



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): Enterprise Lessee

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

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 believe it should only include leased and tenant estates, not managed estates.

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? They should be treated as Business Partners and all buying power and discounts should be passed on to them.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. I am actually in a very good position on this as I am an Enterprise Lessee and I manage a free of tie Enterprise Charge £150.22 for an 11 Gallon Keg of Fosters, where as the local wholesaler charges £95.00. A difference of £55.22 per keg! For Guinness they charge £162.46 and wholesaler £112.00. Difference £50.46! Let's say you sell only one of each a week, that would equate to £5,495.36 over a year and that's only 2 products. I can supply copies of invoices if required.

What are your views on the future of self-regulation within the industry? In my view it clearly hasn't worked! They still feel that they are able to bully tenants into corners, as they have done with myself! I am an Enterprise Lessee and at the present moment Enterprise are trying to fine me £75,000 compensation through Brulines!

They have fined me before, but in smaller amounts, such as

... I have paid these amounts in the past as every time I looked into the legal costs of trying to fight the fines, the costs were more than the fines themselves! In hind sight I wish I had of fought tooth n nail against them, but I didn't and maybe that's why Enterprise have seen me as a soft target!

Then the latest fine came about after I had a Rent review! The BDM came into the rent review looking for an increase of £7,500(). After I picked myself up off the floor, I said an increase in this current financial climate. I asked for an independent rent review, which I am entitled to, but he said no you don't need to do that we can settle this today. I said well if it goes down today we can, but he said" the Rent must go up as per the Lease". At the time I wasn't aware that the Ted Tuppen the CEO of Enterprise, had actually said in Parliament that" every Lessee would have the opportunity for an independent rent review and that it could go down as well as up".

I settled on the day at an increase, because he kept saying it had to be an increase of £500,000) which at the time I thought was a lot better than the £7,500!

Well after a couple of months I received a letter from Enterprise saying that I owed them an estimated £75,000 in compensation according to Brulines data! I was absolutely astonished at this figure and I started looking for some help on the matter as they had made an application for a Consent order in the High Court Chancery Division. While they were making this

application they sent me an invoice for £31,391.00 in compensation, which still sits on my account as an outstanding invoice to this day!

I found out whilst trying to get help on this matter that my pub had been sold by Enterprise to a company called Hermes, on a buy and lease back deal. This is how Enterprise has been raising money over the last few years to service their huge debts! I pay Enterprise _____ in rent per annum, but Enterprise now pays Hermes _____ per annum a difference of £13,000. So hence I could now understand why they were trying to raise my rent by so much, they were trying to cover the lose they were making on the rent!

So as they didn't get the massive rent increase from me, they started to look at other ways to get more money out of me. Along with the court action over the last year Enterprise have sent bailiffs out to me on several occasions, to try and finish me off! When I have only been 7 days late on a rent payment. Also for the last 9 years I have been paying my Rent on a weekly basis, but for the last year they have forced me to pay it monthly in advance, another tactic to squeeze the live out of me. Maybe by luck or the shear blood and sweat I have shed, they haven't finished me off just yet!

I am still battling them in the High Court, where I have had to defend myself twice, as I can't afford a Barrister for each hearing. I believe Enterprise are doing this all over the country to what are meant to be their Business Partners (lessee's).

Q6.

Q7. Do you agree that the Code should be based on the following two core and overarching principles? Yes

i. Principle of Fair and Lawful Dealing

ii. Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant

Q8. Do you agree that the Government should include the following provisions in the Statutory Code?

i. Provide the tenant the right to request an open market rent review if they have not had one in five years, if the pub company significantly increases drink prices or if an event occurs outside the tenant's control. YES

ii. Increase transparency, in particular by requiring the pub company to produce parallel 'tied' and 'free-of-tie' rent assessments so that a tenant can ensure that they are no worse off. YES and Beer PRICES

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 especially as it has been proven to not be accurate enough!

Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? No, I think it covers pretty much everything.

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

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? I think the Pub co's should be forced to publically display their wholesale beer prices, so as tenants we can see how much they are paying the brewery's for it! Offer discounts for selling higher volumes of beer!

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

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

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? 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? NO! I strongly believe that the adjudicating body should not be funded this way, because as with many organisations already out there, the pub co's have too much control over them! As publican's I think it is about time we had an organisation that we can trust to do what is right for us and not for the pub co's. The pub co's would only pass it on to us somewhere down the line anyway. Maybe it could be funded by the publicans ourselves, if it was truly an impartial body and by the fines that were imposed to the pub companies.