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From: MURPHY, Paul (MP) [paul.murphy.mp@parliament.uk]
Sent: 13 June 2013 15:52
To: Pubs Consultation Responses
Cc: I
Subject: Consultation response

Department of Business, Innovation and Skills
3rd Floor, Orchard 2
1 Victoria Street
Westminster
London
SW1H 0ET

pubs.consultation@bis.gsi.gov.uk

Consultation submission on pubco reform

13th June 2013

Dear Sir/Madam,

I write with my submission to the above consultation as the Member of Parliament for Torfaen. Over the last few years, I have been in contact with Ministers and with the Select Committee and All-Party Group about this issue, about which I feel most strongly.

Since looking into this issue, I have seen appalling evidence of hard-working publicans driven to financial ruin by the unfairness of the current situation. I have also seen perfectly viable pubs forced to close because of grossly unfair terms imposed upon them, depriving communities across Britain of valued local community pubs. Figures have suggested that 60% of tied licensees earn under £10,000 per year, despite putting in a huge number of hours to run their pubs. This situation is neither fair nor tolerable.

It is to the credit of Ministers that they have come forward with proposals to consult on statutory regulation. This comes after successive reports by the Select Committee and years of campaigning by the All-Party Save the Pub Group and organisations like CAMRA, the FSB and affected publicans. Their tenacity has been admirable, much as some of the tactics adopted by some of their opponents have been regrettable.

The campaign is not calling for the abolition of the tie, merely that a statutory code of practice is needed to enable the market to operate fairly. Self-regulation has been tried time and again and has been shown to fail in the face of prevarication from pubcos. To end the unfair imbalance of power and the lack of fair reward for hard-working licensees, and end the charging of excessive rents and high beer prices, it is vital that licensees are offered a choice between a tied option and a market rent only option.

Fairness and ensuring tied licensees are no worse off than free of tie licensees should be at the heart of the Code. In order to ensure that the rules are adhered to, an independent adjudicator is needed, with the power to arbitrate on disputes, investigate breaches and impose financial penalties on

04/12/2013

pubcos that break the rules. I accept that the code should not apply to Britain's family brewers with under 500 pubs.

I cannot see what drawbacks there would be to this solution, which would merely cure a massive power imbalance between tenant publicans and large pubcos and thus enable the market to operate freely. Those licensees who want to stay as tied pubs would have the choice of retaining their current status. Perhaps that is why Conservative, Liberal Democrat and Labour MPs have been so supportive of the campaign.

In my 27 years in parliament, I have rarely seen a campaign that has drawn such cross-party support and attracted the backing of organisations as disparate as the FSB, Trade Unions and CAMRA. It is high time that hard-working publicans were given the chance of a fair deal, before more of them are driven out of the business and more communities lose their local pub. I would therefore urge the Government to act and put in place a statutory code of practice with the option of a market rent only option. Anything less will fail both consumers and licensees and endanger yet more of our community pubs.

Please find the answers to the consultation questions below. I would appreciate being kept informed of progress on this important issue.

Yours sincerely,

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

The Rt. Hon. Paul Murphy MP
Member of Parliament for Torfaen

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

| |
|---|
| 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. |
|---|

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|-----------------------------|
| Other (please describe): MP |
|-----------------------------|

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

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 inflated 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 has repeatedly failed to resolve this situation. 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.

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 (which cannot 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. The statutory code and Adjudicator proposals seek to avoid well meaning Government intentions being exploited.**

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 are necessary 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 should have similar powers to those afforded to the OFT in the case of Unfair Contract Terms in consumer Tenancy Agreements, and 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 ineffective self-regulatory approach, so it should not make a big difference to them financially . 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 cost.