The Pubs Code and Pubs Code Adjudicator: Part 1 - response form

Name: Stuart Gallyot
Organisation (if applicable): Punch Taverns plc
Address: Jubilee House, Second Avenue, Burton-on- Trent, Staffordshire DE14 2WF
Email:

Please tick the box below which best describes you as a respondent to this consultation.

X	Pub-owning business with 500 or more tied pubs
	Tied tenant
	Interest group, trade body or other organisation
	Other (please describe)

Punch Taverns

Response to The (Draft) Pubs Code Regulations 2016

Introduction

Punch Taverns owns approximately 3,500 pubs across the UK. As part of that pub estate, we are also one of the largest owners of pubs in Scotland.

We believe this places Punch in a very strong position to comment on two specific aspects of this consultation: firstly, the uncertainty that has been created by the Small Business Enterprise & Employment Act 2014; and secondly, the consequences to both landlord and tenant businesses across the two impending regulatory systems and markets.

At Punch Taverns we respect the will of Parliament and have tried to work constructively with BIS to make these regulations as workable as possible.

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Executive Summary

1. The significance of continued investment in the community pub sector is a fundamental issue for Punch. It is crucial that a waiver for investment is available – one that is simple to understand and that the two well-advised parties have agreed to.

2. Transitional arrangements are not sufficiently dealt with by the regulations. All current agreements that had the benefit of significant investment should receive the same investment waiver during the agreement through transitional relief.

3. The proposed timing for the implementation of the regulations, training of staff and setting up of the Adjudicator's office is too tight. The consultation period ends on 18 January 2016 and the regulations are not finalised. However, these regulations are expected to be 'live' on 26 May 2016 (just 17 weeks later). There should be a transitional relief period of 12 months to implement the regulations, before they go 'live'.

4. The regulations, as drafted, do not constitute 'light touch' regulation. For example, 82 documents or pieces of formal information will be required to let a pub. Punch would support the Government in cutting 'red tape' – this would allow pubs to flourish, while also enabling the Government to achieve its stated policy aim of creating 2 million jobs and cutting of £10 billion[1] of red tape in the lifetime of this Parliament.

5. The MRO compliant agreement should reflect a commercial arrangement the same as that used for other commercial property and free-of-tie pubs. The prime example of a free-of-tie pub lease would be the Wellington Pub Company 20-year lease. This formed part of the Fair Pint submission on 14 June 2013, where it was stated that an MRO agreement should be the same as any other high street lease – we agree with Fair Pint on this point.

6. An MRO compliant agreement should be a new agreement – i.e. a surrender of the existing tied agreement and renewal under the MRO compliant agreement.

7. It was agreed in 2014, by both landlord and tenant groups, that Parallel Rent Assessments (PRAs) were unworkable and unwanted. This was before the Market Rent Only (MRO) option was considered. Now that MRO is an option for tenants (effectively, rent assessments in parallel), PRAs are no longer required – so these should not be included in any regulations, as suggested by the initial consultation.

8. The unintended consequences of this legislation are that tenants will end up being tied by a different route. International brewers will simply tie tenants to products via long-term loan arrangements. If pub companies have restrictions over investment, they will not be able to invest over the same period. Punch believes this is anti-competitive.

[1] https://www.gov.uk/government/news/financial-red-tape-targeted-in-new-review

General Comments

1.0 The Reality of the Adjudicator and the Regulations

When all of the regulations are looked at as a whole, they represent a significant burden on the pub owning company. We have significant concerns that the contractual provisions of agreements, plus the Landlord & Tenant Acts rights and now the Small Business Enterprise & Employment Act 2014 (SBEE), will effectively make every part of the relationship between the pub owning company and the tenant subject to adjudication and arbitration. This burden will equally be borne by the Adjudicator, which Punch believes raises a significant resource concern for the Government, as well as potential cost to both pub owning companies and the Government. This will inevitably lead to closures of community pubs, even in the short term, and would directly conflict with current Assets of Community Value legislation[2].

The regulations, as drafted, do not constitute 'light touch' regulation. For example, 82 documents or pieces of formal information will be required to let a pub. Punch would support the Government in cutting 'red tape' – this would allow pubs to flourish, while also enabling the Government to achieve its stated policy aim of creating 2 million jobs and cutting of £10 billion[3] of red tape in the lifetime of this Parliament. Punch would point to the comments made by the Rt Hon Sajid Javid MP when he championed the benefits of reducing red tape. Speaking about successful businesses and entrepreneurs at the Private Business Awards in October 2015[4], he said: "We've cut red tape and regulation, giving you the flexibility and freedom to run your companies the way you want to run them". After the election in May 2015, it was stated that Mr Javid "is expected to run the department according to his political philosophy of minimal government intervention in markets".[5]

The regulations provide a disproportionate obligation on the pub owning company compared with the tenants. Tenants should shoulder some responsibility for their own actions; the regulations do not take account of this position, the pub owning company is sought to have a liability for tenant failure at every opportunity. We feel it should be a requirement for tenants to receive professional advice and to undertake due diligence. At the same time, tenant advisors should be professionally qualified and trained – there is a concern that untrained rogue advisors will try and make money unscrupulously from tenants.

The unintended consequences of this legislation are that tenants will end up being tied by a different route. International brewers will simply tie tenants to products via long-term loan arrangements. If pub companies have restrictions over investment, they will not be able to invest over the same period. Punch believes this is anti-competitive and will be a matter for the Competition and Markets Authority.

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[2] The Assets of Community Value (England) Regulations came into force on 21 September 2012. The regulations implement the assets of community value scheme set out in part 5 of the Localism Act 2011.
[3] https://www.gov.uk/government/news/financial-red-tape-targeted-in-new-review
[4] https://www.gov.uk/government/speeches/british-business-successes
[5] http://www.ft.com/cms/s/0/03019c56-f7e9-11e4-8bd5-00144feab7de.html?siteedition=uk#axzz3xBtTAUfb

2.0 Transitional Arrangements and Timing

Punch maintains that there is insufficient detail about the transitional period, as those affected move from self-regulation to the statutory regulated approach.

We feel that further information about transitional arrangements is required in two specific areas:

1. Practical steps – who does what, when and how. For example:
    a. How is the Adjudicator going to deal with claims between the end of May and finalising guidance?
    b. What are the timescales for setting up the Adjudicator's office and will there be a panel of arbitrators or independent assessors?
    c. Who will award costs if there is an appeal?
    d. There are number of practical issues that simply have not been given enough thought or time for consideration – for example: Who are the independent assessors? When will the Adjudicator issue advice? Will the Adjudicator's advice and guidelines be subject to consultation?
    e. There is no indication of the likely cost for the levy for the Adjudicator.
2. How the proposed regulations will affect existing arrangements. For example:
    a. Will existing temporary (12-month) agreements starting from the end of May become part of this arrangement or not?
    b. What happens when temporary rents come to an end? If they are subject to a rent assessment and time delay, pubs will shut as temporary rents will not be granted.
    c. Ongoing rent reviews should not be subject to the SBEE.
    d. All current agreements that had the benefit of significant investment should receive the same investment waiver during the agreement through transitional relief. Without this, future investment will be curtailed and the available money will be used to fund the potential loss MRO would bring to investments in current agreements.
    e. As drafted, the regulations allow for a six-month lead-in to a rent review or lease renewal. The deadline of 26 May 2016 should require that no rent review or lease renewal should be subject to granting of an MRO claim until 25 November 2016 at the earliest.

f. There are a number of concerns regarding training and implementation by pub owning companies:

   i. Insufficient time has been given to provide training for pub owning companies' staff regarding these regulations.
   ii. New systems will be required to deal with these regulations and, given the very short timescales involved, these are unlikely to be in place.
   iii. Regulation 4(5)(b) requires that pre-entry awareness training is accredited by the Office of Qualifications and Examinations Regulation (Ofqual) or by Qualifications Wales – but no such training currently exists. Clearly, to meet this requirement, training bodies need to be given additional time to ensure that Ofqual accreditation can be achieved. Otherwise, pubs will be incapable of being let, and pubs will close.

Overall, we believe that the proposed timing for the implementation of the regulations, training of staff and setting up of the Adjudicator's office is too tight. The consultation period ends on 18 January 2016 and the regulations are not finalised. However, these regulations are expected to be 'live' on 26 May 2016 (just 17 weeks later). There should be a transitional relief period of 12 months to implement the regulations, before they go 'live'.

3.0 Parallel Rent Assessments (covers Part 1 and Part 2 of the Consultation)

Punch is in agreement with the consultation decision not to introduce the right for a tenant to receive a Parallel Rent Assessment.

There has been enduring concern that this was always seen as inappropriate by both sides of the argument. When the initial proposal for Parallel Rent Assessments (PRAs) was announced in June 2014, the reaction from the tenant bodies was wholly negative and the idea was branded "unworkable". The Morning Advertiser article reporting on the publication of a Save the Pub group letter signed by Greg Mulholland MP and two other MPs goes on to say: "How can they possibly, on the one hand, argue that the BIS Select Committee market rent only option... does not have sufficient support, yet put forward Parallel Rent Assessments that had literally no-one proposing it as a solution?"[6].

The reality of Parallel Rent Assessments is that they will add nothing to the current MRO process, which – subject to some adjustment in the current drafting – will deliver the BIS policy objective of 'no worse off' and provide the tenant with a parallel tied and MRO offer. There are some concerns around timing and how PRAs can be offered at the same time in certain circumstances such as lease renewal.

[6] http://www.morningadvertiser.co.uk/Operators/Other-operators/Save-the-Pub-Group-accuses-Vince-Cable-of-falling-into-trap-on-pubco-reform

4.0 Regulations and the Landlord & Tenant Act 1954

As a general comment, it is not clear to Punch that the interaction between the Pubs Code – and in particular the market rent only (MRO) procedure – and the Landlord & Tenant Act 1954 (the LTA) is dealt with sufficiently in the proposed regulations. Punch and its advisors do not agree that a court would be able to reconcile the LTA, and resolve the points in the context of lease renewal and the MRO option, which the consultation suggests it would. There are number of implications regarding the existence of two renewal processes, which need to be considered further and provided for in the regulations.

It would be sensible for the tenant to choose either the MRO process (free-of-tie) or the LTA process (tied) at an early stage. This would have the benefit of reducing both cost and red tape at the earliest opportunity.

The Pubs Code and Pubs Adjudicator Part 1: A Government Consultation – Consultations Questions and Answers

Rent Assessments

Question 1 – Do you have views on the proposed rent definition?

1.1.1 Section 6 in the consultation document references regulations 8 to 11 in Annex B. This refers to a 'suitably qualified valuer registered with the RICS' at regulation 9(3) and 9(9). The word 'registered' must be removed as this will conflict with the registered valuers scheme set up by the RICS for Red Book valuations. The wording should read: a 'suitably qualified valuer who is a Member or Fellow of the Royal Institution of Chartered Surveyors'.

1.1.2 Regulation 42(3) also contradicts the requirement for a suitably qualified RICS valuer, as it states the 'Business Development Manager is responsible for conducting rent assessments or assessments of money payable in lieu of rent.' This cannot be correct? Punch does not have Business Development Managers as a specific title as described in 42(6). This aspect of the regulations needs to be redrafted to allow company representatives and, separately, suitably qualified RICS valuers to undertake the task.

1.1.3 Section 6.12 of the consultation document sets out that a rent review proposal is required within 14 days and this is referenced in regulation 9(2)(b). Given that the volume of rent review proposals will be unknown, and could be large, this should be changed to 21 days. There should also be some form of reasonable clause for the landlord, and for the adjudicator to step in and strike out any claim, in the event that the tenant does not cooperate with providing information and access to the pub.

1.1.4 Section 6.14 of the consultation document states that those other contractual terms that may affect the rent will not be prohibited by the provisions on rent assessment (this infers that they will be allowed). The paragraph then contradicts itself, as the final sentence states that: 'These will not constitute a formal rent assessment under the code'. It is assumed that this refers to the 'periodic general business reviews' in the previous sentence. However, this needs to be clarified. If the latter point is applicable (which Punch does not believe is the objective), then to not allow other contractual lease terms would not follow the normal principles of valuation set by the RICS in valuing the contractual lease terms.

1.1.5 Since the publication of Part 2 of the consultation process and the Lords debate in November, Section 8.12 of the consultation document has been removed. This would have had a significant impact on retaining investment in pubs for the future, and the removal of this clause will reduce investment by companies as it creates uncertainty. If the rent is not increased, the tenant is no worse off; indeed, the rent may even decrease. And if the rent does increase, then the tenant has the benefit of an MRO. If the investment in the pub has a sustainable return in the future for both landlord and tenant, then the principle of fair and lawful dealing and 'no worse off' is achieved.

1.1.6 What must be remembered is that if section 8.12 is retained in some guise, it would be subject to investigation by the Adjudicator, which would provide an equitable solution for both landlord and tenant.

Market Rent Only Option

Question 2 – Are there any other circumstances where a renewal would arise and which should trigger MRO beyond those we have set out?

1.2.1 The principle that tenants who are protected by the LTA have an MRO trigger at renewal is accepted.

1.2.2 There are no further circumstances that should trigger a rent review.

Question 3 – Is the wholesale market price for beer the appropriate baseline for determining a significant price increase?

1.3.1 Yes, the wholesale market price as published by brewers is the appropriate baseline for determining a significant price increase.

1.3.2 The pub owning companies' price increases should be referenced to the weighted average of the products within any price list. This will allow for any large variances by brewers on specific product lines.

1.3.3 The weighted average should only apply to those beer and cider products that are available to purchase from the pub owning company.

Question 4 – Is a five percentage point threshold above any increase in the wholesale price of beer (which will reflect any increases in inflation, taxation and other input costs), the appropriate measure?

1.4.1 Yes, this is an appropriate threshold – subject to our answer to Question 3 above, which includes factors outside of the pub companies' control. The calculation/formula set out in the consultation is adequate.

1.4.2 For clarity, taxation should include any movements in duty and VAT.

Question 5 – Do you agree that the calculation of a significant increase in price for tied products and services other than beer should exclude any increase in the wholesale price that results from rises in tax, duty, regulatory compliance costs or inflation (RPI)? Are there any other factors that should be excluded?

1.5.1 Yes. It is agreed that any increase in price for tied products and services other than beer should exclude any increase in the wholesale price that results from rises in tax, duty, regulatory compliance costs or inflation (RPI), as well as any local government costs, taxes or levies that will apply in the future.

1.5.2 This will cause complications, however. A good example would be insurance, which includes insurance tax, VAT, inflation and significant regulatory compliance costs – all of which would be subject to an adjustment for RPI. It is therefore recommended that insurance and utilities are removed as 'tied services', to reduce the burden on business.

Question 6 – Is this the appropriate way to measure a significant price increase for tied products and services other than beer? If not, please explain the alternative you would recommend.

1.6.1 This is a complex basis on which to identify a significant price increase.

1.6.2 Punch does not have another recommendation. However, any alternative should be calculated according to justifiable common sense and on a proportionate basis.

Question 7 – Is a two tier approach appropriate? If so, is the proposed threshold of contributing to 20 per cent of the pub's turnover the right one?

1.7.1 Yes, although this does add further complexity. Punch understands that the approach taken by BIS is that the threshold is based on the 'cost to the tenant (being) 20 per cent or more as a proportion of the pub's turnover' and not 'contributing to 20 per cent', as the question indicates.

1.7.2 The regulations will need to ensure that the former approach outlined above is adopted.

Question 8 – Are the proposed percentage increases in price (30 per cent and 40 per cent) appropriate? If not, please explain your reasoning and an alternative.

1.8.1 Yes. Punch does not propose to offer an alternative.

Question 9 – Do you agree that a significant price increase should be calculated by reference to the price paid by the tenant at a previous point in time? If so, should that be six months ago?

1.9.1 Yes, it is agreed that a significant price increase should be calculated by reference to the price paid by the tenant at a previous point in time, and six months is adequate. This should exclude any

temporary concessions made by the landlord company, and should only reference the 'headline price paid by the tenant'.

Question 10 – Do you have any comments on points (i)-(v), significant impact trigger events, in Chapter 8?

1.10.1 Punch agrees with points (i)-(v) in section 8.35 of the consultation document, the significant impact trigger events.

1.10.2 Point (i) in section 8.35 of the consultation document, relating to the significant impact trigger events, highlights a 'permanent change in trading conditions'. This is not reflected in The (Draft) Pubs Code Regulations 2016 at point 4(2) a-f, and this should therefore be amended to reflect the position in the consultation document.

1.10.3 The regulations should also include a change in circumstances that result from central and/or local government policy changes.

Question 11 – Can you suggest any other circumstances that would be likely to have a 'significant impact' on the expected business of a pub, and that you believe would not be covered by the proposed definition in the Code?

1.11.1 No further circumstances would be likely to have a significant impact, subject to the changes in our answer to Question 10 above.

MRO Compliant Agreements

Question 12 – Do you agree with the distinction drawn between an MRO compliant agreement that arises from a request for MRO at renewal and an MRO compliant agreement that arises from a request for MRO during the course of the tenancy?

1.12.1 No. There are a number of conflicts between the regulations as set out through the SBEE and the LTA. Specifically, Punch does not agree that a court would be able to resolve the points, in relation to the LTA, in the context of lease renewal and the MRO option, which the consultation suggests it would. There are number of implications regarding the existence of two renewal processes, which need to be considered further and provided for in the regulations.

1.12.2 At section 9.13 in the consultation document, there is an implication that an LTA protected tenant, at the renewal of their agreement, has the right to request a similar agreement to their previous agreement (as is their right under the LTA), and the court could deal with this situation. However, section 9.13 also contains provisions for an MRO agreement with some of the benefits of a tied arrangement. Punch does not believe a court using the LTA procedure would be in a position to consider the SBEE, as the LTA judge would not be able to provide a new commercial arrangement.

1.12.3 The consultation document itself contains contradictions in sections 9.4, 9.8 and 9.9. Section 9.4 of the document refers to 'commercial agreements that are already common' and section 9.8 states: 'we are not prescribing any terms that will be required to make the new agreement MRO compliant'. However, section 9.9 then goes on to say: 'if they opt for MRO at renewal to ensure that, in each case, the tenant receives the offer of an MRO agreement that matches the rights, obligations and protections that they currently enjoy under their tied agreement'. This prescribes terms that the market would not usually give, and Punch does not believe this to be lawful or in the spirit of 'fair and lawful dealing'.

1.12.4 The agreement should reflect common commercial practice, and this is stated in section 9.7. In short, the MRO agreement should be a brand new agreement and have the features of a standard commercial lease (see 1.13.2 below).

1.12.5 There is a further complication at clause 13 of the regulations, which provides that the tenant can give notice under clause 14 of the regulations. At clause 14(2)(a), a trigger for an MRO notice is the service of a notice under s25(1) of the LTA. Where the renewal of an agreement is opposed under the s30(1) grounds of the LTA, the MRO right cannot continue. Opposition to a lease has been completely overlooked by these regulations.

1.12.6 The imposition of an MRO agreement which is anything more or less than the market dictates would constitute unjustified interference by Government over Punch's possessions.

Question 13 – Do you support the requirement that an MRO compliant agreement should provide for an open market rent review every five years? Please explain the effect of such a requirement on the commercial relationship between the tenant and the pub owning business in an MRO agreement.

1.13.1 No. This should not be prescribed, but should reflect the market. In most instances, this would be an open market rent review, and it should be upward only as this is a term most commonly found in a lease of commercial premises. It will be a commercial rent review handled in the same way as the rest of the commercial property market.

1.13.2 The simple requirement was shown in the Fair Pint response to the first BIS consultation, when articulating what an MRO agreement should contain.[7] Unfortunately, the Fair Pint submission does not have any page numbers. However, at page 21 of 31 (in the online PDF document) it states: "Should a tied (tenant) 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." The word in brackets is added to provide the correct meaning.

1.13.3 Punch agrees with Fair Pint, in this instance, that this should be subject to the normal rigours of the property market.

[7] https://www.gov.uk/government/consultations/pub-companies-and-tenants-consultation

MRO Procedure

Question 14 – Does the list of required documents set out in paragraph 10.23 provide the independent assessor with all the appropriate information to make an independent assessment of the MRO rental figure? Should any other documents be added?

1.14.1 Care must be taken here not to contradict The Capital & Rental Valuation of Public Houses, Bars, Restaurants & Nightclubs in England and Wales RICS regulations (RICS regulations).

1.14.2 There is an inference in paragraph 10.23 (i) that the current tenant is been valued. This is incorrect. The Reasonably Efficient Operator should be valued, as the RICS regulations at section 4.15 state, so that 'Current and past performance is no guarantee as to the future FMT (Fair Maintainable Trade) and FMOP (Fair Maintainable Operating Profit)'. The bracketed terms have been added within the quote.

1.14.3 The consultation document also asks for a value of SCORFA benefits at 10.23(iii). The RICS regulations at section 7.14 states, when describing the valuation of SCORFA benefits: "The value of such benefits to an operator can be difficult to quantify". It is therefore questionable whether this is capable of adjudication. An example of this would be the issue of how a value would be attributed to the benefit of help in the event of financial difficulty.

Question 15 – Do you have any comments on the timescales for the MRO procedure proposed for the Code?

1.15.1 The 'Frozen' terms in section 10.5 within the consultation should refer back to the original contractual terms, not any personal concessions that may have been given on a discretionary basis by the pub owning company.

1.15.2 There is a concern that timescales within the consultation are measured in days. Punch's experience of these procedures (from the perspectives of pub companies, tenants and their respective legal advisors) is that this can take months – not the 10 weeks proposed for the independent assessment period. Secondly (and this point is also relevant to our answer to Question 17), the independent assessment period will fall down if the terms of the renewal are not agreed before the rent is set or the rent assessor appointed. In simple terms, the value can only be attributed to any agreement if the terms of the agreement are settled and fixed.

1.15.3 The MRO procedure works if everyone 'behaves' in a professional manner. The Adjudicator or the arbitrator, if one is appointed, should have suitable powers to bring the procedure to an end if parties are not responding or acting in a professional manner. If the timescales are not adhered to when the case transfers, the Adjudicator should remove the case and there should be a reasonableness clause within the timing of the regulations, which should stop spurious claims.

1.15.4 We understood that the costs of the independent assessor would be dealt with in Part 2 of the consultation. These have not been adequately addressed.

Question 16 – Do you have any views on the proposed circumstances in which the MRO procedure will come to an end?

1.16.1 There is a concern that the MRO procedure, as drafted, does not actually bring the contractual rent review to an end. The tenant could achieve both an MRO procedure and have a contractual renewal dealt with under arbitration or through an independent expert.

1.16.2 Punch would recommend that the regulations should be drafted to bring the tied rent review to an end if an MRO agreement is granted. This follows the principle that there should be a surrender or termination of the current agreement and the MRO agreement then implemented.

MRO Disputes

Question 17 – Do you have any concerns about these proposals for the resolution by the Adjudicator of disputes related to the MRO procedure? If so, please explain your concerns.

1.17.1 The dispute resolution procedure causes a number concerns for Punch. In our experience, it can last for a number of months – not merely a number of weeks, as expressed. The most concerning period of time is the 42-day notification period. The notification period should be subject to the lease terms been settled and finalised, and this is critical otherwise the 70-day independent assessment period cannot begin. Again, in simple terms, the independent assessor will not be able to provide their valuation if they do not know what terms they are valuing upon.

1.17.2 There should be some form of appeal procedure in the event that either party does not believe the Adjudicator has provided MRO agreement terms that are reasonable. This would be subject to confirmation that the Arbitration Act 1996 applies to all disputes.

1.17.3 This appeal procedure should follow the form of a third party assessor or court process.

Waiver From MRO in Return for Significant Investment

Question 18 – How do you believe the 'amount' of investment for the purposes of 'qualifying investment' should be defined? Please explain your view by reference to the type of rent payment and percentage which should be used, with evidence to support your response.

1.18.1 While we are glad that the principle of the need to incentivise pub investment has been established, there is as yet no recognition of investment linked to current agreements in transitional arrangement.

1.18.2 It is critical that investments undertaken by pub owning companies form part of the transitional arrangements. Based on the principle of fair and lawful dealing, investments that have been completed as part of a current lease should not be subject to an MRO if no rent increase is proposed at the next rent review. This suitably addresses section 8.12 within Part 1 of the consultation document and creates a fair and proportionate balance between investment undertaken in good faith by the pub owning company and the principle of 'no worse off'.

1.18.3 A significant principle should be determined before the investment waiver is considered. There is a lot of commentary about investment returns. In most instances, the pub companies make little true return on investment and merely get back the money they invested. For example, if the pub owning company invests £100,000 with a 10% pa return, this would take 10 years (the normal length of lease within the market) to recoup the initial capital, but with no actual return.

1.18.4 Following on from the example above, the investment return should be greater than the pre-existing rent. In simple terms, if the rent is £25,000 now, in a pre-invested pub, the additional income would need to be greater than £10,000 to achieve a payback. This does not take into account the cost of money to the pub owning company.

1.18.5 The tenant can, at this point, walk away or assign their interest with no impact on them. The pub owning company may need to re-invest again and the initial investment is lost. The pub owning company should be able to achieve a return beyond simply regaining their capital investment.

1.18.6 We believe there should not be a maximum period for a waiver. Section 12.6 within the consultation document states there should be a maximum period for a waiver – this should not be the case where the parties agree to a longer period. The market will determine what the right level for the waiver period should be, and tenants will only sign up to reasonable waiver periods.

1.18.7 The amount of investment for the waiver could be linked to the property rent payable by the tenant – and this should be considered on a pub-by-pub basis. However, there should be no specified amount. Instead, this should be determined by the market and would effectively maintain a competitive difference between the pub owning companies. Any specified amount would have the effect of inhibiting investment. It will be difficult to deal with an investment waiver on a turnover rent – what would the level of waiver be in a variable rent?

Question 19 – Do you agree with the proposed definition of 'qualifying investment' in terms of the 'type' of investment? If not, please explain why not, and suggest an alternative definition, with evidence to support your response.

1.19.1 No, Punch does not agree with the proposed definition of 'qualifying investment'. While the consultation does provide for certain instances of 'qualifying investment', the pub owning company should be able to include those items that they were not contractually bound to undertake under the previous or current agreement. A good example of this would be where a tenant occupying under a full repairing or insuring agreement vacates the property, potentially without legitimate notice, and leaves the pub in a poor and non-repaired state. In this instance, the repairing works should be included in the 'qualifying investment'.

1.19.2 The requirements for the type of investment described in the consultation document at paragraph 12.19 and regulation 12(2)(c) do not provide sufficient flexibility for investments that do not require alteration, increase in size or planning permission. In a significant number of pubs, a large amount of money is spent on customer-facing improvements, which do not require any of these requirements.

1.19.3 Any spend by the pub owning company that is the responsibility of the tenant and that is subject to rent increase should not be subject to an MRO or have a benefit of waiver until the end of the lease term.

1.19.4 To protect landlord investment in the future, wording should be placed in the regulations stating that: "All investment before the start of the agreement, plus all spend during the agreement that was or is not the landlord's responsibility, will provide the pub owning company with a waiver from any MRO claim throughout the term of the lease or tenancy."

Question 20 – What do you consider should be the maximum length of the waiver period: (a) 7 years; (b) 10 years; or (c) another option? Please provide an explanation for your answer and any evidence to support your case.

1.20.1 To restrict the waiver period will by definition restrict investment.

1.20.2 Punch does not believe there should be a maximum period for a waiver. Section 1.12.6 within the consultation document states there should be a maximum period for a waiver – but this should not be the case where the parties agree to a longer period. See our answer to question 18 above.

Question 21 – Do you agree with the safeguards proposed by the Government and the role proposed for the Adjudicator? Are there other safeguards that you consider should be provided? If so, what and why?

1.21.1 Yes, we agree with the proposed safeguards.

1.21.2 However, we believe a better solution would be for a rent review not to trigger an MRO option if the rent is not proposed to be increased at rent review. This would lead to three potential scenarios. In the first of these, the tenant could still obtain a reduction in the tied rent review. In the second scenario, if the tenant, as a reasonably efficient operator, has over-achieved, the pub owning company can seek a rent increase and would need to provide two rent assessments – one MRO and one tied – for the tenant to choose between. In the third option, the rent remains the same, the tenant continues to trade the pub successfully, and the pub owning company continues to achieve a return on its investment.

1.21.3 Punch agrees with the Adjudicator's role in disputes.

Question 22 – Do you believe that there are any unintended or undesirable consequences of the proposed definition of 'qualifying investment' or of other conditions referred to in this chapter on the MRO investment waiver?

1.22.3 Yes. Please refer to our responses in points 1.19.1 to 1.19.4 above.

Additional general comments

Do you have any other comments that might aid the consultation process as a whole?

There is a concern that the questions being asked do not address some of the main issues. On that basis we have provided further commentary.

It essential that tenants receive advice from properly trained professionals, as this will prevent rogue advisors from attempting to make money unscrupulously from tenants

There are a number of clauses within the draft regulations that are repeated, do not reference properly or are not worded correctly. For example:

- Clause 34(b)(v) and 34(b)(vi) both reference the same wording and then regulation 31(6)(b). We do not believe this can be correct.
- Clause 22(1)(b) – In Part 1 of the consultation, this references regulation 15-17; in Part 2, this references regulation 14-17. It is assumed that Part 2 is correct.
- Pages 48-50 contain the contents pages, but these do not match the document itself – Part 15 on the contents refers to Miscellaneous and Part 15 in the regulations refers to Group Undertakings, for example.
- In Regulation 4(2), the reference to 'tenant' should be consistent and should read 'tied pub tenant'.
- Regulation 6(2)(a) does not makes sense. Should it read "where the circumstances in sub-paragraphs (a) and b) of regulation 5(5) do not arise"?
- Regulation 7(1)(b) is not required – an LTA renewal cannot take place without a rent proposal.
- Regulation 8(5)(a) needs to include rent as an indexed allowance, otherwise annual rent increases (which are common) would be considered a rent review.
- There is no definition of what a 'rent review' is. We believe this cannot be correct.
- Regulation 14 does not allow for a position where a pub owning company opposes the renewal of a lease.
- In Regulation 19(2), the wording 'Chapter 2' needs to be replaced by 'Part 2'.
- Regulation 22(2)(c) does not quite make sense grammatically. The words "are terms which" should be deleted and "pubs" should be replaced with "pub tenants".
- Regulation 22(2)(c) should reflect the commitment in section 9.13 of Part 1 of the consultation document, in that it should not apply to the LTA.
- Regulation 26(d) refers to regulation 24(7), which does not exist – we assume it is regulation 24(6).

We are concerned that these regulations have not been drafted with the necessary due diligence.

The Pubs Code and Pubs Adjudicator Part 2: A Government Consultation – Consultations Questions and Answers

Market Rent Only Option and Parallel Rent Assessments

Question 1 – We believe the stated MRO procedure, that will give tenants a free-of-tie rent offer alongside a tied rent review proposal, will enable tenants to make an informed judgment as to whether they will be no worse off by remaining tied and fulfils the objectives of a Parallel Rent Assessment. If you believe that this does not achieve the goal, please give your reasons why.

2.1.1 We agree that the free-of-tie offer alongside a tied rent review will be enable tenants to make an informed decision.

2.1.2 There is a concern, however, that during LTA renewal proceedings the free-of-tie offer alongside a tied rent review will not occur at the same time due to the differing timescales of the LTA and SBEE.

2.1.3 Punch is also still concerned that this will adversely affect investment. What is not clear is where investment is included in one option and not the other. Under the draft procedure, there would be a number of different proposals, but the tenant would not necessarily have the option of all of those actually being available. For example, if the pub owning company offers a tied agreement with investment and MRO agreement without investment, then the tenant would be presented with an MRO agreement with investment as a proposal, which the pub owning company would not be able to provide.

2.1.4 It is also worth noting the problems with trying to value or even identify SCORFA as highlighted in point 1.14.3 above.

2.1.5 These initial proposals should be treated as guidelines for tenants, who should then take their own advice from a suitably qualified professional. These proposals should not be the subject of adjudication.

Question 2 – We would welcome your comments on whether, in addition to the other information requirements of the draft Pubs Code, the documents provided for in Schedule 3 of the draft Code and described in paragraph 10.23 in Part 1 of this consultation are sufficient and appropriate for calculating a meaningful free-of-tie market rent that will allow tenants to make an informed judgment as to whether they will be no worse off by remaining tied.

2.2.1 Schedule 3 of the draft Code refers to regulation 30(3) and this, in turn, refers to Part 7 of the regulations, which references disputes. It is unclear from Schedule 3 who is providing this information – the pub owning company or the tenant. In a number of instances, this information will not be available to either party and is not relevant. See points 2.2.4 and 2.2.5 below.

2.2.2 The pub owning company should not be under an obligation to tell tenants whether or not it is aware of an intention to sell the freehold of the pub. This is contrary to other sectors of the freehold owning commercial property investment sector. Punch also believes this would constitute unjustified interference by Government over Punch's possessions.

2.2.3 Comparative data with other local free-of-tie pubs mentioned in Schedule 3 point 3 and paragraph 6.19 within the consultation document is an almost impossible requirement and, in most instances, will be beyond the knowledge of the pub owning business. In a lot of cases, this information will be subject to confidentiality and the Data Protection Act 1998 – the pub owning company would not release any personal or trading information to third parties, without a formal consent to disclose.

2.2.4 It should be a matter for well-advised individual tenants to search out local market information and ensure it is correct. The pub owning company should not be liable for the tenants' lack of due diligence.

2.2.5 The information requirement in Schedule 3 point 5 which obliges pub owning companies to provide evidence of the value of housing and commercial properties in the local area is unworkable and not relevant to the independent assessment of a public house. This requirement should be removed.

Question 3 – If you believe that the combination of current proposals will not adequately deliver the 'no worse off' principle or does so in a disproportionate way, please give your reasons and, where relevant, provide evidence.

2.3.1 Punch clearly accepts the principles of fair and lawful dealing and the will of Parliament. However, the current proposals are not proportionate and will restrict investment – as described in Part 1 of the consultation.

2.3.2 We believe that the information requirements in Schedule 1 of the regulations represent a significant burden on both the pub owning company and the tenant, and is disproportionate compared with any other commercial property sector.

Availability of the Market Rent Only Option at Rent Assessment

Question 4 – What would be the effect of removing from the draft Pubs Code Regulations the condition that there must be a proposal for an increase in the rent at rent assessment before a tenant may exercise the MRO option?

2.4.1 Where there is no rent increase proposed by the landlord at a specified rent event under the occupational agreement – ie, rent review or lease renewal – no Market Rent Only (MRO) option should be available. The principle of the tied tenant being no worse off than the free-of-tie tenant would therefore stand as a policy objective – the tenant would have had the opportunity at the outset of their agreement to compare the merits of either a tied or free-of-tie offer, and therefore they are in a no worse position if the rent does not increase.

2.4.2 If a rent increase isn't proposed, then the tenant continues to enjoy the benefits of their hard work from the agreement they originally negotiated.

2.4.2 This would provide an elegant solution if linked to investment as described in 1.18.2 above. This proposal should not be abandoned, as Part 2 of the consultation seems to have concluded.

Question 5 – It would be particularly helpful to receive evidence of the percentage of rent reviews that have resulted in a freezing or reduction of the rent over the last three years; of the prevalence of annual indexation provisions and other inter-rent review arrangements in tenancy agreements; the typical increase in the amount payable by the tenant that they result in; and the way in which these are exercised by the pub owning business under the terms of the tenancy.

2.5.1 Over the past three years, 62% of Punch rent reviews resulted in either frozen or reduced rents.

2.5.2 T 88% of the Punch estate on long term agreements (not tenancy at will agreements) is subject to indexation

2.5.3 In terms of typical annual rent increases, Punch has agreements that are linked to both the CPI and RPI. The following statistics refer to those agreements that are subject to respective average annual indexation figures over the last three years: RPI 2.1% pa or £760 pa; CPI 1.5% pa or £470 pa.

2.5.4 Under the terms of the tenancy agreements we have, Punch writes to its tenants providing them with a breakdown of indexation and any new annual rental amount.

The Pubs Code – Information Requirements

Question 6 – Do you agree that these are appropriate conditions to be met before it becomes mandatory to provide specified information to a prospective tenant?

2.6.1 No. Punch has a number of general concerns about the conditions to be met to mandate a pub owning company to provide information.

2.6.2 Punch estimates that there are 82 pieces of information that the pub owning company must provide, receive or explain before the tenant can occupy a pub. This level of information provides for 485 pages[8], prior to the letting of a pub which may have short term notice provisions, is disproportionate.

[8] We would be happy to provide a full break down of this, a brief summary is as follows: Regulations and Code of Practice -33 pages, Type of Tenancy - 21 pages, The Premises - 79 pages, Maintenance and Repair - 69 pages, Obligations for tied purchase - 23 pages, Assignment - 3 pages, Advice and Support - 28 pages, Insurance - 12 pages, Rent and Deposits - 12 pages, Breaches - 6 pages, Miscellaneous information to be provide as per pubs code = 199 pages.

2.6.3 Punch currently provides perspective tenants with thorough and accurate information to enable them to make the right decision when entering into a pub agreement. It is absolutely in Punch's interest to have successful tenants with sustainable businesses.

2.6.4 One of the key issues we have with the regulations within the Code is that they are applied to tenants at too early a stage. Ahead of any recruitment assessment by Punch, this would result in an extremely high and unreasonable administrative burden to the pub owning company.

2.6.5 The information provisions in Schedule 1 are too wide, and may vary as the terms will be subject to negotiation. The conditional elements of Paragraph 8.14 in the consultation document refer to regulations 5(6)(a) and (b), and these relate to the business plan. Punch assumes that the conditions are actually in regulation 5(5)(a) and (b), as these refer to the inspection of the property and form the conditional element.

2.6.6 The conditions and timing of providing information is poorly drafted. For example, regulation 6(2)(a) refers to a pub owning company not providing information in regulation 6(1) where the prospective tenant does not meet the conditions in regulation 5(5)(a) and (b) – ie, where the tenant has visited the pub and has shown an interest in entering into an agreement. We assume this cannot be correct.

2.6.7 Part 3 has a detrimental effect on tenants. The requirement to provide the tenant with a rent proposal at regulation 7(1)(a), when there is a change to the amount payable, would deter temporary rent concessions. The timescale in providing significant amounts of information would delay the temporary cash flow support. A solution would be to only have this requirement as highlighted in regulation 8(5)(a)-(d).

2.6.8 If the rent is subject to indexation, or if the price of a tied product or service changes, this would also provide a duty to provide a rent proposal. This should not be the basis or the goal of the regulations, and conflicts with regulation 8(5)(a)-(d).

2.6.9 Regulation 7(1)(5) requires the pub owning company to respond within 7 days. This is unreasonable and should be increased to 14 days.

2.6.10 Overall, the information requirements in Schedule 1 are too onerous. There are 82 pieces of information for the pub owning company to confirm they are providing or not providing to the prospective tenant. In very simple terms, the tenant will be overloaded with information – which will, in some instances, defeat the principle of 'no worse off'.

2.6.11 There are also a number of catch-all information requirements, which are far too open-ended. For example, regulation 22(1)(f) requires that the pub owning company gives information on: "The advice and support available to the tied tenant during the tenancy or licence, including advice and support in respect of other aspects of business management". What, exactly, does this mean?

Question 7 – Do you agree that a pub owning business may not require a prospective tenant to submit a business plan unless the tenant is a qualified person to whom it has provided the specified information?

2.7.1 The above question has been answered on the assumption that the word 'not' has been removed from the question.

2.7.2 A new tenant, with the exception of short-term agreements or TAWs, should always provide a business plan and seek professional guidance.

2.7.3 It should also be a requirement of taking an MRO agreement that the tenant fully understands the additional fixed overheads costs and burdens, which this new agreement will inevitably entail.

Question 8 – Do you agree that where a change in the tied rent is proposed during the course of the tenancy agreement, the tenant should be provided with a revised rent proposal? Should all of the Schedule 2 information be required; or only those elements that have been changed? Should all of the Schedule 1 information be provided at the same time?

2.8.1 The definition of 'rent proposal', 'rent assessment', 'assessment of money payable in lieu of rent' and 'rent review proposal' in Part 3 and Part 4 are confusing at best. This requires further clarity when finally drafted.

2.8.2 The information requirements in Schedule 2 are reasonable. However, it is not reasonable to provide all of the information to an existing tenant under Schedule 1. The information would simply not be used by the tenant and would constitute a burden on all parties.

Question 9 – Should a rent proposal be required in all cases where there is a change in the rent during the tenancy? Would there be any merit in excluding changes that are automatic or agreed in advance (for example, annual indexation provisions); or that are of a temporary nature (such as rent 'holidays' to provide short-term relief to the tenant)?

2.9.1 A rent proposal should not be required unless there is a trigger event.

2.9.2 Putting additional administrative burdens on pub owning companies will be detrimental to tenants, who require quick and mostly short-term financial help to aid cash flow.

2.9.3 Any agreed rental increases – stepped rents at the beginning of an agreement, annual indexation or rent concessions, for example – should not be subject to the requirement of a rent proposal.

2.9.4 The Government has stated that it does not want annual indexation of rent to be treated as a rent assessment but this should be clearly set out in Regulation 8(5). As currently drafted the only annual indexation that is not treated as a rent assessment, and so a trigger for MRO, is indexation in connection with the price of a tied product or service and not the rent itself.

The Pubs Code – Repair Provisions

Question 10 – Do you consider that these measures on repair obligations provide an appropriate balance between the rights and duties of pub owning businesses and those of their tied tenants?

2.10.1 Punch believes that section 50 of the regulations will conflict with some of the contractual arrangements.

2.10.2 Regulation 50(9) and 50(10) should refer to the contractual arrangements for entering the property. Also, while the condition of emergencies is mentioned, the tenant should allow reasonable access rather than putting the onus on the pub owning company.

2.10.3 Regulation 50(11) is of concern to Punch. Repair obligations should be dealt with through normal commercial contractual relationships and not by the Adjudicator. An example would be whether the Adjudicator is going to be involved in a delay for a gutter repair. Potentially, with a large estate (over 500 pubs), multiple claims may occur. According to the draft regulations, this would be subject to adjudication. Given that this would be subject to a 1% of turnover fine per claim, this is considered to be disproportionate.

The Pubs Code – Arbitrable Provisions

Question 11 – In the draft Code are there any provisions that you consider should be specified as non-arbitrable? Please explain the advantages of doing so.

2.11.1 There are a number of items that should not be subject to adjudication or arbitration.

i. The initial proposals for letting, as described in 1.14.3 and 2.1.5 above – in simple terms, SCORFA benefits – should not be subject to adjudication. This provides a competitive environment for pub owning companies, and is also almost impossible to quantify.
ii. Temporary support concessions should not be subject to adjudication. This would stop assistance to tenants.
iii. Pub owning company support of tenant obligations should not be arbitrated. This would stop assistance to tenants.
iv. Part 9 of the Draft Code: Business Development Managers (with the exception of the provision to the tenant of a note of the issues discussed). If the Adjudicator has concerns about the commitment of a pub company to the training of its BDMs this is best dealt with by an investigation.
v. Part 11 of the Draft Code: Codes of Practice para 76. It would be unduly onerous for a pub company to have to prove in an adjudication that it has provided all tenants with a copy of its code. This might also raise difficulties in proving this without disclosing the names and addresses of tenants in breach of data protection legislation. This is better dealt with by an investigation.
vi. Part 12 of the Draft Code – Compliance. Again this would be very onerous in an arbitration and may require data to be disclosed in breach of data protection legislation. Best dealt with by investigatory powers as the Adjudicator is the person best able to monitor compliance.

2.11.2 A definitive list of 'non-arbitable' provisions should be provided by the Adjudicator as part of any further consultation into its authority.

Contractual Inconsistencies With The Code

Question 12 – Do you have any comments relating to the proposals for void and unenforceable terms?

2.12.1 No, Punch has no comments on these terms.

Extension of Code Protections

Question 13 – Do you have any views on the extent of the extended protection that is proposed?

2.13.1 We believe that it is unreasonable to saddle future purchasers, who may be smaller operators or single owners, with the burdens of complex regulation.

2.13.2 This also has a direct impact on the value of the freehold asset for the pub owning company and restricts the ability for the sale – an impact that is disproportionate. This would constitute unjustified interference by Government over Punch's possessions in respect of the ability to buy or sell property assets without encumbrance.

2.13.3 This is contrary to the Localism Act 2011. The likelihood is that pubs will be sold for alternative use – the purchase would be unattractive to a small pub company or brewer, who would continue to trade with the tenant outside of these regulations.

Group Undertakings

Question 14 – Are there any elements of these proposals regarding group undertakings that you think would not work as intended or that require amending?

2.14.1 It should be the contractual landlord who is subject to adjudication and not any group company. The Adjudicator should not have absolute discretion to bring any party into the determination of a dispute.

Exemptions From The Pubs Code – Genuine Franchise Agreements

Question 15 – Please comment on the key characteristics of a genuine franchise agreement as set out in Table 1. Where you think a characteristic should be amended or removed please set out your evidence as to why.

Similarly if you think further characteristics should be added please set out your justification as to why as well as an explanation of what should be added.

2.15.1 It is important that the franchise agreements are, in certain circumstances, not assignable or saleable. This is because the majority of the problems come from the sale by successful operators to potentially naïve incomers into the business. The incomer is provided with information from the seller that can show an inflated position.

2.15.2 The regulations take an extremely narrow approach – virtually every recognised franchise, both in the pub sector and beyond, would fail this test. The requirement that there should be no additional payments for the supply of goods or services cannot be correct.

2.15.3 In simple terms, if there is no rent payable and the operator of the pub has no financial exposure to stock or bills associated with the running of the pub business, the tenant should not have the benefit of the regulations. Where no rent is paid, the regulations are to a large extent meaningless.

Question 16 – Do you agree with the Government's proposals for 'reasonable piloting' of the pub franchise model. If not, please explain your answer.

2.16.1 We agree with the proposals.

Question 17 – Do you agree that the Pubs Code information requirements that are indirectly related to rent such as the signposting to sources of benchmark information and the provision of historical trade information should apply to genuine pub franchise agreements?

If you disagree please clarify which requirement(s) is of concern, suggest any deletions and/or amendments and justify your arguments.

2.17.1 No, Punch disagrees. The majority of the information in schedule 1 is not relevant to genuine pub franchise agreements.

2.17.2 There should be a separate and reduced information requirement for pub franchises, or for agreements where no rent is paid and there is no exposure to stock or costs of the business.

Exemptions From The Pubs Code – Tenancy At Will and Short-term Agreements

Question 18 – For how long should tenancy at will or other agreements be granted exemption from the Pubs Code?

Please explain the rationale for your answer and provide any evidence to support your case.

2.18.1 Tenancy at will agreements are essential to keep pubs open on a temporary basis. They provide the tenant with no risk the tenant has no repairing obligations, no public liability requirements and can leave the pub with no notice.

2.18.2 We believe that a 12-month exemption period is adequate, as described in the consultation document, and that this is the right length of agreement.

Question 19 – Do you think it is appropriate that a tenant entering into a tenancy at will or short-term agreement with a pub owning business should have completed pre-entry awareness training prior to being offered the agreement?

Please explain the rationale for your answer and provide any evidence to support your case.

2.19.1 The nature of tenancy at will agreements (TAWs) means there is a need to react quickly to situations where a pub would otherwise close. There should not be any further requirements upon a pub owning company than to provide statutory certification e.g. gas certificates, electrical tests and fire risk assessments.

2.19.2 Any restriction upon access to a TAW would mean that pubs would close.

Question 20 – What sort of information do you consider would be useful and desirable for a new tenant to receive from the pub-owning business when entering into a tenancy at will or short-term agreement?

2.20.1 Please see our answer to question 19 above.

Enforcing The Pubs Code – Fee For Arbitration

Question 21 – If you do not agree with the proposed £200 fee please explain why and give the rationale and any evidence in support of an alternative amount.

2.21.1 Punch maintains that the proposed fee should be more than £200.00.

2.21.2 The sum should deter vexatious claims – so, on that basis, it should be at the upper end of the court fee structures, similar to an employment tribunal perhaps. The initial fee for an employment tribunal is £225 and the hearing fee is £950[9], and we believe this would be equitable. If, after a period of time following payment of the initial fee of £225, the parties cannot agree, then the applicant should pay a fee of £950 for the Adjudicator to become formally involved.

Enforcing The Pubs Code – Costs of Arbitration

Question 22 – Do you agree with the Government's proposal that the maximum costs that tied tenants could have to pay a pub owning business following an arbitration should be set at £2,000?

If you do not agree, please suggest an alternative level of fee, explaining the rationale for the alternative and provide evidence to support your case.

[9] https://www.gov.uk/employment-tribunals/make-a-claim

2.22.1 There should be no upper limit, similar to a court process.

Enforcing The Pubs Code – Proposed Maximum Financial Penalty

Question 23 – If you do not agree that the maximum financial penalty the Adjudicator should be able to impose following an investigation should be set at 1% of the annual UK turnover of all group undertakings of the pub owning business, please explain why and give the rationale and any evidence in support of an alternative amount.

2.23.1 Punch does not agree. We believe the 1% fee should be based on the annual UK turnover of only the tied pub estate of the pub owning business – this figure is easily found within the company's annual accounts. It should exclude any other undertakings, such as property investments, managed houses and brewing.

Additional general comments

Please use this space for any general comments that you may have. Comments on the layout of this consultation would also be welcomed.

Please refer to the general comments Punch made earlier in this document, at the end of Part 1 of the consultation response.