

Pub Companies and Tenants: A Government Consultation

BIS consultation 2013

**Response of
The Trading Standards Institute**

June 2013

About The Trading Standards Institute

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our broad church of Members are represented at the highest level of government, both nationally and internationally.

TSI campaigns on behalf of the profession to obtain a better deal for both consumers and businesses.

We are also taking on greater responsibilities as the result of the government's announcement in October 2010 that trading standards is one of the two central pillars of the new consumer landscape (the other being Citizens Advice).

The TSI Consumer Codes Approval Scheme, established at the request of the government to take over from the OFT scheme, went live in April 2013 and will be formally launched in June.

TSI is a member of the OFT's Consumer Protection Partnership which was set up by the government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We have taken over responsibility for business advice and education.

TSI is also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

In compiling this response, TSI has canvassed the views of its Members and Advisers. The response has been composed by the team of TSI Lead Officers for Metrology, spearheaded by Gerry Dutton. If you require clarification on any of the points raised in the response, please do not hesitate to contact Gerry at email lometrology@tsi.org.uk.

TSI does not regard this response to be confidential and is happy for it to be published.

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The Trading Standards Institute wishes to comment only upon the aspect of flow measurement of beer under the proposed code of practice – this has been a contentious issue for many years between the companies and their tenants, and is the area within the consultation document where trading standards is mentioned directly.

Relevant extract from consultation document:

Flow Monitoring Equipment (paragraph 30 of the Code)

5.19

As acknowledged in the 2010 Select Committee Report, “the accuracy of data from flow monitoring equipment and the analysis of that data are highly contentious issues.” It is clear that there is no consensus as to whether the equipment is accurate enough to be used to determine whether a tenant is complying with purchasing obligations. A further difficulty is that, as it appears likely that they are not in use for trade, their accuracy cannot be enforced by Trading Standards.

5.20

Clearly, it is entirely legitimate for one party to a contract to seek to ensure that the other party complies with the terms of that contract. However, the model of the tied public house has been part of the British pub industry since at least the 18th century and for the majority of that time modern flow monitoring equipment has not been available. It is therefore clearly possible to operate a tied estate and to enforce the tie without the use of flow monitoring equipment.

5.21

The Government therefore considers that the simplest and fairest solution is to mandate in the Code that information obtained from flow monitoring equipment may not be used for the purpose of determining whether a tenant is complying with purchasing obligations and that it may not be used or considered as evidence when enforcing purchasing obligations.

Code Paragraph 30.

Information obtained from flow monitoring equipment may not be used for the purpose of determining whether a Tenant is complying with purchasing obligations, nor may it be used or considered as evidence when taking enforcement action on purchasing obligations.

Notes for consideration.

The equipment is not prescribed in law and has not been subjected to a type approval process. Weights and Measures Inspectors are, therefore, under no duty or obligation to examine and test flow measurement equipment for accuracy when used to determine

volume measurement within a particular installation, nor is there any regulated acceptable error allowance.

Trading standards services (TSSs) have been voluntarily involved where individuals involved have appealed for assistance in the interests of Fair Trading. Additionally, the Home Authority of one of the providers of the equipment have provided assistance and opinion towards best practice in the evaluation of the accuracy upon installation, and the experience collectively gleaned from such experiences allowed a view to be formed about the process. A test protocol was set up to allow TSSs to conduct tests within premises with the co-operation of the operator, but it has never been possible to design a totally independent test as there is no indication of results on site.

Flow measurement of gaseous liquid is internationally recognised as a difficult process, and the variation in the pressure of the liquid compounds that difficulty. The measurement result is only available to the monitor of that measured result. Neither the company nor the tenant can see the indication, which means there is an observed lack of transparency. There are uncertainties around line cleaning, and uncertainties evoked by the variation in individual installations are recognised by all parties involved. The results themselves are subjected to interpretation by the operator and are used to inform trends of throughput over a period of time, rather than a specific measured result.

The stock control evaluation of the throughput of individual premises themselves is subject to uncertainties - in cask supply quantity, wastage caused by priming systems, and in comparison with quantities sold.

In-line flow measurement, if working correctly, quantifies liquid flow through a meter closed to the atmosphere and under pressure.

The measurement of the product to the final consumer, made at normal atmospheric pressure, is extremely variable due to the gaseous nature of beer. Usual trade practice is to use brim measure glasses. The inclusion of a head on beer results in an actual liquid content in the glass which will vary between -10% to -1% deficiency of that dispensed per pint. Comparing the number of pints delivered [evaluated from the till records] is thus flawed if compared against a flow measurement of liquid which is under pressure and is liquid, not a mixture of liquid and gas as at the dispense stage, which will always have a greater volume.

That proposition of course assumes a perfect delivery without spillage; poor delivery into the glass can conversely lead to wastage where all the liquid dispensed does not remain in the glass, but is run into the drip tray below and lost to the equation.

It follows that comparison between stock in, measured flow, and stock out witnessed by till sales is an extremely inexact science.

The code therefore echoes the view which individuals within the trading standards service came to some time ago: that the measured results should not be used in isolation to witness the throughput of beer within individual premises.

We turn now to the specific question posed in the consultation document – the fifth provision of Question 8.

Q.8 Do you agree that the Government should include the following provisions in the Statutory Code?

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.

TSI agrees that the Government should include this provision within the statutory code in that the equipment in isolation is considered to not be suitable for making a fair determination that a tenant is complying with purchasing obligations for the following reasons:

- the equipment is not type approved, nor subject to regulation specifying appropriate limits of error;
- exercises and investigations which have been commissioned to prove or disprove the accuracy of the equipment have been inconclusive as to its accuracy or continuing accuracy over a period of time;
- there are a significant number of external on-site factors which can influence the accuracy of the equipment;
- the measurement results are not transparent in that only the operator of the equipment has immediate access to them; the parties to the contract (company and tenant) cannot independently view the measured results;
- it is not possible for an independent third party to evaluate the system without the aid of the equipment operator;
- it is believed that the equipment is intended to be used to evaluate trends rather than to specify measured amounts; and
- when used to make comparisons with records of sales to customer, the sales information can be evaluated by flawed measurement data if based on number of units sold rather than accurately measured individual amounts as dispensing to customer is influenced by wastage during the dispensing process and the reduction of liquid volume dispensed due to excessive 'head' on the beer delivered [the in-line meter measures liquid throughput; the measurement of the glass consists of a liquid portion plus a gaseous portion; the net liquid result if dispensed without spillage will be less than that of the capacity of the glass by the volume of the gaseous head].