

558

**From:** BRAKE, Tom [tom.brake.mp@parliament.uk]  
**Sent:** 13 June 2013 16:16  
**To:** Pubs Consultation Responses  
**Attachments:** Fair Deal for Your Local - Standard Consultation Response.doc



Fair Deal for Your  
Local - Sta...

Please find my submission to the consultation.

Regards

Tom Brake  
Liberal Democrat MP for Carshalton and Wallington

PS. Have you signed the petition to Save St Helier Hospital? Thousands of local people have already signed - [click here](http://www.saveoursthelier.co.uk) to sign the petition or visit [www.saveoursthelier.co.uk](http://www.saveoursthelier.co.uk) for more information

Whilst Tom Brake MP will treat as confidential any personal information that you pass to him, he will normally allow staff and authorised volunteers to see it if this is needed to help and advise you. Tom Brake MP may pass on all or some of the information to agencies such as the DWP, HM Revenues and Customs or the Local Council if this is necessary to help with your case. Tom Brake MP may wish to write to you from time to time to keep you informed on issues that you may find of interest. Please let him know if you do not wish to be contacted for this purpose.

NOTE: Information in this email is confidential and may be privileged. It is intended for the addressee only. If you have received it in error please notify the sender immediately and delete it from your system. You should not otherwise copy it, retransmit it, use or disclose its contents unless permission to do so is explicitly stated. Views expressed in personal emails do not necessarily reflect the position or opinion of the Liberal Democrats.

---

UK Parliament Disclaimer:

This e-mail is confidential to the intended recipient. If you have received it in error, please notify the sender and delete it from your system. Any unauthorised use, disclosure, or copying is not permitted. This e-mail has been checked for viruses, but no liability is accepted for any damage caused by any virus transmitted by this e-mail.

-----  
This email was received from the INTERNET.

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

## Pub companies and tenants - A government consultation

### Response form

The consultation will begin on 22/04/2013 and will run for 8 weeks, closing on 14/06/2013

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

This response form can be returned to:

Pubs Consultation  
Consumer and Competition Policy  
Department for Business, Innovation and Skills  
3rd Floor, Orchard 2  
1 Victoria Street  
Westminster  
SW1H 0ET

Email: [pubs.consultation@bis.gsi.gov.uk](mailto:pubs.consultation@bis.gsi.gov.uk)

Please tick one box from a list of options that best describes you as a respondent. This will enable views to be presented by group type.
<input type="checkbox"/> Representative Organisation
<input type="checkbox"/> Trade Union
<input type="checkbox"/> Interest Group
<input type="checkbox"/> Small to Medium Enterprise
<input type="checkbox"/> Large Enterprise
<input type="checkbox"/> Local Government
<input type="checkbox"/> Central Government
<input type="checkbox"/> Legal
<input type="checkbox"/> Academic
<input type="checkbox"/> Other (please describe): Member of Parliament

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

## **Consultation questions**

Q1. Should there be a statutory Code?

**YES**

Q2. Do you agree that the Code should be binding on all companies that own more than 500 pubs? If you think this is not the correct threshold, please suggest an alternative, with any supporting evidence.

**YES**

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

**YES**

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

**The statutory code should contain a provision that all agreements that contain tied provisions, whatever they are called, should be fair, reasonable and comply with all legal requirements.**

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

**Tied licensees will be able to negotiate lower tied rents as the current rents do not countervail the tied product prices adequately. Lower rents equal high net earnings to the licensee. This kind of improvement will encourage entrepreneurial flair where it is currently lacking, reinvestment, training jobs, and most importantly profitability will ease the closure of pubs and business failure rate of tied publicans.**

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

**Self regulation thus far has delivered nothing in material reforms.**

**The new proposed self Regulatory Board does not share the same commitments as Government, seeking to deliver fairness and a tied licensee no worse off than if they were free of tie.**

**Self Regulation is not accepted as 'independent' by many licensees.**

**Until it can commit to the same objectives for reform it has little future.**

Q7. Do you agree that the Code should be based on the following two core and overarching principles?

*i. Principle of Fair and Lawful Dealing*

**YES**

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

**YES**

Q8. Do you agree that the Government should include the following provisions in the Statutory Code?

*i. Provide the tenant the right to request an open market rent review if they have not had one in five years, if the pub company significantly increases drink prices or if an event occurs outside the tenant's control.*

**YES**

*ii. Increase transparency, in particular by requiring the pub company to produce parallel 'tied' and 'free-of-tie' rent assessments so that a tenant can ensure that they are no worse off.*

**YES**

- iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied.* **YES**
- iv. *Provide a 'guest beer' option in all tied pubs.* **YES**
- v. *Provide that flow monitoring equipment may not be used to determine whether a tenant is complying with purchasing obligations, or as evidence in enforcing such obligations.* **YES**

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

**1. There needs to be a Market Rent Only option - where a licensee can choose to remain tied or simply pay a market rent and purchase beer (and any other formerly tied products from any source).**

**Without this the rest fails.**

**2. Like the Industry Framework Code (in which it is an empty promise as it can not be enforced) there needs to be a clause in the Statutory Code that :**

**"All contracts will be fair reasonable and comply with all legal requirements."**

**3. It should be made clearer that ALL rent assessments (especially at rent review and lease renewal) need to be undertaken on the basis that RICS guidance should be interpreted on the principle that the tied licensee is no worse off than the free of tie licensee.**

Q10. Do you agree that the Statutory Code should be periodically reviewed and, if appropriate amended, if there was evidence that showed that such amendments would deliver more effectively the two overarching principles? **YES**

**The opportunity to review and amend was the main failing of the Beer Orders which led to the unintended consequences being uncontrolled. The statutory code and Adjudicator proposals seek to avoid such gaming of well meaning Government intentions.**

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

**It is essential, as it offers the opportunity for a licensee to sever unfair contract terms presented in tied agreements. Without Free of Tie option and an open market rent the code can be easily exploited.**

Q12. Other than (a) a mandatory free-of-tie option or (b) mandating that higher beer prices must be compensated for by lower rents, do you have any other suggestions as to how the Government could ensure that tied tenants were no worse off than free-of-tie tenants?

**This is not an 'either or' deal. A package of reforms is necessary. They are all outlined in the proposed Statutory Code, with the exception of the most important feature, a mandatory free-of-tie option with an open market rent. If the rent cannot be agreed between the parties, then it should be determined (in accordance with the lease terms) by an independent third party in accordance with RICS rent assessment guidance.**

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

YES

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

*i. Arbitrate individual disputes?*

YES

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

YES

Q15. Do you agree that the Adjudicator should be able to impose a range of sanctions on pub companies that have breached the Code, including:

*I. Recommendations?*

YES

*II. Requirements to publish information ('name and shame')*

YES

*III. Financial penalties?*

YES

**The Adjudicator needs more powers than this. They should have similar powers to those afforded to the OFT in the case of Unfair Contract Terms in consumer Tenancy Agreements, essentially have the power to render an unfair contract term unenforceable.**

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

YES

Q17. Do you agree that the Adjudicator should be funded by an industry levy, with companies who breach the Code more paying a proportionately greater share of the levy?

YES

What, in your view, would be the impact of the levy on pub companies, pub tenants, consumers and the overall industry?

**Pubcos and brewers are already paying for the self regulatory approach, the levy for the statutory code will reduce the funds for self regulation but the work load for the regime will be dramatically decreased (as most complaints are from pub owning company licensees of the 6 biggest firms). The costs associated with the Adjudicator and statutory regulation will largely depend on the behaviour of the pub owning companies, worse behaviour = more complaints = more work = higher costs.**