



Department for Business, Innovation & Skills

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. |
| Representative Organisation |
| Trade Union |
| Interest Group |
| Small to Medium Enterprise |
| Large Enterprise |
| Local Government |
| Central Government |
| Legal |
| Academic |
| Other (please describe): Chartered Surveyor |

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?

No. I will provide more detailed commentary later.

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.

No. Please see my later commentary.

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?

No. Ditto above.

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

I would need to see a proposal. These are a much smaller part of the market place. I imagine few (if any) complaints have been received from this group.

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

See my commentary later.

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

See my commentary.

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

I am not a lawyer and there is no clear definition of what is meant by this phrase. Please refer to my commentary.

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

The principle is worth consideration although subject to a detailed investigation as to how to interpret this. It is not a straight forward concept. See my commentary.

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.

Broadly yes. See my commentary.

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.

If that principle is upheld - yes. I believe that the present situation and methods contained in the Codes of Practice offer transparency to the process relating to the tied model. See my commentary.

iii. Abolish the gaming machine tie and mandate that no products other than drinks may be tied.

Possibly.

iv. Provide a 'guest beer' option in all tied pubs.

Possibly.

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.

No.

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

See commentary.

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. If implemented which I do not agree with. See commentary.

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

No. see commentary.

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?

See commentary.

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

No. See commentary.

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

i. Arbitrate individual disputes?

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

See commentary.

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?

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

III. Financial penalties?

See commentary.

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

No. See commentary.

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

See commentary.

COMMENTARY

Introduction

I am a Chartered Surveyor responding in my own right. In my employed capacity I am a specialist that deals with the public house sector of the market. I run a company that has 4 offices in the UK and I have around 30 years experience in this sector. I have considerable experience of dealing with the valuation and the rental assessment of pubs.

I have considered the BIS Consultation. I hope this commentary is useful.

Background To The Market

The present economic climate and the causes have been expressed in the report and are widely reported. There is no doubt that there is a continued malaise in the economy and the pub sector has been hard hit.

In broad terms the factors such as the smoking ban, cheap supermarket drinks, increasing utility costs and taxation are common themes and all are relevant. I also consider that whilst these general economic factors have adversely affected the pub industry the change in our culture and our approach to spending our leisure pound has had a detrimental affect on the sector. From an historic perspective many of the traditional local pubs that I consider this report is directed at relied upon industries and communities that either no longer exist or now function in a different way. No amount of government interference is likely to change that.

There is increased competition from within the sector with large value for money managed pubs and restaurants offering larger scale (often branded) venues on the high street and around cities and towns. The burgeoning cultural shift to coffee shops and cafes also erodes the pub's share of the market.

In my view there is scope to compete in this market by investment, innovation and flair that I am sure this is encouraged where possible. However, I also consider that there will continue to be pub closures throughout the country. I consider there is a real risk that the proposed government intervention into an already fragile tenanted pub sector will only exacerbate the situation and accelerate pub closures. I also consider that it will stifle the opportunities that may exist for pubco's and tenants as investment in the tenanted sector becomes far more difficult to justify. I will address several themes that recur throughout the Consultation.

Access To Information

There is no person better to judge the trading potential of a pub than the existing tenant. He runs the business on a daily basis, places orders with suppliers and responds to customers' needs. He plans and markets accordingly and maintains records and accounts for the purpose of VAT (in most cases), taxation and good management. He will produce a Profit & Loss account and will understand the heart beat of that business that he is running. This will include all elements of the business from the beers, ciders, wines, spirits and minerals on offer (not all tied), food, accommodation, teams, functions and events. Many of these elements of trade are outside the scope of the tie.

The pubco will have access to historic barrelage and some trading data as well as a knowledge of pubs owned by them in that area. I do not see that the pubco is in an advantageous position over the tenant. If there are cases of misrepresentation they should be dealt with accordingly. Comparable pubs are rarely considered as key evidence at rent reviews but may merely support one case or another. I agree that the pubco has better access to the rents within their estate but tenants have the ability to talk to other tenants who may assist them when it comes to settling their rents. The Codes of Practice provide strict guidelines as to how pubco's should conduct themselves and this seems to be a positive attempt at transparency and fairness.

Current Practice

The Codes of Practice set a clear framework within which to operate. I believe that the complaints referred to in the Consultation are incorrect and misleading. I have been involved in PIRRS, Arbitration and Independent Expert disputes on rent reviews throughout the country for a variety of pubco clients. These examples are few and far between and the statistics from PIRRS show a limited number of annual cases out of the thousands of pubs in the market. In my experience where my company has dealt with around 250 rent reviews on behalf of a

pubco in an 18 months period we had one case referred to Arbitration and none to PIRRS. I am sure the statistics from the pubco's will bear out that many rents fall and the number of disputes is small. I suspect that the claim that there have been large unjustified rent increases is unjustified and unproven. By comparison to the broader commercial property market outside the pub world upward only rent reviews apply and commercial landlords will suit themselves. I have plenty of practical experience of this where pubco's are put under pressure by their landlords and only have the dispute resolution of the lease to rely upon compared to the wide-ranging Codes of Practice that applies to the tied tenants. The downward provision is a significant gain to the tied tenants and they have several dispute resolution options open to them through the Code of Practice.

In my opinion the market place is alive and well in settling rents and the current system is tenant friendly with the measures that already exist. I am sure the statistics of dispute resolution from the pubco's will bear this out. Where there are abuses or failures these should be dealt with accordingly.

Lifestyle Choice

This has been mentioned in the Consultation. The statistics seemed to refer to the lower end of the market of which many of these pubs will fall into. I consider that there is some truth to this in that some pub tenants do make a lifestyle choice that may be difficult to assess in the context of the affordable rent and the perceived return to the tenant. Is there anything wrong with making a lifestyle choice? Does this have an intrinsic value? They can become their own boss with and have a reasonable control of their own way of life.

The Consultation refers to almost half of the tied tenants earning less than £15,000 per annum. It also mentions that 70% (CGA survey) would sign up with their pub company. The risk of losing their home is mentioned. The stated net profit is the amount left after paying rent. The deductions that the landlord and tenant make in the Profit & Loss assessment when calculating rent is likely to include all of the tenant's living costs (heat, light, car, insurances, food, drink, etc). These tend to be met out of the business. It is not the same as earnings.

In the majority of all pubs the tenant lives at the property. It is the home for him and his family and he is part of the local community. It is likely that his children go to the local school and he forms part of the social fabric of that neighbourhood. This is in addition to the fact that the pub provides a roof over his head for the family. The Profit's Test approach to rent assumes that there is living accommodation included although no calculation is undertaken to reflect this as it is an integral part of the valuation methodology. In other words he lives out of the business.

I consider that many pubs will be marginal and that the decline in numbers will continue. I also consider that the proposals outlined in the Consultation will accelerate this decline and result in more sell offs at a faster rate than at present. If you consider this from a tenant's point of view if their pub becomes unviable and is offered for sale then they will lose their home.

As an alternative comparison if the ex tenant had to find a job he may earn £15,000 pa he would have to find somewhere to live for his family and pay rent/mortgage, pay all the usual family outgoings and the costs of living all out of his wage. There is no doubt that he would be considerably worse off than he would if he was running a pub as his own business with, say, £15,000 remaining after most living costs.

I have met many tenants in my time and whilst the economy and the market is tough many of them are happy to run their own business in the way the tenanted sector operates at the

moment with the benefits and safeguards offered by the Codes of Practice and the dispute resolution processes offered.

Valuation Approach

The RICS Guidance Notes on valuing pubs is very useful and thorough. The process is an assessment of the FMT that could be achieved by the REO. This may or may not represent reality. It is tried and tested and familiar to many practitioners in the market place. It should also be recognisable to tenants as it sets out a Profit & Loss format to arriving at a rent.

The Consultation makes reference to misleading and unfair assessments being made as well as there being an imbalance in information available.

I consider the Sample Rent Assessment could be improved in terms of assessing Sales. In the format suggested much effort is made at assessing drink sales. The presentation would not be familiar to the tenant who would normally see a P&L assessment stating turnover by its constituent parts – drinks, food, accommodation, other, machines. I suspect that most tenants do not know the split of trade by lager, ale, cider, packaged, wines, spirits, minerals etc. The valuer would assess these component parts and could share this extra detail with the tenant if required but should present the drink sales at a total figure and at a GP margin. The tenant would recognise this format as this should reflect what his own accounts and stocktake reports would show. If there were discrepancies the detailed assessment of the constituent parts could be shared.

By the same token the assessment for food and accommodation in this model does not have the same level of scrutiny as the drink sales. This is an inconsistent approach. Either have the detail for both (food – numbers of covers, average spend, turnover of covers. Accommodation – number of rooms, average room rates, occupancy levels). It should be one of the other. I think tenants would prefer a simpler presentation with supporting calculations provided on the various elements of trade if required.

Conclusions

I am against the proposal of a statutory code of practice. I consider there will be many unintended consequences that will result in the loss of many more pubs at a faster rate than at present. The tenanted pub sector will become a poorer investment opportunity, more pubs will be converted to management, fewer opportunities will be available to prospective tenants (lifestyle or otherwise) and opportunities for flair and innovation will be more limited. I consider the current self-regulation through the Codes of Practice go a very long way of looking after the tenant's interest.

Thank you

Jim Baker – Chartered Surveyor