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From:

Sent: 10 June 2013 14:58

To: Pubs Consultation Responses

Subject: Consultation submission

Attachments: 13-718RF-pub-companies-and-tenants-a-government-consultation-response-form[1].pdf

Dear BIS,

Please find attached our beer tie consultation submission. We are active members of the FSB and LSL, but are submitting this as tied tenants of Enterprise Inns.

Please can you confirm receipt of this as we have had trouble submitting on line & do not want to miss our opportunity.

Thankyou,

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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

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|---|
| 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. |
| <input type="checkbox"/> Representative Organisation |
| <input type="checkbox"/> Trade Union |
| <input type="checkbox"/> Interest Group |
| <input type="checkbox"/> Small to Medium Enterprise - Tied Leasehold Pub |
| <input type="checkbox"/> Large Enterprise |
| <input type="checkbox"/> Local Government |
| <input type="checkbox"/> Central Government |
| <input type="checkbox"/> Legal |
| <input type="checkbox"/> Academic |
| <input type="checkbox"/> 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.

Consultation questions

Q1. Should there be a statutory Code?

Yes, it is clear from the ongoing numbers of pub closures, and clear financial distress highlighted on the recent CAMRA survey (60% of tied publicans on less than £10k), that self regulation is not working. I personally have had & are having a dreadful experience with Enterprise Inns that has cost me all I had, all I have right now & very likely all I will have if I am forced to collapse the business my home is used as collateral for. The PubCo argument used even as recently as June 2013 by Ted Tuppen is that we knew what we signed. I ask you & him, Who was it in full possession of the facts of the business when we purchased it? Not us but Enterprise Inns. Who is it that gave us a list of needed information to make an informed choice? No-one! Is this fair & reasonable? No! An adjudicator with the ability to grow, adapt, evolve & enforce is the only way forward. Self-regulation has failed.

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.

I strongly disagree with then notion of selective legislation, where fair & reasonable terms are not guaranteed for all. The pye chart supplied on p18, showing total numbers of complaints, obviously highlights (proportionally) the issues associated with larger companies. In the absence of complaints/proportionality data, & with the assurances that behavior in smaller companies is generally responsible - This statutory code should be binding on all pub owning companies. Simple fact, IF there is no bad practice from the Family Brewers/less than 500 club then there is nothing for them to fear & perhaps this is the chance for them to teach best practice & evolve into the future of the Pub sector.

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, fair legislation can only retain it's integrity if it is administered fairly.

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

I have no direct experience of the franchised market.

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

The costs I would expect to be largely absorbed in the ample margins of pub owning companies, the benefits would appear far further reaching. The impact assessment talks of "the loss of economy of scale" as a negative, whereas a fairer distribution of moneys throughout the supply chain can only be of benefit to the whole sector. A greater percentage of every pound spent in a local economy, stays within the local economy. The current system takes too much out of potential local economic growth, using it to fuel corporate debts.

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

Many questions already exist over the effectiveness of self-regulation. I have a case currently within the PICA service. A case that had to pass through over 2 years of pubco [redacted] to even get this far. Of the few publicans who are aware of the service, similar reports have come to my attention (as part of L.S.L.) As for the impartiality & effectiveness of a service, held in secret, with no reasoned findings given, just a judgment passed, & that has no ability to enforce change of practice within any PubCo from it's findings, it will soon become apparent to us. Our PICA service papers are available on request & our panel hearing on [redacted] open for you to witness (as per Roger Vickers invitation) should you wish to.

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, PLEASE! It is the factual inequality of the current system that directly leads to the crisis in the UK tied pubs market. Let the Beer Market open by allowing me the opportunity to buy where best suits my Pub, customers & purse & you will witness the rebalancing & reinvigorating of this sector. Grass roots employment & economic stimulus at a local level, Nationally. What could be better.

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, With most pub rents increasing every year (with RPI clauses), other expenses increasing at inflation rates, and alcohol prices increasing more, the tied publicans share shrinks significantly over a 5 year cycle. With the effect of outside economic forces to contend with, the right to have a rent review should always be open to a tenant, and can only be of benefit the publican & the pub owning company.

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, to have the empirical notion of a fair market rent only, provides not only the chance for tied publicans to take control of their own businesses, but would provide an 'end-stop' to the runaway expectations of profit from pub owning companies, that the lack of competition in pricing has allowed.

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

Yes.

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

Yes, currently 60% of UK pubs can't access 75% of the beer market. In my pub, my pubco stocking list only allows me to stock 6 out of the last 30 CAMRA award winning ales. The current system appears biased in favour of big brands, with little or no access to smaller independent brewers.

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, the lack of empirical measurement has long held this practice to be of questionable legality, particularly in an area where pubcos can issue punitive fines at will with nothing other than the desire to do so. We Publicans have no recourse for this & many are fighting these very fines right now.

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

Whilst detail & clarity are important in rent reviews, I am concerned (from personal experience) that pub owing companies could be capable of losing or gaining odd percentages in the many lines of detail, that many publicans without formal accounts training would be unlikely to spot.

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. The effectiveness of this legislation I will be partly down to it's ability to evolve with the industry as it does with the improvements as they happen. To revisit & adapt any regulations should be a core part of the Adjudicators remit.

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

Yes, some concerns have been raised over the administration of such legislation, however a simple mandatory free-of-tie option, would have the greatest impact on solving all the issues that effect the trade, with the least red tape.

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?

No, without a genuinely free & open market, or an empirical end-stop on profiteering, self regulation has proved that other forms of control are insufficient.

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

Yes. Someone from outside the usual sources for the filling of positions (BII, RICS, ALMR etc.) as we need 100% impartiality. Any advisors to the Adjudicator must be balanced by either someone as unbalanced as them or truly independent.

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. Also beyond that. The adjudicator should be able to enforce the Corporate change vital to stopping the breaches happening initially & to revisit this for compliance by the PubCo's.

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. The adjudicator must be able to enforce their recommendations. Evolution & the ability to evolve should be an aim of this legislation .

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

Yes, naming & shaming is a big deterrent & will sort the wheat from the chaff. This is one area where the PICA service has failed to bring the industry forwards - in that so much is kept secret, no reasoned findings, no access to the meeting minutes & ,after a recent case in court with ETI, no right to go further to use courts in seek of recompense, fairness & redress.

III. Financial penalties?

Yes, sadly this is the only language that (in my experience) pub owning companies are likely to take notice of. Any fines should be widely publish as a further deterrent to PubCo's.

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. These should be paid for & will be a further deterrent to bad behaviour. The impact will lessen as & when the PubCo's learn not to commit these offences & are no longer fined.

In support of the consultation:

What would a market rent only option mean to my business?

I currently run an Enterprise Inns leasehold pub, turning over something in the region of £300K. Over the last 6 years I have never made a taxable profit, in spite of investing everything I've ever had and consistently working a 65+ hour week.

The one area of business growth has been our food. Serving all day, home cooked, locally sourced food has been our saving grace. Localism is more than a good selling point for my business, more than a good way of cutting the carbon miles for my business's footprint, it's about the fact that up to 70% of each pound spent locally, stays within the local economy. Local economic growth I feel is more vital to the true stability of country than the numbers of a few PLCs.

To be able to take this model and apply it to the other half of my business would be revolutionary. I currently have access to 25% of the breweries in my own county, and any beer purchased via the SIBA program (for smaller independent brewers) is artificially priced 30% more than big brands. Looking nationally I am only able to purchase 6 out of the last 30 CAMRA award winning beers.

The MRO option would allow me for the first time to take control of my own business, without artificial constraints. Constraints that hold back it's growth, and the growth of other smaller businesses in the supply chain.

This however only represents the theoretical benefits of a MRO option, the actual benefits I estimate will be much greater.

The balancing factor of competition has long been missing from the capitalist beer tied business model. With rents linked to unachievable trading levels and RPI clauses magnifying the problem. With alcohol prices rising well above inflation. The unchecked desire for profit has fundamentally imbalanced the splits of both risk and reward. If I genuinely had access to an equal share of the profits from my business, I would be able to invest, in both the tired fabric of the building and into developing business growth. I would be able to employ more staff, with the hope of achieving a minimal wage for my self and still being able to see my family.