

[redacted] AND DEEDS OF VARIATION

07 August 2015

12:16

Subject	[redacted] AND DEEDS OF VARIATION
From	[redacted]
To	[redacted]
Cc	McLynchey Julie (ED)
Sent	18 November 2013 13:32

Dear [redacted]

I refer to my earlier call.

As you are aware we had a recent rent review conclusion which I documented in submissions during the Public Consultation.

[redacted]

One might wonder what on earth [redacted] were thinking, seeking to sneak these onerous terms under our radar. [redacted] seem to be acting in such a way that they are already aware that statutory regulation proposals will be diluted sufficiently before they come into effect and they have little to fear.

Again, if a Market Rent Only option were available at our review all this would be superfluous, ordering stock electronically would be our choice not a requirement.

Should you require any further information please let me know, I would be quite happy to forward the deed and a copy of our lease.

Regards.

SIMON CLARKE



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Min Bespoke - Pubco [REDACTED]

18 August 2015

12:50

Subject	Min Bespoke - Pubco [REDACTED]
From	[REDACTED]
To	[REDACTED]
Sent	20 November 2013 14:25
Attachments	 Response ...  Suggestio...

[REDACTED]

From: HUNT, Jeremy [<mailto:jeremy.hunt.mp@parliament.uk>]

Sent: 19 November 2013 19:31

To: Swinson MPST

Subject: FW: From Rt Hon Jeremy Hunt MP

Dear Jo

We have been in correspondence on behalf of my constituent, Chris Lindesay, [REDACTED]. Thank you for your helpful response on 19th August 2013, which I have attached for your information.

I was delighted to hear that the Department for Business Innovation and Skills has completed a consultation on establishing a statutory Code of Practice and were intending to publish a Government Response to the consultation in the Autumn. I would be grateful if you would let me know if that has been released.

In the mean time, Mr Lindesay has written to me again [REDACTED]

I do not have the appropriate contacts for this, but wondered if it was something that you may be able to help with.

I look forward to hearing from you.

Best wishes

Jeremy Hunt

[REDACTED]

From: Chris Lindesay [REDACTED]

Sent: 24 October 2013 17:11

To: HUNT, Jeremy; [REDACTED]

Subject: [REDACTED]

Dear Jeremy

When we first met (was it 5/6 years ago) you asked me what you could do to help with the Punch PubCo problem.

[REDACTED]

Best regards

Chris & Von Lindesay

[REDACTED]

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Outline Suggestion for restructuring Punch to guarantee a sustainable future for the estate.

Prepared by Chris Lindesay,

Monday, 28 October 2013

- 1) The debt secured on Punch's estate can only be repaid from two sources:
 - a. A share of the profits from transactions over the Pub bars
 - b. The proceeds from closing the Pubs for alternative use.
- 2) The preservation / restoration of the "Great British Pub" as a thriving part of British Industry is a desirable outcome for the public, Government, Publicans and Bondholders.
- 3) The current situation, and any traditional restructuring, is unsustainable because it depends on applying further pressure on Publicans on whom achieving 1)a. above depends.
- 4) Applying further pressure on Publicans is going to be problematical as the field is under intense scrutiny, and government, with all party support, is very close to framing new regulations concerning the PubCo/tenant relationship – the stated objective of the regulation being to transfer £100million per year from PubCos to their tenants.
We are told the Government would prefer an alternative resolution.
- 5) There are a number of threads undermining even the current business model, making it a certainty that any traditional proposal is doomed, the current management of Punch can offer nothing more.
- 6) There is an opportunity to achieve something really special.
- 7) It is suggested that engaging with the Publicans and extending to them an opportunity to achieve what they need, can and will facilitate the desired client objective – The maximum possible repayment of the debt over the shortest possible period.
- 8) It is proposed that a highly creative "Out of the box" restructuring of Punch should be implemented, which in effect converts the rental payments made by tenants to mortgage payments made by independent businesses.
- 9) Financing must come initially from the current debt structure, but there are a number of mechanisms which can be tapped to restructure and diversify this debt. These might include:
 - a. EIS investment opportunities . FIT and other incentives accessed locally with a centrally organised template.
 - b. Newly agreed debt based on local negotiation.
 - c. "Reverse ties" with breweries.
 - d. A government sponsored "localism bond".
 - e. Mutualisation of the current structure.
- 10) Publicans have already demonstrated their resilience and capacity to sustain extreme pressure. They can be relied upon to cooperate when it is in their interests to do so.
- 11) It is believed that government is very keen to resolve this problem, created by badly framed regulation, without having to resort to more potentially flawed regulation. Government will be supportive of a correction of the market, by the market, and all the more so because it can be presented as a victory for the British Pub, British Culture, All Party consensus, British institutions, Pension funds and Insurance companies achieving a positive result despite pressure from Hedge Funds and the forces of whatever it is that has made everything so unattractive in modern finance today.
- 12) The organisational transformation required to achieve this is minimal – more in the nature of repurposing existing structures, changing management and redirecting immense positive energy.
- 13) It will not be simple to achieve this goal, but it is by far the most desirable, achievable and attractive option. There are people and organisations poised to get behind this and make it work, unleashing their energy will bring about the best possible outcome for your clients.
- 14) This will be a new departure, and actually could be fun, which is V important!



Department
for Business
Innovation & Skills

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SW1H 0ET

The Rt Hon Jeremy Hunt MP
House of Commons
London
SW1A 0AA

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www.gov.uk/bis
Our ref: 01250

19 August 2013

Dear Jeremy,

Thank you for your Office Manager's email of 28 July, enclosing correspondence from your constituent, Chris Lindesay about the regulation of the pub industry.

As you are aware from Vince Cable's letter of 17 December 2012, the Government is aware of concerns about the relationship between large pub companies and their tenants and takes this matter very seriously. To manage the problems within the pubs industry, the Secretary of State recently consulted on establishing a statutory Code of Practice and an independent Adjudicator to govern the relationship between pub companies and their tenants. At the heart of the proposed Code is both an overarching fair dealing provision and the core principle that a 'tied tenant should be no worse off than a free-of-tie tenant', enshrined in statute, principles that I note Mr Lindesay is supportive of. The proposed Adjudicator would have the powers to arbitrate individual disputes, conduct investigations into systematic violations of the Code, and impose sanctions if pub companies are found to be in breach.

The purpose of the consultation, which closed on 14 June, was to gather additional evidence to help us better assess the likely impact on the pubs industry of our proposals. We wanted to ensure that we heard the widest possible range of views before taking any decisions, including from pub companies, breweries, tenant organisations, tenants and members of the public. I am grateful to you for sharing Mr Lindesay's views with us.



The next step is to consider the evidence brought forward during the consultation and on that basis decide how to act. We intend to publish a Government Response to the consultation in the autumn.

JO SWINSON MP

Jo Swinson MP
Minister for Employment Relations and Consumer Affairs

Pubs: Letter and Response Jo Swinson to Fair Deal For Your Local (MCB2013/10451) - 19 November 2013

11 August 2015
10:25

Subject	Pubs: Letter and Response Jo Swinson to Fair Deal For Your Local (MCB2013/10451) - 19 November 2013
From	[redacted]
To	[redacted]
Sent	28 November 2013 11:07
Attachments	 Letter to J... [redacted]  Greg Mulh...

Attached: Fair Deal For Your Local letter and response from Jo Swinson.

[redacted]

From: [redacted]

Sent: 29 October 2013 17:23

To: Swinson MPST

Cc: Greg Mulholland

Subject: Letter from the Fair Deal for Your Local Campaign

Dear Jo,

Attached is a letter on behalf of the Fair Deal for Your Local Campaign regarding the market rent only option for large owning pub companies and their tenants. The letter includes the definition of the market rent only option, which has not previously been done before.

The Fair Deal for Your Local Campaign includes the Campaign for Real Ale, the Federation of Small Businesses, the Forum of Private Business, the GMB Union, Unite The Union, The Fair Pint Campaign, Licensees Supporting Licensees, Justice for Licensees, the Pubs Advisory Service and the Guild of Master Victuallers.

Many thanks,

[redacted]

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Rt. Hon. Jo Swinson MP
Minister for Employment Relations and Consumer Affairs
Secretary of State for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

25 October 2013

Dear Jo,

CC: The Chair of the Business Innovation and Skills Select Committee

As you might expect there has been much effort put into confusing the relatively straightforward solution to the pub industries problems - a Market Rent Only option.

Even now some Ministers, MPs and officials seem to be working under the illusion that the Market Rent Only option is a complex and radical idea.

A "tied licensee" is obliged to acquire products from the company that owns the pub, such as beer, in addition to paying rent. The idea is that if the price of 'tied' products are higher than the open market price then the tied rent is lower, to 'countervail' the disadvantageous pricing structure, i.e. the tied licensee should be no worse off than if they were free of tie.

Put simply, the Market rent Only means a tied licensee can choose whether to remain in the same tied agreement, paying extra for tied products and a lower rent to compensate for them or swap on to an agreement under which they simply pay a market rent and acquire products from any source if they consider the tied rent is not fairly reflecting the tied product prices.

Quite the contrary to opening a potential floodgate of applicants, it is proposed that this 'option' could be activated at various trigger events - not, as has been suggested, at any time during the agreement period, for example:

- (a) at rent review or lease renewal;
- (b) if the Pub Company makes a significant alteration to the price at which it supplies tied products to the licensee;
- (c) if a pub owning company obliged to honour the Statutory Code propose a sale of their property interest (ensuring developers cannot exploit tied terms to evict a licensee).

Dispute on interpretation of any of these events should be capable of referral to the proposed industry Adjudicator.

The tied model is in itself regulatory, placing a burden and red tape upon the tied licensees, if it is to remain and survive, along with our nation's pubs, a mechanism needs to be in place curtailing the abuse the model and encouraging it to operate fairly.

It is too naive to expect this to be delivered by a periodic formula simply comparing a pub licensee's profitability both on a tied and free of tie basis. The difficulty is that rent

assessments are usually at 5 yearly intervals whereas tied product price increases can be more than one a year. A 5 yearly reassessment allows a party, of a mind to abuse the opportunity to manipulate the dominant position afforded to them by the tied agreement and simply increase product prices, to gain on the swings what they lost on the roundabout.

One question the Government sought responses on is whether their commitment of 'fairness' and 'a tied tenant being no worse off than if they were free of tie' could be delivered by offering tied licensees a free of tie option, a recommendation originally put forward by the Business and Enterprise Select Committee in 2009 and re endorsed by the Business and Innovations committees of 2010 and 2011, chaired by Adrian Bailey.

The free of tie option proposed by four successive All Party Parliamentary Select Committees is the Market Rent Only option, not some spurious forced property interest swap but simply an option for lessees, not pubcos, to determine and consider their tied agreement and sever it if it is not fair.

HOW IT WORKS

The tied licensee's requirement to purchase products from the pub owning company are called 'Purchasing Obligations'. It is perfectly simple to sever these provisions from the main document leaving the remainder in force. The possible eventuality of just such an event as being proposed in the Governments Public Consultation - a Market Rent Only option - has been pre-considered by the pub owning companies and their agreements already contain provisions triggering a rent review (rent recalculation to reflect changing circumstances) to open market rental value if the tied terms are rendered unenforceable. Given the latter there is no necessity to alter lease or tenancy agreements in any way.

A typical provision would read:

(Example provision from a pubco lease - summary)

Changes in the Tie

We may give you notice in writing at any time (and more than once) to:

(a) release you from all or any of your purchasing obligations under clause 18.1(Purchase of Drinks) ; or

(b) vary any of Your purchasing obligations in clause 18.1 (Purchase of Drinks) in order to take into account any law which may make the relevant obligations unenforceable;

with effect from the date in that notice and We may then choose to review the Rent to the Market Rent by serving a Review Notice on You and if any Rent Concessions are still applicable at that time they will cease to apply from the date of Our notice to You releasing or varying Your purchasing obligations.

(Example provision from a tenancy - summary)

The pub owning company may vary the provisions of the Purchasing Obligations in order to take into account any enactment whereby any of the provisions might be or become, in

whole or in part unenforceable or restricted in scope or effect in the event of such a variation the rent firstly reserved shall be reviewed in accordance with the agreement terms.

There is no call for unnecessary red tape, in fact a licensee choosing the market rent only option releases the pub owning company from red tape. The Government's statutory code can have a simple to understand clause indicating that any pub owning company, it is proposed with more than 500 pubs, must offer their tied licensees the option to have a market rent only agreement.

PRACTICAL APPLICATION

There is a misguided view that a whole new process would be necessary. Adding cost and complication, this is quite incorrect. MRO can 'piggy back' existing legal mechanisms and frameworks. Most of the necessary procedures are in place, either in the existing leases or legislation (Landlord and Tenant Act 1954 Part II). All that is needed is a right to the MRO option, which can be in the statutory code at certain trigger points, and a form of appeal, beyond what exists, to the Adjudicator, should there be any doubt over the proper application of the statutory code or the principle that a 'tied tenant should be no worse off than if they were free of tie'.

As an example of procedure:

At rent review, the tenant would indicate they wish to consider MRO, either party could make a rent proposal, both parties would establish their own rental value, in exactly the same way they do now under the current rent review mechanism. Either party at this point might offer terms on a MRO and tied basis. The parties would negotiate (market rent) and if they can not agree the issue can be referred to a third party, again all this is already set out in the existing lease including the appointment of a third party surveyor. If there is still dispute following the third party decision, on application of the statutory code and its spirit, then the Adjudicator would be a final authority of appeal (this is a provision that statutory code has to offer). With the complication of tied product pricing as compared to free trade pricing removed from the equation the whole valuation process is simplified, thereby shortening the review process, saving time and money. The spectre of an appeal to Adjudicator (outside the influence of the pubcos) ensures it is absolutely in the interests of the parties to agree without having to refer.

For renewal - again the procedure is already laid out in the Landlord and Tenant Act 1954 Part II - either party can serve notice of the lease renewal, the practical procedure is much the same as above only the matter is referred to court (rather than a third party surveyor) in the event the parties can not reach agreement. Again the opportunity to appeal to the Adjudicator needs to be incorporated into the statutory code as a final level of appeal.

This is how the system can operate using existing procedures and mechanisms. Timing, court procedures, appointment of third parties and apportionment of costs are all present in existing leases and/or legislation. All that is needed is the right to an MRO option and a right to appeal to a superior authority - the Adjudicator - where the application of the statutory code is in question.

Should a tied licensee choose to implement the option they would be selecting to no longer be subject to purchasing obligations of any form and therefore the sum paid to the pub

owning company would be Market Rent Only like the majority of other normal commercial agreements in high street bars, restaurants, shops, hotels, offices and warehouses.

Once effective, and the rent established either by agreement, independent third party or Adjudicator, just as it is in the usual way through rent review terms already contained within the agreement or in lease renewal terms already contained in legislation (Landlord and Tenant Act 1954 Part II), the pub owning company would issue a deed of variation (see draft attached), as they are already required to do under the existing agreements to record the rental variation, but with the additional provision stating that the licensee is no longer bound by the Purchasing Obligations of the original agreement.

CUTTING RED TAPE

Currently, there is a certain amount of administration involved in operating the tied model for pub owning companies, establishing orders, purchasing, collecting, storing and delivering products. Should a licensee choose to opt for a market rent only option the pub owning company would be released from their administrative obligations - thereby reducing their red tape.

The current proposal by Government deliberately seeks to ensure that smaller pub owning companies, like the regional family brewers, are not directly affected by the statutory code unless they expand to ownership of over 500 pubs.

Most pub companies and brewers claim that their tied rents balance the higher tied beer and product prices. All the Market Rent Only option seeks to achieve is that licensees are able to monitor that claim themselves and opt out if it proves untrue. Ironically, the existence of such an option ensures that the tied agreements can continue to exist if operated fairly and reasonably as was first intended.

With the exception of the Market Rent Only option, no solution has been tabled that will so effectively restrain manipulation of the tied model and stops the inevitable continued destruction of the country's pub estate. Whilst we have undoubtedly lost some 10,000 pubs in the last 10 years, the Freehold owner occupied sector has actually grown, demonstrating that, if given a chance, previously tied pubs can be viable.

Yours sincerely,

Fair Deal for Your Local

Mike Benner, Chief Executive, Campaign for Real Ale (CAMRA)

Clive Davenport, Enterprise and Innovation Chairman, Federation of Small Businesses

Alex Jackman, Head of Policy, Forum of Private Business

Steve Kemp, Political Department, GMB Union

Paul Naylor, Unite The Union

Simon Clarke, The Fair Pint Campaign

Val Spencer, Licensees Supporting Licensees

Inez Ward, Justice for Licensees

Chris Wright, Pubs Advisory Service

Bill Sharpe, Guild of Master Victuallers

Greg Mulholland MP, Co-ordinator of the Fair Deal for Your Local Campaign and Chair of the Parliamentary Save the Pub Group

CC: Adrian Bailey MP



Department
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Greg Mulholland MP
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Our ref: 2013/10451

19 November 2013

Dear Greg,

Thank you for your letter of 29 October in which you set out an explanation of a 'Market Rent Only (MRO) option for the rental of pubs.

As you know the Government is currently considering the evidence submitted during our consultation on establishing a statutory Code of Practice and an Independent Adjudicator to govern the relationship between pub companies and their tenants. The purpose of the consultation was to gather views on whether our proposals would deliver a fair balance of risk and reward between tenants and pub companies, and also sought views on whether a 'mandatory free of tie' option should be included in the code. We intend to publish a government response to the consultation later this year.

I am grateful to you and your colleagues for having taken the time to provide this update on your views and I have copied this letter to Mike Benner of CAMRA who has written on the same topic.

JO SWINSON MP

FW:

04 August 2015

14:48

From: Martin Caffrey [redacted]

Sent: 29 November 2013 13:06

To: [redacted]

Subject:

Dear [redacted]

We have read with interest recent interventions from Pub Co's [redacted] about price increase mechanisms. We do not feel individual Company statements about price increase mechanisms are in any way meaningful or helpful to the current consultation. What is required is an Industry approach. Our own views on this aspect of Pub Co reform are contained in both our original submission and the consultation document as we have discussed at previous meetings.

However you may find it helpful for us to amplify those views for you to take into your considerations and we are happy to attend a further meeting with yourselves to outline these views.

[redacted]

Finally we are mindful that at previous meetings we raised the point of Franchise arrangements figure within your considerations and our concerns about the spread of these "quasi managed arrangements" has been confirmed within a leading article by [redacted]. Other statements within the trade press e.g. turnover leases indicate further developments by Pub Co's in their letting arrangements and variants with the Beer tied Licensee which need careful consideration, we are concerned these could bypass Governance arrangements. In many ways the old descriptors of lettings as Lease or Tenancy need to be broadened to take account of these developments. We favour an approach which deals with and protects Tied Beer supply Licensees, franchise fee or turnover based payments are quasi rents and should not be allowed to slip outside of proposed Governance arrangements.

We look forward to hearing from you.

Martin Caffrey

Martin Caffrey

Operations Director

Federation of Licensed Victuallers Associations

[redacted]

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INDEPENDENCE OF SURVEYORS

07 August 2015

12:19

Subject	INDEPENDENCE OF SURVEYORS
From	[redacted]
To	[redacted]; McLynchy Julie (ED)
Sent	04 December 2013 11:40
Attachment s	[Attachment withheld under section 43 of the Freedom of Information Act - commercial interests]

Sorry, this is a recent case. Thought it may be of interest in demonstrating the problems of the existing self regulatory system.

[redacted]

We need the statutory code to include provisions for appointment of third parties and clear rules in respect of conflicts of interest.

Simon

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Info Only pubs

18 August 2015

12:57

Subject	Info Only pubs
From	[REDACTED]
To	[REDACTED]
Sent	19 December 2013 16:05

Info Only Pubs

From: Justice For Licensees [REDACTED]

Sent: 18 December 2013 12:23

To: Ted Tuppen

Cc: Swinson MPST; Enquiry Enquiry (Other Government Departments); Enquiry Enquiry (Other Government Departments); Cable MPST

Subject: Pubco Consultation

Dear Mr Tuppen

With reference to your submission to the consultation and in particular your unwarranted and unjustified attack on campaigners with the, in my opinion, rather tawdry comment of "This might be a game to certain campaigners..."

Please allow me to ensure both you and the Right Honourable Members of Parliament that as far as I am concerned this is no game and I find your ill thought out comment offensive, unproductive and somewhat lacking in reality. For the avoidance of any doubt whatsoever, people losing their lives or taking their own lives is no game! People losing their homes and livelihoods is no game! The fact that some tenants feel that they have been misled by the pub companies is no game! The fact that some tenants feel abused and exploited is no game! The destruction of the Great British Pub through sheer unadulterated incompetence, irresponsibility and greed is no game!

These are real people, real lives we are talking about here, not some number on a spreadsheet, they live and breathe, they laugh and cry and they are suffering, they deserve just a little empathy and understanding! They do not deserve to be mistreated, they do not deserve to be ripped off and they do not deserve being misled, you would do well to remember that!

Perhaps, Mr Tuppen, you are judging campaigners by your own standards and perhaps it is you that are playing games with people's lives?

Please let me assure you that my aims are neither misguided or damaging to pubs and in fact are probably the opposite of that you try to espouse. Quite simply a model built on respect, honesty and transparency, that is fair to all parties including tenants and consumers, which addresses the seriously unbalanced risk and reward factor, which will help pubs to continue their sterling work in the communities they are a part of. May I respectfully suggest that if you actually engaged with campaigners rather

than attack you might actually learn something, this type of modus operandi is neither helpful nor beneficial to our wonderful pubs, the people that run them and the people that use them!

Regards

Inez

Inez Ward
Justice for Licensees

[REDACTED]

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Re: RICS - CONFUSION OVER RENT ASSESSMENT INTERPRETATION

07 August 2015

12:21

Subject	Re: RICS - CONFUSION OVER RENT ASSESSMENT INTERPRETATION
From	[redacted]
To	McLynch Julie (ED)
Sent	19 December 2013 16:38

That's no problem.

[redacted]

[redacted] have sought to criticise the Government proposal, particularly the formulaic approach, and whilst I may have my own reservations of it I think its only fair you have a complete picture. I do not believe the majority of the [redacted] statements in the submission are at all fair, or in some cases even true, and the formulaic approach should not be undermined for these reasons.

[redacted] - I merely wanted to demonstrate what is happening in the real world. Dispute over guidance interpretation and problems of transparency persist. Nothing in self regulation to address these.

Get well soon.

S

-----Original Message-----

From: McLynch Julie (OME) [redacted]

To: siclarke [redacted]

Sent: Thu, 19 Dec 2013 16:25

Subject: Re: RICS - CONFUSION OVER RENT ASSESSMENT INTERPRETATION

Hi Simon

Thanks for this.

New Year.

I will pick up in the

Hope you have a good Christmas

Best wishes

Julie

[redacted]

From: [redacted]

Sent: Thursday, December 19, 2013 04:08 PM GMT Standard Time

To: [redacted]; McLynch Julie (OME)

Subject: RICS - CONFUSION OVER RENT ASSESSMENT INTERPRETATION

Dear Julie and [redacted]

Please see the below.

I outlined that I was using the Government proposed rent assessment formulaic approach in a lease renewal. I fully accept this is a proposal not set in stone in a statutory code but it is based upon the understanding that this is what the RICS guidance seeks to achieve. The purpose of the exercise was to demonstrate the difficulty surveyors have and the resistance to applying the principle that a tied tenant should be no worse off than if they were free of tie. RICS guidance, as you know, has grey areas but very clearly states that a tied tenant would consider their circumstances and profitability if they were free of tie before making a rental bid.

[redacted]

Regards.

Simon

[redacted]

FW: Pubs Code and Adjudicator Team

04 August 2015

From: Martin Caffrey [redacted]
Sent: 26 June 2014 14:06
To: [redacted]
Subject: Pubs Code and Adjudicator Team

[redacted],

Many thanks for the recent email in respect of the bill to establish Pubs Statutory Code & Adjudicator.

As you are aware we have been involved with the debate surrounding this for several years now and would wish still to have an input. Could you please advise me who this should be channelled through, whether it still rests with the people we have had discussions with at BIS in the past or someone within your team.

Many thanks for your assistance

Martin Caffrey

Martin Caffrey
Operations Director
Federation of Licensed Victuallers Associations
[redacted]



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RE: Pub Code and Adjudicator Announcements

11 August 2015

10:47

Subject	RE: Pub Code and Adjudicator Announcements
From	<u>Martin Caffrey</u>
To	'Martin Caffrey'; [redacted]
Cc	[redacted]; McLynchy Julie (ED); [redacted]
Sent	27 June 2014 14:59
Attachments	 Julie Mcl...  Julie Mcly...

[redacted],

I attach a copy of a letter sent to Julie earlier in the year which may well give us a start point for our meeting.

See you next week.

Martin

Martin Caffrey

Martin Caffrey

Operations Director

Federation of Licensed Victuallers Associations

[redacted]

From: Martin Caffrey [redacted]

Sent: 27 June 2014 13:07

To: [redacted]

Cc: [redacted]; 'McLynchy Julie (CCP); [redacted]

Subject: RE: Pub Code and Adjudicator Announcements

[redacted],

Many thanks for getting in touch so quickly.

Confirming the meeting as agreed for 16.00 on Tuesday 1st July at BIS offices in Victoria.

Three attendees if possible Myself, John Whittaker and David Hawksworth

Martin Caffrey

Martin Caffrey

Operations Director

Federation of Licensed Victuallers Associations

[redacted]

From: (CCP) [redacted]
Sent: 27 June 2014 09:31
To: martin caffrey
Cc: [redacted]; McLynchy Julie (CCP); [redacted]
Subject: Pub Code and Adjudicator Announcements

Hello Martin,

I hope you are well.

Thanks for getting in touch. We would be happy to meet with you next week if you would find that useful. Tuesday, Wednesday and Friday are best but Thursday can also be accommodated if the others are not convenient. If the week after is more convenient then do suggest a date.

Best Regards,

[redacted]

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Julie McLynchy
Deputy Director Consumer and Markets
The Department for Business Innovation and Skills
1 Victoria Street
LONDON
SW1H 0ET

28th February 2014

Dear Julie

It is some time since we last met you and your colleagues in conjunction with two of the principal Pub Companies Admiral and Punch, together with the BII as the Industry's Education and Training body.

There are a number of live issues which we would like to separately address to the joint position we are attempting to forge with the Pub Co's and BBPA.

Within the joint position we were delighted that the Pub Co's accepted our longstanding submission contained in our first BIS submission of a Universal Code of Practice (UCOP) for all within the Industry. In addition the acceptance by the Pub Co's of a Deed of Variation to include the UCOP into all agreements creates a watertight collateral contract and settles the legality question once and for all. However we do have a slight concern that Pub Co's may attempt to slide back to utilising side letters with certain agreements to incorporate the UCOP into agreements. The effect of this would be that should the Pub be sold the UCOP would not be binding upon successors in title and the UCOP protection for the Licensee would fall away. In the light of current Pub Co disposal activity this represents a live issue, consequently any undertakings from Pub Co's to Government needs to specify this point.

Additionally it should be noted that UCOP content has yet to be agreed and ongoing negotiations although positive are proving difficult. As background the FLVA did not sign the BBPA version 6 COP and as it stands the Industry does not have an agreed COP,

Separate to the joint position, we have made our position clear concerning the new and differing types of Pub Co beer tied arrangements relating to franchises and turnover related agreements both of which involve financial elements or franchise fees as quasi rental arrangements, which could circumvent Self Governance or Statutory arrangements. In essence any self employed Beer supply tied Licensee should be afforded the protection under either Statutory Governance or self Governance.

Any Self Governance arrangements or Statutory solutions should seek to cover any Tied Beer Agreement be it Lease/Tenancy/Franchise/Turnover related or other development which may emerge. In essence if the Licensee is self employed and tied for his Beer supply, he should be entitled to the protection afforded by emergent new protections be they Statutory or brought about through Self Governance.

Separate to our joint position, we believe there are other key concerns within our discussions with Pub Co's where we have been unable to find any common ground, principally in relation to Beer price increase mechanisms and behaviours. In common with the Pub Co's, we have written to you under separate cover concerning this matter. To reiterate, our start position is one of rejecting the mandatory FOT proposal and Guest Ale arrangements as they would be destructive to the Tied Beer model. However Pub Co Beer price increase mechanisms and behaviours are equally destructive to the beer tied model. We welcomed the pragmatic support extended to the Industry from Government in relation to the Beer price escalator; we look to Government to seek similar undertakings from Pub Co's in respect of their Beer Supply price increase behaviours. In essence we seek behaviours where Pub Co's only increase their tied Beer prices supplied to Licensees in the same cash quantum as the Pub Co's pay to their Beer suppliers. Adopting this behaviour and delivering compliance through a Government appointed Adjudicator would along with the previously presented solutions solve the fundamental problem within the tied beer model. This solution would be considerably less profit disruptive and dilutive to Pub Co's than the mandatory Beer FOT or Guest Ale option. As a transfer of value element seems an inevitable part of any Pub Industry solution, we need to outline how this would work in practice, delivering both a tangible benefit for Beer tied Licensees and providing a "profits soft landing" for the Pub Co's. Addressing this point addresses the objective of ensuring Beer Tied Licensees are no worse off than their FOT counterparts.

A further BISC concern, one we share, centred on the Pub Co Licensee relationship, we are encouraged Pub Co's were supportive of the pub advice and support model the FLVA have developed (FLVA Helpline). FLVA Helpline from the Licensees perspective is a critical part of the proposed Self Governance arrangements however it remains imperative this is delivered in the Helpline format proposed if this body is to be the Licensees bulwark, mindful of the identified chronic imbalances within the Pub Co/Licensee relationship. Any generic Helpline undertakings by the Pub Co's followed by subsequent slippage to a call centre approach will result in a perfunctory service and remove any element of an independent balancing body for the Licensee.

In view of the above we would seek a meeting with you to amplify the above points which we believe are central to your current considerations.

Yours Sincerely



Martin Caffrey
Operations Director
Federation of Licensed Victuallers Associations

CC The Rt. Hon. Dr Vince Cable MP
Jenny Willott, Minister for Employment Relations and Consumer Affairs

