

## Pubs Advisory Service Ltd

(Submission to Government Consultation June 2013)

*"To launch a trial is often more expensive than the amount invested"*

The imbalance of power and various abuses has been reported and commented on widely by the various select committees stretching back over 9 years. Various trade bodies have sought to "head off" reforms by incorporation of a self regulatory process (SRP) – this being low cost, low regulation and using as little red tape as possible.

The current trade offering of SRP would highlight major areas of concern for any investor, namely that over the last three years:

- being presented with a Code of Practice (COP) that has not met the minimum requirements of the *framework code* behind it
- not being able to see the framework code behind it as it isn't published on most pub company or accrediting body websites (failure of incorporation)
- having a COP that can be subject to unlimited addendums or adjustment after sign up
- in the vast majority of cases not being able to access any of those addendums on sign up (further failure of incorporation)
- not being able to see the original accredited addendum template issued by the BIIBAS (failure of incorporation)
- having a self regulatory body that has failed to publish the current framework into its own rules (failure of incorporation)
- knowing that any code complaint you raise can be derailed or halted at anytime by your landlord (issuing of a county court claim or merest threat of) SEE APNDX 1
- knowing that self regulation process can't enforce fairness despite it being offered voluntarily by all pub companies & family brewers IFC V6 clause 35 (PICA has no power to change contract terms)

Other areas that conflict with fairness:

- product choices that can be withdrawn or discontinued at anytime with no rights to replace,
- rewriting history by attempted reclassification of ancient beer styles such as saying wheat beer is a lager and therefore tied,
- installation of un-graded and un-certificated third party equipment that means licensees can't clean properly or check compliance of food dispense systems (flow monitoring)
- becoming a family brewer owned pub with restricted product offer at anytime by sale of the freehold,

Every single company code published on BIIBAS as of 1 June 2013 is in breach of the IFC Version 6 clause 35; the minimum requirement as indicated in clause 35 does not appear in any company code. BIIBAS head Mr Bernard Brindly has indicated as much by stating "that all company COP's are currently going through re-accreditation for version 6, and the accreditation panel has specifically

been instructed to ensure this part of the IFC will be in every new code.” Clearly no company could find agreement with this requirement since the start of accreditation in March 2010 and the deliberate exclusion & failure of incorporation raises issues (understandably so) in the minds of reasonable people as to how the codes were accredited in the first place. Seemingly all the companies acted in unison to exclude it and with that the distribution of IFC, this important conditional offer contained in the IFC as a minimum requirement is missing from every Pub Company and BIIBAS website. Given the statement we raise questions as to why there is a need to reaccredit as previously an addendum was issued for IFC V5 The reaccreditations are more red tape and costs imposed on pub companies & brewers under SRP and a clear sign of how trade bodies lose control in having a wide ranging inconsistent approach to COP- SRP management.

Most of the smaller company codes are infact a carbon copy of each other; this would indicate the market takes its lead advice from a single source. Company codes offer little choice the industry has shown it cannot be relied upon to include the crucial clauses and incorporation of vital documentation on their own. No business should be exposed to a SRP with so many shortcomings and structural failures. In short as demonstrated above the low cost - low regulation approach overseen by trade bodies will not & cannot work in this trade.

Pub companies have made much of the ongoing support they offer tenants, this level of support can lead to public liabilities please SEE APNDX 2

The incorporation of a pubs adjudicator will however bring fairness, confidence and redress the failures of the previous trade regime. It is our view that a truly independent investigative adjudicator (based on Groceries Adjudicator) can restore confidence for licensees and stamp out bad practice however this adjudicator needs a strong statutory code with clear references to fairness in order to operate properly.

There is no reason why people (mainly couples) cannot make a living wage from running a pub if they are reasonably efficient. Recent surveys have indicated very poor levels of reward/pay for lessees & tenants, so much so that tax credit support to this sector is running at £2m per week this due to the fact the majority of tied pubs earn under £15k

In regards to a wider economic argument let us not forget that pubs support thousands of – Butchers / Veg men / cash & Carry workers / other wholesalers & suppliers e.g. cleaning companies / farmers (barley & hops). Also the evening & night time economies – Cab firms / door security firms / fast food outlets / night bus operators

Our own PAS snapshot survey indicated tied pubs who were no worse off would be able to employ on average 2 more members of staff.

It is true to say the current situation makes it hard if not impossible for any reasonably diligent independent advisor working holistically (looking at the entire opportunity to rent or lease a pub) to recommend taking on a pub from a pub company or brewer. The opportunity will be left to those with little knowledge gambling or experienced operators bottom feeding prime sites or disposals.

In summary: It cannot be left to new entrants to require a higher level of knowledge that is not being covered by existing training mainly because offers are being withheld or hidden from view by those very companies you wish to enter into a long term relationship with. Crucially this level of

knowledge required to get a fair deal and enter the trade is so high that the majority of new entrants will never meet it and will in many cases walk into their pub of choice blindly with key information being hidden from view.

## Pubs Advisory Service Ltd

The main focus of PAS is to provide information for those looking to lease or rent a pub from one of the many pub companies or family brewers who run property estates in the UK. We are a group of trade experts covering the fields of law, licensing, rents, marketing & due diligence.

### APNDX 1

The various landlords recognised the need to modernise working practices owing to findings of the BISCOP – BEC - TISC and have attempted to construct a self regulatory process (SRP).

SRP is totally compromised and failed a fundamental test of fairness and normal business standards as this example demonstrates:

In the case of a *pubco* tenant *;* who raised a complaint under the SRP the “overseeing body” was informed by *pubco* that the complaint would be unable to progress because the tenant *;* had entered into “legal action” against *pubco* this action under the SRP terms is fatal to a complaint progressing. *the tenant* was surprised (and outraged) as he not engaged any lawyers or filed any claim with any court whatsoever – despite several appeals to the “body” disputing the legal action claim and even the issuing of a statutory declaration by *the tenant* to the “body” they simply wouldn’t investigate further or hear his complaint. With outstanding brevity *the pubco* took *the tenant* to court some weeks later.

This example shows how simple it was for any *pubco* to subvert the SRP firstly by misleading the “SRP body” who clearly make no enquires when this is disputed and (or) finally by application of a county court claim themselves. The SRP can still be easily derailed today by any *pubco* making a small claim; there is no mechanism by which the overseeing body can lock the participants into the process.

### APENDX 2

The following situation outlines the reality of tenancy support and the risk that the treasury faces from tied pubs.

The lessee called the PAS and explained that they went bankrupt 2010 as sole trader owing thousands to the Local Authority & HMRC afterwards the lessee was advised by the pub co to set up a limited co to continue trading the pub. No change to the trading terms (rent etc) was made; despite it being clear to the pub company that the pub was unable to pay its public money debts previously. The pub company were happy with the performance and even mentioned to the lessee that they were a good operator.

Naturally the pub ran up new debts to the same creditors as the underlying situation remained unchanged. Now in 2013 they have to liquidate the limited co which owes thousands to the Local

Authority & HMRC. This time the pub company introduced the lessee to an adviser (insolvency practitioner) to help with liquidation of the limited company. The liquidation meetings involved the disclosure of the trading position and established a level of trade and costs that meant the stability of the pub was only possible with a very much reduced rent, around 70% less.

The Pub Company (despite full disclosure of the costs) wanted to set a rent some £9000 above their own advisors break even calculation. The pub company in supporting this calculation deliberately cut the business rates in half to justify this rent, which was completely at odds with the one calculated by their appointed advisor or supplied by the tenant. From first contact it took over 12 months for the pub company to agree that the rent is sustainable at level which their own adviser confirmed and had been proposed by the lessee many months previously. This slow application of support meant that during that time the debts to the local authority & HMRC have been rising by £1300 per month.

The lessee is being asked to throw more good money after bad but in this scenario the good money is actually taxpayer's money and the delay stems from the pub company support. The risk to the lessee is total; the risk to the pub company minimal, the commitment by the tax payer is ongoing.