

LSL / BIS Meeting last Wednesday

11 August 2015

10:44

Subject	LSL / BIS Meeting last Wednesday
From	[redacted]
To	[redacted]
Sent	22 September 2014 17:28

Hi

We met each other at the meeting last Wednesday.

[redacted]

Many thanks

[redacted]

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RE: Statutory Code for pub Industry

11 August 2015

10:47

Subject	RE: Statutory Code for pub Industry
From	<u>Martin Caffrey</u>
To	[redacted]
Cc	McLynch Julie (ED)
Sent	25 September 2014 14:12

From: Martin Caffrey [redacted]
Sent: 25 September 2014 14:12
To: McLynch Julie (CCP)
Cc: [redacted]
Subject: Statutory Code for pub Industry

Julie/[redacted],

Please find attached documents relating to our last meeting and the comparison between where we were with the PubCo's on a voluntary basis.

We would wish to have the opportunity to discuss these further within the current round of committee meetings. Can this request be made via yourselves or do we need to feed in via a different route.

Many thanks for your assistance

Martin Caffrey

Martin Caffrey

Operations Director

Federation of Licensed Victuallers Associations

[redacted]

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FW: Circumventing the tie reforms

12 August 2015

11:27

From: [redacted]

Sent: 26 September 2014 17:27

To: [redacted]

Cc: McLynch Julie (CCP)

Subject: Circumventing the tie reforms

[redacted]

Is this the sort of thing you are looking for ?

Heineken sells 111 pubs to Admiral Taverns

Heineken UK has announced that it has agreed to sell 111 pubs from its Star Pubs & Bars business to Admiral Taverns for an undisclosed sum. The sale is expected to complete during October 2014. Alongside the sale agreement, the two parties have agreed that Heineken will continue to offer its market leading ciders and beers to these 111 pubs. The agreement follows Heineken UK's review of its pub estate and stated ambition to build a portfolio of pubs that have a more specific identity and profile. *Morning Advertiser*

All 111 remain tied to Heineken products even though they have changed owner, I know Admiral would be part of the big 6 but this may demonstrate a way (flaw) to overcome the enhanced code and tied tenant no worse off requirement. Simply sell pubs to anyone with less than 500 pubs and keep the tie.

This demonstrates the need for the statutory threshold to be '500 pubs' as opposed to '500 tied pubs'.

The 500 total pubs is also a reason the brewers are seeking to get provisions moved from the core code to the enhanced code. [redacted]

As it is it seems a brewery tied tenant is permitted to be worse off than a free of tie tenant (and by default if the plan worked a pubco tenant).

I am sure some time ago one of the pubcos tried something like this before, about 4 or 5 years ago - I'll see if I can dig it out.

I also gather there is some debate on excluding 'tenancy at wills' from the code requirements. I understand the argument but these agreements are the 'kill zone' in which to entrap naive prospective tenants. Once a tenant is hooked in then the negotiation for the long term tied agreement that follows has the tenant on the back foot, furniture moved in kids into new school, capital spent on bringing the pub up to a habitable state to suit their needs - they are already committed and at a negotiating disadvantage. It could be there is an easy way to overcome this, I would suggest that any tenancy at will is free of tie on grant. They are supposed to be short term [redacted]. This proposal would put the tenant in a position where they have traded FOT and established for themselves the profitability of the pub under a FOT agreement before considering taking a tied one. It also puts the pubco in a position where instead of the tenant chasing them for a long term agreement it is the pubco that would need to get the agreement on a long term basis and they would need to demonstrate the benefits of the tied agreement they offer over an above FOT trading.

Regards.

Simon

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FW: Circumventing tie reforms

12 August 2015

11:29

From: [redacted]
Sent: 26 September 2014 21:05
To: [redacted]
Cc: McLynch Julie (CCP)
Subject: Circumventing tie reforms

[redacted]

I knew it happened before sometime.

S&N (now Heineken) sell pubs to Royal Bank of Scotland in a series of sales from 1999 - a big one in 2001 (below). Tenants remain tied to S&N despite RBS now owning the pubs [redacted]

<http://mobile.morningadvertiser.co.uk/Company-City-News/S-N-sells-456-pubs-to-Royal-Bank-of-Scotland-for-260m#.VCWs9MlwbqA>

About 10 years later, RBS sell pubs back to Heineken (formerly S&N)

<http://mobile.morningadvertiser.co.uk/Company-City-News/RBS-sells-918-pubs-to-Heineken#.VCWtuslwbqA>

I'm not sure but I seem to recall reading that Block Exemption does not apply to a tie after 5 years (was it Article 5 - EU competition law ?), unless the company tying the tenant owns the property. So strictly speaking those S&N tenants may have been able to claim that the Block Exemption no longer applied after 5 years of RBS ownership and the tie had expired. As long as they keep changing ownership they may be able to get around this. Bearing in mind only about 25% of [redacted] income comes from rent, most of the perceived 'value' in these pubs is in the intangible profit on tied products (about 75% of total annual income) not on tangible rental income. That's why I think the pubcos asset valuations don't stack up. I do not believe that the portfolios are worth what is claimed on the balance sheets (probably a different can of worms to that you are trying to consider right now).

The pubcos are already working their way around the proposals before they even come to pass but its difficult to circumvent a simple mandatory market rent only option applying to all tied tenants of pub owning companies with more than 500 pubs.

S

[redacted]

A pubs saleability is improved if it is vacant so the continued absence of a MRO leaves the tied tenants open to eviction simply by restricting trade and price of beer.

Effective legislation could stop the slaughter of British pubs as an MRO deprives the pub owning company of the weapons to dispossess the tenant of the pub. This is why we need MRO. Failing to offer it in the statutory code will assure Britain of a continued decline in the sector.


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revised code comparison document

11 August 2015

10:47

Subject	revised code comparison document
From	<u>Martin Caffrey</u>
To	[redacted]
Cc	McLynch Julie (ED)
Sent	01 October 2014 15:07
Attachments	 CODE CO...

[redacted],

As requested please find attached a revised template which now has a comparative column against the current Version 6 Industry Framework Code.

Give me a call when you have had the opportunity to review and we can arrange to meet and discuss in more depth.

Martin

Martin Caffrey

Martin Caffrey

Operations Director

Federation of Licensed Victuallers Associations

[redacted]

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CODE COMPARISON VOLUNTARY/ STATUTORY

	PROVISION	VOLUNTARY	V6	STATUTORY
1	Provides a single code without reference to individual codes	Yes	No	No
2	Applies to all companies with 10 or more leased or Tenanted pubs if BBPA member or other voluntary signatories.	Yes	Yes	?
3	Capable of change and amendment by an industry body without change to statute	Yes	Yes ¹	No
4	Descriptive of styles of lettings	Yes	Yes	No
5	All styles of lettings bound by code and applies to Prospective, New and Existing agreements	No. Franchises to be BFA approved (under discussion) Tenancies At Will excluded as are tenancies of 1 year or less duration. Profit sharing agreements just starting and not covered.	No ²	Yes ³ Micro Business can opt in "Tied Pub tenant" to be defined in legislation. Franchises? Profit Shares? Why advise Adjudicator of number of pubs, above or below 500. Why "large pub owning business" definition.
6	Conduct business in a professional, fair and legal manner	Yes	No ⁴	Yes
7	Abide by the Spirit of the Code	Yes	Yes	Yes? (Purposively)

1

Via Pub Governing body and requires 3 yearly re-accreditation

2

Specifically excludes Tenancy at will

3

The inclusion of Tenancy at Will agreements may have a detrimental effect on pub closures

4

Uses words professional, fair & honest

	PROVISION	VOLUNTARY	V6	STATUTORY
8	Co's who operate 10 or more tied agreements to be audited for compliance by Industry Body	Yes	No (100)	Threshold 100 "tied pubs"
9	Co's undertake to provide all other reasonable requests for information.	Yes	Yes	Yes
10	Health warning regarding non signatory Co's	Yes	Yes	N/A
11	Code Legally binding	Yes by incorporation within new agreements or DOV in existing	No	Yes
12	Full copy of the code to be supplied to all new and existing tenants and displayed on all Co websites	Yes	Yes	No
13	Pre Entry Awareness Training (PEAT) to be completed by proof of certification prior to final terms	Yes	No	Yes ? (not quite as defined terms as voluntary, "ensure" rather than certification)
14	Tenants must demonstrate and confirm in writing they have taken appropriate independent professional advice in preparation of a business plan including legal property, financial and rental advice.	Yes	Yes	Pub Owning business must "Ensure" terminology used as above
15	Industry benchmarking tools signposted	Yes	Yes	No (other than specific category shown on P&L)
16	Positive & Negative effects to business plan flagged for consultation.	Yes	Yes	Yes
17	Potential waiver of pre entry requirements, (exemption to be recorded) other than Business Plan for certain qualified applicants.	Yes	No ⁵	Yes (but slightly looser definition)
18	Sufficient info to be given to enable REO to understand nature of business.	Yes	Yes	No. No volume stats other than at rent review points Therefore misses assignees. Does require info of whether freehold for sale

	PROVISION	VOLUNTARY	V6	STATUTORY
19	General terms to be provided at initial meeting	Yes	Yes	Not specific
20	BDM quality/training standards	Yes	No ⁶	No formal qualification required
21	Typical support programmes outlines	Yes	Yes	Yes
22	Request for assistance and stipulated Co. response time	Yes	No ⁷	No To be included within Co policy but no specific time scale imposed.
23	Rent assessments to be conducted in accordance with RICS guidelines	Yes	Yes	Yes
24	"Licence to Alter" guidelines procedures outlined in respect of rent review negotiations	Yes	No	Not specific regarding "licence to alter" as opposed to "consent to works"
25	Production of rent assessment statement to be prepared for all new agreements. Rent reviews and Renewals. Prescribed format showing split by category for sales and GP and referencing to the nearest benchmarking costs available. To be compiled by a competent individual and will contain sufficient info to enable a prospective tenant to evaluate Terms, Conditions & Effect	Yes	No ⁸	Yes
26	Tenant to be made aware of basis of assessment (FMT) with reasonable cost basis	Yes	No	Yes
27	Purchased volume details to be provided by category.	Yes	Yes	Yes

6

Formal qualification of multiple licensed premises management still being developed

7

No specific time scale included

8

Not as specific for tenanted GP/Category split

	PROVISION	VOLUNTARY	V6	STATUTORY
28	House visit within last 3 months prior to rent assessment	Yes	Yes	Yes
29	Share of information which may be used by 3 rd party determination.	Yes	Yes	No
30	Any further info to be provided on request if available.	Yes	Yes	Yes
31	Industry "benchmarking" details flagged up.	Yes	Yes	Yes
32	Rent assessment statements to be provided at rent review. Time specific in advance. Ability to refer to PIRRS	Yes	Yes	Yes on time scale No referral to PIRRS
33	Rent assessment statements to be provided at agreement renewal. Time specific in advance. Ability to refer to PIRRS. Tenant can request review if one not conducted within last 5 years or at end of current agreement.	Yes	No	Yes on time scale No referral to PIRRS Tenant can call for rent review if unpredicted event outside their control significantly impacts upon their ability to trade, or the Co alters the price of its tied products.
34	Contracted out agreements to be notified of intention, to renew or otherwise, 6 months prior to agreement end & be provided with rent assessment statement. Rent negotiations can be referred to PIRRS with time specific conditions	Yes	No	No As these agreements are "contracted out" they are technically not renewed. No rights of advance notice, as in renewals and reviews as above. VERY IMPORTANT as circa 90%+ of all agreements are now contracted out Tenancies.
35	CPI/RPI to be identified and detailed as being both upward & downward.	Yes	Yes	Yes Also requires illustration
36	Upwards only rent reviews not to be included in new agreements. & not to be enforced in existing agreements. Can be altered by DOV at tenant's request.	Yes	Yes	Yes

	PROVISION	VOLUNTARY	V6	STATUTORY
37	Co price lists and range of products and details of purchasing obligations under the tied agreement (including whether a "guest" can be purchased outside the tie), to be provided along with trading terms i.e. payment/credit terms	Yes	Yes	Yes
38	Responsibility of property/business insurance to be outlined and detailed schedule to be provided. Where the company recharge the cost "price matching" must take place	Yes	Yes	Yes
39	Amusement machine tie, supply and operation to be detailed to tenant. No royalty or upfront to be applied. Management and Administration fees charged must be transparent and justified.	Yes	No ⁹	No FOT option given but silent re Fees
40	Where income is shared with the company this should be fully detailed & the tenants share is not to be included within the "divisible balance" at any rent review, renewal or grant of agreement.	Yes	Yes	Yes (Via P&L template) ¹⁰
41	Where the agreement allows for the installation of Flow Monitoring Equipment the cost of installation, maintenance and calibration is to be at the Co's expense. Tampering of equipment expenses to be recharged to tenant. Co's obliged to share data acquired through FME.	Yes	Yes	No Silent on costs No Calibration requirement No obligatory data share

⁹

Excludes management and administration fees. Which appeared as royalty charges could no longer be applied

¹⁰

Important that template remains in this format

	PROVISION	VOLUNTARY	V6	STATUTORY
42	Where discrepancies occur, calibration of equipment must take place followed by an investigation. Further supporting evidence must be provided to justify discrepancies before any charge raised.	Yes	Yes	Yes
43	Co funded capital developments must give detailed implications of F&F and rents payable	Yes	No ¹¹	Rent only mentioned. Silent on F&F (purchase and write off)
44	Tenant funded capital developments are advised to obtain a "licence to Alter"	Yes	No	Not specific with "licence to alter" as opposed to consent for works.
45	Full detail of pub building, use restrictions, EMRO's, late night levies etc to be advised.	Yes	No ¹²	Yes
46	Specific time scales regarding dilapidations schedules detailed.	Yes	No ¹³	Yes
47	Companies to provide detail of how requests for surrender will be dealt with.	Yes	Yes	Yes
48	Dispute resolution procedures via PIRRS regarding rent reviews, renewals and re grants detailed	Yes	No ¹⁴	No
49	Dispute resolution procedures via PICA-Service detailed	Yes	Yes	No
50	PIRRS & PICA-Service detail to be included on co's websites.	Yes	Yes	No

11

12

13

14

Implications for F&F not detailed
Not specific re LLL/EMRO's
Uses "early" notification terminology
"Re-grants" of contracted out agreements not applicable to PIRRS

	PROVISION	VOLUNTARY	V6	STATUTORY
51	Tied Tenant No worse off than defined	Not Defined	No	Yes, for "large pub owning business" "only,
52	Discrimination by pub owning business towards Tenant exercising rights under code will be classed as a breach	"Spirit" of code definition?	Yes? Via spirit.	Yes
53	Whether the tenant has a right to a "parallel rent assessment" and procedures to follow	No	No	Yes Only for "large pub owning business's)
54	Deposit arrangements security, repayment, interest	No	No	Yes

THE FOLLOWING PROVISIONS ARE SPECIFIC TO LEASED PROPERTIES IN THE VOLUNTARY CODE				
	PROVISION	VOLUNTARY	V6	STATUTORY
55	"cooling off" period of 6 months, during which 6 months notice can be given, with exception of £50k + capital investment	Yes	No	No
56	Detailed outline of the premises to be supplied at letting showing relevant use and any restrictions.	Yes. (but should also apply to tenancies)	Yes ¹⁵	Yes
57	Detailed current inventory to be supplied at commencement of agreement. Where correct termination notice has been served by tenant Co obliged to purchase as valued by a professional qualified valuer on the basis of a going concern.	Yes (but should also be included for tenanted agreements)	No	No Only requires that advice re procedures be given. Silent on going concern.
58	Companies must describe the nature scope and extent of repairing covenants and the extent of the lessee's obligations at heads of terms.	Yes (but should also be included for tenanted agreements)	Yes	Yes
59	Co's to ensure prospective and new lessees have a survey undertaken by a professional experienced in the pub market.	Yes	No ¹⁶	No only encourages
60	Co's are to provide a schedule of condition identifying the state of the building, drawing attention to specific problems and clarifying the remedial work required during the course of the lease. Unless specified in lease as "put" the assumption will be that the requirement is "keep"	Yes	Yes	Yes Silent on "put" and "keep"

¹⁵

But is not specific regarding LLL/EMRO's

¹⁶

Lessees "encouraged" to seek advice

	PROVISION	VOLUNTARY	V6	STATUTORY
61	Companies to provide a dilapidations breakdown not less than 9 months prior to expiry. If an interim notice served same time scales apply for remedy save for where repair is required immediately for H&S/Prevention of further damage/business critical.	Yes	No ¹⁷	Yes Required 12 months prior to expiry.
62	A request for assignment must be responded to within 28 days, explaining contractual obligations including relevant fees.	Yes	No	Yes Response must be "timely"
63	An onus on the Co to provide the potential assignee with the same detail as required at the commencement of the agreement	Yes	Yes	No
64	The same pre-entry requirements and waivers apply as above other than the assignee must also hold a personal licence or have a DPS. Co. consent is not to be unreasonably withheld.	Yes	No	? Is this adequately covered under reasonably withholding consent?

THE FOLLOWING PROVISIONS WERE PROPOSED BY THE FLVA FOR INCLUSION WITHIN THE VOLUNTARY CODE.					
	PROVISION	VOLUNTARY	V6	STATUTORY	
65	<p>The provision of an industry "helpline" to assist all tenants in the interpretation of codes and resolution of issues.</p> <p>Designed to support the Licensee from pre entry and ongoing in pub support and to act as a triage for issues pre PIRRS/PICAS on a free of charge basis to the Tenant.</p> <p>Accountable to the Pub Governing Body.</p> <p>Dovetails with Enhanced Pre Entry Awareness Training and supports the front end of the "Risk and Reward" judgement prospective Licensees need to take and to redress the recognised partnership imbalances between Pub Co and Licensee</p>	<div style="border: 1px solid black; padding: 5px; width: fit-content;">No</div>	No	No	
66	The provision of backdating any mutually agreed benefit due to circumstances beyond a tenants control to the point of original, evidenced, claim.	No	No	No	
67	Price margin maintenance. Whereby the cost of products to tenants increased in the same cash quantum as the increase from the suppliers to the Pub Co's	No	No	No	