

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):

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

Justice for Licensees (JFL) is a campaign group first established in Dec 2007. Through our campaigning we have amassed in excess of four hundred and twenty five thousand members and supporters. We have a core membership which consists of consumers, tied licensees, ex tied lessees, managers and consumers which vote on the majority decision basis. We belong to different social networking groups and have used these to ascertain the real views of tenants, when they have no fear of retribution from their respective pubcos, we have gathered opinions from members of our campaigns and we have listened through messaging, emails, chat and telephone conversations. JFL has submitted evidence to previous Select Committee hearings, we took part in the industry mediation, we have had conversations and meetings with all aspects of this trade (pubco CEO, pubco MD, BDM (past and present), family brewer, larger brewers, small brewers and microbrewers, FOT licensees, tied licensees, consumers, managers, trade body and associations) were are members of both the Independent Pub Confederation and also Fair Deal for your Local.

Consultation questions

Q1. Should there be a statutory Code?

Yes.

The pubcos have had since 2004 to reform and they have failed miserably. Self-regulation has not stopped the torrent of horror stories from tenants, it has not prevented licensees losing their health, wealth and happiness and it has not stopped the abuse and exploitation. Self-regulation does not and will not address the imbalance between risk and reward, the pubcos are still taking more than their fair share of the profits and tenants are still struggling, earning a pittance for all their hard work and effort. The latest CGA survey, as commissioned by Camra, found that 84% of tied licensees surveyed earned less than £15,000 pa.

Self-regulation consists of Pre-Entry Awareness Training (PEAT), PIRRS, COPS and BIIBAS, PICAS and PAS.

PEAT - Inez Ward of JFL advised on the initial process at all times she made it patently clear that the training programme had some considerable room for improvement. PEAT need to make new incoming licensees much more aware of the onerous and punitive clauses within contracts and much more aware of how the pubcos can and do operate. PAS – Industry has failed to set up a Pubs Advisory Service, instead has kindly set one up, we do not believe that the pubcos advertise the existence of PAS nor that they advise their tenants of its' existence.

COPS and BIIBAS - COPS fail to address the imbalance between risk and reward, BIIBAS has accredited Pubco COP's which have failed to address clauses of the IFC. PIRRS and PICAS – JFL has serious concerns over both PIRRS and PICAS as highlighted in our submission to BISC (attached) we have requested the opportunity to discuss our concerns with both entities, to date there has been no response.

Self-regulation is failing to stand up to scrutiny and is failing to address the serious issues as raised by BISC, it is failing to implement a fair and equitable solution for licensees and fails to address governments over riding principles of fairness and that a tied licensee should be no worse off than a FOT licensee which is why there is a need for the Statutory Code.

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 part of the IPC and FDFYL we have agreed that the Code should be binding on all companies that own more than 500 pubs however we have some concerns. We are aware of some small family brewers who operate no different from their bigger counterparts, why should the licensees of these companies not be offered protection? The self-regulation body fails to address the government over-arching principles of

fairness and that the tied licensee should be in no worse a position than the FOT licensee, this is a cause for great concern for the licensees and consumers of those companies who fall below any threshold set. We take on board the fact that the introduction of fair and equitable leases for all the big companies will eventually impact on the small ones who choose not to behave fairly or ethically

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?

Having reviewed some of the pub franchises on offer we believe that they are tying agreements and as such should be treated no differently under the Code.

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

Costs – We have no reason to dispute the Governments estimates of costs.

Benefits – It is clear that many pubs are out of kilter with an open market rent when taking into account the cost of the tie and the alleged SCORFA's. The rental system has been manipulated as highlighted through the BISC report, RICS have produced guidance which is not mandatory upon its' members, is purely guidance which is woolly and open to interpretation, in effect there has been very little further movement since 2009 on the rental system and rents remain out of kilter with a fair and sustainable rent. RPI on rents, are in effect, little more than a yearly upward only rent review. Pub companies, through the provisions of the tie, can manipulate prices as and when they see fit, the cost of tied products are up to double the cost on the open market and there is absolutely nothing to prevent the pubcos from trebling or quadrupling that differential. Many tenants believe that alleged SCORFA's are just that, alleged! There is very little in the way of explanations of what the SCORFA's are and the cost of those SCORFA's, this gives the pubcos the opportunity to manipulate to their own ends and to the detriment of licensees, consumers and the pubs of this land. A Statutory Code which truly embraces fairness and that the tied licensee should be in no worse a position than a FOT licensee would benefit the licensee by recalibrating the balance between risk and reward, this could allow the licensee the opportunity to invest in their business, to take a wage and/or to compete with their competitors, this would benefit the licensees, consumers and the pubs of this land, which obviously would also aid the Treasury and employment, not forgetting that it is the licensees that pay the taxes, that claim tax credits and employ people for their business.

Market Rent Only (MRO) option would be an option and not a certainty, if the pubcos are behaving as should be expected from a corporate being and the tenants are indeed happy and content with the relationship and the balance of power and risk and reward then they would have no need to invoke the MRO option. It could indeed be the carrot to entice the pubcos to behave fairly and to incorporate the Governments arch principles of fairness and that the tied licensee should be in no worse a position than the FOT licensee and also the stick to beat them with when they fail ignominiously to adhere to Governments wishes. It will be their choice entirely and all they have to do to protect the tie is adhere to Governments wishes and behave fairly. The pubcos could, of course still

put in a bid to the licensee to sell its products, obviously they would have to be competitive with other suppliers.

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

Many of our members and supporters have serious concerns over self-regulation as highlighted in our evidence to BISC, we have requested to open dialogue with both PIRRS and PICAS to discuss these concerns, to date neither body has responded. Until those concerns are addressed we do not believe that self-regulation will be the answer that this sector of the trade so desperately requires. Self-regulation requires some vast improvements and without those improvements government will continue to see the carnage that has been unfolding before their eyes for the last decade. The pubcos have proven categorically that they are incapable of producing meaningful reform incorporating Government's arch principles, which addresses the concerns so ably highlighted by successive Select Committee hearings.

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 – there is no justification for the gaming tie, if licensees are capable enough of taking on a tied premises and running a pub, then they should be capable enough of choosing gaming machines. Every Select Committee since 2004 have recommended abolition of the gaming tie, we agree.

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

Yes – this would open up the market to small brewers and micro brewers who are not able to market their products to approximately half of the pubs of this land, due to the inadequacies of the tied model.

- 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 – we believe that if the pubcos are going to use flow monitoring equipment then it should become applicable under the Weights and Measures Act.

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

Yes - the Statutory Code should incorporate a Free of Tie, or Market Rent Only option for the reasons given above.

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 – we believe that the pubcos will try to circumvent legislation as they have tried to circumvent self-regulation, the Statutory Code should have the ability to ensure that it delivers the two overarching principles at all times, both now and in the future.

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

Yes – this is absolutely essential to re-address the problems clearly highlighted throughout the last decade. It should be remembered that this is only an option and if the pubcos behave fairly and incorporate Governments overarching principles within their contracts then licensees would have no need to invoke the option. The choice will lie entirely with the pubcos.

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?

The provision of a Free of Tie option would ensure that higher beer prices are compensated for by lower rents.

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

Yes – undoubtedly there is a huge need for an independent adjudicator.

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 – We also believe that the Adjudicator should also have the ability to retrospectively investigate cases of abuse and exploitation of tenants.

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 – we would like the recommendations to become legally binding on the companies.

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

Yes – This will act as a deterrent to pub companies.

III. Financial penalties?

Yes – we believe that pubcos need the threat of a financial penalty to ensure that they behave themselves.

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

Yes

If the pubcos behave accordingly, incorporating Governments overarching principles, then there will be little need of the adjudicator which should limit costs. We believe that the addition of a Free of Tie option would be the carrot to entice the pubcos to behave accordingly or the stick to beat them with when they fail, basically it would be the unequivocal proof that the pubcos were finally behaving as they should.

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BIS/13/718RF

Dear Committee Members

With reference to the Business, Innovations and Skills Committee call for evidence, it is our honour to have the opportunity to submit the following evidence:

Background

Justice for Licensees (JFL) is a campaign group, initially borne out of the need to discover whether the questionable practices of the pubcos were prevalent across the companies and the country. JFL, through its campaigning, has four hundred and twenty five thousand, six hundred and twenty six (425,626) members and supporters, these consist of tied licensees, free of tie licensees, managers, ex licensees, employees of the industry and consumers. We are very proud to be one of the founding members of the Independent Pub Confederation (IPC) and also work closely with Unite the Union. JFL fully supports the findings and recommendations made in the Business and Enterprise Committee 7th report - Pubcos 2008/09 and the Business, Innovation and Skills Committee report of 2009/10.

Summary

There appears to be systemic failure by the pubcos to comply with the most basic of requirements, the pubcos have proven, once again, that they are incapable of meaningful reform. They have consistently failed to deliver on the recommendations of three inquiries, it is clearly evident that self regulation and self policing have not worked and are not working. There is still a distinct lack of honesty, transparency and fairness, the relationship between landlord and tenant remains inequitable. Legislation is the only answer, there must be a mandatory, statutory COP which addresses the core issues of the imbalance of power between landlord and tenant and also the prime concern of the huge imbalance in gain and reward for input into the business. It is imperative that a mandatory, statutory code now be introduced with all due haste. The mandatory, statutory code must include:

- * **A genuine free of tie option with an open market rent review in accordance with RICS guidance.**
- * **Compliance with RICS rental valuation guidance.**
- * **A guest ale right for those who choose to remain tied.**
- * **Removal of the AWP machine tie.**

1 - Surveys

- 1.1 In January of this year JFL ran two surveys of pubcos tenants, one for past tenants (1) and one for present tenants (2), copies of which, with the findings and comments, are attached. We decided to run two surveys as we were painfully aware of the level of 'churn' since the gathering of evidence by BEC in 2008/2009.
- 1.2 Of the current tenants surveyed 78% did not believe that their rent charges are fair, maintainable and sustainable, 40% are paying over 19% of turnover in rent. Of previous tenants 91.1% did not believe that the rent they were charged was fair, maintainable or sustainable and 65.8% were paying over 18% of turnover in rent.

- 1.3 78% of current tenants surveyed draw less than £10,001 income from the business, the results for the previous tenants are even more shocking with 83.6% drawing less than £10,001. Considering the hours worked, which are out of kilter with time directives, the majority of those surveyed earn much less than the national minimum wage. Tenants are having to seek second jobs, which with the hours worked for the pub is not good for the health or benefits, which are a drain on the national economy.
- 1.4 An astounding 83% of current tenants and 94.9% of previous tenants believe that the tie led their business into being unable to effectively compete in their market place.
- 1.5 82.3% of previous tenants and 79% of current tenants do not believe that the BII will be able to effectively police the industry. 78% of current tenants do not believe that their Code of Practice will help their business.
- 1.6 95% of current tenants and 97.5% of previous tenants believe that there should be a complete and full investigation of every aspect of the pubco model by a totally independent body.

Conclusion

There still remains a huge imbalance in power between landlord and tenant, with the tenant having little in the way of redress and the pubco still taking the lion's share with little work or support to warrant the take. This impacts on the general well being of the pub sector with closures and churn still abundantly apparent, it also impacts on the general economy with a cost to the government of benefits, a rise in unemployment figures and social housing. There is no excuse for the tax payers of this land to support irresponsible, incompetent and greedy companies.

2 Codes of Practice (COP)

- 2.1 Whilst we agree that the Codes of Practice are a step in the right direction, we are concerned that it is a very small step that fails to address many of the serious issues in the imbalance of power between landlord and tenant. We were also concerned to learn that some of our members were not advised to seek legal advice before signing for the COP's, we feel that this is far from satisfactory, the pubcos have already made it clear that breaches of COP's can and will be used in a court of law if they deem it necessary. We are also very concerned that some pubcos appear to have used this opportunity to place further onerous conditions on their lessees, surely a Code of Practice is an undertaking by a company or organisation on how they should act, not how they customers/clients are to act, it should be the lease which dictates how the tenant is to act and not a COP.
- 2.2 JFL has found that the number of potential COP breaches and questionable practices outside of the COP's are escalating rather than decreasing. We are also concerned that the mechanisms in place to bring the pubcos to heel on disputes are not hard hitting enough and do little to encourage the pubcos to behave themselves.
- 2.3 The British Beer and Pub Association (BBPA) in conjunction with the IPC carried out a survey into the new COP's (3), we believe that this was not designed to be a comprehensive survey of tenant satisfaction and therefore should not be taken as such. It is indicative of some failure by the pubcos, that 23% of existing tenants were not aware of COP's, nearly one third of existing tenants did not receive COP's and that 8% of new tenants did not know about COP's. 56% of existing tenants and 56% of new tenants were unaware of PIRRS and 22% of new entrants did not take PEAT. 17% of new entrants did not receive trading history and 10% felt that FMT had not been explained properly. 44% are still tied for AWP and of that 44% 54% of those had not had the machine income removed from the divisible balance and 15% of new entrants said machine income had not been removed from the divisible balance, this in despite of the BBPA's assurances

to the committee that AWP income had been removed from the divisible balance, either the BBPA are misinformed and therefore incompetent for not finding out the truth of the matter or they are as complicit as the pubcos in being economical with the truth. 77% had not been offered a FOT agreement and 74% had not received any discounts or rent reduction. Considering that the pubcos are still under scrutiny this does not bode well for the future when scrutiny is removed.

- 2.4 In the BISC 5th report the committee concluded "**The new Framework Code of Practice appears to be a modest step in the right direction. Of necessity it provides a framework for companies of all sizes. We expect the major pub companies to treat it as an absolute de-minimus requirement and to significantly build on it with their own Codes. Only by doing so will pub companies be able to demonstrate that they are committed to reform.**"
- 2.5 We are concerned that many pubcos have not significantly built on the absolute de-minimus requirement.

Conclusion

The COP's are not the answer to the woes of this sector of the industry. There appears to be systemic failure to comply with the most basic of requirements, the pubcos have proven once again that they are incapable of meaningful reform. The COP's fail to deliver a balance of power between landlord and tenant and fail to address in any way the huge imbalance in gain and reward for input into the business.

3 Pre Entry Awareness Training (PEAT)

- 3.1 JFL advised on PEAT. We consistently made the steering group aware that we did not feel that PEAT went far enough. Some points made were taken on board, however when it came to the crux of the issues these were ignored. We are disappointed that 22% of new entrants did not take PEAT.

Conclusion

Peat is another very small step in the right direction, it requires further honesty and transparency and more of a will to ensure that new entrants are not only made aware but also have to take the training.

4 Pubs Independent Rent Review Scheme (PIRRS)

- 4.1 We feel that PIRRS is another step in the right direction and it should be welcomed that there is a cheaper entry route into rent review disputes, that said there are some areas of concern.
- 4.2 Should a tenant decide to go to arbitration through RICS details of the arbitrator's calculations are supplied and there is the possibility of a right of appeal, PIRRS arbitrators supply a brief summary and there is no right of appeal. Arbitrators are only human and therefore it is not beyond the realms of possibility that mistakes can be made, if the arbitrators calculations are not made clear and there is no right of appeal this leaves the tenant and landlord in a less favourable position.

- 4.3 With a PIRRS determination there is a Deed of Variation (DoV), with RICS there is not, we were particularly perturbed to learn that the DoV contains a forfeiture clause.
- 4.4 A PIRRS resolution contains a None Disclosure Agreement (NDA) or confidentiality clause, "The confidentiality clause is in place to protect the private information declared by both parties via their submissions to avoid sensitive information from being used detrimentally".

Conclusion

PIRRS is another step in the right direction however it requires further examination and strengthening to ensure that honesty transparency and fairness are the order of the day. We believe that it would be favourable if both the arbitrator's calculation and the right of appeal clauses were re-examined by the PIRRS board. Forfeiture of lease clauses should not, under any circumstances, be included in the rent review process, the pubcos have the lease to rely on should they need to forfeit the lease. With reference to the NDA we would have to question detrimental to whom? Surely if it is the correct rent, set at the FMT and following RICS new guidance how could this information possibly be detrimental, unless of course the pubco are trying to enshrine rental reductions in secrecy and to prevent them being used as comparables in other rent reviews.

5 Dispute Resolution Service

- 5.1 JFL maintains that there is a need and requirement for a dispute resolution service for this sector of the industry. We believe that it has been clearly shown there are some practices which fall outside of the limited COP's and rental disputes resolution services.
- 5.2 The majority of tenants cannot afford lengthy and costly court cases.
- 5.3 We are aware that the BII have implemented a mediation service.

Conclusion

There is a dire need for a resolution service which covers areas other than COP breaches or rental disputes. This must be quick, efficient and not costly to the tenant. We are unsure whether the BII have the authority to effectively deal with the pubcos.

6 Free of Tie Option

- 6.1 The pubcos have been quite vocal that they have FOT options, however in reality these are little more than FOT pricing with either increases in rent or other sizeable payments to secure the pricing. The pubcos have failed to offer a genuine FOT option, that is the ability to purchase products from wherever the tenant chooses without fear of breaching the contract, accompanied by an open market rent review following RICS new guidance.
- 6.2 There is a systemic failure to offer a guest ale provision.
- 6.3 At the Save the Pub debate in the House of Commons the pubcos finally admitted, despite all the spin to the contrary, that they do not offer a genuine FOT option with an open market rent review following RICS guidance.

Conclusion

Government must legislate to include the above, obviously the pubcos are not going to do this willingly. There is an urgent need for a mandatory, statutory code to include a genuine FOT option accompanied by an open market rent review in compliance with RICS guidelines and a guest ale provision for those who choose to remain tied.

7 Rents and AWP machines.

- 7.1 Rental levels appear to remain high and seem to fail to take account of the fact that a tied tenant should be in no worse of a financial position than a FOT tenant, despite the encouraging new guidance from RICS.
- 7.2 Pubcos are circumventing rent reviews with shorter leases of less than 5 years which fall outside of the Landlords and Tenants Act and contain RPI index linked rents, in other words a yearly rent rise, without taking into account the fall in beer sales and the hardships faced by the hospitality sector. This ensures that rental levels are an ever upward cycle and fail to take into account FMT.
- 7.3 Both the BBPA and the pubcos have assured the committee that AWP income now falls below the divisible balance for rental negotiations and indeed it is included in the BBPA's Framework COP. However the reality is that the pubcos still take AWP machine income into account when putting forward rental bids, in other words they are still taking two bites of the cherry by taking a percentage of the machines profits and then rentalising the tenants incomes from AWP machine agreements. This is abundantly apparent from the findings of the BBPA/IPC survey, also Simon Townsend admitted in the trade press that machine income was taken into account when rental bids are made and the following is an excerpt from a BDM's email concerning a rent review "as the divisible balance and machine income are considered together for the purposes of the rent review as machine performance is part of the pubs income and logically must have some bearing on rental bids."

Conclusion

We believe that it is imperative that there is a mandatory, statutory code which includes compliance with RICS rental valuation guidance in order to prevent circumnavigation and abuse by the pubcos. There is a need for the removal of the AWP machine tie. The pubcos have proven conclusively that they are incapable of operating the AWP tie fairly therefore the only course of action left open is to remove the AWP tie.

8 Competition

- 8.1 Many of our members believe that the alleged counter veiling benefits for the privilege of the tie to do not equate to the cost of the tie and would prefer to be FOT and not have the alleged counterveiling benefits. They believe that they are restricted in their product choice and that they cannot compete effectively in their market place whilst under the onerous restrictions of the tie.

Conclusion

JFL is of the opinion that the tie, as it is currently being operated, is anti competitive and restrictive, that the pubcos operate in a cartel like manner and would question whether there has been foreclosure and price fixing in this sector of the market.

9 British Institute of Innkeeping (BII)

- 9.1 There are a large percentage of our tied members who do not believe that the BII are best placed to serve this industry as policemen of the industry, they believe that the BII are ineffective. The reasoning for this covers views such as they have failed previously and have been complicit in the current status quo, there are conflicts of interest as the BII have revenue streams from the pubcos, that the BII are bullied and dictated to by the pubcos, that the BII are weak and ineffective and simply do not have the tools or authority to deal with the pubcos, this is just a sample of the more popular views.
- 9.2 JFL has passed on some complaints to the BII from tenants who feel that they have been bullied, intimidated, lied to and generally not treated how they would expect a respectable company to treat their so called business partners, in some cases the BII have managed to achieve some results, but never a fair balance, in other words the pubcos were getting off the hook somewhat, in these cases we felt somewhat sorry for the BII as they more than tried their best but did not seem to have the authority to bring about a fairer resolution. In some cases JFL has been extremely disappointed by the BII's response.
- 9.3 We are exceedingly disappointed that 56% of current tenants and the same for new tenants are not aware of PIIRS, we would question whether the same is true of the new mediation scheme, or if the figure are even worse due to the fact that it is much newer than the PIRRS scheme.

Conclusion

JFL maintain that the BII are best placed to serve this industry as the policemen due to the fact that the system and set up is already in place however we carry some severe reservations over their effectiveness and ability to fulfil that task.

10 Beer Monitoring Equipment

- 10.1 JFL is aware that tenants are still being fined for buying out solely off the data from the beer monitoring systems. We are also aware that the pubcos are still using the threat of costly court action to ensure that tenants sign agreements that they have bought out.
- 10.2 Tenants are reporting that calibration is either not happening or is laughable. JFL is receiving no reports of outside verification unless the tenants themselves are requesting verification from Trading Standards.
- 10.3 We are aware that data collected is manually adjusted.

Conclusion

The efficiency and reliability of beer monitoring systems remains very questionable. It is not acceptable that tenants are fined off the findings of equipment that has been found to be unreliable.

It is now clear that the Weights and Measures Act of 1985 must be amended to include beer monitoring equipment.

11 Pubco arguments

- 11.1 The pubcos have argued that it is not their fault, that it is due to incompetent tenants, however it is the pubcos that have allowed these tenants to run pubs, are they saying that they have been totally irresponsible in allowing incompetent tenants to run pubs? The pubcos should and must have adequate procedures in place to ensure that only competent tenants are allowed to run pubs. Considering the extent of the problems across the whole tied estates JFL does not believe that this is the case at all and that the pubcos have to admit the level of incompetence and irresponsibility on their own part.
- 11.2 The pubcos have argued that the majority of their estates are happy with the tie and relationship and that the problems are restricted to a vocal minority. As there has never been a full market study of this sector of the industry, in the last twenty plus years that we are aware of, we could not categorically state whether this is the case or not. However from our own research from our extensive membership we would be content to believe that it is not the case at all and that there are sufficient numbers of tenants who are unhappy with the tie and relationship to warrant government intervention and legislation.
- 11.3 The latest argument from the pubcos is that if they were forced to offer a genuine FOT option with an open market rent review that it would put their business in jeopardy. If the pubcos first two arguments hold any water then this is a mute argument as they would not be allowing incompetent tenants to run their pubs and if the majority are indeed happy then they would not opt for this option and therefore their (Pubcos) business would not be in jeopardy. Does this argument in itself not show the pubco model to be what it truly is? If their tied agreements were indeed comparable to FOT agreements then why would their business be in jeopardy?
- 11.4 They have also argued that a genuine FOT option with an open market rent review would wreak havoc on pubs and increase failure, but how can this be? Rents would be set in accordance with RICS guidelines and so would be set on the Fair Maintainable Trade that could be expected of a reasonably efficient operator, not outstanding but reasonably efficient. Is that not how it should be? Is that not how the pubcos currently set their rents? Therefore where is the problem? The tenants would be able to choose which products they decided to stock and would be able to cater for their customers preferences, without being restricted to a product list and they would be able to negotiate the best price so enabling them to become more competitive. This could also enable them to increase their profits and turnover, so enabling them the luxury of being able to re-invest back into their businesses and buildings and so improving the quality of the estates. Also as this is only an option and considering the pubcos other arguments, the majority are happy with the tie and therefore would not choose this option. This argument is the most self serving and ridiculous nonsense that we have heard to date.

Final Conclusion

There appears to be systemic failure by the pubcos to comply with the most basic of requirements, the pubcos have proven, once again, that they are incapable of meaningful reform. They have consistently failed to deliver on the recommendations of three inquiries, self regulation and self policing have not worked and are not working to address the huge imbalances in power between landlord and tenant. There is still a distinct lack of honesty, transparency and fairness, the relationship between landlord and tenant remains inequitable. Legislation is the only answer, there

must be a mandatory, statutory COP which addresses the core issues of the imbalance of power between landlord and tenant and also the prime concern of the huge imbalance between gain and reward for input into the business. That legislation must include a genuine FOT option (that is the ability to purchase products from wherever the tenant chooses without fear of breaching the contract) with an open market rent review in accordance with RICS guidelines, compliance with RICS rental valuation guidance, with a guest ale right for those who choose to remain tied. The pubcos have proven that they are incapable of behaving fairly with the AWP tie therefore the privilege should be removed. There is a dire need for an independent dispute resolution service to address and rectify problems that may arise.

Recommendations

Mandatory, statutory code to include but not be restricted to

* **A genuine free of tie option with an open market rent review in accordance with RICS guidance.** This would ensure that the industry does indeed self regulate and police itself. It would help prevent abuse and exploitation of the tied agreements, for the simple reason that should the pubcos abuse or exploit the tie then the tenants would have the ability to enforce the FOT option. There should be a de minimis rule for brewers with less than 500 pubs in order to protect the small and family brewers.

* **Compliance with RICS rental valuation guidance.** To prevent circumnavigation and abuse by the pubcos.

* **A guest ale right for those who choose to remain tied.** To help the small and micro brewers and to aid competition.

* **Removal of the AWP machine tie.**

Further recommendations:

An independent dispute resolution service to address disputes between landlord and tenant, this service should not be restricted to rental or COP disputes.

The Weights and Measurements Act 1985 requires amendment to include beer monitoring equipment.

The removal of UORR clauses from all contracts to prevent abuse.

The industry to examine, improve and strengthen PIRRS and PEAT.

The industry must ensure that it agrees on and delivers guidelines on the average costs of running a pub.

The industry must ensure that it delivers a nation wide register on rent reviews and rental levels, to ensure honesty and transparency.