Government Response to the House of Commons Business, Innovation and Skills Committee's Tenth Report of Session 2010–2012: Pub Companies

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Pub Companies: Government Response to the Business, Innovation and Skills Committee's Tenth Report of Session 2010–2012

Executive Summary

The Government thanks the Business, Innovation and Skills Select Committee for its scrutiny of the reforms made by the pub industry up to June 2011. The Committee identified that there remain a number of concerns in the industry that the industry has not yet addressed and recommended that the Government legislate to make the Industry Code statutory and to establish a code Adjudicator.

In 20 July 2010, this Government confirmed that "they would take action if [the Select Committee's] findings were that the pubcos were not acting properly within that Code." The question that the Government has had to consider is what type of action would be most appropriate.

In determining the most appropriate course of action, Government has borne in mind the following principles:

- That the OFT has found no evidence of competition problems that are having a significant adverse impact on consumers and therefore the Government is not minded to intervene in setting the terms of commercial, contractual relationships.
- That legally binding self-regulation can be introduced far more quickly than any statutory solution and can, if devised correctly, be equally effective.

The Beer Tie

In its report, the Committee has made a number of criticisms of the beer tie; that is, the practice whereby pubcos oblige a licensee to purchase beer through the pubco rather than on the open market. The Government would note that the beer tie is considered lawful practice and that whether or not a lease or tenancy includes a tie is a commercial decision on the part of both parties. Furthermore, tied pubs are run under widely different types of agreements: in particular the long term lease model and the traditional tenancy model of operating offer very different terms and fulfil different market needs.

Whilst the Government recognises that pubs face a wide range of challenges in the current economic climate, it sees little evidence to indicate that tied pubs are more likely to close, as has been suggested. In addition, particularly in the case of the traditional tenancy model, the tie may actually play an important role in safeguarding the future of Britain's smaller breweries. Data produced by CGA Strategy clearly shows that between December 2008 and June 2011 more free-of-tie pubs closed than tied pubs, both in absolute figures and as a percentage of the total number of pubs in that category.

The Challenges

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.

The Committee identified a wide range of concerns in this area. It is clear that, as the Committee has stated, significant reforms are needed quickly, particularly around

transparency, dispute resolution and the legal status and strength of the Code. In seeking to address these concerns, the Government has borne in mind the principles set out above.

The Government's response

Following intensive discussions with Government, the industry has committed to implement a range of substantive reforms. The key elements of this self-regulatory package are:

- **The Industry Framework Code to be made legally binding,** by incorporating the Code by reference into new agreements and via a collateral contract for existing lessees.

- **A Pub Independent Conciliation and Arbitration Service (PICAS) to be set up under the umbrella of PIRRS.** PICAS would provide mediation and arbitration on any matter relating to the Framework or Company Codes and the results would be binding on both parties.

- **A three-yearly reaccreditation process for Company Codes**, administered by BIIBAS through examination of annual compliance reports and spot-checks.

- **A new Pubs Advisory Service (PAS),** which would provide an initial offering of free advice to all prospective and current tenants and lessees.

- **A strengthened Framework Code**, with a particular focus on FRI leases. This will bring about immediate improvements in particular in areas such as rent, insurance, Business Development Manager (BDM) training, dilapidations and pre-entry training, combined with a commitment to discuss further improvements with industry partners.

These reforms will directly address the concerns identified by the Committee. Making the Code legally binding and setting up an independent arbitration service will deliver the same outcomes as the Committee's two principal recommendations – to make the Industry Code statutory and to establish a code Adjudicator.

Making the Code legally binding will have the same outcome as making it statutory, as it will allow the Code to be enforced through the courts. Similarly, the establishment of PICAS and PAS, together with the three-yearly re-accreditation process enforced by spot-checks by an independent body, will have a similar effect as establishing a public Adjudicator. This self-regulatory approach has the further advantages of delivering reforms much more quickly than could be done via statute, and with greater flexibility to promptly address industry needs that arise in the future.

The Government recognises and thanks the Committee for its focused scrutiny on this sector which has been essential in driving the necessary improvements. It 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.

Introduction

1. The Government thanks the Business, Innovation and Skills Select Committee for its scrutiny of the reforms made by the pub industry up to June 2011. It recognises that there have been four reports by Parliamentary Select Committees into this subject over the last decade and acknowledges the impact of Parliamentary scrutiny in driving reforms in this industry.

2. The Government would also like to note that, in October 2010, the Office of Fair Trading (OFT) provided its final decision on CAMRA's super-complaint following a consultation on its initial findings[1]. The OFT ruled that further investigation of the beer and pub market was not warranted in the form of a market study, or investigation under the provisions of the Competition Act 1998. Further, the OFT did not consider that the issues raised in the super-complaint warranted a reference to the Competition Commission under the market investigation provisions of the Enterprise Act 2002. These findings have been borne in mind by the Government when considering how to respond to the Select Committee's recommendations.

3. On 20 July 2010, this Government confirmed that "*they would take action if [the Select Committee's] findings were that the pub cos were not acting properly within that Code."* The BIS Committee's report makes clear that further action is needed in the pub industry; however, the question that Government has had to consider is what type of action would be most appropriate. The justification for legislative action is severely weakened where the OFT has found no evidence of competition problems that are having a significant adverse impact on consumers in the industry in question, as with this case.

4. In responding to the Committee's report, the Government recognises that the Committee made a wide range of recommendations covering many different aspects of the pub industry and directed towards a variety of groups. In its response, the Government has therefore only responded to those recommendations that were directly made to it, although it has touched on broader matters where relevant.

The Nature of the Industry

5. The pub industry is a complex one which, as the Committee recognised, demonstrates 'a high level of acrimony and is littered with claims and counter-claims, from both sides'. The Government has had to consider carefully the multiplicity of players, of varying sizes, and their different interests. It is critical to consider the interests of all parties, including consumers, publicans, small and large brewers, and pub companies, in order to deliver a solution that works for all.

6. The Select Committee has highlighted a number of concerns over the current operation of the industry, in particular around transparency, awareness and the application of the Industry Framework Code ('the Code'). The Government agrees

[1] http://www.oft.gov.uk/shared_oft/super-complaints/OFT1279.pdf

with the Select Committee that insufficient progress has been made by the industry in its self-regulation since the previous investigation.

7. Pubs are businesses and their owners should run them rigorously on a sound business basis to generate their respective profits and should take elementary precautions before entering into the commitment, such as considering alternatives within the marketplace. It is equally true, however, that those who take on a pub should have the opportunity to acquire the necessary level of information to allow them to make an informed business decision.

8. It is clear that many people either entering the industry or currently holding leases find it difficult to gain an awareness of the financial realities of the business they are taking on. There has been a lack of transparency around rents and running costs, something which the pubcos have previously done little to dispel; there also remains a significant confusion around the interpretation of Royal Institution of Chartered Surveyors (RICS) guidance in the light of the Code.

9. The Government recognises that the Committee's report also highlights a number of significant concerns over the operation of the Codes. The current legal status of the Codes is unclear, at least in the eyes of lessees[2], something which prevents the pubcos from being held to account over their operation. The fact that 14% of new lessees and a third of existing lessees had not received a copy of their company's Code[3] and that only 13% of those that had seen it believed it would benefit them[4] is even more concerning. It is clear that the Codes need to be strengthened and need to be made more enforceable if they are to suffice as a self-regulatory approach.

10. On the other hand, the Government considers that there have been a number of significant improvements in the industry which it would like to draw to the Committee's attention.

11. The widespread introduction of Pre-Entry Awareness Training (PEAT) and its take-up by 80% of new lessees is to be welcomed and has undoubtedly contributed to a greater awareness amongst new lessees of the opportunities and challenges involved in running a pub. This is a positive step forward which can be further built upon.

12. The introduction of the Pubs Independent Rent Review Scheme (PIRRS) has also been positively welcomed by parties on all sides of the industry, something that was recognised in the Committee's report as 'a positive development in the industry and one that is being used for mutual benefit'. The Government, like the Select Committee, also welcomes the piloting of a new mediation service though notes that, at the time of the Committee's report, the British Institute of Innkeeping (BII) stated that 'we cannot enforce any recommendations', a state of affairs that is clearly unsatisfactory.

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[2] Written evidence provided by the Federation of Small Businesses (para 6) to the BIS Select Committee. Published in Volume II on the Committee's website www.parliament.uk/bis
[3] CGA BBPA & IPC Code of Practice Survey (2011)
[4] Tied Down: The Beer Tie and Its Impact on Britain's Pubs (2011), Glen Gottfried and Rick Muir, IPPR

13. The publication, on 16th September, by the BBPA of new data on the costs of running the pub[5] is a welcome step forward. This data will be a useful complement to that provided by the ALMR, "is in line with the ALMR's own Benchmarking Report"[6] and has been welcomed by the BII: it will help provide much-needed data to new and existing lessees when negotiating rents. The Government appreciates the Select Committee's focus on the need for data to be made openly available in this area, which undoubtedly has been instrumental in driving this initiative.

14. Despite this progress, it is very clear that the industry needs to go further. Significant reforms are needed quickly, particularly in the area of transparency, dispute resolution and the legal status and strength of the Code. The Government is clear that these must take place rapidly if the concerns of the Select Committee are to be answered.

The Beer Tie

15. Much has been written, in the Committee's report and elsewhere, about the beer tie. In the evidence given to the Committee, parties on every side put forward strong views on the merits or otherwise of the tie; its role, purpose and effects; and what was meant by a 'free of tie' model. It should be noted that the beer tie is considered lawful practice due to the Block Exemption[7].

16. Government should not intervene in setting the terms of commercial, contractual relationships, where these are fully justified by law and have been found by the OFT to be raising no competition issues that significantly affect consumers. Fundamentally, whether or not a lease or tenancy includes a tie is a commercial decision on the part of both parties.

17. Furthermore, it is clear that there is a range of types of agreements operating within the tied sector, each of which may have a very different impact on the landlord, lessee or tenant, breweries and other drinks manufacturers, and consumers.

18. According to a recent report by the Institute of Public Policy Research (IPPR), in 2009 there were 55,530 pubs in the UK. Of these, 28,800 were tenanted/leased, 8,500 directly managed and 18,230 free houses.[8] Within this, in each of the tenanted/leased and directly managed categories, approximately a quarter are owned by regional brewers and the remainder by pubcos.

19. The tenanted/leased category; however, contains at least two substantively different types of agreements, a distinction that does not appear to be fully reflected in either the IPPR report or the Committee's report. These are:

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[5] http://www.beerandpub.com/newsList_detail.aspx?newsId=437
[6] Kate Nicholls, ALMR, http://www.beerandpub.com/newsList_detail.aspx?newsId=437
[7] Commission Regulation 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices ('the Vertical Restraints Block Exemption')
[8] Tied Down: The Beer Tie and Its Impact on Britain's Pubs (2011), Glen Gottfried and Rick Muir, IPPR

i. Long term, fully repairing and insuring (FRI) leases, on which dilapidations must be paid and where a premium is paid to the departing licensee. The operator is usually tied for beer and other drinks in some cases.

ii. Traditional tenancy: typically short-term, renewable but not assignable, with the pub owning company, not the tenant, responsible for repairs. The operator is almost always tied for beer.

Within each of these models there will, of course, be a multiplicity of different rents, terms and conditions.

20. Some attempts have been made to categorise the market by size of operator, this does not fully capture the leased/tenanted divide. It is true that (of non-managed pubs) the two biggest pubcos, Punch and Enterprise, primarily operate a lease model, whilst the smaller family brewers of the Independent Family Brewers of Britain (IFBB) operate almost exclusively (other than managed pubs) a traditional tenancy model; however, some larger operators, such as Marston's and Greene King operate a mix of both leased and traditionally tenanted pubs. The distinction should not be primarily by size, but by type of lease or tenancy.

21. Both models are, at least in principle, legitimate, with the potential to fulfil different market needs. However, it is important to recognise the differences between the two models when considering any legislative or self-regulatory solution.

22. The Government considers that the issues described by the Committee in its report primarily refer to those pubs operated under long term leases. This is based on the fact that not only does the Committee's report consistently refer to 'leases' and 'lessees', but that the only question directed at Mr. Paul Wells, Chair of the IFBB, at the oral evidence session was in his capacity as a brewer rather than as a tenancy pub operator[9].

23. The Government concurs with this sentiment and would note that the traditional tenancy model can not only provide a low cost entry for a licensee wishing to open a pub, but also offers a low cost/low risk exit as neither the freehold nor the lease need to be sold on, nor need dilapidations be paid for. The predecessor to the current Committee, in its 2010 report, concluded that "We have received no evidence to suggest that the tie is a cause of controversy or dispute between smaller family and regional brewers and those who operate their tied estate." [10]

24. When considering the issue of pub closures, there is again little evidence to indicate that the tie is a significant factor in causing pubs to close. Data produced by CGA Strategy[11] shows clearly that in the two and a half years between December 2008 and June 2011, there were more net closures of free-of-tie pubs closed than tied pubs, both in absolute figures (1916 free-of-tie; 1778 tied) and as a percentage of the total number of pubs in that category (9.2% of free-of-tie pubs; 5.7% of tied pubs).

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[9] Q223, EV31 of the Business, Innovation and Skills Committee's Tenth Report of Session 2010–2012

[10] http://www.publications.parliament.uk/pa/cm200910/cmselect/cmbis/138/138.pdf

[11] CAMRA commissioned research by CGA Strategy, June 2011

25. Furthermore, the figures fluctuate considerably. Over the most recent six months for which data is available (December 2010 to June 2011), the net closure rate is reversed (134 (0.6%) free-of-tie pubs close compared to 244 (0.9%) of tied pubs), but the gross closure rate is still significantly higher for free-of tie pubs (388 (1.8%) compared to 268 (0.9%) for tied pubs). The difference is made up by the fact that a much larger number of pubs opened in the free-of-tie sector than in the tied sector (254 compared to 24). In terms of harm to individual licensees, it is the number of pub closures that is most relevant, not the number of pubs that open.

26. Although overall, since 2008, the number of free-of-tie pubs has increased compared to the number of tied pubs, this is due to the fact that, as above, significantly more free-of-tie pubs opened than tied pubs. Crucially, it is also because a number of tied pubs have converted to free-of-tie. This is not evidence that the tie is causing pubs to close: it simply shows that the market is responding to some lessees' desires on whether to operate a free-of-tie or a tied pub.

27. The Government recognises that pubs face a wide range of challenges in the current economic climate but sees nothing in the above figures to indicate that market forces are not functioning effectively as regards to tied/free-of-tie status or that tied licensees are more likely to close. The Government see no definitive evidence in these figures that would justify legislating to abolish the tie.

28. In terms of framing a solution, the Government therefore considers the debate over 'tied' or 'free-of-tie' to be largely a distraction. There is nothing in itself that causes the tie to be fundamentally wrong – and, in fact, in some instances, the tied model may be essential to the preservation of small British brewers and local beer – and, with them, British businesses and jobs[12].

29. A more appropriate question centres around the 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. These are the issues that must be addressed in any solution.

Brulines

30. The Committee's report noted that "*there is obviously still a dispute over flow monitoring equipment and its use in accusations of buying out which the Framework has failed to address. In addition there is still confusion over whether it can be proved to be 'in use for trade' and therefore covered by the Weights and Measures Act 1985."*

31. The Government can confirm that because this equipment is not in use for trade, it does not fall within the remit of the Weights and Measures Act 1985.

[12] "Without the right to tie pubs, the Family Brewers wouldn't bring their beers to the bar. Closures amongst the smaller brewers would be inevitable. The tie is a viable way for them to run their pubs." Mike Benner, Chief Executive, CAMRA, quoted in 'What the Tie Means to the Family Brewers' (January 2011)

A Legislative Approach?

32. The Select Committee has recommended that the Government "*Consult on how to put the Code on a statutory footing*", for the Government to "*set out the timetable for that consultation and begin the process as a matter of urgency"* and "*that the consultation includes proposals for a statutory Code Adjudicator armed with a full suite of sanctions."*

33. The Committee has further stated: "*We have not come to this decision lightly and we are firmly of the view that statutory regulation should only be used as a last resort. However, our hand has been forced and we see no other alternative for an industry which has for too long failed to put its own house in order."*

34. The Government agrees with the Select Committee that statutory regulation should only be used as a last resort. Particularly in the current economic climate, the imposition of additional burdens on business must be considered extremely carefully. The possibility of unintended consequences, including damage to businesses, British jobs and the UK economy from even the best legislation in such an area should not be underestimated.

35. The Committee's report must also be considered in the context of the OFT's second ruling on CAMRA's super complaint, which concluded there are no competition issues which significantly adversely affect consumers. In such a situation, for Government to intervene in setting the terms of commercial, contractual relationships could set a dangerous precedent.

36. There are also pragmatic reasons to prefer a self-regulatory solution over a legislative solution. To consult on and introduce changes by statute would take significant time; certainly months, possibly years, whilst it is clear that the challenges facing the pub industry are ones that must be addressed now. Equally, legislation is inflexible and difficult to alter, should future market conditions change.

37. Self-regulation, by contrast, can be fast, effective and responsive to the needs of the industry. Provided that the solution is sufficiently binding and enforceable on all parties, there is no reason that it cannot provide the same degree of certainty that would be delivered by legislation. It is, furthermore, a far more appropriate response than legislation in a market where it has been found that there are no competition issues which significantly adversely affect consumers.

38. Therefore, the Government has decided that a self-regulatory approach, as set out below, is a more appropriate, fast and effective solution than statutory regulation.

The Self-Regulatory Approach

39. The Government has made clear to the industry that significant reforms are required and that the industry must deliver these rapidly. The Government has been equally clear that unless such reforms were put in place voluntarily then it was willing to consult on imposing them by statute.

40. Following intensive discussions with Government, the industry has now made a commitment that it will implement a range of substantive reforms. The Government considers that these reforms will effectively implement the Committee's two principal recommendations – to make the Code statutory and to establish an Adjudicator. They will, furthermore, deliver these reforms more quickly than could be done via statute whilst also delivering substantial additional benefits.

41. The key elements of this self-regulatory package that the industry has committed to are:

    i. **The Industry Framework Code to be made legally binding,** by incorporating the Code by reference into new agreements and via a collateral contract for existing lessees.

    ii. **A Pub Independent Conciliation and Arbitration Service (PICAS) to be set up under the umbrella of PIRRS.** PICAS would provide mediation and arbitration on any matter relating to the Framework or Company Codes and the results would be binding on both parties.

    iii. **A three-yearly reaccreditation process for Company Codes**, administered by BIIBAS through examination of annual compliance reports and spot-checks.

    iv. **A new Pubs Advisory Service (PAS),** which would provide an initial offering of free advice to all prospective and current tenants and lessees.

    v. **A strengthened Framework Code**, with a particular focus on FRI leases. This will bring about immediate improvements in particular in areas such as rent, insurance, Business Development Manager (BDM) training, dilapidations and pre-entry training, combined with a commitment to discuss further improvements with industry partners.

42. Item (i), a legally binding Code, would have the same effect as the Committee's recommendation to make the Code statutory and would do so much more quickly. It would allow disputes over breaches of the Code to be ultimately enforced through the courts.

43. Items (ii) and (iii), binding arbitration and reaccreditation, would have a very similar effect to the Committee's recommendation to establish an Adjudicator. Once again, this reform can be in place much more rapidly and in a less burdensome way to both industry and Government.

44. Items (iv) and (v), the advisory service and a strengthened Code, go beyond the Committee's specific recommendations to Government, but would help significantly in addressing the concerns the Committee has raised around transparency, access to information and rents.

45. Each of these reforms is described in more detail below.

The Industry Framework Code to be made legally binding

46. The BBPA has committed to making the Industry Framework Code (IFC) legally binding. This is an essential step to achieve legal clarity and will allow tenants and lessees to seek resolution of grievances through the courts, if other dispute resolution methods fail.

47. This will be done via incorporating the Code into new leasehold/tenancy agreements by reference, in other words compliance with the Code will be a requirement of the agreement itself. In the case of existing agreements, the parties will need to agree separately to be bound by the Code, in other words there will need to be a supplemental agreement to be bound. This will be achieved either by express agreement or by implication from the conduct of the parties.

48. One advantage of this method is that it results in the pubco making an unlimited and open offer to all its existing tenants and lessees which can be taken up at any time whether or not it has been formally signed by the tenant or lessee. In cases where the tenant or lessee chooses not to sign, they can invoke the Code simply by making a complaint of non-compliance to PICAS or to the courts. Such a complaint brings the IFC into effect through the actions of the complainant.

49. In addition, the BBPA, in conjunction with BII and FLVA, its fellow signatories to the IFC, will undertake an urgent review of the provisions of the IFC in collaboration with expert legal opinion to ensure that the IFC can be easily understood and is clear in its legal interpretation in the event of any legal action in respect of non-compliance.

50. The BBPA has undertaken to complete the legal processes as soon as possible, compatible with due process and due diligence, to implement this commitment by the end of 2011.

A Pubs Independent Conciliation and Arbitration Service (PICAS) to be set up under the umbrella of PIRRS

51. Building on the success of PIRRS, which the Committee's report recognised as "*a positive development in the industry and one that is being used for mutual benefit*", the industry has agreed to launch a new Pub Independent Conciliation and Arbitration Service (PICAS).

52. PICAS will be operated under the same governance as PIRRS, namely the BBPA, BII, FLVA, GMV and ALMR and would be funded through a levy raised primarily from BBPA members. Although tenants/lessees would be asked to pay a small sum to initiate the process – provisionally set at £200 – in order to deter frivolous or vexatious complaints, the pubco would pay the remainder of any costs.

53. PICAS will be based on the mechanisms and governance that have proved successful under PIRRS and will replace the non-binding BII mediation service. Complaints on breaches of the Code, and less defined complaints about behaviour, will be referrable to an independent adjudicator from an approved list similar to that drawn up by PIRRS for valuation experts.

54. Mediation would provide restitution to the complainant where it is appropriate. The company and the complainant would both agree to abide by the decision of the adjudicator, as is currently the case under PIRRS, meaning that decisions will be binding.

55. PICAS will have the ability to refer the results of the process to BIIBAS which informs the accreditation body in its audit of Company Codes. In circumstances where major breaches of the Code are identified, BIIBAS would have the ability to seek further resolution from the company as to its future behaviour with removal of accreditation being the ultimate sanction.

56. The availability of PICAS will not affect in any way the right of a complainant to pursue a grievance through the courts instead of through PICAS.

A three-yearly reaccreditation process for Company Codes

57. Although all large pubcos have now ratified their Codes through BIIBAS, there is currently no reaccreditation process which would entail an audit of the companies' policies and procedures. This means that enforcement takes place entirely through complaints – which may be inadequate if a licensee is unwilling to come forward, and does not facilitate the correcting of any systematic behaviours that go against the Code.

58. All current members of the BBPA and Greene King have therefore agreed to submit their Company Codes for reaccreditation every three years, beginning in 2013.

59. Reaccreditation would be assessed by the BIIBAS Benchmarking Committee. It would be based on an audit trail provided by the companies which, for large companies with FRI leases, would include an annual statement of compliance (the requirement to produce this will be included in the Code and would therefore be legally binding).

60. BIIBAS would also have the power to conduct spot-checks to ensure that the Code was genuinely being followed.

A new Pubs Advisory Service (PAS)

61. The need for high quality, reliable professional advice is frequently vital, either when considering taking on a pub or, for an existing licensee, when negotiating a rent review or simply considering ways in which to improve the business. Although there has been significant progress in this area, with some Company Codes including a requirement to consult a professional adviser before signing a lease, the situation varies across the industry. In particular for a new tenant or lessee, there is no obvious single point of contact.

62. The industry has therefore committed to establishing a new Pubs Advisory Service, administered by the BII, but made available to non-members of the BII

(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.

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