

910

**Memorandum to the Pub companies and tenants consultation**  
**Re: Inquiry into Pubcos – 2013**

**1 Summary of Evidence**

- 1.1 We have been trading here at  
on a tenancy agreement and ~~(then)~~ a lease, initially through Bass but later to Punch Taverns. In 2009 we managed to purchase the freehold from Punch.
- 1.2 When Punch took over the freehold of our premises we found it increasingly difficult to run the pub profitably and our customers have seen beer prices increase dramatically.
- 1.3 The Pubco tried, unsuccessfully, to turn me into what I would call a “self-employed manager”, leaving me with all the risks of self-employment, but without the ability to take our own business decisions.
- 1.4 I consider that Pubcos, in setting inflated rents are making it very difficult for tenants to make a long-term success of running a pub. I see tenanted pubs changing hands or closing on a frequent basis, with new licensees often being inexperienced and, in my view, often unsuitable to run a licensed premises. The uncommercial nature of the terms of the lease from the Pubco leads to personal problems, when licensees are forced out of business and lose their homes and livelihoods. Additionally, I consider that by trying to meet their financial obligations, licensees are adding to the culture of anti-social behaviour and “binge drinking”, as they are forced into selling alcohol to unsuitable customers at low prices, just to try to make enough money to pay their rent.

Deleted:

**2 Background and Personal Experience**

- 2.1
- 2.2 We took out a lease agreement on the pub which was extended by a further 5 years in 1997. This agreement entitles the landlord to rental income and governs the terms of the exclusive purchasing obligations on the tenant (the “Beer Tie”).
- 2.3 The Bass Lease Company, or its former incarnations (“Bass”) owned the freehold on the property until 1998.
- 2.4 Bass sold the freehold to The Punch Pub Company (“Punch”) in 1998, when it sold a large proportion of its tenanted estate following the Beer Orders Act 1989.

**Memorandum to the Pub companies and tenants consultation**  
**Re: Inquiry into Pubcos – 2013**

- 2.5 Upon taking over the freehold, and hence becoming party to the lease agreement, Punch asked all tenants to sign a new lease agreement, called the “New Deal”. We chose to retain our original lease agreement and have not signed any new lease agreement with Punch. Our lease agreement would have run out in 2012.
- 2.6 We decided not to take out a new lease agreement with Punch since as we wished to retain the rights of our original lease, as specified in 2.8 below, which would have been lost if we signed a new lease agreement.
- 2.7 We consider that under the new Punch lease agreement, we would have lost our independence and would have effectively become a manager, rather than a self-employed tenant in all but name, a “self-employed manager”. We would have all the risks of self-employment, but without the ability to make our own strategic business decisions.
- 2.8 The differences between our original lease agreement and the agreement that Punch wished us to sign are:

Deleted:

Original Lease Agreement	Proposed Punch Lease Agreement
We can retain 100% of the takings of all gaming and other machines.	Punch would be entitled to 50% of these takings, worth about £     per week to Punch, or £'     per annum.
No disclosure of financial information, except during a rent review	Weekly disclosure to Punch of financial information
No requirement to install monitoring equipment	We would be required to install monitoring equipment, so that Punch could monitor in detail all sales
No requirement to meet a business manager on a regular basis	We would be required to have a monthly meeting with a business manager from Punch

- 2.9 If we were to have signed the agreement, we would been better off financially, since Punch would give us discounts that were not on offer to tenants who did not comply with the terms of the Punch agreement. We feel that we have run the pub successfully on a self-employed basis for many years and were not prepared to give up the freedoms of self-employment in return for financial incentive.

**Memorandum to the Pub companies and tenants consultation**  
**Re: Inquiry into Pubcos – 2013**

- 2.10 It should be noted that the discounts on offer to tenants who have a New Deal agreement were not particularly large – we were offered a discount of about £10 per barrel in 1998, i.e. about 5% - 10% of the gross price – they are only guaranteed for 12 months, and are subject to the tenant meeting certain sales targets. Failure to meet these sales targets results in the discounts being withdrawn.
- 2.11 I was particularly concerned about Punch's requirement to install monitoring equipment. This monitoring equipment would give Punch detailed data regarding all sales (both those under the beer tie and those outside) so that they could assist us in deciding which lines to stock, which evenings to hold promotions, how many staff to employ and the prices we should charge, etc. I consider that these decisions are my own strategic business decisions and, having run the pub successfully for 26 years before Punch became involved, ones that I am perfectly capable of making myself.
- 2.12 As for the requirement to disclose financial information, I believe that one of the great advantages of being self-employed is not having to report to a boss. This advantage would be lost if I were to sign the Punch agreement.
- 2.13 With regards to the requirement by Punch to take 50% of the takings of gaming and other machines, Punch would have also removed the flexibility I had as a self-employed tenant to offer free use of machines (as per paragraph 2.8). I use this flexibility to attract customers to my business.
- 2.14 Following the sale of the freehold by Bass, I joined a Tenants' Association that had been formed by other tenants in a similar position as myself. This Association worked from 1998 to 1999.
- 2.15 I am [redacted] of the local Pub Watch Association [redacted]. Pub Watch is an association of pub and club landlords, working together with the Police, to deal with troublemakers and disputes. We meet on a monthly basis to discuss the problems that landlords are having. We also have a two-way radio network that enables us to quickly communicate with each other and the police if there are problems in one pub so that we can be prepared to deal with the troublemakers.

### **3 The Beer Tie**

- 3.1 The Beer Tie is an exclusive purchasing obligation that has been enforced first by Bass and later by Punch, on us. Under the beer tie, we were obliged to buy all beers and lagers from Punch. We were not tied for wines, spirits and ciders.

**Memorandum to the Pub companies and tenants consultation**  
**Re: Inquiry into Pubcos – 2013**

- 3.2 This meant that we could buy non-tied products from any supplier and were able to take advantage of competitive prices and offers. However, we must buy beers and lagers from Punch at whatever price they chose to charge. They had a monopoly on these products.
- 3.3 When our beer tie was with a brewer, we were limited to selling only the beers and lagers that the brewer themselves would supply. In our case, this tended to be just the beers and lagers that Bass brewed. This put us at a competitive disadvantage to freehold pubs, who could sell beer from any brewer and could buy these beers from any source.
- 3.4 For many years tied tenants, like ourselves, fought for the right to sell a guest beer, i.e. one that is outside the normal range of beers offered under the beer tie purchased from a third party. Not only does the right to sell a guest beer increase the range of products that can be sold, but also it allows the tenant to purchase one of their range of beers and lagers at a competitive, open market price, thereby enabling the tenant to offer a competitively priced product to the customer.
- 3.5 We successfully won this right in 1992.
- 3.6 I calculated that having the right to sell one guest beer was worth £3,000 per annum in 1997, based on selling 8,000 pints per year, or 37.5p per pint.
- 3.7 However, the right to sell a guest beer is only available to tenants tied to a brewer. Pubcos, by definition, are not brewers, and hence the right to sell a guest beer, defined as one that can be purchased on the open market, was not available to tenants like myself who were tied to a Pubco.
- 3.8 I was aware from the press that Pubcos were very concerned to not be classed as brewers so that they can maintain their exclusive ties. I believe from the press that this is why the Firkin chain of pubs stopped brewing any beer when Punch acquired them from Bass.
- 3.9 It should be noted that one advantage of being tied to a Pubco, as opposed to a large brewer is that we are able to sell a far wider range of beers and lagers than would otherwise be the case.

**4 The Link Between Wholesale Beer Prices and Rents**

- 4.1 As a result of losing the right to sell a guest beer following the acquisition of the freehold by Punch, we were entitled to a rent reduction, since our agreed rent had been calculated on the basis of being able to sell a guest beer.
- 4.2 Punch disputed this and, after taking legal advice, we decided to take Punch to a rent tribunal, which was due to be held sometime in 1999.

**Memorandum to the Pub companies and tenants consultation**  
**Re: Inquiry into Pubcos – 2013**

- 4.3 In the run up to the date of the tribunal, we were visited several times by representatives from Punch trying to make us back down from going to tribunal. Eventually, Punch settled, on a without prejudice basis, out of court, giving us a rent reduction of £1,560 per annum, or £30 per week.

**5 Basis of Setting Rent**

- 5.1 Please refer to my comments in paragraphs 4.1 – 4.3 above.
- 5.2 The price of rents should not be underestimated for the effect it has on the behaviour of tenants. Our rent was over 10% of our turnover, and we run a large, busy, town-centre pub with a high annual turnover compared to many. I am aware of many examples of much smaller pubs, with lower turnovers, but with a very high fixed rent, which I understand to be similar in amount to ours, that the tenants are required to cover.
- 5.3 I consider that many new entrants to the tenancy business have unrealistic expectations of how easy running a pub will be and how much profit is to be made from the pub business.
- 5.4 In [redacted] of the local Pub Watch Association, I have seen numerous tenants take over pubs in the area, where both Punch and other Pubcos set the rent at very high, totally unviable levels, given the size and location of the pub.
- 5.5 I have seen many instances of tenants being forced out of their homes and personally losing everything due to the financial difficulties they get into by agreeing to sign an uncommercial lease on a pub. I am even aware of one tenant in [redacted] who took their own life as a result of the financial stress they were under.
- 5.6 Due to the demands placed on tenants in trying to make enough money to cover their rents, I estimate that on average a tenant taking out an agreement with a Pubco will last just 2 years – the local magistrates are understood to have called this the “Revolving door”. This means that inexperienced, unsuitable candidates now run many of the tenanted pubs. I know that they cause considerable problems for the police, running disorderly houses with no control over the customers.
- 5.7 To have any hope of meeting financial obligations, tenants are forced into selling as much alcohol as they can, as cheaply as possible and often to undesirable customers. In my view, it is this, together with the very low prices charged by the large chains of managed houses, that is encouraging the culture of binge drinking, leading to antisocial behaviour throughout the country. [redacted] is a classic example of a small market town where excessive drinking of cheap alcohol creates problems every weekend.

**Memorandum to the Pub companies and tenants consultation**  
**Re: Inquiry into Pubcos – 2013**

**6 Other Points**

**6.1 *Punch's Business Objectives***

**6.1.1** I consider that Punch has 3 key businesses:

- a real estate investment business, whose source of income is rental income from its pub estate, and
- an agency business, taking a mark up on beer and other drinks sales to its tenants via the beer tie.
- A managed estate which allows large level refurbishment projects, and heavily discounted beers which are all heavily subsidised by the leased estate and run for direct profit to Punch Taverns and in direct competition to the said pubs who are subsidising them.

**6.2** However, I consider that Punch is trying to behave as an employer of managers, not a landlord and beer agent for its self employed tenants. This is borne out by the way that Punch would like to interfere in the running of my business, e.g.. by installing monitoring equipment.

**6.3** In this regard Punch is not interested in the welfare of its tenants, only in profits. In paragraph 5.7 I have discussed my views of the impact of the policy of Pubcos setting high rents on binge drinking, and in 5.5, the personal impact on tenants forced out of their homes by the unrealistic demands of the Pubcos.

**6.4** In addition to the terms of its agreements relating to gaming machines (see 2.8 above), I believe that Punch tries to get commission from telephone companies for the payphones on their premises and on gas and electric too.

**6.5 *Support for tenants***

**6.5.1** In my view, Punch had not been at all supportive towards us since taking over the freehold. Rather I have been subjected to what I consider to be bullying tactics to try to persuade me to sign the Punch agreement, which Punch consider would increase its profits. These tactics got so bad that I had to resort to having my solicitor present during meetings with Punch to ensure that everything was kept above board.

**Memorandum to the Pub companies and tenants consultation**  
**Re: Inquiry into Pubcos – 2013**

- 6.5.2 As tenants, we were responsible for all building maintenance and decoration. Bass would give financial support for repairs, but this support stopped when Punch took over the freehold.

6.6 *Contractual issues*

- 6.6.1 Following the sale of the freehold to Punch, Punch took over responsibility for supplying for the specialist equipment, particularly cellar equipment, which is rented to us. However, they did not actually become the lessor themselves. I believe that they took out a contract with the owners of the equipment to lease it to the tenants. Our contract for the equipment was with Punch.
- 6.6.2 Approximately 13 years ago, we suffered an equipment failure in our cellar that resulted in the loss of 22 gallons of Carling. The equipment was supplied through Punch, as the agent for the equipment suppliers.
- 6.6.3 When Bass was our landlord, any similar problems were settled immediately and without question. However, Punch denied any responsibility for the liability, although they were quite clearly responsible under the terms of the contract (it was their responsibility to then claim against their contract with the equipment supplier). The only recourse left to me was to apply to the Small Claims Court.
- 6.6.4 As with the rent tribunal, Punch eventually made a without prejudice settlement out of court, but did not actually make payment and hence the Court sent in bailiffs to Punch to recover the money.
- 6.6.5 We were required under the terms of the lease to obtain our buildings insurance through Punch, from which Punch take a handling charge. The premiums became very high recently, I understand to cover the many claims made by inexperienced tenants.

Deleted:

6.7 *Contact with Punch*

- 6.7.1 Under the terms of our agreement, we were entitled to see a representative of Punch relatively frequently to keep us informed of special promotions, new drinks launches, etc.
- 6.7.2 This was not the same as seeing a business manager, who would advise us on how to run our business. This is merely a representative to keep us up to date with the latest initiatives and offers. We do not see a business manager from Punch at all, and do not wish to do so, since we did not sign the Punch agreement (paragraph 2.8 above).

**Memorandum to the Pub companies and tenants consultation**  
**Re: Inquiry into Pubcos – 2013**

6.7.3 When Bass was our landlord, we would see a local area manager about once every 6 weeks. The Punch business managers were making visits between 6 and 18 months which was clearly unacceptable.

6.8 *Miscellaneous*

6.8.1 For information, the Tenants' Association, mentioned above, was unfortunately wound down due to a number of members breaking the terms of their tie, and hence the terms of their lease, and others having to leave their premises following what was described to me as intimidation by Punch. This left us with insufficient numbers to make the Association viable.

7 **Since September 2009**

7.1 In September 2009 we were lucky enough to buy the Freehold from Punch Taverns, this gave us opportunity to shop around for better prices, on beer and insurance, on average we were saving around £185 per composite barrel (36gallon), which in turn increased our GP from 44% and increased to 68% on the day of purchase. This also allowed us to reduce our annual insurance from over £3000 per year to £1500 per year.

7.2 Our level of support also improved on that night, i.e. brand support and promotion support. We believe that the bulk of the brand support that was offered to Punch was passed directly to their managed estate.

7.3 In our opinion

7.3.1 Rents of any individual premises with the pubco's should be based upon their rateable value not by barrelage or predicted barrelage as it is currently calculated also annually they increased the rent by the rate of inflation, this should be removed.

7.3.2 The basic principal of the pubco should work, it always did in the past when it was brewery tenancies, and maybe this was simply because breweries had it in their interest to look after publicans as in turn they were selling beer of that particular brewery.

7.3.3 Having a tied pub to a supplier is a cheap entry for people to get into the pub industry and should be kept, however the major pubco's do need regulating in a manageable and fair way for both the publicans and the property owners.