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Letter to BIS Select Committee following the Call for Evidence - 7 November 2012

Rodger Vickers
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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?

- 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.

A handwritten signature in dark ink, appearing to read 'VINCE CABLE', with a small mark above the 'C'.

VINCE CABLE

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

Letter to BIS Select Committee following the Call for Evidence - 19 December 2012



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19 December 2012

Dear Adrian,

SELF REGULATION OF THE PUB INDUSTRY FRAMEWORK AND COMPANY CODES

Further to my appearance in front of your committee, and my subsequent letter, I wrote to Rodger Vickers (Chair of the Pubs Independent and Conciliation and Arbitration Service – PICAS) on 7 November, copying the letter to British Beer and Pub Association (BBPA), the British Institute of Innkeeping (BII), the Association of Licensed Multiple Retailers (ALMR), the Federation of Licensed Victuallers Association (FLVA), the Guild of Master Victuallers (GMV) and the Independent Pubs Confederation (IPC). My letter asked for evidence on how the self-regulatory approach announced in December 2011 was working.

I received 19 responses to the letter. Regarding the elements of the self-regulatory approach I received the following evidence:

- Version 5 of the Industry Framework Code was made binding in contracts at Christmas in 2011. Some respondents were not convinced that the code was indeed legally binding, though all large pub companies have said that they will be bound by it. The pub companies all wrote to their tenants in December 2011 to inform them of this change. Since then there has been no co-ordinated communication to tenants about their rights under the Code. At least one pub company incorporates it into training and some licensee groups actively promote it to their members; however, some groups who do not support self-regulation either don't mention the Code or talk about the Code negatively.
- The FLVA, ALMR, GMV and BBPA are negotiating Version 6 of the Code, and see opportunities for further improvements. The IPC was involved in early meetings with the BBPA but this engagement lapsed due to a disagreement as to whether the question of whether or not there should be a free of tie option was open for discussion.
- PICAS was launched in March 2012, and became operational in June 2012. It has so far heard two cases (both found against the pub companies), with further cases pending. One of the two successful claimants said "The administration of the PICA service was straightforward and efficiently handled and the communication was clear from the start and up to the panel hearing. The actual hearing [chaired by Rodger Vickers] was

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

- The British Institute of Innkeeping (BII) have established their code reaccreditation process, and it will begin in late 2013.
- A new Pubs Advisory Service has been established by an independent tenants’ group; however, it is not clear from the consultation how substantive a service this provides to tenants. The BII and FLVA are also exploring setting up their own advice services. A number of respondents thought that there was scope for having a range of services in the market - several suggested the possibility of a Board overseeing these services to set minimum standards.
- Some respondents believe that unless the issue of the beer-tie is addressed, with all licensees given a free-of-tie option with open market rent review, the issues in the industry will remain.
- A few respondents questioned the process of determining rents. Version 5 of the Code requires that rents must be set in accordance with RICS guidance but some respondents believe the guidance is open to interpretation.
- Several bodies of the industry are negotiating over an Industry Governance Board, which would oversee the operation of the Industry Framework Code. This would go further than the self-regulatory deal announced last November, but discussions have faltered on two issues: firstly; discussions around who should sit on the Governance Board, and whether it should be a pre-requisite to have signed up to the Code; secondly; whether issues relating to the tie should be included in the Code.

Having considered the evidence, although the industry has implemented Version 5 of the Code and made other improvements, notably on setting up PICAS, the changes are not as far-reaching as I would have liked and do not appear to have engendered the culture change that is needed. Many of the responses I received show clear evidence that significant numbers of individual publicans are continuing to face serious hardship and difficulties in operating in this industry.

At present, I am considering the possible options that are available. I recognise the valuable role that the Committee has played in highlighting this issue, and will write again in January outlining how the Government intends to take forward this issue.

I have copied this letter to the nineteen individuals and organisations that responded to my call for evidence.



VINCE CABLE

The Rt Hon Vince Cable MP

Secretary of State for Business, Innovation and Skills

Letter to BIS Select Committee following the Call for Evidence - 8 January 2013



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8 January 2013

Dear Adrian,

PUB COMPANIES AND LICENSEES

Following my letter of 19 December 2012, I am writing to inform you that, following the recent call for evidence, I have decided to consult on establishing a statutory Code and Adjudicator to oversee the relationship between pub companies and licensees, in line with your Committee's recommendations of September 2011.

I recognise that over the few past years, there have been serious concerns surrounding the pubs industry, particularly focusing on the relationship between large pub companies and their licensees. The self regulatory approach, which was announced by the Government in November 2011, has not been sufficiently far-reaching and does not appear to have engendered the culture change that is required, with many individual publicans continuing to face significant hardships and difficulties. Therefore, further government action is required in order to maintain a level playing field in the business environment.

Although many pub companies behave well, the evidence I have received makes it clear that in too many cases licensees are being exploited and squeezed, through a combination of unfair practices, lack of transparency and a focus on short-termism at the expense of the long-term sustainability of the sector. This behaviour, especially alongside the many other challenges facing the sector, risks damaging the British pub industry, which not only consists of small businesses employing hundreds of thousands of people across the country but also contributes substantially to community spirit and cohesion.

After considering the various options, I have therefore decided to consult on establishing a Statutory Code and an independent Adjudicator for the pubs sector to govern the relationship between large pub companies and their licensees. I intend to publish the formal consultation in spring; however, I will outline the broad framework of the proposed policy below.

The proposed Code will be based on the existing Industry Framework Code, but it will be strengthened to include both an overarching fair dealing provision and also the fundamental principle that 'a tied licensee should be no worse off than a free-of-tie-licensee.' This will have particular significance with regards to rents, as the consultation will propose that guidance issued by the Royal Institute of Chartered Surveyors must be interpreted in the light of that principle. This will help protect small businesses – the many thousands of publicans across the country – who may currently be disadvantaged.

The proposed Adjudicator will be based on the model of the widely-welcomed Groceries Code Adjudicator, and will have the power and function to:

- arbitrate individual disputes between large pub companies and their licensees, including about whether or not a rent review has genuinely been conducted on an 'open market' basis, in accordance with the new statutory Code;
- carry out investigations based on complaints that have been received, and have wide-ranging powers to require information from pub companies during an investigation;
- where an investigation finds that a pub company has breached the Code, impose sanctions – including, in the case of severe breaches, financial penalties – on that company;
- Publish guidance on when and how investigations will proceed and how these enforcement powers will be used;
- Advise pub companies and licensees on the Code;
- Report annually on his or her work;
- Recommend changes to the Code.

In order to place the most proportionate burden on business, I currently consider that it would be most appropriate for this new regulatory regime should apply to all pub companies with a tied estate of more than 500 tied leases, thereby targeting the companies with the greatest market power and exempting smaller companies, about whom very few complaints have been received and who, from the evidence received thus far, are widely recognised as behaving responsibly. I am therefore intending to consult on that basis.

I would also like to be clear that I am not proposing to abolish the beer tie. The evidence strongly suggests that the tie, per se, is not the issue: when operated as envisaged and fairly, it is a valid business model being used responsibly by companies both large and small and, were it to be removed, the British brewing industry could be significantly disadvantaged. What is clear is that it is the abuse of the tie, like the abuse of rent calculations and other factors, that is causing problems in certain circumstances. Accordingly, the Government's proposals would address abuses of the tie, through enshrining the principle that 'a tied licensee should be no worse off than a free of tie licensee' in the Code, whilst not impinging on the business practices of companies that are using the tie responsibly. The challenge is to do this and we will be consulting on how to do this.

I trust that you and your Committee will welcome these proposals which have the potential to make a significant difference for publicans, the pub industry and community pubs all over the country. I would like to thank you for the pivotal contribution you and your Committee have

made to the development of this policy and look forward to receiving your input into the coming consultation.

I will be placing a copy of this letter in the library of the House.

A handwritten signature in black ink, appearing to be 'Vince Cable', written in a cursive style.

VINCE CABLE

The Rt Hon Vince Cable MP
Secretary of State for Business, Innovation and Skills