
From: Geoff Temperton [mailto:geoff@roslyn.co.uk]
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Subject: TRIM: Re BIS Pub Companies and Tenants - A Government Consultation response
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Please find attached the response from Roslyns Licensed Trade Accountants

As a Licensed Trade accountant we specialise in the tenanted, free and club sector. Our current clients are over 85% tenants on tied agreements.

As part of the submission I have highlighted that no Licensed Trade accountants have been listed as Individuals/Organisations consulted and would therefore offer ourselves to be consulted in any further consultation regarding the Pub sector.

If you require any further information do not hesitate to contact myself on the details below

Kind Regards

Geoff Temperton MBA FBII
Operations Director

Tel: +44 (0)1142 138 330

Office: 01142 138 330

"Its not what we do it's the way that we do it"

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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): Licensed Trade Accountants

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, over the last 4 years we have seen significant improvement in the tied pubcos in terms of transparency and the willingness to set the new businesses up on sustainable agreements.

There is also a huge concern in what the future of the industry will look like with a statutory code and a free of tie model. This will in my view reduce the competition within the market place allowing the large multi-national brewers to exert their pressure by offering larger discounts (although not as large as currently given to the pubcos due to reduced buying power of the individual pubs) and removing the current trend for local cask / micro brewed ales.

The current variety of products on the Pubco lists is one of the factors that has contributed to the increase in the number of British breweries and the significant real ale revival. As cask ale and real ales are the two areas of competitive advantage against the low priced supermarkets.

The self regulation has also benefited the potential tenant especially where they have little or no experience. Making sure they have the correct professional advice before going into the agreement with the Pubco.

As a Licensed Trade Accountants we provide professional advice to our clients helping with their business plans and expectations of the business. It is imperative to make sure the business is sustainable based on their expectations and giving advice in connection to our experience and industry benchmarks. This added value we can bring to the potential tenant allows proper discussion before taking on the pub and therefore reducing the complaints against the Pubcos at a later date due to false information or mis-selling. In basic terms "get the deal right at the start".

Following review of this consultation Roslyns feel the proposals will cause more unintended consequences than benefit:

More complexity within rental calculations therefore less understanding of potential tenant.
Loss of economies of scale not only distribution but buying power from large Multi-national brewers to individual tenants.

Less investment in pubs by pubcos

Relationship between fixed and variable costs, free of tie will increase the fixed costs and may have a detrimental affect on the business especially in times of decline. Beer is in decline rents will be fixed for a period of time.

Pubcos become property companies and generating a more fragmented market leading to higher costs to pubs and consumer.

The way forward is to continue with self regulation making sure the potential tenant has the correct training, advice and support to generate and maintain a sustainable business.

Roslyns also feel that any further consultation should involve Independent Licensed Trade accountants

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.

As above Roslyns do not feel there should be a statutory code. But believe the current Code of Practice and self regulation should apply to all operators of non managed pubs.

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?

If a Code is binding then all of non managed with the exception of franchised as this is a managed format.

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

Exempt as above although as self employed business they still require full pre entry 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.

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

Roslyns believe the self regulation is working within the industry in generating a more transparent operating environment. It has helped generate a more stable pub sector by concentrating on the pre entry requirements of new tenants. This is the key time in analysing and forecasting via the business plan so that all parties understand how the potential tenant wants to operate the pub going forward. This also generates an open market valuation with the support and advice of professional advisors. Giving the advice and knowledge to the potential tenant to negotiate with the pubco in order to develop a sustainable business forecast. This is now followed up with accounts reflecting variance analysis to original plan and quarterly reviews with tenant and pubco. At this stage if the plan is not working it allows all parties to put action plans in place to get the business into sustainability and avoid the pub failing.

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

Any code should be based on fair and lawfull

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

Apart from not agreeing to a Statutory code the principle of a tied tenant should be no worse off than the free of tie tenant sounds good but it will open up the rent negotiations and assessments even further due to the subjective nature of SCORFA. How can you quantify the value of this- how much will a BDM add to a tenant. This not only depends on the relationship they have but also on the willingness of the tenant to listen and accept advice. The quality of the BDM and the training they have, is an experienced BDM charged at a higher rate than a new

BDM similar to solicitors day rates? Also what are the benchmark discount levels. A wholesaler will look at their risk indicators in determining discounts payable. This will include credit scoring, experience, capital employed so should the hypothetical rent assessment take these factors into account. This will just turn into an exercise which is unmanageable and unrealistic.

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.***

As part of the self regulated codes of practice I agree to open market rent reviews on the same basis of Business rate calculations eg outside tenants control. In terms of increase in drink prices I do not agree as this has other factors eg supplier prices to pubco, tax increases etc again how to quantify "significant". Pubcos compete and if wholesale prices are much higher in one than another then the tenant will choose which company to use. In terms of the tenant wanting the specific pub it is down to the advice from professional companies like ourselves to help the tenant achieve a sustainable business for all parties.

- 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.***

Self regulation has increased the transparency to the potential tenant, it all depends on what the potential tenant does with this information or what they understand. The pub companies are now offering independent licensed trade specialists to help and advise the new tenants so they understand what they are taking on, their view of the business and how this compares to the Pubco view and then allowing the business forecast to be made sustainable

If a free of tie is run parallel the SCORFA costs and margin achieved will be very subjective and therefore generate less understanding.

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

Roslyns are concerned if this happens that the machine operators will become much more fragmented and it will develop a large supply of small machine operators who cannot invest in the machines or innovate new ideas. Also the resulting loss of income to HMRC as tenants with their own machines will revert back to the old days of under-declaring or not declaring machine income. In terms of other products it becomes part of the SCORFA benefits and where they add value to the business.

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

The guest beer was tried with the Beer Orders and has generated unintended consequences. The definition of guest beer needs to be quantified. If it is to generate a more local feel and helping the local community/brewers then this could be an advantage as it will help pubs provide what consumers want but if it is any product then the largest seller eg standard lager will be sourced at a higher discount only helping the large multi national brewers and therefore actually reducing choice to the consumer. This later option will in affect generate free of tie and will cause the same unintended consequences already mentioned.

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.

If there is a tied agreement flow monitoring is the same as CCTV in the high street. I would rather see more policemen but understand the cost implications. Flow monitoring can be used as added value especially in current times where pubs maybe struggling. In the past if business declines the view was that the tenant is buying outside the tie so it becomes very anti trust. With flow monitoring data it highlights to the pubco the reduction in trade is genuine and therefore discussions can start quicker to help develop the business sustainability. Roslyns trade accountants and stocktakers will also use this data to help the tenants analyse their business, through sales mix, time analysis for sales compared to staffing levels etc. Also innovation in the flow monitoring helping with links to tills and i-draught all helping reduce costs and increase profitability.

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

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?

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? No

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?

As part of the self regulation and Codes of Practice the most important part of any business is the start. Both parties must provide their views of the business and be able to justify. Pubco via shadow P&L/FMT calculations. The potential tenant must complete a full business plan so they understand what they are taking on and the potential of the business. This must include full P&L and cashflow analysis. How many tenants have gone out of business due to cashflow on a profitable business. This professional advice from Licensed Trade specialists will give the potential tenant the extra knowledge when negotiating and will stop the Pubcos trying to "pull the wool over their eyes" knowing that it will be checked and questioned.

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

No

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?

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?

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

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?