577

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

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.

London

Email:
Tel:

Consultation questions

Q1. Should there be a statutory Code? YES

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. The proposed code should be binding on all pub companies and brewers irrespective of size or amount of pubs they own. A company that owns one single pub and lets it out to a tenant on a full or partial tied agreement is just as likely to abuse their dominant position as a company with 5,000 pubs. Without regulation restricting beer price to tied tenants or absolute clarification of rental guidance, a single pub owning landlord can adjust beer price or discounts at will should they so desire. This could simply be so that they could force the tied tenant out of the pub in order to make the pub vacant for alternate use. Many pubs sold on by pubcos to property developers that have tenants on long leases are abused in this way. There should be one code for all with different provisions, ie free of tie option, for companies that own more than 500 pubs.

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? Franchise agreements are an underhand attempt at rebranding existing, onerous agreements. I think any comparison between the tie and franchising, however tenuous, is fraught with danger. Some Pubcos and brewers are seeking to use these agreements as a replacement to traditional leases in an attempt to circumvent calls for greater transparency and potential Government legislation. Certainly, there has been a push by some of the larger Pubcos to place prospective tenants on short term lease agreements that offer no rent review provision, relying exclusively on annual RPI linked increases to push rents upwards. Pubcos have committed themselves to removing upwards only rent review clauses from all lease agreements yet still include RPI linked rents. In a declining market place any form of compulsory rent increase agreement simply cannot be right. Government should NOT be persuaded to move away from the position of tied tenants being no worse off than free of tie. Franchise agreements.,or other similar lease rebranding, will not deliver Government's prime principle.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. A pub with a turnover of circa £200k (average 200 barrel UK pub) would have a fair free of tie rent at around 40k (10% of turnover) and the tenant would earn the same. That same pub according to Enterprise Inns' 2013 accounts would have a tied rent of £37,000. The tied tenant earns around £10k

(CAMRA survey June 2013) This, combined with the lost profit on over inflated tied products, amounts to £40k (£200 per barrel discount on fot brewer's barrel)

The dry and wet rent combined conservatively leaves the tied tenant £4k per year worse off than his free of tie counterpart. My example above shows the tied tenant being around a £30k year worse off.

The Market Rent Only option (MRO) is absolutely not abolishing the tie, indeed it is making it work as it should. That is, if you pay more (above market prices) for your beer, then in return your rent should be lower (than market) and 'countervail' inflated product prices leaving a scenario where the tied tenant is no worse off than if they were free of tie.

The Market Rent Only option reduces Adjudicator work load offering a self-policing opportunity at an individual pub level. If it were made available to tied tenants it would enable individual operators to compare and contrast their tied agreement with the circumstances and profitability of being free of tie. It is the terms of the tied agreements, if perceived to be unfair and unreasonable that will result in tied operatives choosing to release themselves of the burden of being tied. The threat alone of this flexibility will ensure that those pub owning companies operating tied agreements will seek to maintain fairness and competitive behaviour rather than using their inflexible models as a tool to oppress their licensees. If the Pubco operated in a manner that was both fair and reasonable, no tied tenant would opt out of their tied agreements, choosing instead to stay tied in a fair and equitable agreement.

Q6. What are your views on the future of self-regulation within the industry? The BBPA "framework" self-regulated code of practice is an insult. As we expected it is little more than an attempt to get past BIS scrutiny and to then carry on as normal. A code of practise written by the people whose behaviour it is meant to regulate and then "enforced" without sanction by bodies funded by the same companies is going to achieve nothing.

The problem is now as always has been that under a self-regulated approach there is no will and certainly no mechanism in place to restrain the pubcos from abusing their dominant position and taking more than a fair share of the a pubs' profits. The idea of relying on corporate goodwill where it clearly doesn't exist is ludicrous. The BBPA have confirmed that they are not empowered to offer provisions that balance risk and reward. The self-regulatory body that proposes to govern over PIRRS and PICAS, has been unable to confirm, despite written requests, that it will seek to deliver the Government's commitments of 'fairness' or that a 'tied licensee should be no worse off than if they were free of tie. The very fact that the self regulatory process is unable to offer any reassurance that it seeks to deliver the same commitments as Government, indicates there is no motivation from the Pubcos to address these fundamental issues. The absence of such assurances undermines the credibility of the self-regulatory process and relying on any part of it to deliver meaningful progress, even in its perceived state of independence, remains a meaningless exercise.

There are those that will see self-regulated codes as merely one step in the evolution of our commercial environment but if it was meant to prove we can act responsibly then it failed and now deserves statutory legislation. The sector has been badly regulated internally by an irresponsible few and there needs to be a removal of the barriers to a free and fair market - i.e legislation to give tenants a free of tie option. If there were to be a last attempt at a code of practise for smaller companies then it would need to be independent, binding, mandatory and with real sanction for transgression. The tie has granted the pubcos a license to print money and it's unregulated - any amount of unscrupulous and, disgracfull behaviour can go on under the banner of 'business to business relationships'. I would argue that many licensees are as vulnerable as the consumer and the same products are involved. Firm protection for all through statutory regulation is required.

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, however, the RICS guidance has been abused by both pubcos and surveyors alike. It is not legally binding and it's not mandatory on surveyors that apply it. It is, after all, just guidance, and this has allowed pubco' placemen' on the RICS panel to manipulate the rental process/ (Rob May ex RICS TRVG chair is national rent controller for Enterprise Inns. All of the TRVG panel are compromised in some way)*

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*

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

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 Flow monitoring equipment should be prescribed and covered by the W&M Act.*

Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? YES. The statutory code MUST contain the provision for a free of tie option with an open market rent.

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

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? YES. This is the only way to ensure tied tenants are no worse off than if they were free of tie.

Tied publicans across the UK should be allowed to compete in a highly uncompetitive market place and the only sure way of achieving this is to give tenants the choice to opt out of the beer tie.

A genuine market rent only option, irrespective of whether the tenant chooses to take it, will mean:

- Fewer pubs will close.
- More jobs created
- More investment directly into pubs which will encourage a new breed of patrons previously put off by the cost and inconsistency of run down underperforming tied pubs.
- Dealing direct with brewers will mean greater discounts forcing more competition at the pump
- Greater access to market for brewers
- Increase revenue for the Treasury

The Market Rent Only option (free of tie) is absolutely not abolishing the tie, indeed it is making it work as it should. That is, if you pay more (above market prices) for your beer, then in return your rent should be lower (than market) and 'countervail' inflated product prices leaving a scenario where the tied tenant is no worse off than if they were free of tie.

The Market Rent Only option reduces Adjudicator work load offering a self-policing opportunity at an individual pub level. If it were made available to tied tenants it would enable individual operators to compare and contrast their tied agreement with the circumstances and profitability of being free of tie. It is the terms of the tied agreements, if perceived to be unfair and unreasonable that will result in tied operatives choosing to release themselves of the burden of being tied. The threat alone of this flexibility will ensure that those pub owning companies operating tied agreements will seek to maintain fairness and competitive behaviour rather than using their inflexible models as a tool to oppress their licensees. If the Pubco operated in a manner that was both fair and reasonable, no tied tenant would opt out of their tied agreements, choosing instead to stay tied in a fair and equitable agreement.

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 side by side rent calculation (tied and non-tied) should be used to assess the strength of the deal on offer by the pubco and should be used in conjunction with the free of tie option. The tenant is then armed with ALL of the facts and can determine through the calculation whether or not he wishes to remain tied. The rental calculation on its own will NOT deliver the Government's objectives as it still allows for beer price manipulation after the rent review date without the tenant having any say.

Between 2002 and 2006 Enterprise Inns increased the price of beer 7 times, effectively eroding tenants GP's by around 10%. The price of a pint rose by around a £1 and the fate of the tied sector was essentially sealed. The tenant, who had agreed what they thought was a fair rent, had no control over the price of beer sold through the tie (wet rent) and pubs became too expensive. Enterprise transferred any balance sheet profit from the tenant and into their bank accounts.

The rental calculation should only be used as a tool by tied tenants to determine the strength of the deal on offer. On its own it still allows for manipulation and the principle of fairness can never be achieved. The threat of a MRO ensures the pubcos play fair.

Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code? YES The adjudicator must also have real power to amend tied contracts at any stage in the future should the market adjust negatively or Governments immediate proposals not go far enough

Q14. Do you agree that the Adjudicator should be able to:

iii. ***Arbitrate individual disputes?*** *YES*

iv. ***Carry out investigations into widespread breaches of the Code?*** *YES*

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*

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

III. ***Financial penalties?*** *YES*

Q16. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory? Adjudicators must have the power to consider ANY complaint they receive, including 'unfair contracts' which must be amended to cover B2B relationships. Where the adjudicator considers a term to be unfair they must have the power to take action and stop the offending behaviour, perhaps by stripping away the offending term.

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 Pubcos, brewers and tenants should be made to contribute to the self-regulatory body, this coupled with the fines raised by offending pubcos and brewers should make the scheme entirely self funding.

Completed by . - 14 June 2013

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Pub Companies and the Beer Tie – A Case for Reform

The future of the British Pub is in danger. Pubs are still closing at a rate of around 26 a week – thousands have been lost over the last few years and many more individual businesses have failed or are failing. The reality is that this is only the tip of the iceberg – there are many thousands more under invested, asset stripped, once vibrant thriving pubs, waiting beneath the surface ready to float onto the market as 'serially failed' tied pubs suitable for alternative use. In a society where the pub is at the heart of many communities, this simply is unacceptable.

The real reasons for pub failures are hidden behind a wall of deceit and a smoke screen of National proportions put in place by those causing the damage in the first place and perpetuated by their lobbyists and 'paid for' trade organisations intent on maintaining industry status quo for no other reason other than it benefits an irresponsible few. The beer tie and the 'P ubcos' that operate it are the fundamental cause of the systematic failure of the UK's pub sector. Part of Britain's legacy, heritage and tradition is being destroyed in front of our eyes for the sake of satiating the demands of short term private equity greed.

Around 50% of pubs in the UK are owned by Pub Companies - large property companies known as 'Pubcos' who lease pubs out to tenants to run as their own business. These pubs are contractually obliged to buy their beer from the Pubco who charge over market rent for the property and as much as double the price for beer that is available on the open market - this is known as the beer tie.

The sector has been investigated no fewer than 26 times since 1966; 22 times in the UK and 4 in the EU, and each time there have been grave concerns about the Pubcos and the beer tie. In more recent years the BIS Select Committee have examined the model 4 times and each time they have produced a damning report that painted a worrying picture of Pubco abuse, lack of tenant support, agreements not honoured and downright bullying.

After much political debate the Government have decided to act and are currently consulting on proposals to establish a Statutory Code and an Independent Adjudicator to govern the relationship between large pub companies and their tenants. Although long overdue, they have at last recognised that after many years of serious concerns and numerous complaints the pub is sector dominated by unfair contracts, anti-competitive behaviour and market foreclosure that has damaged pubs, driving prices up - and quality down - for publicans and consumers alike. The overriding factor in all but a few cases is the disgraceful way the Pubcos and brewers that copy the tied supply model choose to implement the beer tie arrangement.

This document seeks to draw attention to the terrible effects that the tied model and the Pubcos are having on pubs, part of the cultural heritage of the UK and creating much needed debate and honesty in a sector where it has been missing for so long.

The beer tie – A low cost road to ruin?

Pubs operate under many different forms of ownership and management, ranging from independent free houses to pubs owned by large pubcos. Most will come under the following descriptions:

- Freehold - The owner buys the pub outright and is free source products from any supplier at competitive market rates.
- Leasehold - May operate under a tied or a non-tied arrangement.
- Tenancy – A short term tied agreement, typically for a 3 to 6 year term.

There are many other agreements most of which operate outside of the Landlord & Tenant Act and provide the occupying tenant little or no security. These agreements include; Franchise, Tenancy at Will (TAW), Retail Partnership etc. Some Pubcos and brewers are seeking to use these agreements as a replacement to traditional leases in an attempt to circumvent calls for greater transparency and potential Government legislation. Certainly, there has been a push by some of the larger Pubcos to place prospective tenants on short term lease agreements that offer no rent review provision, relying exclusively on annual RPI linked increases to push rents upwards. Pubcos have committed themselves to removing upwards only rent review clauses from all lease agreements yet still include RPI linked rents. In a declining market place any form of compulsory rent increase agreement simply cannot be right.

There is no evidence to suggest that it would be any more expensive to enter into a free of tie lease than one that is tied. This is a myth kept alive by the Pubcos who seek to divert attention away from the fundamental problem caused by the beer tie. Before the emergence of the Pubcos in the early 90's, free of tie leases were plentiful and competition was healthy. It wasn't unusual to see freeholders offer reverse premiums or rent free periods in the hope of attracting experienced operators into successful pub businesses. Post 1989 Beer orders, armed with cheap debt, the Pubcos aggressively acquired tens of thousands of freehold pubs and overnight pubs and the supply of beer in the UK simply changed hands. Gone were the real 'low cost' entry offers as the transfer of power and profit shifted to companies such as Punch Taverns and Enterprise Inns and entire industry was essentially brought to its knees.

Pubcos actively and glossily market their model as a low cost entry to the pub business. This all too often attracts vulnerable, naive, ill-advised, ill-resourced and highly inexperienced people who invest their savings and who frequently find themselves ruined within 2 years or less. The standard, quality and success of any pub business depend on the level of experience, commitment and investment by the actual publican. This cannot be achieved in a distorted and totally unfair market. Where once there was competition between tied and free of tie leases, thousand of tied tenants have since suffered at the hands of the dominant, un-regulated Pubcos and brewers that copy them, losing their homes and their livelihoods in the process. The true cost on an entire society will never truly be known. In a very short space of time a low cost entry became an extremely high cost exit and the fallout is evident for all to see.

Why are pubs closing?

There are currently around 50,000 pubs in the UK. These are tough times and consumer confidence is weakened by the expensive cost of going out brought on in the main by overinflated tied product prices and a nation of serially failing, under invested pubs. It is clear that the increases in product prices purchased through the beer tie, combined with high levels of rent, is leading to the failure of many more tied pub businesses than free of tie.

Much scaremongering has taken place by the Pubcos with little foundation. Campaign for Real Ale's (CAMRA) own statistics indicate that more tied pubs are closing than free of tie and in fact there are more free of tie pubs now than there were five years ago. The BBPA have consistently presented pub closure figures in a misleading way as they do not include reclassification of pubs from tied to free of tie just before they close. A pub that may have been tied for the last 50 years is sold to a property developer as a free of tie pub, subsequently, on receipt of planning permission, closes and then registers in the BBPA figures as a free of tie closure. This is misleading and wholly inaccurate.

Whilst pub closure figures are a good indication of the poor health of our sector they capture only part of the picture. The Pubcos still refuse to publish individual pub failure rates where the tenant surrenders the lease, goes bankrupt or simply hands back the pub keys because they can't make it pay, only to be replaced with a new tenant or a management company. This 'churn' rate, if published, would provide a damning picture of sector abuse and paint a more accurate picture of the damage being caused by the Pubcos and their rapacious exploitation of the beer tie.

We do, however, have some indication of the tied sector churn rate – Enterprise Inns most recent accounts show that out of 5,720 pubs, 1,463 have had tenants in them for less than a year, suggesting a churn rate of 26%. This is a conservative estimate because it doesn't include pub closure figures, TAW's or pubs that have had multiple 'churns' in a short space of time. In 2010 Neil Robertson, the then CEO of the British Institute of Innkeepers (BII), issued a press release stating that one pubco had a churn rate that had dropped from 65% to 35%. Even if were to only extrapolate the lower figure of 35% across the whole sector this would indicate an annual tied churn rate of circa 10,000 pubs. As the average pub is thought to employ 10 staff that's around 100,000 lost jobs in the pub industry annually.

Has self-regulation worked?

The tied model has clearly failed and the pubs sector has been stifled by the unreasonable and unsustainable business practices of the Pubcos. There are parallels with what happened with the banks speculation, which did so much damage to the economy. Some of the pub owning companies can be seen to have behaved in a similarly irresponsible manner, overvaluing their estates and borrowing vast sums against this, which has led to not only their mind boggling levels of debt but also to them taking much more than is reasonable as a proportion of income from their pubs. This is damaging and destroying what would otherwise, even in difficult economic times, be viable small businesses that of course also employ local people and buy local produce.

The problem is now as always has been that under a self-regulated approach there is no will and certainly no mechanism in place to restrain the pubcos from abusing their dominant position and taking more than a fair share of the a pubs' profits. The idea of relying on corporate goodwill where it clearly doesn't exist is ludicrous. The BBPA have confirmed that they are not empowered to offer provisions that balance risk and reward. The self-regulatory body that proposes to govern over PIRRS and PICAS, has been unable to confirm, despite written requests, that it will seek to deliver the Government's commitments of 'fairness' or that a 'tied licensee should be no worse off than if they were free of tie. The very fact that the self regulatory process is unable to offer any reassurance that it seeks to deliver the same commitments as Government, indicates there is no motivation from the Pubcos to address these fundamental issues. The absence of such assurances undermines the credibility of the self-regulatory process and relying on any part of it to deliver meaningful progress, even in its perceived state of independence, remains a meaningless exercise.

The Pubcos introduced codes of practice shortly after the T&ISC in 2004 and after six separate attempts we still have self-regulated codes that address nothing more than the peripheral and less significant issues. A self-policing code funded entirely by the very people causing the problem simply cannot work and it's crazy to watch so many people get distracted by it.

Are the fixed costs in a tied pub lower?

Far from being a low cost entry there is much propaganda surrounding the tied tenant having a reduced 'risk profile'. Pubcos argue that lower fixer costs (annual rental charges) are offset by higher variable costs (higher price for beer purchases) when this simply isn't the case at all. In a recent benchmarking survey, the Association of Licensed Multiple Operators (ALMR), found that tied rents were higher than free of tie rents and in doing so, dispelled the myth that the true cost of the tie was countervailed by cheaper rents – the reason that the tie is allowed to continue under EU block exemption.

In 1969 the Monopolies Commission, Beer – A Report on the Supply of Beer, highlighted the fact that there was little difference, if any, between the tied and free of tie price of beer sold to publicans. Today that gap has widened, so much so that an average tied pub could pay as much as double for beer than a free of tie tenant. Despite the current recession, Pubcos are continuing to raise beer prices and rents forcing many of their tenants out of business. As more of their pubs close and fewer people want to take a tied lease the Pubcos are trying to squeeze more income out of fewer and fewer pubs. Like the banks, Pubcos have been caught out by over leveraging and securitized debt and it is the tenants and consumers that are suffering.

I run small, free of tie, low turnover , with an annual barrelage of less than the national average. While tied publicans across the UK continue to pay an extortionate price for beer, perhaps as much as £160 for a 11 gallon keg of lager, I pay less than half for the same product. I have attached the latest price offer from Heineken UK showing Fosters available at only £73.23 a keg (including retrospective discounts) and a FREE promotional, marketing and training package that would never be available in the tied sector.

In Summary - Heineken offer to small free of tie bar:

Heineken keg (11gal) - £240 brewers barrel discount
Fosters Keg (11gal) - £225 brewers barrel discount or £245 a barrel with retrospective discount.

- Heineken UK will refurbish all existing bars & cellars to ensure optimum dispense across portfolio
- Provide product quality & training initiatives to deliver the perfect drinking experience
- Heineken will provide all owned branded glassware free of charge
- **£1k per year for the you to spend on anything required**
- **6 free 11g kegs made available for captains day and charity days, etc**
- Access to all Heineken free stock promotions across all product sectors

The OFT did not give the pubcos a clean bill of health!

Pubcos and the BBPA have claimed a clean bill of health by the OFT but this is simply untrue. It was not in the mandate of OFT to consider business to business issues instead they only considered the pub sector as it applied to consumers. No report by a competition authority for decades has found anything other than problems, of one sort or another, in the pub sector. Whilst the OFT, in response to CAMRA's 2010 Super-complaint, declined to undertake a market study they did caveat their decision by stating they did not have a mandate to consider competition issues, supply terms or the fundamental issue of the tied tenant being no worse off than if they were free of tie, nor did they have the power to consider the commercial relationship between landlord and tenant. Contrary to Pubco assertions It is wrong for them to claim the OFT gave the industry a clean bill of health when this is clearly not the case.

Will the price of beer rise under a market rent only?

Reform would undoubtedly reduce the cost of the beer in tied pubs as product cost would be significantly reduced. If tied tenants were able to buy beer on the open market at a competitive price, this would result in some cases of a saving of up to 50%. The tenant could then choose to offer beer to their customers at competitive rates or use the increased profit to reinvest back into their business.

Will brewers stop brewing?

The current dominance of the Pubcos in the beer wholesale market creates significant barriers to entry for smaller brewers. Brewers can only supply their products to Pubco tenants if they are on the Pubco' exclusively restricted product lists. Pubcos require that brewers offer them substantial discounts, meaning that some small producers end up making a loss on supplying Pubco tenants. A substantial number of products from small and regional brewers are excluded from the Pubco lists or priced at an uncompetitive level. In many cases smaller brewers are almost completely excluded from their own local markets. A truly open and competitive market will provide plenty of scope for local and regional brewers to promote and distribute their products resulting in greatly enhanced choice for the publican and the consumer. There are around 1,000 brewers in the UK and the vast majority do not have access to two thirds of the pubs in the country.

Fewer pubs will close.

It is difficult to see how the prospect of offering tied licensees the right to a fair rent and being able to sell beer to their customers at a fair price would result in pub closures. The Pubcos and their lobbying arm; the BBPA, will tell us that more pubs and breweries will close under a MRO but this is entirely without foundation with no evidence to back it up. Reform of the beer tie through offering tied tenants a market rent only option is intended to result in higher licensee profitability regardless of the type of agreement they have. With increased profitability comes increased stability and financial prospects for the licensee, this cannot result in further pub closures but instead offers a sustainable future for the tied model and potential growth right across the sector.

Will Pubcos stop investing?

Pub owning companies currently claim they invest in their tied estates. They have argued that if a licensee chose to terminate the tied agreement this purported investment would cease. On a market rent only basis the pub company would only derive income from rent and not from over inflated products. Unlike other commercial agreements, like shops and offices, rent in the pub sector is determined by licensee profitability. It follows that if the only revenue stream is rent the pub company would be incentivised to ensure their licensees were trading profitably. Investment and support of licensees, whatever their agreement, would therefore form the foundation of any forward thinking and optimistic pub owning company.

The Solution – A statutory code and a market rent only option?

Government is now proposing to legislate in order to secure a healthy pubs industry and I believe the Statutory Code of Practice should include the following provisions:

- The tied tenant should be no worse off (or better) than a free-of-tie tenant.
- An option for the tenant to opt out of their 'tied' arrangement resulting in them paying a market only rent to the pubco (MRO) and allowing them to acquire products from any source.
- There should be a provision contained in all codes that contracts will be fair, reasonable and comply with all legal requirements.
- The principles of both fairness and the tied tenant being no worse off should apply to all pub owning companies with the MRO applying to only those with over 500 pubs.

The Market Rent Only option (MRO) is absolutely not abolishing the tie, indeed it is making it work as it should. That is, if you pay more (above market prices) for your beer, then in return your rent should be lower (than market) and 'countervail' inflated product prices leaving a scenario where the tied tenant is no worse off than if they were free of tie.

The Market Rent Only option reduces Adjudicator work load offering a self-policing opportunity at an individual pub level. If it were made available to tied tenants it would enable individual operators to compare and contrast their tied agreement with the circumstances and profitability of being free of tie. It is the terms of the tied agreements, if perceived to be unfair and unreasonable that will result in tied operatives choosing to release themselves of the burden of being tied. The threat alone of this flexibility will ensure that those pub owning companies operating tied agreements will seek to maintain fairness and competitive behaviour rather than using their inflexible models as a tool to oppress their licensees. If the Pubco operated in a manner that was both fair and reasonable, no tied tenant would opt out of their tied agreements, choosing instead to stay tied in a fair and equitable agreement.

The unintended consequences.

Positive outcomes of the Beer Orders in 1989 were the breaking of the stranglehold held by a handful of brewers on the UK pub sector and to increase the choice of beers to consumers, the Orders succeeded in both those aims. An unforeseen consequence was the birth of pub companies, little more than non-brewing property companies. The failing of the Beer Orders was the absence of a review and variation of the regulations. This fundamental flaw has been considered and gaming of Government intentions restrained by allowing the proposed Adjudicator the power to review alter and amend the statutory code. Leaving the beer tie model in an unregulated form enabled exploitation of what are essentially unfair contract terms in commercial agreements. Maintaining industry status quo is simply not an option.

You signed it so it's your fault

It's an ignorant argument - the courts and parliament are there to encourage the development of commercial models with contractual agreements being constantly challenged and updated. This shouldn't be any different in the pub sector. It is the role of society, the courts and parliament to make the changes that are required. If the government look with open eyes at the current situation in the pub sector then they will see what four successive Business and Enterprise Select Committees saw - an inefficient and exploitative market place in the hands of an irresponsible few.

Why Government must intervene.

The pub sector is in urgent need of reform. Government must act now and introduce a statutory code of practice that enforces the principle of the tie tenant being no worse off than if they were free of tie. The adjudicator must have real power to amend tied contracts at any stage in the future should the market adjust negatively or Governments immediate proposals not go far enough. Tied publicans across the UK should be allowed to compete in a highly uncompetitive market place and the only sure way of achieving this is to give tenants the choice to opt out of the beer tie.

A genuine market rent only option, irrespective of whether the tenant chooses to take it, will mean:

- Fewer pubs will close.
- More jobs created
- More investment directly into pubs which will encourage a new breed of patrons previously put off by the cost and inconsistency of run down underperforming tied pubs.
- Dealing direct with brewers will mean greater discounts forcing more competition at the pump
- Greater access to market for brewers
- Increase revenue for the Treasury

There have been many people and organisations that have highlighted the disgraceful continuation of the ill-conceived, damaging and highly anti-competitive practices that exist in the UK pub sector. Britain, being a small place, has allowed for this insidious structure to be set up by the Pubco founders - most of who have moved on to other pastures. Along the way they have found our quaint and perhaps naive, little industry very easy to manipulate, pillage and ruin. The sector was built on community, a common heritage, love of pubs and beer and a perhaps even a sense of fun in some way. Fertile ground of course for the pubcos and their premeditated pursuit of short term gain.

Be under no illusion, the Pubco tied model is about financial engineering and not about running pubs. They employ a relative handful of staff yet have negative impact on the industry as a whole. By exploiting a loop hole in the well intentioned 1989 Beer Orders, Pubcos have evolved through huge borrowings and the extraction of vast sums of money from the industry to pay down this accumulated debt. The question that has to be asked is, why should retailers and consumers pay significantly above the market price for goods to finance the existence of a business model which benefits only a few?

My observations are underpinned by thirty years of professional experience in the pub trade. I write this document from the view point of someone with both free-of-tie and tied pub experience having operated pubs, bars and restaurants all of my adult life. Up until 2009 I operated a busy tied Enterprise Inns pub with takings of over double the national average. The pub was a fantastic asset to the local community; way ahead of its time in terms of product range, service and customer accountability. The beer tie systematically allowed transfer, without thought or consideration for the tenant in occupation, over 95% of the pubs profits to Enterprise Inns. My business never stood a chance. My pub closed its doors for the final time in November 2009 and took with it my entire life savings, destroyed my family and left a financial black hole of over £250,000. I have not operated a tied pub since.

14 June 2013

HEINEKEN

Brands Partnership

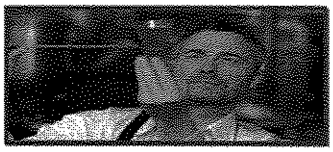
5th June 2013

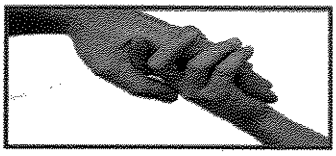
Our Core Values

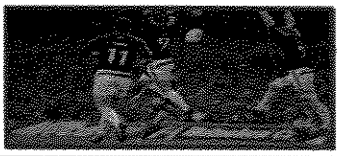
Passion
for Quality!

Respect
for individuals, society and the environment!

Enjoyment
we bring enjoyment to life for Life!

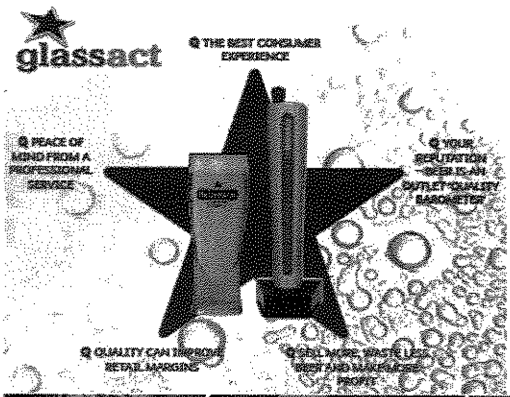






HEINEKEN

Quality is Everything



Quality in Glass

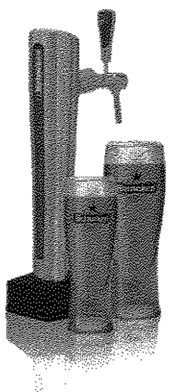
-Passion for quality at the heart of everything
-Staff training covering all aspects of selling the perfect pint
-Branded Glassware / Schooner size serve

Staff Incentive Mystery Drinker

-Mystery customer Brand activity – instant staff rewards

BIIAB
AWARDING QUALIFICATIONS for LICENSED RETAIL

CASK MARQUE

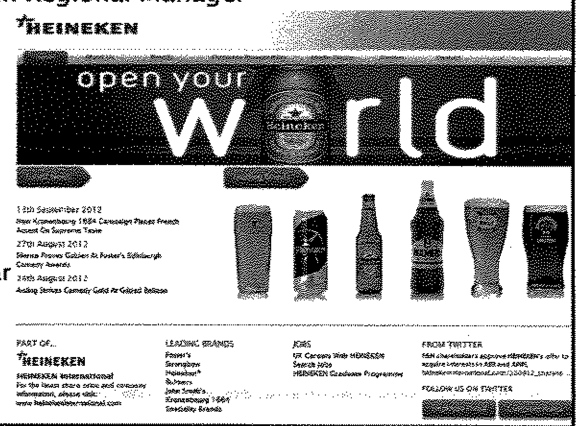


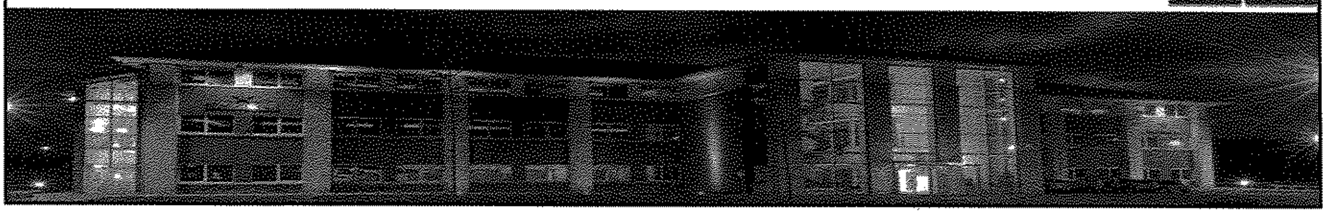
STRONGBOW Heineken BULMERS 1664

HEINEKEN

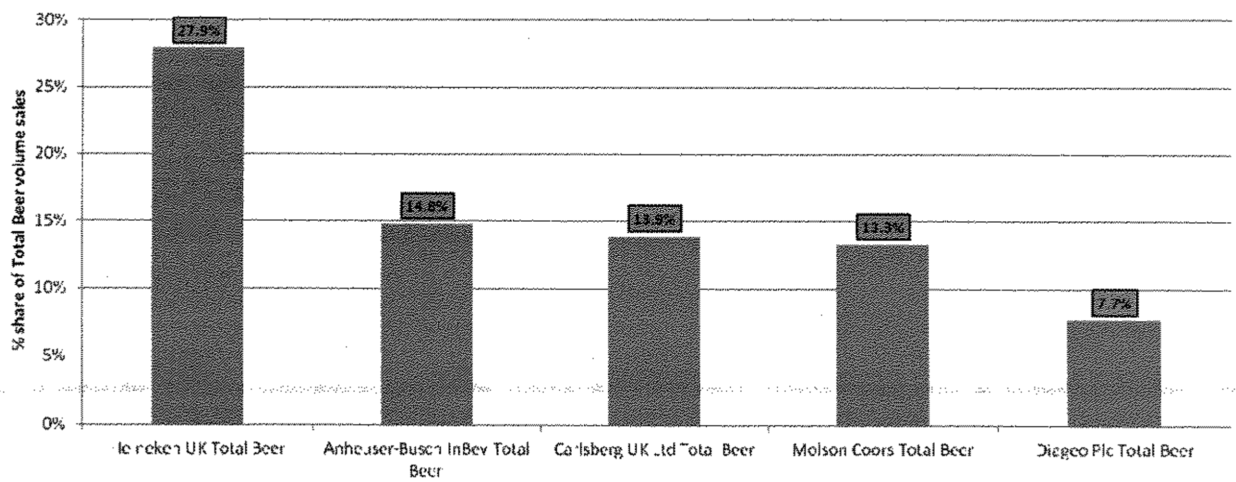
Customer Service Charter

- – Agreed monthly appointment schedule with Heineken Regional Manager
- * Business & Service Review
- * Consumer insight
- * Marketing Initiatives
- * Staff Training/Product quality execution
- – First Point Customer Contact Centre
- * One number contact for all queries – 0845 878 7072
- * Continuity of One telesales operator across the group
- * Technical support & resolution 9am–9pm 365 days per year
- * Free Heineken on-line ordering facility readily available
- – Local Distribution
- * Weekly deliveries – no hidden delivery charges



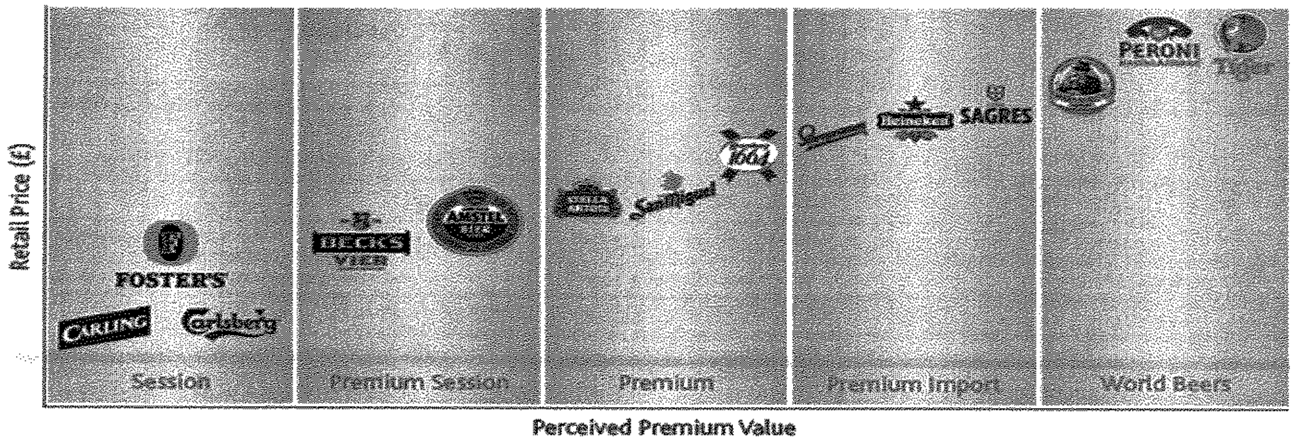


Top 5 Brewer's Share of Total Beer Vol – South IFT



5

Retail Pricing Ladder by Category



Delivering real cash margin benefits for your business

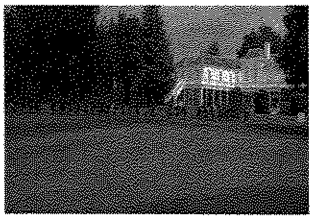
STRONGBOW Heineken BULMERS

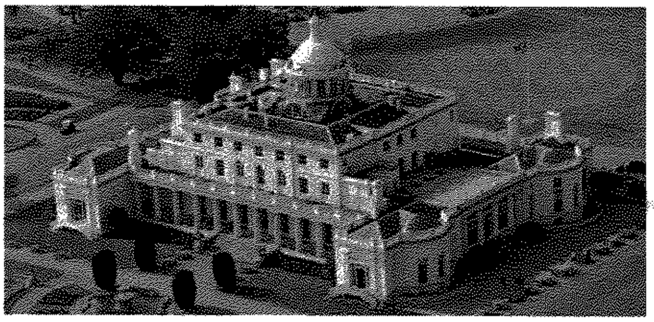
HEINEKEN

Testimonials

STOKE PARK
★ ★ ★ ★ ★
COUNTRY CLUB, SPA & HOTEL

MG
MANOR of GROVES





STRONGBOW Heineken BULMERS 1664

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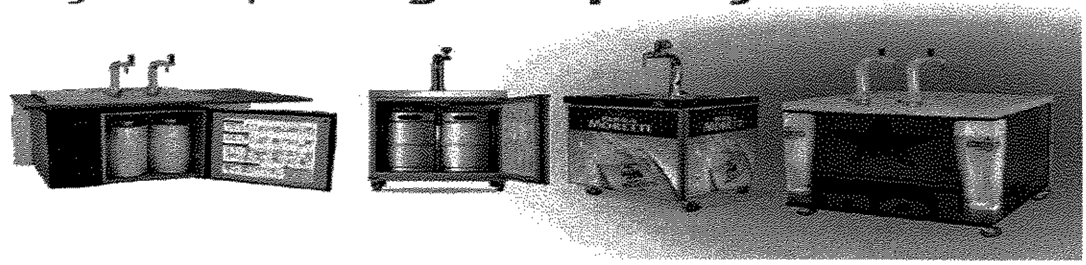
Heineken David Unit

Discover the cleaner, fresher, cheaper way to dispense **great quality beer**



- *No cellar or cellar cooling required*
- *No line cleaning required*
- *Great quality beer every time (with reduced wastage)*
- *Easy to operate, fixed or mobile versions*
- *Energy efficient cooling system*
- *Extended keg life, up to 30 days*
- *Save up to 7p per pint on dispense costs**
- *HEINEKEN in the UK subsidise the cost of DAVID Green and Green XL units*
- *5 Year warranty and service cover*

STRONGBOW Heineken BULMERS 1664 HEINEKEN

Brands Partnership

- **PASSION FOR QUALITY**
  - Heineken UK will refurbish all existing bars & cellars to ensure optimum dispense across portfolio
  - Provide product quality & training initiatives to deliver the perfect drinking experience

- **MARKETING**
  - Heineken will provide all owned branded glassware free of charge
  - Potential for Corporate Spend via Golf/use of function facilities
  - **£1k per year for the you to spend on anything required**
  - **6 free 11g kegs made available for captains day and charity days, etc**
  - Access to all Heineken free stock promotions across all product sectors

- **FORWARD MOVING PRICE MECHANIC**
  - **Heineken will cap all future owned brand increases to 3p per equivalent pint for 3 years**
  - Excludes 3rd party brands & future Government Duty Increases

STRONGBOW Heineken BULMERS 1664

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PRODUCTS & PRICES June 2013

					Net Invoice Prices				RSP	Margin	GP%
DRAUGHT	**ABV %**	**Own/Foreign**	**List Price**	**Discount**	**36 gls**	**22 gls**	**11gls**	**Pint**	**Pint/Btl**	**Pint/Btl**	**Pint/Btl**
FOSTER'S	4.0	Own	£ 484.67	£ 225.00	£ 259.67		£ 79.34	£ 0.90	£ 3.60	£ 2.10	69.95
AMSTEL	4.1	Own	£ 533.56	£ 240.00	£ 293.56		£ 89.70	£ 1.02	£ 3.80	£ 2.15	67.81
KRONENBOURG 1664	5.0	Own	£ 554.68	£ 235.00	£ 319.68		£ 97.68	£ 1.11	£ 3.95	£ 2.18	66.28
BIRRA MORETTI	4.6	Own	£ 592.94	£ 210.00	£ 382.94	30L-£70.21	£ 117.01	£ 1.33	£ 3.95	£ 1.96	59.61
HEINEKEN	5.0	Own	£ 577.57	£ 240.00	£ 337.57		£ 103.15	£ 1.17	£ 4.20	£ 2.33	66.51
JOHN SMITHS EXTRA SMOOTH	3.6	Own	£ 432.98	£ 180.00	£ 252.98		£ 77.30	£ 0.88	£ 3.60	£ 2.12	70.72
STRONGBOW	4.5	Own	£ 482.77	£ 230.00	£ 252.77		£ 77.24	£ 0.88	£ 3.80	£ 2.29	72.28
GUINNESS	4.1	Foreign	£ 519.46	£ 160.00	£ 359.46		£ 109.84	£ 1.25	£ 3.95	£ 2.04	62.08
PACKAGED BEER	**ABV %**	**Own/Foreign**	**List Price**	**Discount**	**Case Price**		**Case Price**	**Btl**	**RSP**	**Margin**	**GP%**
AMSTEL	4.6	Own	£ 31.41	£ 14.42	£ 16.99		£ 16.99	£ 0.71	£ 3.40	£ 2.13	75.01
BIRRA MORETTI	4.6	Own	£ 33.77	£ 14.58	£ 19.19		£ 19.19	£ 0.80	£ 3.40	£ 2.03	71.78
FOSTER'S GOLD	4.8	Own	£ 32.22	£ 16.72	£ 15.50		£ 15.50	£ 0.65	£ 3.40	£ 2.19	77.21
HEINEKEN	5.0	Own	£ 32.71	£ 14.76	£ 17.95		£ 17.95	£ 0.75	£ 3.40	£ 2.09	73.60
KRONENBOURG 1664 275ml	5.0	Own	£ 33.65	£ 18.50	£ 15.15		£ 15.15	£ 0.63	£ 3.40	£ 2.20	77.72
SAGRES	5.0	Own	£ 36.38	£ 17.80	£ 18.58		£ 18.58	£ 0.77	£ 3.40	£ 2.06	72.68
SOL 330ml	4.5	Own	£ 31.34	£ 13.84	£ 17.50		£ 17.50	£ 0.73	£ 3.40	£ 2.10	74.26
TIGER 330ml	4.8	Own	£ 36.34	£ 17.35	£ 18.99		£ 18.99	£ 0.79	£ 3.40	£ 2.04	72.07
DESPERADOS	5.9	Own	£ 32.82	£ 8.78	£ 24.04		£ 24.04	£ 1.00	£ 4.00	£ 2.33	69.95
PACKAGED CIDER	**ABV %**	**Own/Foreign**	**List Price**	**Discount**	**Case Price**		**Case Price**	**Btl**	**RSP**	**Margin**	**GP%**
BULMER'S ORIGINAL & PEAR 568ML	4.5	Own	£ 23.60	£ 10.80	£ 12.80		£ 12.80	£ 1.07	£ 4.20	£ 2.43	69.52
BULMERS No 17	4.0	Own	£ 26.83	£ 10.84	£ 15.99		£ 15.99	£ 1.33	£ 4.50	£ 2.42	64.47
BULMERS RED PRESSED GRAPE	4.0	Own	£ 26.83	£ 10.84	£ 15.99		£ 15.99	£ 1.33	£ 4.50	£ 2.42	64.47
BULMERS BOLD BLACK CHEERY	4.0	Own	£ 26.83	£ 10.84	£ 15.99		£ 15.99	£ 1.33	£ 4.50	£ 2.42	64.47
JACQUES FRUIT DE BOIS 440ml	5.5	Own	£ 23.36	£ 7.10	£ 16.26		£ 16.26	£ 1.36	£ 4.60	£ 2.48	64.65
PACKAGED ALE	**ABV %**	**Own/Foreign**	**List Price**	**Discount**	**Case Price**		**Case Price**	**Btl**	**RSP**	**Margin**	**GP%**
CALEY DEUCHARS IPA	4.4	Own	£ 16.30	£ 6.35	£ 9.95		£ 9.95	£ 1.24	£ 3.80	£ 1.92	60.72
THEAKSTON XB	4.5	Own	£ 14.71	£ 4.72	£ 9.99		£ 9.99	£ 1.25	£ 3.80	£ 1.92	60.57

NB : 90p 11g keg surcharge on Foster's, John Smiths & Kronenbourg 1664. No surcharge on 22g kegs

Retrospective Discount:

Every barrel over 100 Brls gives you £20 per Brl extra discount. E.G. Fosters would become £73.23 as a net price.

Brand	ABV	Price Per 9g	Price Per 11g	Price Per 18g
ABBOT ALE	5.0	£ 88.97		
ADNAMS SOUTHWOLD BITTER	3.7	£ 67.92		
ADNAMS BROADSIDE	4.7	£ 82.27		
BANKS MILD	3.5	£ 71.95		
BATEMANS YELLA BELLY GOLD	3.9	£ 74.39		
BOMBARDIER	4.3	£ 79.36		
BRAINS BITTER	3.7	£ 62.92		
BRAINS DARK	3.5	£ 60.70		
BRAINS REVEREND JAMES	4.5	£ 71.30		
BRAINS SA BEST	4.2	£ 72.09		
BRAINS SA GOLD	4.3	£ 71.83		
BRAKSPEAR BITTER	3.4	£ 72.47		
BUTCOMBE BITTER	4.0	£ 71.88		
CALEY 80 SHILLING	4.1	£ 69.58		
CALEY DEUCHARS IPA	3.8		£ 78.75	£ 128.85
CALEY FLYING SCOTSMAN	4.0	£ 65.40		
CALEDONIAN GOLDEN XPA	4.3	£ 67.35		
CASTLE HARVEST PALE	3.8	£ 69.41		
COURAGE BEST	4.0	£ 61.38		
DIRECTORS	4.8	£ 76.00		
EVERARDS TIGER	4.2	£ 96.98		
FULLERS LONDON PRIDE	4.1	£ 84.36		£ 168.72

Brand	ABV	Price Per 9g	Price Per 11g	Price Per 18g
GREENE KING IPA	3.6	£ 71.94		£ 143.88
JENNINGS CUMBERLAND	4.0	£ 74.88		£ 120.81
JOHN SMITHS BITTER	3.8	£ 60.41		
MARSTONS PEDIGREE	4.5	£ 77.30		
OLD SPECKLED HEN	4.5	£ 83.05		
RINGWOOD BEST BITTER	3.8	£ 74.91		
RUDDLES COUNTY	4.3	£ 83.08		
SHARPS DOOM BAR	4.0	£ 75.38		
SPITFIRE CASK	4.2	£ 74.34		
ST AUSTELL TRIBUTE	4.2	£ 79.34		
THEAKSTON BEST	3.8		£ 77.80	£ 127.29
THEAKSTON BLACK BULL	3.9	£ 65.64		
THEAKSTON LIGHTFOOT	4.1	£ 69.74		
THEAKSTON OLD PECULIAR	5.6	£ 87.36		
THEAKSTON XB	4.5	£ 73.25		
THWAITES WAINWRIGHT GOLDEN ALE	4.1	£ 75.86		
TIMOTHY TAYLOR LANDLORD	4.3	£ 89.83		£ 179.66
WADWORTH 6X	4.3	£ 83.83		
WYCHWOOD HOBGOBLIN	4.5	£ 84.30		
YOUNGS BITTER	3.7	£ 71.92		
YOUNGS LONDON GOLD	4.0	£ 67.88		
YOUNGS SPECIAL BITTER	4.5	£ 91.80		

HEINEKEN

If you have any further questions please contact me at your convenience

Regional Manager

@heineken.co.uk

Subject To Board Approval Without Prejudice

STRONGBOW Heineken BULMERS 1664

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