spirit of the same.
- 1.2 The PICA-Service is a wholly owned subsidiary of the Pubs Independent Rent Review Scheme (PIRRS) which provides a low cost rent review resolution service to tenants/lessees and Pub Companies/Breweries. PIRRS and PICA-Service are provided by five of the industry's leading associations: the Association of Licensed Multiple Retailers (ALMR), the British Beer and Pub Association (BBPA), the British Institute of Innkeeping (BII), the Federation of Licensed victuallers Associations (FLVA) and the Guild of Master Victuallers (GMV).
- 1.3 PICA-Service, given the date the Pubs' UK Industry Framework Code of Practice (IFC) came into effect, can only deal with alleged breaches taking place subsequent to the 30th June 2010. Complaints made by a tenant must be based therefore on alleged breaches taking place from 30th June 2010 onwards in accordance with the wording of the version of the Industry Framework Code of Practice, or an individual Pub Co/Brewery Code of Practice, accredited subsequent to 30th June 2010, and in place at the date of the alleged breach.
- 1.4 The process will not, and can not, deal with legal issues nor will it deal with rent review or lease renewal rental Determinations. The latter will continue to be referred through the established PIRRS procedures. The conduct of the parties within rental negotiations, other than concerning modes of calculation and figures contended for which if in dispute should continue to be referred through PIRRS procedures, can nonetheless be referred to PICA-Service.
- 1.5 The PICA-Service dispute resolution procedure is to be resolved by way of a Panel decision rather than by way of the findings of an individual. Whilst circumstances may arise which necessitate the need for the PICA-Service Administrators to call a Preliminary interim panel meeting, in order to clarify whether a case meets with the necessary criteria or the manner in which a case is to be progressed, the Panel's Award will follow a Hearing, at which the parties may or may not, be present (see in particular paragraphs 1.11 and 5.3 which follow).
- 1.6 The selection of the Panel to hear each individual case is a matter for the Chairman of the PICA-Service Panel. This will be drawn from the extended panel of individuals selected and approved by the Board, such individuals having undertaken the requisite PICA-Service panel training. Such extended panel will include individuals with experience of the trade and may or may not include a lay member or lay members. The PICA-Service Administrators will diligently, when administering a panel to deal with a specific case, enquire of the panel chair and of panel members whether any are conflicted by way of having in recent times represented, worked for or having had other involvements which place them in a conflict of interest situation. If they have they will

stand down and be replaced. In assessing or determining conflict of interest, this will be given a natural and plain interpretation such as would be applied and understood by a reasonable objective individual in knowledge of the facts. PICA-Service's decision in the matter to be final.

- 1.7 The procedure will be administered in accordance with what follows. Reference to Arbitration within the title of PICA-Service refers, to be clear; to the fact the Panel will act as the Arbiter. There is to be no connection with Arbitration procedures under the terms of the Arbitration Act 1996, other Arbitration legislation, case law or legal precedents.
- 1.8 The parties to the dispute will commit themselves to the scheme and will sign up to accepting its findings. A document placed before the tenant will incorporate the need for him/her to provide a signed acceptance of the PICA-Service Terms and Conditions. The various Pub Companies and Breweries have agreed to abide by PICA-Service's findings in each and every case which comes before the Panel on a block basis. This cannot involve the parties in actually relinquishing their legal rights under their Lease or Tenancy Agreement, nor prevent subsequent recourse to the Courts, but by the parties having signed up to availing themselves of this service it is believed that they are committed to abiding by the findings of the PICA-Service Panel.
- 1.9 The entire procedure is to be conducted by a single named person representing each side. The tenant may deal with the matter him/herself or may appoint a third party to represent them. The Brewery/Pub Co is given the same option but it will not be acceptable, other than with the written consent of the other side or, in unusual circumstances, by the specific dispensation of PICA-Service for one person to deal with part of the procedure with a different individual or different individuals becoming involved at a different stage.
- 1.10 Reference to either party within what follows is as such intended to refer to and include such parties' Representative under circumstances whereby a third party Representative has been appointed to represent them.
- 1.11 Reference is made at paragraph 3.9 to a Timetable being issued to deal with the various stages of the Panel Hearing procedure. The parties should be aware of the fact that at the tenant's option they may present themselves personally to the Panel Hearing.

PRELIMINARY ISSUES

- 2.1 An aggrieved tenant must ensure that they have registered their grievance in writing with their Pub Co or Brewery and have given their landlords a reasonable opportunity of resolving the problem through their internal grievance procedures prior to referring the matter to the Administrators of PICA-Service.
- 2.2 PICA-Service is intended to operate in cases where such internal grievance procedures have not resulted in a satisfactory solution as far as the tenant is concerned.
- 2.3 The PICA-Service Administrators will, on being placed on notice by the tenant of the fact that a complaint is to be issued, promptly inform the Pub Company or Brewery concerned of the situation and require that they confirm within a fourteen day period that they have indeed completed their internal grievance procedures concerning the matter. In the absence of a response being issued within this fourteen day period the PICA-Service Administrators will commence proceedings.
- 2.4 If such response, within the time constraint indicated in paragraph 2.3, details that the internal grievance procedures have not been completed the Pub Company/Brewery concerned will be afforded a further twenty-one days to bring the matter to a

conclusion effectively meaning that they have a window of 35 days from initially being notified of the problem to resolve the matter. In the absence of both parties advising the PICA-Service Administrators of a satisfactory outcome within the timescale indicated above the latter will commence proceedings.

- 2.5 It is stressed that, whilst the PICA-Service Administrators are empowered at their absolute option and discretion to vary timetables, time should otherwise be regarded as being of the essence as far as the parties to the dispute are concerned. This proves to be necessary in order to ensure that the parties deal with all matters in a timely manner and cannot be seen to be acting in contempt of the PICA-Service procedures.

3. THE APPLICATION PROCEDURE

- 3.1 An aggrieved tenant will make application to the PICA-Service Administrators setting out his/her case.
- 3.2 He/She will be provided with details of the PICA-Service Terms and Conditions relating to the scheme which they will need to sign up to and return within a set period. Such Terms and Conditions will include their agreeing to abide by the findings of the PICA-Service Panel and agreeing to maintain absolute confidentiality in all matters, the latter to include all material furnished by the parties, as and if applicable their representatives and PICA-Service in terms of Statements, Responses and correspondence and in respect of the PICA-Service findings. PICA-Service, on the other hand, is permitted to publish detail of the PICA-Service panel's findings in terms of whether or not a breach has occurred and to name the Pub Company or Brewery involved. It will only identify the tenant with their (the tenant's) prior consent. It may identify the subject matter of the breach but will provide no further detail. It will not divulge the amount of any Award.
- 3.3 The tenant will if at all possible, to accompany the signed acceptance of the PICA-Service Terms and Conditions, provide the documentation relevant to their case. This may include a copy of the signed Lease or Tenancy Agreement under which he/she occupies the premises. Other documents which may prove to be relevant could include Deeds of Variation, Licences for Alterations, Licences to Assign, Rent Review Memoranda, Machine Agreements etc. dependent on the nature of the complaint. All documentation to be provided in triplicate.
- 3.4 Should it prove not to be possible for the tenant to provide relevant documentation he/she should advise the PICA-Service Administrators of this at the earliest opportunity to enable this to be obtained if and as applicable from the Pub Co/Brewery concerned.
- 3.5 The tenant will also provide a Statement setting out full details of his/her complaint. This in standard cases to comprise no more than ten sides of A4 in no less than font size 10. Should there be the unavoidable need for the ten page limit to be exceeded to enable the case to be given full consideration the tenant should request specific dispensation on this point from the PICA-Service Administrators stating the reasoning behind the need for additional pages. The Administrators' decision to be final. This document should be set out in numbered sections and paragraphs for ease of reference at Panel stage. It is permissible for relevant attachments to be appended to the Statement in addition to the restriction of the ten page limit and these should be in the form of numbered Appendices.
- 3.6 The tenant should within their Statement identify the relevant section of the Pub Industry Framework Code of Practice or individual Pub Co/Brewery Code of Practice it is contended has been breached, either in practice or in the spirit of the same, and identify with reasons the costs to them of the perceived wrongdoing which forms the basis of their complaint. There is the need to demonstrate to the PICA-Service panel that amounts claimed are fair, reasonable and equitable. Costs claimed should, as a

result, be supported where relevant by annotated original receipts or invoices (not photocopies) and, where appropriate, calculations. Complete clarity is regarded as being essential.

- 3.7 It is likely that earlier discussions will have taken place between the tenant and the Pub Co/Brewery in relation to the complaint and that these may have included negotiations, offers and/or counter offers. Neither party should be disadvantaged by having made earlier attempts to settle the dispute and reference must not, without the written consent of the other side, be made to earlier correspondence or discussions.
- 3.8 The tenant will enclose with the papers referred to at paragraphs 3.2, 3.3 and 3.5 his/her cheque in the sum of £200 made out to PICA-Service. Provided the complaint is upheld by the Panel the £200 will at the end of proceedings be returned to the tenant. The decision of PICA-Service to be final.
- 3.9 It is important to understand that the PICA-Service Administrators cannot commence dealing with the case until all of the above documents are in their possession. As soon as all the documents have been presented copies will be supplied to the Brewery or Pub Company concerned and a Timetable issued for Responses and the Panel Hearing.

4 THE PUB CO/BREWERY RESPONSE

- 4.1 The Pub Co/Brewery will respond promptly to any request from the PICA-Service Administrators for the provision of documentation not sourced by the tenant (see paragraphs 3.3 and 3.4). Copies at the same time to be supplied by the Pub Co/Brewery to the tenant.
- 4.2 The Timetable issued by PICA-Service will afford the Pub Co or Brewery involved a minimum of 21 days to respond to the tenant's Statement.
- 4.3 Such Response must respond purely to the content of the tenant's Statement and should again be forwarded to the PICA-Service Administrators in triplicate. Such Response to comprise no more than ten sides of A4 in no less than font size 10. Should there be the unavoidable need for the ten page limit to be exceeded to enable the case to be given full consideration the Pub Co/Brewery should request specific dispensation on this point from the PICA-Service Administrators stating the reasoning behind the need for additional pages. The Administrators' decision to be final on this point.
- 4.4 This document should similarly be set out in numbered sections and paragraphs for ease of reference at Panel stage with, where possible, the paragraph numbers corresponding with those utilised in the Tenant's Statement so that the response effectively deals with the individual points made by the tenant. It is permissible for relevant attachments to be appended to the Response in addition to the restriction of the ten page limit and these should be in the form of numbered Appendices.
- 4.5 The Response should include mention as to which paragraphs of the tenant's Statement are agreed in addition to refuting those matters which are not agreed. This then obviates the need for the preparation of a Statement of Agreed Facts and acts to save both time and costs.
- 4.6 It is likely that earlier discussions will have taken place between the tenant and the Pub Co/Brewery in relation to the complaint and that these may have included negotiations, offers and/or counter offers. Neither party should be disadvantaged by having made earlier attempts to settle the dispute and reference must not, without the written consent of the other side, be made to earlier correspondence or discussions.
- 4.7 The PICA-Service Administrators will promptly forward a copy of the Response document to the Tenant.

5. THE TENANT'S RESPONSE

- 5.1 The Timetable issued will afford the tenant at least 14 days to respond to the Pub Co's/Brewery's Response should it be perceived that this details incorrect or inadmissible material. Such Tenant's Response to comprise no more than five sides of A4 in no less than font size 10.
- 5.2 Care must be taken to ensure that this is not utilised as an opportunity to forward a further Statement dealing with new issues. Such Response must respond purely to the content of the Pub Co's/Brewery's Statement and should again be forwarded to the PICA-Service Administrators in triplicate. A copy of any Response will be forwarded to the named Pub Company/Brewery representative dealing with the matter.
- 5.3 The tenant should in any event within the 14 day period advise the PICA-Service Administrators whether he/she is content that the Panel has regard to the written material issued by each side or would prefer to address the Panel in person at the Panel Hearing.
- 5.4 A copy of any Response issued by the tenant will be forwarded promptly to the Pub Co/Brewery along with details as to whether the tenant has opted to address the Panel. Should the latter be appropriate the Pub Co/Brewery will be given a similar opportunity to address the Panel.

6. THE PANEL HEARING

- 6.1 PICA-Service will appoint a chair person to conduct the Hearing whose decision on all matters of Hearing procedure will be final.
- 6.2 In cases where the tenant has elected to present him/herself personally to the Panel Hearing both parties will have been advised in advance by the PICA-Service Administrators of the date and time at which they should attend and the venue of the Hearing.
- 6.3 Each party will be afforded the opportunity to be present at the time of the other side's presentation.
- 6.4 The parties must not introduce new evidence not already covered in the tenant's Statement or the Pub Co/Breweries' Response or details of earlier negotiations concerning the subject matter without the specific prior consent of the other side or the consent of the chair person.
- 6.5 A twenty minute period will, should this have been notified in advance by the tenant as being required, be allowed to each side to verbally summarise their claim or their Response, through the chair person, to the Panel. The chair person may allow a longer period at his/her absolute discretion and the parties are at liberty to identify a need for this prior to the panel Hearing.
- 6.6 If either party, having indicated they will attend, does not do so this will not preclude the other side from appearing. If the parties or one of the parties is being represented by a third party it is permissible for both to each address the Panel as long as their joint addresses do not exceed the twenty minute period or any longer period granted at the chair person's discretion.
- 6.7 If a party notifying the PICA-Service Administrators of a wish to present themselves to the Panel Hearing does not attend the Panel reserve the right to progress to its Award in any event.

- 6.8 The Panel may, through the chair, direct individual questions to either or both of the parties at their discretion.
- 6.9 Once personal appearances have been concluded the parties will leave the room to enable the Panel to discuss the matter in private.
- 6.10 Given the likely nature of such complaints it is not intended that the Panel will usually travel to the subject licensed premises to carry out inspections. This fact should be born in mind by the parties when preparing their Statements and Responses as they may care to include photographic evidence as Appendices where relevant.
- 6.11 Should either of the parties deem it to be essential that the Panel hearing take place on site at the subject licensed premises they must identify this factor, giving their reasons, at the outset. The Administrators' decision in the matter to be final.
- 6.12 The Panel will make their decision as to whether or not to uphold the tenant's complaint in full or in part. They have the power to make monetary Awards to cover their perception of the landlord Company's wrongdoing where appropriate and this may include, should they believe these to be relevant, loss of earnings, the tenant's reasonable and relevant costs, the costs of PICA-Service and, again where regarded by them as being relevant, interest, but shall not include what the Panel consider to be consequential losses of an indirect nature or any element of legal costs.
- 6.13 The Panel are similarly empowered, where they see this as being essential, to order remedial action to take place in respect of physical works where these are justified.

7 STATEMENT OF TRUTH

- 7.1 The parties should understand they are under a strict duty of care to ensure that everything they place before PICA-Service is absolutely truthful, complete and accurate.
- 7.2 Should they be professionally represented their Representative should include within each Statement or Response confirmation that this complies with the Code of Practice, Practice Statement and Guidance notes of their professional body.
- 7.3 Should such Code, Practice Statement or Guidance notes not prove to be relevant to their standing they should provide a Statement of Truth. This may be worded as follows:-

'I understand that my overriding duty is to the PICA-Service Panel and I have complied with that duty. I confirm that I have made clear which facts and matters I have referred to are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.'

- 7.4 Commitment to this same Code of Practice, Practice Statement and/or Guidance notes or, as appropriate, the Statement of Truth to similarly be observed by the parties in all matters to include the giving of verbal evidence as detailed at paragraph 6.5 above.

8 LEGAL ISSUES

- 8.1 PICA-Service do not see legal representation, whether involving staff solicitors or external lawyers, throughout this process as being in the spirit of these proceedings. The Panel will not, as a result, reimburse within their Award, a tenant's legal costs however incurred.

- 8.2 Should the tenant nonetheless intend to be legally represented this will be at his/her own non-recoverable cost. He/she must place the PICA-Service Administrators on notice of the fact he/she is to be legally represented at least twenty one days prior to the date of the Panel Hearing to enable the Pub Co/Brewery concerned to, at its option, similarly arrange for legal representation.
- 8.3 The parties' contentions must not however contain any legal argument as the Panel will not have the power to determine any points of law. If disputes of a legal nature are identified the Administrators to PICA-Service will cease proceedings until these have been clarified and resolved by the parties.
- 8.4 If it transpires that clarification cannot be afforded by the parties on any legal point in a manner mutually agreed between them the matter will be regarded as being one for the legal profession rather than as a subject for PICA-Service.

9 THE PICA-SERVICE DECISION

- 9.1 PICA-Service will utilise its best endeavours to provide the parties with details of its Decision along with, where appropriate, its Award in a timely fashion having regard to the constraints of the Timetables mentioned earlier.
- 9.2 The Decision will not be reasoned and there will be no supporting dialogue or calculations.
- 9.3 PICA-Service will not be bound or fettered by the content of any Statement of Agreed Facts or any Statements or Responses placed before it. If either party fails to supply documents within the prescribed timetable PICA-Service reserves the right to proceed to its decision in any event.
- 9.4 PICA-Service reserve the right to make inquisitorial enquiries by post, telephone or on rare occasions by requesting that a Witness of Fact or Witnesses of Fact appear before them but are under no obligation so to do.
- 9.5 The PICA-Service Administrators, when once the panel has completed its deliberations, will communicate its decision to the parties by post in a timely manner.
- 9.6 The PICA-Service Decision should be regarded as being final and there is no right of appeal by either party unless it is subsequently proven that such decision was based on erroneous information recklessly or fraudulently presented.

10. PAYMENTS

- 10.1 PICA-Service will, in affording an Award (paragraphs 6.12 and 6.13); provide details of the monetary amount involved and/or the remedial action required and within what timeframe. They may impose penalties in cases of non or late payment or action. PICA-Service will similarly identify the payee(s) to whom restitution is to be made. PICA-Service reserve the right to opt to receive payments in the first instance and arrange financial settlements itself on administrative grounds but are under no obligation so to do.

11. IN SUMMARY

- 11.1 An aggrieved tenant must ensure that they have registered their grievance in writing with their Pub Co or Brewery and have given their landlords a reasonable opportunity of

resolving the problem through their internal grievance procedures prior to referring the matter to the Administrators of PICA-Service.

- 11.2 The PICA-Service Administrators will, on being placed on notice by a tenant of the fact that a complaint is to be issued, promptly inform the Pub Company or Brewery concerned of the situation and require that they confirm within a fourteen day period that they have indeed completed their internal grievance procedures concerning the matter. In the absence of a response being issued within this fourteen day period the PICA-Service Administrators will commence proceedings.
- 11.3 If such response, within the time constraint indicated in paragraph 11.2, details that the internal grievance procedures have not been completed the Pub Company/Brewery concerned will be afforded a further twenty-one days to bring the matter to a conclusion effectively meaning that they have a window of 35 days from initially being notified of the problem to resolve the matter. In the absence of both parties advising the PICA-Service Administrators of a satisfactory outcome within the timescale indicated above the latter will commence proceedings.
- 11.4 The tenant presents in the first instance to PICA-Service:-
- a A completed application form (foregoing paragraph 3.1)
 - b A signed copy of the PICA-Service Terms and Conditions agreeing to abide by the Panel's findings (paragraph 3.2)
 - c Relevant documentation (copy Lease etc) – paragraph 3.3
 - d A Statement setting out full details of his/her complaint in triplicate (paragraphs 3.5, 3.6 and 3.7)
 - e His/her cheque in the sum of £200 made out to PICA-Service. This is intended to represent the tenant's contribution towards costs of the proceedings whilst also acting to guard against frivolous complaints. Provided the complaint is upheld by the Panel the £200 will be returned to the tenant at the end of the proceedings. The decision of PICA-Service to be final in this matter (paragraph 3.8).
- 11.5 Under circumstances whereby the tenant is unable to supply legal or other documentation the Pub Co/Brewery will, on being requested so to do, provide this to the PICA-Service Administrators with copies being sent to the tenant (paragraphs 3.4 and 4.1).
- 11.6 The named Brewery/Pub Company representative presents their Response in triplicate (foregoing paragraph 4.2).
- 11.7 The tenant may wish to avail himself/herself of a right to respond (in triplicate) to the Pub Co's/Brewery's Response should it be perceived that this details incorrect or inadmissible material (paragraphs 5.1 and 5.2).
- 11.8 The parties may, at the tenant's option, appear in person before the Panel (paragraphs 5.3, 6.5, 6.6 and 6.7).
- 11.9 The PICA-Service Decision should be regarded as being final and binding on both parties.

12. CONCLUSION

- 12.1 Whilst the above represents the approved procedures at the time of going to print the PIRRS Board does reserve the right to review the content from time to time, and where necessary update the wording. Tied tenants and tied lessees, Pub Companies and Breweries who envisage having an involvement in PICA-Service procedures should ensure therefore they are working from the most up to date procedure paper.

Dated 17th November 2012

Russell Stone

Russell Stone
 George Pub
 Holyport
 Maidenhead
 Berkshire
 SL6 2JL
 November 15th 2012

Jo Swinson MP

Jo as per your response to my email, I am putting in writing my evidence in relation to the self-regulation of the Pubco – Tenant relationship.

I have attached my complaint that was placed with Picas in July 2012 and of which the Panel hearing was undertaken on the 17th October 2012, my understanding being that my Picas hearing was the second to have happened.

The administration of the Picas service was straightforward & efficiently handled and the communication was clear from the start & up to the Panel hearing.

The actual hearing was professionally undertaken and both parties had enough time to talk through their points and the questioning from the panel afterwards was relevant & fair.

The decision & the award was made in good time (within 2-3 working days) and I was given 30 days to submit associated costs relating to Picas and the Pubco were given 21 days to pay the award to Picas who in turn pass the award on to me. (A deadline unfortunately the Pubco yet again failed to deliver)

I am pleased I went through the process but we must understand that this was the only 'vehicle' open to me in this situation and I wanted to see what would happen.

You will see from my complaint that the behaviour of the Pubco was extremely unreasonable & unfair. My motive to complain was more about making an example of the Pubco's behaviour and help stop this kind of treatment rather than compensation – although I definitely feel as well as making a Pubco responsible for it's actions they should indeed be financially penalised.

Picas itself did state to me that I had to put a claim for compensation together as it's role was not to just penalise the Pubco's behaviour – my compensation claim was something hard to put a monetary award next to as some points related to stress & distraction from my business.

The outcome of the Picas award and findings were 'satisfactory' but my complaint did allege 'bullying' and stated many unfair rental bid proposals from the Pubco – something I think is very apparent in my experience in this matter.

It must be noted however that although my evidence is strong the Pubco were only found to be in '*breach of their code in respect of the manner in which they conducted a rent review due in 2010*' – the word 'manner' may cover a multitude of sins but is not specific enough in my opinion to help me understand the actual breach or indeed the Pubco to learn from it.

I received 30% of my total compensation claim (confidential) – so we will have to see if naming and shaming the Pubco plus a monetary penalty of x will work to rid tenants/Leascholders from this kind of treatment which appears 'rife' within the Pub Industry (I myself have had several phone calls since my article in the PMA from distressed Publicans wanting help)

I can see (and hope) that many Picas hearings will be undertaken because of Pubco behaviour which does beg the question 'will self regulation actually work', when we keep seeing blatant disregard to the tenants and leaseholders well being, motivation & ability to trade.

However I know there is a huge feeling in the trade that Picas being administered by the BII and potentially having some 'conflicts of interest' between the Pubco/Tenant relationship, could mean that the confidence in the system will cause Picas not to be utilised (some have said this of PIRRS) and the Pubco could continue to 'perform badly'.

I will share my own opinion of the Pub Industry in relation to the Pubco/Tenant relationship, which is an objective one as an individual who got involved in a Lease just over 6 years ago.

My experienced thus far, albeit on the surface quite extreme, plus everything I have seen, heard and involved myself in, concludes that there is no doubt that this kind of situation is a common occurrence in many Publicans lives.

The Pubco model does clearly show that rent & beer prices are being forced to unreasonable levels and individuals are hell bent to ensure they unfairly 'squeeze the pips' out of small businesses with no real concern about the success of said business.

I cannot see or indeed receive any 'countervailing benefits' from my Pubco & this kind of behaviour is resulting in closed or 'churned' Pubs, no investment to improve the asset and does not encourage talent into the industry.

It s clear that some individuals 'absolutely understand' what is happening and if the penny dropped with many more individuals (which includes licensees & customers alike) this Pubco model (and consequent behaviour) would be stopped and the Pub industry would have a fighting chance to bring more good to our small business growth & communities as well.

Yours sincerely

Russell Stone
07515 100362

Formal Complaint to PICAS

I am formally complaining to PICAS in relation to unfair treatment from Enterprise Inns.

The issue of Leaseholder bullying, code of practice breach and unreasonable behaviour during a period of 12 months is in my opinion clearly evident.

To try and run a small family business with this kind of distraction and mental pressure is completely unfair & unreasonable.

The effect this has had on our business (during the stated timescale & the present) is considerable in terms of our potential motivation and success.

I cannot and will not accept that this treatment was not malicious or without attempting 'unfair company gain' as the 'audit trail' of events consistently demonstrate.

My next rent review is 2015 and negotiations will commence in 2014 – which begs the question of 'how much more pain & distraction can Enterprise throw at me over a period of another 12 months and beyond?'

Yours sincerely

**Russell Stone
The George Pub, Maidenhead, Holyport, Berkshire, SL6 2JL**

Factual Information

All information that follows is backed up by an 'Audit trail' of events from 23rd March 2010 until 13th April 2011. (Attached)

Relevant letters & emails to ensure no question of any doubt surrounding the facts in this matter back up all 'audit trail' events.

Areas of complaint:

1.Highlighting the rent review process from ETI was totally unacceptable and breached Code of practice timescales & 'spirit' of the code

Rent at time of assignment date of July 2006 - 30k

Rent at last review date of September 2005 – 28k

- 1.After chasing the Regional Business manager for several months to start the rent review proceedings, I receive a letter dated 30th June 2010 (around 11 weeks before rent determination date) to move my rent by 170%.
- 2.Second rental figure of 100% increase is given to me on July 15th 2010.
- 3.I get the 'proper' detail of the 'working out' of this 100% increase from the rent controller of ETI on August 4th 2010 (7 weeks before the rent determination date).
- 4.I start the PIRRS action on October 11th 2010 – pay my fee on December 23rd 2010 – ETI eventually pay their fee around 22nd January, further delaying the process of PIRRS.

The timescales of this process are unacceptable – which were driven by ETI

The fairness of the rent bid is unacceptable – which were driven by ETI

2.Rental increase proposal totally unacceptable on all 5 occasions of rent determination

- 1.Initial rent proposal of 80k (170% increase) – June 30th 2010
- 2.Second rent proposal of 60k (100% increase) – July 15th 2010
- 3.Third rent proposal of 51k (70% increase via calderbank offer) – August 31st 2010
- 4.Verbal offer of 46k from rent controller (53% increase) – September 16th 2010.
- 5.ETI 'Independent Valuer' bid of 52.5k (75% increase) – March 9th 2011

The outcome of the PIRRS rent determination was around 29% increase – considerably lower than any of the 5 rental offers from ETI. (April 13th 2011)

3.Alleged bullying from ETI towards Leaseholder & their own 'Independent Valuer' to achieve an unfair & unjust rental increase.

- 1.4 of the 5 outrageous rent proposals from ETI over a period of 3 months would, in my opinion, appear to constitute bullying.
- 2.The divisional director of ETI wrote to me stating that the rent controller of ETI concurred with the Regional manager's assessment of rent, which was not true. (July 23rd 2010)
- 3.The independent valuer for ETI, stated that his work was being questioned by ETI during the PIRRS process. (February 2011)

The 3 areas of complaint clearly demonstrate that over a period of almost a year the tenant has received shocking treatment from ETI and it's direct & indirect employees.

Throughout this lengthy period there were several chances to rectify this matter in a 'retail partnership' and 'common sense' approach but at every stage this was ignored – Individuals (above RBM level) I made aware of this to rectify this situation and point out the unreasonable behaviour include:

Ted Tuppen	-	Chief Executive
Simon Townsend	-	Chief operating officer
Steve Burns	-	Divisional director
Rob May	-	Rent controller

The difficulty in assessing compensation in this kind of case is evident – however it must be re-iterated that this period saw a motivated business, clearly with plans and ideas in mind, being mistreated and unfairly punished for attempting to run a small Pub successfully.

Compensation

<u>Issue</u>	<u>Cost</u>
1. 10 months of unnecessary stress forced upon tenant & family	
2. 10 months (& ongoing) affect on motivation to build business and Improve asset – potential loss of trade	
3. Tenant time in preparing PIRRS case	
4. Pub placed on market	
Total compensation	

Rent review - Timeline & audit trail

<u>Date</u>	<u>Situation</u>
23rd March 2010	Review with Paul Clark RBM - Agree to meet up on 20th April to start review process
19th April	Paul Clark cancels meeting on email
May	I ring Paul Clark to prompt a new meeting date
July 1st	Letter received from Paul Clark highlighting 170% rent increase
July 3rd	I ring Paul & confirm meeting for 8th July
July 6th	I email Paul to confirm meeting for 8th July
July 6th	Paul Clark emails to confirm meeting
July 8th	Meeting occurs - set up another meeting for 15th July
July 15th	Paul Clark confirms 100% increase at meeting
July 15th	I email Paul Clark to confirm rejection of rent increase
July 17th	I sent letter to Ted Tuppen outlining my situation
July 18th	Ted Tuppen responds & tells me Rob May will be writing to me in next few days
July 23rd	Steve Burns (Director) responds and says Rob May concurs with rent quote
August 2nd	I write to Rob May asking for his response as promised by Ted Tuppen
August 4th	Response received from Rob May - attaches new FMT breakdown and requires my input on my view
August 4th	I respond to Rob May with my thoughts on this matter
August 5th	I send Rob May my FMT
August 7th	Rob May acknowledges my response & FMT
August 26th	I ring Rob May to ask what's happening - He tells me a response is imminent
August 27th	Response from Rob May - Acknowledges 100% rent is too high & suggests further meeting with Paul Clark
August 30th	I respond to Rob - challenging non-beer margin & comparables & further meeting with Paul Clark
August 31st	Rob May agrees meeting with Paul not appropriate & suggests PIRRS as next step
August 31st	I request from Rob May the final rent figure
August 31st	Rob emails & confirms £51k
September 7th	Letter from Rob with calderbank offer of 51k
September 9th	I email Rob with a request to go to arbitration & ask for guidance on how to proceed
September 15th	I email Rob with my Calderbank offer of 41k
September 16th	Phone call from Rob to meet at 46k
September 17th	I phone Rent dept (Rob on holiday) to say 42k is highest I can go to
September 27th	I email confirmation to Rob on his return
September 27th	Rob confirms 42k unacceptable & requests which dispute resolution I will follow
September 28th	I request to Rob which arbitrator will be appointed
September 28th	Rob lists potential arbitrators
October 11th	I visit BII for clarity on PIRRS & meet up with Chief Exec Neil Robertson who persuades me that PIRRS is way forward and he is not impressed with ETI's management thus far
October 11th	I notify Rob May of PIRRS action
December 3rd	Meeting with new RM Bruce Benyon - 1st face to face apology
December 8th	RS confirms with Rob - H Day is PIRRS valuer & reiterates 42k is max offer
December 17th	RS confirms with Rob that wrong beer prices issued
December 21st	Rob confirms wrong beer prices - due to size of container
December 23rd	RS pays PIRRS fee
January 5 th 2011	Howard Day confirms my payment but cannot proceed due to non payment by Enterprise
January 13th	Statement of agreed facts(SOAF) commences between RS & Dan of Davis ,Coffer,Lyons
January 17th	Howard day chases up payment from Enterprise
January 17th	Dan emails to confirm some of the SOAF agreements - including a 64% dry margin
January 20th	I email Dan the comparable information for the SOAF
January 25th	H Day confirms timetable - some 3 weeks late due to Enterprise non-payment

January 31st RS complains to Rob May re: situation & Code of Practice issues - copies in BII

January 31st Rob responds & ignores the actual complaint relating to unfair interest charges

February 1st Phone call from Dan confirming some FMT agreement - sales & margins almost exact
He tries to change food margin agreed on 17/01 from 64% to 65% - I refuse
He states FMT sales at 370k - I said mine were 365k
I chase up the comparable sites to be agreed from 20th January

February 3rd I complain to Simon Townsend re COP issue & Robs response

February 7th Dan emails & copies in H Day - request for accounts and margin analysis - I am confused!

February 7th I ring Dan - no response - so email him & H.Day my response

February 9th I ring Dan to clarify use of FMT & chase up SOAF
He responds that Enterprise behind the request for accounts and that SOAF is now at risk
Dan intimates that Enterprise has a figure & his work is being questioned/not being used!
I do not think this is an Independent valuation! (taped conversation)

February 9th I speak to Claire at BII with my concerns

February 10th I get a response from Simon Townsend - he is investigating but states the COP commenced October 2010
but will respond later to my complaint once he has all information

February 10th Pick up copy of COP prior to October 2010 from BII

March 8th E-mail Simon Townsend re response to complaint - five weeks on! & attach 'audit trail' of events

March 8th response from Simon Townsend - still investigating

March 9th Received independent valuers written statements - Rent bid now at 52.5k!

March 18th response from Simon Townsend - full response due on 21st March

March 21st Full response from Simon Townsend - meeting to be set up

March 22nd Phone call from Bruce Benyon - meeting tba

April 11th Meeting with Simon Townsend - Apology & will accept 42k - even though he believes it will be more
If PIRRS is lower then we go with that instead - ETI to pay my PIRRS costs

April 13th PIRRS determination is £38750 - Russell right all along and should not have gone through this situation

Save the Pub



All Party Parliamentary Save the Pub Group

Submission to BIS about the effectiveness of the self-regulatory solution of the pubco tied business model announced November 2011

November 2012

Introduction

The BIS Select Committee published what was supposed to be its final report into the pubcos in September 2011. This was the fourth such report since 2004 (Trade and Industry) with no progress made by the pub owning companies (pubcos) despite the strong criticism of the pubcos and their business model and the recommendations made each time.

The second committee report (then Business and Enterprise) laid bare the serious and fundamental problems in the sector in their report in May 2009. The Committee's findings were stark. 64 per cent of lessees did not think their pubco added any value and while a fifth had had a dispute with their pubco, few (18 per cent) were satisfied with the outcome. The Committee was astonished to learn that 67 per cent of the lessees surveyed earned less than £15,000 pa and **over 50 per cent of the lessees who had turnover of more than £500,000 pa earned less than £15,000 – a 3 per cent rate of return**. The committee concluded that lessees shared the risks with their pubco but it was clear that they did not share the benefits. They found an imbalance of bargaining power between lessees and pubcos and the arrangements for assessing rents remained opaque.

The committee's follow-up report in March 2010 (BIS) then found that nothing substantive had changed and so they gave the pubcos 14 months to reform themselves including introducing a free-of-tie option with open market rent review (in other words a rent only option based on a genuine independent rent, also known as a genuine free-of-tie option)

It is important to note the response of BIS at the time as there seems to have been collective amnesia in the Department as to what Ministers and officials said and signed up to:

Committee Recommendation:

“The industry must be aware that this is its last opportunity for self-regulated reform. If it cannot deliver this time, then government intervention will be necessary. We do not advocate such intervention at this stage, but remain committed to a resolution to all the problems discussed in this Report and those of the 2004 and 2009 Reports. Should those problems persist beyond June 2011, we will not hesitate to recommend that legislation to provide statutory regulation be introduced”. (Paragraph 158)

BIS Response:

*In its support package communication, Government has made it very clear that it accepts the BISC recommendation for the effective operation of the British Beer and Pub Association Code of Practice on tenancies and leases. **This is further backed up by a clear statement that Government gives the industry until June 2011 to improve. If the BISC concludes by then that the Code is not working as well as it should we will consult on putting the code on a statutory basis with effective enforcement.** The code of practice should also incorporate a beer/non-beer tie option for tenants **with***

a commitment that the Government will act if the industry does not. In addition the industry should introduce voluntary provision for tenants to offer a guest beer outside the traditional beer tie as part of the code with Government action to introduce an order if industry fails to act.

So the position of BIS, as a Department, was to give the pubcos until June 2011 and if self regulation had deemed to have failed by then, they would intervene and introduce a statutory code of practice including a genuine free of tie (independently assessed rent only) option and a guest beer right.

This process was publically signed up to by BIS Ministers and officials (and hence as a Department) in February 2011. It was then endorsed by the two responsible Ministers in the incoming coalition Government, Ed Davey and Vince Cable (Ed Davey on the floor of the House of Commons, Vince Cable in front of the BIS select committee at a public evidence session).

The Fundamental Problem

- The crux issue in the sector is that pub owning companies operating on a leased model take more than is reasonable from pub turnover (in BOTH inflated beer prices and rents), making it difficult or impossible for the licensee (the small business) to make a living, sometimes making hardly anything as all profit is taken by the pubco. This is causing viable pubs to close that would otherwise survive. ***Nothing in the so called self regulatory reform package changes this fundamental problem.***
- The supposed basis of the 'tie' and how it used to operate is that licensees pay more for beer (and other product) but pay a *lower* than market rent – but this stopped being the case and leases became unfair, based on hugely inflated beer prices AND high rents.
- The latest ALMR Benchmarking survey showed that for the first time, tied rents are actually higher than rents for free of tie. Tenants/lessees are basically being double overcharged and there is currently nothing to stop this!
- It is notable that European Competition Law sought to regulate tied agreements with undertakings and block exemptions, the principle being that the disadvantage of being tied (high product prices) would be countervailed by a lower rent. Essentially a principle that the tied tenant should not be worse off than if they were free of tie. That is clearly not the case, so it seems clear that this exemption is being breached. *It is also notable that the OFT decision not to investigate the sector was partly made on the basis that tenants/lessees had lower rent than free of tie licensees, which completely undermines the findings of their response to the CAMRA super complaint.*

The Government Response

- The Government published its response to the BIS Select Committee report, which had shown that self-regulation had failed and despite clear and unequivocal promise from Ministers to introduce a statutory solution, they extraordinarily instead announced a 'self-regulatory solution' in November 2011. Ministers, for reasons best known to themselves, performed a spectacular U-turn and had allowed those responsible for the serious problems in the sector and the clear abuse of their lessees, to reform themselves and to police themselves, which was astonishing. Should Barclays and the BBA have been allowed to decide the solution to the LIBOR scandal?! That is what has happened with pubcos and their equivalent, the BBPA!
- 2011 was supposed to be the pubcos last chance to self-regulate, Ministers then gave them yet another one. The whole process of voluntary codes of practice has been going on for years and

past voluntary codes have been regarded as completely inadequate so for BIS to respond to the clear recommendations of the Select Committee by merely seeking to extend this yet further was extremely odd.

- The Save the Pub Group exposed, through a freedom of information request, that there had been in secret one-sided negotiations between BIS Minister and officials with the BBPA (the British Beer & Pub Association, the representative association of the pubcos) behind the backs of other industry organisations, crucially those representing tied licensees and pub customers and the BIS Select Committee.
- It also exposed that the published BIS proposals were based on what the BBPA agreed to in these secret negotiations, many cut and pasted directly from the BBPA's own document! So in reality, this was the BBPA's solution, not the Government's!
- Inevitably only what the BPPA/pubcos agreed with was included and ***the key mechanisms to deal with the crux issue – rent only (genuine free of tie) option and guest beer right - were deliberately therefore excluded.***
- In truth, the Framework and company codes, under the veil of offering a multitude of peripheral apparent concessions in reality seek to do one thing - *avoid what is actually needed to deal with the problems in the sector.*

Current Status of the 'self regulatory solution'

- Officials have claimed that all the commitments made in the Government response to the Select Committee Report have now all been "achieved", when they patently have not.
- Currently (a year on from the BIS/BBPA proposals) the BBPA are on draft 6 despite the Government claiming the code would be legally binding by Christmas 2011!
- There is yet to be agreement on the code from even the very small and unrepresentative group of organisations actually involved in the negotiation process, the rest having rejected the process because of the BBPA's failure to agree to address the crux issue.
- Key licensee and consumer organisations (including the Federation of Small Businesses, CAMRA, Fair Pint, Justice for Licensees, GMB, Unite for Licensees) have not been involved in the process of developing the code of practice as was envisaged by BIS. Minister Ed Davey had been clear that the code should be developed through meaningful dialogue between **all sides** and that the issue of 'risk and reward' should be included. There was no meaningful dialogue, because the BBPA made clear at one initial meeting (clearly held so they could tick the 'consultation' box) that they would not consider dealing with risk and reward – thus rejecting the clear expectation of the responsible BIS Minister and making a mockery of the expectation to genuinely consult.
- The BII have **NOT** set up the Pubs Advisory Service (PAS) that was agreed in the BIS/BBPA self regulatory reform package (despite extraordinarily and worryingly, BIS officials wrongly telling the media that this had been done!).
- **Due to this failure, tenants decided to set up their own version of PAS. However this is not recognised by the pubcos. The existence of PAS, now a body and a service outside pubco influence, is not made known to tenants on entry or at rent review or lease renewal, which is very revealing.**

What is wrong with this 'self regulatory' solution?

- Even when it is completed and implemented it **will do nothing to address the crux issue within the pub sector which is that the hugely indebted pubcos continue to take more than is fair from their pubs, meaning the licensee cannot make a living. Otherwise (and genuinely) viable pubs that do not need to close are closing as a result.** Crucially a rent-only option (i.e. free of tie option paying rent only, based on an independently assessed market rent) and guest beer right, were both rejected by the BBPA (and pubcos) despite Select Committee and successive Ministers calling for these. **So it does nothing to stop the crux problem, the scandal of the pubcos double overcharging tenants/lessees with grossly inflated beer prices and unregulated, unreasonable rents.**
- It is notable that whereas the clear instruction to pubcos was to expand on and go further than the BBPA's framework code of practice, they have failed to do. The Framework Code is NOT substantially strengthened, the provisions relating to rent, insurance, Business Development Manager (BDM) training, dilapidations and pre-entry training remain materially unchanged and whilst discussion of further improvements with industry partners has taken place, this appears to have been a box ticking exercise as no further improvements in respect of the core issue, rebalancing risk and reward, have come to fruition. The "Immediate Changes" were nothing more than redrafting and rewording of the original Framework Code giving the false impression of progress, the one and only new proposal, the publication of a national price list was never published.
- The idea of the codes being made 'legally binding' is confused and inconclusive, with even the BBPA receiving differing legal opinions. The codes are not legally binding for all tenants/lessees in the sector. They are not legally binding if not incorporated into the contract and not signed by both parties; and of course they are not applicable to tenants/lessees of non BBPA members. Indeed, what is certain is that what has been done is to make it possible for the codes to be legally binding if signed up to by both parties or by being incorporated as leases, which is NOT the same as them automatically becoming legally binding – as if equivalent to a statutory code. So there has been dishonest presentation on the part of BIS over this issue, as well as the confusion and conflicting advice. There remain many tenants/lessees to whom the codes are not currently legally binding as they are not in their lease, they haven't signed up to them – and because the codes do not address the crux issue, they do not want to sign up to them!
- The nonsense of making codes legally binding by December 2012 is actually a red herring. A weak code of practice that fails to offer a genuine free of tie option and a guest beer right does nothing to address the imbalance between large and small business, whether it is legally binding or not!
- It is misrepresentative to say the BBPA's Framework Code is an "Industry" Framework Code and is industry agreed. The code does not apply to all in the industry. A new Framework Code has NOT been agreed by the industry. The Independent Pub Confederation, including FSB, CAMRA and UNITE, representing tenants, lessees, small brewers and consumers have been specifically excluded from the process AGAIN.
- So called independent bodies NOT independent - in personnel or funding. PIRRS and PICAS are BBPA sponsored and run and not seen as independent, despite the involvement of other bodies and the codes do not cover the material and meaningful issues to tenants (they cannot set fair rents!) and therefore even if PICAS were independent the service can not consider issues outside the code. Chair of the established PICAS panel, Roger Vickers, in fact acts for Punch Taverns.

Norman Lamb, in his tenure in the Department, was horrified when he discovered that Mr Vickers acted for Punch and was Chair of the established PICAS panel, when it was supposed to be an independent body, something that he was clearly unhappy that he had not been told by officials.

- There has been some misunderstanding of the recent decisions made by PICAS. Alan Yorke, the first licensee to go through the PICAS, has said he is “Still trying to work out the Government’s aim in promoting self regulation in the sector.” He goes on to say “I am at a loss as to what the Government wants. Is it balancing risk and reward? I am trying to work out what the Government objective is with the self regulation agreement”. He also raised concerns with the procedure of PICAS, stating that the process is ‘very intimidating’, as well as suggesting their needs to be an independent review of every decision that goes through PICAS, stating “There needs to be more accountability and communication on how it arrives at its decision.” This clearly demonstrates that there is a complete lack of trust with PICAS from tenants and licensees, even from a licensee who was successful in his appeal!
- The PICAS cases have to be kept confidential, which does nothing to assist with much needed transparency and accountability and allows the pubcos to force licensees to stay silent their issues, or they can’t even go through PICAS in the first place.
- With influence in many bodies, including the Royal Institution of Chartered Surveyors (RICS), the pub companies managed to manipulate the tied rental market resulting in a situation today where tied rents are now higher than free of tie rents. Rob May, National Rent Controller for Enterprise Inns, now perhaps the biggest pub company in the country (and the one with the worst reputation with its lessees), was the chairman of the RICS specialist group that wrote the rent assessment guidance for pubs, considered to be a gross conflict of interest to many in the industry. The RICS is rife with surveyors who are in conflicted positions either working directly for pub companies or brewers or deriving significant fees from instructions there from.
- The Government, and BISCOM 2011, identified that the new RICS guidance, despite attempts to improve it, was suffering confused interpretation and the specialist RICS group, on which Rob May still sits, has blocked any revisions to ensure clarity. It has also been revealed that the guidance is not mandatory even amongst RICS members and therefore pub company employees are not bound by its provisions.
- Due to confidentiality issues the framework and company codes cannot fulfil their claim to provide prospective and existing licensees access to information that they need to enable them to make sound commercial decisions and resolve disputes fairly and satisfactorily. Existing and prospective licensees are still faced with a lack of information and crucially without comparable.
- Indeed it is clear that the pubcos are still giving wholly unrealistic sales figures and ‘fair maintainable trade’ (FMT), when in reality the amount tenants/lessees can make is considerably less than what they suggest and often in reality little or nothing at all (whilst of course, the pubcos are guaranteed their income from fixed inflated rent, based on these dishonest figures and their unreasonable mark-up on beer). This was described at the time of the select committee hearings as fraudulent.
- Other issues have still not been dealt with – the fact that the large pubcos still exploit both the AWP tie (amusement machines with prizes) and force lessees to purchase overpriced insurance from them, rather than allowing them to shop around on the open market.

Proper Review of the Issue

- BIS have failed in their duty to even monitor progress until embarrassed into looking at the sector again by the bungling of officials who told the leading pub trade press publication, the Publican's Morning Advertiser, that all the commitments announced in November 2011 had been achieved and that the Pubs Advisory Service had been set up.
- MPs were clear when in January they voted in favour of an autumn review of the new Framework Code and when this is eventually agreed upon, the responsibility for reviewing this clearly falls within the remit of the Department for Business Innovation and Skills, as the department that implemented the reforms in the first place.
- That review must now **properly** take place, as the reality is that the reforms, even as limited as they are, have not been implemented – and anyway, do not address the crux issue and so are not doing anything to stop the scandal that the pubcos are continuing to overcharge their tenants to pay off their eye watering debt – money that is simply going down the drain and NOT into the economy.
- The review must however be conducted on a genuine and honest basis and instead of the very limited set of questions that have been asked of the industry. The key question that BIS should be and must now ask, is has the progress made since last November addressed the fundamental imbalance between pubco and tenant/lessee and has it stopped the pubcos overcharging their tenants.
- All relevant organisations must be included in the review. That includes all member organisations of the Independent Pub Confederation (BIS must stop treating the IPC as equivalent to each – it is an umbrella organisation comprising of many organisations, each of which must be given an individual voice in any review, equal representation with other organisations and a place in any negotiations).

The solution

- The solution is simple – and a market based one: to give licensees the option of either a tied lease (agreeing to buy beer and other product from the pub owning company and rent) or a rent only (free of tie) (i.e. they pay rent only, at an independently assessed fair market rent and can buy all produce on the open market at wholesale/brewery prices).
- This is not 'regulation' or interference in contractual relationships, it is a simple mechanism that would reintroduce competition into the sector as well as stop the ongoing abuse of small businesses by offering them a choice – and an assessment of market rent.
- **This is effectively a self regulatory mechanism. If the tied agreements are fair and competitive then tenants will seek to remain in such agreements rather than go free of tie.**
- If an offer of a free of tie option with an open market rent assessment were made mandatory, there would be no necessity for Framework or Company Codes, PICAS, PIRRS or accreditation.
- This is NOT abolishing the 'beer tie', it is simply ensuring that pub owning companies can no longer overcharge their tenants with the double whammy of extortionate beer prices AND high rents. Tied leases remain an option, but would again be what the tie is supposed to deliver (including to be compliant with European law) – a lower than market rent in exchange for paying higher beer prices. That can be attractive to tenants as it lowers their fixed costs, but the pubcos could no longer overcharge, as the market rent figure becomes the comparator. Managed pubs owned by breweries would of course continue to be permitted to sell only that brewers' beer.

Save the Pub – not the Pubcos: the clear business/growth case for reform

- The giant pubcos are effectively insolvent with billions of pounds of debt (Punch Taverns is regarded as a ‘zombie company’) and have no growth opportunities, indeed are not only selling off pubs but much of their turnover doesn’t even go into the UK economy, but goes straight to their creditors, some of whom are based abroad. The pubcos are preventing growth that could take place with more pubs being run by small pub companies run on a different model, micro breweries and entrepreneurs all of whom are taking on and making a success of former pubco pubs, but often they are prevented from doing so by deliberate sale for alternative use or development or through restrictive covenant, which remains a problem.
- Smaller pub operators are taking on pubs, but the market cannot be the solution in most cases unless the pubco choose to sell – and often they sell **viable** pubs for development or for alternative use such as supermarkets – an unnecessary loss of a small business and a community facility.
- To rejuvenate the stifled sector, we need stop the double rip-off, the extraction of too much turn over in unfair rent and overpriced products – and allow tied pubs to compete with managed and freehouses (notably figures show are that both sub-sectors are doing well) – and at the same time encourage more diverse and local ownership of pubs which boosts local economies, as well as growth in the sector – and for the economy as a whole.

Conclusion

- **The pubcos and the BBPA have had yet another year to try to regulate themselves, after the 14 month last chance they were offered. They have failed again. Surely BIS are not going to allow them yet another final chance to regulate and police themselves?**
- It is clear where the blame lies for the skewing of the tied system that has led to the abuse of this relationship, so expecting these companies to regulate themselves on this issue is unacceptable. Legislative change, including a mandatory and enforceable code of conduct, is essential.
- Governments can and do regulate commercial relationships (e.g. banks, media, supermarkets) and relationships between landlords and tenants. The Coalition Government notably is legislating to curb the powers of the giant supermarkets to stop their exploitation of small businesses. So BIS must stop using this line as a further excuse for lack of meaningful action on this issue.
- It is time now for what Ministers including Vince Cable promised they would do – and introduce a free of tie (rent only) option for tied licensees, which was BIS policy as published in March 2010 and signed up to by Vince Cable and Ed Davey subsequently. Last year’s last chance for the pubcos to reform themselves and play fair might have been ignored, this one must not be.
- It is time for BIS to wake up. It is time for BIS officials and Ministers to stop seeking simply to defend their mistaken decision last year and an indefensible response to the Select Committee recommendations. It is time for BIS to do the right thing for licensees, for pubs, for communities and for the economy.

Save the Pub Group

November 2012

Spirit Pub Company

The Rt Hon Vince Cable MP
Secretary of State for Business,
Innovation and Skills
Dept for Business, Innovation &
Skills
1 Victoria Street
London
SW1H 0ET

Dear Mr Cable

I am writing as Managing Director of the Leased pub division of Spirit Pub Company PLC. Spirit Pub Company has a high quality pub estate of 1,278 pubs nationwide, consisting of 791 managed pubs and 482 pubs operated on a leased and tenanted basis. I would like to take this opportunity to update you and your Department of the ways of working we have introduced following the inquiries into Pubcos; the subsequent introduction of the framework Codes of Practice including the legally binding version 5 and also our de-merger from Punch Taverns last year.

In July 2011, we de-merged from Punch Taverns which was fully completed in March this year. Following the de-merger, we reviewed our practices and implemented a new framework of processes for Spirit Leased. In conjunction with this we developed our own Spirit Leased Code of Practice which was given accreditation by BIIBAS this year.

I would like to assure you that irrelevant of the number of pubs we have, we fully endorse the new ways of working in the Industry Framework Code (IFC) and comply with all elements of this, including those from Version 5 in our Code of Practice and ways of working.

In order that we continue to provide fair, transparent and beneficial ways or working with our individual Licensees, we have also introduced the following processes in our business:

Recruitment Stage

- Provide a copy of our Code of Practice on our website, at application stage, and a further copy will be included in our new welcome pack to new Licensees.

- We brief a new Licensee on all aspects of our Code of Practice throughout the application stage and provide all the information required for someone who is taking a tenancy or lease agreement.
- We have introduced a final Operations Director interview in our recruitment process to ensure that the applicant is fully informed as to the business they are taking on, understands their agreement and our Code of Practice. This interview ensures that if a waiver is given for professional advice and training this is wholly appropriate to that individual. The Operations Director also makes the final decision as to the suitability of the applicant.
- Implemented our own mandatory training for new Licensees on top of the Pre-Entry Awareness Training introduced by the BII and detailed in the IFC Version 5.

Ongoing Relationship

- Trained our team of 10 Business Development Managers on all aspects of the Code of Practice over two days.
- Created an internal intranet system which holds all the key processes included in our Code of Practice for continual reference by our Business Development Managers.
- Introduced weekly emails to our Business Development Managers to remind and inform on all elements of the Code of Practice.
- Although rental assessments for lease agreements are required to be approved by a RICS qualified surveyor under the IFC, our rental assessments for both lease and tenancy agreements are approved by our Chartered Surveyor recruited into the new Spirit Leased business. He is also responsible for conducting all rent reviews in the time specified within our Code of Practice.

Disagreement Resolution

- Refer to our Code of Practice in communications with our Licensees either formally through rent reviews or on individual matters or areas of concern.
- Implemented a formal call logging system to manage any dispute resolution with our Licensees alongside the recruitment of a Communications & Compliance Manager who has significant expertise in the Leased sector for both Greene King and now Spirit Leased to ensure our ways of working are clear and adhered to at all times. A recent example referred to PICAS by one of our Licensees was managed by this member of our team.
- Endeavour to resolve any disagreement internally first with the Business Development Manager and our Licensee, often with the support of our Communications & Compliance Manager. However if

- this cannot be resolved at this level we will involve our Operations Director and later myself.

I can confirm that our ultimate objective is that we have good, long term relationships with our Licensees and the introduction of the legally binding IFC is playing a major role in helping us achieve this. We have every intention of meeting all aspects of our Code of Practice and whilst we recognise that some disputes will take place, we are confident that with our focus on all the above, this will be at a minimum and if they require escalation, we will endeavour to reach a solution with PICAS.

We will update and amend our ways of working following the introduction of the revised IFC scheduled for December 2012.

If you have any questions, please call me directly and I will be happy to assist or meet you or your team to provide clarification.

Yours faithfully



Chris Welham
Managing Director – Spirit Leased

Stephen D Corbett

BUSINESS, INNOVATION AND SKILLS CALL FOR EVIDENCE INTO PUB COMPANIES & SELF-REGULATION

SUBMISSION BY STEPHEN DOUGLAS CORBETT

November 2012

1 INTRODUCTION

- 1.1 The pubco supply tied model has been investigated no fewer than 26 times since 1966, 22 times in the UK and 4 in the EU, and not once has it been passed fit for purpose. The BBPA may claim that all is well and good but this position is not full and frank, nor is it acceptable, or a reflection of the truth, for them, or any pubco operator, to seek to rely on their own warped conclusions of previous reports in order to avoid further Government scrutiny. It is abundantly clear that the current version of the 'supply tied pubco model' is a distortion and abuse of what it was claimed to be. Industry self-regulation has been 'underway' since the Trade and Industry Select Committee in 2004 with little or no progress. The issue is, and always has been, re-balancing risk and reward, ensuring that disadvantages of being tied are properly balanced against advantages. This remains an elusive expectation and has been obscured and confused by many distractions and delays, including the BBPA's own Framework Code.
- 1.2 In more recent times the BIS Select Committee have investigated the model four times and each time they have produced a damning report which has severely criticised the pubcos. The BEC report in 2009 said "We recommend that the Secretary of State refer the matter to the Competition Commission for urgent investigation". They went on to say "the beer tie should be severely limited to ensure there is proper competition in the market". In 2010 the BISC concluded "We remain of the view that over a period of time offering lessees the option of being tied or being free of tie is the only way to judge properly the fairness of the tie". In 2011 Adrian Bailey's BISC went further and said "The BBPA has now shown itself to be impotent in enforcing its own timetable for reform. This latest attempt at reform has failed and we neither have the time nor the patience to continue along this path". The 2011 Committee goes on to caution Government by saying "offering a compromise of non-statutory intervention would be a departure from its undertakings to us and would not bring about the meaningful reform that is needed".
- 1.3 The function of scrutiny in sectors such as ours is to prevent the development of anti-competitive practices and it is entirely appropriate that such inquiries should take place from time to time irrespective of whether or not they reach similar conclusions. The T&ISC in 2004, BEC 2009, BISC 2010 and the BISC 2011 all painted a worrying picture of pubco abuse, lack of tenant support, agreements not honoured and downright bullying. All Committees were unanimous in their condemnation of pubco practices as well as their desire to ensure tied tenants should be no worse off financially than their free of tie neighbours. This is something that not only the pubcos have failed to recognise but the Government as well in its November 2011 self-regulation package.

- 1.4 Pubcos and the BBPA have claimed a clean bill of health by the OFT but this is simply untrue. No report by a competition authority for decades has found anything other than problems, of one sort or another, in the sector. In 2000 the OFT found competition issues and concluded that "the level of competition in the industry could be better". The Director General went on to say "I shall continue to be vigilant both in my pursuit of anti-competitive practises in the industry and in my consideration of structural changes through mergers. In particular I shall not hesitate to use my powers under the Competition Act 1998 to tackle anti-competitive agreements, or abuses of a dominant, or jointly dominant position; or under the Fair Trading Act 1973 to make a monopoly reference to the Competition Commission should that become warranted" In 2004/2005 the OFT found that it was restrained in its actions by the legislation such as the Competition Act 1998 (Land Agreements, Exclusions and Revocations Order 2004.)
- 1.5 The 2010 OFT, in response to the CAMRA Super-Complaint, relied heavily on evidence from pubcos to reach seemingly pre-conceived conclusions. They were supposed to be making a decision on whether to carry out a market study or not. Instead, the OFT team seemed to produce a report that might as well have been written by the BBPA. It seemed very strange to many that they decided that the likes of J.D.Wetherspoon and Mitchell &Butler didn't operate pubs in competition with tied operators - this will have been news to JDW and M&B as much as anyone else. Indeed, Peter Luff, who, in the 2009 BEC report, recognised the OFT were compromised in their opinions, went on to say "The OFT has declined to act in the past; we recommend that the Secretary of State refer the matter for urgent investigation by a body which has no vested interest in defending its earlier position". The OFT, in their 2009 response, did caveat their decision to do nothing, by stating " We consider that lessees' concerns regarding terms of supply, the conduct of negotiation with their pub company, or issues regarding rental valuations, are either matters for pub companies to address with individual lessees or are issues for industry or other relevant bodies to consider. These are not issues for the OFT to address or investigate further". They went on to say "The OFT does not have a mandate to intervene in commercial negotiations between particular parties".
- 1.6 By the OFT's own admission, they did not have a mandate to consider competition issues, supply terms or the fundamental issue of the tied tenant being no worse off than if they were free of tie in business to business to relationships, nor do they have the power to consider the commercial relationship between landlord and tenant. It is wrong for the pubcos to claim the OFT gave the industry a clean bill of health just as it was wrong for the Business Minister to make similar statements prior to releasing Governments self-regulation package as this is clearly not the case.
- 1.7 The problem here is that the decision makers are not empowered, or do not have the remit to tackle the problems direct. The pubcos have hid behind this Government failure, allowing them to perpetuate the myth of harmony in a sector dominated by the supply tie and anti-competitive practices. The evidence of course is somewhat different to pubco claims. Half the pubs in the UK are either failing down through neglect and abandoned by customers or boarded up, for sale; 'suitable for alternative use'. Tied tenants failing in their droves, homes lost and livelihoods destroyed. The stark evidence of the Great British asset conversion scheme is staring the UK in the face – a landscape of closed pubs and our cultural heritage lying in tatters all around us. The sector is desperately lacking in competition. The pubcos sit in the middle of the supply chain, manipulating prices to both publicans and consumers alike, with little regard for a sector in spiralling decline.

2 THE BBPA MISLEAD PARLIAMENT

2.1 It is clear that the voice of the 25,000 tied tenants has been completely ignored by Governments self-regulation approach which does little to redress the fundamental issue of profits in the form of rebalancing the commercial aspects of tenants risk and reward. The reforms initiated by Ed Davy in December 2011, were in direct response to the BBPA's proposals, highlighted in Greg Mulholland MP and Fair Pint's FOI request earlier this year. The self-regulation package betrays the weakness of Governments consultation with the industry and was perhaps prompted by a series of catastrophic falsehoods put forward by the BBPA.

2.2 The existing codes of practice were drawn up by the pub owning companies and not by the industry as a whole. They do nothing to neither alleviate tied pub business failures nor stop the pubcos from putting their hands through tenant's arms and grabbing handfuls of cash. On close inspection of the FOI it is apparent that Government were misled over the BBPA's offer of immediate code improvements and this resulted in a self-regulation package that put nothing new on the table of tied tenants and did nothing to halt the obscene transfer of industry profit to pubco bank accounts.

2.3 The immediate improvements negotiated by Government and outlined in their self-regulation package were 'ALL' included in codes prior to Ed Davy's response and were not therefore 'immediate improvements' to the BBPA's existing framework code.

- Upwards Only Rent Reviews	- WERE ALREADY IN CODES
- Waiver Policies	- WERE ALREADY IN CODES
- Timetable for pre-entry training	- WERE ALREADY IN CODES
- Timetable for information	- WERE ALREADY IN CODES
- Insurance	- WERE ALREADY IN CODES
- AWP Machines	- WERE ALREADY IN CODES
- RICS Guidance	- WERE ALREADY IN CODES
- Rents and other complaints	- WERE ALREADY IN CODES
- Rents	- WERE ALREADY IN CODES
- Professional Advice	- WERE ALREADY IN CODES
- Dilapidations	- WERE ALREADY IN CODES
- BDM Training	- WERE ALREADY IN CODES
- Price Lists	- ALREADY SENT TO TENANT.
- Annual Statements of Compliance.	- ALREADY PUBLISHED ON BII WEBSITE

2.4 There is now clear and irrefutable evidence that the BBPA misled Parliament. If you track Enterprise Inns company codes you will see that code changes are in place before being offered at BBPA framework code improvements. All of the 'improvements' on offer were in fact already in place in individual company codes and by definition, made no difference at all to tenants profits or the industry as a whole. You could be forgiven for concluding that Simon Townsend, Chairman of the Communications Group for the BBPA, wrote the improvements for his own company before inclusion in the BBPA's framework codes. In addition, the legality of the codes is very much in question. The BBPA sought legal opinion from Martin Reece – senior Partner of DLA Piper, a full twelve months before seeking further opinion from Robert Howe. As we can see from closer inspection of the Fair Pint FOI, the Reece opinion spectacularly contradicts that

of Robert Howe. The BBPA chose to present the Howe opinion to Government for obvious reasons, in the process burying the contradicting Reece statement to the archives of history. It was only through Fair Pints FOI request that this BBPA 'sleight of hand' was brought to light.

3 CONCLUSION

- 3.1 My observations are underpinned by thirty years of professional experience in the pub trade. I write this submission from the view point of someone with both free-of-tie and tied pub experience having operated pubs, bars and restaurants all of my adult life. Up until 2009 I operated a busy tied Enterprise Inns pub with takings of over double the national average. The pub was a fantastic asset to the local community; way ahead of its time in terms of product range, service and customer accountability. It was, for its size, one of the busiest pubs in South London and turned over in excess of £500k per year. Under the tying supply conditions which systematically allowed transfer, without thought or consideration for the tenant in occupation, over 95% of the pubs profits to the Landlord, the business never stood a chance. My pub closed its doors for the final time in November 2009 and took with it my entire life savings, destroyed my family and left a financial black hole of over £250,000. I have not operated a tied pub since.
- 3.2 The BEC in 2008, the BISC in 2009 and 2010 made some sensible and powerful recommendations designed to secure the future of the British pub and breathe life back into a sector so badly in need of reform. Sadly, almost three years after the last inquiry and twelve months after Governments self-regulation reforms, the situation for tied tenants has worsened. Pubcos, whilst papering over some of the Government's low priority concerns, have ignored the substantive issues concerning tenant's personal income and business profitability. The tied supply model and the property companies that operate it are the main contributor to pubs systemically going out of business with thousands of tied tenants losing their pubs, their homes and their livelihoods. Even as government observes the practices of the pubcos is this period of self-proclaimed reform it is abundantly clear that the very existence of the model has created a restrictive and anti-competitive market place which has effectively enslaved the tied tenant through rental guidance manipulation and charging excessively for beer.
- 3.3 The 2009 BIS Committee advised that the OFT could not be trusted to investigate the relationship between pubco, tenant and consumer. This recommendation sadly, turned out to be correct. A Competition Commission referral remains the only comprehensive option for safeguarding half the nations stock of pubs. At the very least the Government should stand by their previous recommendation that all tied tenants should be given an option to be free of tie and this should be accompanied by an open market rent review. This should be included in a statutory code of practice. This alone will redress the imbalance of power and allow tied tenants to police their tying arrangements with their dominant and abusive landlords and ensure Government never needs to waste tax payer's money again by having to investigate pubco immoral practices time and time again.

Stephen D Corbett
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The Fair Pint Campaign

THE FAIR PINT CAMPAIGN



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Rt. Hon Vince Cable M.P.
Department for Business Innovations and Skills
1 Victoria Street
London
SW1H 0ET

22nd November 2012

Dear Dr Cable

RE: THE PUB INDUSTRY - SELF REGULATION

We refer to the letter sent to Rodger Vickers, dated 7th November 2012, and whilst being members of the Independent Pub Confederation (IPC) and wholly endorsing their written submission, we felt it appropriate to highlight the salient issues that surround the tied pub industry's continued troubles which are not wholly addressed in the strict parameters of your four questions.

You will perhaps appreciate that BBPA, BII and FLVA are all Framework Code cosignatories and, other than IPC, all the groups contacted are participants in the Pubs Independent Conciliation and Arbitration Service (PICAS), it is likely you will therefore get an apparently 'weighted' view of the industry reforms.

We understand you have met all the parties that were copied in to the letter and by now you will no doubt have two irreconcilable pictures of the industry's progress and reforms.

Since the Trade and Industry Select Committee of 2004, the goal has been to deliver reforms restraining pub owning companies from exploiting their lessees. A Framework Code written by the very people it seeks to restrain, unsurprisingly, does not achieve the objective. Furthermore, the BBPA inspired and funded PICAS is deliberately designed and conceived to only consider breaches of what has already been established as an inadequate Framework Code. As Kate Nicholls, of the Associated Licensed Multiple Retailers Association (ALMR), said in witness statements at the BISCOM 2009/10, "...there should be an entirely independent, separate board nominated by public interest bodies and consumer representatives to deal with the issues of compliance - industry cannot sit in judgment on itself." This suggestion seems to have been accepted and endorsed as appropriate by BISCOM. It seems this regulatory body, PICAS and indeed the proposed 'overall governing body', is to be populated by only those who BBPA allow, so the industry will sit in judgment of itself, exactly the opposite of what was suggested should be done.

The BBPA's Framework Code (Version 5) was recognised to be inadequate and Ed Davey sought significant strengthening, outlined in the Government Response to the Select Committee reports.

That strengthening was to take two forms, "Immediate Improvements", to be implemented by December 2011, and "Further Improvements".

IMMEDIATE IMPROVEMENTS

We are aware, from the Freedom of Information requests, that the Immediate Improvements and Further Improvements were essentially proposed by the BBPA and copied over to the Government Response. To his credit Mr. Davey did recognise that rebalancing risk and reward is the priority issue and as such he moved it up from the bottom of the BBPA's list to No.1 on the 'Further Improvement' list in the Government Response.

We believe the BBPA misled Mr. Davey on the "Immediate Improvements". Mr. Davey was led to believe that the Immediate Improvements, proposed at that time by the BBPA, were absent from the existing Framework and Company Codes and if included, he would be seen to have made significant immediate progress in reforming the industry. Mr. Davey was not made aware that these were in fact no concession at all, as the Immediate Improvements were already present in codes. We attach (Appendix A) the list of Immediate Improvements demanded in the Governments Response, the BBPA Framework Code, dated January 2010, and, as an example, the Enterprise Inns Company Code, dated 1st October 2010 and have cross referenced where the purported improvements can be found. These 'Improvements' were present in Company and Framework Codes in 2010 so the offer to Mr. Davey to include them by the end of 2011 were misleading and utterly hollow commitments.

FURTHER IMPROVEMENTS

Version 6 of the Framework Code is now almost six months late in its publication and whilst we have not seen a draft, IPC (and therefore Fair Pint) being excluded from code variation discussions since April 2011, we have been informed by the BBPA that there will be no provisions relating to free of tie options, guest beer rights or machine tie release, all of which we consider to be a true means of offering a rebalance of risk and reward in tied relationships. Without some variation to the Framework Code seeking to address this issue and thereby restraining the pubco's from manipulating and abusing the position of power offered to them by virtue of the tied agreements, we see the Framework Codes as little more than window dressing, concealing an empty shop.

COSIGNATORIES TO THE VERSION 6 DRAFT

There are two cosignatories to the BBPA's Framework Code, the British Institute of Innkeepers (BII) and the Federation of Licensed Victuallers Association (FLVA).

In an article on the 13th September 2012, when discussing the latest Version (6) of the Framework Code, Peter Thomas, chief executive of the BII, said: "It isn't perfect and it is fair to say that there is still further work to be done....."

In the same article, FLVA operations director Martin Caffrey said "that negotiations over the latest version were still ongoing and as yet there were no consensus among the groups involved. It is very much a work in progress. We said all along that we signed version five to keep the discussions ongoing."

The BII and FLVA were the only two industry bodies to back the BBPA's Framework Code after mediation in 2009 and the very fact that the cosignatories to the code have already stated, ahead of Version 6's publication, that it does not go far enough, after 3 years of negotiating, should be evidence enough that it never will if left to the discretion and control of the BBPA.

CODE ENFORCEABILITY AND CONTENT

Enforceability

Code enforceability and content go hand in hand. There has been no significant, material or meaningful variations to the code since mediation and it follows that it will continue to fall short of the industry's needs, BISCOM recommendations and Government Response expectations.

It is claimed the code can be made legally binding to new Tenants by attaching it to the Lease and that it is legally binding to existing Tenants as a result of the principle of unilateral agreements outlined by the *Calill v Carbolic Smoke Ball* case. We have grave doubts about the latter, and know that even the BBPA have conflicting advice in this regard. We suspect the BBPA are well aware of the questionability of reliance upon such a principle and as such we will see an apparent concession in the Version 6 that all existing Tenants can have a standard deed of variation, at the Tenants own cost, to formally legitimise the Framework Code.

Content

There has been almost eight years of side stepping the fundamental issue troubling the industry. In the Select Committees this was identified as ensuring a principle that the tied tenant should be no worse off than if they were free of tie. Ed Davey, in the Government Response, redefined the principle to a balance of risk and reward. Put simply a pubco needs to be regulated to restrain them from exploiting their tied agreements and taking more profit than they should from pubs leaving their tenants in many cases practically destitute. This can not be achieved by enforcement

of an inadequate code and therefore code content is just as important as a code being legally binding.

We remain gravely concerned that any variations to the BBPA's Framework Code changes being taken as more than they are. We expect a series of tweaks will be dressed up by the BBPA to be something significant in an attempt to avoid further scrutiny or intervention.

You will be aware that there is great concern that Company Codes, which may contain more onerous provisions, will become legally binding also. The BBPA may claim it is the Framework Code and not the Company Codes that are now legally binding, by virtue of the Calill principle, but the same principle they seek to rely upon in respect of the Framework Code must also apply to Company Codes exposing the tenant to greater risk. If companies wish to offer something over and above the Framework Company code there should be a stipulation that the Tenants written acceptance must be obtained to each individual offer to avoid Tenants being unwittingly trapped into onerous terms that are not outlined in the Framework Code.

The Framework Code variations are likely to be little more than adjustments to previous provisions e.g. where the Framework Code previously required a company to outline a timetable for release of information or pre entry training, or make a clear statement, the Framework will now actually stipulate an actual timetable and the clear statement required. As the company codes already satisfied the previously vague Framework Code provision, i.e. they have stipulated a timescale and make a clear statement then we now seem to be accrediting the Framework Code using the Company Codes rather than the other way round.

We predict some variations to 'Principles of behaviour'. There has always been a provision in the Framework Code that all contracts will be fair and reasonable. BISCUM, in every report over the last 8 years of investigation and inquiry, have already suggested they do not consider tied agreements to be 'fair'. Few Tenants would consider that their tied agreement is fair (with pubcos taking upwards of 80% - 100% of a pubs profits). BIIBAS and now PICAS, essentially pubco funded services, have no hope of sitting in judgement of such an issue. Any provisions or variations to such important principles of behaviour are rendered insincere and impotent whilst in the pubco's have such powerful influence over their enforcement.

There will be much play on companies committing to comply with Royal Institution of Chartered Surveyors (RICS) guidance. We would draw your attention to the current Framework Code ;

5.7.2. All rent assessments and renewals must be conducted in accordance

with the RICS Guidance prevailing at that time.

As you can see once again, this obligation is already conferred, but as the RICS guidance is suffering confusion in interpretation (despite our efforts to have clarification) this remains meaningless. Even if clarity were offered by the RICS, all pubcos need to do to circumvent the guidance is farm it out to a surveying practice, it being confirmed by the RICS that guidance is not mandatory upon their members.

Complaint was made to BIIBAS (PICAS predecessor) about failure of pubcos to comply with RICS guidance, they conceded they could not act. A complaint of failure to comply with RICS guidance now would go to a PICAS panel for consideration. The PICAS panel will turn to the most experienced member for guidance, in this case the only chartered surveyor and chairman. You will be aware by now over the concerns over Mr Vickers' appointment and impartiality, he has, despite repeated requests (Appendix B), refused to confirm his interpretation of the RICS guidance, and thereby acknowledge the previous RICS Pubco Forum Report (in 2009) statement that if guidance is followed correctly the tied tenant should be left in a position where they are no worse off than if they are free of tie. You will see from the dates of the requests to Mr Vickers, the questions being raised now remain unchanged since May 2012. It is of great concern that the only chartered surveyor in PICAS neither acknowledges or accepts the principle (the tied tenant should be no worse off....) and compounds the opinion of some that Mr Vickers is not impartial or independent. We suspect under these circumstances PICAS will not find in favour of the tenants interpretation and therefore a breach of failure to comply with RICS guidance in this regard can never be proven. Combined with Rob May (National Rent Controller for Enterprise Inns) influencing the continued lack of clarity of guidance, the RICS door of rebalancing tied rents to sustainable and fair levels, reflecting the disadvantages of being tied, has now been successfully slammed in the face of Tenants by what we consider to be pubco place men.

It is perhaps tellingly that the same question asked to Mr Vickers was asked of the British Institute of Innkeepers (BII) in our letter dated 25 May 2012 (Appendix 2). They, the supposed industry policeman, were unable to confirm their position on the principle that the tied tenant should be no worse, or better, off than the free of tie tenant.

REBALANCING RISK AND REWARD

The Business Innovations and Skills Select Committee in 2008 concluded that ; "We have no confidence that the advantages of being tied outweigh its drawbacks. There is an easy way to test this; as leases become due for renewal, the pubcos could and should offer lessees a choice between a free of tie lease and a tied one."

The BISCOP 2010 Report agreed this was the way forward and recommended "the option of being tied or being free of the tie is the only way to judge properly the fairness of the tie."

The BISCOP 2010-12 concluded (para 153) **"Our predecessor's recommendation clearly stated that over a period of time all existing lessees and all new lessees should be offered a free of tie lease with an open market rent review based on RICS guidance.** This recommendation was endorsed by the then Government. Despite this clear instruction, the BBPA/IPC survey has shown that only 16% of new lessees and only 9% of current lessees had been offered a free-of-tie lease. Furthermore, it is open to question whether the free of tie agreements which have been offered are 'genuine' free of tie and accompanied by a full open market rent review. **Again we conclude that the industry has shown itself unable or unwilling to deliver meaningful reform."**

The heart of the matter will not be addressed at all in the Framework Code - the commercial split of profits and the tie. The BBPA stated there were a range of further issues to be discussed and explored which address some sensitive commercial issues. Ed Davey said the appropriate question was whether there is the right balance of risk and reward in the relationship. If the Framework Code is measured against this one statement from Mr Davey it fails the critical test.

The BBPA have confirmed that they are not empowered to offer the provisions to rebalance risk and reward in their Framework Code i.e. they can not require commercial variations upon their members. If that is the case then an alternative must be sought to reform this one specific issue. As the Framework Code can not offer provisions to rebalance risk and reward we propose parking the codes, as without this they remain fairly inconsequential and of little interest to anyone but to those seeking to circumvent the reform process.

To use an analogy, we currently have a code written by teenagers outlining how they wish to behave and as a parent none of the commitments offered address the fundamental instinct to protect the teenagers safety and health. A parent may not be that bothered that their offspring have committed to putting their socks in the wash basket, what they seek is a few basics, travel at night with friends, be in by a certain time, call if they are late, don't drink or smoke. It is the basic commitments the Framework Code lacks.

CONCLUSION

We believe Ed Davey was misled on the 'Immediate Improvements' commitments by the BBPA, as they already existed in the Framework and Company Codes 2010. We fear the BBPA are seeking to use the same ruse

once again on BIS and the industry.

We see little point in dressing something up to be something its not at this stage of the process. Successive Select Committees have sought a 'meaningful' Self Regulatory solution for eight years. Company codes have been present since before 2002, they were as legally binding then as the Framework Code is now, assuming the Calill principle is the correct authority, they had an independent dispute resolution mechanism. These codes like the incarnations considered by BISCOP, and like the Framework Code of today lacked the key ingredient the basic fundamental foundation that would make them meaningful - a mechanism to restrain a pubco from taking more than they should from a pubs profits.

We remain willing to meet or submit any additional information you may require and would fully support Norman Lamb's previous suggestion of a round table meeting which would assist BIS in understanding the issues and reasons for continued dispute within the industry.

Yours sincerely

A handwritten signature in black ink, appearing to read "S Corbett". The signature is written in a cursive style with a large initial "S" and a long, sweeping underline.

S CORBETT

APPENDICES

APPENDIX 1

Enterprise Inns code - it is easier to word search the Immediate Improvements in the document than search through the document hard copy.

<http://www.enterpriseinns.com/Applicants/Documents/CodeofPractice.pdf>

IMMEDIATE IMPROVEMENTS,

To be made by the end of 2011, to apply to all FRI leases

- **Upward Only Rent Reviews:** Upward Only Rent Reviews must not be enforced. No Upward Only Rent Reviews will be included in new leases.

BBPA FRAMEWORK CODE PAGE 10 para 14

Enterprise Inns Code page 1 and 20 under the heading Rent Reviews para 1 & 2 14. *UPWARDS ONLY RENT REVIEW CLAUSES (UORR): UORR clauses will not be included in leases.*

Some existing agreements may contain UORR clauses and, in such circumstances, company Codes of Practice will make it clear they will not enforce them.

ENTERPRISE INNS CODE PAGE 1 AND 20

- **Waiver policies:** Company Codes to formalise pre-entry waiver requirements to incorporate details of waiver policies in relation to pre-entry training and professional advice. This would include a requirement to sign exemption papers. **ALREADY IN CODES** THIS IS A NOTHING PROVISION - PEOPLE ALREADY EXPERIENCED AND/OR QUALIFIED TO RUN A PUB DON'T HAVE TO HAVE PRE ENTRY TRAINING - THERE ALREADY IS A WAIVER IN EXISTING BBPA AND COMPANY CODES

BBPA FRAMEWORK CODE PAGE 13

30. All **pre-entry requirements** (including holding a personal license under the Licensing Act 2003) concerning training or evidence based certification of professional or legal advice **shall be capable of being waived by the Pub Company in the case of existing lessees or tenants or experienced operators,** on production of suitable evidence.

e.g ENTERPRISE INNS CODE PAGE 2

Enterprise Inns existing company code

- If you have not previously run a pub, you must as a minimum complete the Pre-Entry Awareness Training Course run by the British Institute of Innkeeping (BII), www.bii.org/home prior to signing any agreement. You will also be required to attend our *five day* Business Foundation Programme. This induction course delivers three key qualifications – the BII Introduction to Licensed Retail Operations, the Level 2 Award in Food Safety and the BII Award in Beer and Cellar Quality, and it is our expectation that you will complete this programme prior to commencing your agreement. For details of our Business Foundation Programme, visit www.enterpriseinns.com/cop/training
- If you are an experienced retailer but you have not attended our business induction course or an equivalent course elsewhere in the last three years, or there has been a key change in legislation, you will be required to attend our Business Foundation Programme.
- **The above requirements may be waived,** at the company's discretion, **if** you are deemed to be suitably qualified, through experience and achievement, to rely on your judgement, or

are a company of sufficient standing.

- **Timetable for pre-entry training:** Company Codes to include a specific timeframe for pre-entry training and professional advice to be undertaken, before a substantive discussion takes place to take on a lease. **ALREADY IN CODES ? SEE ABOVE**

- **Timetable for information:** Company Codes to include a specific timetable for information to be provided in advance of rent negotiations, rent review and renewals, together with a timescale for completion at the end of negotiations. **ALREADY IN COMPANY CODES** BUT IT IS THE INFORMATION PROVIDED THAT REMAINS VAGUE - IF THEY ARE NOT BOUND TO SUPPLY SPECIFIC 'RELEVANT' INFORMATION THEN WHAT GOOD IS IT ? AFTER ONE YEAR ENTERPRISE INNS HAVE STILL NOT SENT ME ANY COMPARABLE EVIDENCE ON MY RENT REVIEW AND IT WOULD APPEAR, OTHER THAN THEIR COMMITMENT TO BE 'OPEN AND TRANSPARENT', ARE NOT BOUND TO DO SO.

e.g. Enterprise Inns existing company code, page 20-21

If your agreement provides for a cyclical review of the rent to a pre-determined timeframe, usually three or five years, we will aim to provide you with **12 months' notice** of the review date.

We will prepare our own assessment of the FMT and retailer profit for the pub, using our estimates of the performance of the business that might be achieved by a reasonably efficient operator, using our tied price list and any discounts that are applicable to your agreement and the actual business rates which apply to your premises (if available). We will also set out our opinion of the open market rent applicable to the premises, and provide you with our rent proposal (Pub Rent Review Assessment, Key Support Document I or visit www.enterpriseinns.com/cop/pubrentreview.pdf) whether above or below the current rent, and aim to provide this to you in writing not less than **six months prior** to the review date.

.....**Within two weeks** of issuing our Pub Rent Review Assessment, your Regional Manager will aim to make an appointment to discuss our Pub Rent Review Assessment and Your Pub Rent Proposal with you.

- **Insurance:** Company Codes will specify that they will price match insurance recharges. **ALREADY IN CODES** THIS IS ALREADY THE CASE AND IS CONTAINED IN BBPA AND COMPANY CODES (AGAIN INSTIGATED BACK IN 2004 FOLLOWING TISC ?)

BBPA FRAMEWORK CODE PAGE 8

2. **INSURANCE:** Liability for maintaining and meeting the cost of insurances required Full details of the insurance schedule (to include all aspects of cover provided) and the charges payable to the company will be given to the tenant/lessee together with any excess applicable. **Companies will offer to "price-match" on any like for like policies identified by the tenant/lessee.**

ENTERPRISE INNS CODE PAGE 7

- **AWP machines:** Company Codes will specify exactly how machine income is distributed and will give transparency on royalties if taken. **ALREADY IN CODES** - SINCE TISC 2004 AWP TIE TO BE REMOVED NOT INCOME CLARIFIED

BBPA FRAMEWORK CODE PAGE 9

11. It will be made clear in the process of profit assessment that where AWP machines are tied, and the income is shared, such income will not be included in the "divisible balance".

ENTERPRISE INNS CODE PAGE 20

- **RICS guidance:** The Industry Code and therefore Company Codes, will specify that all rent review assessments must comply with RICS guidance and that rent assessments for new FRI leases must be signed off by a RICS qualified individual. **ALREADY IN CODES**

BBPA FRAMEWORK CODE PAGE 9 RENT ASSESSMENT

7. The guidelines for rent assessment are established by an independent body (RICS) and applied to all leases and tenancies. The independent body will keep its rent assessment guidelines under review and, amongst other matters which the guidelines will need to take into account, are any resulting legislative changes and court rulings.

8. Any resultant changes arising from such developments of the guidelines will be adopted and applied to all leases and tenancies on review as and when they are published.

ENTERPRISE INNS CODE PAGE 20

• **Rents and other complaints:** Company Codes will include timescales for responses to all complaints and final settlements of cases. **ALREADY IN CODES**

BBPA FRAMEWORK CODE PAGE 13

35. Company codes will set out a procedure for complaints and a mechanism to resolve disputes arising from the relationship between the company and the tenant/lessee.

ENTERPRISE INNS CODE PAGE 20

• **Rents:** Company Codes will specify a total rent assessment statement which is fully justified. **ALREADY IN CODES** BUT DEFINE JUSTIFIED - YOUR RENT IS £50,000 BECAUSE WE ESTIMATE YOU TURNOVER £500K, WE ESTIMATE YOUR PROFIT IS 50% AND WE ESTIMATE YOUR COSTS ARE 30% AND WE ESTIMATE THE TENANT WOULD BID 50% OF DIVISABLE BALANCE MIGHT BE CONSIDERED JUSTIFICATION BUT NOT SUBSTANTIATED WITH ANY EVIDENCE (rent assessment)

BBPA FRAMEWORK CODE PAGE 10 DISCLOSURE AND TRANSPARENCY

16. Full disclosure of all relevant information is an essential feature of the relationship between the pub company and tenant/lessee. Pub companies will provide, as a minimum, the following information to any prospective tenant or lessee at the start of a new tenancy/lease or rent review negotiation.

17. **SHADOW PROFIT AND LOSS (P&L) ACCOUNT: A shadow profit and loss (P&L) account will be prepared by the pub company in good faith based on reasonable assumptions.**

The shadow P&L will be produced and drafted by a properly competent individual.

The shadow P&L will contain sufficient detail to enable a prospective tenant or lessee to take proper professional advice upon the terms, conditions and effect of the tenancy or lease being offered.

The shadow P&L will include full details of income streams broken down into drinks, food, other (including machine income) and details of cost assumptions on wages, utilities, rates, insurance, repairs and maintenance, operational costs and "other expenses", including marketing and promotions, entertainment, door staff, licensing costs and licensing conditions.

ENTERPRISE INNS CODE PAGE 20

• **Professional advice:** Codes will be much more stringent on the need for potential FRI Lessees to take professional advice on new lets and renewals. **ALREADY IN CODES**

BBPA FRAMEWORK CODE PAGE 6

Demonstrate they have taken proper independent professional advice prior to accepting a tenancy/lease (and during the operation of the tenancy/lease whenever the need arises)

ENTERPRISE INNS CODE PAGE A3, 2, 6, 7, 14, 16, 22 AND 23

• **Dilapidations:** For a new lease Company Codes will make clear the company policy on dilapidations. If there is a requirement to 'put it right and keep it right', then lessees must be encouraged to undertake their own survey. **ALREADY IN COMPANY CODES ANY REASONABLY EFFICIENT OPERATOR WOULD UNDERTAKE A SURVEY IF THEY DO**

NOT THEY WOULD NOT BE APPROPRIATE TENANTS AND IT WOULD BE IRRESPONSIBLE TO ACCEPT THEM AS A TENANT - THIS IS GOOD BUSINESS SENSE AND SHOULD GO WITHOUT SAYING

Enterprise Inns existing company code PAGE 18 & 19

Dilapidations

Depending on the nature of your agreement, you will be expected to either "Put and Keep", or properly maintain, the business premises (including living accommodation) in a safe and compliant condition for the duration of your occupancy. The repairing responsibilities of both parties are specified in your agreement, and an "At a Glance" schedule is included at Key Support Document G or visit www.enterpriseinns.com/cop/pubrepairresponsibility.pdf

• **BDM training:** Company Codes will make it clear that over an agreed period of time, all BDMs will receive training, or be exempt under a quantified waiver scheme similar to one used for pre-entry training. All BDMs to undertake continuous professional development training (CPD). **ALREADY IN CODES** IT IS THE COMPANY TRAINING THE BDM'S NOT THE BDM'S THEMSELVES THAT NEED REGULATION

BBPA FRAMEWORK CODE PAGE 13

BUSINESS RELATIONSHIP/DEVELOPMENT MANAGERS (BRM/BDM'S)

34. Company codes will set out provisions and commitments governing the competence and future progression of BRM's/BDM's, including qualifications and on-going training

ENTERPRISE INNS CODE PAGE 8

• **Price lists:** Companies to publish a national company wholesale price list to achieve greater transparency.

COMPANY PRICE LISTS ARE ALREADY PUBLISHED TO THEIR LESSEES/TENANTS AND PROVIDED TO PROPECTIVE APPLICANTS THEY ARE NOT OPENLY AVAILABLE TO ANYONE ELSE SO TENANTS CAN NOT COMPARE ONE PUBCOS PRICES TO ANOTHERS

ENTERPRISE INNS CODE PAGE 11

• **Annual statements of compliance:** For large companies with FRI leases, there will be a requirement for an annual statement of compliance on the FRI lease operation. **THIS ALREADY EXISTS ON THE BII WEBSITE AND FALLS OUTSIDE THE FRAMEWORK CODE AS IT IS NOT A PUBCO OR TENANT OBLIGATION** AS THE CODE PROVISIONS ARE SO INCONSEQUENTIAL TO TENANTS IT IS UNLIKELY MANY WILL WASTE THEIR TIME WITH THE COMPLAINTS PROCEDURE, AS HAS BEEN DEMONSTRATED BY THE BII FINDINGS, MOST COMPLAINTS FALL OUTSIDE THE CODE PROVISIONS. IF THE CODE CONTENT CONTAINED MATERIAL PROVISIONS THAT MADE A DIFFERENCE TO PUB CO BEHAVIOUR AND TENANT PROFITABILITY THEN THIS MIGHT BE A USEFUL PROVISION.

House of Commons

Business, Innovation and Skills Committee

Pub Companies

Tenth Report of Session 2010–12

Volume 1

Sanctions

131The 2010 Business, Innovation and Skills Committee Report recommended that all breaches should be highlighted on the BII website. In evidence to us the BII confirmed that this was happening.

APPENDIX 2

INDEPENDENT PUB CONFEDERATION

of publicans, consumers and small brewers

R Vickers Esq
Brownhill Vickers
82 Queen Street
Sheffield
S1 2DW

25th May 2012

Dear Rodger

We understand as the new chairman of the PICAS panel you will be considering complaints relating to pub industry codes.

The BBPA have recently confirmed that their Industry Framework Code revisions, soon to be released in draft form, will not offer an free of tie, guest beer or machine tie release options. Various groups representing lessees and tenants consider that, in view of the latter, the BBPA's IFC will not address the Government and industry expectation that it will rebalance risk and reward.

There is a requirement within the IFC to follow RICS guidance on rent valuation procedure and this may be seen by some as having the potential to deliver the desired effect of rebalancing risk and reward.

The RICS stated that, if followed correctly, the result of rent guidance should ensure that a tied operator is no worse off than a non tied operator. David Rusholme confirmed to the BISCOP that the guidance had put firm guidance in place in relation to this principle. It seems there is some dispute that the guidance refers to this matter at all and as a result the rent valuation process seems open to a various interpretations allowing manipulation or even abuse of the rent assessment process.

The above, coupled with the fact that guidance is not mandatory on members and the RICS do not seek to ensure guidance compliance from non members seems to render the IFC condition to follow guidance as unenforceable and an empty promise.

I would be grateful if you could confirm how you envisage PICAS will be able to address and consider code breach complaints in relation to pubcos or brewers not following RICS guidance given that the guidance is neither clear or enforceable.

Is it your understanding that the RICS guidance, seeks to ensure a rental result that countervails the tied product price and that if followed correctly this should leave the tied tenant no worse, or better, off than if they were non tied ?

Yours sincerely

Simon Clarke
Campaign Manager and Secretary

From: siclarke <siclarke@aol.com>
To: RCV2 <RCV2@Brownillvickers.com>
Subject: PUBCOS - PICAS - Roger Vickers
Date: Mon, 18 Jun 2012 17:48

Dear Rodger

Thank you for your response. We appreciate the clarification but believe you may have misunderstood the queries.

To address your points in order ;

1. We are aware PICAS will not be accrediting company codes.
2. We are aware PICAS will not be dealing with rent reviews or lease renewals.
3. We are aware you only have a casting vote (although it may be unrealistic to expect a chairman not to be influential over a group - e.g. the RICS Trade Related Valuations Group and Rob May, National Rent Controller for Enterprise Inns).

We hope our letter dated 25th May is rooted precisely in the remit for PICAS as you describe, that being complaints relating to compliance of the Framework Code.

To clarify, the Framework Code contains a provision that *"All rent assessments and renewals must be conducted in accordance with the RICS Guidance prevailing at that time."* A complaint may be lodged alleging that a pub company have not conducted a rent assessment in accordance with RICS Guidance, before after or during a rent review procedure. PICAS would not be asked to establish an open market rental value, that would be for the appointed third party, but to consider whether the pubco has, or has not, conducted the exercise of rent assessment in accordance with RICS Guidance.

The RICS have confirmed they are unable to enforce Guidance upon their own members. The question therefore remains, could you please confirm how you envisage PICAS will be able to address and consider code breach complaints in relation to pubcos or brewers not conducting rent assessments in accordance with RICS Guidance given that confusion over interpretation of the guidance remains and it is unenforceable upon members of the RICS.

It would seem Ministers, MP's, lessees and tenants are under the impression that a rent should be arrived at, with a correct interpretation of RICS guidance, following the principle of the tied tenant being no worse off than the non tied tenant, thereby rebalancing risk and reward. We believe a PICAS panel will not be required to give attention to this matter, simply that it has been effectively complied with in a pub company's rent assessment.

Your view of the interpretation of RICS Guidance to the above principle, which is not an issue for PICAS deliberation, is critical given your influence over the group as chairman. If code complaints relating to failure to comply with RICS Guidance are to be made it is important to establish the PICAS interpretation of the principle before hand. If it transpires that you and/or PICAS as a whole do not consider that the revised RICS guidance seeks to achieve a rebalancing of risk and reward by application of the principle, then a complaint made on the grounds of failure to adopt the principle would be futile.

Please confirm that in the above eventuality, lessees and tenants should not rely on PICAS to ensure that a tied licensee should be no worse off than a free of tie licensee.

Regards.

SIMON

Bernard Bindley
Wessex House,
80 Park St.,
Camberley,
Surrey, GU15 3PT

25th May 2012

Dear Bernard,

Firstly, congratulations on your new appointment. You have taken the role in troubled times, for both the BII and the industry as a whole, and I hope your practical experience in the sector puts you in good stead for the challenges to come.

The pub closure figures appear to be decreasing which, to the unwitting observer, seems like things are improving. The reality is these figures are masking the business failure rate, or pub tenant churn. Your predecessor, Neil Robertson confirmed only last year that the failure rate at one particular pubco equated to 43% a year. The circumstances for tied tenants and lessees has not materially changed since then and the churn rate remains high.

There is an expectation by the industry, Government and BISCUM to ensure that risk and reward is rebalanced in order to offer operators a fair deal and reduce business failure amongst tied tenants.

The BBPA confirmed in their last meeting with IPC that the FC will not contain any provisions relating to free of tie, guest beer or machine tie release options. The BBPA have confirmed this is simply not something they are empowered to enact as a trade association on their members. We consider this an open and honest admission that the FC will not rebalance risk and reward.

We consider the BII's failure to openly confirm that they agree with the principle that a tied licensee should be no worse off than the free of tie licensee has been a major contributory factor to the diminishing membership. We believe, in spirit, the BII do

agree with his principle but rather than promote amendments to the operation of the tie, supporting the IPC's free of tie and guest beer release options, the BII became a cosignatory to the BBPA FC, on the basis they believed that its development would have the desired effect of rebalancing risk and reward. This possible outcome has now been shattered. We, like many other former BII members, lost my faith in the direction of the organisation and believe something significant is now needed if you are to resurrect the BII's fortunes.

In view of this latests revelation by the BBPA, it is difficult to see what real meaningful improvements are offered by the BBPA's code and why any association, body or representative would become, or remain, a cosignatory. After almost 2 years of constant rewording, in terms of profitability and remuneration to tenants and lessees, the IFC still changes nothing of great consequence.

Fair Pint Campaign now call on the BII to withdraw its support for the BBPA IFC and confirm that a tied licensee should be no worse, or better, off than a non tied operator. This will demonstrate to lessees and tenants that you have their interests at heart and may well assist in revitalising the BII membership.

Yours sincerely

Stephen D. Corbett

APPENDIX A(1)

(since prospective tenants/lessees are unlikely to be members of the BII).
Administration costs will be funded from the Corporate Membership of the BII.

63. The PAS will provide an initial offering of free advice to all prospective and current tenants and lessees. This will allow a prospective tenant or lessee to access – without cost – advice that they can be confident is being given by a reliable and independent source. Further advice, beyond the initial offering, will be charged for, but as with the initial advice, tenants and lessees can be confident that it is being given by professional and independent advisers vetted by the BII.
64. The Government also welcomes the recent initiative of the Royal Institution of Chartered Surveyors (RICS) in working with the industry, to facilitate the establishment of a bench-marking scheme. This will be a highly valuable initiative that will help to further increase the information available to lessees, so that they can get as fair a deal as possible.

A strengthened Framework Code

65. Recognising the significant concerns identified by the Select Committee, the BBPA has agreed to make substantive changes to the Industry Framework Code. Once the Code becomes legally binding these changes, together with the rest of the Code, will become binding commitments enforceable through the courts (or through PICAS).
66. Given the substantive differences between FRI leases and traditional tenancies discussed above, these changes will predominantly apply only to FRI leases. Traditional tenancies will be bound by the current Industry Framework Code, possibly with some slight modifications.
67. The BBPA has identified a number of changes that can be made rapidly, in particular in areas such as rent, insurance, Business Development Manager (BDM) training, dilapidations and pre-entry training. It has committed to putting these in place by the end of 2011. It has also identified a number of more substantive areas in which it has made a public commitment to discuss further improvements with industry partners.

Immediate improvements, to be made by the end of 2011, to apply to all FRI leases

- Upward Only Rent Reviews: Upward Only Rent Reviews must not be enforced. No Upward Only Rent Reviews will be included in new leases.
- Waiver policies: Company Codes to formalise pre-entry waiver requirements to incorporate details of waiver policies in relation to pre-entry training and professional advice. This would include a requirement to sign exemption papers.
- Timetable for pre-entry training: Company Codes to include a specific timeframe for pre-entry training and professional advice to be undertaken, before a substantive discussion takes place to take on a lease.

- Timetable for information: Company Codes to include a specific timetable for information to be provided in advance of rent negotiations, rent review and renewals, together with a timescale for completion at the end of negotiations.
- Insurance: Company Codes will specify that they will price match insurance recharges.
- AWP machines: Company Codes will specify exactly how machine income is distributed and will give transparency on royalties if taken.
- RICS guidance: The Industry Code and therefore Company Codes, will specify that all rent review assessments must comply with RICS guidance and that rent assessments for new FRI leases must be signed off by a RICS qualified individual.
- Rents and other complaints: Company Codes will include timescales for responses to all complaints and final settlements of cases.
- Rents: Company Codes will specify a total rent assessment statement which is fully justified.
- Professional advice: Codes will be much more stringent on the need for potential FRI Lessees to take professional advice on new lets and renewals.
- Dilapidations: For a new lease Company Codes will make clear the company policy on dilapidations. If there is a requirement to 'put it right and keep it right', then lessees must be encouraged to undertake their own survey.
- BDM training: Company Codes will make it clear that over an agreed period of time, all BDMs will receive training, or be exempt under a quantified waiver scheme similar to one used for pre-entry training. All BDMs to undertake continuous professional development training (CPD).
- Price lists: Companies to publish a national company wholesale price list to achieve greater transparency.
- Annual statements of compliance: For large companies with FRI leases, there will be a requirement for an annual statement of compliance on the FRI lease operation.

Areas of further improvement, which the BBPA commits to discussing with industry partners

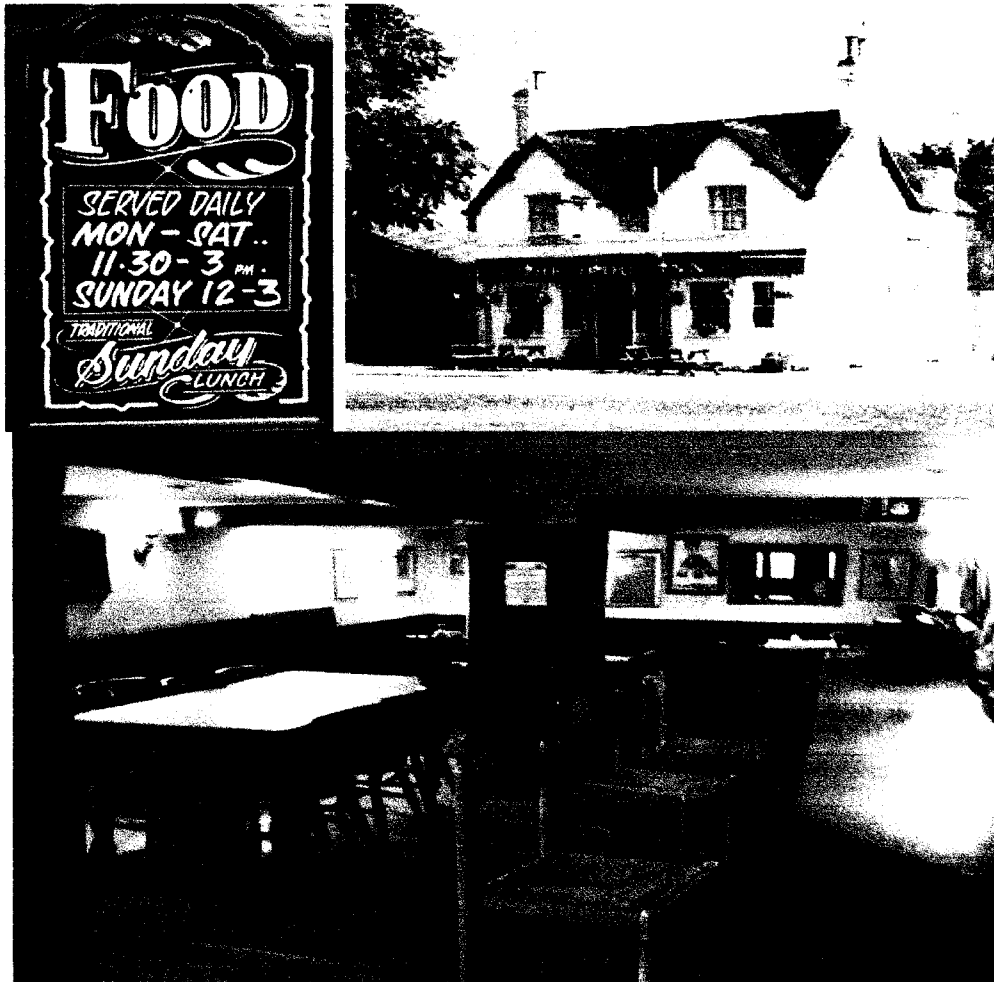
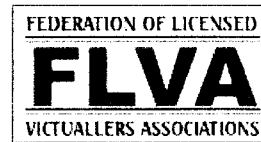
- The underlying principles of the Code, in particular relating to the balance of risk and reward.
- Evolution of the AWP tie, including exploring a mechanism whereby the issue of machine income rentalisation might be resolved.
- Simplification of the rental negotiation process.

- Rent assessments requiring greater justification of assumptions used.
- Agreement on common format of shadow P&L statements to enable greater comparability between companies.
- Enhancement of PIRRS, including potential extension of its remit to FRI Lease renewals, not just mid-term rent reviews.

Conclusion

68. The Government considers that, taken as a whole, this package of measures represents a substantive commitment to self-reform. The measures would give effect to the recommendations made by the Select Committee to Government – a legally binding Code and the equivalent of an adjudicator – and go substantially further in helping to address many of the other concerns raised by the Committee's report.
69. The Government recognises and thanks the Committee for its focused scrutiny on this sector which has been essential in driving the necessary improvements. The industry's previous progress towards self-regulation had been far from satisfactory and it is thanks to the Committee that the need to make rapid and significant reforms has been recognised. Despite its previous tardiness, the industry's initiative in rapidly responding to the Committee's report with a robust and meaningful package of measures should also be welcomed.
70. The fact that these reforms have been delivered on a self-regulatory basis means that they can be in place far more quickly than any statutory solution. The Government is confident that, given the high level of Parliamentary interest in this matter, the industry will lose no time in fulfilling the commitments it has publicly made.

APPENDIX A(ii)



**UK PUB INDUSTRY
FRAMEWORK CODE OF PRACTICE**

for Tied Tenanted and Leased Pubs

January 2010

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INTRODUCTION TO FRAMEWORK CODE OF PRACTICE

This third revision of the pub industry Framework Code sets out the minimum standards and requirements that tenants/lessees should expect from a pub company, regarding the letting and operation of leased and tenanted tied pubs, which must be incorporated into individual company Codes of Practice.



The Code is intended to ensure that prospective tenants/lessees have the necessary skills, advice and knowledge to take on a pub business and to receive sufficient information to enable them to undertake a thorough evaluation of the business opportunity and prepare a detailed business plan.

The Code demands transparency and disclosure from pub companies in the setting of rents and includes forms of redress to ensure potential (and existing) tenants/leaseholders can better understand the business that they are entering and the assistance that can be sought.

The Code sets out the level of detail to be provided to the tenant/lessee at initial rent setting and subsequent rent review and introduces the Pub Independent Rent Review Scheme (PIRRS) as an alternative to rent arbitration. The Code also sets out a requirement for prospective tenants/lessees to undertake training to ensure they fully understand the implications of a pub tenancy/lease and further places obligations on lessees wishing to assign their lease.

This Code of Practice sets out the requirements for the contents of individual Company Codes of Practice. Companies offer a wide variety of different business models that fall under the general descriptions of tenancies and leases.

Tenancies are typically agreements with a short period of tenure around 3-5 years. Tenants are likely to be "tied" for all supplies of drinks with the owning company responsible for the upkeep of the property.

A lease agreement provides for longer term investment and lessees (individuals or small companies) can realise a goodwill benefit through assignment of the lease after a qualifying period. A wide variety of lease agreements are available, varying in length from five years upwards. Leases usually come with full repairing clauses and a tie for beer.

Companies may therefore offer either tenancies only, leases only, or both.

Company Codes may be written to cover both leases and tenancies but pub companies may wish to consider writing separate Codes that are focused on the type of business operated, whilst still complying with the Framework Code. Where pub companies operate both leases and tenancies, they have the option to write either separate Codes or a single Code but, either way, such Codes will still need to comply to achieve BII accreditation.

The Company Code of Practice will be signed by the tenant/lessee and the pub company, and thereby will become binding, and may be used as evidence in any disputes or subsequent court proceedings. The Code will also be binding on successors since they form part of the basis on which the original agreement was entered into.

The industry Code of Practice is not capable of being altered unilaterally and future revisions to the Code will be carried out in consultation with relevant tenant/lessee representatives (i.e. FLVA and BII). The industry Code will be periodically reviewed by agreement with these bodies.

A procedure for dealing with any disputes about the application of the Code by pub companies is described on page 14.

PUB COMPANY OBLIGATIONS

All pub companies operating tenanted or leased pubs should produce a Code of Practice based on the principles set out in this Code.

This is a requirement for membership of the British Beer & Pub Association (BBPA).

A full copy of the company's own Code of Practice must be provided to all new and existing tenants/lessees.

Pub companies must also apply to the BII (British Institute of Innkeeping), and acquire, accreditation of their Codes.¹

This industry Framework Code will be displayed on the BBPA, BII and FLVA websites as well as those of pub companies who are members of the British Beer & Pub Association.

Codes prepared by members of the BBPA shall bear the BBPA logo and the BIIBAS logo to indicate compliance with the industry Code of Practice and the BII's own standards contained within the accreditation process.

Companies meeting these requirements can be regarded as offering high standards of fairness, transparency and support to prospective tenants/lessees. Companies may wish to address other issues and provide broader benefits but must, in the first instance, comply with all the requirements of the pub industry Code.



¹ BIIBAS is the BII Benchmarking and Accreditation Service

TENANT/LESSEE PRE-ENTRY REQUIREMENTS

Before a prospective tenant/lessee is offered a substantive agreement, they **MUST** meet the following requirements:

- Hold a personal licence²
- Obtain accredited pre-entry training to enable them to evaluate and understand the contract they are seeking to enter into

Such training must meet Qualification Curriculum Authority accredited standards.



- Demonstrate they have taken proper independent professional advice prior to accepting a tenancy/lease (and during the operation of the tenancy/lease whenever the need arises)
- Take professional legal and business advice which should be used to prepare an appropriate business plan

Financial advisers should ensure their clients are made aware of the effects of changes on the business plan. For the avoidance of doubt a financial health-warning statement should be provided to the tenant/lessee, akin to the warnings attached to financial products such as endowments

- The above requirements may be waived, at the company's discretion, in cases where the acquiring tenant or leaseholder is suitably qualified through experience and achievement to rely on their judgement or is a company of sufficient standing.

² Not applicable where the prospective tenant/lessee is a company

MINIMUM REQUIREMENTS FOR COMPANY CODES OF PRACTICE

The key principles set out below must be followed to ensure sufficient information is provided to enable the “reasonably competent operator³” to understand the nature of the pub business being offered and how this will be embodied in a tenancy or lease agreement.

All contracts will be fair, reasonable and comply with all legal requirements.

Protection is afforded to tenants/lessees under Part II of the Landlord and Tenant Act 1954, as amended, for premises in England and Wales and, unless “contracted out” in accordance with the procedures set out in the Act. For premises in Scotland, protection is afforded by the provisions of the lease and the company’s policy in relation to lease expiry.

Initial heads of agreement covering the principle terms of a tenancy/lease will be supplied to prospective tenants/lessees at the outset with a full copy of the lease before they are asked to sign any commitment.



Details of the business opportunities offered by the company will be described including the types of tenancy/lease agreements available and the period of tenure, any purchase obligations such as a beer tie, amusement machine tie and any other product ties.

³ RICS Guidance © IVS GN 12, para 3.4 “A market based concept whereby a potential purchaser, and thus the valuer, estimates the maintainable level of trade and future profitability that can be achieved by a competent operator of a business conducted on the premises, acting in an efficient manner. The concept involves the trading potential rather than the actual level of trade under the existing ownership so it excludes *personal goodwill*.”

TERMS OF BUSINESS

1. **PRICE LIST:** The Pub Company's current and relevant price list will be supplied (under the terms of the agreement for tied and other products) which will include notification about any imminent changes.

Where beer is supplied under a tie details of the range of products available will be provided including the prices charged, qualifications for discount and whether the company will allow a guest beer supplied direct from a small brewer to be purchased outside the tie.

Where wet products other than beer are also supplied, the terms of the purchase obligations attached to these products will be made clear according to the type of agreement. An outline of trading terms (e.g. credit/payment terms) will also be provided.



2. **INSURANCE:** Liability for maintaining and meeting the cost of insurances required

Full details of the insurance schedule (to include all aspects of cover provided) and the charges payable to the company will be given to the tenant/lessee together with any excess applicable. Companies will offer to "price-match" on any like for like policies identified by the tenant/lessee.

3. **AMUSEMENT MACHINES:** Company policy with regard to the supply and operation of tied amusement machines on the premises⁴



Relevant information will include the terms of supply (whether or not a machine tie exists), number and siting of machines, arrangements for the collection of cash, machine-management support provided and details of how the landlord/tenant share of machine income will be assessed

4. **CAPITAL DEVELOPMENTS:** Company policy with regard to potential opportunities for improvements/refurbishments and any implications for rent.
5. **FLOW MONITORING EQUIPMENT:** Pub companies to develop a protocol setting out the terms under which flow monitoring equipment may be installed and any further prima facie evidence available.

Suggested details for inclusion are set out at Annex A



⁴ This will include category C and D machines, skill prizes machines, pool tables and similar equipment.

PUB PREMISES

6. A full description of the pub building will be provided, including:
- details of the premises licence and any conditions attached thereto as well as any enforcement action taken during previous two years, where known.
 - to the best of knowledge information about any material changes of commercial conditions likely to appear in the area⁵ and how these might influence the business opportunity available.

Details of any restrictions on the uses to which the premises may be put (e.g. planning constraints on types of trading and/or hours, disclosure of Use Classes - A3 or A4) will be provided.

Repairing Leases:

Companies will describe the nature, scope and extent of their policy with regard to repairing covenants.

Companies will provide the prospective lessee with details about the nature, scope and extent of their obligations in the Heads of Terms agreement.

Prospective lessees will be encouraged to inspect the property thoroughly, seeking independent professional advice on the structure.

RENT ASSESSMENT

7. The guidelines for rent assessment are established by an independent body (RICS) and applied to all leases and tenancies. The independent body will keep its rent assessment guidelines under review and, amongst other matters which the guidelines will need to take into account, are any resulting legislative changes and court rulings.
8. Any resultant changes arising from such developments of the guidelines will be adopted and applied to all leases and tenancies on review as and when they are published.
9. The rental assessment model will be based on a lawful application of statute and common law. Companies will ensure that the prospective tenant or lessee is aware of the basis of the rental assessment (FMT) and how the market rent for the property is established. The setting of initial rent and its subsequent review will be handled fairly, with reasonable allowances made for costs and sustainable trade.
10. The assumptions included in the rental assessment model will be explained together with assessment procedures for rent reviews, including those matters that will be taken into account or disregarded by both parties.
11. It will be made clear in the process of profit assessment that where AWP machines are tied, and the income is shared, such income will not be included in the "divisible balance".

⁵ This should include any developments to nearby premises in the pub owning company's estate.

12. When calculating gross profits for tied pubs the prices charged to the tenant or lessee by the pub company in the relevant tied price list should be used.
13. The rateable value used in the rent assessment will be the actual rates payable where available or, if not available, the estimated rates based on FMT.
14. **UPWARDS ONLY RENT REVIEW CLAUSES (UORR):** UORR clauses will not be included in leases.

Some existing agreements may contain UORR clauses and, in such circumstances, company Codes of Practice will make it clear they will not enforce them. In addition, if lessees want a side letter/deed of variation to that effect it can be provided though at the lessee's expense. Companies will also provide lessees with the opportunity to convert to new agreements if terms can be agreed.

15. **RPI:** Where a tenancy or lease refers to indexation by reference to the RPI, Pub Companies will notify their tenants or lessees that the adjustment in the rent may be upwards or downwards, according to the movement of the Retail Price Index at the time.

DISCLOSURE AND TRANSPARENCY

16. Full disclosure of all relevant information is an essential feature of the relationship between the pub company and tenant/lessee. Pub companies will provide, as a minimum, the following information to any prospective tenant or lessee at the start of a new tenancy/lease or rent review negotiation.
17. **SHADOW PROFIT AND LOSS (P&L) ACCOUNT:** A shadow profit and loss (P&L) account will be prepared by the pub company in good faith based on reasonable assumptions.

The shadow P&L will be produced and drafted by a properly competent individual.

The shadow P&L will contain sufficient detail to enable a prospective tenant or lessee to take proper professional advice upon the terms, conditions and effect of the tenancy or lease being offered.

The shadow P&L will include full details of income streams broken down into drinks⁶, food, other (including machine income) and details of cost assumptions on wages, utilities, rates, insurance, repairs and maintenance, operational costs and "other expenses", including marketing and promotions, entertainment, door staff, licensing costs and licensing conditions.

Precise history of turnover and overheads will often not be available as such information rests with the existing or former holders of the tenancy/lease. However details of volume purchased directly from the company over the past three years will be provided where available.

⁶ Includes beer, wine, spirits and minerals

Prospective tenants or lessees will be advised about the availability of industry Benchmarking Reports which may assist with the preparation of their business plan⁷.

The same information that is provided at the commencement of new lease negotiations must be provided to all lessees at the start of a rent review negotiation (including a shadow P&L containing all the information prescribed above). In addition to a breakdown of costs, detailed information on the assumptions made on turnover by income stream must also be provided.

Any further information that is requested by prospective tenants or lessees and/or their professional advisers will be supplied subject to it being available.

Further information that tenants/lessees may request is identified at Annex B. Where such information is requested and cannot be provided, pub companies should give the reason why.

RENT REVIEW

18. All rent review clauses will be capable of upwards and downwards reviews.
19. The treatment of “goodwill disregard” will follow RICS guidance.

Any goodwill attached to the premises attributable to the tenant or lessee having achieved a greater level of business than an “average competent tenant” and the effects of the tenant’s or lessee’s improvements will be disregarded.

PUB INDEPENDENT RENT REVIEW SCHEME (PIRRS):

20. Company Codes should set out the procedures available where the rent review is not agreed including the company’s internal procedures and the option for referral to an independent expert through PIRRS or arbitration.
21. Company codes must include details about the Pub Independent Rent Review Scheme and reference to the website www.pirrscheme.com
22. Irrespective of the terms of the lease the landlord grants the tenant/lessee the right to elect for a referral to the PIRRS scheme and agrees to be bound by the expert valuation delivered through the PIRRS scheme. This will not remove the right to arbitration but the tenant/lessee will waive such a right if the option to refer to the PIRRS is taken.
23. Codes must also contain the company’s commitment to support the PIRRS scheme which is a condition of BII accreditation.

BUSINESS SUPPORT

24. Company Codes will explain how the relationship between the company and the tenant/lessee will be conducted during the operation of the tenancy/lease so that the business opportunities presented by the outlet can be exploited to mutual benefit.

⁷ Including the ALMR Benchmarking Report

Codes of Practice will describe the range of support programmes and advice which may be available through the company⁸. Such support might typically include:

- Commitment to assess capabilities and training needs of tenants, lessees and staff
- Licences and any relevant training requirements
- Business management advice (tenants/lessees will be advised to obtain professional services in areas such as finance, stocktaking, book-keeping)
- Brand promotion, merchandising and provision/ maintenance of dispense equipment
- Outlet promotion and marketing
- Procurement benefits
- Rating advice
- Landlords support - external decoration, signage, building repairs (including car parks and gardens)

MATERIAL CHANGES/EXCEPTIONAL CIRCUMSTANCES

25. Company codes will set out the company's policy for dealing with requests for assistance from competent tenants/lessees arising from circumstances where they experience business difficulties which are beyond their control.

ASSIGNMENT OF LEASES

26. The assignment of leases places obligations on both the pub company and the lessee wishing to assign his lease (assignor). This is to ensure that the potential purchaser of the lease (assignee) is supplied with the same information as would be supplied by the landlord at the commencement of a lease and is able to take his own proper business decisions about the business being offered.

Lessee Obligations:

27. Lessees wishing to assign their lease (assignors) must ensure that any assignee of their lease receives the same financial information disclosed by the pub company at commencement of the assignor's interest and actual trading figures and accounts for the preceding three years where appropriate⁹. Where information is unavailable the reason for this must be disclosed.
28. The assignor must disclose information as if he were the original landlord and will inform a prospective assignee that they must:
- ***demonstrate they have complied with pre-entry training,***
 - ***obtain qualified professional advice and produce a business plan.***

⁸ Company Codes must refer to the support provided but are not bound to provide the examples listed nor are they limited by them.

⁹ See Para 17

Equally the requirement for pre-entry training or professional advice is capable of being waived by the assignor providing that evidence is sanctioned and approved by the Pub Company.

Pub Company Obligations:

29. Companies will set out clearly how they will respond timely to requests for assignment and explain the implications for disposal of the business. Full details will be provided regarding procedures, professional support/advice available and all relevant fees. Buy back arrangements, if any, will be described and an early breakdown given of any dilapidations to allow lessees time to put right before assignment.
30. All pre-entry requirements (including holding a personal licence under the Licensing Act 2003) concerning training or evidence based certification of professional or legal advice shall be capable of being waived by the Pub Company in the case of existing lessees or tenants or experienced operators, on production of suitable evidence.
31. Pub Companies will not agree to an assignment unless the above requirements have been complied with.

DILAPIDATIONS

32. Companies will provide an early breakdown of any dilapidations to allow lessees time to put right and advise whether fixtures and fittings will be purchased and, if so, arrangements for payment.

SURRENDER

33. Companies will set out how it will deal with any requests for surrender of the lease.

BUSINESS RELATIONSHIP/DEVELOPMENT MANAGERS (BRM/BDM'S)

34. Company codes will set out provisions and commitments governing the competence and future progression of BRM's/BDM's, including qualifications and on-going training¹⁰
35. Company codes will set out a procedure for complaints and a mechanism to resolve disputes arising from the relationship between the company and the tenant/lessee.
36. Codes will set out the role of BRM/BDM's and the support and professional guidance they will provide.

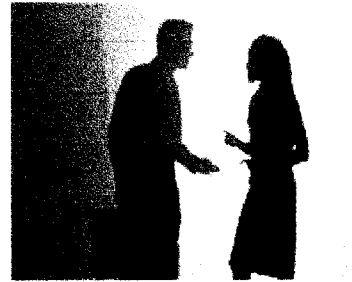
RESTRICTIVE COVENANTS

37. Individual Pub Companies will make their policy on restrictive covenants clear.

¹⁰ BII is developing an accredited training qualification for BRM's/BDM's

DISPUTES

Company Codes should explain the procedures to be adopted where either party feels that the provisions of the Code have not been followed. Where the tenant/lessee believes that he is the aggrieved party, the procedures should ensure that the matter is properly considered at an appropriately high level of management in the company concerned, and at a level of management higher than that at which the relevant decisions were initially taken.



38. The adoption of codes by companies in line with the framework code provides an adequate procedure for the resolution of differences. It is nevertheless acknowledged that in individual cases, lessees may feel that a company has not properly followed the procedures set out in its code.

39. In such circumstances, it will be open to him or his representative to send the BII a brief description of the circumstances with an explanation why the lessee believes the code has not been properly followed. The BII or FLVA will pass on this information to the company concerned and use its good offices to ensure, as far as possible, that there are no misunderstandings, or personality issues, that are standing in the way of a more fruitful dialogue between the company and the lessee or his representative.

USE OF FLOW MONITORING EQUIPMENT

(Suggested detail for inclusion in pub company protocol)

1. Details of data to be shared with tenant/lessee and frequency
2. Calibration/allowances and parameters for review
3. Evidence of buying-out, supported by the flow-monitoring equipment
4. Procedures to be followed by the company in establishing with the tenant/lessee that a breach has occurred
5. Penalties/sanctions to be applied in lieu of forfeiture of lease in the event that a breach is determined
6. How any charges will be applied
7. Authorisation of FME personnel to be given access to the premises and circumstances in which such access may be denied
8. Tampering with equipment.

**SOME IMPORTANT POINTS TO CONSIDER
WHEN TAKING OVER (OR LEAVING) A PUBLIC HOUSE¹¹**

1. Ensure you visit every part of the building before taking over
2. Signing a Tenancy at Will gives no security under the Landlord & Tenant Act - seek advice before signing and making any investment
3. Engage a solicitor conversant with licensed property leases
4. Get a structural survey if you are responsible for the repairs
5. Obtain a copy of the full Premises Licence (not just the summary) and carefully note details of all conditions imposed and trading hours
6. Obtain a copy of the Premises Licence plan and check areas covered for the sale of alcohol and provision of regulated entertainment. Pay attention to any outdoor areas
7. Carry out due diligence exercise by speaking to the Police, Environmental Health Officer and other appropriate responsible authorities to establish if there are any current issues
8. Check if there is a Highways Act Licence in place for outside tables and chairs
9. Copy of lease and next rent review date
10. Details of designated premises supervisor in situ
11. Engage a qualified accountant
12. Engage a qualified stocktaker
13. Draw up a business plan with relevant information - see below
14. Details of staff responsibilities (see below under TUPE)
15. Details of any possible outstanding claim against the business
16. Details of any equipment on hire purchase/rental agreement
17. Ensure you have full and correct insurance cover for the business
18. Apply for Gaming Licences/Permits
19. Apply for PRS and PPL licences and SKY TV if appropriate
20. Notification of changed address to licensing authority where you received your personal licence

OTHER IMPORTANT INFORMATION:

- The last three years accounts
- Last three years barrelage details
- Dilapidation report (if and when any outstanding work is to be completed)
- Health and safety risk assessment policy
- Fire risk assessment
- Disability discrimination audit
- Asbestos survey
- Portable electrical appliance test certificate (PAT)
- Five year full electrical report
- Gas safety certificate
- Energy performance certificate
- Service records of:
 - Fire extinguishers
 - Security system
 - Outside play equipment
 - Tills and all other equipment used in the business
- Complete inventory schedule (i.e. items to be left on the premises)

¹¹ Source: *FLVA Green Paper (November 2009)*

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006

The above Regulations came into force in April 2006 and place responsibility on both the transferor and the transferee. At least a fortnight before a transfer of a business takes place the transferor (present employer) must pass on certain information in writing to the transferee (new employer). It is important therefore to collect the following information and arrange to meet and consult with all staff before taking over or leaving the premises. Failure to do so will be costly.

- All employees terms and conditions
 - Employees name, address and date of birth
 - Details of when employment commenced
 - Details of service with previous employers which count
 - Any break in employment
 - Job title and duties
 - Rate of pay
 - Pay intervals (hourly, weekly, monthly etc)
 - Breakdown of hours of work
 - Any outstanding holiday entitlement
 - Details of holiday entitlement and when holiday year commences
 - Sickness scheme
 - Details of any pension scheme in operation
- Any grievance and disciplinary action that has taken place over the past two years
- Any court or tribunal cases from the last two years or any possible outstanding case the transferor might consider could be brought
- Any collective agreement that will have effect after the transfer (this might be in place when a managed house transfers to leased)
- A transferor or transferee will be held jointly responsible for the failure to consult with employees representatives, Trade Union officials or if non available then all staff

(A decision by an appeal tribunal ruled that the maximum award should be thirteen weeks pay for failure to consult with employees in a transfer.)

If the required information is not made available two weeks before the change over, the in-going licensee can take the outgoing one to a tribunal. (The award is a minimum of £500 per employee.)

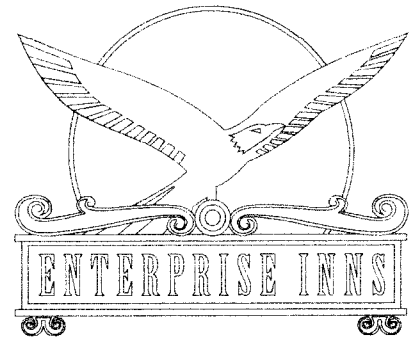
It is also important to obtain details of any staff training achievements

UTILITIES (GAS AND ELECTRICITY)

When there is a changeover at a premise the in-going business person does not have to inherit the agreements with the previous owner.

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The Letting and operating of the tied leased and tenanted pubs



**The Letting and Operating of Tied
Leased and Tenanted Pubs**

An introduction from the Chief Executive

The pub industry has seen many changes since we started Enterprise Inns back in 1991, but our commitment to the leased and tenanted business model has remained a constant theme for our business throughout this time. From modest beginnings, we can now be justifiably proud of the outstanding quality of our pub estate, located throughout England and Wales, offering an unrivalled range of locations, size and trading styles.

I passionately believe that the availability of top quality pubs for lease or tenancy offers enthusiastic, committed and entrepreneurial operators an opportunity to take on the challenges of creating and running a successful pub business without having to buy a pub and with the support, expertise and resources of a major public company committed to long term success in the pub industry and mutual profitability working alongside our "Retailers in Partnership".

The past twenty years have seen many challenges: increasing competition for the Consumer's leisure pound; more red tape and regulation, including a ban on smoking in pubs; higher taxes and duties and supermarkets selling alcohol at irresponsibly low prices. How have pubs coped with these challenges? They have simply got better and better. Compared to twenty years ago, the range of products, be it locally produced cask ales or exotic foreign lagers, has increased beyond all recognition. Pub food, once a story of crisps and soggy scampi in the basket, can now compete with the best restaurants. Standards, quality, choice: do your own market research - we all know that pubs have never been better.

For Enterprise Inns, taking part in the quality revolution has simply meant having the best pubs and, above all, attracting the very best licensees to work with us as "Retailers in Partnership".

What is this Code of Practice?

Our new Code of Practice sets out our commitments to you, spelling out in the simplest possible terms the way in which we will work together with you for mutual success in your Enterprise Inns pub.

The core values upon which we have built almost twenty years of success lead with fairness, integrity, honesty, transparency and mutual respect and these are the key themes that run through this Code of Practice.

If you decide to take on an Enterprise Inns pub, we want you to be well prepared, fully aware of the contractual relationship that you are signing up to and confident in the support that you will receive whilst working with the Enterprise Inns team. Of course, you will be accepting certain obligations and we must make sure that there is nothing in the small print to catch you out, that there are no surprises waiting around the corner. ~~We strongly recommend~~ **We strongly recommend** that you **take independent professional advice to assist** your understanding of your obligations and the protection afforded by this Code. There is a glossary of terms included in this document to help you understand any technical terms or jargon we may have used.

Our Code of Practice complies with all aspects of the UK Pub Industry Framework Code of Practice and has been accredited by the British Institute of Innkeeping Benchmarking and Accreditation Service (BIIBAS), an accreditation which will be reviewed on an annual basis to ensure that we are standing by our commitments to you. Both you and Enterprise Inns will be required to sign a certificate to confirm that the terms and conditions of the Code are fully understood and, whilst your formal lease or tenancy agreement will always be the legally binding proof of the contractual relationship between us, this Code will have effect and may be relied upon by both parties in any dispute.



Ted Tuppen CBE (Chief Executive)

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Pub Rent Review Assessment

Your Pub Rent Proposal

Pricelist

Running a pub is a serious business and we want to make sure that you are fully aware of the challenges that lie ahead. You need to spend sufficient time to ensure that you know as much as possible to help you select the right pub, the most appropriate form of agreement, the skills and qualifications that you need and the support that we will offer.

There are alternative ways of starting a career in the pub industry; you may choose to buy your own pub and operate it as a free house, or you may become an employee and work as a member of staff in a managed house. These options are not available with Enterprise, as we only offer pubs to be operated under lease or tenancy agreements, our clear area of focus and expertise since the company was formed some twenty years ago.

Pub letting particulars

We will send you our standard letting particulars, Pub Business Opportunity, for any available pub which you believe might suit your requirements. This full colour document shows a photograph of the pub, descriptions of the trading area and living accommodation, a local demographic and competitor analysis and an estimate of the rent and ingoing funds required.

To view an example of our standard letting particulars, visit www.enterpriseinns.com/cop/pubbusinessopportunity.pdf

Flexible letting agreements

All of our letting agreements offer an unrivalled range of market leading products, a choice of tied or free-of-tie options for the supply of some beers, ciders, wines, spirits, minerals and amusement machines. There are a variety of incentive mechanisms to help you to put together a letting package most suited to your particular business plan. All other supplies to the pub, notably food, are completely free-of-tie in all cases.

There are currently two different tied agreements offered by Enterprise Inns which are covered by this Code of Practice, but the commitments we make are also applicable to every current tied agreement (excluding Tenancies at Will) under which an Enterprise pub is operated. Whatever form of agreement you choose, you must ensure that you are fully aware of all of the contractual obligations that you will be signing up to, including a drinks supply agreement (product tie) and your responsibility for maintaining your pub in good condition, further details of which are explained under Repairing Responsibilities later in this Code. It is vitally important for you to understand that under any tied drinks supply agreement, in return for a subsidised rent, you may pay more for your tied drinks supplies than you would do if you were free-of-tie.

Retail Partnership Tenancy (RPT): This is a shorter form of agreement available for lets of between one and five years which is contracted out of the Landlord and Tenant Act 1954. It is excluded from any security of tenure and expires on its contractual expiry date. You are responsible for day to day maintenance, rent is subject to annual indexation by reference to the Retail Price Index (RPI) and the agreement is non-assignable.

Retail Partnership Lease (RPL): This is a substantive lease agreement available in terms of 10, 15 or 20 years. It is a protected business agreement with security of tenure where there are statutory rights to renew at the end of the contractual term. You are responsible for all non structural repairs. Rent is subject to annual indexation by reference to RPI and in some cases, a five yearly open market rent review, which can move the rent ~~upwards or downwards~~. After an initial two year period the agreement is assignable subject to obtaining our consent.

Providing that there have been no material breaches of the agreement during its term, you are continuing to meet your repairing responsibilities and are trading the business at a level which might be expected of a reasonably efficient operator, we would normally seek to enable the

renewal of your agreement (either RPT or RPL) at the end of its term, whether or not it is protected under the Landlord & Tenant Act 1954.

Full details of these agreements and their summary heads of terms, together with the range of available service, training and support packages that we offer, are available from our Recruitment team at Enterprise Inns (0800 953 0072) or visit www.enterpriseinns.com/cop/agreements

Pre-entry requirements

Before you even consider applying for a particular pub with Enterprise Inns, you need to be aware of the high standards of qualification that we regard as essential for running a successful pub business:

If you have not previously run a pub, you must as a minimum complete the **Pre-Entry Awareness / Training Course** run by the British Institute of Innkeeping (BII), www.bii.org/home **prior to signing any agreement**. You will also be required to attend our **five day Business Foundation Programme**. This induction course delivers three key qualifications – the BII Introduction to Licensed Retail Operations, the Level 2 Award in Food Safety and the BII Award in Beer and Cellar Quality, and it is our expectation that you will complete this programme **prior to commencing your agreement**. For details of our Business Foundation Programme, visit www.enterpriseinns.com/cop/training

If you are an experienced retailer but you have not attended our business induction course or an equivalent course elsewhere in the last three years, or there has been a key change in legislation, you will be required to attend our Business Foundation Programme.

The above requirements may be **waived**, at the company's discretion, if you are deemed to be suitably qualified, through experience and achievement, to rely on your judgement, or are a company of sufficient standing.

You will be required to hold a Personal Licence

You must be able to prepare and deliver to us a detailed business plan for your pub, including your plans for operating the business together with detailed profit and loss and cash flow forecasts.

You must take proper, independent professional advice in respect not only of your business plan but also with regard to the legal obligations attaching to the agreement and the property that you are taking on.

You will be required to provide evidence of your creditworthiness and of access to adequate funding to support your application for the pub and the execution of your business plan.

This Code of Practice contains a number of links to external websites which we believe are important sources of information to you, both immediately and ongoing. Electronic communication methods will be an important element of our business relationship and it is our expectation that you will maintain a valid e-mail address and internet connectivity throughout the term of your agreement with us.

Direct letting or assignment

You can take an Enterprise Inns pub either through direct negotiation and agreement with the Company or through an assignment of an existing agreement from a current Enterprise Inns licensee.

The next section, "Taking a Pub with Enterprise Inns", sets out the process to be followed when applying for your chosen pub directly from Enterprise Inns but also contains vital information for those considering taking a pub on assignment.

Taking an assignment from a current licensee is, of course, a transaction between you and that licensee. It will however result in you enjoying all of the benefits and taking over all of the obligations of that agreement and therefore requires our formal consent. We will act reasonably and in a timely manner when considering whether to give consent to assign. We will insist that you demonstrate the same high standards of training, due diligence and business planning before we would consider consenting to such an assignment, including a requirement for you to sign up to the terms of this Code of Practice.

Our comprehensive Assignee Pack has been designed to help you through every step of the process of buying a lease and illustrates how we can support your objective of achieving a satisfactory outcome.

For full details of our Assignee Pack, see Key Support Document H or visit www.enterpriseinns.com/cop/assigneepack.pdf

Once you have chosen the pub which interests you, we will share a lot more information with each other so that you can prepare your detailed business plan and we can begin to negotiate the terms on which your agreement will be based.

Pub business facts

We will send you more specific data about the pub, Pub Business Facts, including as much as five years' historic trading data covering the tied volumes purchased from Enterprise Inns and any records of gaming machine income that we have in our possession. We will also quantify any investment that we have made in the premises in the last five years and provide you with our estimates of the ingoing costs that you will need to fund upon taking over the business. We will also identify certain key overhead costs that you need to consider, such as property insurance, business rateable value and repairs and maintenance.

Pub Business Facts also gives you an indication of the agreement that we would propose to offer, together with the estimated rent and barrelage discounts that we believe would be appropriate for the pub. We will also be prepared to discuss the implications of alternative levels of discount or tie release options which you may wish to consider.

These are provided for your guidance and will be the subject of further discussion and negotiation between us. (Pub Business Facts see Key Support Document A or visit www.enterpriseinns.com/cop/pubbusinessfacts.pdf)

Pub business plan

You will be expected to produce a detailed business plan, outlining your operating and marketing plans for the pub as you intend to run it, setting out in detail your profit and loss account and cash flow forecasts. We strongly recommend that you research and use any available benchmarking data to validate the assumptions you have made in your own business plan.

We will provide you with a template business plan, our Business Blueprint (see Key Support Document B or visit www.enterpriseinns.com/cop/businessplan) which shows you the level of detail that we believe that you should include in your business plan. You may choose to present your plan in this format if you wish.

We will provide you with a comprehensive list of all the products which are available to you and the current list prices which apply.

We may be able to provide further detailed information, upon request. If you do request further information relating to the pub which we are unable to provide, we will give you a clear explanation as to why this is the case.

We will not complete an agreement with you until your business plan has been approved and signed off by a qualified and experienced trade accountant who has identified the break-even point of your business and highlighted the consequences of material changes in turnover, margin and/or costs. This is a mandatory condition of our offer and we will pay £250 towards the cost of this advice to successful applicants, provided that you engage the services of an approved and qualified advisor. We can provide you with an extensive list of such trade advisors, visit www.enterpriseinns.com/cop/pubtradeaccountants.pdf

Pub business assessment

When you have completed your own business plan, we will provide you with our assessment of the Fair Maintainable Trade (FMT) and retailer profit for the pub, using our estimates of the performance of the business that might be achieved by a reasonably efficient operator (Pub Business Assessment). Our assessment is provided for illustrative purposes only to demonstrate how we have arrived at our opinion of the rent that is appropriate for the pub. It is not under any circumstances a guarantee of potential profit.

We use the widely recognised, industry standard, valuation methods and follow the guidance published by the Royal Institution of Chartered Surveyors (RICS), including any updates or amendments as may be published from time to time.

We will disclose any benchmark information that we have used to arrive at our assessment of the appropriate level of costs in our appraisal of Fair Maintainable Trade and resulting retailer profit.

The Pub Business Assessment also shows you the options that may be available for your selected pub, depending on the agreement that we are proposing. These options may, for example, allow you to select a greater level of barrelage discount, in which case there will be a corresponding increase in the rent you will pay. You may also wish to consider tie release options for any, or all, of wines, spirits, minerals, packaged beers, packaged ciders, packaged FABs and gaming machines (if available). You may also opt for a guest ale concession which will enable you to procure cask ales from members of the Society of Independent Brewers (SIBA) for dispense through one SIBA-supplied and maintained beer engine. For more information about SIBA, visit www.siba.com

In all cases, the cost implications of the choices you make will be detailed in the Pub Business Assessment. (Pub Business Assessment, see Key Support Document C or visit www.enterpriseinns.com/cop/pubbusinessassessment.pdf)

Negotiating and agreeing terms

Once you have decided upon the various options that you believe are most suited to your business plan, we will negotiate and agree the terms on which the contractual agreement between us will be based.

Once these terms are agreed, you will complete and submit to us a schedule, Your Pub Business Plan Summary, which details the assumptions you have used in your business plan and the key terms that we have agreed between us. (Your Pub Business Plan Summary see Key Support Document D or visit www.enterpriseinns.com/cop/yourpubbusinessplan.pdf)

Before moving on to the next stage, we will both sign this schedule as a formal acknowledgement of the terms agreed between us. At this stage, you are not committing yourself to anything but we are both confirming the conclusion of our negotiations, allowing us to move on to the next stage of preparing the legal agreement which will form the contract between us.

Pre-contract form (PCF)

Once we have agreed all the key commercial terms and both sides are happy that all aspects of our future business relationship have been discussed and agreed in principle, we will set out the details of every key element in a Pre-Contract Form which will detail the terms upon which our legally binding agreement will be formalised (see Key Support Document E or visit www.enterpriseinns.com/cop/pubprecontractform.pdf).

Legal advice

A lease or tenancy agreement is a legally binding document which confers obligations and responsibilities upon both parties to the agreement and it is therefore extremely important that you fully understand all aspects of the agreement before you sign. We strongly recommend that you do not complete a tenancy agreement with us unless you have taken appropriate legal advice. You will not be able to complete a lease agreement with us unless you are able to confirm that you have taken appropriate legal advice or that you confirm in writing your decision not to do so, despite our recommendation. For more information about sourcing legal advice, visit www.lawsociety.org.uk/home.law

Independent professional industry advice

We strongly recommend that you consider membership of a professional industry body, such as the BII or the Federation of Licensed Victuallers Associations (FLVA), which provide invaluable support, training and advice to self-employed licensees. We are willing to pay the first year's membership fee for all new retailers who wish to join one of these bodies and strongly recommend that you take advantage of professional business advice throughout the term of your agreement.

For further information on the features and benefits of these organisations, visit www.bii.org/home and www.FLVA.co.uk

Responsible retailing

In an age when the widespread availability of cheap alcohol in supermarkets has contributed to headline grabbing binge-drinking and irresponsible behaviour, we see the pub, more than ever, as the "home of responsible drinking", a place where customers can enjoy great service and excellent products in a safe and hospitable environment. This means that when you take on a pub with Enterprise Inns, you commit to the highest standards of responsibility, not just to act within the law but also to ensure that you and your customers behave in a way that is properly acceptable within the community that you serve.

We regularly participate in industry-wide and government-led responsible retailing initiatives, including Drinkaware (Campaign for Smarter Drinking) and Challenge 21. We will provide information and guidance to you to enable you to utilise these initiatives within your business.

For further information see www.drinkaware.com and www.beerandpub.com/industryArticle.aspx?articleId=85

Licences

If you wish to run any pub, you must first obtain a personal licence, which is portable. Every pub needs an individual premises licence, and applications for both are dealt with by the relevant local authority. Full details of the Licensing Act 2003 and your responsibilities as a personal licence holder and the designated premises supervisor (DPS) can be found on the Department of Culture Media and Sport (DCMS) website, visit

http://www.culture.gov.uk/what_we_do/alcohol_and_entertainment/default.aspx

Your local authority website will give you all the information you need to make a licence application. If we hold the current premises licence, we will provide you with details of any specific conditions or enforcement notices that we are aware of in respect of your chosen pub. We may transfer the premises licence into your name at the commencement of your agreement, the associated costs

of which will be recharged to you. In all other cases, it is your responsibility to ensure that you are fully aware of any conditions associated with the premises licence and to undertake the transfer of the premises licence into your name at the commencement of your agreement. We strongly recommend that you take advice from a solicitor specialising in licensing.

If you are planning to broadcast copyright music, whether recorded or live, you will need to obtain the appropriate Performing Rights Society (PRS) licence (visit www.prsformusic.com/Pages/default.aspx)

If you intend to offer music via a juke box you will also require a Phonographic Performance Limited (PPL) licence (visit www.ppluk.com/en/Music-Users/). However if you are tied for such equipment our suppliers will provide the relevant licence.

You will be responsible for the costs of all licences relevant to your pub operation, and the costs of any reviews arising.

Health & safety

We take the health and safety of our employees, business partners and customers extremely seriously. Your responsibilities for the repair and maintenance of the premises you occupy are clearly defined in your agreement, and these include maintaining an adequate regime for the management and implementation of your health and safety responsibilities.

We offer a comprehensive Statutory Inspection and Health & Safety compliance service, which is mandatory in all new agreements, and is designed to assist you in achieving and maintaining compliance with your statutory obligations. Services within the scheme include annual testing of gas installations, fixed wiring, emergency lighting, fire alarm and lifting equipment as well as an annual Health & Safety audit of your business and tailor-made support to assist you with the management of Health & Safety within your business.

Services also include the development of workplace risk assessments, employee training and workplace inspections in addition to access to a 24 hour Helpline to help answer any questions, queries or concerns you may have regarding health and safety, fire safety and employment law. For further information visit www.enterpriseinns.com/cop/pubhealthandsafety.pdf

Insurance

We procure and arrange buildings insurance cover on your behalf, which enables us to provide high quality, value-for-money buildings insurance cover for every single pub in our estate, regardless of its location, reinstatement value or claims history. The costs of this cover will be recharged to your account. You are not permitted to arrange your own buildings insurance.

Each year, we will provide you with a summary schedule of the cover for your pub and advise you of the annual cost to you, which will be recharged to your account, and any licensee contributions to repairs that may be applicable. ~~If you can identify a lower price~~ policy which provides comprehensive like-for-like cover to a similar standard as that provided by us then we will agree to price match accordingly.

If you wish to seek alternative quotations, you should write to our Insurance Manager, or e-mail insurance.manager@enterpriseinns.plc.uk confirming your intention and we will send you a further copy of the policy schedule of cover, details of the reinstatement value of your pub and the sums insured and any claims history, all of which will be necessary to secure an alternative quotation. For further information, visit www.enterpriseinns.com/cop/pubinsurance.pdf

All licensees are required by law to take out Employers Liability Insurance. In addition to this,

you are required to take out insurance for public and products liability, contents (including trade inventory, stock, fixed glass, cash in machines and your own personal effects) and business interruption (including the loss of licences).

The recommended cover is usually available as a package policy from a variety of insurers. Our Insurance Manager, who is available on 0121 733 7700, or e-mail insurance.manager@enterpriseinns.plc.uk will be able to introduce you to insurance brokers who are able to help you. You must provide us with details of all your business insurance arrangements when your agreement commences and annually thereafter or at other times when requested to do so.

Service charges

Depending on the nature of your agreement, there may be mandatory service charges which will be applied to your account. Even where they are not mandatory, you may choose to take advantage of the service packages we provide in such areas as:

- Monthly accounts, stocktaking and quarterly VAT returns;
- Statutory inspection and Health & Safety compliance service;
- Cellar cooling, heating and boiler maintenance;
- Repairs and maintenance fund.

Whether mandatory or optional, the available service packages and the charges associated with them will be explained to you during our letting negotiations and will be detailed in the Pre-Contract Form. For further information on these service packages, visit www.enterpriseinns.com/cop/pubservicespackages.pdf

Trading terms

Unless otherwise stated in your agreement, rent is due monthly in advance, on the first day of the calendar month. We will agree payment terms for the supply of goods with you. The only approved method of payment is by direct debit and should you fail to pay by this method then we reserve the right to make additional charges to cover the costs of administration. Queries relating to rent or goods payments may be addressed either to your Regional Manager or your Regional Credit Control Manager who will aim to resolve your query as quickly as possible.

You will be required to lodge a deposit with us, usually to the value of three months' rent, which we will hold in accordance with the terms of your lease or tenancy agreement. We require a deposit as security for the rental obligations you will have to us and as security for the credit terms you will receive on trade purchases. In all our new agreements, you will receive interest on your deposit, credited annually to your deposit account. The rate of interest earned will be the Interest Rate (IR) minus 0.50%, subject to a minimum rate of 0.50%.

We will return any remaining balance of your deposit upon your departure from the property, after the deduction of any sums owed, which will be shown in a detailed departure statement.

Cooling off period

Starting a pub business requires significant thought and can often mean a big change of lifestyle. While our tenancy agreement allows you to give six months' notice to quit at any time during the term, a lease agreement is a much greater commitment. Therefore, if within the first six months of commencing a new lease agreement with us, you believe you may have made the wrong decision, or simply feel that the demands of running your pub were more than you had expected, you should let your Regional Manager know in writing as soon as possible. Your

agreement describes the mechanism for serving formal notices upon us. We will acknowledge your request and, providing that there have been no material breaches of the agreement during its term, we will release you from your agreement no more than six months after receiving your formal notification. In the event that we have not appointed a permanent successor within this timescale, we may purchase your fixtures and fittings at an agreed valuation, and any remaining balance of your deposit will be returned to you after the deduction of any sums owed.

The terms of this cooling off period do not apply if you have purchased your lease by assignment although it may be possible to agree terms under which you may surrender an agreement purchased by assignment.

Role of the Regional Manager

Your Regional Manager is your key contact with Enterprise Inns throughout our business relationship together. Your Regional Manager's principal task is to work with you throughout the life of your agreement to help you develop the long term sustainability and profitability of your pub. We are committed to providing you with high quality support from our Regional Managers and we provide them with ~~extensive training~~ to ensure that they possess the necessary knowledge and skills to carry out their responsibilities and to support you effectively.

In 2010 we were awarded the Investors in People Champion Standard in recognition of the quality of formal and informal training provided to all our staff and of our commitment to the continual development of our people. Our Associate Regional Manager training programme has been recognised with a National Industry Training Award (NITA) for its quality and comprehensive approach to the development of core skills within the Regional Manager's role. In addition, we continue to work with organisations such as the British Institute of Innkeeping in order to source and develop appropriate training and qualification standards to support the continuous professional development of our staff.

Your Regional Manager will be available to support your business in such areas as –

- a better understanding of your potential customers and your local competition and the provision of relevant promotion and marketing advice
- the identification of suitable investment opportunities that provide sustainable returns for both parties
- an appraisal of retailing standards, appropriate brand and category management advice and relevant staff training and development
- an appraisal of your statutory compliance, financial controls and efficiency measures

We recognise that the first few weeks and months in your new pub will be critical in establishing the foundations for your future success. Our New Retailer Welcome Pack (see Key Support Document F or visit www.enterpriseinns.com/cop/pubwelcomepack.pdf) sets out our special commitments to you in these early weeks to ensure that you get off to the best possible start.

Once you have settled in, our Regional Managers continue to be there to help you, are available by e-mail, phone or text during reasonable working hours and undertake to return all messages as soon as possible and certainly within 24 hours. You will be notified of holiday or sickness cover when appropriate.

On a structured basis, they will organise regular business development meetings with you which are designed to help you fulfil your pub's potential. These meetings are arranged to a pre-agreed frequency, generally around cycles of four to twelve weeks, which will naturally vary according to your business circumstances and requirements. A typical business meeting is likely to include; a review of your general trading performance; your profit and loss account; business development opportunities; the relative sales performance of your brand range; the training and development needs of you and your staff; but will be flexible to suit our mutual needs and relevant to current circumstances. You will gain the greatest benefit from these meetings by ensuring that you put aside sufficient time for a proper review and making sure that you are fully prepared in advance.

Your Regional Manager will also be responsible for the ongoing commercial relationship between us, including, when appropriate, the determination and negotiation of any aspects of the terms of your agreement.

In the event that you are dissatisfied with the service and support you are receiving from your Regional Manager, we invite you to raise your concerns with your Divisional Director. If you remain dissatisfied with the response you receive, please refer to the "Complaints and disputes" section below.

Brand portfolio

We offer an extensive range of international, national, regional and local brands, including an exceptional range of cask ales, and will be pleased to provide guidance on the most suitable portfolio for your business as well as appropriate training, generally provided at no cost to you, on how to store, dispense, serve and market your chosen products. We regularly review and refresh our product range to ensure that you have the optimum choice of brands with which to meet your customers' needs. Products currently available are set out in our most recent price list and we undertake to provide you with at least two weeks' notice of any changes to our product range.

Price list

Before you prepare your business plan, we will provide you with a comprehensive list of all the products which are available to you and the prices which apply at the time. We will, from time to time, need to adjust our prices to reflect market conditions. This generally happens in February each year and we will provide you with not less than two weeks notice of any such changes. The only exception to this commitment is the application of any changes to VAT or duty which will be applied on the date, and in the amounts, specified by the Chancellor of the Exchequer or on the date, or in the amounts, passed on to us by our suppliers. Any reductions in VAT or duty will be passed on in full. You will be able access your own current product and price list at any time by logging in to your private account in the Retailer Channel of our website.

If your agreement entitles you to any discounts to our wholesale pricelist, these discounts will be adjusted annually at the time of, and broadly in line with, the average increase in our wholesale prices.

Ordering

A dedicated Sales and Service Centre team member will contact you at a specified time each week to take your drinks order. We are also available to take any query you may have by telephoning 0845 601 1602 from 0700 to 1800 Monday to Friday. You can also contact us via sscsupport@enterpriseinns.plc.uk

We endeavour to provide a high quality customer service and make the following commitments:

- To call you on the agreed day at the agreed time;
- To endeavour to ensure that core products are available at all times;
- To advise you of promotional offers;
- To deal with ad hoc requirements efficiently;
- To address and resolve any queries as efficiently as possible.

Taking orders efficiently, helping you chose the best brands and take advantage of the most exciting promotions is a massive logistical exercise. You can play your part in helping it run smoothly for everyone by committing to certain actions:

- To be available on your agreed day and agreed time for placing your order;
- To have your order requirements ready when we call;
- To order sufficient stock to cover ten days normal trading;
- To ensure that your account is up to date to enable us to release your order.

For full details of our Supply Chain Service Charter, visit www.enterpriseinns.com/cop/pubsupplychain.pdf

Deliveries

Each week we deliver around 185,000 items to our pubs through a specialist drinks distribution service and all orders placed with us are electronically transmitted to our contract partners ready for picking and onward delivery.

We will endeavour to ensure that you receive your requirements as efficiently and effectively as possible, and make the following commitments:

- To deliver your order on the agreed day and within the agreed time window;
- To collect empty containers on a one for one basis;
- To deliver the goods into the cellar according to your requirements;
- When we get it wrong, we will try to put it right within a reasonable timescale.

Again, correctly delivering thousands of products each week is a huge task and, in order to help us to achieve our objectives, we need you to commit to certain actions:

- To ensure that a responsible person is available to receive and sign for the goods;
- To make sure that the delivery area meets relevant Health & Safety standards;
- To check all goods before signing the delivery note;
- To check that you have received the correct packs for packaged goods;
- To ensure that empties are stored in a secure place prior to their collection.

For full details of our Supply Chain Service Charter, visit www.enterpriseinns.com/cop/pubsupplychain.pdf

Technical services

The correct dispense of draught beer is absolutely key to quality and therefore customer satisfaction. We have produced an extensive Guide to Technical Services in which we aim to provide information relating to best practice for beer dispense, how to resolve common problems, health and safety requirements in the cellar, and other useful information. Our brand owners provide first line technical services support, however in the event of any difficulty you should contact Enterprise Inns Sales and Service Centre on 0845 601 1602 from 0700 to 1800 Monday to Friday.

For full details of our Guide to Technical Services, visit www.enterpriseinns.com/cop/pubtechnicalservices.pdf

Quality control and line cleaning

Our product range and the service level agreements we operate with our suppliers and distributors are designed to ensure that you only receive supplies of drinks products which are of the highest quality. This may mean that some products are in insufficient demand to maintain adequate throughputs with which to meet appropriate quality thresholds. In such circumstances, we may need to delist products and if this is the case we will aim to give you not less than two weeks notice of our intentions.

You will be expected to maintain high quality retail standards, including giving sufficient focus to the quality of products dispensed to your customers. In this regard you will be expected to conduct a regular line cleaning regime and we will advise you of any deficiencies in your line cleaning regime that we become aware of. In the event that you fail to maintain sufficient line cleaning standards, to the extent that remedial repairs, or even line replacements, are required, you may be recharged the cost of such works.

Ullage

In the event that you have received a faulty product, you must first register the fault whilst the product is still within its best before date. We will then process the claim for credit on your behalf.

We will register the ullage return with our distributor and the brand owner. If appropriate, a technician will visit you to verify the faulty product. We will make arrangements for the container to be uplifted and returned to the depot. A credit decision will be made once the assessment is complete and you will be informed of the decision. Credit will only be given if there is a genuine fault with the product and providing there is a stipulated minimum quantity of product remaining within the container.

For full details of our comprehensive ullage policy, visit www.enterpriseinns.com/cop/pubullage.pdf

Compliance with the terms of your supply agreement

The purchasing obligations you are bound by and the prices you have agreed to pay for tied drinks enable us to offer you a subsidised rent. We take adherence to the tie agreement extremely seriously as it is a fundamental component of our contractual agreement with you. Failure to adhere to this component of our agreement constitutes a breach of contract.

In the event that you experience an emergency stock shortage and have made every effort to secure additional supplies from us, you must discuss the matter with your Regional Manager before taking any further action. It is essential that you do not procure tied supplies from any other source without our authorisation.

If, under your agreement, we have the right to install flow-monitoring equipment, we will use the information produced to ensure that all retailers are complying with the terms of their purchasing obligations. The information produced by the equipment can also be useful to you in managing your business.

Flow-monitoring

The flow-monitoring system compares the volume dispensed through an individual line against that which has been delivered to each pub. This is achieved by the installation, at no cost to you other than a small amount of electricity usage, of a flow monitor located on each draught line which records the movement of liquid through it. The resulting data is automatically uploaded on a regular basis and is placed onto a secure web site facility and made available to you at no cost. This provides you with core information relating to each product dispensed, enabling you to most effectively manage your range of brands stocked, the line cleaning cycles you employ, the dispense "hot spots" in your bar and the product yields you are achieving, all of which can aid and enhance your stocktaking and product reconciliation.

There is clear evidence that beer lines which are regularly cleaned greatly improve the customer experience and resulting footfall into pubs. A flow-monitoring installation enables you to identify exactly when, and with what frequency, line cleaning is taking place. The flow-monitors and their associated components are all sealed units which comply with environmental health regulations in relation to food products.

Within three months of taking on an Enterprise Inns pub or having flow-monitoring equipment installed, you will receive a visit from a qualified technician who will provide you with the necessary instruction on how the system operates and how to view and use your pub dispense data via the web portal.

Monitoring and compliance procedures

If we have reason to believe that there has been a material variance between the volume of product delivered and that which has been dispensed, we will undertake a thorough investigation using all available data and other relevant evidence and will discuss with you the discrepancy in order that we can determine why such a variance has occurred. If you dispute our findings, we will not simply raise a charge at this point relying solely upon the flow monitoring data in our possession. We may require access to your delivery notes, stock records, VAT returns and/or accounts in order to complete our investigations. In each case where we are relying upon data produced by the flow-monitoring system, we will check and validate the calibration of the relevant flow-meters to ensure that the equipment is functioning correctly. You may attend and observe the calibration exercise if you wish.

If you refuse to co-operate with our request for additional information and there is no satisfactory explanation for the variances then we reserve the right to recover damages to compensate us for the volume variance and this charge may also include an administration fee. Where such a charge is raised, a copy of all relevant documents and data will be provided, identifying the volume variance and the corresponding value of compensation to be charged, including details of charges and administration fees.

We consider non-compliance with your purchasing obligations to be a very serious matter and you may wish to seek independent legal advice concerning the implications of a potential breach of contract.

In order to remedy the breach of contract that has occurred and in addition to recovering damages, we may invite you to give your formal written undertaking that you will not commit further breaches of your purchasing obligations. In certain circumstances we may require such an undertaking to be witnessed by a third party. Charges will not be withdrawn from your bank account by direct debit without your prior consent.

All flow-monitoring equipment is owned by us and any attempt to bypass, tamper with, or corrupt the system in any way is a breach of the contractual agreement and may result in further substantial charges being made.

If any breach of agreement occurs in a pub where no flow-monitoring has been installed, we may wish to install the equipment in order to be able to monitor dispense levels in the future.

Other methods of compliance monitoring

We reserve the right, under each agreement, to enter our properties at reasonable times and with reasonable notice to all areas that contain stored products or dispense equipment. We may enter the property at any time in the case of an emergency or when a breach of agreement is suspected. This action may be taken either by employees of the company or by our appointed agents.

We, or our agents, may undertake regular cellar inspections to service and maintain our flow-monitoring equipment and we may take samples of products, the wholesale cost of which will be reimbursed to you.

A number of the premium packaged products which we supply are specifically labelled for our customers and can be easily identified by their markings. We will always advise you of any changes to the packaging of such products in order that you may ensure that you are receiving the correctly marked product from our distributors.

Payment method, invoices and statements

We have clear procedures for the collection of sums due for goods and rent and there are consequences for non payment by the due date. It is important to maintain up to date payments according to your payment schedule. This will avoid the risk of disruption to your supplies and the potential breach of your agreement.

Payment method

The only approved method of payment is by direct debit. If the amount to be paid or the payment date changes, we will notify you at least four days in advance of your account being debited or as otherwise agreed. If an error is made by us or your bank or building society, you are guaranteed a full and immediate refund of the amount paid. You may cancel a direct debit at anytime by writing to your bank or building society, but you must provide us with notice of your intention to do so, your reason for cancellation, and confirmation of the method by which you will pay any monies owed to settle your account.

Should you fail to pay by direct debit, we reserve the right to make additional charges to cover the cost of administration. Details of these charges will be advised to you where necessary and may be charged should you continue to fail to make payment by the contractual method of direct debit.

Invoices and statements

We will send you an invoice detailing the charges that will be applied to your account within three working days of your delivery being made, and will confirm the transactions that have been applied to your account within ten working days of each month end. Queries relating to invoices or statements should be addressed either to your Regional Manager or your Regional Credit Control Manager, who will aim to resolve your query as quickly as possible.

For full details and examples of our invoices and statements, visit www.enterpriseinns.com/cop/pubinvoicesandstatements.pdf

Remedying non-payment

Returned direct debits must be paid by electronic bank transfer (CHAPS), or by debit or credit card. This should be paid via your Regional Credit Control Manager, within 24 hours of notification of a returned direct debit. Failure to do so will put your beer delivery at risk, as your order will have been automatically put on hold. Payment by cheque is not acceptable.

If you choose to pay by credit card, we will incur a charge from your bank, which we will recover from you by way of an administration fee. We reserve the right to charge interest on late payments at the prevailing IR plus 4%.

Allocation of payments

Payments received by the Company will be allocated to the specific invoices to which they relate wherever possible. In the event of lump sum payments on account being received, then these will be allocated to outstanding invoices as deemed appropriate by the Regional Credit Control Manager.

Property services

It is our experience that pubs in good repair and condition outperform those which are not. Ongoing repairs and maintenance of the building is therefore an essential ingredient in the success of your business.

Our property team is committed to ensuring that the pubs we offer for let are fit for purpose, their image and condition remains acceptable and that retailers are given every opportunity to maximise the trading potential of any site. We will provide you with the necessary support and assistance to ensure that your pub is maintained in optimum condition throughout your occupation.

For full details of our property services, visit
www.enterpriseinns.com/cop/pubpropertyservices.pdf

The role of Regional Property Manager (RPM)

Throughout the life of your agreement, you will be supported by a nominated Regional Property Manager, along with the services of our 24-hour property Helpdesk which may be contacted on 0870 707 1111. Our team are qualified and knowledgeable in all aspects of property maintenance, management and development, and are available to provide help and advice on all property issues, including insurance.

We engage a network of suppliers and contractors who are able to provide a diverse range of services including emergency maintenance; minor building works; major renovations and re-developments; compliance testing and utilities management. You are under no obligation to use these particular service providers and you may obtain such services from suppliers of your choice.

At the commencement of your agreement

We will hand you your pub in a condition which is fit to trade as a licensed premises and conforms to our schedule of minimum opening standards (MOS). We will provide you with all necessary statutory certificates as appropriate to the premises (gas; electricity; asbestos; energy performance) and user manuals, explaining how they are relevant to your occupation of the premises and what your responsibilities are.

If you are planning to purchase the business from a current lessee by assignment, we will have implemented a dilapidations process with the current lessee to ensure the property is in a satisfactorily repaired condition, and that you have received all relevant statutory certificates from the assignor, prior to giving our consent for the assignment to proceed. However, you must ensure that you conduct your own due diligence on the condition of the premises by taking appropriate advice from a qualified surveyor.

In some instances, in order to bring a pub into a condition agreeable to both of us, it may be necessary for us to carry out, at our cost, works to the pub once you have commenced your new agreement. These are known as Lease Support Works and are likely to be repairs to items which are close to life expiry or which might present an early financial burden to your business. The content of these works will be agreed with you in advance, and a full schedule of the items will be attached to your agreement prior to you signing up. From the date you commence your new agreement, the works agreed in your Lease Support Schedule will be binding on us and we will endeavour to deliver these in full within six months of that date.

Within the first three months of your agreement, your Regional Property Manager will conduct a thorough business review with you to outline the key elements of our ongoing property relationship. During the life of your agreement, an annual review with your Regional Property Manager will be an integral component in the ongoing maintenance of your premises and success of your business.

Repairing responsibilities

Your agreement will contain defined responsibilities for the repair and maintenance of the property you occupy. The responsibilities of each party may be specific to a particular agreement and it is essential that you fully understand and appreciate the responsibilities you are taking on under your agreement.

If you enter into a lease agreement, you will be responsible to "Put and Keep" the property into a condition which is agreed between us, in which case (unless otherwise agreed) you will be expected to "Put" the whole of the property into good condition and "Keep" it in such condition throughout the life of your agreement.

Prior to entering into your new agreement, you must ensure that you fully understand and accept the repairing obligations particular to the type of agreement you intend to sign. Should you fail to maintain the property to the detriment of the pub's trading potential or such that the property fails to comply with statutory requirements, we reserve the right to undertake any necessary works and recharge the costs to you.

The repairing responsibilities of both parties are specified in your agreement and an "At a Glance" schedule is included at Key Support Document G or visit www.enterpriseinns.com/cop/pubrepairresponsibility.pdf

Repair and maintenance fund

In order to help you manage your ongoing repairing obligations and to ensure that your pub is maintained in a good condition throughout the term of your agreement, we operate both a repair and maintenance fund and a decorations fund for all new agreements. We will establish the level of repairs and maintenance fund, and/or decorations fund as appropriate for your pub, agreeing this with you prior to the commencement of your agreement. You will make a monthly contribution into a deposit account designated exclusively for the purposes of maintaining your pub in good condition in line with your repairing responsibilities. The monthly contributions are placed into a dedicated account reserved exclusively for this purpose. You will receive interest on the balance of your Repair & Maintenance Fund credited annually to your account. The rate of interest earned will be the Interest Rate (IR) minus 0.50%, subject to a minimum rate of 0.50%. For further details, visit www.enterpriseinns.com/cop/pubrepairfund.pdf

These funds, and the contributions you make into them, are our estimate of an essential overhead cost of your business and we will reflect these costs in our Pub Business Assessment when determining the appropriate level of rent for your pub.

Property service and support packages

Cellar cooling - we offer a comprehensive cellar cooling contract designed to give you complete peace of mind by ensuring that your cellar cooling installations are maintained to a standard that provides optimum performance and efficiency. The service covers the cost of all parts and labour for all repairs or replacement, together with two planned maintenance visits a year and a Help Desk (telephone number 0870 707 1111) which operates 365 days a year.

Heating and boiler maintenance - we offer a fully comprehensive heating and boiler maintenance package which provides for an annual service of the boiler(s) and covers the cost of all parts and labour for repairs. When the equipment is due for replacement, you will be covered for the full cost of installation of a market leading energy efficient boiler which should optimise energy savings and help offset rising energy costs.

Health & Safety – we offer a comprehensive Statutory Inspection and Health & Safety compliance

service designed to assist you in achieving and maintaining compliance with your statutory obligations. Services within the scheme include annual testing of gas installations; fixed wiring; emergency lighting; fire alarm and lifting equipment as well as an annual Health & Safety audit of your business.

For full details of our available property service packages, visit www.enterpriseinns.com/cop/pubpropertyservices.pdf

Investment opportunities

There may be occasions during the life of your agreement when you feel that building alterations or the addition of new facilities would enhance the trading opportunity at your pub. You should discuss your ideas with your Regional Manager in order that we may consider your proposals and, if appropriate, agree the best route for you to progress the project.

Subject to our prior written consent, you may choose to fund and organise the project using your own funds, design team and building contractors. It will still be important for you to talk to your Regional Manager who will instruct the property team to prepare a "Licence to Alter" which documents the agreed works enabling you to progress the project at your own pace.

In the event that we agree to fund and organise the project, you will need to agree the scope of your business plan with your Regional Manager including any variations to rent or other commercial terms which may be required to reflect the investment that we are making. Your Regional Manager will then instruct the property team to prepare all necessary plans, designs schedules of works and variations to commercial terms which will be formally agreed by all parties before commencement of the project. Throughout the project, you will be supported by the property team.

For full details of our capital investment charter, visit www.enterpriseinns.com/cop/pubinvestment.pdf

Repairs /

Depending on the nature of your agreement, you will be expected to either "Put and Keep", or properly maintain, the business premises (including living accommodation) in a safe and compliant condition for the duration of your occupancy. The repairing responsibilities of both parties are specified in your agreement, and an "At a Glance" schedule is included at Key Support Document G or visit www.enterpriseinns.com/cop/pubrepairresponsibility.pdf

At the end of your agreement

When your agreement is due to expire, or an early exit arrangement is agreed, we will inspect the premises to ensure that it has been maintained in keeping with the terms of the lease repairing obligations. Issues arising out of this inspection will be brought to your attention early enough to provide you with the opportunity to remedy these, and in any event not less than three months prior to your departure. This process also applies if your agreement is capable of renewal.

At the point of assignment

Should you choose to sell (assign) your interest in the business, the condition of the premises will be an important factor. We will inspect the premises to ensure they have been maintained in keeping with the terms of the agreement. This will ensure that the building is in a safe and

compliant condition for the new occupants. Issues arising out of this inspection will be brought to your attention early enough to provide you with the opportunity to discuss them with your own surveyor and to remedy them prior to the sale of the lease.

For full details of our Dilapidations Charter, visit www.enterpriseinns.com/cop/pubdilapidations.pdf

Retailers in partnership – business support

We either provide or can help you to access a diverse range of support services and benefits which have been designed to help you make your business more successful and your life a little easier. Many of these services are exclusive to our retailers and are either provided free of charge or at very competitive prices.

We frequently consult our retailers to ensure that the range and quality of these services remain valuable and relevant to your business needs.

A selection of service and support packages is attached to the letting particulars for each pub. For further details of our current range of business initiatives and support services, visit www.enterpriseinns.com/cop/pubsupportpackages.pdf

Gaming

In the majority of our pubs you may opt to be free-of-tie and therefore pay an annual tie release fee in respect of all gaming machines.

If however, you are tied for the supply of gaming machines, we provide a full installation, collection and management service for both digital and analogue equipment through a range of nominated suppliers who operate to agreed standards of performance encompassing investment, service quality, security and equipment performance. Compliance with these standards is monitored and managed by our gaming team. Income performance reviews with operators are carried out at local and national level and relevant information and suggestions for improved performance are provided to retailers at business review meetings.

Where gaming income is shared between us, your share of income will be excluded from our assessment of Fair Maintainable Trade which results in a “divisible balance” from which rent is deducted. We will, however, show our estimate of the machine income that would be retained by you in our assessment of the retailer profit which might be derived from the pub. This is clearly shown in the Pub Business Assessment, Key Support Document C or visit www.enterpriseinns.com/cop/pubbusinessassessment.pdf

Where you retain all gaming income, including if you are free-of-tie for gaming machines, this will be included in the “divisible balance” from which rent is deducted.

If you are tied for the supply of gaming machines, we will provide you with a comprehensive description of the arrangements for all gambling and gaming services for your pub, including:

- Your obligations as a licensee;
- The number, type and location of machines within the pub;
- How income is apportioned between us;
- How operating costs are charged to our share of income;
- Advice on how to maximise your machine income;
- Terms of supply, supplier list and supplier operating standards;
- The arrangements for cash collections;
- Income monitoring and the disclosure of information;
- Advertising and promotion rights.

In any new agreements which are tied for the supply of gaming equipment, income will typically be shared as follows:

- Amusement with Prizes (AWP) – 33% to you, the balance to us from which we pay rent to the supplier;
- Skill with Prizes (SWP) – 20% to you, 20% to us and 60% to the supplier;
- Juke boxes – after the payment of any agreed front moneys to suppliers, 25% to you, 25% to us and 50% to the supplier;
- Pool tables – after payment of rent to the supplier, 50% to you and 50% to us.

To view a sample Gaming Consent Letter, containing all of the relevant information, visit www.enterpriseinns.com/cop/agreements

For further information concerning gaming machines, whether tied or free-of tie, visit www.enterpriseinns.com/cop/gaming

Rent reviews

The mechanism by which rent may be varied is specified in your agreement. In most agreements, rent is adjusted annually on the anniversary of the agreement, in line with the RPI. All our tied lease or tenancy agreements issued since 2005 provide that RPI adjustments may be upward or downward. Furthermore, all our tied lease or tenancy agreements issued since 2005 provide that rent may be adjusted **upwards or downwards at cyclical review**.

In **upward** tied agreements, where express provisions exist concerning **upward** only adjustments to RPI and cyclical reviews it is our policy to conduct such reviews on an upward or downward basis. Notwithstanding our approach to such clauses in tied agreements, and in order to ensure that no upwards only provision can be relied upon by any landlord successor, you may choose to remove any such clause from your tied agreement by Deed of Variation, the actual costs of which will be recharged to you.

If your agreement provides for a cyclical review of the rent to a pre-determined timeframe, usually three or five years, we will aim to provide you with **12 months' notice of the review date**.

We will prepare our own **assessment of the FMI** and retailer **costs** for the pub, using our estimates of the performance of the business that might be achieved by a reasonably efficient operator, using our tied price list and any discounts that are applicable to your agreement and the actual business rates which apply to your premises (if available). We will also set out our opinion of the open market rent applicable to the premises, and provide you with our rent proposal (Pub Rent Review Assessment, Key Support Document I or visit www.enterpriseinns.com/cop/pubrentreview.pdf) whether above or below the current rent, and aim to provide this to you in writing not less than six months prior to the review date. These assessments are prepared by your Regional Manager who is fully trained in making such appraisals, assisted and overseen by a Divisional Director. **We use** the widely recognised, industry standard, valuation methods and follow the guidance published by the **RICS**, including any updates or amendments as may be published from time to time.

In the event that you are achieving a greater level of trade than that which we believe would be achieved by a reasonably efficient operator, we will disregard this level of outperformance from our rent assessment.

If you have, with our written permission, invested in structural improvements to the premises which have had a beneficial impact on the performance of the business, the effect on rental value attributable to such improvements will be disregarded in our rent assessment.

We will provide you with a template proposal document (Your Pub Rent Proposal, Key Support Document J or visit www.enterpriseinns.com/cop/rentproposal.pdf), in exactly the same form as our Pub Rent Review Assessment, to enable you to consider and prepare your own view

as to the appropriate rent for the premises. Within two weeks of issuing our Pub Rent Review Assessment, your Regional Manager will aim to make an appointment to discuss our Pub Rent Review Assessment and Your Pub Rent Proposal with you. We will ask you to provide us with a copy of your latest accounts, and commit to you that such information will not be used for any purpose other than gaining a clear understanding of your business, in particular your costs, for the purposes of an open and transparent rent review negotiation.

We will discuss, in confidence, any comparable letting and rent review evidence we may have, but we will not disclose confidential trading information in respect of any other pubs in our estate. We will disclose any benchmark information that we have used to arrive at our assessment of the appropriate level of costs in our appraisal of Fair Maintainable Trade and retailer profit.

Once we have agreed terms, we will promptly complete the appropriate legal documentation.

At the same time we may offer you a choice of an entirely new agreement, with a range of discount and tie release options, and if you elect to pursue this route then we will provide you with a Pub Business Assessment, which will form the basis for negotiating any such new agreement.

If you do not wish to start a completely new agreement and if we fail to reach agreement on the level of rent which will apply to your existing agreement until the next cyclical rent review, the mechanism for resolution is described in your agreement. However, providing that you have, in good faith, made a formal and properly justified rent offer to us and regardless of the explicit terms of your lease in relation to rent reviews you may opt, entirely at your discretion, to refer the matter to the Pubs Independent Rent Review Scheme (PIRRS) for determination.

PIRRS offers an accessible, independent, low cost rent review resolution service. Capped fees enable both parties to resolve disputes in a fair, affordable and timely manner.

Upon opting to resolve a rent review dispute via PIRRS, both parties will be required to renounce any right to arbitration or referral to original final offers by signing a deed of variation. Both parties must then contact the PIRRS administration team to request the PIRRS information pack and application form.

You will be asked to begin proceedings by completing your PIRRS application form and selecting your preferred independent valuer from those nominated by the PIRRS board.

We recognise the costs associated with a third party determination of rent, and therefore during any such third party process we will continue to seek negotiated terms with you on a "without prejudice" basis, in order to avoid costs for both parties wherever possible.

For full details of the Pubs Independent Rent Review Scheme, visit www.pirrscheme.com
In the event that we are unable to agree terms such that the review due date passes, rent remains payable in full at the current rate. If the rent increases once settled, interest may be payable by you at the IR + 2% on any arrears due. If the rent reduces once settled, interest may be payable by us at the IR +2% on any credit owed.

Renewing your agreement

If a tenancy or lease which is contracted out of the Landlord & Tenant Act 1954 comes to an end, the occupier must leave the premises if terms for a new tenancy or lease have not been agreed and completed in advance.

If a tenancy or lease is protected under the Landlord & Tenant Act 1954 it cannot end except as a result of formal notice being served, either as a section 25 notice (by the landlord) or a section 26 request (by the tenant or lessee). You are entitled to renew your agreement on substantially the same contractual terms and conditions, subject only to appropriate modernisation of the agreement and agreement of a new open market rent and term.

Providing that there have been no material breaches of the agreement during its term, you are continuing to meet your repairing responsibilities and payment terms and are trading the business at a level which might be expected of a reasonably efficient operator, we would normally seek to either offer a similar agreement or enable the renewal of your existing agreement at the end of its term, whether or not it is protected under the Landlord & Tenant Act 1954.

We will aim to remind you not less than 12 months prior to the end of the term of your agreement, of the choice available to you which might include the continuation of a protected lease on the current lease terms. We will use our best endeavours to agree terms with you either to renew your current lease, or to commence an entirely new, alternative lease. We will conduct these negotiations with you in exactly the same manner as described in the Rent Reviews section above.

If formal notice has been served by either party or we are unable to agree terms for the renewal of a protected agreement before the expiry of the current lease, the matter must be referred for determination by the Court.

In all matters relating to the renewal of a lease, we recommend that you seek appropriate independent legal advice.

Consequences of breaching the agreement

The agreement we have negotiated with you, and which you have entered into, is a legal contract which brings with it explicit commitments. Any breaches of these contractual commitments will be taken extremely seriously and may, as a last resort, result in legal proceedings to forfeit the agreement, repossess the premises and seek damages and costs.

In certain circumstances, it may be that an injunction to restrain breaches of covenant is an appropriate mechanism to regularise your continuing occupation of the premises. If we do commence any legal proceedings, it may be possible to settle these proceedings without the need for either party to attend Court by way of a Consent Order, the costs of which will be sought from you. A Consent Order, which is agreed between the parties and which is enforceable by the Court may lead to resolution and reinstatement of the lease if fully complied with.

Ultimately however, failure to comply with the explicit terms of the agreement may put your business and home (if you live at the premises) at risk.

Complaints and disputes

The requirement of each party to sign this Code at the outset of our business relationship is an indication of the importance we place on both its spirit and content. It is not designed to replace the conditions set out in your lease or tenancy agreement, which are specific to you and which are binding throughout the term, but it is intended to play a pivotal role in the conduct of our future business relationship.

We regard this Code as an important element of the agreement between us and, in the event of any dispute or disagreement between us, we expect the content of this Code to be taken into account by any mediator, review body, independent expert, arbitrator or, in the unlikely event that legal proceedings may be required to resolve matters between us, the Courts.

Failure to fulfil your responsibilities under your agreement or this Code could adversely affect the nature of our business relationship and jeopardise the support which we endeavour to provide to you throughout your tenure. In the event of a material breach of the terms of your agreement, the protection afforded to you under this Code may be withdrawn, in which case you will be notified in writing.

If you have any concerns or cause for complaint or feel the provisions detailed in this Code have not been followed, you should first contact your Regional Manager, who will seek to resolve the problem as quickly as possible. If you are still unhappy, or cannot reach agreement with your Regional Manager, you should escalate the matter to your Divisional Director, Managing Director (Operations) or ultimately, the Chief Operating Officer.

In the event that you continue to believe that we have failed to adhere to our responsibilities or obligations under this Code, you may submit a complaint in writing, providing full details of the circumstances of your grievance, to BIIBAS. They will pass this information to us and use their good offices to ensure, as far as possible, that there are no misunderstandings or personality issues that are standing in the way of a more fruitful dialogue between us.

Change of circumstances

Throughout the term of your agreement, you will be expected to demonstrate that you are fully compliant with all aspects of your agreement and that you are doing everything possible to manage your business efficiently and effectively.

If your circumstances change in any way that might affect your personal or premises licence or the continued operation of the pub, you must inform your Regional Manager as soon as possible. We can then review with you the issues affecting your business and seek to identify the most appropriate manner in which we can assist you.

Similarly, if you experience financial difficulties at any time during your tenure, you should inform your Regional Manager of your circumstances as early as possible. In order that we may fully assess your situation, you will be expected to provide detailed information and disclosure from which we will aim to devise an appropriate action plan as quickly as possible. We will confirm to you, in writing, the detailed information that we require and the timescale to which we will aim to respond to you. Our response may be to propose an adjustment to your rent or the discounts applied to tied supplies. Such adjustment, which may be temporary and personal, will be designed to assist you through the period of financial difficulty and may be conditional upon the implementation of specific actions designed to improve the operational performance and/or financial controls of the business. If there has been a material and permanent detrimental change to your business, caused by circumstances which are outside of your control, then such adjustment may, at our discretion, be applied until the next cyclical rent review by Deed of Variation or by way of an entirely new agreement.

Assigning the agreement

Most leases are assignable, meaning that you may choose to sell your interest in the business for the remaining term of your lease to a third party. As with the sale of any business, you must take appropriate professional advice in arriving at such a decision, and you should give us notice of your intentions as soon as possible. You will not be able to assign your lease without our consent.

It is your responsibility to deliver disclosures to any potential assignee in accordance with the UK Pub Industry Framework Code of Practice, and we will insist that any potential assignee meets the same pre-entry requirements as would be expected of anyone taking an agreement directly from us. This means that you will be required to provide the same information to the purchaser (assignee) as would be supplied by us at the commencement of a lease, together with actual trading figures and accounts for the preceding three years if appropriate. To view the UK Pub Industry Framework Code of Practice, visit <http://www.beerandpub.com/industryArticle.aspx?articleId=222>

We would not normally allow an assignment to occur within the first two years of an agreement, or within two years of a capital investment funded by the Company. However, providing that there

have been no material breaches of the agreement during its term, and that you are continuing to meet your repairing responsibilities we would normally seek to enable the assignment of your agreement.

Our comprehensive guide, *Selling your Lease*, has been designed to help you through every step of the process and illustrates how we can support your objective of achieving a satisfactory outcome. Visit www.enterpriseinns.com/cop/pubsellingyourlease.pdf

Surrendering the agreement

Other than as described in the "Cooling off period" section above, there may be circumstances whereby you wish to surrender the remaining term of your agreement. Under the terms of the Retail Partnership Tenancy, you may do this at any time by providing us with not less than six months' notice of your intentions.

Under the terms of the Retail Partnership Lease, there are no rights to surrender the lease. However providing that there have been no material breaches of the agreement during its term, and that you are continuing to meet your repairing responsibilities we would normally undertake to consider any request you might make.

We may be able to help you to assign your agreement or alternatively we may be able to agree a timetable over which we aim to recruit a new retailer to take over your pub, under which circumstances we would normally charge a surrender fee equal to three months' rent.

Buying your pub

Whilst we are committed to the long term ownership of pubs occupied under lease and tenancy agreements, we are prepared to consider any serious offer that you wish to make to purchase the pub that you are operating. If you have been in occupation for at least three years, have complied with all the terms of your agreement and maintained comprehensive accounting records, you may submit a formal offer in writing, with proof of funding for the purchase and we undertake to give this offer our full consideration.

Restrictive covenants

If we sell a pub, whether or not to the current lessee or tenant, we do not apply any restrictive covenants which would prevent the continuing and future use of the premises as a pub.

Our over-riding aim is to enjoy a mutually profitable, open, respectful and honest working relationship with all of our Retailers in Partnership, based upon a shared commitment to abide by the obligations, responsibilities and ways of working that feature throughout this Code of Practice.

The Enterprise Inns team is committed to your success in your pub and we will do everything we can to make sure that your business and your relationship with us is not only profitable but also fulfilling and enjoyable.

We very much look forward to working together.

Assignment	The legal transfer of a lease agreement from an assignor (seller) to an assignee (buyer)
AWP	Amusement with Prize
Beer engine	The mechanical device that is used to draw cask-conditioned ale from the barrel to the glass, also known as a hand-pull
Benchmarking	Using relevant data sources in order to validate key assumptions, for example gross margins and operating overhead costs. Sources of such data include the Association of Licensed Multiple Retailers (ALMR)
BII	British Institute of Innkeeping
BIIBAS	British Institute of Innkeeping Benchmarking and Accreditation Service
CHAPS	Clearing House Automated Payment Scheme
Contracted out	Excluded from security of tenure under the Landlord and Tenant Act 1954
DCMS	Department of Culture, Media and Sport
DPS	Designated Premises Supervisor
FLVA	Federation of Licensed Victuallers Association
FMT	Fair Maintainable Trade
Ingoing funds	The cleared funds required to purchase the inventory of fixtures and fittings, stock and glassware as well as funding any deposits and other associated costs and expenses
IR	Interest rate which is the Bank of England Base Rate
Lease	An assignable agreement usually with a term of ten years or more
MOS	Minimum opening standards
	<ul style="list-style-type: none"> Statutory Compliant <ul style="list-style-type: none"> Electrical Certification Fire Alarm Certification (if fire alarm is installed) Emergency Lighting Certification (if emergency lighting is installed) Gas Safety Certificate Asbestos Register Fire Extinguishers tested Lift / Hoist Safety Certificate – to be isolated until tested Lock change - all external doors and internal security doors (cellar/private accommodation) to be included Broken Windows – reglazed Catering Specialist – test catering equipment for electrical and gas safety Wind and Water Tight – basic repairs to roofs, guttering, windows and doors Safe Property – assessed for dangerous elements which could cause harm to the general public. Essential repairs to be carried out as emergency works. Remove all rubbish – including trading areas, private accommodation, cellars, external areas Intruder Alarm – tested and left in working order Habitable Private Accommodation – left clean and in good decorative order, minimum provision to be one bedroom, lounge, bathroom, kitchen
NITA	National Industry Training Award
PIRRS	Pub Independent Rent Review Scheme
PPL	Performing Rights Society
Put and Keep	The requirement to put those items of a building, which are a tenant or lessee's repairing responsibility, into repaired condition throughout the term of the agreement regardless of the condition of the items at the start of the agreement
RICS	Royal Institution of Chartered Surveyors
RPI	Retail Price Index

RPL	Retail Partnership Lease
RPT	Retail Partnership Tenancy
SIBA	Society of Independent Brewers
Subject to Contract	The need to complete a formal written contract in order to record agreement
SWP	Skill with Prize
Tenancy	A non-assignable agreement usually with a term of between one and five years
Tenancy at Will	A short-term tenancy agreement which may be terminated without notice by either party
Ullage	Beer that has been delivered in a condition which is unfit for sale

APPENDIX B .

INDEPENDENT PUB CONFEDERATION

of publicans, consumers and small brewers

R Vickers Esq
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Sheffield
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25th May 2012

Dear Rodger

We understand as the new chairman of the PICAS panel you will be considering complaints relating to pub industry codes.

The BBPA have recently confirmed that their Industry Framework Code revisions, soon to be released in draft form, will not offer an free of tie, guest beer or machine tie release options. Various groups representing lessees and tenants consider that, in view of the latter, the BBPA's IFC will not address the Government and industry expectation that it will rebalance risk and reward.

There is a requirement within the IFC to follow RICS guidance on rent valuation procedure and this may be seen by some as having the potential to deliver the desired effect of rebalancing risk and reward.

The RICS stated that, if followed correctly, the result of rent guidance should ensure that a tied operator is no worse off than a non tied operator. David Rusholme confirmed to the BISCUM that the guidance had put firm guidance in place in relation to this principle. It seems there is some dispute that the guidance refers to this matter at all and as a result the rent valuation process seems open to a various interpretations allowing manipulation or even abuse of the rent assessment process.

The above, coupled with the fact that guidance is not mandatory on members and the RICS do not seek to ensure guidance compliance from non members seems to render the IFC condition to follow guidance as unenforceable and an empty promise.

I would be grateful if you could confirm how you envisage PICAS will be able to address and consider code breach complaints in relation to pubcos or brewers not following RICS guidance given that the guidance is neither clear or enforceable.

Is it your understanding that the RICS guidance, seeks to ensure a rental result that countervails the tied product price and that if followed correctly this should leave the tied tenant no worse, or better, off than if they were non tied ?

Yours sincerely

Simon Clarke
Campaign Manager and Secretary